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APPENDIX A

Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. R. 12.4(E), *Carruthers v. Tennessee,* No. W1997-00097-SC-DDT-DD, (Tenn. Apr. 9, 2026)

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DEATH PENALTY CASE
Case No. W1997-00097-SC-DDT-DD
EXECUTION SCHEDULED FOR May 21, 2026, at 10:00 a.m.

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

TONY VON CARRUTHERS,
Movant,

v.

STATE OF TENNESSEE,
Respondent.

MOTION FOR POST-CONVICTION DNA TESTING AND REQUEST TO APPOINT A SPECIAL MASTER PURSUANT TO TENN. S. CT. R. 12.4(E)

Maria DeLiberato*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

ATTORNEY FOR MOVANT
TONY VON CARRUTHERS

**pro hac vice* pending

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STATEMENT OF THE CASE

The State of Tennessee is on the verge of carrying out the execution of Tony Carruthers despite the fact that available, probative, and untested physical evidence exists that could confirm what Mr. Carruthers has been unequivocally arguing for three decades — that he is innocent of the kidnapping murders of Marcellos Anderson, Frederick Tucker, and Delois Anderson. Mr. Carruthers seeks access to forensic evidence collected in this case for DNA testing under the provisions of Tenn. Code Ann. § 40-30-304 (2024) and/or Tenn. Code Ann. § 40-30-305 (2024).

Mr. Carruthers files this motion for DNA testing access in this Court pursuant to Tennessee Supreme Court Rule 12.4(E) because the motion and related litigation may "potentially affect" the timing of the scheduled execution. *See* Rule 12.4(E) (mandating that once an execution date is set, if a proposed motion will potentially affect the timing of an execution, a defendant must file that motion in the Tennessee Supreme Court). Mr. Carruthers anticipates that, if granted, the DNA testing itself will be concluded prior to his May 21st execution date, so this Motion for Testing, in and of itself, is unlikely to affect the

timing of his scheduled execution.[1] However, if the DNA results confirm Mr. Carruthers' innocence or cast doubt on the appropriateness of his death sentence, Mr. Carruthers will move to stay his execution. As such, Counsel files the Motion with this Court.

This Court can and should grant DNA testing on the face of this Motion, without the need for additional fact-finding by a special master. However, should this Court determine that there are factual matters of dispute, Mr. Carruthers requests the appointment of a special master to adjudicate these issues.

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[1] Mr. Carruthers' federal counsel filed a claim under *Ford v. Wainwright*, 477 U.S. 399 (1986) that Mr. Carruthers is incompetent to be executed. The Shelby County Criminal Court rejected that claim, but an appeal of that denial is pending before this Court. *Carruthers v. State*, W1997-00097-SC-DDT-DD (Appellant's brief filed on 4/7/2026).

STATEMENT OF THE FACTS

I. The State's case against Tony Carruthers was built upon circumstantial evidence and rested on the testimony of convicted felons and paid informants.

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). On March 3, 1994, their bodies were found in a grave in a Memphis cemetery. *Id.* Their bodies were found on top of one another, underneath a piece of plywood that was underneath a casket. Marcellos Anderson's hands were bound behind his back with cloth ties. Frederick Tucker was also bound with cloth ties at his hands and feet. Delois Anderson had two red socks knotted together wrapped around her neck, and one arm was tied behind her back with a pair of knotted pantyhose (Ex. 1, 1996 Trial Transcript, Vol. 13, p. 1864-1867).

Ms. Anderson had been reported missing, and the State believed her home was the scene of the kidnapping. The prosecution drew this conclusion based on the facts that Ms. Anderson did not take her purse with her, someone answered the phone when her niece telephoned the residence but failed to speak, and a half-eaten meal was found in Ms.

Anderson's bedroom. The police collected multiple latent prints suitable for comparison from Ms. Anderson's house, including prints from the doorknobs and the phone receiver.

The State's ultimate theory at trial was that Mr. Carruthers, along with his co-defendants, James and Jonathan Montgomery, kidnapped Marcellos Anderson to rob him. *Carruthers*, 35 S.W.3d at 524. Marcellos Anderson was "heavily involved in the drug trade" and known to carry large amounts of cash and valuables. *Id.* It was Jonathan Montgomery who led authorities to the bodies in the grave, which led police to the involvement of his brother James. Jonathan was found hanged in his cell prior to trial. *Id.* at 524 n.2.

The case against Mr. Carruthers was originally dismissed in General Sessions Court for lack of evidence (Ex. 2, Docket and news article showing dismissal of charges). The State was only able to secure an indictment and proceed with its case against Mr. Carruthers after it enlisted the services of a career snitch named Alfredo Shaw, who testified to his purported confession (Ex. 3, Crimestoppers Report dated 4/3/94). In the words of the investigating officer,

> This CI gave a statement that Tony Carruthers confessed to murders. This CI testified at the Grand Jury. When this information was received, Tony Carruthers [sic] case in General Sessions Court had been dismissed for lack of evidence. Without this information and his testimony in Grand Jury Carruthers would have been released.

Id.

The State's original theory of prosecution was based on Mr. Shaw's grand jury testimony that two brothers, Jerry and Terry Durham, hired Tony Carruthers to commit the three murders for $100,000 and a kilogram of cocaine (Ex. 4, Trans. Alfredo Shaw GJ Testimony). But before trial, Mr. Shaw recanted his grand jury testimony in a TV news statement where he confessed that the police had paid him to testify against Tony Carruthers. *See* Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (interview previously introduced as Ex. 5 (transcript) and Ex. 9 (video) in *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000), Response to Motion to Set Execution Date (filed Dec. 30, 2019)).

No forensic evidence linked Mr. Carruthers to the crime. *Carruthers*, 35 S.W.3dat 523–72 (established by omission). There were no eyewitnesses to the murder. *Id.* The fingerprints collected from Ms.

Anderson's house excluded Mr. Carruthers and Mr. Montgomery, and it included 6 unidentified prints.[2]

At trial, the prosecution's case rested almost entirely on the testimony of convicted felons and paid informants. Jimmy Lee Maze Jr., "a convicted felon," testified that he had received two letters from Mr. Carruthers about a "master plan" to "make those streets pay me." *Carruthers*, 35 S.W.3d at 524. Mr. Maze then recounted a conversation he purportedly had with Mr. Carruthers discussing plans for the kidnapping. *Id.* Charles Ray Smith testified that Mr. Carruthers had commented to him, while working together on a prison work detail in a cemetery, that hiding a body under the grave of another would be a good way to dispose of a corpse. *Id.* Finally, Alfredo Shaw testified that Mr. Carruthers confessed to him. *Id.* at 528–29.

Mr. Carruthers was forced to represent himself at trial. The jury never heard about the any evidence regarding the fingerprints from Ms.

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[2] In 2022, the Memphis Police Department ran the unidentified prints in AFIS. *See* Ex. 5, Latent Fingerprint Report, dated 1/24/22. One print on the northwest bedroom door matched Ms. Anderson's niece, but there still remain 6 unidentified prints.

Anderson's house — neither that there were unidentified prints — nor that Mr. Carruthers and Mr. Montgomery were excluded from the prints. The only putative "confession" in this case was obtained by Mr. Shaw—a career snitch. Much of the remaining evidence against Mr. Carruthers was circumstantial at best. For example, Nakeita Shaw testified that she witnessed Mr. Carruthers and James Montgomery at her home on the night of the kidnappings. *Id.* at 526. Without more, however, this testimony did little to inculpate Mr. Carruthers and it has never been asserted that Mr. Carruthers was unacquainted with the Montgomery brothers. Likewise, Chris Hines's testimony that Jonathan Montgomery beeped him and said "[m]an, a n——r got them folks," apparently meaning "Cello and them." *Id.* at 526. But this testimony does not inculpate Mr. Carruthers, as it only shows that Jonathan Montgomery had knowledge of the murders, which he clearly did since he led police to the location of the bodies.

Both Mr. Montgomery and Mr. Carruthers were convicted and sentenced to death. On direct appeal, this Court found that James Montgomery was so prejudiced by Mr. Carruthers' forced self-representation that Mr. Montgomery was entitled to a new trial. *State*

v. Carruthers, 35 S.W.3d 516, 553–54 (Tenn. 2000) (reversing Montgomery's conviction and death sentence because "the record demonstrates that Montgomery was severely prejudiced by Carruthers' self-representation…").

II. In the decades since Mr. Carruthers' conviction and death sentence, the circumstantial evidence against him at trial was further undermined, and in some instances, was outright retracted.

A. Forensic Testing conducted on significant physical evidence prior to co-defendant James Montgomery's re-trial affirmatively excluded Mr. Carruthers.

As part of the re-trial proceedings, co-defendant James Montgomery sought forensic testing on multiple pieces of physical evidence collected from both the kidnapping scene and the grave site scene where the bodies were located. Testing revealed several pieces of critical information (Ex. 6, Affidavit of Alan Keel, Attachment 2).

First, the testing did not reveal any DNA matches to Mr. Montgomery or Mr. Carruthers on the evidence. A majority of the samples were either too small to produce a profile under 2003 technology, were inconclusive, or matched the victims. However, there

was one robust male profile on a white blanket that was buried with the victims. *Id*. Mr. Carruthers, Mr. Montgomery, and the male victims were excluded as a source of the DNA. The unknown male profile was suitable for upload into the Combined DNA Index System (CODIS) database. The last report Mr. Carruthers obtained, through a request under James Montgomery's case, was in 2019 and indicated that there were no hits in CODIS (Ex. 7, 2019 CODIS Report).

In the wake of the release of the DNA results, the State offered and Mr. Montgomery accepted an *Alford* plea to a reduced charge of three counts of second-degree murder. *See North Carolina v. Alford*, 400 U.S. 25 (1970). Mr. Montgomery was sentenced to 27 years in prison on each count, to be run currently, and was released in 2016 (Ex. 8, James Montgomery Plea Form and Transcript).

B. From the time of Mr. Carruthers' arrest through the next 30 years, the State affirmatively concealed Alfredo Shaw's status as a paid government informant.

For thirty years, the State withheld information about Alfredo Shaw's status as a paid government informant. It did so despite repeated requests for exculpatory and impeachment materials. While bias is a classic form of impeachment, the damage to the State's theory

from this information was particularly important because Alfredo Shaw himself had admitted in a confession to the media that he had been paid by the police for falsely implicating Mr. Carruthers.

The State's attempts to hide Mr. Shaw's status began as soon as Mr. Carruthers' prosecution commenced, as evidenced by State's repeated failures to disclose any information about Shaw's history as an informant. *See e.g.,* Ex. 9, Defense Supplemental Motion for Discovery and Inspection; Ex. 10, State's Response to Motion for Discovery; Ex. 11, Motion for the Disclosure of Impeaching Information; Ex. 12, Resp of State to Mtn for Disc. Of Impeaching Information.

Prior to trial, Alfredo Shaw went to the media and admitted that his grand jury testimony was false and given only as a result of pressure and payment from the State Attorney and law enforcement. *See* Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (interview previously introduced as Ex. 5 (transcript) and Ex. 9 (video) in *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000), Response to Motion to Set Execution Date (filed Dec. 30, 2019)).

At trial, Mr. Carruthers, forced to act as his own counsel, called Mr. Shaw to the stand to admit his recantation from the media interview. Prior to calling Mr. Shaw, the Court called in Mr. Shaw's counsel, and in open court, cautioned that if Mr. Shaw repeated his recantation from the media interview: "The State has indicated that if that is indeed his testimony today, then they plan to seek indictments for aggravated perjury in both of those instances." (Ex. 13, 1996 Trial Transcript, Vol. 14, p. 2128.) After meeting with his client, Mr. Shaw's lawyer reported that Mr. Shaw would "testify that what he has testified before was all true and correct." *Id*. at 2136. Mr. Shaw kept his lawyer's promise and repeated for the jury the "confession" that Mr. Carruthers purportedly gave him (Ex. 14, 1996 Trial Transcript, Vol. 15, p. 2174-2178). Mr. Carruthers, acting *pro se*, attempted to discover if Mr. Shaw was a paid informant. The prosecutor successfully objected to the question and kept the jury from learning the truth. *Id*. at 2254.

In post-conviction, through counsel, Mr. Carruthers continued his quest to prove that Alfredo Shaw was indeed acting as paid informant for the State (Ex. 15, Letter from Charles R. Ray, post-conviction counsel, to John W. Campbell, Assistant District Attorney (Aug. 6,

2002); Ex. 16, Letter from John W. Campbell, Assistant District Attorney to Charles R. Ray, post-conviction counsel (Aug. 26, 2002); Ex. 17, Letter from Charles R. Ray, post-conviction counsel, to John W. Campbell, Assistant District Attorney (Aug. 30, 2002)).

On September 12, 2002, post-conviction counsel filed a "Motion to Compel the State to Reveal All Agreements, Renumeration, Or Other Consideration Given To The State's Witnesses" (Ex. 18, Motion to Compel). The prosecution denied giving Mr. Shaw a deal but parsed carefully its denial of payment to Mr. Shaw:

> [T]he State again submits that Shaw was not given any deal in exchange for his testimony. Furthermore, the State submits that Shaw was not a 'paid government agent' planted in the jail to obtain evidence against petitioner.

(Ex. 19, Response of the State of Tennessee to Petitioner's Motion to Reveal All Agreements Given to State's Witnesses).

Concerned regarding the equivocations of the State, post-conviction counsel filed a second Motion to Compel specifically as it related to Alfredo Shaw *(*Ex. 20, Motion to Compel (Alfredo Shaw)). The post-conviction court ordered that the State file a written response "divulging whether Alfredo Shaw was or was not a paid government

agent for either the county, state, or federal government during the time period he had conversations with petitioner in the Shelby County Jail." (Ex. 21, Dec. 3, 2002, Order). The prosecutor's response on December 10, 2002, asserted that Alfredo Shaw "was not a 'paid government agent' planted in the jail to get a statement from petitioner . . . The State does not understand why another Response is necessary." (Ex. 22, Response of the State of Tennessee). The State doubled down on this answer in a January 7, 2003, letter:

> I thought this matter was resolved by my earlier response. But just in case [sic], **I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. . . I do not know how much clearer I can be on this topic.**

(Ex 23, Letter from John W. Campbell, Assistant District Attorney General to Charles R. Ray, Post-conviction Counsel for Mr. Carruthers (Jan. 7, 2003) (emphasis added)).

Over the ensuing decades, Mr. Carruthers's counsel requested documents related to Alfredo Shaw's work as a confidential informant through Tennessee Public Records requests, Freedom of Information Act requests directed to federal law enforcement agencies, and through

discovery in federal habeas proceedings. (Ex. 24, Letter from Timothy A. Beacham, Assistant District Attorney General to Richard L. Tennent, Assistant Federal Public Defender (Oct. 28, 2019); Ex. 25, Shelby County Sheriff's Office Public Records Redacted Response showing Shaw as a paid informant from 1991 to 1998).

Finally, on May 9, 2024, the Shelby County Criminal Court, Division V, ordered the Memphis Police Department to provide information regarding Alfredo's Shaw's employment as a confidential informant to the Shelby County District Attorney's Justice Review Unit (Ex. 26, Agreed Order). On August 6, 2024, Assistant District Attorney Kevin Rardin provided the counsel for Mr. Carruthers more than 20 pages of information regarding Alfredo Shaw's employment as a confidential informant. The documents included signed confidential agreements between Shaw and law enforcement dating back to mid-1980s and ledgers of payments to Mr. Shaw continuing until at least 2003 (Ex. 27, Shaw informant file).

C. Trial testimony from medical examiner that victims were buried alive has been proven false.

For decades, the State has perpetuated the false narrative that the victims were buried alive, based entirely on the testimony of medical examiner Dr. O.C. Smith. *Carruthers*, 35 S.W.3d at 527. There was no scientific basis for this conclusion, and even Dr. Smith himself has subsequently disavowed this conclusion. (Ex. 28, Affidavit of Dr. O.C. Smith ("I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin."); Ex. 29, Testimony of Dr. Cleland Blake and Dr. George Nichols (post-conviction expert testimony that there was no scientific basis for Dr. Smith's trial testimony)).

To this day, public perception of this case is shaped by the mistaken belief that Mr. Carruthers buried the victims alive. *See, e.g.*, Evan Mealins, *Tennessee Supreme Court sets 2026 execution dates for Christa Pika, three others*, The Tennessean (Oct. 1, 2025), https://perma.cc/VG3H-KZ72 (claiming Carruthers was convicted of "burying alive three people"); WREG Staff, *Memphis man convicted of triple murder goes from death row to freedom*, WREG (Sept. 26, 2016), https://wreg.com/news/memphis-man-convicted-of-triple-murder-goes-

from-death-row-to-freedom/ (recounting co-defendant Montgomery's release from prison and conviction for burying the victims alive).[3]

D. James Montgomery's Statement Exonerating Mr. Carruthers and Inculpating Ronnie Irving.

In 2010, co-defendant James Montgomery, while serving out his remaining sentence, gave a statement to an investigator with the Capital Habeas Unit indicating that he kidnapped Marcellos and Fred and that he dispatched Ronnie "Eyeball" Irving to kidnap Ms. Anderson. He confirmed to the investigator that Mr. Carruthers was not involved in the kidnapping or the murders. Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. To date, the unidentified physical evidence (the latent fingerprints or unknown male DNA profile) has not been compared to Mr. Irving.

1. Post conviction efforts for fingerprint testing

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[3] The State continues to assert this false narrative in the present day. "[T]rial testimony established that they had all died of injuries associated with being buried alive." *see* State's Brief at 9, *Carruthers v. State*, No. W2026-00226-CCA-R3-PD (Tenn. Crim. App. filed Mar. 23, 2026).

On September 21, 2021, Mr. Carruthers, acting *pro se*, filed a petition for fingerprints analysis pursuant to Tenn. Code Ann. 40-30-401 (2021), et seq. On February 2, 2022, the State responded in opposition to Mr. Carruthers's *pro se* pleading. The Federal Public Defender for the Middle District of Tennessee filed a notice of intent to represent Mr. Carruthers in his fingerprints matter and filed a Reply to the State's opposition. On January 16, 2026, the Shelby County Criminal Court dismissed the request for fingerprint testing without an evidentiary hearing. The case remains on appeal. *Carruthers v. State*, No. W2026-00226-CCA-R3-PD.

2. Post conviction efforts for DNA Testing

In state post-conviction, Mr. Carruthers argued that his counsel was ineffective during pre-trial litigation for failing to retain a DNA expert, who would have testified: (1) DNA was available on blood found on "blanket-like cloth"; and (2) the DNA did not belong to the victim nor any of the three co-defendants. The post-conviction court rejected this claim, concluding that this testimony and DNA results "are only very minimally helpful to the petition. In no ways does this evidence negate all other proof in the case and it is rank speculation to assume that this

indicates that a third party might have committed this crime." Carruthers *v. State*, No. W2006-00376-CCA-R3PD, 2007 WL 4355481, at *38 (Tenn. Crim. App. Dec. 12, 2007).

Mr. Carruthers next moved *pro se* in 2011 to reopen state-post conviction proceedings under the Tennessee's post-conviction DNA statute, seeking testing of the vaginal swab and blanket from trial, using a pre-printed form. The post-conviction court dismissed the motion, relying on the 2007 ruling in his post-conviction case that the DNA testing "has already occurred, and the results are only minimally helpful to Petitioner." *Carruthers v. State*, 2013 WL 3968787 (Aug. 1, 2013). Mr. Carruthers sought testing under only the mandatory provisions of the Tennessee DNA testing statute. Tenn. Code Ann. Section 40-30-304.

The State opposed the testing, arguing that while the DNA sample from the blanket did not match any of the codefendants, it had been uploaded to CODIS as of April 2012 and there were no hits. The Court ruled that Mr. Carruthers did not meet the statute's requirement for mandatory testing because a "new CODIS match might identify the depositor of the biological material on the blanket but could not prove

that it was deposited at a time contemporaneous with the crime for which Petitioner was convicted." *Id*. at *4.

III. Items Now Sought to be DNA Tested

First, Mr. Carruthers seeks the DNA testing of items, which are still in existence and which have never been subjected to DNA testing: 1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson[4]; 2) the bindings of Marcellos Anderson[5] and 3) the bindings of Delois Anderson, which include knotted pantyhose around her hand and the red socks knotted around her neck.[6] New advances in DNA testing and analysis create a likelihood that testing will provide

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[4] These are in the custody of the Shelby County Medical Examiner.

[5] These are packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number E-C94-586; 15305 ("Marcellos Anderson, cloth ties, knotted").

[6] These are separately packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number C-C94-588;15305 and 15305a ("Delores (sic) Anderson knotted pantyhose", "dirty red sock", and "bloody red sock"). The red sock listed as "bloody" (15305a) was tested in 2003 and revealed a weak unknown profile from a bloodstain, but it appears that the mate - listed as "dirty" (15305) - was never tested. Both socks appeared to be knotted together around her neck. *See* Ex. 6, Affidavit of Alan Keel.

investigative leads to answers far beyond the unanswered question of whose blood was on the blanket. (Ex. 6, Affidavit of Alan Keel, p. 2).

Criminalist and DNA expert Alan Keel concludes that it is likely each of these items, the fingernails and the materials used as bindings "bear transfer biology from whomever bound the victims." (Ex 6, Affidavit of Alan Keel, p. 6). Mr. Keel has conducted DNA testing in hundreds of cases in over 36 states and has reviewed the prior testing in this case of the Tennessee Bureau of Investigation and Bode Technology Group and their supporting records. (Ex. 6, Affidavit of Alan Keel, p. 1-2). Because of revolutionary advances in forensic DNA testing, analysis today can lead to highly discriminating DNA profiles from common sources across different items of evidence, including sources not previously considered suitable for testing. *Id*., p. 2. Mr. Keel concludes that the bindings should be sampled for transfer or touch biology from the assailant in light of current technology. He explains:

> This approach could also produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket. Such a finding would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the relevance of the foreign blood

> previously discovered on the #16 blanket as originating from an assailant.

Id. at p. 6. In other words, the analysis could create a lead to the true perpetrator's profile. Additionally, if the male DNA profile on the bindings matched the unidentified profile from the blood on the blanket, it would support the inference that the blood was deposited at the time of the murders.

Mr. Keel also stresses the importance of testing the fingernail scrapings:

> Fingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested. It is likely that one or more of the victims struggled with the perpetrator(s) during the assault. I have personally examined fingernail evidence in over 50 cases. My experience attests and the scientific literature documents that most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived. Hence, foreign biology associated with the fingernails of homicide victims is usually relevant to the crime. Biology transferred from a person to another person's fingernails is rarely self-evident and often is not from blood. Any available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation.

Id. at p. 7.

Assuming a profile is obtained from any or all of those items, Mr. Carruthers seeks to compare that profile to the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and to upload any unmatched profile to CODIS.

Mr. Carruthers also seeks to compare the unknown male profile that was found on a white blanket in the grave with the victims.[7] As noted above, this profile had already been compared to Mr. Carruthers, co-defendant James Montgomery, and the victims and uploaded to CODIS. (Ex. 7, 2019 CODIS Report). Mr. Carruthers' counsel was provided an update in 2019 that there have been no hits. Counsel has not been provided with a more recent update. Mr. Carruthers seeks to have that unknown male profile re-run in CODIS and compared to Ronnie Irving, who James Montgomery identified as his co-defendant and the one responsible for the kidnaping of Delois Anderson.

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[7] This profile from the blanket is in the custody of the Tennessee Bureau of Investigation under Lab Case #063001146, marked as Exhibit 02-a.

SUMMARY OF THE ARGUMENT

Before the State of Tennessee carries out the irreversible execution of Tony Carruthers, this Court should require the State to submit critical evidence for DNA testing. As described herein, this Motion requests DNA testing on specific pieces of probative physical evidence, most of which has never been tested, and which will likely point to the real perpetrator or perpetrators and avoid a wrongful execution.

Mr. Carruthers' case shares many of the hallmarks of other wrongful convictions cases. He was convicted primarily on the testimony of snitches and informants, the leading cause of wrongful convictions. The remaining evidence against him was circumstantial, and he was at an even higher risk of a wrongful conviction and/or a wrongful death sentence due to his forced self-representation. This Court should evaluate the totality of the information known at Mr. Carruthers' trial, as well as the significant new evidence discovered since his trial, and grant this Motion for Post-Conviction DNA Testing.

ARGUMENT

THIS COURT SHOULD GRANT DNA TESTING PRIOR TO CARRYING OUT AN IRREVERSIBLE EXECUTION.

A. Mr. Carruthers' case is exactly the kind of case for which Tennessee's Post-Conviction DNA Statute was created.

Tennessee's Post-Conviction DNA Analysis Act of 2001 ("DNA Act") was created to serve two purposes. "[F]irst, to aid in the exoneration of those who are wrongfully convicted and second, to aid in identifying the true perpetrators of the crimes." *Powers v. State*, 343 S.W. 3d 36, 51 (Tenn. 2001). The *Powers* Court specifically concluded that the DNA Act granted more than just exclusionary testing. "DNA analysis that only compares a petitioner's profile with a profile developed from biological material found at a crime scene cannot effectuate this second purpose." *Id*. "When, however, uploading the latter into a DNA database can potentially identify the person responsible for the crime, the Act also serves a 'law-enforcement,' or justice-finding, purpose: the apprehension of criminals who may still be at large." *Id*.

The United States Supreme Court has recognized and echoed this purpose:

> DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both

> the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure—usually but not always through legislation.

Dist. Attorney's Off. for Third Jud. Dist. v. Osborne, 557 U.S. 52, 55, (2009). See also *Brief for The Innocence Network as Amicus Curiae Supporting Appellee*, *State v. Jones*, No. 2025-0913, 2026 WL 221492, at *3 (Ohio Jan. 27, 2026) (noting that postconviction DNA testing is a powerful tool to prevent wrongful incarceration and that all 51 legislatures have enacted postconviction DNA testing statutes).

Granting DNA testing here would advance both of those stated purposes — to exonerate Mr. Carruthers and to identify the guilty party or parties. Mr. Carruthers has maintained his innocence for 30 years. No physical evidence connected him to the crime. The DNA testing completed in 2003 in co-defendant James Montgomery's case excluded Mr. Carruthers and revealed the presence of an unidentified male profile.

Prior decisions related to DNA testing in Mr. Carruthers's case should not control this motion. First, as a matter of law, when

evaluating a request for DNA testing, "[p]revious appeals should not, however, be used to determine 'the merits of any claim,' that is, whether the reasonable probability threshold [for testing] has been established." *Powers v. State*, 343 S.W.3d 36, 56 (Tenn. Crim. App. 2011). Equally as important, Mr. Carruthers seeks testing under new facts about newly available DNA testing, new facts that have come to light since his prior post-conviction proceedings, and a different provision, Tennessee Code § 40-30-305 (2024), the permissive DNA testing statute.

In post-conviction, Mr. Carruthers raised an ineffective assistance of counsel claim alleging that the counsel who represented him during pre-trial proceedings failed to conduct a meaningful investigation of the case by failing to hire a DNA expert. An evidentiary hearing was held on the claim. At that hearing:

> Todd Bille, accepted as an expert in forensic DNA analysis, testified that, in November 2002, he was hired by codefendant James Montgomery to serve as an expert in his case. Bille was asked to examine evidence to determine if there could be potential biological fluids and whether DNA analysis could be performed. Bille examined a total of nineteen items, including Marcellos Anderson's socks, pants, shirt, underwear and belt; Tucker's socks, jeans, belt, shirt, and boots; Delois Anderson's dress and underwear; an

> unidentified red sock; ties or bindings from Tucker; and a section of a white cloth blanket. From the testing done on these items, Bille prepared a summary report in June 2003 and a final report on March 17, 2005.
>
> Bille reported that samples from the white blanket did not match the DNA of any of the victims, the petitioner, or the codefendants. Bille commented that the tests performed on the white blanket could not have been performed at the time of the trial, but similar tests could have been performed with the same results.

Carruthers, 2007 WL 4355481, at *33 (Tenn. Crim. App. Dec. 12, 2007).

In evaluating the claim, the Tennessee Court of Criminal Appeals ultimately concluded that Mr. Carruthers could not establish prejudice because it agreed with the post-conviction court that the 2003 DNA results "only very minimally helpful to the petitioner" and did not satisfy the standard for prejudice for an ineffectiveness claim. *Id*.

Under *Powers*, this Court cannot substitute the prior ineffectiveness finding as a merits ruling against this request for testing. Moreover, the new evidence of a third-party suspect and new evidence of prosecutorial misconduct cast the case in a different light. Mr. Montgomery gave a statement in 2010 admitting that Montgomery committed the crime and confessing that he dispatched Ronnie Irving to

kidnap Delois Anderson - not Tony Carruthers. He provided new evidence that Mr. Carruthers is innocent of the kidnapping and murders. The testing Mr. Carruthers' now seeks has the potential to show that the State of Tennessee has convicted and sentenced the wrong man to death.

B. Mr. Carruthers should be granted testing under either the mandatory or discretionary avenues for relief under the DNA Act.

Tennessee's DNA Act allows two separate paths for a petitioner to secure DNA testing; one is mandatory, and the other is discretionary. Mr. Carruthers satisfies all four prongs under either mandatory or discretionary testing.

First, pursuant to Tenn. Code. Ann. § 40-30-304 (2024), the Court *shall* grant testing if the following four prongs are met:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Second, pursuant to Tenn. Code. Ann. § 40-30-305 (2024), the Court *may* grant testing if the following four prongs are met:

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

There are no statutory time limits for requesting testing, and a petitioner cannot waive the right to DNA analysis under the Act by implication. *See Griffin v. State,* 182 S.W.3d 795, 799 (Tenn. 2006). The third prong expressly permits restesting when the evidence was not

subjected "to the analysis that is now requested." Tenn. Code. Ann. § 40-30-305 (2024) [8]

Where Tennessee courts have denied requests for DNA testing, it is primarily in cases where the proposed DNA testing could not conclusively identify an alternate suspect, where the testing was based on pure speculation of another perpetrator, or where there was overwhelming evidence of guilt. *See Alley v. State*, No. W2004–01204–CCA–R3–PD, 2004 WL 1196095, at *9 (Tenn. Crim. App. May 26, 2004) (holding that the purpose of the DNA Act was "not to create conjecture or speculation that the act may have possibly been perpetrated by a phantom defendant" and denying DNA testing where Petitioner's had confessed, his allegation of innocence was recent, and he had set forth an insanity defense at trial). *See also McBee v. State*, No. E2025-00053-CCA-R3-PC, 2026 WL 230074, at *8 (Tenn. Crim. App. January 28,

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[8]As noted above, Mr. Carruthers filed a pro se request for mandatory DNA testing in 2011 asking for DNA testing on the vaginal swab collected from Delois Anderson and the white blanket containing male DNA. The instant Motion is not seeking the same analysis. Instead, he is seeking testing of several pieces of evidence that have either never been subject to DNA testing or that he is now seeking to compare to a known alternate suspect.

2026) (denying mandatory DNA testing on a gun and laser sight where the defense at trial was that the victim shot herself during a struggle over the gun and exculpatory testing could only possibly result in some impeachment evidence).

Tennessee courts have also recognized that wrongful convictions often occur because of false identifications and false confessions and therefore have never limited the granting of DNA testing "to only those cases in which there was tenuous evidence supporting the jury's finding of guilt." *Powers v. State*, 343 S.W.3d 36, 57 (Tenn. 2011) (granting DNA testing in a sexual assault case where the defendant was identified through a photo line-up). The *Powers* Court noted:

> As past cases demonstrate, however, many DNA exonerations have occurred despite the fact that there was substantial evidence supporting the conviction. *See* Cynthia E. Jones, *The Right Remedy for the Wrongly Convicted: Judicial Sanctions for Destruction of DNA Evidence,* 77 Fordham L.Rev. 2893, 2926 (2009) ("[A]s is demonstrated with over 200 exonerations, DNA evidence, standing alone, has the persuasive force to prove that an innocent person has been wrongly convicted, notwithstanding all other evidence used at trial to prove guilt beyond a reasonable doubt."); Rodney Uphoff, *Convicting the Innocent: Aberration or Systemic Problem?,* 2006 Wis. L.Rev. 739, 778 (2006) (discussing the Arizona case of

> Larry Youngblood, who, "[c]ontrary to the 'overwhelming evidence,' ... was, in fact, innocent" and had his conviction vacated in 2000).

Id. at 56–57.

There is no overwhelming evidence of guilt here, and Mr. Carruthers is not seeking to pin these murders on a "phantom" defendant. Rather, before his life is taken by the State of Tennessee, he seeks to have an opportunity to prove what he has been saying for 30 years: that he is not guilty of the kidnapping and murder of the victims, and that someone else committed the crime with James Montgomery. He further submits that has satisfied all four prongs under the mandatory or discretionary standard. Each one will be discussed in turn below.

C. Mr. Carruthers would not have been prosecuted or convicted if exculpatory DNA results are returned as a result of this testing.

This Court must "presume that the DNA analysis at issue is exculpatory or favorable to the defense" and "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *McBee*, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026) (citing *Powers v. State*, 343 S.W. 3d 36, 55 (Tenn. 2001)).

"A 'reasonable probability' of a different result exists when the evidence at issue, in this case potentially favorable DNA results, undermines confidence in the outcome of the prosecution. *See, e.g., State v. Workman,* 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002). In making this determination, we must consider the 'potentially favorable' DNA results along with the existing evidence." *Alley*, 2004 WL 1196095, at *9 (Tenn. Crim. App. May 26, 2004).

One example of the potentially favorable DNA evidence testing in this case could yield is evidence under the victims' fingernails that implicate the alternative third suspect, Ronnie Irving. Additionally, the bindings are likely to contain touch DNA from the person or persons who secured the bindings on the victims. As noted herein, the case against Mr. Carruthers was never overwhelming. No physical evidence or eyewitness testimony directly linked him to the murders. Indeed, it was not until paid career informant Alfredo Shaw came forward with Mr. Carruthers' purported "confession" that the State had enough evidence to secure an indictment and move forward with their prosecution. That fact alone should weigh in favor of DNA testing. Neither is this a case where Mr. Carruthers' assertion of his innocence

is recent, or where there were multiple, consistent confessions by Mr. Carruthers.

When weighing the potentially favorable DNA results, this Court's required analysis of all "existing evidence" must include three key pieces of new evidence that Mr. Carruthers' jury never knew: (1) the 2010 statement from James Montgomery exonerating Mr. Carruthers and implicating Mr. Irving; (2) the State's recent admission (after decades of denying it) that Alfredo Shaw was indeed a career paid informant; and (3) the false testimony from the medical examiner that the victims were buried alive.

A fair analysis of exculpatory DNA results when viewed in the context of the State's existing evidence, gives rise to a reasonable probability that Mr. Carruthers would not have been prosecuted or convicted. Indeed, the DNA analysis done in 2003 pursuant to Mr. Montgomery's re-trial cast such a doubt on the State's theory of prosecution, that it accepted a negotiated *Alford* plea for Mr. Montgomery, who was sentenced to a term of years on a reduced charge and who has been a free man for the last decade.

As for the prongs regarding condition and location of the evidence and status of any previous testing, Mr. Carruthers can first show that the evidence he seeks to test is available and suitable for DNA testing. The fingernail specimens are in the custody of the Shelby County Medical Examiner; the bindings of Marcellos Anderson and the knotted pantyhose and red socks from Delois Anderson are in the custody of the Shelby County Criminal Court Clerk, and the unknown male profile from the white blanket is in the possession of the Tennessee Bureau of Criminal Investigation.

As far as previous testing, the fingernail specimens and the bindings on Marcellos Anderson and Delois Anderson have never been subjected to DNA testing[9]. The white blanket was subject to DNA testing, and an unknown male profile was developed. Mr. Carruthers is not requesting further sampling of the white blanket; he simply seeks to

[9] There were two red socks recovered from Delois Anderson, one marked as "bloody" and one marked as "dirty." The "bloody" red sock was subjected to DNA testing on the blood only in 2003. It does not appear the "dirty" sock was tested at all. Neither sock was tested for touch DNA, which is what Mr. Carruthers now requests.

compare that unknown profile to Mr. Irving and to further ensure the sample has been recently run in CODIS to see if there are any matches.

As for the final prong, Mr. Carruthers does not submit this Motion for any other reason other to prove the innocence that he has steadfastly professed for 30 years. While it is true that an execution date has been set, as indicated in the attached affidavit of Alan Keel (Ex. 6), this testing should be able to be completed within 14 days of delivery to the DNA lab. As such, the results will be available prior to Mr. Carruthers' execution. While the results themselves may generate further motions or litigation, the inquiry for this Court is whether the *request for testing* is done for purposes of delay.[10] That is simply not the case here.

D. Mr. Carruthers' verdict or sentence would have been more favorable if exculpatory DNA results are returned as a result of this testing.

Exculpatory DNA results would have been extremely relevant and meaningful to Mr. Carruthers' jury in an otherwise circumstantial case,

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[10] Moreover, undersigned counsel became only recently involved in Mr. Carruthers' case, in late March of 2026.

and had they been available, there is a reasonable probability Mr. Carruthers would have been convicted of a lesser charge and/or would not have been sentenced to death. As the Tennessee Court of Criminal Appeals explained earlier this year:

> If a petition does not meet the criteria for mandatory testing, a post-conviction court has discretion to order testing if a "reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction" and the criteria in (2), (3), and (4) are met. T.C.A. § 40-30-305. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome." *Powers v. State*, 343 S.W.3d 36, 54 (Tenn. 2011) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009) (citations and quotation marks omitted). Although the post-conviction court must presume that the DNA analysis at issue is exculpatory or favorable to the defense, the court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *Id*. at 55.

McBee, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026).

As noted above, Mr. Carruthers meets the remaining three prongs under the discretionary statute, as they are identical to the mandatory prongs. The evidence is in existence and suitable for testing, it has not

been previously tested in the manner in which is now being requested, and this Motion is not being filed to delay Mr. Carruthers execution, but rather to assert his innocence of both the crime and of the death penalty.

Of particular importance with respect to his innocence of the death penalty is the fact that Tennessee allows residual doubt to be considered as a mitigation factor. *State v. Hartman*, 42 S.W.3d 44, 56 (Tenn. 2001) (citing *State v. Teague,* 897 S.W.2d 248, 256 (1995) (*Teague IV*)). Surely, at least one juror would have been swayed by this exculpatory DNA evidence to harbor residual doubt as to his guilt and refuse to join an unanimous verdict for the death penalty.

This conclusion is further underscored by the State's own treatment of the previous DNA results in Mr. Montgomery's case. The fact that Mr. Carruthers and Mr. Montgomery were excluded from the evidence previously tested, coupled with the discovery of an unknown male profile on a blanket buried with the victims, led Mr. Montgomery himself to a more favorable verdict and sentence — he entered an *Alford* plea to a reduced charge and a term of years. Montgomery was originally charged, convicted and sentenced to death in the same trial

and under the same state theory as Mr. Carruthers. He was sentenced to a term of years and was released from custody in 2016 due to the strength of these favorable DNA results. And yet, Mr. Carruthers now sits six weeks away from his scheduled execution. This Court should refuse to let his execution take place without first requiring the requested evidence be submitted for DNA testing.

E. If additional fact finding is necessary, appointment of a special master is appropriate.

Pursuant to Rule 12, Mr. Carruthers requests that this Court appoint a special master, consistent with the procedures outlined in Tennessee Rule of Civil Procedure 53, if it determines that this litigation may involve additional fact finding. Tenn. Sup. Ct. Rule 12.4(E).

CONCLUSION

For the reasons stated above, Mr. Carruthers respectfully asks that this Court grant DNA testing and/or appoint a special master to adjudicate his *Motion for Post-Conviction DNA Testing* claim. As Justice Sotomayor recently concluded in her dissent from denial of certiorari for a Texas Petitioner seeking DNA testing, "It is inexplicable why the Bastrop County District Attorney's Office refuses to allow DNA testing…despite the very substantial possibility that such testing could exculpate Rodney Reed and identify the real killer…Because the Court refuses to do so, the State will likely execute Reed without the world ever knowing whether Reed's or Fennell's DNA is on the murder weapon, even though a simple DNA test could reveal that information." *Reed v. Goertz,* 146 S. Ct. 936, 939 (2026) (Sotomayor, J., dissenting from denial of certiorari).

The State of Tennessee should not follow the State of Texas' lead here. Granting this DNA testing could definitively prove what Mr. Carruthers has been saying for 30 years, that he is not guilty of these kidnapping murders. If the State had known of these exculpatory results or if his jury had been told about this exculpatory evidence, he

would not have been prosecuted, convicted as charged, and/or sentenced to death. This Court should grant the Motion.

PRAYER FOR RELIEF

1. Grant DNA testing.
2. Appoint a special master to make factual findings as necessary regarding Mr. Carruthers's right to DNA testing.
3. Any other relief the Court deems just.

Respectfully submitted this the 9th day of April, 2026.

Maria DeLiberato*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org
Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

ATTORNEY FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* pending

CERTIFICATE OF COMPLIANCE

I certify that this Brief contains 7,860 words as determined by the word processing program used to prepare this document. This is under the 15,000 word limit set forth in Tennessee Supreme Court Rule 46, § 3.02.

/s/ Maria DeLiberato
Maria DeLiberato
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

ATTORNEY FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* pending

CERTIFICATE OF SERVICE

I, Lucas Cameron-Vaughn, certify that on April 9, 2026, a true and correct copy of the foregoing was served via electronic filing to opposing counsel, Courtney Orr, Nicholas Spangler, Katherine Redding, Benjamin Barker, G. Kirby May, Sarah Stone, Leslie Price, and Leslie Byrd..

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

ATTORNEY FOR MOVANT TONY VON CARRUTHERS

APPENDIX B

Order Denying Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. R. 12.4(E), *State v. Carruthers*, No. W1997-00097-SC-DDT-DD, (Tenn. Apr. 30, 2026)

FILED
04/30/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. TONY CARRUTHERS

Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129

No. W1997-00097-SC-DDT-DD

ORDER

Tony Carruthers, a death-row inmate scheduled for execution on May 21, 2026, has filed a pleading styled, "Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. R. 12.4(E)." In his motion, Mr. Carruthers is seeking the appointment of a special master, pursuant to a December 2025 amendment to Rule 12(4)(E), to adjudicate his request for additional testing under the Tennessee Post-Conviction DNA Analysis Act of 2001 ("DNA Act"). *See* Tenn. Code Ann. §§ 40-30-304, -305 (2024).

Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

Further, because the motion is denied, the accompanying motion of Maria DeLiberato, American Civil Liberties Union, to appear *pro hac vice* on behalf of Mr. Carruthers in this matter is also DENIED.

It is so ORDERED.

PER CURIAM

APPENDIX C

Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001, *Carruthers v. Tennessee,* Nos. 94-02797-99, 95-11129, (Tenn. Crim. Ct. 30th Jud. Dist. at Memphis May 4, 2026)

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

FILED
2026 MAY -4 A 10:09
HEIDI KOHN
CRIMINAL COURT CLERK
BY

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.

MOTION FOR DNA TESTING PURSUANT TO THE TENNESSEE POST-CONVICTION DNA ANALYSIS ACT OF 2001

Maria DeLiberato, Esq.*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Lucas Cameron-Vaughn, Esq.
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

Melanie C. Verdecia, Esq.*
Quarles & Brady LLP
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602
melanie.verdecia@quarles.com
(813) 387-0279

ATTORNEYS FOR MOVANT
TONY VON CARRUTHERS

**pro hac vice* forthcoming

STATEMENT OF THE CASE

The State of Tennessee (Respondent) is on the verge of executing Petitioner Tony Carruthers without testing available, probative, and untested physical evidence that could confirm Mr. Carruthers' innocence, which he has maintained for three decades.[1] Through this Motion, Mr. Carruthers seeks access to forensic evidence collected in this case for DNA testing under the Tennessee Post-Conviction DNA Analysis Act of 2001 (the "**DNA Act**") (§§ 40-30-304, 40-30-305, Tenn. Code Ann.).

Mr. Carruthers originally filed a motion for DNA testing under the DNA Act in the Tennessee Supreme Court (the "**TSC**"), on April 9, 2026, pursuant to Rule 12.4(E) because the motion and related litigation may "potentially affect" the timing of his execution scheduled for May 21. However, on April 30, 2026, the TSC issued a three-sentence denial of Mr. Carruthers' motion, stating:

> Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

A true and correct copy of the Order is attached as **Exhibit 2**.

Despite the TSC's Order, Mr. Carruthers maintains that filing his request in the TSC was appropriate under Rule 12(4)(E) and that, in doing so, he followed the appropriate and available state court remedy to seek this testing. Nevertheless, in light of the TSC's Order, Mr. Carruthers now files this request in this Court and asks for an expedited ruling. This Court can and should grant Mr. Carruthers' request without the need for an evidentiary hearing. However, should this Court determine

[1] A true and correct copy of the Order setting Mr. Carruthers' execution is attached as **Exhibit 1**.

that there are factual matters of dispute, Mr. Carruthers requests an evidentiary hearing to address any factual issues.

STATEMENT OF THE FACTS

I. Mr. Carruthers' conviction and death sentence are based on circumstantial evidence, including the testimony of convicted felons and paid informants.

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). After Ms. Anderson was reported missing, on March 3, 1994, the victims' bodies were found in a grave in a Memphis cemetery. *Id.* Their bodies were on top of one another, underneath a piece of plywood that was underneath a casket. Marcellos Anderson's hands were bound behind his back with cloth ties. Frederick Tucker was also bound with cloth ties at his hands and feet. Delois Anderson had two red socks knotted together wrapped around her neck, and one arm was tied behind her back with a pair of knotted pantyhose. (1996 Trial Tr., Vol. 13, pp. 1864-67, attached as **Exhibit 3**.)

The State believed Ms. Anderson's home was the scene of the kidnapping because Ms. Anderson did not take her purse with her, someone answered the phone when her niece telephoned the residence but failed to speak, and a half-eaten meal was found in Ms. Anderson's bedroom. Police collected multiple latent prints suitable for comparison from Ms. Anderson's house, including prints from the doorknobs and the phone receiver.

The State's case against Mr. Carruthers was originally dismissed in General Sessions Court for lack of evidence. (Docket and news article showing dismissal of charges, attached as **Exhibit 4**). The State was only able to secure an indictment and proceed with its case against Mr. Carruthers after it enlisted the services of a career snitch named Alfredo Shaw, who testified to Mr. Carruthers' purported confession. (Crimestoppers Report (April 3, 1994), attached as **Exhibit 5**.)

In the words of the investigating officer, without Shaw's "information and his testimony in Grand Jury Carruthers would have been released." *Id.* A true and correct copy of Shaw's grand jury testimony is attached as **Exhibit 6**.

Indeed, the State's original theory of prosecution was based on Mr. Shaw's grand jury testimony that two brothers, Jerry and Terry Durham, hired Mr. Carruthers to commit the murders for $100,000 and a kilogram of cocaine. (*See* Ex. 6.) But before trial, Mr. Shaw recanted his grand jury testimony in a TV news statement where he confessed that the police paid him to testify against Mr. Carruthers. *See* Resp. Mot. to Set Execution Date, *State v. Carruthers*, No. W1997-00097-SC-DDT-DD, (Dec. 30, 2019), attached as **Exhibit 7**, at Ex. 5 (Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (transcript)) & Ex. 9 (video).

The State's ultimate theory at trial was that Mr. Carruthers, along with his co-defendants, James and Jonathan Montgomery kidnapped Marcellos Anderson to rob him. *Carruthers*, 35 S.W.3d at 524. Marcellos Anderson was "heavily involved in the drug trade" and known to carry large amounts of cash and valuables. *Id.* It was Jonathan Montgomery who led authorities to the bodies in the grave, which led police to the involvement of his brother James. Jonathan was found hanged in his cell prior to trial. *Id.* at 524 n.2. Jonthan gave inconsistent statements to police from the beginning, but after several unrecorded interrogation breaks and across multiple days, Jonthan ultimately told police that he, James, and Mr. Carruthers were present at the gravesite when the victims were killed, but that neither James nor Mr. Carruthers killed anyone. Instead, Jonathan told police it was a man named Bobby Wilson who was the actual killer.[2] (*See* Jonathan Montgomery Statements, attached as **Exhibit 8**.)

[2] At a motion to suppress Jonathan Montogmery's statements, Memphis Police Sgt. Roleson testified that Mr. Wilson was wanted for a different Memphis homicide, the January 19, 1994

No forensic evidence linked Mr. Carruthers to the crime. *See Carruthers*, 35 S.W.3d at 523-72. There were no eyewitnesses to the murder. *Id.* The fingerprints collected from Ms. Anderson's house, which included six unidentified prints, excluded Mr. Carruthers and Mr. Montgomery.[3]

At trial, the prosecution's case rested almost entirely on the testimony of convicted felons and paid informants. Jimmy Lee Maze Jr., "a convicted felon," testified that he had received two letters from Mr. Carruthers about a "master plan" to "make those streets pay me." *Carruthers*, 35 S.W.3d at 524. Mr. Maze then recounted a conversation he purportedly had with Mr. Carruthers discussing plans for the kidnapping. *Id.* Charles Ray Smith testified that Mr. Carruthers had commented to him, while working together on a prison work detail in a cemetery, that hiding a body under the grave of another would be a good way to dispose of a corpse. *Id.*

Finally, Mr. Shaw testified that Mr. Carruthers confessed to him. *Id.* at 528-29. Mr. Shaw's testimony was the only putative "confession" in this case. While Shaw is a career snitch, the jury did not hear that at trial (as discussed more below).

The State's remaining evidence against Mr. Carruthers was circumstantial at best. For example, Nakeita Shaw testified that she witnessed Mr. Carruthers and James Montgomery at her home on the night of the kidnappings. *Id.* at 526. Without more, however, this testimony did little

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shooting death of Marlin Webb and that he believed Wilson was on the run at the time of the murders. (Motion to Suppress Transcript (Dec. 15, 1994, attached as **Exhibit 9**, at 39.)

[3]In 2022, the Memphis Police Department ran the unidentified prints in AFIS. (*See* Latent Fingerprint Report (Jan. 24, 2022), attached as **Exhibit 10**.) One print on the northwest bedroom door matched Ms. Anderson's niece, but there still remain six unidentified prints.

In addition to requesting testing under the DNA Act, Mr. Carruthers also requested testing under Tennessee's Post-Conviction Fingerprint Analysis Act of 2021. After the state court denied that claim, Mr. Carruthers filed a lawsuit in federal court related to that denial. Those claims remain pending in *Carruthers v. Skrmetti, et al.*, No. 3:26-cv-00540 (M.D. Tenn.).

to inculpate Mr. Carruthers; it has never been asserted that Mr. Carruthers was unacquainted with the Montgomery brothers. Likewise, Chris Hines' testimony that Jonathan Montgomery beeped him and said "[m]an, a n——r got them folks," apparently meaning "Cello and them" (*id.* at 526), also does not inculpate Mr. Carruthers but only shows that Jonathan Montgomery had knowledge of the murders, which he clearly did since he led police to the bodies.

Mr. Carruthers was forced to represent himself at trial. The jury never heard any evidence about the fingerprints from Ms. Anderson's house—either that there were unidentified prints or that Mr. Carruthers and Mr. Montgomery were excluded from the prints.

Both James Montgomery and Mr. Carruthers were convicted and sentenced to death. On direct appeal, the Tennessee Supreme Court found that James Montgomery was so prejudiced by Mr. Carruthers' forced self-representation that Mr. Montgomery was entitled to a new trial. *State v. Carruthers*, 35 S.W.3d 516, 553-54 (Tenn. 2000) (reversing Montgomery's conviction and death sentence because "the record demonstrates that Montgomery was severely prejudiced by Carruthers' self-representation").

II. In the decades since Mr. Carruthers' conviction and death sentence, the circumstantial evidence against him at trial has been further undermined.

A. Testing conducted on significant physical evidence prior to James Montgomery's re-trial affirmatively excluded Mr. Carruthers.

As part of his re-trial proceedings, Mr. Montgomery sought forensic testing on multiple pieces of physical evidence collected from both crime scenes. Testing revealed critical information. (Aff. Alan Keel (April 6, 2026), attached as **Exhibit 11**, at Attachment 2 [hereinafter Keel Aff.].)

First, the testing did not reveal any DNA matches to Mr. Montgomery or Mr. Carruthers. A majority of the samples were either too small to produce a profile under 2003 technology, were inconclusive, or matched the victims. However, there was one robust male profile on a white

blanket that was buried with the victims. *Id*. Mr. Carruthers, Mr. Montgomery, and the male victims were excluded as a source of the DNA. The unknown male profile was suitable for upload into the Combined DNA Index System (CODIS) database. The last report Mr. Carruthers obtained, through a request under James Montgomery's case, was in 2019 and indicated that there were no hits in CODIS. (2019 CODIS Report, attached as **Exhibit 12**.)[4] No additional DNA testing has occurred since 2003, and to the best of Mr. Carruthers' knowledge, the unknown male profile has not been analyzed or compared since 2019.

B. For decades, the State concealed Alfredo Shaw's status as a paid government informant.

For thirty years, the State withheld information from Mr. Carruthers and his defense team about Alfredo Shaw's status as a paid government informant. It did so despite repeated requests from Mr. Carruthers and his team for exculpatory and impeachment materials. The State's concealment of Mr. Shaw's status began as soon as Mr. Carruthers' prosecution commenced and continued in the years following his trial, as evidenced by the State's repeated failures to disclose any information about Mr. Shaw's history as an informant. *See, e.g.*, Defense Suppl. Mot. Disc. & Inspection (June 8, 1994), attached as **Exhibit 14**; State's Resp. Mot. Discovery (Sept. 29, 1994), attached as **Exhibit 15**; Mot. Disc. Impeaching Info. (Jan. 31, 1996), attached as **Exhibit 16**; Resp. State Mot. Disc. Impeaching Info. (Sept. 29, 1994), attached as **Exhibit 17**.

And before Mr. Carruthers' trial, Mr. Shaw went to the media and admitted that his grand jury testimony was false and given only as a result of pressure and payment from the State Attorney

[4] In the wake of the release of the DNA results, the State offered and Mr. Montgomery accepted an *Alford* plea to a reduced charge of three counts of second-degree murder. *See North Carolina v. Alford*, 400 U.S. 25 (1970). Mr. Montgomery was sentenced to concurrent 27-year sentences on each count and was released in 2016 (James Montgomery Plea Form and Transcript, attached as **Exhibit 13**.)

and law enforcement. *See* Ex. 6, at Ex. 5 (Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (transcript)) & Ex. 9 (video). Not only would Mr. Shaw's position as an informant have gone to his bias, but his recantation directly undermines the State's case against Mr. Carruthers.

At trial, Mr. Carruthers, forced to act as his own counsel, called Mr. Shaw to the stand to admit his recantation from the media interview. Before Mr. Shaw took the stand, the trial court called in Mr. Shaw's counsel and, in open court, cautioned that if Mr. Shaw repeated his recantation then the State "plan[ned] to seek indictments for aggravated perjury in both . . . instances." (1996 Trial Tr., Vol. 14, p. 2128, attached as **Exhibit 18**.) After meeting with his client, Mr. Shaw's lawyer reported that Mr. Shaw would "testify that what he has testified before was all true and correct." *Id*. at 2136. Indeed, on the stand, Mr. Shaw repeated for the jury the "confession" that Mr. Carruthers purportedly gave him—which he had previously recanted to the media. (1996 Trial Tr., Vol. 15, pp. 2174-78, attached as **Exhibit 19**.) Mr. Carruthers attempted to ask if Mr. Shaw was a paid informant, but the prosecutor successfully objected and kept the jury from learning the truth. *Id*. at 2254.

In post-conviction, through counsel, Mr. Carruthers continued his quest to prove that Mr. Shaw was a paid informant for the State. Attached as **Composite Exhibit 20** are three letters from Mr. Carruthers' post-conviction counsel, Charles R. Ray, to John W. Campbell, Assistant District Attorney in August 2002 requesting such information. On September 12, 2002, Mr. Carruthers, through post-conviction counsel, filed a *Motion to Compel the State to Reveal All Agreements, Renumeration, Or Other Consideration Given To The State's Witnesses* (attached as **Exhibit 21**). In its response (attached as **Exhibit 22**), the State denied giving Mr. Shaw a deal but parsed carefully its denial of payment to Mr. Shaw:

> [T]he State again submits that Shaw was not given any deal in exchange for his testimony. Furthermore, the State submits that Shaw was not a 'paid government agent' planted in the jail to obtain evidence against petitioner.

(Ex. 22, at 1.)

Concerned regarding the State's equivocations, on November 25, 2002, post-conviction counsel filed a second Motion to Compel specifically as it related to Mr. Shaw (attached as **Exhibit 23**). The post-conviction court ordered that the State file a written response "divulging whether Alfredo Shaw was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with petitioner in the Shelby County Jail." (Order (Dec. 3, 2002), attached as **Exhibit 24**, at 1.) The State's response filed December 10, 2002 (attached as **Exhibit 25**), asserted that Mr. Shaw "was not a 'paid government agent' planted in the jail to get a statement from the petitioner. . . . The State does not understand why another Response is necessary." (Ex. 25.) The State doubled down on this answer in a January 7, 2003, letter from Mr. Campbell to Mr. Ray (attached as **Exhibit 26**):

> I thought this matter was resolved by my earlier response. But just in case [sic], **I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. . . I do not know how much clearer I can be on this topic.**

(Ex. 26 (emphasis added).)

Over the ensuing decades, Mr. Carruthers' counsel continued to request documents related to Mr. Shaw's work as a confidential informant through Tennessee Public Records requests, Freedom of Information Act requests directed to federal law enforcement agencies, and through discovery in federal habeas proceedings. Copies of these requests are attached as **Composite Exhibit 27**.

Finally, on May 9, 2024—almost three decades after Mr. Carruthers' trial—the Shelby County Criminal Court, Division V, ordered the Memphis Police Department to provide

information regarding Mr. Shaw's employment as a confidential informant to the Shelby County District Attorney's Justice Review Unit. (Agreed Order Directing Memphis Police Dep't Release Data Regarding Alfredo Shaw Shelby Cnty. Just. Rev. Unit (May 9, 2024), attached as **Exhibit 28**.) On August 6, 2024, Assistant District Attorney Kevin Rardin provided Mr. Carruthers' counsel with more than 20 pages of information regarding Mr. Shaw's employment as a confidential informant (attached as **Exhibit 29**). The documents included signed confidential agreements between Mr. Shaw and law enforcement dating back to mid-1980s and ledgers of payments to Mr. Shaw continuing until at least 2003. (*See generally* Ex. 29.)

C. The medical examiner's trial testimony that the victims were buried alive has been proven false.

At Mr. Carruthers' trial, medical examiner Dr. O.C. Smith testified that the victims were buried alive. *Carruthers*, 35 S.W.3d at 527. The State then used this narrative in its penalty phase arguments to emphasize the purported "wicked" and "atrocious" nature of the crime. A true and correct copy of an excerpt of the prosecutor's penalty phase argument is attached as **Exhibit 30**.

However, there was no scientific basis for the conclusion that the victims were buried alive. (Testimony of Dr. Cleland Blake & Dr. George Nichols, attached as **Exhibit 31** (post-conviction expert testimony that there was no scientific basis for Dr. Smith's trial testimony).) Even Dr. Smith himself has subsequently disavowed his own testimony from Mr. Carruthers' trial. (Aff. Dr. O.C. Smith (April 3, 2007), attached as **Exhibit 32** ("I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin.").) Yet, the State perpetuates this false narrative—to this day. *See* State's Br., *Carruthers v. State*, No. W2026-00226-CCA-R3-PD (Tenn. Crim.

App. Mar. 23, 2026), at 9 ("[T]rial testimony established that they had all died of injuries associated with being buried alive.").[5]

D. In 2010, James Montgomery gave a statement exonerating Mr. Carruthers and inculpating Ronnie Irving.

In 2010, James Montgomery, while serving his reduced sentence (*see supra* note 4), gave a statement to an investigator with the Capital Habeas Unit that he kidnapped two of the victims and dispatched Ronnie "Eyeball" Irving to kidnap Ms. Anderson. He confirmed to the investigator that Mr. Carruthers was not involved in the kidnapping or the murders. Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. To date, the unidentified physical evidence—the latent fingerprints or unknown male DNA profile—has not been compared to Mr. Irving. *See supra* note 3.

Mr. Carruthers has tried to obtain DNA testing throughout the three decades since his trial. In state post-conviction, Mr. Carruthers argued that his counsel was ineffective during pre-trial litigation for failing to retain a DNA expert, who would have testified: (1) DNA was available on blood found on "blanket-like cloth"; and (2) the DNA did not belong to the victim or any of the three co-defendants. *See generally Carruthers v. State*, No. W2006-00376-CCA-R3PD, 2007 WL 4355481 (Tenn. Crim. App. Dec. 12, 2007). At an evidentiary hearing, Mr. Carruthers presented expert testimony:

> Todd Bille, accepted as an expert in forensic DNA analysis, testified that, in November 2002, he was hired by codefendant James Montgomery to serve as

[5] To this day, public perception of this case is shaped by the mistaken belief that Mr. Carruthers buried the victims alive. *See, e.g.*, Evan Mealins, *Tennessee Supreme Court sets 2026 execution dates for Christa Pika, three others*, The Tennessean (Oct. 1, 2025), https://perma.cc/VG3H-KZ72 (claiming Carruthers was convicted of "burying alive three people"); WREG Staff, *Memphis man convicted of triple murder goes from death row to freedom*, WREG (Sept. 26, 2016), https://wreg.com/news/memphis-man-convicted-of-triple-murder-goes-from-death-row-to-freedom/ (recounting co-defendant Montgomery's release from prison and conviction for burying the victims alive).

> an expert in his case. Bille was asked to examine evidence to determine if there could be potential biological fluids and whether DNA analysis could be performed. Bille examined a total of nineteen items, including Marcellos Anderson's socks, pants, shirt, underwear and belt; Tucker's socks, jeans, belt, shirt, and boots; Delois Anderson's dress and underwear; an unidentified red sock; ties or bindings from Tucker; and a section of a white cloth blanket. From the testing done on these items, Bille prepared a summary report in June 2003 and a final report on March 17, 2005.
>
> Bille reported that samples from the white blanket did not match the DNA of any of the victims, the petitioner, or the codefendants. Bille commented that the tests performed on the white blanket could not have been performed at the time of the trial, but similar tests could have been performed with the same results.

Id. at *33.

The post-conviction court Mr. Carruthers' claim, concluding that this testimony and the DNA results "are only very minimally helpful to the petition. In no ways does this evidence negate all other proof in the case and it is rank speculation to assume that this indicates that a third party might have committed this crime." *Id.* at *38.

Mr. Carruthers next moved *pro se* in 2011 to reopen state post-conviction proceedings under the DNA Act, seeking testing of the vaginal swab and blanket from trial, using a pre-printed form. Mr. Carruthers sought testing under only the mandatory provisions of the DNA Act. § 40-30-304. Tenn. Code Ann. The State opposed the testing, arguing that while the DNA sample from the blanket did not match any of the codefendants, it had been uploaded to CODIS as of April 2012 and there were no hits.

The post-conviction court dismissed Mr. Carruthers' motion, relying on the 2007 ruling in his post-conviction case that the DNA testing "has already occurred, and the results are only minimally helpful to Petitioner." *Carruthers v. State*, No. W2012–01473–CCA–R3–PD, 2013 WL 3968787, at *3 (Tenn. Crim. App. Aug. 1, 2013) (quoting *Carruthers*, 2007 WL 4355481, at *38). The Court ruled that Mr. Carruthers did not meet the statute's requirement for mandatory testing because a "new CODIS match might identify the depositor of the biological material on the blanket

but could not prove that it was deposited at a time contemporaneous with the crime for which Petitioner was convicted." *Id*. at *4.

III. Pursuant to the DNA Act, Mr. Carruthers seeks testing of several pieces of evidence.

A. Items that Have Never Been Tested

First, Mr. Carruthers seeks the DNA testing of items, which are still in existence and which have never been subjected to DNA testing: (1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson;[6] (2) the bindings of Marcellos Anderson;[7] and (3) the bindings of Delois Anderson, which include knotted pantyhose around her hand and the red socks knotted around her neck.[8] Criminalist and DNA expert Alan Keel concludes that it is likely each of these items "bear transfer biology from whomever bound the victims." (Keel Aff., at 6.) New advances in DNA testing and analysis create a likelihood that testing will provide investigative leads to answers far beyond the unanswered question of whose blood was on the blanket. *Id.* at 2.

Mr. Keel has conducted DNA testing in hundreds of cases in over 36 states and has reviewed the records related to the prior testing in this case conducted by the Tennessee Bureau of Investigation and Bode Technology Group. *Id.* at 1-2. Because of revolutionary advances in forensic DNA testing, analysis today can lead to highly discriminating DNA profiles from

[6] These are in the custody of the Shelby County Medical Examiner.

[7] These are packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number E-C94-586;15305 ("Marcellos Anderson, cloth ties, knotted").

[8] These are separately packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number C-C94-588;15305 and 15305a ("Delores (sic) Anderson knotted pantyhose", "dirty red sock", and "bloody red sock"). The red sock listed as "bloody" (15305a) was tested in 2003 and revealed a weak unknown profile from a bloodstain, but it appears that the mate—listed as "dirty" (15305)—was never tested. Both socks appeared to be knotted together around her neck.

common sources across different items of evidence, including sources not previously considered suitable for testing. *Id*. at 2. Mr. Keel concludes that the bindings should be sampled for transfer or touch biology from the assailant in light of current technology, explaining:

> This approach could also produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket. Such a finding would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the relevance of the foreign blood previously discovered on the #16 blanket as originating from an assailant.

Id. at 6. In other words, the analysis could provide a lead to the true perpetrator's profile. Additionally, if the male DNA profile on the bindings matched the unidentified profile from the blood on the blanket, it would support the inference that the blood was deposited at the time of the murders.

Mr. Keel also explains the importance of testing the fingernail scrapings:

> Fingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested. It is likely that one or more of the victims struggled with the perpetrator(s) during the assault. I have personally examined fingernail evidence in over 50 cases. My experience attests and the scientific literature documents that most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived. Hence, foreign biology associated with the fingernails of homicide victims is usually relevant to the crime. Biology transferred from a person to another person's fingernails is rarely self-evident and often is not from blood. Any available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation.

Id. at 7.

Assuming a profile is obtained from any or all of these items, Mr. Carruthers seeks to compare that profile to the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and to upload any unmatched profile to CODIS.

B. Further Testing of Previously Tested Items

Mr. Carruthers also seeks to compare the unknown male profile that was found on a white blanket in the grave with the victims.[9] As noted above, this profile was already compared to Mr. Carruthers, co-defendant James Montgomery, and the victims and uploaded to CODIS. (Ex. 8.) Mr. Carruthers' counsel was provided an update in 2019 that there have been no hits. Counsel has not received a more recent update in the seven years since.

In other words, the testing of this evidence is incomplete. Mr. Carruthers seeks to have that unknown male profile re-run in CODIS and compared to Mr. Irving.

SUMMARY OF THE ARGUMENT

Mr. Carruthers' case shares many of the hallmarks of other wrongful conviction cases—a conviction resting primarily on the testimony of snitches and informants and otherwise on circumstantial evidence. *See, e.g.*, *DPI Analysis: Causes of Wrongful Convictions*, Death Penalty Info. Ctr. (May 31, 2017), https://deathpenaltyinfo.org/stories/dpic-analysis-causes-of-wrongful-convictions (reporting official misconduct as the leading cause for wrongful capital convictions); *Wrongful Convictions*, Equal Just. Initiative, https://eji.org/issues/wrongful-convictions/ (last visited May 3, 2026) ("More than half of wrongful convictions can be traced to witnesses who lied in court or made false accusations. In 2018, a record number of exonerations involved misconduct by government officials. Other leading causes of wrongful convictions include mistaken eyewitness identifications, false or misleading forensic science, and jailhouse informants." (footnotes omitted)). But Mr. Carruthers was even more disadvantaged due to his forced self-representation.

[9] This profile from the blanket is in the custody of the Tennessee Bureau of Investigation under Lab Case #063001146, marked as Exhibit 02-a.

Mr. Carruthers requests DNA testing on specific pieces of probative physical evidence, most of which has never been tested. In reviewing this Motion, it is important to consider the totality of the circumstances, including the information known at Mr. Carruthers' trial, along with the significant new evidence and information discovered since his trial. Before the State executes Mr. Carruthers, which can't be undone, this Court should require the State to submit critical evidence for DNA testing pursuant to the DNA Act.

ARGUMENT

I. This Court should grant Mr. Carruthers DNA testing under the DNA Act before the State carries out his irreversible execution.

The DNA Act was created to serve two purposes—"first, to aid in the exoneration of those who are wrongfully convicted and second, to aid in identifying the true perpetrators of the crimes." *Powers v. State*, 343 S.W. 3d 36, 51 (Tenn. 2001). The *Powers* Court specifically concluded that the DNA Act granted more than just exclusionary testing. *See id.* "DNA analysis that only compares a petitioner's profile with a profile developed from biological material found at a crime scene cannot effectuate this second purpose." *Id*. "When, however, uploading the latter into a DNA database can potentially identify the person responsible for the crime, the Act also serves a 'law-enforcement,' or justice-finding, purpose: the apprehension of criminals who may still be at large." *Id*.

Similarly, the U.S. Supreme Court has recognized and echoed this purpose:

> DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure—usually but not always through legislation.

Dist. Attorney's Off. For Third Jud. Dist. v. Osborne, 557 U.S. 52, 55, (2009). Indeed, DNA testing helps prevent wrongful incarceration around the country. *See* Br. The Innocence Network as Amicus Curiae Supporting Appellee, *State v. Jones*, No. 2025-0913, 2026 WL 221492, at *3 (Ohio Jan. 27, 2026) (noting that postconviction DNA testing is a powerful tool to prevent wrongful incarceration and that all 51 legislatures have enacted postconviction DNA testing statutes).

There are no statutory time limits for requesting testing under the DNA Act, meaning a petitioner can request DNA testing at any time. § 40-30-303, Tenn. Code Ann. ("[A] person convicted of and sentenced for the commission of first degree murder, . . . may ***at any time***, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." (emphasis added)); *see also Griffin v. State*, 182 S.W.3d 795, 799 (Tenn. 2006). Further, a petitioner cannot waive the right to DNA analysis under the DNA Act by implication. *See id.* In fact, the third prong of both standards provides for testing if the evidence was not subjected "to the analysis that is now requested." §§ 40-30-304, 40-30-305, Tenn. Code. Ann.[10] Therefore, Mr. Carruthers' motion is properly filed now—before his looming execution.

A. Mr. Carruthers' case is exactly the kind of case for which Tennessee's Post-Conviction DNA Statute was created.

In reviewing Mr. Carruthers' motion, this Court must "presume that the DNA analysis at issue is exculpatory or favorable to the defense." *McBee v. State*, No. E2025-00053-CCA-R3-

[10] As noted above, Mr. Carruthers filed a *pro se* request for mandatory DNA testing in 2011 asking for DNA testing on the vaginal swab collected from Delois Anderson and the white blanket containing male DNA. The instant Motion is not seeking the same analysis. Instead, he is seeking testing of several pieces of evidence that have either never been subject to DNA testing or that he is now seeking to compare to a known alternate suspect.

PC, 2026 WL 230074, at *7 (Tenn. Crim. App. January 28, 2026) (citing *Powers*, 343 S.W. 3d at 55). The Court must also "consider all the available evidence, including the evidence presented at trial and any stipulations of fact made by either party." *Alley v. State*,No. W2004–01204–CCA–R3–PD, 2004 WL 1196095, at *3 (Tenn. Crim. App. May 26, 2004); *see also id.* at *9. The Court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *McBee v. State*, No. E2025-00053-CCA-R3-PC, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026).

Further, Tennessee courts have never limited DNA testing "to . . . cases in which there was tenuous evidence supporting the jury's finding of guilt." *Powers*, 343 S.W.3d at 57 (granting DNA testing in a sexual assault case where the defendant was identified through a photo line-up). To the contrary, the Tennessee Supreme Court has recognized that "past cases demonstrate" that "many DNA exonerations have occurred *despite* the fact that there was substantial evidence supporting the conviction." *Id*. at 56 (emphasis added).

In cases where Tennessee courts have denied requests for DNA testing, the proposed DNA testing could not conclusively identify an alternate suspect, the testing was based on pure speculation of another perpetrator, or there was overwhelming evidence of guilt. *See Alley*, 2004 WL 1196095, at *9 (holding that the purpose of the DNA Act was "not to create conjecture or speculation that the act may have possibly been perpetrated by a phantom defendant" and denying DNA testing where Petitioner's had confessed, his allegation of innocence was recent, and he had set forth an insanity defense at trial); *see also McBee* , 2026 WL 230074, at *8 (denying mandatory DNA testing on a gun and laser sight where the defense at trial was that the victim shot herself during a struggle over the gun and exculpatory testing could only possibly result in some impeachment evidence). None of these are true here.

Mr. Carruthers' case is not supported by overwhelming evidence of guilt. Mr. Carruthers has maintained his innocence of the crimes for which he was sentenced to death for 30 years. No physical evidence connected him to the crime. The State's case against Mr. Carruthers at trial was circumstantial at best. Since then, the State's case has fallen apart—as explained above. The DNA testing completed in 2003 in Montgomery's case excluded Mr. Carruthers and revealed the presence of an unidentified male profile. But it was incomplete.

Further, Mr. Carruthers does not seek to pin these murders on a "phantom" defendant. Rather, before his life is taken by the State of Tennessee, Mr. Carruthers requests an opportunity to prove what he has been saying for 30 years: that he is not guilty of the kidnapping and murder underlying his death sentence and that someone else committed these crimes with James Montgomery.

Ultimately, granting Mr. Carruthers' request for DNA testing would advance both of the stated purposes of the DNA Act—to exonerate Mr. Carruthers and to help with identifying the true perpetrator(s) of the crimes underlying Mr. Carruthers' conviction and sentence.

B. Mr. Carruthers is entitled to testing under both provisions of the DNA Act.

The DNA Act allows a petition to secure DNA testing on two separate grounds, which have separate standards—one mandatory and one discretionary. As discussed below, Mr. Carruthers satisfies all four prongs under both standards.

1. Mr. Carruthers meets the criteria for DNA analysis under § 40-30-304.

First, the Court ***shall*** grant testing if the following four prongs are met:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

§ 40-30-304, Tenn. Code. Ann.

On the first prong, "[a] 'reasonable probability' of a different result exists when the evidence at issue, in this case potentially favorable DNA results, undermines confidence in the outcome of the prosecution." *Alley*, 2004 WL 1196095, at *9 (citing *State v. Workman*, 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002)). "Previous appeals should not . . .be used to determine 'the merits of any claim,' that is, whether the reasonable probability threshold [for testing] has been established." *Powers*, 343 S.W.3d at 56.[11] Therefore, in reviewing this Motion, this Court cannot substitute the prior ineffectiveness finding in Mr. Carruthers' case as a merits ruling against this request for testing. Moreover, the new evidence of a third-party suspect and new evidence of prosecutorial misconduct cast the case in a different light. Mr. Montgomery's 2010 statement admitting that he committed the crime and confessing that he dispatched Mr. Irving to kidnap Delois Anderson provided new evidence supporting Mr. Carruthers' innocence that was not available when the prior ruling was made. The testing Mr. Carruthers' now seeks has the potential to show that the State of Tennessee has convicted and sentenced the wrong man to death, consistent with Mr. Montgomery's 2010 statement.

Further, considering "the 'potentially favorable' DNA results along with the existing evidence" (*Alley*, 2004 WL 1196095, at *9) in this case means that, when weighing the potentially

[11] Also, Mr. Carruthers seeks testing under newly available DNA testing, new facts that have come to light since his prior post-conviction proceedings, and a different provision, Tennessee Code § 40-30-305 (2024), the permissive DNA testing statute.

favorable DNA results, this Court must consider three key pieces of new evidence that Mr. Carruthers' jury never heard: (1) the 2010 statement from James Montgomery exonerating Mr. Carruthers and implicating Mr. Irving; (2) the State's recent admission (after decades of denying it) that Mr. Shaw was indeed a career paid informant; and (3) the evidence discrediting the medical examiner's testimony that the victims were buried alive. *See supra* pp. 6-13.

Especially when considered in the context of this information, there is a reasonable probability that Mr. Carruthers would not have been prosecuted or convicted if he had exculpatory DNA results. The evidence Mr. Carruthers seeks to test is *directly* related to the crimes and almost certainly would contain the true perpetrators' DNA—the bindings used on the victims and scrapings from the victims' fingernails. Therefore, the DNA testing requested could produce several results that would affect the outcome in Mr. Carruthers' case. For example, a match on the evidence could directly link an alternative third suspect, Ronnie Irving, to these crimes. This, along with Montgomery's statement implicating Irving, would give police a basis to name Irving a suspect for these crimes—and certainly a strong basis to change the outcome in Mr. Carruthers' case.[12]

In fact, Mr. Carruthers' jurors have confirmed the outcome of his trial would have been different had exculpatory DNA been presented. While Mr. Carruthers' DNA motion was pending at the TSC, federal investigators interviewed jurors who served on the jury at Mr. Carruthers' trial. One of the jurors concluded that "[a] DNA match with a different person would make [her] doubt Mr. Carruthers' guilt." (Decl. Zillah Ferrari (April 2, 2026), ¶ 11, attached as **Exhibit 33**.)

[12] Indeed, the DNA analysis done in 2003 for Mr. Montgomery's re-trial cast such a doubt on the State's theory of prosecution against Mr. Montgomery that the State itself accepted a negotiated *Alford* plea for Mr. Montgomery, who has been free for the last decade. *See supra* note 4.

One less vote for guilt on first-degree murder, of course, would change the entire outcome of Mr. Carruthers' trial—establishing the first prong of § 40-30-304.

Jurors also confirmed that the other information that has come to light would affect their analysis. That same juror also stated that if she had "known that Shaw was a paid informant, [she] would not have voted for a death sentence." (*Id.* ¶¶ 8, 11.) In addition, that juror *and* a separate juror acknowledged the importance of the State's argument that the victims were buried alive, stating: "Had I known the victims were not buried alive, I would have not voted for a death sentence." *Id.* ¶ 3; Decl. David Adams (April 21, 2026), ¶ 3, attached as **Exhibit 34** (same). These juror declarations show that exculpatory DNA evidence, especially when considered with the other information that has come to light since trial, would have changed their analysis of Mr. Carruthers' case. Therefore, the first prong of § 40-30-304 is satisfied.

Even if this Court reviews this request in the context of *only* the evidence presented at Mr. Carruthers' trial three decades ago, the first prong is still satisfied because, again, the jury heard *no direct evidence* connecting Mr. Carruthers to the crime. The presentation of exculpatory DNA evidence surely would have changed the jury's calculus of considering the case.

As to the second prong, the evidence Mr. Carruthers seeks to test is available and suitable for DNA testing. The fingernail specimens are in the custody of the Shelby County Medical Examiner; the bindings of Marcellos Anderson and the knotted pantyhose and red socks from Delois Anderson are in the custody of the Shelby County Criminal Court Clerk, and the unknown male profile obtained from the white blanket is in the possession of the Tennessee Bureau of Criminal Investigation. To the extent the State disputes the accuracy of these assertions, an evidentiary hearing is proper for the Court to hear from the Clerk of the Court, the Medical Examiner, and the Tennessee Bureau of Investigation.

As to the third prong, the fingernail specimens and the bindings on Marcellos Anderson and Delois Anderson have never been subjected to DNA testing.[13] The white blanket was subject to DNA testing, and an unknown male profile was developed. Mr. Carruthers is not requesting further sampling of the white blanket; rather, he seeks to compare the unknown profile to Mr. Irving and to further ensure the sample has been recently run in CODIS to see if there are any matches. In other words, Mr. Carruthers requests testing that has not been conducted. Therefore, this prong is also satisfied.

Finally, Mr. Carruthers does not submit this Motion for any other reason other to prove the innocence that he has maintained for 30 years. While his execution has been set, this testing should take only 14 days after the evidence is delivered to the DNA lab. (Keel Aff., ¶ 17.) As such, the results will be available prior to Mr. Carruthers' execution. While the results themselves may generate further motions or litigation, the inquiry for this Court in reviewing *this Motion* is whether the *request for testing* is done for purposes of delay.[14] It is not. The purpose is to establish his innocence before he is killed for a crime he did not commit.

2. Mr. Carruthers meets the criteria for DNA analysis under § 40-30-305.

Second, the Court ***may*** grant testing if the following four prongs are met:

---

[13] There were two red socks recovered from Delois Anderson, one marked as "bloody" and one marked as "dirty." The "bloody" red sock was subjected to DNA testing on the blood only in 2003. It does not appear the "dirty" sock was tested at all. Neither sock was tested for touch DNA, which is what Mr. Carruthers now requests.

[14] Moreover, undersigned counsel became only recently involved in Mr. Carruthers' case, in late March of 2026. Also, Mr. Carruthers filed a similar motion 27 days ago in the TSC. The State responded on April 12, 2026. The TSC did not deny that motion until three weeks later, stating the motion was not properly filed at the TSC under Rule 12. (Ex. 2.) Any additional delay related to the proceedings at the TSC should not be attributed to Mr. Carruthers. Indeed, if the State had agreed to the request at the outset, the testing would probably be complete by now. (*See* Keel Aff., ¶ 17.)

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

§ 40-30-305, Tenn. Code. Ann. The Tennessee Court of Criminal Appeals recently explained this separate standard:

> If a petition does not meet the criteria for mandatory testing, a post-conviction court has discretion to order testing if a "reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction" and the criteria in (2), (3), and (4) are met. T.C.A. § 40-30-305. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome." *Powers v. State*, 343 S.W.3d 36, 54 (Tenn. 2011) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009) (citations and quotation marks omitted). Although the post-conviction court must presume that the DNA analysis at issue is exculpatory or favorable to the defense, the court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *Id*. at 55.

McBee, 2026 WL 230074, at *7. If this Court does not find in Mr. Carruthers' favor under the mandatory standard, it should *at least* find that Mr. Carruthers is entitled to testing under this discretionary standard.

Exculpatory DNA results would have been extremely relevant and meaningful to Mr. Carruthers' jury, which heard only circumstantial evidence of Mr. Carruthers' guilt at trial. for the reasons discussed above (*supra* Part I.B.1), exculpatory DNA results provide a reasonable probability Mr. Carruthers would have been convicted of a lesser charge and/or would not have been sentenced to death.

As to Mr. Carruthers' death sentence, it is especially significant that Tennessee allows the jury to consider residual doubt as a mitigation factor. *State v. Hartman*, 42 S.W.3d 44, 56 (Tenn. 2001) (citing *State v. Teague*, 897 S.W.2d 248, 256 (1995)). Had the jury heard exculpatory DNA at trial, at least one juror would have certainly considered it in mitigation and voted against a death sentence—thus precluding the court from sentencing Mr. Carruthers to death. (*See* Ex. 33, ¶ 12 (stating that he does not support Mr. Carruthers' death sentence after learning new information); Ex. 34, ¶ 4 (same).)

This conclusion is further underscored by the State's own treatment of the previous DNA results in Mr. Montgomery's case. Mr. Carruthers and Mr. Montgomery being excluded from the evidence previously tested, coupled with the discovery of an unknown male profile on a blanket buried with the victims, led the State to enter into an *Alford* plead with Mr. Montgomery for a more favorable judgment and sentence—leading to his ultimate release. *See supra* notes 4 & 12. Montgomery was originally charged, convicted and sentenced to death in the same trial and under the same state theory as Mr. Carruthers. He was sentenced to a term of years and was released from custody in 2016 due to the strength of these favorable DNA results. *See supra* note 4. And yet, Mr. Carruthers now sits six weeks away from his scheduled execution. (*See* Ex. 1.)

As to the other prongs of § 40-30-305, they are established here for the same reasons as they are established under § 40-30-304. *See supra* Part I.B.1.

CONCLUSION

As U.S. Supreme Court Justice Sotomayor recently concluded in her dissent from denial of certiorari for a Texas Petitioner seeking DNA testing, it is inexplicable why the State "refuses to allow DNA testing . . . despite the very substantial possibility that such testing could exculpate [the Petitioner] and identify the real killer . . . ." *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026)

(Sotomayor, J., dissenting from denial of certiorari). Without such testing, the State will proceed with executing Mr. Carruthers "without the world ever knowing" whether his DNA is on the evidence from the crimes scenes and victims' bodies, "even though a simple DNA test could reveal that information." *Id.*

The State of Tennessee should not follow the State of Texas' lead here. Granting the requested DNA testing could definitively prove what Mr. Carruthers has been saying for 30 years—that he is not guilty of these kidnapping murders. If the State had known of these exculpatory results or if his jury had been told about this exculpatory evidence, he would not have been prosecuted, convicted as charged, and/or sentenced to death. This Court should refuse to let his execution take place without first allowing Mr. Carruthers to conduct the requested DNA testing.[15] Accordingly, this Court should grant the Motion.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Tony Carruthers respectfully requests that this Court enter an Order (1) granting this Motion, (2) setting an evidentiary hearing if the Court deems it necessary, (3) expediting briefing on this Motion, (4) granting the requested DNA testing, and (5) granting any other relief the Court deems just.

Respectfully submitted this the 4th day of May, 2026.

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn, Esq.
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067

[15] Even in Florida, the national leader on executions as of late, James Duckett was recently granted not one but two rounds of DNA testing before the State could proceed with his execution. *See generally Duckett v. State*, No. SC2026-0528, 2026 WL 1173073 (April 30, 2026).

lucas@aclu-tn.org

Maria DeLiberato, Esq.*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Melanie C. Verdecia, Esq.*
Quarles & Brady LLP
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602
melanie.verdecia@quarles.com
(813) 387-0279

ATTORNEYS FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on May 4, 2026, a true and correct copy of the foregoing has been served on counsel for the Respondent via electronic mail:

JONATHAN SKRMETTI
Attorney General and Reporter

LESLIE PRICE Leslie.Price@ag.tn.gov
BENJAMIN BARKER Benjamin.Barker@ag.tn.gov
COURTNEY ORR Courtney.Orr@ag.tn.gov
NICHOLAS SPANGLER Nick.Spangler@ag.tn.gov
G. KIRBY MAY Kirby.May@ag.tn.gov
SARAH STONE Sarah.Stone@ag.tn.gov
LESLIE BYRD Leslie.Byrd@ag.tn.gov
Office of the Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn, BPR No. 036284
American Civil Liberties Union
Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
(615) 645-5067
lucas@aclu-tn.org

APPENDIX D

Appendix to Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001, *Carruthers v. Tennessee,* Nos. 94-02797-99, 95-11129, (Tenn. Crim. Ct. 30th Jud. Dist. at Memphis May 4, 2026)

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

FILED
2026 MAY -4 A 10:39
CRIMINAL COURT CLERK
BY

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.
_____/

APPENDIX TO
MOTION FOR DNA TESTING PURSUANT TO THE
TENNESSEE POST-CONVICTION DNA ANALYSIS ACT OF 2001

Exhibit	Description
1.	September 30, 2025 Order setting Mr. Carruthers' execution
2.	April 30, 2026 Order regarding Motion for DNA testing
3.	Trial Transcript Vol 13, p 1864-1867
4.	Docket and news article showing dismissal of charges
5.	April 3, 1994 Crimestoppers Report
6.	Grand Jury Testimony of Alfredo Shaw
7.	December 30, 2019 Carruthers Response to Motion to Set Execution Date
8.	Jonthan Montgomery Statements
9.	December 15, 1994 Trial Transcript Vol 29 regarding Motion to Suppress
10.	January 24, 2022 Latent fingerprint report
11.	April 6, 2026 Affidavit of Alan Keel
12.	2019 CODIS Report
13.	James Montgomery Plea Form and Transcript
14.	June 8, 1994 Defense Supplemental Motion for Discovery & Inspection

Exhibit	Description
15.	September 29, 1994 State's Response to Motion for Discovery
16.	January 31, 1996 Motion for Disclosure of Impeaching Info
17.	September 29, 1994 State's Response to Mtn for Disc. of Impeaching Info
18.	1996 Trial Transcript, Vol. 14, pp 2128, 2136
19.	1996 Trial Transcript, Vol 15, p 2174-2178
20.	Composite of letters from Mr. Carruthers' post-conviction counsel, Charles R. Ray, to John W. Campbell, Assistant District Attorney in August 2002
21.	September 12, 2022 Motion to Compel State to Reveal All Agreements, Renumeration, Or Other Consideration Given To The State's Witnesses
22.	October 9, 2022 State's Response to Motion to Reveal All Agreements Given to State's Witnesses
23.	November 25, 2022 Motion to Compel (Alfredo Shaw)
24.	December 3, 2002 Order
25.	December 10, 2022 Response of the State of Tennessee
26.	January 7, 2003 Letter from Mr. Campbell to Mr. Ray
27.	Composite of Mr. Carruthers' counsel document requests related to Mr. Shaw's work as a confidential informant
28.	May 9, 2024 Agreed Order re Shaw
29.	Alfredo Shaw Informant File
30.	Excerpt of Penalty Phase Argument
31.	Testimony of Dr. Cleland Blake & Dr. George Nichols
32.	April 3, 2007 Affidavit of Dr. OC Smith
33.	April 20, 2026 Ferrari Juror Affidavit
34.	April 21, 2026 Adams Juror Affidavit

EXHIBIT 1

FILED
09/30/2025
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE vs. TONY CARRUTHERS

Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129

No. W1997-00097-SC-DDT-DD

ORDER

The State of Tennessee filed a motion to set an execution date for Tony Carruthers, stating that Mr. Carruthers has completed the standard three-tier appeals process and requesting that an execution date be set in accordance with Tennessee Supreme Court Rule 12(4)(A). In his response, Mr. Carruthers asked the Court to deny the motion and to issue a certificate of commutation pursuant to Tennessee Code Annotated section 40-27-106 based on certain enumerated extenuating circumstances.

Upon careful review of the response and supporting documentation, the Court concludes that no "legal reason exists against execution of the sentence" under Tennessee Code Annotated section 40-23-119 and that under the principles announced in *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000), Mr. Carruthers has presented no extenuating circumstances warranting issuance of a certificate of commutation. Accordingly, his request for a certificate of commutation is DENIED.

Mr. Carruthers also raised the issue of his present competency to be executed and requested a competency hearing under *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). In accordance with the procedures adopted in *Van Tran v. State* and the standard set forth in *State v. Irick*, 320 S.W.3d 284 (Tenn. 2010), the issue is hereby remanded to the Criminal Court for Shelby County, where Mr. Carruthers was originally tried and sentenced, for a determination of his present competency, including the initial determination of whether he has met the required threshold showing. *See Black v. State*, 2025 WL 1927568 (Tenn. July 8, 2025). To ensure the determination of Mr. Carruthers' competency to be executed occurs in close proximity to his scheduled execution date, the filing requirements established in *Van Tran* are hereby modified as follows: Mr. Carruthers shall file his petition alleging incompetency to be executed in the trial court no sooner than February 11, 2026 and no later than February 13, 2026. In all other respects, the proceedings shall be conducted in accordance with the procedures and timelines set forth in *Van Tran*.

Upon due consideration, the State's motion to set an execution date is GRANTED. Accordingly, under the provisions of Rule 12(4)(E), it is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the 21st day of May, 2026, unless otherwise ordered by this Court or other appropriate authority. No later than April 21, 2026, the Warden or his designee shall notify Mr. Carruthers of the method that the Tennessee Department of Correction (TDOC) will use to carry out the execution and of any decision by the Commissioner of TDOC to rely upon the Capital Punishment Enforcement Act. *See* Tenn. Code Ann. § 40-23-114. Counsel for Tony Carruthers shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM

EXHIBIT 2

FILED
04/30/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. TONY CARRUTHERS

Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129

No. W1997-00097-SC-DDT-DD

ORDER

Tony Carruthers, a death-row inmate scheduled for execution on May 21, 2026, has filed a pleading styled, "Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. R. 12.4(E)." In his motion, Mr. Carruthers is seeking the appointment of a special master, pursuant to a December 2025 amendment to Rule 12(4)(E), to adjudicate his request for additional testing under the Tennessee Post-Conviction DNA Analysis Act of 2001 ("DNA Act"). *See* Tenn. Code Ann. §§ 40-30-304, -305 (2024).

Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

Further, because the motion is denied, the accompanying motion of Maria DeLiberato, American Civil Liberties Union, to appear *pro hac vice* on behalf of Mr. Carruthers in this matter is also DENIED.

It is so ORDERED.

PER CURIAM

EXHIBIT 3

02C01-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

STATE OF TENNESSEE, Appellee,	*	FILED 12/30/97 WILLIAM B. KEY, CLERK BY Bennett D.C.
VS.	*	Cause Nos. 94-02797
	*	94-02798
TONY CARRUTHERS and	*	94-02799
JAMES MONTGOMERY,	*	95-11128
Appellants.	*	95-11129

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE,
OPENING STATEMENTS AND CLOSING ARGUMENTS
VOLUME 65 OF 82 VOLUMES

Vol. 42

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:
PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
201 Poplar Avenue - Third Floor
Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:

HAROLD D. ARCHIBALD, ESQ.
Archibald and Halmon, P.C.
Suite 900
22 North Front Street
Memphis, TN 38103

J.C. MCLIN, ESQ.
Attorney at Law
Suite 201
301 Washington Avenue
Memphis, TN 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By

APPEARANCES

FOR AGENTS MCGRIFF AND CHISM:
SID ALEXANDER, ESQ.
U.S. Attorney's Office
Federal Office Building
Memphis, Tennessee 38103
(901)544-4231

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CROSS-EXAMINATION BY MR. ARCHIBALD..... 1950
CROSS-EXAMINATION BY DEFENDANT CARRUTHERS..... 1955

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VOIR DIRE EXAMINATION BY MR. MCLIN (JURY OUT).. 1989
VOIR DIRE EXAMINATION BY THE COURT (JURY OUT).. 1990
VOIR DIRE EXAMINATION BY MR. MCLIN (JURY OUT).. 1991

STATE RESTS..... 2006

you-all are welcome, when you start using it, to roll it back out closer, if you care to.

MR. HARRIS: Your Honor, can I approach?

THE COURT: Sure.

BY MR. HARRIS:

Q. All right. Doctor, let's look at State's Exhibit Number 32. Will you begin by telling us, go to the top up here and tell us whose bodies are shown there, and show us the positions that they were in.

A. Yes, sir. On the top diagram, this represents the grave and then the pit in the floor of the grave containing the three bodies of Delois Anderson, Marcellos Anderson, and Fredrick Tucker. They show the superimposition of the bodies on one another based upon the tonal differences of the colors.

The best way to explain it is that this photograph as a composite is made from the three photographs depicted down here that are converted to line form. This is the body of Delois Anderson shown lying in the base of the pit. Her head is here with her face in the corner in the bottom of the pit. The right arm is behind the back. It is tied with a ligature to the left arm. She is clothed in panties,

and there is clothing up here.

She is on the floor, and immediately above her is the body of Fredrick Tucker. His head is towards her feet. His feet are bent at the knee to cover her lower back, and his feet are actually overlying a portion of her buttock region.

The third body is that of Marcellos Anderson. He is adjacent to Fredrick Tucker, lying on top of his mother with his head towards her head.

And we take these three photographs and superimpose them, and you can see how they were overlying one another in the dimensions of the pit beneath the grave.

Q. All right, sir. Now, I will ask you if you observed them as they came out of the grave?

A. Yes, sir. I observed them as we were excavating and lifting them out of the ground.

Q. Did each body -- was each body bound?

A. Yes, sir. Each body had ligatures or bondage, the ligature material, to the hands in the case of Ms. Tucker, the hands and feet of -- I'm sorry -- Ms. Anderson, the hands and feet of Fredrick Tucker, and then the hands of Marcellos Anderson.

Q. All right sir. Now, if I could ask to --

MR. HARRIS: I've shown these to counsel,

Your Honor.
Q. I'll ask you if you photographed the bonds of, first of all, Delois Anderson?
A. Yes, sir. They were photographed both on the body and then once they were removed.
Q. I would ask if you will look at this photograph, tell me does it accurately depict and portray the bonds on Ms. Anderson?
A. Yes, sir. This photograph depicts the bonds that were on the body of Delois Anderson. I removed them by my own hand and positioned them for this photograph.
Q. All right. Now, have you examined them? We have them here today, and you've seen the actual bonds, have you not?
A. Yes, sir.
Q. All right. Does that photograph truly and accurately depict the bonds that she had?
A. Yes, sir.
MR. HARRIS: Okay. I would ask that the photograph be introduced as State's Exhibit Number 33.
THE COURT: All right.

(Whereupon, Exhibit No. 33 was marked and filed.)

BY MR. HARRIS:

Q. All right. Did you observe the bonds of Mr. Fredrick Tucker?

A. Yes, sir, I did.

Q. And I'll pass you a photograph and ask you if this photograph truly and accurately depicts and portrays the bonds that were on Mr. Fredrick Tucker?

A. Yes, sir, they do.

MR. HARRIS: All right. I would ask that that be introduced as State's Exhibit Number 34.

THE COURT: All right.

(Whereupon, Exhibit No. 34 was marked and filed.)

BY MR. HARRIS:

Q. All right. The last one, ask you if you will look at that, and did you see the bonds on Mr. Marcellos Anderson?

A. Yes, sir.

Q. And are these photographs of the bonds?

A. Yes, they are.

MR. HARRIS: All right, sir. And I'd ask that they be introduced as State's Exhibit Number 35.

THE COURT: All right.

EXHIBIT 4

Case Information

94059138-03 | The State of Tennessee vs TONY CARRUTHERS

Case Number
94059138-03
File Date
02/28/1994

Court
Division 10
Case Type
Affidavit

Judicial Officer
Turner, William C.
Case Status
Disposed

Party

State of Tennessee
The State of Tennessee

Race
Other

Defendant
CARRUTHERS, TONY

DOB
07/01/1967

Race
Black

Address
2013 PAMELA
Apt # A
MEMPHIS TN 00000

Charge

Charges
CARRUTHERS, TONY

	Description	Statute	Level	Date
1	FIRST DEGREE MURDER	39-13-202	Felony M	03/04/1994
2	FIRST DEGREE MURDER	39-13-202	Felony M	03/04/1994
3	FIRST DEGREE MURDER	39-13-202	Felony M	03/04/1994

Bond Settings

Document received by the TN Supreme Court.

Setting Date
3/5/1994

Disposition Events

03/25/1994 Plea

Judicial Officer
Judge, Converted

1	FIRST DEGREE MURDER	Dismissed Lack of Prosecution

03/25/1994 Plea

Judicial Officer
Judge, Converted

2	FIRST DEGREE MURDER	Dismissed Lack of Prosecution

03/25/1994 Plea

Judicial Officer
Judge, Converted

3	FIRST DEGREE MURDER	Dismissed Lack of Prosecution

03/25/1994 Disposition

1	FIRST DEGREE MURDER	Dismissed Lack of Prosecution

03/25/1994 Disposition

2	FIRST DEGREE MURDER	Dismissed Lack of Prosecution

03/25/1994 Disposition

3	FIRST DEGREE MURDER	Dismissed Lack of Prosecution

03/25/1994 Sentenced

1	FIRST DEGREE MURDER	Sentenced

Document received by the TN Supreme Court.

03/25/1994 Sentenced

2	FIRST DEGREE MURDER	Sentenced

03/25/1994 Sentenced

3	FIRST DEGREE MURDER	Sentenced

Events and Hearings

02/28/1994 Case Filed

03/07/1994 Arraignment

Hearing Time
9:00 AM

03/09/1994 Attorney

Hearing Time
9:00 AM

03/10/1994 Attorney

Hearing Time
9:00 AM

03/17/1994 Attorney

Hearing Time
9:00 AM

03/25/1994 Preliminary Hearing

Hearing Time
9:00 AM

Financial

No financial information exists for this case.

Document received by the TN Supreme Court.

Guns [illegible] of a March 5 [illegible] Sanitized Steel Co. on Henry Avenue. The guns were [illegible] and 179 [illegible]. City Councilman Myron [illegible] cars, which were then shredded together. The next phase of the [illegible] agent, said a similar swap is planned soon. Story

Clinton tax returns show trade risks, modest pay

By John M. Broder
Los Angeles Times

WASHINGTON — President Clinton on Friday released his tax returns for his first years in public office as the White House aimed to show that Whitewater was a losing land deal.

The documents for 1977-79 paint a fascinating picture of a relatively low-paid couple dabbling in highly speculative commodity and real estate ventures that in one case paid spectacular returns and in another — the Whitewater deal — resulted in a sizable financial loss.

The release of the tax returns and a Thursday night press conference were aimed at demonstrating that the President and his wife are not withholding information on Whitewater and their overall financial situation.

The tax returns were presented Friday by the Clintons' private attorney, David Kendall. He said the Clintons had already given the documents to special counsel Robert Fiske, and were releasing the returns publicly "in a spirit of full cooperation and openness."

On Friday, the grand jury investigating Whitewater subpoenaed another senior White House aide, staff secretary John Podesta. The White House said he had been summoned to testify about contacts between the White House and the Treasury Department concerning the investigation of Madison Guaranty Savings and Loan.

The returns show a remarkable income growth for the Clintons, from $41,731 in 1977 to $85,214 in 1978 to $158,495 in 1979.

Salary increases account for very little of the growth.

Mrs. Clinton began in commodities trading in October 1978 at the urging of the Clintons' close friend, the well-connected Arkansas lawyer James Blair, now the general counsel of Tyson Foods Inc., the nation's largest poultry producer.

Her investment in the high-risk cattle futures market is surprising, given that the Clintons had relatively low incomes and very few assets. White House aides would not say how much of her own money Mrs. Clinton put at risk or how much of the trading was done on credit.

In 1979, Clinton took office as governor, earning $33,519.14 for the year, while Mrs. Clinton made partner at the Rose firm and saw her income rise to $38,615.60. But her luck in the futures market continued and she reported a profit of $72,996 before bailing out in October.

After they got out of the commodities market, the Clintons' income fell substantially. Tax returns released previously

Please see RETURNS, Page A11

Witness vanishes, so does case in slaying of 3 found in grave

By Rob Johnson
The Commercial Appeal

A General Sessions Court judge dismissed first-degree murder charges Friday against the men who police believe buried three Memphians in another woman's grave at Rose Hill Cemetery.

The state's witness, who led detectives to the grave of Delois Anderson, Marcellos Anderson and Frederick Tucker, has vanished. And without his testimony, prosecutors were left empty-handed in their cases against James T. Montgomery and Tony Carruthers, both 26.

The two were charged with the murders March 4 and have been in the Shelby County Jail ever since.

"I have no choice but to dismiss the charges," said Judge Anthony Johnson during Friday morning's hearing. Montgomery's attorney, Robert Michael Friedman, agreed.

"It seems to me that all this time they have kept these defendants in jail without proof, and the judge properly dismissed the charges," Friedman said.

Prosecutors didn't protest.

The victims' families were furious.

"Where did the system fail us? Where was the ball dropped?" asked Andre Steel, Butler's father. "They will kill again."

But conditions set by the parole board kept the two men in jail for the time being, and the gruesome triple-murder case is still under investigation.

Police, meanwhile, have been searching for the man who implicated the two suspects. He vanished several days after leading police to the grave, and prosecutors haven't heard from him since.

Although the witness's name has been previously published in news stories, prosecutors requested Friday that it be withheld, citing the delicacy of their case.

Asst. Atty. Gen. Jerry Harris said Carruthers and Montgomery were still the state's two main suspects.

"We need anyone out there who knows anything about this case to call us or call Crime Stoppers," he said. "There are people out there who know what happened, but they aren't talking to us."

Armed with an exhumation order, police unearthed Dorothy Daniels's grave March 3.

Beneath her coffin, a sheet of plywood and a layer of dirt, they found the bodies of three people who'd been missing since Feb. 25.

Marcellos Anderson and Tucker had been shot to death. Delois Anderson, Marcellos's mother, had suffocated, according to the Shelby County Medical Examiner's office.

Investigators say the men who legitimately buried Daniels didn't know someone had al-

Please see DROP, Page A11

NCAA

MEN

Arkansas	10
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Bost. Coll.	7
Indiana	6
Michigan	7
Maryland	7
Florida	6
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Details in Sports

INSIDE

BUSINESS
BYGONE DAYS
CLASSIFIED
COMICS
CROSSWORD
DEATHS
LOTTERIES/BIRTHS
MOVIES
RELIGION
SCOREBOARD
TELEVISION
VIEWPOINT

■ Palestinian inc
says soldiers joi
mosque massac

■ WEATHER: Sunny
High near 70. South
15. Low tonight in up
rain likely. Cloudy
chance of rain. Detail

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38112
38112
38114

winner.
Sports section.

...suits for co... information, but may not ...been able to get a clear reading for several



Tony Carruthers



James T. Montgomery

From Page A1

Drop

ready filled the grave beneath them.

Investigators won't discuss the motive for the killings.

Both men face a hearing to determine whether their paroles will be revoked, according to Colis Newble, the state's parole hearing director.

Carruthers's hearing has been scheduled for March 30. Montgomery's hearing date had not been set Friday.

Friday's dismissals should enable his client to walk out of jail, Carruthers's attorney maintains.

"The probable cause for revoking their paroles were these murder charges," said attorney A C Wharton. "But now that the charges have been dismissed, the probable cause has evaporated."

Both men have violent felony records.

Montgomery pleaded guilty in 1986 to receiving and concealing stolen property, robbery with a deadly weapon and assault with intent to commit robbery with a deadly weapon. Carruthers pleaded guilty in 1990 to aggravated assault.

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If your address appears
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EXHIBIT 5

MEMPHIS CRIME STOPPERS
INFORMANT REPORT

CONFIDENTIAL INFORMATION — FOR POLICE USE ONLY

INFORMANT # 21171

DATE/TIME OF CALL: 04 / 03 / 94 1820
MO DAY YR TIME

CALL RECEIVED BY: PST CA Scott 8429

CASE ASSIGNED TO: _____

R & I # 930303 0976 MF

BUREAU: Homicide

BOOKING # _____

INVESTIGATOR: Kolsom

A. TYPE OF CRIME (*CHECK APPROPRIATE CATEGORY*)

ARSON	_____	BURGLARY	_____	LARCENY	_____	SEX CRIMES	_____
ASSAULT	_____	FUGITIVE	_____	NARCOTICS	_____	VICE	_____
AUTO THEFT	_____	HOMICIDE	X	ROBBERY	_____	OTHER (SPECIFY)	_____

LOCATION OF OCCURRENCE: See Narrative

DATE/TIME OF OCCURRENCE: ___ / ___ / ___ ___
MO DAY YR TIME

B. NARRATIVE

Caller advised that he was supposed to be a part of the killings of the three people found buried in a grave (Anderson case) Caller stated it was a hit made because of drugs. Caller also advised he had talked with homicide detectives and was advised to call and get a number.

OVER

C. SUSPECT #1 INFORMATION

NAME/ALIAS: _____

ADDRESS: _____

SEX/RACE/AGE: ___ / ___ / ___

HGT/WGT: ___ / ___

SUSPECT #2 INFORMATION

NAME/ALIAS: _____

ADDRESS: _____

SEX/RACE/AGE: ___ / ___ / ___

HGT/WGT: ___ / ___

PLEASE ADVISE CRIME STOPPERS AT 528-CASH IF AN ARREST IS MADE AS A RESULT OF TH INFORMATION. COMPLETE SECTION J ON BACK AND RETURN TO CRIME STOPPERS WITHIN 15 WORKING DAYS OF DATE RECEIVED.

Document received by the TN Supreme Court

This CI, gave a statement that Tony Carruthers confessed to Murders.
This CI testified at the Grand Jury.

When this information was received.
Tony Carruthers case in General Sessions Court had been dismissed for lack of evidence. without this information and his testimony in Grand Jury Carruthers would have been released

Sgt A.D. Roberson.
Homicide

Victs: Anderson, Delaris
Anderson, Marcellus
Tucker, Fred.

Tony Carruthers' Booking # 94059138

Document received by the TN Supreme Court.

EXHIBIT 6

TRANSCRIBED FROM TAPE; PM GRAND JURY SESSION 3-29-94; BARRY MOORE INVESTIGATOR; JOHN CAMPBELL PROSECUTOR; TYPED BY S.WADDELL.

JC. We should put him under oath. Won't you stand up for us? Raise your right hand please. Do you solemly swear to tell the truth to this uh Grand Jury about your knowledge of the homicides of uh Delois Anderson, Marcelus Anderson and Fredrick Tucker. Tell the truth?

A. Yes sir.

Q. Please sit down... Ask you to state your name for the Grand Jury.

A. Alfredo Bernard Shaw

Q. And Mr. Shaw, tell by your uniform by which... are you an inmate at the Shelby County Jail?

A. Yes sir.

Q. Ok..uh I want to direct your attention back several months... Do you know an individual by the name of Tony Von Carruthers?

A. Yes sir.

Q. How long have you known Tony Von Carruthers?

A. Uh I've known Tony um ever since uh 1988.

Q. 1988? ok, you and he friends or aqaintances?

A. Well we um.. 1988..89 we were uh incarcerated in the jail... number 4-4E pod together.

Q. Ok this was in Shelby County Jail?

A. Yes sir

Q. Ok did you have an occasion to talk to Tony Carruthers a couple of months ago here in Memphis, Tennessee?

A. Yes sir

Q. Ok, was this in the jail or was this out on the street?

A. Well I had the conversation with Tony um back in September of uh 93, over a phone conversation...

Q. Ok, what was the nature of that phone conversation?

A. Um the nature of phone conversation...uh ... pertaining to a uh... hit..

Q. Ok now... when you mean a "hit" what do you mean?

A. Um... Meaning a murder...committed uh.. that's all...

Q. Ok, what did Tony ask you to do?

A. Ok... well um... its.. another.. 2 more other people had called me up by the name of Terry and Jerry Darr... called twins...

Q. What uh.. What uh do Jerry and Terry Darr do?

A. Ok they called me and uh... they had been asking me um previously before that about uh.... participating uh... in the hit on uh.. Marcellus...

Q. What kind of arrangments were they willing to make for this hit?

A. Um... they made arrangements uh offering a hundred thousand dollars and a kilo of cocaine... to me and Tony Carruthers.. uh... to carry the hit out on these individuals...

Q. What'd you tell them?

A. I told them that I didn't know and I wasn't uh... I didn't think that I wanted to participate and in that kinda hit...

Q. Did you get contacted again after that first contact about doing this killing?

A. Yes sir.

Q. Who.. Who contacted you?

A. Ok, that's Terry and Jerry contacted me uh again, this is about mid September.. uh.. and they had Tony Carruthers over the phone then...

Q. Did you talk to Tony?

A. Yes sir, Uh Terry and Jerry asked me did I know uh Tony Carruthers... and I said Tony Carruthers the name sounds familiar to me... and Tony said uh what's up Shaw? I said uh Tony?... He said, Yeah man what's up? and uh and he said uh what's going on man? like that... and I said nothing much man and he said uh... and then Terry came back in into the conversation and he said, have you thought about what we uh discussed?... And I told him, I said uh.. Yeah I thought about it, I said.. like I said I don't want to participate... into this kinda activity.. and that's when Tony came in and said.. Man everything gonna be skrate... and what he means by skrate everything's gonna go alright...

Q. Did he uh did he ask you to go with him too?

A. Yeah Tony asked me on the side... he kept trying to convince me to go head on and carry out this uh this mission with him... you know and uh that it was well planneded out you know uh.. that we wouldn't.. we wasn't supposed to get caught or anything... uh supposed tuh.. once the murder was committed...

Q. Now, back in I guess February or really in early March were you in 94 were you housed back in Shelby County Jail?

A. Yes sir

Q. Did you have an occasion to see Tony Carruthers and Marshall in the Shelby County Jail?

A. Yes sir. Yes sir... Tony uh sent a message to round me up that was on one side of the 4th floor.. Tony was on the other side of the 4th floor... we have a mark on the south side of the jail on the 4th floor and uh and I was housed in K Pod and uh Tony was housed in C Pod and he sent a message around uh for me to try get to the legal room this particular day.

Q. And where is the legal room in the jail?

A. The legal room is on the 5th floor...

Q. Now is this after you heard about uh Marcellus being killed?

A. Right...

Q. Did you meet with Tony Carruthers in in the uh legal room in the jail?

A. Yes sir I did..

Q. And what did Tony tell you?

A. Ok.. when I met with Tony in the jail in the legal room I asked Tony you know I said What's up Tony?.. He said man I told you see man uh I told you this shit was gonna be skrate like that he said uh... I said well uh... He said uh this shit went smooth.. I said yeah the way you all did it it did go smooth.. I said but uh... He said but if that boy... wouldn't uh took them to that grave they would never have found out about it... I said yeah you're right... He said uh.. I said So Tony what happened?.. He said uh well we went to that boy's mommas house looking for him and the money and he was staying with Marcellus... and he said Marcellus was not there at that particular time so they held his mother and had her to call Marcellus over the phone... and and told her to tell him that it was important that he needed to come there... so when Marcellus came there him and Tucker was together...

Q. And that was Fred Tucker?

A. Right... but Marcellus, Tucker and uh this guy named Big Brother was the one that originally carried out the hit on uh I mean carried out the robbery on uh Terry and Jerry Darr....

Q. You mean this was in retaliation of that event?

A. Right uh, one occasion for $80,000.00 and uh one occasion for $160,000.00 and 2 kilos of cocaine... so um I asked Tony uh what happened and he went on to tell me that once Marcellus and uh Tucker got to the house they put the gun on them and made them get back into the church.... Marcellus knew it was there supposedly took Tony and them to Mississippi... or somewhere where theres money... supposed to been... so once they got to Mississippi apparently the money wasn't there Tony told me that he shot uh.. Tucker and Marcellus there on the scene immediately... and uh I said why did you all burn the uh truck up Tony.. I said uh what was the reason for burning... He said Man our fingerprints was all over the truck and we couldn't drive the truck back because they was looking for these people and they was looking for the truck... so his mother was still alive, Marcellus mother was still alive.. they drove em back to Memphis in a stolen vehicle... and uh took them to the gravesite and I said uh... well Tony why you all kill the woman, kill the woman and he said uh naw we uh.. no he said when he drove them back to Memphis they took em to the gravesite.. and uh Tony said Man we dropped them boys in that grave like that he said...uh James Montgomery asked Tony what are we going to do with this bitch? And Tony said uh... she starts to holler.. and said James put the pistol up to her head and told her bitch or else you're going to die like your dead ass son... and then thats when they pushed the woman over in the grave and told her die like your dead ass son...

Q. And they buried her in the grave?

A. Yes sir..

Q. Now this this is what uh Tony told you in the jail?

A. Yes sir

Q. And the reason he told you about this is because you were told about the.. they tried to hire you but (coughing covers up answer)

A. Right.. (inaudible)

Q. Tony ever tell you how much he got for it?

A. No sir he did not.

Q. I believe that's all the questions I have.

Do any of you have any questions?

Q. I would like to ask him where did they get the (inaudible) from?

A. Um they got the woman, they went to um her home looking for her son Marcellus...

Q. So they took her with em too?

A. Yeah took her along with them...

Q. Where did you go to school?

A. Southside High School sir

Q. If you could I have one more witness, right here at least

All right

Thank you sir. Thanks a lot.

EXHIBIT 7

IN THE TENNESSSEE SUPREME COURT
AT NASHVILLE

FILED
DEC 30 2019
Clerk of the Appellate Courts
Rec'd By

STATE OF TENNESSEE	)	
	)	
v.	)	No. W1997-00097-SC-DDT-DD
	)	
TONY VON CARRUTHERS	)	**CAPITAL CASE**

RESPONSE IN OPPOSITION TO MOTION TO SET EXECUTION DATE; NOTICE THAT DEFENDANT IS INCOMPETENT TO BE EXECUTED AND REQUEST FOR A HEARING; AND REQUEST FOR CERTIFICATE OF COMMUTATION

FEDERAL PUBLIC DEFENDER
FOR THE MIDDLE DISTRICT OF TENNESSEE

KELLEY J. HENRY, BPR #21113
Supervisory Asst. Federal Public Defender

AMY D. HARWELL, BPR #18691
Asst. Chief, Capital Habeas Unit

RICHARD L. TENNENT, BPR #16931
JAMES O. MARTIN, III, BPR #18104
Asst. Federal Public Defenders

810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265

IN THE TENNESSSEE SUPREME COURT
AT NASHVILLE

STATE OF TENNESSEE	)	
	)	
v.	)	No. W1997-00097-SC-DDT-DD
	)	
TONY VON CARRUTHERS	)	**CAPITAL CASE**

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RICHARD L. TENNENT, BPR #16931
JAMES O. MARTIN, III, BPR #18104
Asst. Federal Public Defenders

810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265

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Comes now Tony Von Carruthers, through counsel, and pursuant to Tennessee Supreme Court Rule 12.4(A) and (C) and files this Response in Opposition to the Attorney General's Motion to Set an Execution Date. Pursuant to Rule 12.4(C) this Response is filed in the Nashville Division, and not Jackson. Also pursuant to Rule 12.4(C) a syllabus that summarizes the contents of this Response is filed contemporaneously.

I. INTRODUCTION

Should Tony Carruthers be executed, he will be the first person in a century to be put to death after being forced to represent himself at trial. Should Mr. Carruthers be executed, he will be the unique defendant who is executed based on an indictment and a theory of guilt that the prosecution subsequently disavowed, and based on the testimony of a witness the prosecution called a liar.

Should Tony Carruthers be executed, it will be for a crime that the State of Tennessee was willing to settle for a life sentence, and to which the State allowed his co-defendant to plead best-interest for a sentence of twenty-seven years.

Should Mr. Carruthers be executed, he will be one of a small, unlucky few, who were put to death, without the prosecution presenting any forensic evidence or firsthand eyewitness testimony of their guilt, or even their purported role in the killings. Should he be executed, it will be based on the testimony of criminals who traded cocaine by the kilogram and their testimony for sentence reductions.

Tony Carruthers' convictions and death sentence are based on proof that Tony Carruthers, forced to represent himself without aid of counsel,

misguidedly presented in his own defense. Indeed, should he be executed, the single most important event that led directly to his death will be his forced self-representation.

Indeed, the horrific crime that resulted in his pending execution in fact never occurred. Although the jury sentenced him to death for burying three humans alive, the overwhelming scientific evidence that is now acknowledged by the medical examiner proves that three already dead bodies were placed in a grave.

Critically, the person that the jury sentenced to death bears no resemblance to the person before this Court. Mr. Carruthers suffers from severe mental illness, a fact that precludes him from even understanding his own irrationality, let alone the nature of his current legal circumstances. As a result, should Tony Carruthers be executed, the State of Tennessee will put to death a profoundly mentally ill man who will have no rational understanding of why the State is killing him.

Instead, Mr. Carruthers' "understanding" of his execution - as set-forth in his voluminous public pleadings, letters to the court, and other non-privileged documents – is that a long-term "extrinsic fraud" and "fraud upon the court," in violation of Rule of Professional Conduct 3.3, and contrary to chapter 3 and verse 3 of Ezekiel, that has been perpetrated by a cabal of defense lawyers, prosecutors, judges, Masons and deviants. The conspirators have been motivated by their desire to escape indictment by the Department of Justice, and preserve their law licenses from revocation by the Board of Professional Responsibility. And, with his execution, at least one other murder, of a prominent lawyer

by a criminal court judge's law clerk, will go unsolved. Thus, his execution would be an extraordinary fraud upon the court.[1]

No execution date should be set for Tony Carruthers, this case should be remanded for further proceedings in the trial court, and this Honorable Court should issue a certificate of commutation.

A. The framework of this opposition.

Counsel for Mr. Carruthers will begin this opposition with a discussion of trial issues that warrant relief from execution. This section will be presented under the major heading "Fraud Upon the Court," as, subject to Rule of Professional Conduct 1.14 and *Holland v. Florida*, 560 U.S. 631 (2010) counsel wishes to honor Mr. Carruthers' preferred language. Moreover, while counsel might chose different language, the wording "Fraud Upon the Court" is not unfair when used to describe the legal injustices that occurred in Mr. Carruthers' case, not the least of which was the denial of his right to counsel, the presentation of an

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[1] Mr. Carruthers' profound mental illness and resulting psychosis further precludes his understanding that he will be executed. As counsel understands - Mr. Carruthers' distorted belief system, he will not be executed because the Department of Justice and Board of Professional Responsibility will intervene, he will be released from custody, and he will be awarded $3.3 million in damages from each of the dozens of various conspirators who have violated his rights. In Mr. Carruthers' mind, the current efforts to seek an execution date are nothing more than another effort to get him to enter a best interest plea to time-served, so as to provide cover for the conspirators, and concealment of their crimes.

entirely new theory of guilt that was irreconcilable with the proof presented to the Grand Jury, and the imposition of a sentence of death for three horrific murders that never happened.[2]

Following the "Fraud Upon the Court" section, again pursuant to Rule of Professional Conduct 1.14, counsel will address Mr. Carruthers' competency and mental health issues. This section is presented without his consent, and over his strenuous objections. Counsel respects Mr. Carruthers, and does not submit these arguments lightly. However, counsel has a sincere and deeply held belief that Mr. Carruthers was never competent to stand trial, was not competent to represent himself, and is not competent to be executed. Moreover, he is not competent to waive any meritorious arguments. For reason that will be developed in greater depth in this second section, counsel is certain that Mr. Carruthers has a serious mental illness, whether labelled schiziophrenia, or schizioaffective disorder bipolar type, and that the manifestations of this serious mental illness include paranoid delusions, distorted thought processes, conspiratorial misapprehension of fact, a gross inability to make prudent decisions, and a complete inability to rationally perceive or understand the world around him. He also has significant brain damage which exacerbates the debilitating effects of his serious mental illness, and, as a result of either or both the mental illness and brain

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[2] Three murders happened, but the three murders that Mr. Carruthers was sentenced to death for never occurred. Three people were not "buried alive," instead, three dead bodies were hidden in a grave by someone.

injury he suffers from anosognosia, which is the delusional belief, despite all evidence to the contrary, that he is not mentally ill.

In advancing the second section, however, counsel wants to be clear. Mr. Carruthers is also a kind and charming man. Going against his sincere wishes is hard, and not at all pleasant.

Following the second section regarding mental illness, counsel will submit three arguments that are all very applicable to Mr. Carruthers that this Honorable Court may be, or may become familiar with: (1) the Severely Mentally Ill, as a class which clearly includes Tony Carruthers, should be categorically protected from imposition of the Death Penalty, (2) the death penalty is racist, and (3) Tennessee's Death Penalty is contrary to evolving standards of decency.

B. Relief requested: No execution date should be set, this case should be remanded for further proceedings in the trial court, and a Certificate of Commutation should be issued.

In regards to the various significant grounds to oppose execution that are set-forth, below, counsel asks for three different, but related, forms of relief. First, pursuant to Tenn.Code.Ann. § 40-27-106, as each ground establishes significant extenuating circumstances, this Honorable Court should issue a Certificate of Commutation. *Workman v. State*, 22 S.W. 3d 807, 808 (Tenn. 2000). Second, pursuant to Article One, §§ 8 and 16 of the Tennessee Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution, counsel asks that this Honorable Court exercise its supervisory authority to remand for further and appropriate proceedings in the trial court. *Van Tran v.*

State, 6 S.W.3d 257, 260 (Tenn. 1999). Third, each and every ground individually and collectively establishes that this Honorable Court should decline to set an execution date, at this time.

C. A note on exhibits.

Counsel has not made the majority of Mr. Carruthers' vast record an exhibit. For much of the history of his case, counsel has relied upon the narratives contained in the opinions of this Court, and the Court of Criminal Appeals. The trial record is nearly 6,000 pages in length; while the record filed in the federal district court contains over 20,000 pages. [3] However, counsel has excerpted various witnesses' trial testimony, and in so doing, counsel has included their entire testimony—even if only a few pages are directly relevant to the issue being raised. Counsel has done this to be fair to this Court and the State, and so that a witnesses words can be seen in full context.

In the appendix of Exhibits, undersigned counsel has attempted to assemble all exhibits that are relevant to Mr. Carruthers' "Fraud Upon the Court" arguments, first. Then all exhibits related to Mr. Carruthers mental health issues will follow. All exhibits that address the three

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[3] Undersigned took on the role of lead counsel in October of 2018, following the departure of the last of Mr. Carruthers' three prior federal public defenders (one retired, one is a professor, the last moved to a different state). Suffice it to say, counsel has done his best, but has not been afforded the opportunity to review, let alone master, the entire 20,000 page record.

broad, but crucial, arguments regarding (1) a categorical exemption for the mentally ill, (2) racism, and (3) evolving standards of decency will be last. One exhibit relevant to the "Fraud Upon the Court," is a video from the nightly news, wherein Alfredo Shaw, a critical trial witness, claimed to have committed perjury; a "transcript" of this story was prepared by an unknown person at some unknown date, as an aid to the Court, this transcript is filed, however, counsel recognizes that the actual video is the actual evidence. Where possible, and within counsel's skills, hyperlinks have been inserted.

D. A note on citations to the various *Carruthers* opinions.

Counsel has chosen not to refer to the various appellate decisions as "*Carruthers-I*," "*Carruthers-II*" as this seemed overly confusing. Instead, all citations (other than appropriate *Id*s) will contain the cite to the appropriate reporter. In total, nine opinions can be found in Westlaw, though, for the most part, counsel will focus on the opinion of this Honorable Court on direct appeal, *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000), the Court of Criminal Appeals regarding post-conviction, *Carruthers v. State*, 2007 WL 4355481 (Tenn.Crim.App. Dec. 12, 2007), and the Sixth Circuit Court of Appeals, *Carruthers v. Mays*, 889 F.3d 273 (6th Cir. 2018). Also the unreported opinion of the District Court for the Western District of Tennessee, has been attached as an exhibit.[4]

[4] Ex. 1, DE 195, Order Denying Habeas Corpus.

II. "FRAUD UPON THE COURT"

The first major set of issues that counsel will raise relate to the fundamental (un)fairness of Tony Carruthers' trial. To best recognize how prejudicial these legal wrongs were to Mr. Carruthers it is important to start with an overview of the proof, or lack thereof. Following that, counsel will address the very troubling role of Alfredo Bernard Shaw, and discuss the other suspects that the jury never heard about, but who (unlike Mr. Carruthers) had a motive for the crime. After the setting is established, counsel will explore the specific exigent legal and constitutional wrongs that justify the issuance of a Certificate of Commutation, support a remand for further proceedings, and would justify a decision to decline to schedule an execution.

A. The facts, and lack thereof, at trial; the unmatched bloody DNA; the role of Alfredo Bernard Shaw and his contrary story of guilt; the suspects the jury never heard about.

Tony Carruthers was convicted of three murders that occurred in February of 1994, the murder of Mr. Carruthers' friend, Marcellus Anderson, Mr. Anderson's friend Frederick Tucker, and Mr. Anderson's mother, Delois Anderson; the bodies of all three victims were found buried beneath a grave. *Carruthers*, 35 S.W.3d at 524-30. No forensic evidence linked Mr. Carruthers to the crimes; no testimony was presented regarding fingerprints, or ballistics (indeed no testimony placed a pistol, such as that used to kill the victims, in his hand). *Id.* at 524-30. His DNA was not at the crime scene, but two blood stains on a piece of cloth buried with Marcellus Anderson contained DNA that did

not match the victims, Montgomery or Carruthers—**the identity of the person whose DNA and blood was left on that cloth is unknown to this day**. *Carruthers v. State*, 2007 WL 4355481, at *33 (Tenn.Crim.App. Dec. 12, 2007);[5]

Instead, the most significant proof against Mr. Carruthers came from various local criminal defendants: Alfredo Shaw to secure an indictment, and then Jimmy Maze, Terrell Adair, and Charles Ray Smith to secure convictions at trial. Shaw told a story of a murder for hire, while Maze, Adair and Smith told a very different story about a violent effort to take over the drug trade in their neighborhood—a trade that had been run by Marcellus Anderson and his partner, Andre Johnson. *Carruthers*, 35 S.W.3d at 24-30. Under the new story, while the three witnesses couldn't conclusively say Carruthers had killed anyone, they claimed that he and Montgomery had made unusual threats, and had alluded to unusual plans, all of which suggested an intent to kidnap and kill Marcellus Anderson. *Id.* This proof was combined with somewhat stronger evidence against Montgomery, including proof Montgomery was with the victims in the hours before their death, and less clear proof that Carruthers was with Montgomery and the two victims earlier in the night, and then with Montgomery the next morning, when a car that may have been used in the crime was cleaned. *Id.*

Prior to trial, indeed prior to indictment, with a dearth of concrete evidence, and a recognition that they would risk dismissal at preliminary

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[5] Ex. **2**, Excerpt PCR Testimony of Todd Bille, pp. 19-23.

hearing,[6] the District Attorney convened a special grand jury and secured an indictment against Tony Carruthers based on the testimony of Alfredo Shaw, a convicted felon and career informant.[7] [8] Mr. Shaw told the grand jury a story about a murder for hire (payment to be $100,000 and a kilogram of cocaine) directed by twins named Jerry and Terry Durham.[9] [10] Shaw claimed he spoke with the Durham twins and Tony Carruthers twice during September, 1993, but ultimately declined to become involved.[11] He claimed Tony Carruthers, a man he had met five years earlier in jail, who he knew just well enough that his "name sounded familiar," began to pressure Shaw to join in this murder scheme.[12] Shaw further claimed that following the homicides he fortuitously happened to run into Tony Carruthers in the jail law library (despite being an incompatible who should have been kept separate for his own protection), and of all the people on the planet Earth, Mr. Carruthers chose to confess to Shaw—and no one else.[13] Indeed, at trial, Shaw had to admit that the last time he had seen Mr. Carruthers, face-to-face prior to the alleged confession, was in jail in 1988, when the two men had an "altercation."[14]

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[6] Ex. 3, March 1994 Memo from Wright to Brown.

[7] Ex. 4, Trans. Alfredo Shaw GJ Testimony.

[8] Ex. 5, Trans. Shaw's Statement to Media admitting paid informant and liar.

[9] Id.

[10] Ex. 6, Trans. Depo. Shaw, p. 31.

[11] Ex. X4 Trans. Alfredo Shaw GJ Testimony p. 2.

[12] *Id.* at 2-3.

[13] *Id.* at pp. 2-4.

[14] Ex. 7, Excerpt Trial Tr., Alfredo Shaw Testimony, pp. 2214-16, 2279.

The very first element of Shaw's story was factually absurd—he claimed that he had spoken with Tony Carruthers over the phone along with the Durham twins, twice, in or sometime before September of 1993—but, Tony Carruthers was still in prison in September of 1993, and was not released until November 15, 1993. *Carruthers*, 35 S.W.3d at 524. Thus, the prosecution either knew this story was false, or chose to remain deliberately ignorant of its truth, as the prosecutors and police failed to make any effort to obtain phone records of any calls between the prison and the Durham twins, or to seek prosecution of the two men who—*allegedly*—had paid $100,000 and a kilogram of cocaine for the murder of three citizens. (*Established by omission from the record*).[15] [16]

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[15] By 1994 it was common practice around the country for the police and prosecution to obtain jail phone records for use in criminal prosecutions. *E.g. U.S. v. Johnson*, 120 F.3d 1107, 1108-10 (10th Cir. 1997) (phone records used to verify calls from jail in July, 1994); *Consalvo v. State*, 697 So.2d 805, 810, fn. 2 (Fla. 1996) (jail phone records used to confirm defendant called witness on Oct. 3, 1991); *Carter v. O'Sullivan*, 924 F.Supp. 903, 910 (C.D. Ill. 1996) (noting that in Illinois, by 1994, the prison system "keeps track of numbers called and monitors and records phone calls); *Nadeau v. State*, 683 So.2d 504, 505 (Fla.App.4th 1995) (23 phone calls between Oct. and Dec. 1993 verified with jail records); *U.S. v. Jackson*, 1997 WL 198056 (D. Kansas, Mar. 17, 1997) (jail phone records used to verify call between defendant and witness in 1993 prosecution);

[16] Obviously, had the prosecution obtained phone records that established that Shaw had lied, these would have been produced as *Brady* materials, or at the latest, when Shaw took the stand and committed perjury in violation of *Napue v. Illinois*. Conversely, if phone records confirmed his

Not surprisingly, considering the inherent absurdity of Mr. Shaw's story, he recanted prior to trial, and made a statement to the local news admitting that he had been given police files related to the murders, and (he claimed) paid either $2,000 or $3,000 to implicate Tony Carruthers.[17] [18] [19] In response to his recantation, Assistant District Attorney Jerry Harris asserted that Mr. Shaw was a person "who lies" who he would not put before a jury.[20] [21] [22]

Instead of placing the "person who lies," Alfredo Shaw and his false story of a murder for hire before the jury, the prosecution elected to call Charles Ray Smith, "a convicted felon," Jimmy Lee Maze "another

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story, there is no doubt they would have been produced in discovery and introduced at trial.

[17] Ex. 8, "State Bribed me to lie," Tri-State Defender, March 2-6, 1996.

[18] Ex. 5, Transcript of Channel 13 Interview with Alfredo Shaw and DA Jerry Harris.

[19] While undersigned counsel submits that the evidence establishes that Alfredo Shaw lied to the Grand Jury, whether he was paid with cash for this lie, or simply was a cheap snitch who would say whatever he thought the government wanted hear to get probation is unknown. Mr. Carruthers however, is certain, that he was paid, and it was a "fraud upon the court."

[20] Ex. 9, CD/Video of Channel 13 Interview of Shaw.

[21] Ex. 5, Transcript of Channel 13 with Alfredo Shaw and DA Jerry Harris.

[22] A paralegal at the Federal Public Defenders made a transcription of the News Channel 13 Interview with Shaw. This transcription is provided to the Court as an aid, however, the actual interview is, of course, the best evidence.

convicted felon," and Terrell Adair, a third "convicted felon" who collectively testified to a diabolical plot by Carruthers and Montgomery to take over the drug trade in their neighborhood from Marcellus Anderson and his partner, Andre Johnson. *State v. Carruthers*, 1999 WL 1530153, at *19-23 (Tenn.Crim.App. Dec. 21, 1999). The State also called Andre Johnson, himself. *Id.* at *22. The new story completely omitted any mention of the evil Durham twins, or any murder for hire theory. *Id.* (established by omission). Indeed, where the Durham twins had been the criminal masterminds in the Shaw story, version two replaced them with Tony Carruthers. *Id.* Charles Ray Smith, a man who while in prison was assigned to cemetery duty, ascribed to Tony Carruthers the nefarious idea that a grave would be an excellent location to hide a body. *Id.* at *19. Maze and Adair similarly told stories about incriminating statements (or incredibly odd ones, depending on your perspective) that Mr. Carruthers had made, which they tied into a plot to kidnap and kill Marcellus Anderson. *Id.* at *19-23. While, Andre Johnson testified about threats he had received from co-defendant Montgomery, he testified about the trust and friendship between Carruthers and Marcellus Anderson. *Id.* at *22.

There were only two commonalities between Alfredo Shaw, and three of the new witnesses, Maze, Smith and Adair. All four were

criminals, and at least three of the four traded their testimony for sentencing relief by the prosecution.[23] [24] [25] [26]

There was also a very interesting commonality between Andre Johnson and Alfredo Shaw's story (but not the new version of Maze, Smith and Adair) – Johnson would come into federal court in October of 1996, and swear under oath that he would accept $100,000 to have another man killed.[27] Under oath, he testified that he would decline to be the triggerman, but he would find a cheaper hitman who he would pay $25,000, while keeping the rest as profit.[28] Whether, Mr. Johnson's admitted willingness to have someone killed for money ever reached fruition is not clear from the transcript of his testimony.[29]

At trial, Mr. Carruthers attempted to present proof from Michael Shae Holmes, a drug partner of Mr. Anderson and Mr. Johnson that Anderson and Johnson were in debt to Columbian cocaine dealers, which, may have been related to the three earlier shootings of Johnson, Terrell

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[23] Ex. 10, Jimmy Maze Declaration.

[24] Ex. 11, Deal for Charles Smith.

[25] Ex. 12, Charles Smith Judgment.

[26] Counsel is unaware of why Terrell Adair was not prosecuted federally, along with Andre Johnson. However, he admitted under oath, at Carruthers' trial, that he was involved with Anderson and Johnson in their multi-kilogram cocaine operation. (Ex. 13, Excerpt Trial Tr. Terrell Adair Testimony, pp. 1404, 1434-35, 1519-20).

[27] Ex. 14, Excerpt Trial Tr. Andre Johnson Testimony in McDonald Trial, pp. 2399-2401.

[28] *Id.*

[29] Id.

Adair, and Anderson.[30] [31] It was Mr. Holmes belief that the murders of Anderson, his mother and Tucker, were all committed by or for the Columbian drug dealers.[32] According to Holmes, after the murders, Anderson paid off the debt to the Columbians.[33] In a hearing outside the presence of the jury, Mr. Carruthers presented testimony from Holmes that Johnson had initially refused to pay the debt, and that following his failure to pay, the Columbians came around "looking for Johnson" and driving around with a man called Ronnie Ervin.[34]

Outside the presence of the jury, Michael Holmes also revealed that Andre Johnson had Michael Holmes kidnap Charles Smith (the man who was on cemetery duty while in prison, who claimed that Mr. Carruthers told him that a grave would be a good place to hide a body).[35] Holmes also testified that shortly before Anderson's murder, Johnson and Anderson were "feuding."[36] [37]

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[30] Ex. 15, Excerpt Trial Tr., Michael Shae Holmes, pp. 2394-98.

[31] Mr. Carruthers also attempted to introduce this proof through Terrell Adair, but, again, the Court found that proof that other men may have had motive to kill Anderson was irrelevant. (Ex. 13, Excerpt Adair Testimony, pp. 1436-49, 1455-86).

[32] Ex. 16, 1996 Statement of Michael Holmes, pp. 1-6.

[33] *Id.* at pp. 5-6.

[34] Ex. 15, Excerpt Trial Tr., Michael Shae Holmes at pp. 2404-06.

[35] *Id.* at 2406-10.

[36] *Id.* at 2410.

[37] Which is to say that Johnson not only may have caused Anderson to have an unpayable debt to the Columbians, he also may have been the sort of person to kill off his partner to clear the debt.

Unfortunately, the jury heard none of this exculpatory evidence. Tony Carruthers, pro se, was unable to articulate an adequate basis for the admission of any of this testimony, and the trial court held it all to be irrelevant.[38] The court stated, "I'm not going to allow you to suggest to the jury that these Columbian drug lords were coming up to collect their debt and kill these three people."[39] Similarly, the trial court refused to permit Holmes, a business partner of Anderson and Johnson, to testify that Anderson and Johnson were in debt to the Columbians.[40] This was similar to the court's earlier ruling that Terrell Adair could not be questioned about the debt Anderson and Johnson owed to the Columbians.[41]

Thus, Mr. Carruthers' was prevented from showing that Anderson owed $100,000 or $250,000 to the Columbians, or arguing that this enormous debt had already led to multiple shootings, or establishing that Johnson was feuding with his violent business partner, Anderson (a man so violent, he had his other business associate, Charles Ray Smith, kidnapped). With all of those "normal" avenues of defense shut down by the rulings of the trial court, Mr. Carruthers went to Plan B, and he called Alfredo Shaw to the witness stand, so that he could "prove" that Shaw lied.[42] As will be discussed, below, this ill-advised decision did not

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[38] *Id.* at 2414-15.

[39] *Id.* at 2415.

[40] *Id.* at 2418-19.

[41] Ex. 13, Excerpt Trial Tr. Terrell Adair Testimony, pp. 1481-83.

[42] Ex. 7, Excerpt Trial Tr. Alfredo Shaw Testimony.

work out, as Mr. Carruthers, pro se, had Shaw read some of his most damning prior statements directly into the record, while failing to establish that he was a liar.

The jury thus heard not only from multiple State witnesses that Tony Carruthers had claimed to be a criminal mastermind with a violent plan, but they then heard from his own witness that he had confessed to the murders. They were forbidden from learning about the Columbians, the drug debt, the other kidnapping ordered by Johnson, or the potential nexus of all those events with no less than three other shootings. With this testimony (and lack thereof), and despite the lack of any actual forensic or direct evidence, the jury found that Mr. Carruthers' presence with two of the victims, prior to their deaths, was sufficient to convict him, and then (for reasons that will be discussed, subsequently) to impose death.

B. For years the State of Tennessee has fought to conceal the truth: Alfredo Shaw was a paid informant before, during, and after the time he allegedly obtained Tony Carruthers' "confession;" the fight to conceal this truth rises to the level of a "Fraud Upon the Court" as formal pleadings introduced before the Honorable Walter Kurtz falsely disavowed Mr. Shaw's role as an informant.

Mr. Carruthers has maintained, for over twenty-five years, that his entire prosecution is fatally compromised, due to the prosecution's use of a paid informant, Alfredo Bernard Shaw, to secure the indictment against him. This indictment, in large part, rested on Mr. Carruthers' alleged confession to Shaw, after Carruthers had already retained counsel. Moreover, Carruthers' alleged confession was then presented to

the jury through the testimony of Shaw. This confession would have been subject to complete suppression, pursuant to *Maine v. Moulton*, 474 U.S. 159, 176 (1985) ("the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent") and *Massiah v. U.S.*, 377 U.S. 201 (1964). Moreover, evidence that Shaw was a government agent had to be disclosed to defense counsel pursuant to *Giglio v. United States*, 405 U.S. 150 (1972). Indeed, in moving to reveal evidence that Alfredo Shaw was a government agent, Mr. Carruthers' post-conviction counsel explicitly relied on *Massiah* and *Giglio*.[43]

The extent to which the Shelby County District Attorney has attempted to conceal the facts of Mr. Shaw's status as a government agent may be indicative that it had some concern that a *Moulton/Massiah* violation may have occurred. That office has done an exemplary job for the past two plus decades in denying—contrary to fact—that Mr. Shaw was a paid informant for "anybody" at "any time."

At trial, Mr. Carruthers attempted to question Shaw as to whether he was a "confidential informant for the Sheriff's Department," but the prosecution had an objection to relevance sustained.[44].

During post-conviction proceedings, counsel for Mr. Carruthers repeatedly sought confirmation from the Shelby County District Attorney

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[43] Ex. 17, PCR Counsel Requests for Information on Alfredo Shaw.

[44] Ex. 7, Excerpt Trial Tr. Alfredo Shaw Testimony, p. 2254.

that Shaw was a paid informant[45] and by letter, and by pleading before the Honorable Judge Kurtz, the prosecutors denied that Shaw had been a paid informant.[46] Judge Kurtz, on December 3, 2002, specifically ordered the State to divulge whether Shaw "was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with the petitioner in the Shelby County Jail."[47] On January 7, 2003, in their final denial, the assigned prosecutor claimed, "I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. To the best of their knowledge, Alfredo Shaw was never a paid informant during the time frame stated in your letter of December 16, 2002."[48]

Finally, in December of 2017, after the conclusion of all tiers of review, but for certiorari to the United States Supreme Court, the Shelby County Sheriff's Department, provided limited and redacted records regarding Mr. Shaw's payment history from, and only from, the Shelby County Sheriff's Department.[49] What payments Mr. Shaw received from the Memphis Police, the District Attorney, the FBI, the DEA, or other agencies, have never been revealed to counsel or Mr. Carruthers, despite multiple requests for records of such.[50]

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[45] Ex. 17, PCR Counsel Requests for Information on Alfredo Shaw.
[46] Ex. 18, Three Denials by DA that Shaw an Informant.
[47] Ex. 19, Kurtz Order to Compel
[48] Ex. 18, Three Denials by DA, p. 3)(emphasis added).
[49] Ex. 20, Fessenden Letter with Attached Payment History.
[50] Ex. 21, Compilation of Requests for Records.

The records provided by the Sheriff reflect that Alfredo Shaw made purchases of crack cocaine on September 23 and 25, 1991, and a purchase of marijuana on October 29, 1992, while receiving an undefined/illegible payment of $100.00 on October 28, 1992.[51] Thus, at least three years prior to Mr. Carruthers' "confession," Shaw was already working for the government.

Thereafter, following the alleged "confession," but prior to the April 1996 trial, Shaw made another $100 purchase of marijuana for the Sheriff on November 30, 1995. Subsequent to helping secure Mr. Carruthers' conviction and death sentence, Shaw made numerous additional drug buys, and received informant payments or reimbursement for "informant expense" on December 16, 1996, and January 29, February 24, March 19, April 28, May 2 and May 7, 1997 totaling $436.00.[52] Mr. Shaw, in his subsequently recanted recantation, claimed that he received either $2,000 or $3,000 for his grand jury testimony against Mr. Carruthers.[53] [54]

The Shelby County Sheriff's Departments disclosure of December, 2017 reveals that the prosecution's response during post-conviction, and following Judge Kurtz's order was factually untrue—Alfredo Shaw had been a paid informant for, at the very least, the Shelby County Sheriff.

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[51] Ex. 20, Fessenden Letter with Attached Payment History, p. 3.
[52] *Id.*
[53] Ex. 8, TriState Defender "State bribed me to lie."
[54] Ex. 9, CD/Video of Channel 13 Interview of Shaw.

Moreover, at the time the State was denying that Alfredo Shaw was a paid informant, the State was defending the conviction of Earley Story in the Court of Criminal Appeals, which had been obtained based on Shaw's work as a "cooperating individual." *State v. Story*, 2002 WL 31257803, at *1 (Tenn.Crim.App. Sept. 13, 2002). The trial testimony reveals that Shaw, allegedly, purchased $500 of marijuana from Sheriff's Deputy (and defendant) Earley Story on January 9, 1997, $500 more on January 15, 1997, and $850 more on January 22, 1997. *Id.* at *1-2. The payment records provided by the Sheriff reflect that on January 9, 1997, the Sheriff withdrew $500 for Alfredo Shaw to purchase marijuana; albeit where the money came from for the second two buys is less than clear.[55] The three alleged purchases of marijuana from Story are bookended by payments to Shaw on December 16, 1995 and January 29, 1997. (*Id.*). Mr. Story was able to present an alibi for the first two purchases, and the jury acquitted him, but he failed to establish an alibi for the third, and was convicted. *Story*, at *2-3. To this day, Mr. Story asserts that he was framed, and never sold marijuana to anyone. *See e.g.*, Case No. W2019-01406-CCA-R3-ECN (appeal pending in Tennessee Court of Criminal Appeals).

Thus, it is clear that the State knew that Shaw was an informant, when they filed pleadings suggesting the contrary before the Honorable Judge Walter Kurtz. That the State "doth protest too much," suggests that their attorneys recognized the significance of Shaw's work as an

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[55] Ex. 20, Fessenden Letter with Attached Payment History, p. 3.

informant (indeed, it may suggest that the Shelby County Sheriff is not the only agency he regularly worked for, and that a full accounting would reveal more damning evidence regarding his work inside the Shelby County Jail).

By submitting factually misleading pleadings, in the face of an explicit court order, the Shelby County District Attorney's Office perpetrated a fraud upon the court.

The Shelby County District Attorney's Office recently had a death sentence reversed due to their failure to disclose a $750 payment from the FBI to a key witness. *Thomas v. Westbrooks*, 849 F.3d 659, 661-64 (6th Cir. 2017). The *Thomas* court's observation on prosecutorial misconduct (an issue the court declined to resolve, as relief was granted under *Brady*) is very apt to our circumstances, as well:

> Were we to reach the merits of the prosecutorial misconduct claim, we might well charge the state prosecutor with actual knowledge that Jackson's testimony about her receipt of reward money was perjured. Given the importance of Jackson's testimony to the State's case and the State's repeated questioning about her purportedly high-minded reasons for testifying, it seems that any competent prosecutor would have carefully reviewed the case file for evidence that Jackson might have been testifying for some less-than-altruistic reason in order to guard against the risk of impeachment. This seems especially true in a case like this one where the witness had already testified against the same defendant in a related federal proceeding. Had the prosecutor done so, the parties agree that she would have come across a document indicating that Jackson had received a significant payment from the FBI after the

> conclusion of the federal trial. Thus, were we to presume that the State's prosecutor engaged in diligent preparation for trial, we would conclude that she knew of the payment at trial.

Id. at 667.

A similar result is appropriate here. Indeed, in light of the apparently contumacious conduct of the prosecutors in the post-conviction court, it would be highly appropriate to remand this matter for further proceedings, so that the misleading representations regarding Alfredo Shaw can be addressed (or, if possible, explained).[56] Moreover, to avoid the execution of a man who was indicted based on clearly perjured testimony, and who was convicted when he, pro se, chose to place that perjured testimony before the jury, no execution date should be set by this Honorable Court, and a Certificate of Commutation should be issued.

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[56] To be fair, as of yet, the Shelby County District Attorney has not been required to explain how they could plead that Alfredo Shaw was not a paid informant. But, perhaps, they have an explanation. Possibly, Sheriff's deputies contumaciously lied to prosecutors to conceal their relationship with Shaw, and the prosecutor's naively believed them. Albeit, for Mr. Carruthers the end result is the same, a material falsehood was submitted by the State in post-conviction proceedings, despite an explicit order from the Post-Conviction Judge.

C. Mr. Carruthers, against his will, and as punishment for his unusual behavior, was forced to represent himself; the last known case where a man was denied counsel and sentenced to death occurred in 1923; executions for men who were punished by being denied counsel are simply unheard of.

Mr. Carruthers complained about his lawyers, and due to issues that will be addressed in Section III, below, he did so intemperately, offensively, and provocatively, if not entirely unfairly. During the 22 months between when Mr. Carruthers was first appointed counsel, and when he was ordered to represent himself as punishment for his complaints, his three prior sets of attorneys and investigators had interviewed six potential witnesses out of a somewhere between 125 and 170; the majority of his prior attorneys and investigators interviewed no witnesses at all; a mitigation specialist was only sought by his final attorney, who requested such on the same day he filed a motion to withdraw (days prior to the scheduled trial); and no forensic pathologist was ever obtained by any of the lawyers (despite, as will be seen in the sub-section related to the "buried alive" myth, this being an essential

task). *Carruthers*, 2007 WL 4355481, at *16, 26-30.[57] [58] Thus, when Mr. Carruthers complained about his attorneys, his factual predicates were not unreasonable, but his theories about why his attorneys had not diligently investigated or prepared were factually absurd, and to a person of common sensibilities, offensive: Mr. Carruthers claimed that one set of lawyers were intentionally failing to represent him due to their homosexual desire to have carnal relations with him[59]; while, his final lead counsel's failure to work as expediently as Mr. Carruthers believed necessary was the product of cocaine addiction and blatant racism. *Id.* at * 18, 28.[60] [61]

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[57] Attorney Nance testified he "identified" witnesses, but he could not recollect interviewing any, Attorney Garrett who followed Nance testified he did not interview witnesses at all; and Attorney Wright, who was appointed in a dual attorney/investigator position did not interview any witnesses either. When Mr. Carruthers began representing himself and was given an investigator, John Billings, Mr. Billings discovered that in the preceding 22 months no more than 7, out of over 160 possible witnesses had been interviewed.

[58] Ex. 22, PCR Hearing Tr. Bill Massey Testimony, pp. 482-83.

[59] Two common themes to Mr. Carruthers misapprehensions of fact are (1) their internal inconsistency: why attorneys who wished to seduce Mr. Carruthers would do so by failing to help him makes no sense, and (2) their transference of mental illness and irrationality from Mr. Carruthers (who due to anosognosia cannot perceive such in himself) to defense counsel.

[60] Ex. 23, Compilation of Letters of Complaint.

[61] Mr. Carruthers' final lead counsel, the Honorable William Massey, did an excellent job of preserving letters for the record, including a batch that were written in a manic flurry during December of 1995. Undersigned

In response to Mr. Carruthers' intemperate complaints, the trial court removed two sets of lawyers, and when Mr. Carruthers complained about his final set, the court sanctioned him by denying him the right to counsel, entirely. *Carruthers*, 35 S.W.3d at 550. However, seeing that Mr. Carruthers was incapable of self-representation, the Honorable William Massey volunteered to forgive Mr. Carruthers and to represent him at trial; the trial judge refused to permit this.[62] Mr. Massey testified:

> I'm watching a man trying to defend himself in a death case and I think what I recall saying to Judge Dailey when I asked to approach him, I said, Judge, a compromised Bill Massey is better than Tony Carruthers representing himself. He wants me back aboard, I'll come. And they wouldn't – and they wouldn't let me back aboard.[63]

After the removal of Mr. Massey, Tony Carruthers repeatedly begged to have counsel appointed — whether Mr. Massey or other qualified counsel—and reiterated that he was not competent to represent himself, but his requests were denied on January 11, February 20, March 4, and April 15, 1996. *Carruthers*, 35 S.W.3d at 543-46.

In 1923, the Virginia Supreme Court upheld the death sentence of Sam Riddick. *Riddick v. Commonwealth*, 115 S.E.523 (Va. 1923). Mr. Reddick did not have counsel at trial, but the court found this

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counsel understands that these letters are representative of the letters sent to all of his various attorneys, but with one exception those other letters do not appear in the record (to the best undersigned can tell).

[62] Ex. 22, PCR Hearing Tr. Bill Massey Testimony, pp. 466-68.

[63] *Id.* at 467.

acceptable—under 1920s understandings of the law—as he had been incarcerated for "many months" pretrial, and he had friends who "might have secured counsel and ordered subpoenas for witnesses in his behalf." *Id.* at 727. Thus, Mr. Riddick's right to counsel was not "denied." *Id.* As far as counsel is aware, Mr. Riddick is the last man to be executed who did not have counsel at trial—outside of those defendants who affirmatively exercised their right to self-representation, usually with disastrous results. *E.g.* *State v. Jones*, 568 S.W.3d 101, 110 (Tenn. 2019); *Commonwealth v. Williams*, 196 A.3d 1021, 1025 (Pa. 2018); *People v. Lawley*, 38 P.3d 461, 470 (Ca. 2002).

Contrary to those foolish defendants who chose self-representation, Mr. Carruthers insisted until the end that he was not competent to handle a trial without an attorney. As will be shown, below, this was not only because he was unlearned in the law, but because he was, in fact, not competent.

To avoid the execution of a man who was denied counsel at trial, no execution date should be set, this Honorable Court should exercise its inherent authority and remand for appropriate proceedings in the trial court, and a Certificate of Commutation should be issued.

D. The State was willing to convey an offer of life in prison, which Mr. Carruthers could have already served had he accepted it; his co-defendant, James Montgomery is already free having accepted a best-interest plea for 27 years.

Mr. Carruthers informed the trial judge that William Massey had secured him a plea offer of twenty-five years,[64] which he rejected because (1) he maintained his innocence, and (2) he believed that it was "a violation of the victims' family rights" to extend such an offer without consulting with the victims' families.[65] Assistant District Attorney Harris clarified that Mr. Carruthers had not been offered twenty-five years, instead he stated on the record that his office had agreed that if Mr. Carruthers was willing to plead to life, he would seek the victims' family's approval.[66] As the murders occurred prior to July 1, 1995, Mr. Carruthers would have had release eligibility on a life sentence after service of twenty-five (25) years in prison, which is to say, earlier this year. Tenn.Code.Ann. § 40-35-501(h)(1) and (i).[67]

James Montgomery, Mr. Carruthers' co-defendant, was permitted to plead best-interest to Murder in the Second Degree, with a term of 27 years at 35% (after winning a retrial due to the prejudicial impact of

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[64] Since at least 2003, Mr. Carruthers has been convinced that he has an open offer to plead to time-served, which the State is trying to coerce him to accept.

[65] Ex. 24, Tr. Feb. 21, 1996 Hrg., pp. 9-10.

[66] *Id.* at p. 16.

[67] Thus, rather than 25 years being a misstatement by Mr. Carruthers, it was the minimum term of a life sentence.

being tried with pro se litigant Carruthers).[68] In December of 2015, James Montgomery was released from prison.[69] [70]

To avoid the execution of a man who should have been able to enter a guilty plea to a sentence of less than death, no execution date should be set, this Honorable Court should exercise its inherent authority and remand for appropriate proceedings in the trial court, and a Certificate of Commutation should be issued.

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[68] Ex. 25, State v. Montgomery Tr. of Alford Plea, p. 23.

[69] Ex. 26, "Memphis man convicted of triple murder goes from death row to freedom," NewsChannel3, Sept. 26, 2016.

[70] It is interesting to note that the debunked and repudiated theory that the three victims were buried alive was (a) not advanced during the 2000 Alford Plea, but (b) continued to be featured in the 2016 story about Montgomery's release. Clearly, this false story resonates most powerfully with the public at large, despite it being a morbid fantasy.

E. The Aggravating Factor of Hideous, Atrocious and Cruel was false; the victims were not buried alive; the prosecutions' essential argument for death was factually false; the continued repetition of this horrifying myth reveals how incredibly prejudicially misleading it was; in Mr. Carruthers' words, it was a fraud upon the court.

At sentencing, the prosecution called two witnesses. They first presented a member of the clerk's office to testify regarding the criminal records of the defendants, which included a single conviction of aggravated assault against Mr. Carruthers.[71] *State v. Carruthers*, 1999 WL 1530153, at *26 (Tenn.Crim.App. Dec. 21, 1999). Then, the State presented their star witness, Dr. O.C. Smith, who testified at length and in vivid detail about the pain suffered by the three victims who were "buried alive." *State v. Carruthers*, 35 S.W.3d at 530.

Dr. Smith's testimony became the focus of the State's final closing argument at sentencing.[72]. This powerful argument vividly and painfully told a story of prolonged suffering of three victims buried in a dark pit, Ms. Anderson listening to her son die, her son listening to her die, Frederick Tucker dying with them both, all three victims slowly suffocating, all three victims having injuries that would not have been

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[71] Co-defendant Montgomery had a much more significant record, involving two convictions for robbery with a deadly weapon and one conviction for assault with intent to commit robbery with a deadly weapon. *Carruthers*, 1999 WL 1530153, at *26.

[72] Ex. 27, Excerpt Trial Tr., State's Closing Argument at Penalty Phase.

fatal, but for the crushing weight of the dirt above them. [73] The prosecution's final closing argument relied on this emotionally wrenching horror story, while focusing almost exclusively on the single aggravating factor of heinous, atrocious and cruel.[74] The last words of the able prosecutor were as follows:

> We've come to you with awesome, horrible, unforgettable, almost unmentionable facts, haunting facts, haunting facts.
>
> The death penalty should be reserved for these two people who would put into action such a heinous, atrocious, and cruel plan, who would so callously take away human life, who would without regard for any of the social sensibilities take away what was so unnecessary, the life of Delois Anderson. So callous, so unnecessary, so horrible, so heinous and so atrocious and so cruel.
>
> Thank you.[75]

The jury in imposing death, agreed with the State, and found that all three murders had been "heinous, atrocious and cruel." *Carruthers*, 1999 WL 1530153, at *1. All but one appellate court that ruled on Mr. Carruthers' case found it important to recite: "the three victims were buried alive." *Carruthers v. Mays*, 889 F.3d 273, 277 (6th Cir. 2018); *Carruthers v. State*, 2013 WL 3968787, at *1 (Tenn.Crim.App. Aug. 1,

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[73] *Id.*

[74] Id.

[75] *Id.* at pp. 2784-85.

2013); *State v. Carruthers*, 35 S.W.3d 516, 528 (Tenn. 2000); *Carruthers*, 1999 WL 1530153, at *24.

This Honorable Court undertaking "Proportionality Review" vividly observed that "the three victims were kidnapped, bound, shot and buried alive, in a pit beneath another person's grave:" three times during this review, this court repeated the phrase "buried alive." *Carruthers*, 35 S.W.3d at 570. The Court of Criminal Appeals, in weighing aggravating factors and finding that the death sentence was legally appropriate similarly stressed that the victims were "buried alive." *Carruthers*, 1999 WL 1530153, at *60.

However, in 2007, the Court of Criminal Appeals recognized that the commonly accepted "fact" that the victims were buried alive was highly dubious; the court appointed expert pathologist, Cleland Blake, had long ago concluded that both Mr. Tucker and Mr. Anderson were dead prior to burial, and Ms. Anderson was either dead or unconscious at the time of burial. *Carruthers*, 2007 WL 4355481, at *23-24. However, Dr. Blake's conclusion, according to the Court of Criminal Appeals, could have been presented at trial, but Mr. Carruthers failed to call him. *Id.* at *44.[76] On post-conviction, Dr. Blake's conclusion was ratified by a third expert, Dr. George Nichols who testified that:

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[76] That is, the mentally ill defendant who was sanctioned with the loss of counsel, was then faulted for failing to understand that Dr. Blake's testimony could save his life. In light of the fact that Mr. Carruthers defense focused entirely on the fact that he was innocent (and that Alfredo Shaw lied to the Grand Jury), it is not surprising that he failed to understand why Dr. Blake might matter. In light of him not being

> [T]here was no evidence, in his opinion, "that any person was alive in the site in which their bodies were discovered." He further testified that there was "no proof of the best evidence of conscious activity of any victim while alive in the grave site." Specifically, **he found no evidence of inhalation of dirt, mud, dust, or earth in the upper airways, mouth, or lungs of any of the victims, which would have indicated that the victims had breathed after being placed in the grave**. On redirect examination, he reiterated that he found no evidence to show that "any of these three people were alive and breathing in that space. None."
>
> *Id.* at *24 (**emphasis** by counsel).

Finally, Dr. O.C. Smith submitted an affidavit which was filed with the Federal District Court, disavowing his conclusion that the victims were buried alive.[77] He concluded his declaration as follows:

> I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable medical certainty, the victims were in fact alive at the time they were buried beneath the coffin….
>
> I have addressed this issue with Bobby Carter of the Shelby County Attorney General's Office in regard to a retrial of James Montgomery and believe this lead [*sic*] to a plea agreement.[78]

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competent to defend himself, it was inevitable he would fail to see the relevancy.

[77] Ex. 28, Affidavit of OC Smith.

[78] Ex. 28, Affidavit of OC Smith at p. 2, ¶¶ 3,4.

That is, the vivid and horrific story told by the prosecution was false. The prosecution's key reason for requesting death was untrue. Three expert witnesses have shared their opinions: two who said the story was explicitly false, one who could no longer support the story.

Sadly, due to the limits of federal habeas corpus review, the Federal District Court held that it could not consider Dr. Smith's affidavit, and examined the victims' cause of death only under a false testimony theory (and then only under the strictures of highly deferential federal habeas review).[79] Moreover, the district court found that, if it could consider Dr. Smith's recantation, it would not establish that he was lying at the time he testified, or, even then that the prosecution knew he was lying.[80] Of course, whether it was a lie, or an innocent mistake by a less than competent pathologist, had no effect on the jury – they believed the testimony, as did every court that weighed the propriety of imposing a sentence of death.

The key question, which has never been properly weighed and considered, is whether the jury would have sentenced Tony Carruthers to death for his ambiguous role in the burial of three already dead bodies? No court has ever addressed that issue. [81] In light of Montgomery's

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[79] Ex. 1, Order Denying Habeas Relief, pp. 150-51.

[80] *Id.* at 152-53.

[81] The Court of Criminal Appeals, in 2007, examined the issue from a prosecutorial misconduct perspective, and considered what the impact would have been of contrary testimony from Dr. Blake versus the testimony of Dr. Smith, and concluded that any error would have been harmless. *Carruthers*, 2007 WL 4355481, at *56. The court did not

subsequent plea to a mere 27 years, and Dr. O.C. Smith's opinion that his changed opinion on cause of death led to the Montgomery plea, it is impossible to overstate the importance of the false narrative to the State's case for death. Certainly, this Court's Confidence that the jury would have sentenced Mr. Carruthers to death, absent the false "buried alive" myth should be seriously undermined. Johnson v. State, 38 S.W.3d 52, 55 (Tenn. 2001) (remanding for new capital sentencing proceeding, because evidence withheld by Shelby county prosecutor was material to sentencing).

To avoid the execution of a man who was sentenced to death based on a hideously false myth, a myth that whether intentionally fabricated or innocently propagated amounted to a fraud upon the court, no execution date should be set, this Honorable Court should exercise its inherent authority and remand for appropriate proceedings in the trial court, and a Certificate of Commutation should be issued.

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consider the impact of Dr. Smith's complete recantation of his prior testimony.

F. Tony Carruthers, in part due to his lack of legal knowledge or understanding, and in part for reasons that will be addressed, below, did more to get himself convicted and sentenced to death than did the prosecution.

Tony Carruthers was not engaging in hyperbole when he insisted that he was not competent to represent himself. The record reflects that his actions ensured his own conviction. Twice his behavior at trial was so counterproductive that the jurors felt the need to pass notes to the court: the jurors asked if the Court could have Mr. Carruthers speak up so they could hear him, instruct him not to ask repetitive questions, and much more troublingly, they requested that he stop "scratching or pulling around his groin" while standing in front of the jury.[82] In regards to the groin manipulation, the jurors noted that they found "this very offensive and distracting."[83] But these matters of style – and reflective of Mr. Carruthers' mental illness - were outweighed in significance by outrageously foolish matters of substance.[84]

Mr. Carruthers believed that to prove his innocence he needed to prove that the story the jury had not heard, about the killing being a

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[82] Ex 29, Excerpts from Trial Tr. re: Juror Notes.

[83] *Id.*

[84] Undersigned counsel wants to be clear: counsel respects Mr. Carruthers' dignity and understands the stress caused by having to represent himself at trial. The fact that, while on trial for his life, Mr. Carruthers had an unfortunate nervous tic (one that might be associated with his mental health issues) should not be used to denigrate Mr. Carruthers.

murder for hire, needed to be disproven, thus he had to put Alfredo Shaw on the stand. Shortly before trial, Alfredo Shaw had recanted, and told the local media that he had been paid $3,000 by the prosecution in return for his false testimony to the grand jury.[85] However, prior to Mr. Carruthers' calling him to the stand, through counsel, Mr. Shaw made it clear he would not only recant his recantation, and testify that Mr. Carruthers had admitted to the murder, but he would also claim that Mr. Carruthers—via deputies in the jail that he controlled—had threatened him and his family, coercing his original recantation.[86]

Given these circumstances, any reasonably effective attorney would have refrained from calling Shaw to the stand. However, Mr. Carruthers, representing himself could not refrain, and did not have the skill or talent to cross-examine Shaw. Instead, he reviewed, line-by-line, Mr. Shaw's initial damning statement to the police, wherein he claimed that he and Mr. Carruthers had been offered $100,000 and a kilogram of cocaine to murder Marcellus Anderson, and that Mr. Carruthers subsequently confessed to the three killings, in detail.[87] He then did a similar line-by-line examination of Mr. Shaw's nearly factually similar testimony the Shelby County Grand Jury.[88] He then established that Mr. Shaw had given a sworn deposition, where he told the same story as before.[89] After

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[85] Ex. 8, *TriState Defender* "State bribed me to lie."
[86] Ex. 7, Excerpt of Trial Tr., Alfredo Shaw Testimony, pp. 2129-36.
[87] Ex. 7, Excerpt of Trial Tr., Alfredo Shaw Testimony, pp. 2166-2201.
[88] *Id.* at 2208-2217.
[89] *Id.* at 2218.

producing three consistent statements regarding his own guilt, Mr. Carruthers lost control of Mr. Shaw who preceded to testify about how his life was on the line, and how Mr. Carruthers and his people had threatened the lives of Shaw and Shaw's family.[90]

It was in the midst of this inept cross-examination that the jury passed their note wondering why Mr. Carruthers kept asking the same questions, over and over.[91] The questions the jury kept hearing over and over were Mr. Carruthers' requests that Alfredo Shaw repeat his story of Carruthers' guilt. A rational jury very well may have wondered why, having had the defendant present proof of his own guilt three times, they needed to hear it a fourth time.

Possibly worse yet, Mr. Carruthers did not know to object when the prosecution asked a grotesquely inappropriate and unduly prejudicial series of questions on cross-examination, while exploring Shaw's alleged fear of Mr. Carruthers:

Q. Okay. Now, let me talk to you a little bit about the things that you – when you say things started happening, one of the things was Jonathan Montgomery was found dead in the jail; is that right?

A. Correct.

Q. How did that make you feel?

A. How would that make anyone feel, you know what I mean, that's involved in the case? I knew it was something –

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[90] *Id.* at 2219-24.

[91] *Id.* at 2241.

Q. I mean, don't tell me what you think or something about the circumstances of that, but just tell me how it made you feel?

A. How it made me feel, that, you know, he was a great asset to this case, and I knew I was a great asset to this case, and that made me feel that, you know, something would eventually happen to me on down the line.

Q. All right. Did it make you scared?

A. Right.[92]

The death of co-defendant, Jonathan Montgomery (the younger brother of James Montgomery) was found by both the Sheriff's homicide investigator and the Medical Examiner to be a suicide, a conclusion the prosecutor himself reported to the trial court.[93] However, the clear implication of the prosecutor's questions, contrary to fact, was that Jonathan Montgomery had been murdered in jail, and that Shaw risked being next. But, Mr. Carruthers, a non-lawyer, failed to raise on objection pursuant to Tennessee Rules of Evidence 401, 402, or 403. Had such an objection been made, the trial court would have been compelled to prevent the questions and strike the irrelevant and prejudicial line of answers. Moreover, a competent attorney would have also requested a mistrial, due to this flagrant misstatement of fact. Plainly, the prosecutor "intentionally misstate[d] the evidence [and] misled the jury as to the inferences it may draw." *State v. Sexton*, 368 S.W.3d 371, 419 (Tenn. 2012). This blow was not merely a hard one, but a devastating and foul

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[92] Ex. 7, Excerpt Trial Tr., Alfredo Shaw Testimony, pp. 2266-67.

[93] Ex. 30, Tr. Hrg. Aug 31, 1995, Jonathan Montgomery abated by death.

one that the prosecution was constitutionally forbidden from striking. *Berger v. United States*, 295 U.S. 78, 88 (1935). But, again, as a forced-to-be pro se litigant, Mr. Carruthers did not have the skill or learning to lodge these obvious objections.[94]

Even when Mr. Carruthers' stumbled on a point of merit, he lacked the skill, insight, or knowledge to highlight it for the jury; for example, he got Alfredo Shaw to admit that prior to either the alleged murder-for-hire phone calls of September 1993, or the jail house confession of March, 1994, the last time he had seen or spoken to Mr. Carruthers had been in 1988, when they had an "altercation" in jail.[95] However, instead of being able to exploit this absurdity, Mr. Carruthers finished his examination of Shaw with a discussion of the threats Shaw had—allegedly—received.[96] The end of Mr. Carruthers pro se cross-exam of Alfredo Shaw is one of the most singularly inept, ineffective and disastrous cross-examinations, possible, one that seemed designed to secure not only a guilty verdict, but a death sentence—especially in light of the unobjected to, prejudicial misstatement of fact elicited by the prosecutor regarding Jonathan Montgomery's death:

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[94] Reflecting most poorly on Mr. Carruthers' subsequent appellate counsel, this obvious error was not raised as "plain error" on appeal. Thus, while manifestly unfair, no court has ever addressed the prejudicial impact of the prosecution's intentionally misleading questioning.

[95] Ex. 7, Excerpt Trial Tr., Alfredo Shaw Testimony, pp. 2214-16, 2279.

[96] *Id.* at 2279-85.

Carruthers. All right. Are you aware that the jail keeps records of every time you move and every time you go to the law library?

Shaw. I understand that. But it's also -- I'm also aware that Tony Carruthers can get things arranged if he want to get things arranged, and you got that arranged, Mr. Carruthers.

Carruthers. Are you aware that Tony Carruthers is not allowed to go anywhere in the jail except escorted by an officer?

Shaw. Well, now you can't, now. But back then you wasn't. You was free to do whatever you wanted to do until you—until people start fearing you.

Carruthers. No other questions, Mr. Shaw. Thank you.[97],[98]

Sadly, no court has ever weighed in on the constitutional adequacy of Mr. Carruthers' (self-)representation. This Honorable Court (being

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[97] *Id.* at 2284-85.

[98] No proof has ever been presented in any tribunal about this magical and mysterious power that Tony Carruthers supposedly had over the Shelby County Sheriff's Deputies. The record is devoid of any indication that any deputies were ever charged for conveying Mr. Carruthers' alleged threats to Shaw. Clearly, if the District Attorney actually believed Shaw's claim was serious, they had the full-weight and power of the government behind them to investigate it. Instead, no official actions were taken.

unaware of the underlying reasons for Mr. Carruthers' intemperate objections to appointed counsel) held:

> To the extent that Carruthers is alleging that his pro se representation was ineffective, we agree with the Court of Criminal Appeals' conclusion that when a defendant forfeits or waives the right to counsel, regardless of whether the waiver is explicit or implicit, he or she also forfeits or waives the right to effective assistance of counsel."

Carruthers, 35 S.W.3d at 551. Thus, no court has ever examined Mr. Carruthers' self-representation under the standard of *Strickland v. Washington*, 466 U.S. 668, 697 (1984). But, plainly, Mr. Carruthers' decision to put Alfredo Shaw on the witness stand, and to cross-examine him in the manner he did, fell below any reasonable professional standard and was deficient. His failure to call Dr. Cleland Blake to rebut the false claim that the three victims were buried alive was equally deficient. While, his behavior that elicited notes from the jury was similarly deficient—no lawyer seeking to maintain credibility would ever engage in bodily manipulation before a jury. Moreover, it is abundantly clear that Mr. Carruthers' deficient performance caused him prejudice. But for Shaw, or but for the false buried alive myth, there I a reasonable probability that Tony Carruthers would not have gotten the death penalty.

To avoid the execution of a man who was represented by a manifestly ineffective (non)attorney, this Honorable Court should decline to set an execution date, should exercise its inherent authority and remand for appropriate proceedings in the trial court where a hearing

can be held to determine whether Mr. Carruthers' forced self-representation met a constitutional standard of deficiency and prejudice, and a Certificate of Commutation should be issued.

III. MR. CARRUTHERS IS SEVERELY MENTALLY ILL, HE WAS LEGALLY INCOMPETENT TO STAND TRIAL, TO REPRESENT HIMSELF, OR TO WAIVE MERITORIOUS ISSUES; HE IS INCOMPETENT TO BE EXECUTED

Tony Von Carruthers has fought for over 25 years to prove two essential truths: (1) his conviction was the product of a conspiratorial fraud upon the court, and (2) that he is not, and has never been, mentally ill.

As set-forth in the prior section, Mr. Carruthers' first essential truth is grounded in objective fact. Many elements of his trial were fundamentally unfair. However, as will be demonstrated in this section, Mr. Carruthers' beliefs deviate from the objective facts and are radically distorted by paranoia and delusions. As a result, while lawyers see legal errors, *Brady* violations, and valid grounds for relief, Mr. Carruthers' sees "Fraud Upon the Court!", a vast murderous conspiracy, and an entitlement to millions of dollars in damages and immediate release from confinement.

Mr. Carruthers' second deeply and sincerely held truth, that he is not mentally ill, is contrary to reality. Instead, at the time Mr. Carruthers was arrested, he was mentally ill, irrational, and incompetent to stand trial. At the time he complained about his attorneys, he was incompetent to demand their replacement. At the time

he was forced to represent himself, he was incompetent to defend himself. At the time he forced his post-conviction attorneys to abandon mental health arguments, he was incompetent to waive meritorious claims. And, today, he is incompetent to be executed.

A. The overwhelming evidence that Tony Carruthers is severely mentally ill: the conclusions of the experts who personally evaluated him.

After Charles Ray was appointed to represent Mr. Carruthers in 2002, he was surprised to discover that Mr. Carruthers had never received a "more-than-perfunctory" mental evaluation, "especially in view of the fact that his seemingly bizarre behavior" led to his forced self-representation.[99] Based on Mr. Ray's thirty-plus years of experience as a criminal defense attorney, he had "serious doubts about Mr. Carruthers' competence to stand trial, much less act as his own counsel."[100] He thus sought the expert assistance of Dr. Pamela Auble a neuropsychologist, and Dr. William Kenner, a psychiatrist.[101] They would be the first mental health professionals to conduct comprehensive in-person assessments of Mr. Carruthers that were coupled with, and informed by, his past history, and objective empirical data. Only after many hours of work and diligent analysis did they reach scientifically based conclusions. Subsequently, when Mr. Carruthers' was represented by this office, two more mental health experts comprehensively evaluated

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[99] Ex. 31, Affidavit of Charlie Ray ¶3.

[100] *Id.*

[101] *Id.,* ¶¶ 5., 6

him. Dr. Shawn Agharkar, a nationally renowned psychiatrist and professor at the Emory and Morehouse Schools of Medicine met with Mr. Carruthers in person, and conducted a first-hand evaluation. Dr. Ruben Gur, a leading neuropsychologist, and the Director of the University of Pennsylvania's Brain Behavior Laboratory and Center for Neuroimaging, examined Mr. Carruthers' brain structure through neuropsychological data and PET and MRI scans. These four experts each establish that Mr. Carruthers has a severe mental illness, that he has never had a rational understanding of the proceedings against him, and that he was not legally competent at any stage of the proceedings.

1. **Dr. Pamela Auble "preliminarily" concluded that "Mr. Carruthers was mentally ill and his mental illness distorted his appreciation of reality; she predicted that he might have brain damage; she did not reach a conclusion as to his past competency, but believed appropriate medication would have helped manage his behavior.**

Charles Ray arranged for Dr. Auble to conduct neuropsychological testing on Mr. Carruthers.[102] Based on this testing, and her review of his records, she prepared a report of her "preliminary impressions."[103] She did not reach a final diagnosis of Mr. Carruthers, but her preliminary conclusion was that he was mentally ill, and that paranoid personality

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[102] Ex. 32, Dr. Auble, Preliminary Impressions

[103] Dr. Auble's preliminary conclusions are the least significant of the four doctors, in the sense that she never reached any final, definitive result. However, (a) her work was first in time, (b) it informed the more comprehensive work done by the experts who followed, and (c) many of her preliminary predictions were later confirmed

disorder or bipolar disorder were possible diagnoses.[104] More importantly, she concluded that this mental illness, by whatever name, would have "distorted his ability to understand the impact of evidence on jurors and how his presentation would have affected them. His appreciation of reality may have been distorted and this may have affected his ability to realistically appraise possible outcomes...." She noted that his difficulties in relating to counsel should have been seen as a "symptom of mental illness."[105]

Dr. Auble did not reach any preliminary conclusions regarding Mr. Carruthers' competency, though she believed he might have managed his behavior more adaptively if he had been properly medicated.[106] She also concluded that Mr. Carruthers had not been malingering, exaggerating, or faking any symptoms.[107] Ultimately, her impressions may be most important in that her suspicions/predictions would later be confirmed by Dr. Agharkar and Dr. Gur. She noted, for instance, that Mr. Carruthers "could have…brain injury" as a result of various traumatic head injuries and a premature birth[108]—in fact, as will be discussed, below, he suffers from significant brain damage.

A few other observations from her report should be highlighted as they reflect on long-standing delusions that continue to this day, and/or that illuminate his delusional/paranoid thinking:

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[104] *Id.* at 15.
[105] *Id.* at 15.
[106] *Id.* at 15-16.
[107] *Id.* at 15.
[108] *Id.* at 15,

1. Mr. Carruthers had complaints about all former attorneys, and continued to claim that at least one had been homosexual and had made a pass at him.[109]

2. Mr. Carruthers claimed he had an offer for "time-served" but he was refusing to accept it, because he wanted "exoneration."[110]

3. He claimed that another man (who he apparently would not name) had confessed in federal court, but had not been charged.[111]

2. Dr. William Kenner unequivocally concluded that Mr. Carruthers is mentally ill, and had never been competent to stand trial, to represent himself, or to waive legal claims in post-conviction proceedings.

Dr. William Kenner[112] issued a Psychiatric Report on November 11, 2004, in which he concluded, unequivocally, that Mr. Carruthers was mentally ill, had not been competent to stand trial, had not been competent to represent himself, and was not competent to waive issues during post-conviction proceedings.[113] Dr. Kenner examined a wealth of information, including letters written by Mr. Carruthers over the preceding eight years, various pleadings related to his behavior towards attorneys, complaints filed by Mr. Carruthers to the Board of Professional Responsibility, testimony of prior counsel, various medical records, and witness interviews; and he combined this information with

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[109] *Id.* at 3.
[110] *Id.* at 9.
[111] *Id.* at 9.
[112] Dr. Kenner's curriculum vitae is attached as Exhibit 33.
[113] Ex. 34, Dr. Kenner Psychiatric Report, p. 34.

three separate in-person, videotaped clinical examinations, that lasted for six and one-half hours.[114]

Dr. Kenner provided a detailed narrative description of Mr. Carruthers' behavior both pre- and post-trial, with a full exploration of his bizarre, offensive, and highly intemperate complaints about counsel—including his complaints about a conspiracy amongst his attorneys, and regarding his attorneys' conspiracy with the prosecutors and at least one juror.[115] Dr. Kenner finished his history of Tony Carruthers with a description of his behavior during his interviews:

> I asked Mr. Carruthers if he ever felt as if his mind were racing? He said, "My mind's always racing. I can't talk as fast as I think. I can't drink coffee with caffeine because it drives me crazy. I'm already going too fast." I asked if coffee helped him focus. He said that he used ginkgo for that.
>
> Mr. Carruthers' affect has ranged from subdued wariness to yelling and threatening. His mood has ranged from extremely angry to happy and joking with the prison officers. I found no depressive affect. The inmate's rate of speech varied from carefully picking his words to spewing forth accusations about how I had violated various of his constitutional rights and how he would seek monetary damages as well as criminal penalties from me. When agitated he had pressure of speech as he spit out his words like a machine gun.

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[114] *Id.* at 1-2.
[115] *Id.* at 2-20.

> Mr. Carruthers knew who he was, where he was, and the date. He had no hallucinations or delusions other than his conspiracy theory about his case.
>
> In the weeks after our last meeting on December 1, 2003, Mr. Carruthers began to send me the same kind of letters that he had sent William Massey. His beef with me involved the tapes of our meetings. He has demanded those back "unedited," and I assume that means he wants no copies left in my possession. He has agreed to let me off cheaper than he will the State of Tennessee for "$157,000,000." [116]

Later, Dr. Kenner described how Mr. Carruthers attempted to cajole him into agreeing that he did not need mood stabilizing medications, when this failed, Carruthers decided that Kenner was "a racist charlatan who would poison him."[117]

Dr. Kenner diagnosed Mr. Carruthers with an Axis I diagnosis of Bipolar Disorder, type II, hypomanic.[118] As a result of this mental illness, at the time of trial:

> Mr. Carruthers had an inflated, grandiose sense of himself and his abilities particularly when he must understand the complex criminal justice system. With me, he could not even listen to my reasoning about the importance of a trial of mood stabilizing drug in 2003, no more than he could appreciate the subtleties of his attorneys' effort to defend him in 1996. With both them and me, he felt grandiose, and when we did not follow his lead, he fought us for control of his

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[116] *Id.* at 26-27.
[117] *Id.* at 30-31.
[118] *Id.* at 27.

> psychiatric evaluation and his defense. He turned the tables on his attorneys as he did with me. I became the bad doctor who would poison him, strip him of his rights just as Massey and the others had become the bad lawyers who conspired to have their client killed by a racist, KKK-inspired court system.[119]

Dr. Kenner concluded his report with his expert opinion that, as of 2004, "Carruthers remains incompetent to make decisions about his appeals, just as bipolar disorder had left him incompetent to stand trial in 1996 much less represent himself."

Undersigned counsel has spoken with Dr. Kenner over the last month. Dr. Kenner, should he be called to testify at a future proceeding, would stand by his conclusions that Mr. Carruthers has a severe mental illness, and that he was not competent at any stage of these legal proceedings. The subsequent 15 years of identical, paranoid and delusional behaviors by Mr. Carruthers, only provides further corroboration of Dr. Kenner's original opinion.

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[119] *Id.* at 31.

3. Dr. Ruben Gur first examined Dr. Auble's neuropsychological test results, and based on that testing predicted where brain damage might be present; he then reviewed PET and MRI scans of Mr. Carruthers' brain; there was brain damage where expected, and throughout major portions of Mr. Carruthers' brain, including significant damage to the right parietal lobe.

Dr. Ruben Gur[120] prepared a Neurobehavioral Assessment of Tony Carruthers in September of 2011.[121] He began his report by analyzing the neuropsychological evaluations performed by Dr. Auble under a Behavioral Imaging algorithm.[122] This analysis suggested that brain impairment was likely to be seen in the left interior fronto-temporal region, and in the right parietal region.[123] This analysis produced the following graphical illustration that displays the two areas of predicted impairment in blue.[124]

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[120] Dr. Gur's curriculum vitae is attached as Exhibit 35.
[121] Ex. 36, Dr. Gur Assessment, Sept. 27, 2011.
[122] *Id.* at 1.
[123] *Id.* at 1.
[124] *Id.* at 1.

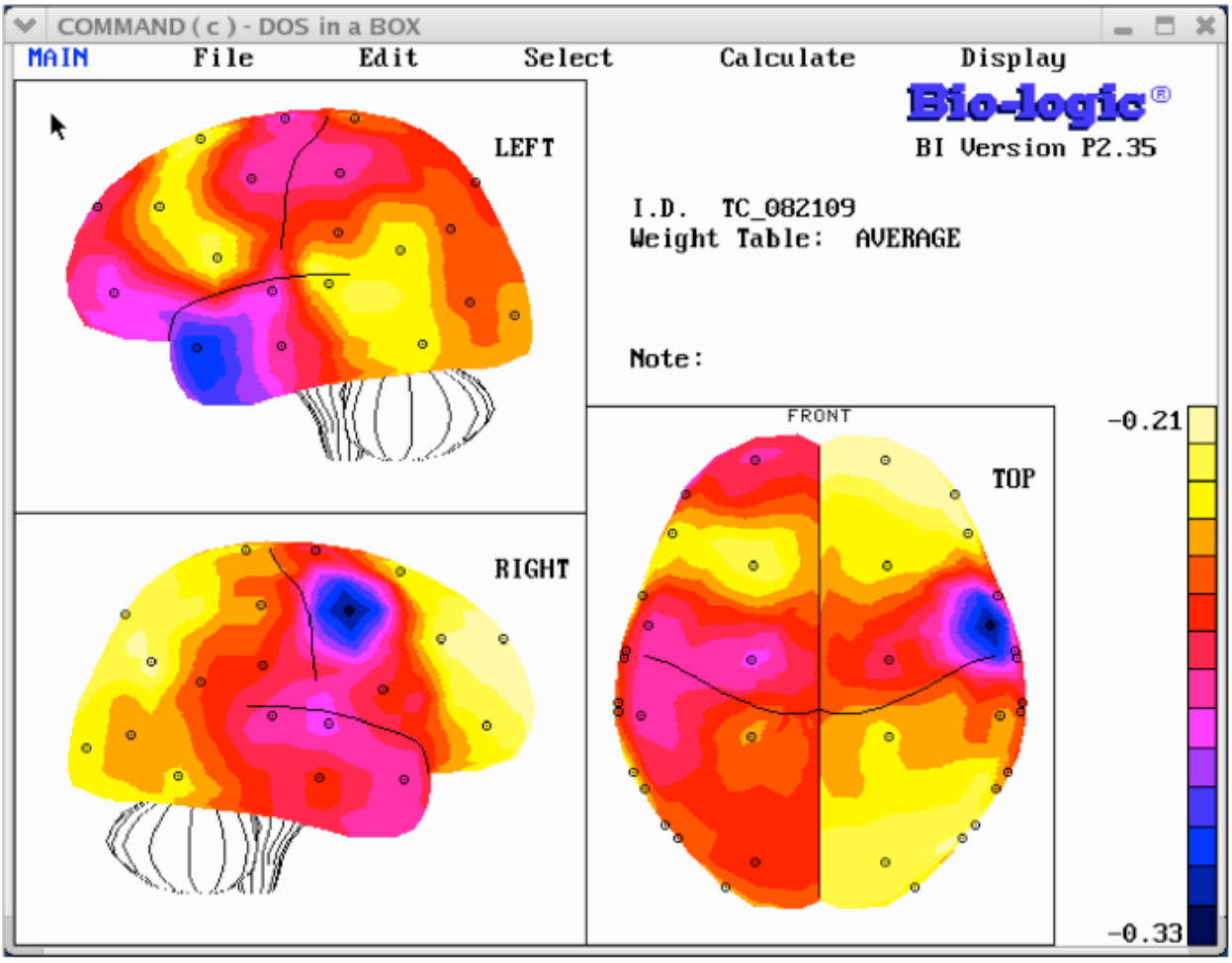


Figure 1. Behavioral image of Mr. Carruthers's brain

The pattern of impairment seen in Mr. Carruthers' brain is "consistent with traumatic brain injury."[125] Of course, Dr. Auble and Dr. Kenner in their reports both detailed multiple traumatic head injuries that Mr. Carruthers had suffered as a child, and Dr. Auble predicted that brain scans could reveal such injury.

A Magnetic Resonance Imaging (MRI) analysis of Mr. Carruthers' brain confirmed that his right parietal lobe was significantly abnormal,

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[125] *Id.* at 1-2.

while additional areas of abnormally low volume were observed.[126] Positron Emission Tomography (PET) revealed yet more abnormalities.[127]

Dr. Gur explained the behavioral effects resulting from these observed brain impairments (which were consistent with Mr. Carruthers' real world behavior), which include the following:

- "The structural abnormalities…in the frontal regions of Mr. Carruthers' brain would cause diminished execution functions, such as…emotion regulation…and impulse control.
- Damage to his right parietal lobe "could lead to a lack of insight into one's own motives and behaviors."
- Damage to his amygdala, hippocampus, and cortical regions would collectively lead to "compensatory hypervigilance…, sudden hyperexcitability" and "severe emotional dysregulation."
- His damaged amygdala "will misinterpret threat signals and when excited it will issue false alarms." This damage "can also lead to paranoia."
- "[A]bnormalities in basal ganglia could further impair rational performance under stress."[128]

The cause of Mr. Carruthers' brain abnormalities could not be immediately determined, but they were "most consistent with traumatic brain injury, toxic exposure, a neurodevelopment disease process, or a

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[126] *Id.* at 2-3.
[127] *Id.* at 3-4.
[128] *Id.* at 4-5.

combination of these factors."[129] Again, the histories developed by Drs. Auble and Kenner both confirmed traumatic head injuries. Dr. Gur was unable to offer a final diagnosis "without a personal examination of Mr. Carruthers and incorporation with history."[130] However, Dr. Gur offered that clinicians could use his data and findings to reach their own conclusions, and this offer was taken up by Dr. Shawn Agharkar.

4. **Dr. Shawn Agharkar found that Mr. Carruthers, due to his delusional, psychotic thought processes, coupled with organic brain impairments lacked the capacity to rationally understand the proceedings against him, to assist in his own defense, to defend himself, or to waive post-conviction mental health claims; he found that Mr. Carruthers was seriously mentally ill.**

Dr. Shawn Agharkar[131] built upon all of the prior work done by Drs. Auble, Kenner, and Gur, while personally meeting with Mr. Carruthers for 3.5 hours.[132] He concluded that the best diagnostic label for Mr. Carruthers' mental illness was schizioaffective disorder, bipolar type; which is a psychotic disorder that resembles a combination of Schizophrenia and Bipolar Disorder.[133] Schizioaffective disorder, bipolar type "is a severe and persistent debilitating mental illness with an extremely poor prognosis if untreated."[134]

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[129] *Id.* at 5.
[130] *Id.* at 5.
[131] Dr. Agharkar's curriculum vitae is attached as Exhibit 37.
[132] Ex. 38, Dr. Agharkar's Report, Sept. 23, 2011.
[133] *Id.* at 5.
[134] *Id.* at 5.

People, like Mr. Carruthers, who have this mental illness are psychotic, may experience hallucinations, have delusions such as paranoid and persecutory beliefs, and may exhibit disorganized thoughts or behaviors.[135] Other ill effects include cognitive impairment and problems with "memory, insight, judgement, thought organization, and problem solving."[136]

Dr. Agharkar observed that Mr. Carruthers' mental illness, coupled with the brain damage visible in Dr. Gur's MRI and PET scans would cause further difficulties:

> Persons like Mr. Carruthers who suffer from two major mental disorders are far sicker than persons with one. The co-morbidity of Schizoaffective disorder and brain damage is a marked, severe, disabling condition. His psychotic and other Schizoaffective symptoms are likely to be exacerbated by the effects of his brain impairments, and likewise, his psychiatric symptoms will intensify the negative effects of the damage to his brain.[137]

Dr. Agharkar's observations of Mr. Carruthers, particularly his paranoia and irrationality, are remarkably consistent with others' observations of Mr. Carruthers over the past twenty-five years:

- Mr. Carruthers "appeared quite paranoid," and was "guarded and suspicious" during their interview. He believed that Dr. Agharkar may have been an FBI agent who was masquerading as a psychiatrist;

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[135] *Id.* at 5.
[136] *Id.* at 5.
[137] *Id.* at 6.

he also believed their visit was being secretly monitored by microphones placed in the ceiling.[138]

- Mr. Carruthers' claimed to have a "silver bullet" that proved his innocence, but all of his prior lawyers in "collusion with the state" refused to raise this issue. His entire prosecution was part of a "vast government conspiracy."[139]

- Mr. Carruthers' reiterated his complaint about some of his attorneys making homosexual advances towards him.[140]

- Mr. Carruthers claimed that even though he did not want to represent himself, he was "winning" at trial, but "the Judge and prosecutor 'shut me down' because he was doing so well."[141]

- Mr. Carruthers became very upset when discussing the prior evaluation by Dr. Kenner. He claimed that Dr. Kenner and his prior attorneys had violated ethical Rule 3.3 and that he was owed $33.3 million dollars.[142]

- Mr. Carruthers claimed the media was colluding with the State in covering up the bias and errors at trial. When Dr. Agharkar could not follow his reasoning and asked for clarification, Mr. Carruthers responded that the doctor "did not know all the facts and it was 'self-evident.'" He followed this explanation with his claim that had been

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[138] *Id.* at 2.
[139] *Id.* at 2.
[140] *Id.* at 2-3.
[141] *Id.* at 3.
[142] *Id.* at 3.

poisoned while in prison, given "Pylori" in his food, been secretly monitored, and had his social security number stolen.[143]

- Mr. Carruthers adamantly denied all mental illness, refused to discuss any symptoms of mental illness, and repeatedly stated, "I am not crazy." "Mr. Carruthers denies feelings of paranoia…though he clearly was paranoid…during our interview."[144]

- Mr. Carruthers was "hyperverbal," his thinking was "tangential and difficult to follow" and there was "evidence of significant delusional thought processes involving persecutory and paranoid delusions."[145]

a. Mr. Carruthers was not competent to stand trial; his lack of insight and delusions are not purposeful, but are sincerely believed.

Regarding Mr. Carruthers' competency to stand trial, Dr. Agharkar concluded that his mental illness "impaired his capacity to rationally understand the proceedings against him and to assist in his defense." Dr. Agharkar found that

> [to] rationally assist counsel, Mr. Carruthers would need to accurately perceive the world around him. There is ample evidence that due to his mental illness and brain damage he is unable to do this. Paranoid delusions color his worldview and affect his decision-making capacity. He may act out of fear or see "shadows" or threats that do not exist. As

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[143] *Id.* at 3.
[144] *Id.* at 3
[145] *Id.* at 5.

> a result, he makes decisions that are not in his best interest.[146]

Dr. Agharkar observed that Mr. Carruthers "accused his attorneys of a vast conspiracy within the legal system involving homosexual themes and demands for millions of dollars which he persists in believing the government owes him:" he "continues to express fixed false beliefs involving persecutory and conspiratorial themes, resulting in his mistrust of anyone involved in his legal case."[147]

Dr. Agharkar found that Mr. Carruther's "lack of insight is typical of persons with psychotic illness. It is not volitional or purposeful, but rather, he exists in a delusional world that appears 'normal' to him and is thus akin to asking a fish what water is. He does not believe he is mentally ill, though he clearly is. His brain damage only makes this worse."[148]

He concluded, "to a reasonable degree of medical certainty, that due to mental disease and defect, namely his delusional, psychotic thought processes, and organic brain impairments, Mr. Carruthers lacked the capacity to rationally understand the proceedings against him and assist in his defense at the time of his trial in April, 1996."[149]

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[146] *Id.* at 7.
[147] *Id.* at 7.
[148] *Id.* at 7.
[149] *Id.* at 8.

b. Mr. Carruthers was not competent to represent himself at trial; his decisions at trial would have been based on fear and paranoia rather than rational thinking; he would fixate on small details, while missing the big picture.

Dr. Aghharkar concluded that Mr. Carruthers was "the worst possible candidate for the role of advocate in his own capital [trial]. In my opinion, to a reasonable degree of medical certainty, Mr. Carruthers was not competent to represent himself."[150] In reaching this conclusion, Dr. Agharkar noted that, based on his mental illness and brain damage, and due to his delusional and persecutory beliefs, Mr. Carruthers' ability to make rational decisions would have been grossly impaired.[151] Dr. Agharkar predicted that Mr. Carruthers would (1) fixate on collateral details, while missing the big picture, (2) fail to appreciate the consequences of his own behavior, and (3) he would fail to follow good advice out of paranoia.[152] Counsel would ask this Honorable Court to refer back to section II.F, above, for direct evidence that Mr. Carruthers behaved exactly as Dr. Agharkar predicted.

c. Mr. Carruthers was not competent to waive post-conviction mental health claims.

Dr. Agharkar concluded that Mr. Carruthers' lack of insight into his own paranoid delusional beliefs, and his inability to appreciate the

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[150] *Id.* at 9.
[151] *Id.* at 8.
[152] *Id.* at 8.

legal significance of his psychiatric condition, left him unable to competently waive any mental health claims.[153]

d. Mr. Carruthers lacks the capacity to rationally understand his criminal case, and to rationally understand the reasons for his potential execution.

A key conclusion of Dr. Agharkar's report is that Mr. Carruthers lacks the capacity to rationally appreciate or understand his legal case.[154] His delusions and paranoia so significantly distort his world view that his perceptions of reality are radically different from the perceptions possessed by the world around him.[155]

Since the filing of the instant motion, undersigned counsel has preliminarily consulted with Dr. Agharkar, who states that that there is no reason, whatsoever, to suspect that Mr. Carruthers' delusions, paranoia or lack of capacity for rational thought have changed in the past eight years. Absent evidence to the contrary, it is a near certainty that Mr. Carruthers is as mentally ill, today, as he was in 1996 when he was incompetent to stand trial, or in 2011, when he met with Dr. Agharkar. Dr. Agharkar is willing to conduct another clinical interview with Mr. Carruthers and review additional information and provide a more complete assessment of Mr. Carruthers' current mental functioning.

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153 *Id.*
154 *Id.* at 5-8.
155 *Id.* at 7.

5. Dr. Sarah Vinson, a Board Certified Forensic Psychiatrist who directed the Fulton County Jail Competency Restoration Program, has attempted to assess Mr. Carruthers, as of yet, she has simply been served a claim for $3.3 million dollars, but she will continue her efforts.

Dr. Sarah Vinson, a Board Certified Forensic Psychiatrist, who for two years directed the Fulton County Jail Competency Restoration Program, and who has been qualified as an expert witness in State and Federal Courts,[156] attempted to meet with Mr. Carruthers on December 13, 2019, to perform a preliminary assessment of his competency to be executed. Mr. Carruthers declined to see Ms. Vinson, and has demanded her insurance paperwork so that he can be paid $3.3 million for her malpractice in attempting to see him. With her name appearing in this pleading, she may receive an additional claim for $3.3 million dollars.

Dr. Vinson has reviewed the reports prepared by the prior experts, as well as court records, letters and documents that Mr. Carruthers publicly filed pro se, and various non-privileged records provided by counsel. Her initial conclusions are that Mr. Carruthers is severely mentally ill and that he lacks the capacity to rationally understand the State of Tennessee's rationale for his execution. Obviously, she remains available and willing to attempt further in-person assessment of Mr. Carruthers and to consider additional documentation provided by any party.

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[156] Dr. Vinson's curriculum vitae is attached as Ex. 39.

B. The overwhelming evidence that Tony Carruthers is severely mentally ill: twenty-five plus years of delusional and paranoid behavior.

Mr. Carruthers' irrational, delusional, and paranoid behavior has been witnessed by all of his prior attorneys, and has been demonstrated in myriad pro se filings that he has submitted over the past 25 years.[157] Undersigned counsel possesses eight bankers' boxes of letters from Mr. Carruthers to this office, alone. A few explicit highlights—that have previously been filed in the public record, or are based entirely on documents in the public record—of Mr. Carruthers' irrationality will be provided to assist this Court in corroborating the findings of Drs. Agharkar, Gur and Kenner.

Attorney Lee Filderman submitted a declaration to the U.S. District Court, detailing his observations of Mr. Carruthers' mental illness during the time he represented him on direct appeal.[158] While he initially thought Mr. Carruthers was lucid and rational, his opinion changed the longer he knew him, and the more he witnessed his paranoid belief in plots against him.[159] Mr. Carruthers had a "skewed" view of legal issues; he would not focus on relevant issues, but instead he concentrated only on the issues that he believed important.[160] Mr.

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[157] Ex. 55, Examples of Pro Se Pleadings in Post-Conviction Court (these are simply all pro se pleadings taken from one volume of the District Court record, they are not comprehensive, merely illustrative).
[158] Ex. 40, Filderman Declaration, Sept. 21, 2011.
[159] *Id.* at ¶ 4.
[160] *Id.* at ¶ 7.

Carruthers disagreed with counsel that the best result he could hope for was a new trial, instead, he irrationally believed that all Mr. Filderman had to do "was file what he [Mr. Carruthers] wanted, on the arguments he deemed important, and the case could end and he could then be a free man."[161] Mr. Carruthers subsequently accused Mr. Filderman of being ineffective, and he demanded $66.6 million to settle his claims.[162] He wrote incessant letters, often inscribed with signs and symbols, and irrational and nonsensical words.[163] Mr. Filderman and his co-counsel both believed that Mr. Carruthers had "major mental health issues," however they did not believe those issues were relevant at their stage of the representation.[164]

Attorney Jefferson Dorsey from the Capital Case Resource Center, worked with Mr. Carruthers in 1996 and 1997.[165] He noted that Mr. Carruthers could appear coherent for a time, but eventually he would decompensate and "lose focus on this legal issues and begin discussing religious matters, claiming to have Messianic powers, telling me that he was a prophet or that he had other spiritual endowments."[166] Mr. Dorsey described his behavior as "psychotic," and he provided another example: "he would persistently assert that he would be released immediately."[167] Prior to becoming an attorney, Mr. Dorsey had worked as a residential

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[161] *Id.* at ¶ 8.
[162] *Id.* at ¶¶ 9, 10.
[163] *Id.* at ¶ 11.
[164] *Id.* at ¶ 12.
[165] Ex. 41, Declaration of Jefferson Dorsey, July 29, 2011.
[166] *Id.* at ¶ 8.
[167] *Id.* at ¶ 8.

specialist, medication coordinator, and case manager at residential treatment program for "chronically mentally ill young adults,"[168] and thus, he had some greater professional insight into Mr. Carruthers' condition. Mr. Dorsey concluded that Mr. Carruthers had an apparent serious mental illness.[169]

Jim Thomas represented Mr. Carruthers in post-conviction proceedings from 2004 through 2008. His memoranda regarding this representation were previously filed in federal district court.[170] Based on those documents, and other materials that are part of the public record, Mr. Thomas prepared a new affidavit detailing his observations of Mr. Carruthers.[171] Mr. Thomas, like Mr. Filderman and Mr. Dorsey before him, discovered that Mr. Carruthers had fixed beliefs, including (1) unshakeable beliefs in what legal arguments were meritorious (meritless ones) and which ones weren't (the ones Mr. Thomas would wish to advance), and (2) the belief that he would be immediately set free, with no new trial ordered.[172] Mr. Carruthers' belief in his imminent release was so strong, he had Mr. Thomas price a new Jaguar automobile, and made plans for his victory party in Memphis.[173] However, Mr. Carruthers also believed that Mr. Thomas and his partner, Bill Ramsey, were engaged in "Extrinsic Fraud" or "Fraud Upon the Court," and he

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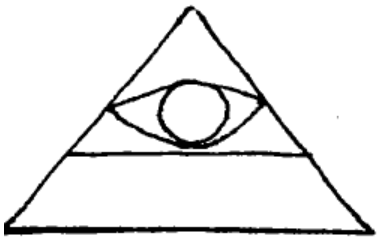
[168] *Id.* at ¶ 3.
[169] *Id.* at ¶ 8.
[170] Ex. 42, Thomas Memoranda.
[171] Ex. 43, Thomas Affidavit, Dec. 30, 2019.
[172] *Id.* at ¶ 9.
[173] *Id.* at ¶ 9.

wrote them many letters on this theme, containing numerous references to the number 3.3, whether from RPC 3.3, or Ezekiel 3.3, or "Oil #333."[174] He also put his magical pyramid on top of many of his letters.[175]

Undersigned counsel has included some exemplars from the first pages of letters, which are not submitted for their content, but only their symbology.[176] The pyramid that Mr. Thomas describes appears like this[177]:



Earlier in pleadings submitted to the trial court, and in letters to counsel, the pyramid had not "evolved" and appeared more simply as this[178]:



[174] *Id.* at ¶¶ 7, 9.
[175] *Id.* at ¶ 7.
[176] Ex. 44-49.
[177] This is a portion of Ex. 47, Example Motion to Not Have GAL 10-22-2004.
[178] This is cut from the first page of Ex. 23, Compilation of Letters to Trial Counsel, and was found on a letter to Craig Morton, dated June 5, 1995.

Previously filed in the U.S. District Court was a memo from 2010 that was prepared by an investigator in this office, Kate Tate, detailing Mr. Carruthers' behavior on a single day in April of 2010.[179] Years after Mr. Carruthers had not won immediate release with Mr. Filderman, and not won immediate release with Mr. Thomas, he continued to have fixed false beliefs that he would be released immediately and that he would be awarded millions of dollars for various transgressions.[180] Mr. Carruthers wanted Ms. Tate to look into hotel rooms in London for late July, 2010, when, presumably, he would be free, and to get him a "pre-users guide" for a particular Jaguar automobile.[181]

Concurrent with his belief that release was imminent, however, Mr. Carruthers also held the belief that his lawyers were filing frivolous motions to stall his case, and were lying and working against him.[182] Other topics of the April 2010 conversation included prayer oils, the smell of pork on other inmates, his refusal to allow Ms. Tate to talk to his family or explore mitigation, the prison's habit of reading his mail, and his discovery of a suspicious hair in a letter that Ms. Tate had sent him, which he thought should be DNA tested.[183]

To give this court a better flavor of what the lawyers described, counsel has provided exemplars of letters that contain his symbols, or display his thoughts about the various frauds. The first such letter is one

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[179] Ex. 50, Kate Tate Memo, April 21, 2010.
[180] *Id.* at 1.
[181] *Id.* at 1-2.
[182] *Id.* at 1-2.
[183] *Id.* at 2.

that our office was copied, that was sent to the Board of Professional Responsibility in regards to former counsel Michael Passino.[184] This 10-page letter opens with an apparent demand for $3.3 million dollars for four separate claims, all related to "FRAUD UPON THE COURTS," it then covers many topics and contains many complaints, including: (1) the defense lawyers are part of a civil conspiracy, (2) they have a conflict of interest that requires withdrawal, (3) the conflict is between their office and their malpractice insurance carrier, (4) there are four pending "malpractice for malfeasance and intentional negligence" claims pending, (5) they owe $*3.3* million dollars for each violation, (6) the lawyers are playing homosexual games, (7) they owe $**3.3** million as "Their interest is adverse to my claim of extrinsic fraud and fraud upon the courts!!"[185]

Also provided as exemplars are (1) the first page from a letter that contains Mr. Carruthers' "Lion of Judah" symbology, which appears infrequently, but often enough to have made an impression,[186] (2) the first page of a letter that contains his Moneyhouse with three $100

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[184] Ex. 44, Example Fraud Upon the Court letter. Mr. Passino personally prepared a release of information earlier this month, so that present counsel could obtain his entire file from the BOPR as it relates to complaints filed by Tony Carruthers. This release is attached as Ex. 51. Counsel understands the file is massive and does not expect to receive it prior to the filing of this Response. The complaint also references a second attorney, whose name is redacted from the complaint.

[185] *Id.* at 1-7.

[186] Ex. 45, Example Lion of Judah letter.

bills,[187] and (3) the first page of a letter ordering cigars for a future victory party.[188]

These documents, coupled with the observations of his attorneys demonstrate that Mr. Carruthers has been displaying delusional, paranoid, and psychotic thinking for decades, and he has been doing so in a manner that has been consistent from attorney to attorney to attorney.

C. Undersigned counsel's best description of Mr. Carruthers' present mental state.

Counsel had hoped to have Mr. Passino's Board of Professional Conduct file of complaints made against him by Tony Carruthers, prior to filing this Response.[189] Counsel believes that file contains the most current and clearly not privileged communications from Mr. Carruthers. At the time of the filing of this Response, however, counsel does not possess those records. Thus, in an effort to best describe Mr. Carruthers' present mental state (which is, ultimately, no different than it has been for the past 25 years), this section details counsel's personal observations.[190]

At this time, counsel has refrained from sharing any letters directly written to undersigned, or voice recordings left on undersigned's phone.

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[187] Ex. 46, Example Moneyhouse letter.
[188] Ex. 49, Example of Victory Cigar letter.
[189] *See* Ex. 51, Michael Passino's BOPR Release.
[190] Any and all observations of counsel that are described in this Response, are the observations of Richard Lewis Tennent, Tn.Sup.Ct.No. 16931.

Disentangling the portions of those messages that might, arguably, be attorney-client communications from matters that can be disclosed under Rule of Professional Conduct 1.14 is somewhat difficult. It has been counsel's hope that the most delusional, paranoid, conspiratorial and irrational aspects of those communications would be shared directly with examining experts by Mr. Carruthers, himself, and/or would be evident in his complaints to the Board regarding Mr. Passino.

However, in light of Mr. Carruthers' refusal to speak with Dr. Vinson, counsel feels ethically compelled to provide an overview of Mr. Carruthers' belief system. This overview is provided subject to Rule of Professional Conduct 3.3 and in light of counsel's obligation to speak truthfully, and to not make any "false statement[s] of fact."

Mr. Carruthers' deeply held beliefs, which he has consistently and repeatedly expressed throughout counsel's representation (which meaningfully commenced in October of 2018), include the following:

1. Mr. Carruthers is subject to constant surveillance by the Justice Department. All of his phone calls are intercepted, and NASA or the NSA uses voice recognition software to create contemporaneous transcripts of all that is said. These transcripts are provided to the Office of the Shelby County District Attorney, so that they can gain a tactical advantage in these legal proceedings. All phone conversations begin with Mr. Carruthers reminding the Justice Department (and/or District Attorney Amy Weirich) that they owe him $3.3 million per intercepted call. When static occurs, or Global TellLink cuts the call short, Mr. Carruthers notes that this is evidence of the intercept. He has contacted this office's IT department to request that they undertake security

measures to remove the wiretaps, and he has contacted the Public Defender Henry Martin, so that he may speak directly with the Justice Department about ending the illegal wiretap. As counsel understands it, this wiretapping issue has been raised by Mr. Carruthers since this office first began representing him, nearly a decade ago.

2. The Justice Department is also responsible for investigating "Fraud Upon the Court" and the crime of misprision of a felony, thus it is very important when speaking over the phone that he (or I) read into the Department of Justice's wiretap transcript various documents that establish the fraud. We must inform the listening Justice Department personnel that Mr. Carruthers' lawyers have failed report ethical and criminal violations committed by the Shelby County District Attorney's Office, contrary to those lawyers obligations under Rule of Professional Conduct 8.4 and in violation of 18 U.S.C.A. § 4. Mr. Carruthers believes that the Justice Department ethically MUST investigate the fraud, and even though they are illegally wiretapping his calls to assist the Shelby County District Attorney, they will also indict that same District Attorney for her office's crimes.

3. Not only is Mr. Carruthers innocent,[191] but his entire case is the product of a vast criminal fraud that involves the trial judge, the

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[191] In no way does counsel wish to suggest his claim of innocence is a delusion. As far as counsel knows, Mr. Carruthers is innocent. The evidence against him at trial was weaker than the evidence in many cases counsel successfully tried when he made his living as a trial attorney. Certainly, other than the extraordinarily dubious statement of Alfredo Shaw, no one else has heard Mr. Carruthers maintain anything other than absolute innocence.

judge's former law clerks, the prosecutors, defense attorneys, and the media. Jurors were intentionally planted, and Alfredo Shaw was paid to lie. The "Checks prove it!" Mr. Carruthers can escape this conspiracy when the Justice Department indicts the conspirators, and/or when the Board of Professional Responsibility revokes their law licenses.

4. Getting the Department of Justice to indict, or the Board to seize licenses is easy, any lawyer could have done it, and should have done it, years ago. All any lawyer needs to do is file a report regarding the fraud with the Department of Justice and/or the Board, and they will act (Mr. Carruthers' has never been able to explain why his own reports, and the transcriptions of his phone calls have not been sufficient to trigger intervention). However, all of Mr. Caruthers' lawyers, sadly including undersigned, keep failing to report the Fraud Upon the Court, and the Extrinsic Fraud to those agencies. Instead, all of his lawyers have routinely violated Rule of Professional Conduct 8.4, and have knowingly failed to report the conspiracy and the misconduct, so as to protect the Shelby County District Attorneys. Lawyers are either in direct conspiracy with the prosecutors, or (possibly in counsel's case) are just too chicken to take on that scary office.

5. To conceal the conspiracy the conspirators have murdered at least one lawyer, who was killed by one of the Trial Judge's former law clerks.

6. Just about everyone who has been involved in this case, or is aware of the frauds perpetrated as part of this case, owes Mr. Carruthers $3.3 million dollars, for each and every violation they have committed, and/or violation they have failed to report. (I am also aware that a

number of people and business entities, outside of the criminal conspiracy owe Mr. Carruthers large sums of money for various other bad acts, but I do not know the details of what they did wrong, or why they owe him so many millions).

7. To conceal the conspiracy, preserve their law licenses, dodge prison, and avoid millions in damages, the conspirators need Mr. Carruthers to accept a best interest plea. The motion to set execution dates was timed concurrent with certain other events, which were all designed to trick Mr. Carruthers into entering a plea (possibly to time-served). Mr. Carruthers will not accept a best-interest plea to time-served; he wants exoneration, as he is owed hundreds of millions of dollars in damages that he would forfeit if he pled.

8. Mr. Carruthers will win, the Justice Department and Board will intervene, the conspirators will go to prison and lose their law licenses, while Mr. Carruthers will be released as a multi-millionaire. He has the location for a home, and a model of car already selected.

9. Mr. Carruthers believes that Federal Bureau of Investigation agents desire to interview him for the purpose of creating false statements of him admitting to crimes. For this reason, all counsel and defense personnel must submit business cards to the prison staff to provide to Mr. Carruthers prior to all legal visits. This procedure must be followed for Mr. Carruthers to appear for a visit, even when he is informed by letter or telephone call of the pending visit and he has met with the legal visitor on countless prior occasions.

10. Mr. Carruthers is not mentally ill, has never been mentally ill, and any attempt by undersigned to claim he is mentally ill is fraud

upon the court, extrinsic fraud, and actionable malpractice—subject to $3.3 million in damages per violation.

This is not a complete list of Mr. Carruthers' unusual beliefs. However, these are some of those that seem most directly related to his (mis)understanding of his legal situation. These beliefs appear to be "fixed," and not subject to change despite argument, or twenty-five years of contrary evidence.

D. The four relevant (and distinct) legal standards for competency: competency to stand trial, to self-represent at trial, to waive post-conviction claims, and to be executed.

1. The *Dusky* and *Blackstock* standards for competency to stand trial; Mr. Carruthers did not have a rational understanding of the proceedings and was not competent to stand trial.

Tennessee follows the standard for competency to stand trial set-forth by the United States Supreme Court in *Dusky v. United States*, 362 U.S. 402 (1960). *State v. Blackstock*, 19 S.W.3d 200, 205 (Tenn. 2000). Under these precedents, the relevant standard for competency to stand trial is whether the accused "has the capacity to understand the nature and object of the proceedings against him, to consult with counsel and to assist in in preparing his defense." *Blackstock*, 19 S.W.3d at 205 (quoting *State v. Black*, 815 S.W.2d 166, 174 (Tenn. 1991)). Additionally, pursuant to *Dusky* and, as required by the 14th Amendment to the United States Constitution, a defendant must (1) have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and (2) have "a rational as well as factual understanding of the proceedings against him." *Dusky*, 362 U.S. at 402. Conversely, the

United States Supreme Court holds that "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S. 162, 171 (1975).

As has been set-forth in sections III.A-C, above, Mr. Carruthers simply did not and does not possess a rational understanding of the legal process, his legal situation, or the options available to him. Moreover, due to his mental illness, absent mood-stabilizing medications,[192] he lacked the capacity to consult with his counsel with any degree of rational understanding, or to assist in the preparation of his own defense. Plainly, Mr. Carruthers' conduct was the opposite of assisting counsel.

In his unmedicated state, Mr. Carruthers lacked the capacity for rational thought, could not assist his counsel, and could not achieve a rational understanding of the proceedings against him. Indeed, as discussed in Section II.F, above, Mr. Carruthers' behavior at trial demonstrated that he had no rational understanding of the process, or of the impact of his (irrational, illogical and self-defeating) choices on the jury.

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[192] Mr. Carruthers has successfully fought against all mental health treatment for years, so we do not have real world evidence of how he would respond to medication. However, Dr. Kenner, with decades of treating similarly mentally ill individuals, was confident that "if he had taken mood stabilizers before his trial, Carruthers more likely than not would have achieved 'chemical competency' and would have been able to assist his attorneys in his own defense." (Ex. 34 at 34).

2. The *Edwards* and *Hester* non-standards for permitting a defendant to represent themselves at trial; a seriously mentally ill individual might be competent to stand trial, but might not be competent to defend themselves; as Mr. Carruthers was plainly not competent to stand trial, he clearly was not competent to defend himself.

The United States Supreme Court, in 2008, recognized that there were a group of mentally ill defendants who satisfied the *Dusky* competency standard, but who "lack[] the mental capacity to conduct [their] trial defense unless represented." *Indiana v. Edwards*, 554 U.S. 164, 174 (2008). This Court following *Edwards* has recognized that in some cases "a defendant's communication skills may be so limited or impaired that they cannot be appropriately accommodated using means less restrictive than declining to allow a defendant to exercise his or her right of self-representation." *State v. Hester*, 324 S.W.3d 1, 32–33 (Tenn. 2010). However, both *Edwards* and *Hester* addressed the issue of when a trial court could deny a defendant the right to engage in self-representation, neither addressed what legal standard of competency would require a court to prohibit self-representation (or would prevent a court from punishing a defendant by denying them the right to counsel). This court in *Hester* explicitly stated, "The issue of whether the Tennessee Constitution would permit an exception from the right to self-representation for those 'competent enough to stand trial ... but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves' is not before the Court in the present case." *Hester*, 324 S.W.3d at 32. Thus, this court

has not articulated the constitutional standard for determining whether a defendant is competent to represent themselves at trial (whether voluntarily or as a punishment).

Nonetheless, whether this court were to determine that a higher standard should apply, or whether the *Blackstock* and *Dusky* standards are sufficient, Mr. Carruthers is still incompetent; he simply had no capacity for rational understanding.

3. The Three-Part *Reid* Analysis for Waiver of Post-Conviction Claims; Mr. Carruthers has a serious mental disease that prevented him from understanding his legal position, and which prevented him from making a rational decision; he was not competent to waive competency during post-conviction.

The competency standard for waiving rights during post-conviction proceedings was set-forth in *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478 (Tenn. 2013). Broadly, does the prisoner possess "'the present capacity to appreciate [his or her] position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether the petitioner is suffering from a mental disease, disorder, or defect which may substantially affect the petitioner's capacity.' The question is not whether the prisoner is able to care for himself or herself, but whether the prisoner is able to make rational decisions concerning the management of his or her post-conviction appeals. The prisoner (or the "next friend") bears the burden of proving incompetency by clear and convincing evidence." *Reid*, 396 S.W.3d at 513

(quoting *Reid v. State*, 197 S.W.3d 694, 703-05 (Tenn. 2006). In *Reid* this Honorable Court provided a three-part analysis:

> (1) Is the person suffering from a mental disease or defect?
>
> (2) If the person is suffering from a mental disease or defect, does that disease or defect prevent him from understanding his legal position and the options available to him?
>
> (3) If the person is suffering from a mental disease or defect which does not prevent him from understanding his legal position and the options available to him, does that disease or defect, nevertheless, prevent him from making a rational choice among his options?
>
> If the answer to the first question is no[;] the court need go no further, the person is competent. If both the first and second questions are answered in the affirmative, the person is incompetent and the third question need not be addressed. If the first question is answered yes and the second is answered no, the third question is determinative; if yes, the person is incompetent, if no, the person is competent.

Id. (citing *Rumbaugh v. Procunier*, 753 F.2d 395, 398-99 (5th Cir. 1985)).

As has been developed in Sections III.A-C, Mr. Carruthers clearly has a severe mental illness, thus the first question is answered, affirmatively. Mr. Carruthers' mental illness prevents him from understanding that he is mentally ill, thus the second question is also answered affirmatively, and Mr. Carruthers was not competent to waive his competency claims during post-conviction. Moreover, his mental

illness prevents him from rationally understanding anything about his case, most especially about his own mental illness, thus he could not rationally choose between his options, thus the third question is also answered affirmatively, and Mr. Carruthers, for a second reason, was not competent to waive post-conviction competency claims.

4. Those who are unable to rationally understand the State's rationale for their execution are categorically immune from execution; Mr. Carruthers lacks this rational understanding, and is incompetent to be executed; a *Van Tran* remand is legally required.

The Eighth Amendment to the United States Constitution precludes the execution of a prisoner "who has 'lost his sanity' after sentencing." *Madison v. Alabama*, 139 S.Ct. 718, 722 (2019). (quoting *Ford v. Wainwright*, 477 U.S. 399, 406 (1986)).

In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the Supreme Court rejected a competency test that asked whether the prisoner was aware that he was to be executed and why he was to be executed. *Id.* at 956. The Supreme Court recognized that a defendant may be able to parrot the words that would indicate that he is aware that he will be executed for a crime, but this parroting or simple awareness does not equate to competency. *Id.*

Instead, "[t]he critical question is whether a 'prisoner's mental state is so distorted by a mental illness' that he lacks a "rational understanding" of "the State's rationale for [his] execution." *Id.* at 958-60. "The potential for a prisoner's recognition of the severity of the offense and the objective of community vindication are called in question,

however, if the prisoner's mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole." *Id.* at 958-59.

The Court in *Panetti* recognized that "Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." *Id.* at 960. In determining whether any particular defendant met the newly defined competency standard, the Court emphasized the key role of experts:

> The conclusions of physicians, psychiatrists, and other experts in the field will bear upon the proper analysis. Expert evidence may clarify the extent to which severe delusions may render a subject's perception of reality so distorted that he should be deemed incompetent.

Id. at 962.

In 1999 this Honorable Court recognized that it possessed "an affirmative constitutional duty to ensure that no incompetent prisoner is executed." Van Tran v. State, 6 S.W.3d 257, 265 (Tenn. 1999), In light of this obligation, and seeing that there was no statutory process, this Court exercised its "inherent supervisory authority [to] set forth the procedure that a prisoner sentenced to death must follow in order to assert his or her common law and constitutional rights to challenge competency to be executed." *Id.* at 260-61. This procedure was incorporated into Tenn. S. Ct. R. 12.4(A), and modified by *State v. Irick*, 320 S.W.3d 284 (Tenn. 2010). Under *Van Tran*, a defendant who is incompetent to be executed

must raise the issue with this Court in response to a motion to set execution date. This Court, in turn, will remand the case to the criminal court for the prisoner to submit proof necessary to make a required threshold showing; once that showing is met, the criminal court will appoint appropriate experts, and conduct a hearing. *Id.* at 273-74.

Counsel for Mr. Carruthers, for all the reasons that are set-forth in this section, including in sub-sections III.A-C, above, now gives formal notice that Mr. Carruthers is incompetent to be executed and should be categorically excluded from the death penalty under the United States and Tennessee constitutions. He respectfully requests that this case be remanded to the criminal court for a full and fair determination of whether Mr. Carruthers is competent to be executed.

Counsel for Mr. Carruthers further, respectfully, asks that all due process procedural protections be afforded to him during such a proceeding, including provisions that he and all relevant witnesses be given adequate time and opportunity to prepare, and to be heard. *Panetti*, 551 U.S. at 950-51. A recent examination of the truncated time frames envisioned by the *Van Tran* court suggests that the trial court must be given more leeway to comport with due process. *Van Tran*, 6 S.W.3d at 267-72. That is, as counsel reads it, the entire process from the moment of remand to the deadline for the trial court's final order is to take no more than thirty-five (35) days, and the experts will be given a total of ten (10) days from the date of their appointment to see and assess Mr. Carruthers, and to draft and file their final report. *Id.* at 269. Respectfully, those tight time frames are unrealistic, and risk preventing experts from being able to complete helpful, intelligent, complete and

scientifically valid reports. This rushed schedule also compromises the ability of the lawyers and the trial judge to engage in reasoned analysis and discourse. Counsel is not suggesting any particular time-frame, other than that the trial court be given authority to deviate from the *Van Tran* schedule.

E. No court has ever determined whether Mr. Carruthers was competent to stand trial, defend himself, or waive meritorious legal issues; until today, his competency to be executed was not ripe for adjudication.

In the trial court, prior to their removal, no lawyer for Mr. Carruthers ever sought ex parte funding for an independent psychiatric or neuropsychological exam, and no lawyer ever pled that Mr. Carruthers was incompetent to stand trial. During post-conviction proceedings, appointed counsel investigated these issues, and filed Dr. Kenner's report with the court. However, Mr. Carruthers repeatedly filed pro se pleadings objecting to his lawyers' assertion of mental health issues, and challenging their efforts to secure a Guardian ad Litem to assist them.[193] Ultimately, Judge Kurtz appointed an independent expert (suggested by post-conviction counsel), Dr. Stephen Montgomery—who never met with Mr. Carruthers, but who reviewed other reports and documents.[194] Dr. Montgomery disagreed with Dr. Kenner and Dr. Auble (despite their in-person clinical evaluations of Mr. Carruthers) and concluded that

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[193] *E.g.* Ex. 47, Oct. 22, 2004, Motion to Dismiss GAL "Frivolous!", etc.; Ex. 48, Nov. 4, 2004 Pro Se Motion to Dismiss GAL and Pro Se Claim Against the State.

[194] Ex. 52, Dr. Montgomery Report.

Carruthers merely had a personality disorder, which did not impair his ability to make rational choices, and thus he was, and had been, competent.[195] Mr. Carruthers' post-conviction counsel then submitted a Response to Dr. Montgomery's report, wherein they stated:

> Regardless of whether undersigned counsel necessarily "agree" with Dr. Montgomery's factual assumptions and the conclusions he draws from them or would otherwise seek to challenge them under different circumstances, the reality is that under the circumstances of this particular (even unique) case, Dr. Montgomery's report effectively requires Petitioner's counsel to honor Petitioner's longstanding and consistently-expressed wishes not to challenge his competency to stand trial.[196]

Subsequently, PCR counsel honored Mr. Carruthers' demands, and refrained from presenting any proof regarding Mr. Carruthers' mental illness; Judge Kurtz held that all grounds for relief based on incompetency to stand trial were waived: "The petitioner and his counsel in this proceeding have chosen purposely not to raise any issues regarding the petitioner's mental state, possible insanity defense, or competency to stand trial or waive counsel."[197]

In federal habeas corpus proceedings, counsel for Mr. Carruthers in the office of the federal public defender took the position that they were ethically required to overrule Mr. Carruthers and raise competency and

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[195] *Id.* at 15-17.

[196] Ex. 53, Response to Dr. Montgomery, filed April 5, 2005.

[197] Ex. 54, Order, Feb. 2, 2006, p. 9.

mental health issues. They sought the expert services of Dr. Agharkar and Dr. Gur (referenced, above), who collectively concluded that Mr. Carruthers had never been competent. However, the District Court ruled that Judge Kurtz's finding of waiver precluded consideration of these arguments, or of the reports of Dr. Agharkar and Dr. Gur, under the doctrine of procedural default.[198] The Sixth Circuit Court of Appeals upheld this decision, again for purely procedural reasons. *Carruthers*, 889 F.3d at 292.

Thus, no court has addressed the significance of Dr. Agharkar's, Dr. Gur's, and Dr. Kenner's conclusions. No court has held a hearing where their opinions can be tested by the State, and where any contrary opinions (such as that of Dr. Montgomery) can be subjected to cross-examination. As of today, however, Mr. Carruthers' meritorious claim of incompetency to be executed has become ripe (until the State requested an execution date, it was not ripe). *Van Tran*, 6 S.W.3d at 267.

Thus, it would be just and appropriate if this Honorable Court exercised its supervisory authority and not only remanded Mr. Carruthers' incompetency to be executed claim, but also instructed the criminal court to determine whether Mr. Carruthers had been competent to stand trial, or to represent himself.

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[198] Ex. 1, Order, Mar. 31, 2014, pp. 43-48.

F. A certificate of commutation should be issued, because Mr. Carruthers' unaddressed severe mental illness and clear legal incompetency are exactly the type of extenuating circumstances envisioned by Tenn.Code.Ann. § 40-27-106.

The proof of Mr. Carruther's severe mental illness that is set-forth in this section is overwhelming. The evidence that he lacked all rational understanding, and was manifestly incompetent to stand trial, or to represent himself, is clear. His waiver of these claims during post-conviction proceedings was entirely irrational, and utterly incompetent, and of no significance.

However, no court has ever addressed this proof on its merits. Had proof of Mr. Carruthers' incompetency to stand trial and represent himself been presented on direct appeal, Mr. Carruthers would have been entitled to a new trial—like the one won by his co-defendant, James Montgomery, who is now free and at liberty, today.

Indeed, the reasons that justified Montgomery's relief apply equally to Mr. Carruthers, once we recognize that his enforced self-representation was not punishment for contumacious behavior, but an inappropriate sanction for his unchosen mental illness:

> [Carruthers'] pro se representation [prejudiced] Montgomery's right to a fair trial. Indeed, despite the trial court's efforts, the record demonstrates that Montgomery was severely prejudiced by Carruthers' self-representation, specifically, his offensive mannerisms before the jury, his questioning of witnesses that elicited incriminating evidence, and most importantly, his calling Alfredo Shaw to testify as a witness. The prejudice to Montgomery was compounded when

> the State used and emphasized the incriminating evidence elicited by Carruthers during its closing argument.
>
> *Carruthers*, 35 S.W.3d at 553–54.

Under Tenn.Code.Ann. § 40-27-106 the irrefutable evidence of Mr. Carruthers' incompetency and mental illness amounts to an extenuating circumstance warranting commutation of his sentence. *Workman v. State*, 22 S.W.3d 807, 808 (Tenn. 2000). This court's previous finding that Mr. Carruthers; mentally ill, delusional, paranoid, self-defeating self-representation denied James Montgomery a fair trial, should now be extended to justify relief for Mr. Carruthers as well.

Respectfully, it would be good and just if the Certificate of Commutation were entered here.

IV. TONY CARRUTHERS SHOULD BE CATEGORICALLY EXEMPT FROM EXECUTION DUE TO SERIOUS MENTAL ILLNESS

This Court should create a categorical exemption from execution for the seriously mentally ill. An exemption is necessary, because a defendant's serious mental illness compromises the reliability imperative for a constitutionally just conviction and death sentence. In addition, because execution of the mentally ill violates contemporary standards of decency, an exemption would promote the interests of justice. Each of the objective factors set out by the Supreme Court as indicia of modern standards of decency weigh in favor of exemption: the national trend away from capital punishment entirely, widespread proposed legislative exemptions for the mentally ill, polling data of American's views,

opinions expressed by relevant professional organizations, and the opinion of the international community. *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (citing *Harmelin v. Michigan,* 501 U.S. 957, 1000 (1910); *Rummel v. Estelle,* 445 U.S. 263, 274–275 (1980)).

A. Defining terms: what is a "serious mental illness"?

The Diagnostic and Statistical Manual defines mental disorder as "a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning."[199] "People with [severe mental illness] experience both a mental illness *and* a functional disability . . . and often have a long history of hospitalizations or intensive outpatient treatment due to severe psychological dysfunction."[200]

According to the American Psychological Association:

> [Serious Mental Illness, or SMI] refers to disorders that carry certain diagnoses, such as schizophrenia, bipolar disorder, and major depression; that are relatively persistent (*e.g.*, lasting at least a year); and that result in comparatively severe impairment in major areas of functioning, such as cognitive capabilities; disruption of normal developmental processes, especially in late adolescence; vocational capacity and social relationships. The [Diagnostic and Statistical

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[199] Ex. 56, DSM-V, American Psychiatric Association, (5th ed. 2013), § I.
[200] Ex. 57, J. Sanchez et. al, *Predicting Quality of Life in Adults With Severe Mental Illness: Extending the International Classification of Functioning, Disability, and Health* (2016) 61 Rehab. Psych. 19, 20 (citations omitted).

> Manual] diagnoses most associated with SMI include schizophrenia, **schizo-affective disorder**, **bipolar disorder**[201] and severe depression with or without psychotic features.[202]

Similarly, the Substance Abuse and Mental Health Services Administration (SAMHSA) defines "serious mental illness" as "someone over 18 having (within the past year) a diagnosable mental, behavior, or emotional disorder that causes serious functional impairment that substantially interferes with or limits one or more major life activities."[203] The National Institute of Mental Health (NIMH)[204] and the National Alliance on Mental Illness (NAMI) have similar definitions of serious mental illness as SAMHSA.[205]

Mental illnesses that meet the diagnostic criterion for SMI are all generally associated in their acute state with hallucinations, delusions, disorganized thoughts, or significant disturbances in consciousness,

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[201] **Emphasis** by counsel, in light of diagnoses of Drs. Agharkar and Kenner.

[202] Ex. 58, Am. Psychological Ass'n, *Assessment and Treatment of Serious Mental Illn*ess (2009), at 5 (internal citation omitted).

[203] Ex. 59, U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, https://www.samhsa.gov/find-help/disorders (last visited Dec. 22, 2019); *Mental Health and Substance Use Disorders.*

[204] Ex. 60, *Serious Mental Illness (SMI) Among U.S. Adults*, available at https://www.nimh.nih.gov/health/statistics/prevalence/serious-mental-illness-smi-among-us-adults.shtml (last visited Dec. 22, 2019).

[205] Ex. 61, http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers, p.2 (last visited Dec. 22, 2019).

perception of the environment, accurate interpretation of the environment, and memory.[206]

B. Mr. Carruthers' psychotic disorder is a serious mental illness, which renders his conviction and death sentence unconstitutionally unreliable.

Reliability is the bedrock of any claim that the death penalty is constitutional. The Supreme Court has repeatedly recognized that any capital prosecution offends the Eighth Amendment if the judicial system cannot sufficiently insure reliability in the determination of the sentence. *Caldwell v. Mississippi*, 472 U.S. 320, 329 (1985) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *Eddings v. Oklahoma*, 455 U.S. 104 (1982), *Lockett v. Ohio*, 438 U.S. 586 (1978), *Gardner v. Florida*, 430 U.S. 349 (1977)); *see also Middlebrooks v. State*, 840 S.W. 2d 317, 341-47 (Tenn. 1992) (holding that a capital sentencing scheme that fails to reliably narrow the class of death eligible defendants violates Article 1, §16 of the Tennessee Constitution) (citing *Woodson*; *Zant v. Stephens*, 462 U.S. 862, 879 (1983)).

For this reason, in *Atkins v. Virginia*, 536 U.S. 304 (2002), *Roper v. Simmons,* 543 U.S. 551 (2005), and *Graham v. Florida,* 560 U.S. 48 (2010), the Supreme Court identified two categories of defendants who it held could not reliably be sentenced to death: the intellectually disabled and juveniles. Because the Court's rationale resulting in those

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[206] *See* Ex. 62, DSM-V, at § II.02 (Schizophrenia Spectrum and Other Psychotic Disorders); Ex. 63, § II.05 (Anxiety Disorders); Ex. 64, § II.08 (Dissociative Disorders).

categorical exclusions applies with *at least* equal force to the seriously mentally ill, execution of individuals who are seriously mentally ill is likewise unconstitutional.

Individualized sentencing is the predicate for any constitutional imposition of the death penalty. In 1976, the Supreme Court held "the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson*, 428 U.S. at 304-05. In *Woodson*, the Court specified that the Eighth Amendment requires consideration of "the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind." *Id.* at 304; *accord Roberts v. Louisiana*, 428 U.S. 325, 329 (1976). Subsequently, the Court explicitly linked the consideration of mitigating evidence with the heightened need for reliability in capital cases in *Lockett v. Ohio*, 438 U.S. 586 (1978). *Lockett* held that a "risk" that mitigation may not be fully considered offends the constitution: "[P]revent[ing] the sentencer in all capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation creates the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty . . . that risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments." *Id.* at 605.

While insisting that individualized sentencing is the lynchpin of reliability in capital cases, the Supreme Court has recognized that some qualities are inherently difficult for jurors to appropriately weigh and

consider. These facts are, by their very nature, "double edged." They should mitigate a defendant's moral culpability, but societal misconceptions about those factors create too significant a risk that they will be misused for a defendant with those qualities to be reliably sentenced to death. The *Atkins* Court determined that where a reliable assessment of constitutionally protected mitigation lies beyond the jury's ability, jurors cannot be asked to consider a death sentence.[207]

The Court has created categorical exclusions for qualities that inherently present a risk that juries will not adequately assess the defendant's moral culpability. The Court has done so, consistent with the dictates of *Woodson* and *Lockett*, because the jury's failure to properly consider mitigating evidence undermines the reliability of that jury's determination. If a particular quality presents too great a risk that the jury cannot properly comprehend and weigh that mitigation, the unreliability that is created means that the death penalty cannot be constitutionally applied. The risk that a jury will fail to appropriately consider such a quality undermines the reliability of the jury's determination, and the presence of such a factor requires a categorical ban.

The Supreme Court has identified six factors that so undermine the reliability of a jury assessment of individualized characteristics that

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[207] *See*, Ex. 65, Scott E. Sunby, *The True Legacy of Atkins and Roper: The Unreliability Principle, Mentally Ill Defendants, and the Death Penalty's Unraveling*, 23 WILLIAM & MARY BILL OF RIGHTS JOURNAL, 21 (2014).

categorical exemption from the death penalty is required. In exempting the intellectually disabled and juveniles from capital punishment in *Atkins* and *Roper*, and juveniles from mandatory life sentences in *Simmons*, the Court established a framework for the evaluation of when a categorical ban is necessary:

1) When the defendant's individualized characteristics inherently impair his cooperation with his lawyer and impair the lawyer's ability to prepare a defense, *Atkins*, 536 U.S. at 320-21; *Graham*, 560 U.S. at 77;
2) When the individualized characteristics inherently make the defendant a poor witness, *Atkins*, 536 U.S. at 320-21;
3) When the individualized characteristic inherently distorts the defendant's decision making, *Graham*, 560 U.S. at 78 (highlighting the unreliability produced by a juvenile's "[d]ifficulty in weighing long-term consequences");
4) When the characteristic has a "double edge" and is often misperceived by jurors as aggravating, *Roper*, 543 U.S. at 573;
5) When there is a lack of scientific consensus as to the characteristic (though not as to its mitigating nature), *Atkins*, 536 U.S. at 308-09; and
6) When there is a risk that the brutality of the crime will unduly outweigh the mitigating characteristic. *Roper*, 543 U.S. at 573;

Each of these factors applies with at least equal force to the seriously mentally ill as it does to the intellectually disabled and to the young.

Mental illness vitiates the reliability of any capital sentence thereby causing it to violate the Eighth Amendment. Mental illness and mentally ill people present jurors with the same daunting challenges as those the United States Supreme Court has already found to be too great for the Eighth Amendment to countenance. Substitution of the words "mentally ill" for "juveniles" in the following excerpt from *Graham* demonstrates how completely these factors apply equally to both:

> [T]he factor[s] that distinguish the *mentally ill* from [other] adults also put them at a significant disadvantage in criminal proceedings. The *mentally ill* mistrust [other] adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than [other] adults to work effectively with their lawyers to aid in their defense. Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the [non-impaired] adult world . . . , all can lead to poor decisions by one charged *while mentally ill*. These factors are likely to impair the quality of a *mentally ill* defendant's representation.

Graham v. Florida, 560 U.S. 48, 78 (2010).

1. **Mental illness impairs a defendant's ability to work with his counsel; and it unambiguously destroyed Mr. Carruthers' ability to even have an attorney at trial.**

A mentally ill defendant is arguably less able to work with his counsel than a juvenile or intellectually impaired defendant. Cooperation with counsel is particularly at risk when the mental illness includes common symptoms of paranoia, psychosis, delusions, or deep depression. Many mentally ill people resist the stigma of being called "mentally ill"

or become paranoid when such a label is used against them. When that occurs, counsel's attempt to mitigate the defendant's culpability through presentation of his mental illness may actually engender additional distrust from the client. Mental illness may prevent even an otherwise cooperative client from providing meaningful assistance because his thought processes may be altered or disjointed; he may be unable to remember events accurately; and he may have difficulty with communicating. As with young and intellectually impaired defendants, the very characteristics that diminish a mentally ill defendant's culpability jeopardize his ability to assist counsel.

Tony Carruthers, as has been shown in Section III.A-C, has always had incredible difficulty working with counsel, and has always opposed any claim that he is mentally ill. His belief that all of his attorneys have ultimately chosen to work against him, and actively wished to do him harm has significantly impaired his ability to work with counsel. In his case, his intemperate complaints about counsel led the trial court to deny him the right to counsel, entirely; while his inability to recognize his own mental illness prevented him from presenting proof of his disease at sentencing.

2. Mental illness makes a defendant a poor witness.

Mentally ill clients are likely to make poor witnesses. Due to weakened narrative skills

> impaired individuals have difficulty relating a story that could be understood by the listener who does not share the same experience or knowledge. They tend to describe "significantly fewer bits of information about the context of the story and the events that initiated it." … [They] are less

> able to describe a character's plan, the cause and effects of the character's actions, and the character's motivations. Researchers have expressed particular concern over how these young men would have fared when they attempted to "tell their story in the forensic context."[208]

Mentally ill clients often minimize or deny their own symptoms – either out of shame, as a learned response to repeated societal aversion, or as a result of their mental condition.

If a defendant's mental illness manifests in outburst, inability to control movements, or my making inappropriate gestures or noises, the jurors may interpret such behavior as proof of a lack of remorse or as proof of dangerousness.[209] As Justice Kennedy observed in *Riggins v. Nevada*, 504 U.S. 127 (1992) (Kennedy, J., concurring), medicating a mentally ill defendant may actually make the situation worse: "As any trial attorney will attest, serious prejudice could result if medication inhibits the defendant's capacity to react and respond to the proceedings and to demonstrate remorse or compassion." *Id.* at 143-44.

Tony Carruthers had to do more than testify; he had to make opening and closing statements, cross-examine witnesses, and perform

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[208] Ex. 66, Michele LaVigne & Gregory Van Rybroek, "*He got in my face so I shot him": How defendant's language impairments impair attorney-client relationships*, UNIV. OF WISC. LAW SCHOOL, SERIES PAPER No. 1228 at 4.

[209] Ex. 67, Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?* 98 COLUM. L. REV. 1538, 1563 & n.22 (1998) (reporting Capital Jury Project findings describing jurors' reactions to defendants who engaged in outbursts during trial).

in front of the jury—not for a brief time as a witness, but for the duration of his trial. The jury's notes about his odd behavior (not least being his groin manipulation problem), and the irrational, counter-productive, self-defeating nature of his defense case, reveal that this second factor is very applicable to his situation.

3. Mental illness distorts a defendant's decision making.

In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court highlighted the unreliability created by youth, finding that a juvenile may have "[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel . . . all can lead to poor decisions. . . ." *Id.* at 78. Mental illness impairs decision making at least as much as youth – in many cases more so.

Capital jurisprudence is rife with examples of decisions impaired by mental illness. For example, in *Godinez v. Moran*, 509 U.S. 389 (1993), the capital defendant fired his counsel, pled guilty, and refused to present any mitigation evidence, stating that he wanted to die. *Id.* at 392. That defendant's mental illness rendered the capital sentencing completely unreliable – forcing the justice system to act, instead, as his method of suicide. As Justice Blackmun stated,

> Just a few months after he attempted to commit suicide, Moran essentially volunteered himself for execution: He sought to waive the right to counsel, to plead guilty to capital murder, and to prevent the presentation of any mitigating evidence on his behalf.

Id. at 416 (Blackmun, J., dissenting). A result more antithetical to *Woodson* and *Lockett* is hard to imagine.

Mr. Carruthers chose to put Alfredo Shaw on the witness stand, and then have him read into the record three consistent statements wherein he claimed that Mr. Carruthers had confessed to a triple murder. That was a terrible, illogical, irrational and counter-productive decision. Indeed, it was Mr. Carruthers' profoundly impaired decisions that secured co-defendant Montgomery a new trial. *Carruthers*, 35 S.W.3d at 553-54. Clearly, mental illness distorted Mr. Carruthers' decision making.

4. Mental illness is a double-edged mitigator.

Factors that are constitutionally mitigating under *Lockett* but that may be improperly considered as proof of a client's dangerousness or inability to be rehabilitated or cured have been found to pose a constitutionally intolerable risk of an unreliable sentence. In *Atkins*, the Court noted that some mitigation has the perverse effect of "enhanc[ing] the likelihood that the aggravating factor of future dangerousness will be found by the jury." *Atkins*, 536 U.S. at 321. *Roper*, likewise, focused on the potentially double-edged nature of mitigation, finding that "a defendant's youth may even be counted against him." *Roper*, 543 U.S. at 573.

The Capital Jury project has determined that, beyond all other aggravating factors, a jury's determination that a defendant might be dangerous in the future trumps all other considerations.[210] As the

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[210] Ex. 67, Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?* 98 COLUM. L. REV. 1538, 1559 (1998) (37.9% of jurors stated it would make them "much more likely" and 20%

Supreme Court noted in *Skipper v. South Carolina*, 476 U.S. 1 (1986), a jury's belief that that a defendant will adapt to prison life is key to a successful penalty phase defense. *Id.* at 4-5.

Here Mr. Carruthers' mental illness, and his unfortunate case of anogsognosia, caused the jury not to learn of his mental illness at all. They simply saw odd behavior with absolutely no context. Thus, in his case, mental illness was single-edged, as it only cut against Mr. Carruthers.

5. While the scientific community agrees that mental illness lessens a defendant's culpability, experts often disagree or testify confusingly about mental illness.

Mental health experts' understanding of mental illness is far from complete. Though virtually all mental health clinicians and experts agree that serious mental illness mitigates a criminal defendant's moral culpability, those same clinicians and scientists admit limited understanding of etiology, progression of disease, and the mechanisms through which such mental illness mediates behavior. In *Roper*, the Supreme Court found the lack of uniform clinical and scientific understanding to be a reason for a categorical exemption:

"slightly more likely" to vote for death if they were concerned a defendant might pose a future danger); *see also* Ex. 68, Marla Sandys, *Capital jurors, mental illness, and the unreliability principle: Can capital jurors comprehend and account for evidence of mental illness?* BEHAVIORAL SCIENCES & THE LAW (2018), available at https://onlinelibrary.wiley.com/doi/abs/10.1002/bsl.2355 (last visited Dec. 23, 2019).

> If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having anti-social personality disorder, we conclude that States should refrain from asking jurors to issue a far graver condemnation – that a juvenile offender merits the death penalty.
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> *Roper*, 543 U.S. at 573.

Evidence shows that juries are incapable of reliably sifting through competing psychiatric testimony. Juries frequently view defense experts as hired guns who offer up excuses, while not discounting the opinions of prosecution experts.[211] Further, where juries have already rejected a defendant's mental health evidence in the form of an insanity or diminished capacity defense, there exists a distinct risk that the jury will be confused as to how to weigh mental illness (which it just rejected) as mitigation.

Obviously, the jury heard nothing about Mr. Carruthers' mental illness, due to Mr. Carruthers' mental illness.

6. Brutality of a crime often unduly overwhelms the mitigating nature of a mental illness.

Mental illness frequently contributes the brutality of the crime, resulting in acts that appear particularly unnecessary, aberrant, sadistic, and frightening to the jury.[212] The *Roper* Court's determination that an

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[211] Ex. 69, Scott E. Sunby, *The Jury as Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony*, 83 VA. L. REV., 1109, 1126-30 (1997).

[212] Ex. 70, Marc Bookman, *13 Men Condemned to Die Despite Severe Mental Illness*, MOTHER JONES (Feb. 12, 2013) (summarizing multiple

unacceptable risk exists that a crime's brutality would overpower mitigation proof is an even greater concern in the context of mental illness.

This factor does not apply to Mr. Carruthers (if counsel is correct in his belief that Mr. Carruthers did not kill anyone, and is innocent). However, to the extent he is a murderer, and simply no longer remembers or accepts that truth, then, this truly senseless, absurd, and awful crime would have to be the product of mental illness—as, unlike the Columbian drug dealers who were owed $100,000+, he had no rational motive to kill one of his friends.

Just as the Eighth Amendment prohibits the execution of the intellectually disabled and juvenile defendants because of the risk that their conditions will not be properly considered as mitigating, so too does the execution of the seriously mentally ill violate the Constitution. As this Court has held, "although the Eighth Amendment to the Federal Constitution and Article I, §16, are textually parallel, this does not foreclose an interpretation of the language of Article I, §16, more expansive than that of the similar federal provision." *State v. Black*, 815 S.W.2d 166, 188 (Tenn. 1991) (citing *California v. Greenwood*, 486 U.S. 35, 50 (1988); *California v. Ramos*, 463 U.S. 992, 1013–1014 (1983); *Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn.1988); *Miller v. State*, 584 S.W.2d 758, 760 (Tenn.1978)); *State v. Harris*, 844 S.W. 2d 601, 601 (Tenn. 1992) (same). Thus, even if this Court were to find that execution of the

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cases where severely mentally ill defendants have been sentenced to death).

seriously mentally ill does not violate the federal constitution, it should find that it violates the state constitution.

C. Execution of a seriously mentally ill person violates contemporary standards of decency.

The Eighth Amendment to the United States Constitution states in relevant part: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Fourteenth Amendment to the United States Constitution states, in relevant part: "Nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." *Accord Robinson v. California*, 370 U.S. 662 (1962) (applying the Eighth Amendment to the individual States of the union).

Courts must look to the "evolving standards of decency that mark the progress of a maturing society" when tasked with determining whether a punishment is "cruel and unusual." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). The Supreme Court conducts two separate Eighth-Amendment analyses: (1) whether the death penalty is grossly disproportionate to a certain class of offenders (here, persons with serious mental illness), *see Kennedy v. Louisiana*, 554 U.S. 407 (2008) (rape of a child); *Enmund v. Florida*, 458 U.S. 782 (1982) (non-triggerman); *Coker v. Georgia*, 433 U.S. 584 (1977) (rape of an adult woman); and (2) whether the class of offenders categorically lacks the "capacity to act with the degree of culpability associated with the death penalty," *Atkins v. Virginia*, 536 U.S. 304 (2002) (intellectually disabled); *Roper v. Simmons*, 543 U.S. 551 (2005) (juveniles).

When conducting a proportionality review, the Supreme Court evaluates a number of factors: (1) whether state legislative enactments indicate that a national consensus has emerged against the imposition of a particular punishment, *Roper*, 543 U.S. at 567; *Atkins*, 536 U.S. at 316; (2) whether trends in prosecution and sentencing indicate the practice is uncommon, *Atkins*, 536 U.S. at 316; (3) whether polling data shows the death penalty is disfavored, *Atkins*, 536 U.S. at 316 n.21; (4) whether there is a consensus among relevant professional and social organizations, *Atkins*, 536 U.S. at 316 n.21; *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988); and (5) how the international community views the practice, *Atkins*, 536 U.S. at 316 n.21; *Thompson*, 487 U.S. at 830.

1. Proportionality is determined, in part, with reference to a national consensus, which supports a ban against executing seriously mentally ill individuals.

In evaluating whether a national consensus exists in the Eighth-Amendment context, the Supreme Court has relied on "legislation enacted by the country's legislatures" as the "clearest and most reliable objective evidence of contemporary values." *Penry v. Lynaugh (Penry I)*, 492 U.S. 302, 331 (1989). The Court also looks to "measures of consensus other than legislation," *Kennedy*, 554 U.S. at 433, such as "actual sentencing practices[, which] are an important part of the Court's inquiry into consensus." *Graham v. Florida*, 560 U.S. 48, 62 (2010). Also, in looking at whether a national consensus exists, the Court examines the opinions of relevant professional organizations, polling data, and international consensus. *See Atkins*, 536 U.S. at 316 n.21.

a. Evidence of National Consensus: 21 jurisdictions have abolished the death penalty outright.

The Supreme Court's analysis of the objective indicia of a national consensus with regard to exclusion of certain categories of offenders has included the states that prohibit the death penalty outright. *Roper*, 543 U.S. at 564. ("When *Atkins* was decided, 30 States prohibited the death penalty for the [intellectually disabled]. This number comprised 12 that had abandoned the death penalty altogether and 18 that maintained it but excluded the [intellectually disabled] from its reach.").

Twenty-one states, as well as the District of Columbia, prohibit the death penalty outright for all crimes committed after the repeal, and ten additional states have an actual or de facto (ten years since an execution) moratorium on executions.[213] A national consensus is emerging, as more than half of United States jurisdictions prohibit the death penalty in practice and 60% of Americans told Gallup they preferred life imprisonment over the death penalty as the better approach to punishing murder. *Id.*

Additionally, the Supreme Court looks to the consistency of the direction of change. *Atkins*, 536 U.S. at 314. Since 2010, nine states have taken affirmative stances against the death penalty; four states have passed legislation ending the death penalty (Connecticut, Illinois,

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[213] *See* Ex. 71, *The Death Penalty in 2019, Year End Report,* Death Penalty Information Center, https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2019-year-end-report (last visited December 22, 2019).

Maryland, and New Hampshire), and six governors have imposed moratoriums on executions. (California, Colorado, Ohio, Oregon, Pennsylvania, and Washington).[214]

b. Evidence of National Consensus: Active death-penalty states are seeking to exclude persons with SMI from being eligible for the death penalty.

Since 2016, some of the most active death-penalty states have introduced legislation to exempt persons with serious mental illness from being eligible for the death penalty. These states include Arizona, Arkansas, Idaho, Indiana, Kentucky, Missouri, North Carolina, Ohio, South Dakota, Tennessee, Texas, and Virginia. In 2019 alone, nine state legislatures considered measures to ban the execution of individuals with SMI.[215]

On February 11, 2019, legislators in Tennessee introduced two bills to exclude persons with SMI from the death penalty. HB1455 and SB 1124. House Bill1455 was referred to the House Judiciary Committee on February 11 and assigned to the Criminal Justice Subcommittee on February 13. It was favorably reported out of subcommittee on March 13.

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[214] Ex. 72, *State by State*, Death Penalty Information Center, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited December 22, 2019).

[215] *See* Ex. 71, *The Death Penalty in 2019, Year End Report,* Death Penalty Information Center, https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2019-year-end-report (last visited December 22, 2019).

SB1124 was referred to Senate Judiciary Committee on February 11, 2019.[216]

c. Evidence of National Consensus: Of the 33 jurisdictions with the death penalty, 25 specifically address mental illness as a mitigating factor.

Although thirty-three jurisdictions (thirty-one states plus the federal government and the military) still maintain the death penalty, twenty-five jurisdictions—a full three-quarters of jurisdictions with the death penalty—specifically ask juries to consider mental or emotional disturbance or capacity as a mitigating factor. Ala. Code § 13A-5-51 (mental or emotional disturbance and capacity); Ariz. Rev. Stat. Ann. § 13-751(G) (capacity); Ark. Code Ann. § 5-4-605 ("mental disease or defect" and capacity); Cal. Penal Code § 190.3 ("mental disease or defect" and capacity); Colo. Rev. Stat. Ann. § 18-1.3-1201(4) (capacity and "emotional state"); Fla. Stat. Ann. § 921.141(7) (mental or emotional disturbance and capacity); Ind. Code § 35-50-2-9(c) ("mental disease or defect" and capacity); Ky. Rev. Stat. Ann. § 532.025(2)(b) ("mental illness" and capacity); La. Code Crim. Proc. Ann. art. 905.5 ("mental disease or defect" and capacity); Miss. Code Ann. § 99-19-101(6) (mental or emotional disturbance and capacity); Mo. Rev. Stat. § 565.032(3) (mental or emotional disturbance and capacity); Mont. Code Ann. § 46-18-304(1)

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[216] Ex. 73, Tennessee General Assembly Legislation Webpage, http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB1455&GA=111; Ex. 74, *Recent Legislative Activity*, Death Penalty Information Center https://deathpenaltyinfo.org/facts-and-research/recent-legislative-activity (last visited Dec. 22, 2019).

(mental or emotional disturbance and capacity); Nev. Rev. Stat. § 200.035 (mental or emotional disturbance); N.H. Rev. Stat. Ann. § 630:5(VI) (mental or emotional disturbance and capacity); N.C. Gen. Stat. Ann. § 15A-2000(f) (mental or emotional disturbance and capacity); Ohio Rev. Code Ann. § 2929.04(B) ("mental disease or defect" and capacity); Or. Rev. Stat. Ann. § 163.150(1)(c)(A) ("mental and emotional pressure"); 42 Pa. Cons. Stat. Ann. § 9711(e) (mental or emotional disturbance and capacity); S.C. Code Ann. § 16-3-20(C)(b) (mental or emotional disturbance and capacity); Tenn. Code Ann. § 39-13-204(j) ("mental disease or defect" and capacity); Utah Code Ann. § 76-3-207(4) ("mental condition" and capacity); Va. Code Ann. § 19.2-264.4(B) (mental or emotional disturbance and capacity); Wash. Rev. Code § 10.95.070 ("mental disease or defect" and capacity); Wyo. Stat. Ann. § 6-2-102(j) (mental or emotional disturbance and capacity); 18 U.S.C. § 3592(a) (mental or emotional disturbance and capacity). Prior to its legislative abolishment of the death penalty in 2012, Connecticut specifically prohibited the execution of persons with serious mentally illness. Conn. Gen. Stat. § 53a-46a(h)(2).

The fact that so many death penalty states recognize mental illness as a mitigating factor is a clear legislative signal that defendants with serious mentally illness—individuals who are so emotionally disturbed or mentally incapacitated that they cannot be expected to responsibly conform to lawful conduct—should not receive the death penalty.

Even though these states have statutory mitigating factors that allow the jury to take into count a defendant's serious mental illness, a

jury's unreliability in doing so mitigates in favor of an outright exclusion of the death penalty for persons with SMI.[217]

d. Evidence of National Consensus: Sentencing trends reveal a reluctance to impose the death penalty upon SMI defendants.

A broad national consensus is reflected not only in the judgments of legislatures, but also in the infrequency with which the punishment is actually imposed. *See e.g.*, *Roper*, 543 U.S. at 567; *Atkins*, 536 U.S. at 316. As discussed below, an analysis of the evolving standards of decency demonstrates that the frequency of new death sentences has decreased considerably over time for *all* defendants, not just the seriously mentally ill. Many jurisdictions that have the death penalty as an option do not impose it.[218] Numerous other jurisdictions have eliminated it altogether. In 2018, the Washington Supreme Court held that that the death penalty

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[217] *See* Ex. 65, Scott E. Sundby, *The True Legacy of Atkins and Roper: The Unreliability Principle, Mentally Ill Defendants, and the Death Penalty's Unraveling*, 2014 Wm. & Mary Bill Rts. J., Vol. 23:487, 492, 497 ("*Roper* thus strongly reinforced *Atkins*'s recognition that if circumstances prevent a juror from being able to give proper consideration to constitutionally protected mitigation, the death penalty *categorically* cannot be imposed." (emphasis in original)).

[218]Ex. 75, Pew Research Center, California is one of 11 states that have the death penalty but haven't used it in more than a decade (Mar. 14, 1999) https://www.pewresearch.org/fact-tank/2019/03/14/11-states-that-have-the-death-penalty-havent-used-it-in-more-than-a-decade/ (last visited Dec. 23, 2019).

violates the state constitution, as it is contrary to the evolving standards of decency: "We recognize local, national, and international trends that disfavor capital punishment more broadly." *State v. Gregory*, 427 P.3d 621, 636 (Wash. 2018). But, even in states where the death penalty continues to be a sentencing option, jurors are increasingly less likely to impose it, particularly against defendants who are seriously mentally ill.[219] Studies show that jurors consider a defendant's serious mental illness to be an important factor in their sentencing decisions.[220]

e. Evidence of National Consensus: Relevant professional organizations, polling data, and the international community support a ban on the death penalty for seriously mentally ill defendants.

In addition to legislation and trends in prosecution, the Supreme Court has cited other factors in identifying a national consensus, such as the opinions of relevant professional and social organizations, polling

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[219] Ex. 67, Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What do Jurors Think?* 98 Colum. L. Rev. 1538 (1998); Ex. 76, Michelle E. Barnett, *When mitigation evidence makes a difference: effects of psychological mitigating evidence on sentencing decisions in capital trials*, 22 Behavioral Sciences and the Law 751 (2004) ("Mitigating evidence such as the defendant was suffering severe delusions and hallucinations . . . yielded a proportion of life sentences statistically greater than would be expected had no mitigating evidence had been presented.").

[220] *Id.*

data, and views among the international community. *See e.g.*, *Atkins*, 536 U.S. at 316 n.21; *Thompson*, 487 U.S. at 830.

Nearly every major mental health association in the United States has issued policy statements recommending the banning of the death penalty for defendants with serious mental illness:[221]

- American Psychiatric Association, *Position Statement on Diminished Responsibility in Capital Sentencing* (approved Nov. 2004 and reaffirmed Nov. 2014);[222]
- American Psychological Association, *Report of the Task Force on Mental Disability and the Death Penalty* (2005);[223]
- National Alliance on Mental Illness, *Death Penalty*.[224]
- Mental Health America, *Position Statement 54: Death Penalty and People with Mental Illnesses* (approved Mar. 5, 2011).[225]

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[221] Ex. 77, American Psychological Association, *Associations concur on mental disability and death penalty policy*, Vol 38, No. 1, p. 14 (2007), https://www.apa.org/monitor/jan07/associations (noting the APA, the ABA, the American Psychiatric Association, and the National Alliance on Mental Illness' agreement that SMI offenders should not be subject to the death penalty) (last visited Dec. 22, 2019).

[222] Ex. 78.

[223] Ex. 79, https://www.apa.org/pubs/info/reports/mental-disability-and-death-penalty.pdf.

[224] Ex. 80, Available at https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Death-Penalty (last visited Dec. 22, 2019).

[225] Ex. 81, https://www.mhanational.org/issues/position-statement-54-death-penalty-and-people-mental-illnesses (last visited Dec. 22, 2019).

The American Bar Association also publically opposes executing or sentencing to death the defendants with serious mental illness.[226] In 2016, the ABA published a white paper that concluded:

> The death penalty is the ultimate punishment that should be reserved for the most blameworthy individuals who commit the worst crimes - and it does not serve any effective or appropriate purpose when it is applied to individuals with severe mental illness. The Supreme Court has already recognized that there are two other categories of individuals who have similar functional impairments to people with severe mental illness that are inherently 'less culpable' to the point that it is unconstitutional to apply the death penalty in their cases. In light of this constitutional landscape, the growing consensus against this practice, and the fact that none of the current legal mechanisms afford adequate protection against the death penalty to those diagnosed with serious mental disorders or disabilities, it is time for the laws in U.S. capital jurisdictions to change.[227]

Citing national polls in 2014 and 2015, then ABA President-elect Hilarie Bass said the American public "support[s] a severe mental illness

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[226] Ex. 82, American Bar Association, *ABA Recommendation 122A*, Serious Mental Illness Initiative (adopted Aug. 2006), https://www.americanbar.org/groups/crsj/projects/death_penalty_due_process_review_project/serious-mental-illness-initiative-/ (last visited 12/19/2019).

[227] Ex.83, https://www.americanbar.org/content/dam/aba/images/crsj/DPDPRP/SevereMentalIllnessandtheDeathPenalty_WhitePaper.pdf (last visited Dec. 22, 2019).

exemption from the death penalty by a 2 to 1 majority."[228] In 2017, the ABA expressed concern in an Arkansas case involving a defendant with SMI.[229] In 2019, the ABA filed an amicus brief in the Nevada Supreme Court arguing that imposition of the death penalty on people with severe mental illness serves no legitimate penological purpose and asking the court to "categorically prohibit the execution of individuals who were suffering from severe mental illness at the time of their crimes."[230]

Turning to Tennessee, in 2018, the ABA published an analysis of the savings an exclusion for the mentally ill would likely generate for the state of Tennessee.[231] Former Tennessee Attorney General, W.J. Michael Cody expressed his support for an exemption for the seriously mentally ill: "[A]s society's understanding of mental illness improves every day," it is "surprising that people with severe mental illnesses, like

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[228] Ex. 84, https://deathpenaltyinfo.org/news/american-bar-association-issues-white-paper-supporting-death-penalty-exemption-for-severe-mental-illness;
see also Ex. 85, https://www.americanbar.org/news/abanews/aba-news-archives/2016/12/aba_luncheon_feature/ (last visited Dec. 22, 2019).

[229] Ex. 86, https://www.americanbar.org/content/dam/aba/uncategorized/GAO/ABAH%20BasstoHutchinsonGreene.pdf.

[230] Ex. 87, ABA Amicus Brief in Nevada Supreme Court.

[231] Ex. 88, ABA, Potential Cost Savings of Severely Mentally Ill Exclusion from the Death Penalty: An Analysis of Tennessee Data, https://www.americanbar.org/content/dam/aba/administrative/crsj/deathpenalty/2018-smi-cost-analysis-w-tn-data.pdf

schizophrenia, can still be subject to the death penalty in Tennessee."[232] Mr. Cody noted that defendants with SMI differ from other defendants: "In 2007, an ABA study committee, of which I was a member, conducted a comprehensive assessment of Tennessee's death penalty laws and found that 'mental illness can affect every stage of a capital trial' and that 'when the judge, prosecutor and jurors are misinformed about the nature of mental illness and its relevance to the defendant's culpability, tragic consequences often follow for the defendant.'"[233]

Other community organizations oppose the execution of persons with SMI. For example, in 2009, Murder Victims' Families for Human Rights published "Double Tragedies, Victims Speak Out Against the Death Penalty for People with Severe Mental Illness."[234] Amnesty International published a paper opposing the execution of the mentally ill in 2006.[235]

Opinion pieces appear frequently opposing the death penalty for people with SMI:

- Frank R. Baumgartner and Betsy Neill, *Does the Death Penalty Target People Who Are Mentally Ill? We Checked*' THE WASHINGTON POST, April 3, 2017 ("[O]ur research suggests that the

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[232] Ex. 89, W.J.M. Cody, "Exclude mentally ill defendants from death penalty," THE COMMERCIAL APPEAL, Feb. 12, 2017.

[233] *Id.*

[234] Ex. 90, https://www.amnestyusa.org/double-tragedies/.

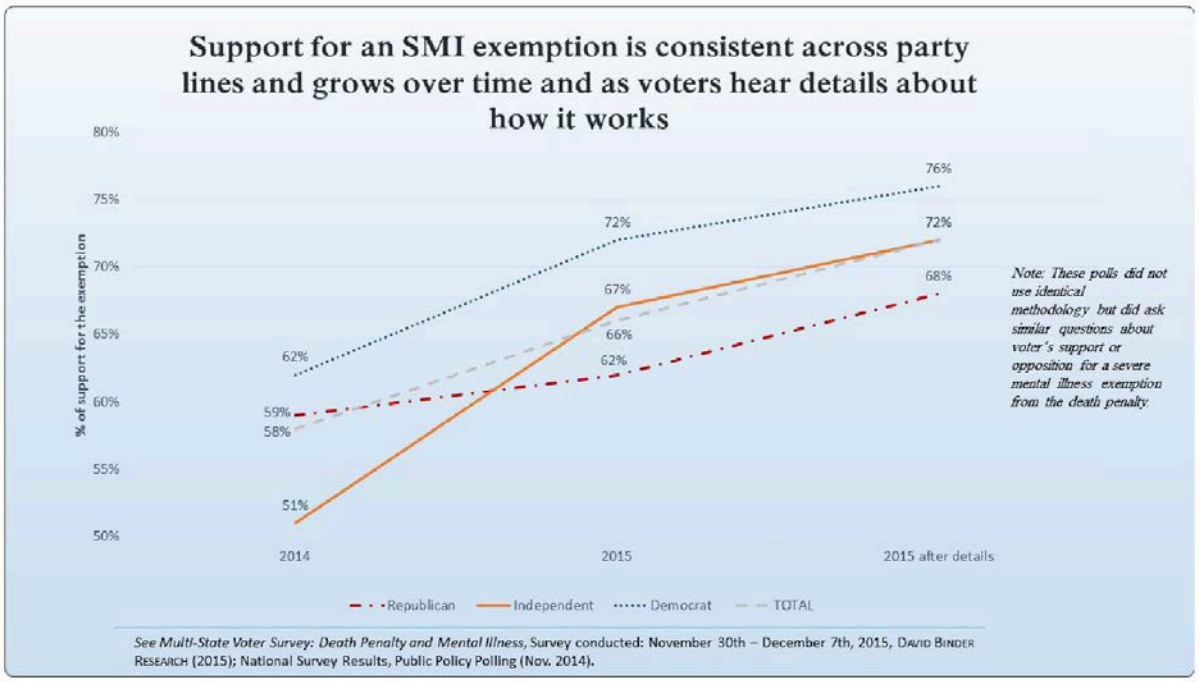
[235] Ex. 91.

death penalty actually targets those who have mental illnesses."), Ex. 92.

- Michael Stone, *Severe Mental Illness and the Death Penalty*, JEFFERSON POLICY JOURNAL (Thomas Jefferson Institute for Public Policy) (Jan. 4, 2017), Ex. 93.
- Bob Taft and Joseph E. Kernan, *End the Death Penalty for Mentally Ill Criminals*, THE WASHINGTON POST, March 24, 2017 (written by two former governors (Ohio and Indiana)), Ex. 94.
- Austin Sarat, *Stop Executing the Mentally Ill*, U.S. NEWS, June 28, 2017, Ex. 95.

Public opinion polls also support this consensus:

- In November 2015, the American Bar Association conducted a multi-state survey of voters' opinions on the death penalty:



- The ABA's 2016 polling found that 66% of respondents oppose the death penalty for people with "mental illness." The rate of opposition rose to 72% when respondents learned about the details of how a "severe mental illness" exemption would work. *Id.*
- In 2014, Public Policy Polling found that 58% of respondents opposed the death penalty for "persons with mental illness"; with 28% in favor and 14% unsure.[236]

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[236] Ex. 96, Public Policy Polling, National Survey Results, https://drive.google.com/file/d/0B1LFfr8Iqz_7R3dCM2VJbTJiTjVYVDVodjVVSTNJbHgxZWlB/view.

- A 2009 poll of Californians found 64% opposed the death penalty for the "severely mentally ill."[237]
- A 2007 North Carolina poll found that 52% of respondents were against imposing the death penalty on defendants who had a "severe mental illness or disability" at the time of the crime, with only 30% being in favor of the practice.[238]

Gallup polling shows that 75% of participants oppose the death penalty for the "mentally ill."[239] Opposition was similar to the rate of opposition of the death penalty for the "mentally retarded (82%)." *Id.* Notably, a higher percentage of respondents opposed the death penalty for the mentally ill (75%) than for juveniles (69%). *Id.*

Lastly, there is an overwhelming international consensus, not just against the death penalty, but also specifically against imposing the death penalty upon defendants with severe mental illness. The United Nations Commission on Human Rights has called for countries with

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[237] Ex. 97, Jennifer McNulty, *New poll by UCSC professor reveals declining support for the death penalty*, University of California Santa Cruz Newscenter, Sept. 1, 2009, http://news.ucsc.edu/2009/09/3168.html (last visited Dec. 22, 2019).

[238] Ex. 98, Rob Schofield, *NC Policy Watch Unveils Inaugural "Carolina Issues Poll:" Results Show that Voters are Supportive of Public, Humane Solutions in Mental Health and Affordable Housing* (Apr. 9, 2007), http://www.ncpolicywatch.com/2007/04/09/nc-policy-watch-unveils-inaugural-"carolina-issues-poll"/ (last visited Dec. 22, 2019).

[239] *See* Ex. 99, Gallup, *Death Penalty* (poll conducted May 6-9, 2002), *available at* https://news.gallup.com/poll/1606/death-penalty.aspx, p.12 (last visited Dec. 22, 2019).

capital punishment to abolish it for people who suffer to "from any form of mental disorder."[240] A recent report by the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions emphasized concern "with the number of death sentences imposed and executions carried out" in the United States "in particular, in matters involving individuals who are alleged to suffer from mental illness."[241]

The European Union has also declared that the execution of persons "suffering from any form of mental disorder . . . [is] contrary to internationally recognized human rights norms and neglect[s] the dignity and worth of the human person."[242] Generally, the EU opposes the death penalty for all crimes.[243]

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[240] Ex. 100, *U.N. Comm'n on Human Rights Res. 2004/67*, U.N. Doc. E/CN.4/RES/2004/67 (Apr. 21, 2004); *U.N. Comm'n on Human Rights Res. 1996/91*, U.N. Doc. E/CN.4/RES/1996/91 (Apr. 28, 1999), *see Press Release*, https://www.un.org/press/en/1999/19990428.HRCN938.html ("The Commission urged all States that still maintained the death penalty . . . not to impose it on a person suffering from any form of mental disorder.").

[241] Ex. 101, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, U.N. Doc. A/HRC/26/36/ADD.2 (June 2, 2014).

[242] Ex. 102, European Union, Delegation of the European Commission to the USA, EU Memorandum on the Death Penalty, presented to U.S. Assistant Secretary of State for Human Rights (Feb. 25, 2000).

[243] Ex. 103, October 10, 2019, World and European Day Against the Death Penalty, https://www.coe.int/en/web/human-rights-rule-of-law/day-against-death-penalty (last visited Dec. 22, 2019).

f. Evidence of National Consensus: Mental Health Courts

Jurisdictions nationwide are adopting mental health courts that take a holistic approach to rehabilitated persons with mental illness who are in the criminal justice system. Nationwide, there are over 300 mental health courts in all fifty states.[244] At least one hundred of these courts serve felony offenders.[245] Mental health courts, while diverse, can be broadly defined as "a specialized court docket for certain defendants with mental illnesses that substitutes a problem-solving model for traditional criminal court processing … [in which participants] voluntarily participate in a judicially supervised treatment plan."[246] These special courts clearly reflect a consistency in the direction of change in the growing national awareness of the role serious mental illness plays in crime and the special consideration that must be accorded.

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[244] Ex. 104, *Adult Mental Health Treatment Court Locator*, Substance Abuse & Mental Health Services Administration, https://www.samhsa.gov/gains-center/mental-health-treatment-court-locator/adults (last visited Dec. 22, 2019).

[245] *Id.*

[246] Ex. 105, *Mental Health Courts: A Primer for Policymakers and Practitioners*, at 4, The Council of State Governments Justice Center (2008), https://csgjusticecenter.org/wp-content/uploads/2012/12/mhc-primer.pdf (last visited Dec. 22, 2019).

2. Execution of the seriously mentally ill as a class of people is unconstitutional because mental illness diminishes personal responsibility.

The last "step" of the Eighth Amendment analysis requires a court to exercise its own independent judgment in determining whether the death penalty is a disproportionate response to the moral culpability of the defendant. *See e.g., Atkins*, 536 U.S. at 312 (quoting *Coker v Georgia*, 433 U.S. 584, 597 (1977). To impose our society's gravest punishment, the defendant must meet the highest level of moral culpability—the "punishment must be tailored to [a defendant's] personal responsibility and moral guilt." *Enmund*, 458 U.S. at 801. Without such congruence, the punishment of death becomes "grossly disproportionate." *Id.* at 788 (quoting *Coker*, 433 U.S. at 592). Only the "most deserving" may be put to death. *Atkins*, 536 U.S. at 320.

In *Atkins*, the Court determined that the deficiencies of the intellectually disabled "diminish[ed] their personal culpability":

> [Intellectually disabled] persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.

536 U.S. at 318.

Much like intellectual disability, serious mental illness is a persistent and frequently debilitating medical condition that impairs an

individual's ability to make rational decisions, control impulse, and evaluate information. As defendants with serious mental illness lack the requisite degree of moral culpability, the acceptable goals of capital punishment are negated, just as they are for juveniles and intellectually disabled individuals. Thus, this Court should find that severely mentally ill individuals are also categorically ineligible for the death penalty.

Although severely mentally individuals who are not found incompetent to stand trial or "not guilty by reason of insanity" know the difference between right and wrong, they nevertheless have diminished capacities compared to those of sound mind. Hallucinations, delusions, disorganized thoughts, and disrupted perceptions of the environment lead to a loss of contact with reality and unreliable memories. As a result, they have an impaired ability to analyze or understand their experiences rationally and as such, have an impaired ability to make rational judgments. These characteristics lead to the same deficiencies cited by the *Atkins* Court in finding the intellectually disabled less personally culpable—the severely mentally ill are similarly impaired in their ability to "understand and process information" (because the information they receive is distorted by delusion), "to communicate" (because of their disorganized thinking, nonlinear expression, and unreliable memory), "to abstract from mistakes and learn from experience" (because of their impaired judgment and understanding), "to engage in logical reasoning" (because of their misperceptions and disorganized thinking), and "to understand the reactions of others" (because of their misperceptions of reality and idiosyncratic assumptions).

D. Conclusion:

This Court should hold that execution of severely mentally ill individuals violates the Eighth Amendment and Article I, §16 of the Tennessee Constitution, set out a procedure by which Mr. Carruthers may vindicate his claim, and remand his case to the trial court for further proceedings where he may establish the nature and severity of his mental illness and, thus, his exemption from execution. It would be highly appropriate and just to join this issue with the necessary *Van Tran* remand for determination of competency to be executed. Certainly the proof of serious mental illness that is relevant to this issue, is also highly relevant to the competency to be executed question.

V. THE DEATH PENALTY IS UNCONSTITUTIONAL DUE TO INHERENT AND SYSTEMIC RACISM.

Rooted in a racist past and currently racist in application, Tennessee's use of the death penalty violates the Eighth Amendment to the United States Constitution and Article I, §16 of the Tennessee Constitution. Nothing could be more arbitrary under the Eighth Amendment than a reliance upon race in determining who should live and die, but despite decades of judicial oversight, the application of the Tennessee death penalty statutes remain racially disparate. Racism infects the process through implicit bias in prosecutorial discretion, through the bias (both sometimes overt and sometimes unknowing) in jury selection, through the ineffective assistance of defense counsel, and through bias in the jurors' perceptions and determinations. Because

there is no way to root out this impermissible consideration of race, the death penalty is unconstitutional.

A. The history of the death penalty in Tennessee involves both judicial and extra-judicial executions.

Since its inception in 1796, the law in Tennessee has allowed for capital punishment.[247] "Until 1913, all individuals convicted of a capital offense were hanged. There are no official records of the number or names of those executed."[248] In 1916, Tennessee progressed to electrocution as a means to end human life. Electrocution remained the sole method of execution from 1916 until 1960. During this time, Tennessee executed 125 people. Of the 125, 85 were African-American including the 31 African-American men executed for rape.[249] After decades of legal battles on the constitutionality of the death penalty and method of execution,

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[247] Ex. 106, *Capital Punishment Chronology,* TENNESSEE DEPARTMENT OF CORRECTIONS,https://www.tn.gov/content/dam/tn/correction/documents/chronology.pdf.

[248] Ex. 107, *Tennessee Executions*, TENNESSEE DEPARTMENT OF CORRECTIONS, https://www.tn.gov/correction/statistics-and-information/executions/tennessee-executions.html.

[249] In 1977, too late to save the 36 men Tennessee had already executed for the crime of rape, the United States Supreme Court found it unconstitutional to impose a sentence of death for the crime of rape. *Coker v. Georgia*, 433 U.S. 584 (1977). 455 people were executed for rape between 1930 and 1972. 89.1% of those men were black. Ex. 108, *Race, Rape, and the Death Penalty,* DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/policy-issues/race/race-rape-and-the-death-penalty

Tennessee made lethal injection the method of execution starting January 1, 1999.[250]

Parallel to the official, state-sanctioned death penalty, there has been a darker history of capital punishment in Tennessee. There have been 237 reported extra-judicial lynchings in Tennessee—the birthplace of the Ku Klux Klan.[251] Of the 95 counties in Tennessee, 59 counties have reported lynchings. *Id.* The numbers of lynching per county range from one to twenty, with Shelby County holding the record for most lynchings. *Id.* In keeping with that history, Shelby County is also responsible for nearly 50% of the current number of people on death row. The individuals lynched in Memphis include Calvin McDowell, William Stewart, and Thomas Moss.[252] After opening the People's Grocery store in Memphis, TN, a thriving business, Misters McDowell, Stewart, and Moss were confronted and jailed by law enforcement officers along with over 100 other black men. *Id.* On March 9, 1892, masked men entered the jail and removed Mr. Moss, Mr. McDowell, and Mr. Stewart and hung them in an

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[250] Ex. 106, *Capital Punishment Chronology,* TENNESSEE DEPARTMENT OF CORRECTIONS, https://www.tn.gov/content/dam/tn/correction/documents/chronology.pdf.
From 1960 to 2000 there was not a single execution in the state of Tennessee. Ex. 107, *Tennessee Executions*, TENNESSEE DEPARTMENT OF CORRECTIONS, https://www.tn.gov/correction/statistics-and-information/executions/tennessee-executions.html.

[251] Ex. 109, *Lynching in America*, EQUAL JUSTICE INITIATIVE, https://lynchinginamerica.eji.org/explore/tennessee.

[252] *Lynching in America*, EQUAL JUSTICE INITIATIVE, Calvin McDowell, William Stewart, and Thomas Moss (video).

open field. *Id.* When the executioners asked Mr. Moss for his last words he stated, "Tell my people to go west. There is no justice for them here." *Id.*

B. Racially biased determinations violate the Eighth Amendment's prohibition on cruel and unusual punishment.

In *Furman v. Georgia*, 408 U.S. 238 (1972), the Supreme Court addressed the discriminatory application of the death penalty. Concurring to the Court's per curiam holding that the death penalty violates the Eighth Amendment, Justice Douglas concluded that the capital statutes across the country were "pregnant with discrimination," *id.* at 257, and were counter to "the desire for equality . . . reflected in the ban against 'cruel and unusual punishments' contained in the Eighth Amendment," *id.* at 255. Justice Douglas reasoned:

> In a Nation committed to equal protection of the laws there is no permissible 'caste' aspect of law enforcement. Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position.

Furman v. Georgia, 408 U.S. 238, 255 (1972).

In his separate concurring opinion, Justice Stewart indicted the capital punishment system saying, "if any basis can be discerned for the selection of these few sentenced to die, it is the constitutionally impermissible basis of race." *Id.* at 310. The Court later found that the death penalty does not comport with the Eighth Amendment if "imposed

under sentencing procedures that create a substantial risk that it [will] . . . be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976).

Racial disparity in the application of the death penalty is unconscionable. The Supreme Court has repeatedly held that consideration of race is completely inconsistent with the dictates of justice. *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867 (2017); *Buck v. Davis*, 137 S. Ct. 759, 778 (2017); *Foster v. Chatman*, 136 S. Ct. 1737 (2016); *Powers v. Ohio,* 499 U.S. 400, 411 (1991); *Rose v. Mitchell,* 443 U.S. 545, 555 (1979); *Castaneda v. Partida,* 430 U.S. 482 (1977); *McLaughlin v. Florida*, 379 U.S. 184 (1964) (declaring the "central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the states"). Contrary to the mandates of the Supreme Court, the overt racism that led to the lynching of black citizens became ingrained in the justice system. This happened, in part, because for many years the courts viewed their duty as limited to minimizing racist enforcement of the law. *See McCleskey v. Kemp*, 481 U.S. 279 (1987); *Furman*, 408 U.S. at 257 (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)). As Justice Black observed in *Callins v. Collins*, 510 U.S. 1141 (1994),

> [E]ven if the constitutional requirements of consistency and fairness are theoretically reconcilable in the context of capital punishment, it is clear that this Court is not prepared to meet the challenge. In apparent frustration over its inability to strike an appropriate balance between the *Furman* promise of consistency and the *Lockett* requirement of individualized sentencing, the Court has retreated from the

> field . . . providing no indication that the problem of race in the administration of death will ever be addressed.

Id. at 1156 (Blackmun, J. dissenting from denial of certiorari) However, "the central purpose of the Fourteenth Amendment was to *eliminate* racial discrimination emanating from official sources in the states." *McLaughlin v. State of Florida*, 379 U.S. 184, 192 (1964) (emphasis added).

Managing the risk of racism inherent in the administration of the death penalty has proven untenable and unconstitutional. Just last year, the Supreme Court noted how "familiar and recurring" the evil of racism is:

> It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons This imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments.
>
> ***
>
> [R]acial bias, a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice. This Court's decisions demonstrate that racial bias implicates unique historical, constitutional, and institutional concerns. An effort to address the most grave and serious statements of racial bias is not an effort to perfect the jury but to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy.

Peña-Rodriquez v. Colorado, 137 S. Ct. 855, 867, 869 (2017).

While blacks make up approximately 12% of the population, they account for 42% of the national death row.[253] *Id.* These disparities are well known and well documented. The death penalty is intended for the worst of the worst, (*see Harmelin v. Michigan*, 501 U.S. 957, 966 (1991)), yet research continues to show that race, not crime, is the more likely indicator for who receives the death penalty.

The Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. *Trop v. Dulles*, 356 U.S. 86 (1958). The nation has evolved. It is no longer willing to tolerate the racism that has plagued the Nation for centuries, not from prosecutors, (*Foster v. Chatman*, 136 S. Ct. 1737 (2016)), not from experts or defense counsel, (*Buck v. Davis*, 137 S. Ct. 759 (2017)), and not from juries, (*Pena-Rodriguez, 137 S. Ct. 855*). Where racism cannot be excised from the death-determination process, the death penalty itself is unconstitutional.

C. Implicit biases influence prosecutorial discretion in seeking death.

A defendant's journey through the legal system has but one conductor: the prosecutor. From the pretrial decisions to the final closing statement, prosecutors bring their own perspectives, strategies, and biases into each decision. The most critical of these decisions, however, is whether to seek the death penalty. Prosecutors make such decisions against the backdrop of their own worldview – including their implicit,

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[253] Ex. 110, *Ways That Race Can Affect Death Sentencing*, DEATH PENALTY INFORMATION CENTER.

unconscious biases. Studies have shown that racialized implicit biases cause associations between black citizens and violence, criminality, and aggression.[254] Whites are associated with purity and seen as victims.[255] Research shows that merely seeing a black face can trigger negative associations.[256] By the time a prosecutor has made a charging decision, she has been primed with both the race of the defendant and the victim. Similar to an implicit bias test, a prosecutor must then make choices about the charge, the strategy, plea negotiations, and, ultimately whether to seek death. If prosecutors' implicit biases align with the rest of the country's – and there is no reason to believe that they are uniquely immune – these racial associations impact every decision prosecutors make.[257] Racial priming affects charging decisions, how prosecutors perceive jurors, how they assess witnesses, what evidence they perceive

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[254] Ex. 111, Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, SEATTLE UNIV. L. REV., V. 35:795.

[255] *Id.*

[256] *Id.* at 799; Ex. 112, Lisa Trei, *'Black' features can sway in favor of death penalty, according to study*, Standford Report (2006); Ex. 113, Jennifer Eberhardt, et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes.* CORNELL LAW FACULTY PUBLICATION (2006).

[257] *Id.,* Ex. 114, Katherine Barnes, et al. *Place Matters (Most): An Empirical Study of Prosecutorial Decision-Making in Death Eligible Cases*, 51 Arizona Law Review, 305 (2009). Ex. 115, Mike Dorning, *Plea Bargains Favor Whites in Death Penalty Cases, Study Says*, WASHINGTON POST, July 26, 2000.

as exculpatory, etc. Even when not acting intentionally, a prosecutor's implicit bias becomes the lens through which she dispenses justice.

D. Prosecutors across the nation continue to violate *Batson*.

The history of the exclusion of blacks from jury service is long – and telling. In 1880, the Supreme Court held that statutes limiting jury service to whites are unconstitutional. *Strauder v. West Virginia*, 100 U.S. 303 (1879). In the wake of *Strauder*, states removed the racial discrimination from their statutes, while initiating a series of facially constitutional practices aimed at achieving the same goal—preventing blacks from serving on juries. While some states began using seemingly neutral requirements such as intelligence, experience, or good moral character to keep black citizens out of the jury box, other states printed the names of black jurors on separate color paper so those names could be avoided during a putatively "random" drawing or, alternatively, utilized the jury commissioner as a proxy for the state's racism.[258]

Addressing these machinations, the Supreme Court held why accepting prosecutors' reasons for excluding African American jurors is problematic: prosecutors are infected with racism:

> If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory

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[258] Ex. 116, Michael J. Klarman, *From Jim Crow to Civil Rights* 39-40 (2004).

> requirement. The general attitude of the jury commissioner is shown by the following extract from his testimony: 'I do not know of any negro in Morgan County over twenty-one and under sixty-five who is generally reputed to be honest and intelligent and who is esteemed in the community for his integrity, good character and sound judgment, who is not an habitual drunkard, who isn't afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of a juror, and who can read English, and who has never been convicted of a crime involving moral turpitude.'
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> *Norris v. State of Alabama*, 294 U.S. 587, 598–99 (1935).

By the 1960s, the Court required courts to pull the jury venire from a "fair cross-section of the community." *Duren v. Missouri*, 439 U.S. 357 (1979); *Taylor v. Louisiana*, 419 U.S. 522 (1975). Prosecutors, again, adjusted their practices to achieve the same goal.

In 1986, the Supreme Court declared any exclusion prospective jurors based on race unconstitutional. *Batson v. Kentucky,* 476 U.S.79 (1986).[259] However the Court's ruling proved difficult to enforce. In 2015, the New Yorker reported that in the approximately 30 years since *Batson*, courts have accepted the flimsiest excuses for striking black jurors and prosecutors have trained subordinates to strike black jurors without a judicial rebuke.[260] A 2010 report by the Equal Justice Initiative

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[259] Much of this section is drawn from Ex. 117, Radley Balko, *There's overwhelming evidence that the criminal-justice system is racist. Here's the proof.*, WASHINGTON POST, Sept. 18, 2018, Updated Apr. 10, 2019.

[260] Ex. 118, Gilad Edelman, *Why Is It So Easy for Prosecutors to Strike Black Jurors?* THE NEW YORKER, June 5, 2015.

documented cases in which courts upheld prosecutors' dismissal of jurors because of allegedly race-neutral factors such as affiliation with a historically black college, a son in an interracial marriage, living in a black-majority neighborhood or that a juror "shucked and jived."[261]

Although there is no comprehensive data on the rate at which prosecutors strike black jurors nationally, regional studies clearly show racial bias in jury selection is far from a relic of the past:

- A study of criminal cases from 1983 and 1993 found that prosecutors in Philadelphia removed 52% of potential black jurors as compared to only 23% of nonblack jurors.[262]
- Between 2003 and 2012, prosecutors in Caddo Parish, Louisiana — one of the most aggressive death penalty counties in the country — struck 46% of prospective black jurors with preemptory challenges, as compared to 15% of non-blacks.[263]
- Between 1994 and 2002, prosecutors in Jefferson Parish, Louisiana struck 55% of blacks, but just 16% of whites.[264]

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[261] Ex. 119, EJI, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy*.

[262] Ex. 120, ACLU, *Race and the Death Penalty.*

[263] Ex. 121, Ursula Noye, *Blackstrikes: A Study of the Racially Disparate Use of Peremptory Challenges by the Caddo Parish District Attorney's Office*, Reprieve, August 2015.

[264] Ex. 118, Gilad Edelman, *Why Is It So Easy for Prosecutors to Strike Black Jurors?*, THE NEW YORKER, June 5, 2015.

- Although blacks make up 23% of the population in Louisiana, *80%* of criminal trials had no more than two black jurors, and it notably takes only 10 of 12 juror votes to convict in that state.[265]
- A 2011 study found that between 1990 and 2010, North Carolina state prosecutors struck about 53% of black people eligible for juries in criminal cases as compared to about 26% of white people.[266] The study's authors concluded that the chance of this occurring in a race-neutral process was less than 1 in 10 trillion.[267] Even after adjusting for excuses given by prosecutors that tend to correlate with race, the 2-to-1 discrepancy remained.[268] The North Carolina legislature had previously passed a law stating that death penalty defendants who could demonstrate racial bias in jury selection could have their sentences changed to life without parole.[269] The legislature later repealed that law.[270]
- Recently, American Public Media's "In the Dark" podcast did painstaking research on the 26-year career of Mississippi District Attorney Doug Evans and found that during his career, Evans'

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[265]Ex. 119, EJI, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy*.

[266]Ex. 122, Barbara O'Brian & Catherine M. Grosso, *Report on Jury Selection Study*, MICH. ST. UNIV. COLLEGE OF LAW FACULTY PUBLICATIONS, Dec. 15, 2011.

[267] *Id.*

[268] *Id.*

[269] Ex. 123, North Carolina Senate Bill 461, The Racial Justice Act.

[270] Ex. 124, Matt Smith, *"Racial Justice Act" repealed in North Carolina*, CNN, June 21, 2013.

office struck 50% of prospective black jurors, compared with just 11% of whites.[271]

- In the 32 years since *Batson*, the U.S Court of Appeals for the 5th Circuit — which includes Mississippi, Texas and Louisiana — has upheld a *Batson* challenge only twice, out of hundreds of challenges.[272]
- A survey of seven death penalty cases in Columbus, Georgia, going back to the 1970s found that prosecutors struck 41 of 44 prospective black jurors.[273] Six of the seven death penalty trials featured all-white juries.[274]
- In a 2010 study, "mock jurors" were given the same evidence from a fictional robbery case but then shown alternate security camera footage depicting either a light-skinned or dark-skinned suspect.[275] Jurors were more likely to evaluate ambiguous, race-neutral

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[271] Ex. 125, Will Craft, *Mississippi D.A. has long history of striking many blacks from juries*, APMReports, June 12, 2018.

[272] Ex. 126, Ian Millhiser, *Something has gone wrong with Jury Selection in Mississippi, and the Fifth Circuit is to Blame.*, THINK PROGRESS, Apr. 5, 2018.

[273] Ex. 127, Bill Rankin, *Motion: Prosecutors excluded black jurors in seven death penalty cases*, ATLANTA JOURNAL CONSTITUTION, Mar. 19, 2018.

[274] *Id.*

[275] Ex. 128, Justin D. Levinson, Danielle Young, *Different Shards of Bias: Skin Ton, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 W. VA. L. REV., 307 (2010).

evidence against the dark-skinned suspect as incriminating and more likely to find the dark-skinned suspect guilty.[276]

- Between 2005 and 2009, prosecutors in Houston County, Alabama, struck 80% of black people from juries in death penalty cases.[277] The result was that half the juries were all white and the remainder had only a single black juror, even though the county is 27% black.[278]

Although these statistics make painfully clear that racism in jury selection is still rampant, it is very difficult for defendants to prove that a prosecutor's purportedly race-neutral reasons are pretext for racism in all but the most egregious cases. In recent years, the Supreme Court has encountered a few of these egregious cases. In 2016, the Supreme Court held 7-1 that Georgia prosecutors violated *Batson* when they used peremptory strikes to remove all four African American potential jurors from Timothy Foster's capital jury. *Foster v. Chatman*, 136 S. Ct. 1737, 1755 (2016). The trial court accepted the prosecutors' purportedly race-neutral reasons for the strikes and denied Foster's *Batson* challenge. *Id.* at 1742-43. Mr. Foster, a black man, was then convicted and sentenced to death for the sexual assault and murder of a white woman, and his postconviction litigation of the *Batson* claim was unsuccessful. *Id.* at 1742. Almost 20 years later, Foster obtained a copy of the prosecutors'

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[276] *Id.*

[277] Ex. 129, Nina Totenberg, *Supreme Court Takes on Racial Discrimination in Jury Selection*, NPR Nov. 2, 2015.

[278] *Id.*

jury selection file, and the evidence of racial discrimination contained in it was so stark that it led to almost unanimous consensus among the justices that the prosecutors' strikes "were motivated in substantial part by race."[279] *Id.* at 1743, 1755. It is noteworthy that it took 20 years for Foster to obtain evidence of the blatant racism of his prosecutors and that he had lost his *Batson* claims in many courts along the way.

In 2019, the Court encountered another egregious case, and seven justices held that a Mississippi prosecutor violated *Batson* when he struck 41 out of 42 potential black jurors throughout six different trials of Curtis Flowers. *Flowers v. Mississippi*, 139 S. Ct. 2229, 2251 (2019).[280] The Mississippi Supreme Court reversed three times (all for prosecutorial misconduct, and one specifically for a *Batson* violation), and twice the jury could not reach a unanimous verdict. *Id.* at 2236-37. The Court described the prosecutor's pattern of racist use of peremptory strikes across his trials as follows:

> Stretching across Flowers' first four trials, the State employed its peremptory strikes to remove as many black prospective jurors as possible. The State appeared to proceed as if *Batson* had never been decided. The State's relentless, determined effort to rid the jury of black individuals strongly suggests that the State wanted to try Flowers before a jury

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[279] Justice Roberts delivered the opinion of the Court. *Foster*, 136 S. Ct. at 1742. Only Justice Thomas dissented. *Id.* at 1761 (Thomas, J., dissenting).

[280] Justice Kavanaugh delivered the opinion of the Court, *Flowers*, 139 S. Ct. at 2234. Justice Thomas dissented, and Justice Gorsuch partially joined his dissent. 139 S. Ct. at 2252 (Thomas, J., dissenting).

> with as few black jurors as possible, and ideally before an all-white jury. The trial judge was aware of the history. But the judge did not sufficiently account for the history when considering Flowers' *Batson* claim.
>
> The State's actions in the first four trials necessarily inform our assessment of the State's intent going into Flowers' sixth trial. We cannot ignore that history. We cannot take that history out of the case.

Id. at 2246. The Court held, "[i]n light of all of the circumstances here, the State's decision to strike five of the six black prospective jurors [at Flowers' sixth trial] is further evidence suggesting that the State was motivated in substantial part by discriminatory intent." *Id.*

Though the courts continue to attempt to root out racism in the selection of juries, the history outlined above makes clear that racist considerations often infect the jury selection process. Such prejudice is difficult for the courts to police – often masquerading as a socially acceptable trope or commonly held belief. Because the courts cannot effectively police the considerations applied to the selection of jurors, the courts cannot eliminate racism from the process. Where a defendant's life is on the line, the risk that racism will infect the process renders the use of the death penalty unconstitutional.

E. Defense attorneys can also be racist and have implicit bias, which often deprives capital defendants of their Sixth Amendment right to effective counsel.

Although prosecutors are often blamed for racial disparities in the legal system, defense attorneys are not immune to the effects of racism and implicit bias. In *Buck v. Davis*, 137 S. Ct. 759 (2017), the Court

considered an ineffective assistance of counsel challenge to defense counsel's introduction of a medical expert's report counsel knew presented the view that the defendant's "race disproportionately predisposed him to violent conduct" during the penalty phase, in which "the principal point of dispute" was whether the defendant "was likely to act violently in the future." *Id.* at 775. The Court characterized the report of stating "in effect, that the color of Buck's skin made him more deserving of execution." *Id.* As to the deficient-performance prong of *Strickland*, the Court concluded that the introduction of this report "fell outside the bounds of competent representation." *Id.* As to *Strickland's* prejudice prong, the Court rejected the district court's conclusion that "'the introduction of any mention of race' during the penalty phase was '*de minimis*.'" *Id.* at 777 (quoting the district court opinion). Instead, the Court held that the expert's testimony was "potent evidence" on the penalty phase question of future dangerousness, as it

> appealed to a powerful racial stereotype—that of black men as "violence prone." In combination with the substance of the jury's inquiry, this created something of a perfect storm. Dr. Quijano's opinion coincided precisely with a particularly noxious strain of racial prejudice, which itself coincided precisely with the central question at sentencing. The effect of this unusual confluence of factors was to provide support for making a decision on life or death on the basis of race.

Id. at 776. Thus, the Court held, "Buck has demonstrated prejudice." *Id.* at 777. The Court held, no matter how egregious the crime, "[o]ur law punishes people for what they do, not who they are." *Id.* at 778. Using this guiding principle the Court found that use of race as a factor

to determine the future dangerousness of a defendant, regardless of which party presents that evidence, is intolerable in our justice system. *Id.* at 780. As the Court explicitly found that defense counsel introduced the expert report (and live testimony) while aware of the expert's blatantly racist conclusions, counsel was clearly infected himself with overt racism or implicit bias.

In addition, even if not hampered by implicit bias or racism, issues of race put capital defense counsel is in an impossible, double bind. Given the clear and consistent role that race plays in sentencing, a lawyer who fails to inform a client that racism will affect the client's sentence could be said to have rendered ineffective assistance. *McCleskey v. Kemp*, 481 U.S 279, 321-22 (1987). However, a lawyer who tells a client that truth demolishes the client's confidence in the justice system. *Buck*, 137 S. Ct. at 778. In short, issues of race increase the likelihood that counsel will provide constitutionally inadequate assistance.

F. Juror bias vitiates the constitutionally-mandated, individualized sentencing determination.

The Constitution requires that capital sentencing be individualized to each defendant's "record, personal characteristics, and the circumstances of his crime." *Woodson v. North Carolina*, 428 U.S. 280, 303-04 (1976). In *Woodson*, the Court held that in capital cases, the "fundamental respect for humanity underlying the Eighth Amendment requires consideration of the character and records of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process." *Id.*; *accord Kansas v.*

Marsh, 548 U.S. 163, 173-74 (2006); *Tuilaepa v. California*, 512 U.S. 967, 972 (1994); *Zant v. Stephens*, 462 U.S. 862 (1983). Under the Eighth Amendment, "[w]hat is important at the [punishment] selection stage is an *individualized* determination of the basis of the character of the individual and the circumstances of the crime." *Zant*, 462 U.S. at 897 (emphasis in the original).

An individualized sentencing determination does not countenance the jury's consideration of race. As the Supreme Court held in 2017,

> The unmistakable principle . . . is that discrimination on the basis of race, "odious in all aspects, is especially pernicious in the administration of justice." *Rose v. Mitchell,* 443 U.S. 545, 555 (1979). The jury is to be "a criminal defendant's fundamental 'protection of life and liberty against race or color prejudice.' " *McCleskey v. Kemp,* 481 U.S. 279, 310 (1987). Permitting racial prejudice in the jury system damages "both the fact and the perception" of the jury's role as "a vital check against the wrongful exercise of power by the State." *Powers v. Ohio,* 499 U.S. 400, 411 (1991); *cf. Aldridge v. United States,* 283 U.S. 308, 315 (1931); *Buck v. Davis, 137 S. Ct. 759,* 779 (2017).
>
> *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017).

Despite this constitutional requirement, death-qualified juries routinely consider race in making sentencing determinations.[281] Nearly

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[281] Ex. 130, David C. Baldus et al., *Law and Statistics in Conflict: Reflections on McCleskey v. Kemp*, HANDBOOK OF PSYCH AND LAW 251 (D.K. Kagehiro & W.S. Laufer eds., 1992) (presenting statistical research indicating that a black defendant who kills a white victim has a significantly greater likelihood of receiving a sentence of death).

80% of executions are for the murder of white victims, despite blacks being as likely to be victims of murder.[282] Killers of black people rarely get death sentences.[283] White killers of black people get death sentences even less frequently.[284] And far and away, the person *most* likely to receive a death sentence is a black man who kills a white woman.[285] While white people make up less than half of the country's murder victims, a 2003 study by Amnesty International found that about 80 percent of the people on death row in the United States killed a white person.[286]

The correlation between the race of the victim and the severity of punishment exists in jurisdictions across the country:[287]

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[282] Ex. 110, *Ways That Race Can Affect Death Sentencing*, DEATH PENALTY INFORMATION CENTER.

[283] Ex. 131, Glenn L. Pierce, Michael L. Radelet, and Susan Sharp, *Race and Death Sentencing for Oklahoma Homicides Committed Between 1990 and 2012*, 107 CRIM. L. & CRIMINOLOGY 733 (2017).

[284] *Id.*

[285] *Id.*

[286] Ex. 132, *United States of America: Death by Discrimination – the Continuing Role of Race in Capital Cases*, Amnesty International, Apr. 23, 2003.

[287] Much of this section is drawn from Ex. 117, Radley Balko, *There's overwhelming evidence that the criminal-justice system is racist. Here's the proof.*, WASHINGTON POST, Sept. 18, 2018, Updated Apr. 10, 2019.

- A 2012 study of Harris County, Texas, cases found that people who killed white victims were 2.5 times more likely to be sentenced to the death penalty than other killers.[288]
- In Delaware, according to a 2012 study, "black defendants who kill white victims are seven times as likely to receive the death penalty as are black defendants who kill black victims . . . Moreover, black defendants who kill white victims are more than three times as likely to be sentenced to death as are white defendants who kill white victims."[289]
- A study of death penalty rates of black perpetrators/white victims versus white perpetrators/black victims through 1999 showed similar discrepancies. Notably, prosecutors are far less likely to seek the death penalty when the victim is black.[290]
- A study of North Carolina murder cases from 1980 through 2007 found that murderers who kill white people are three times more

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[288] Ex. 133, Scott Phillips, *Racial Disparities in the Capital of Capital Punishment*, 45 HOUSTON L. REV. (2008).

[289] Ex. 134, Sheri Lynn Johnson, John H. Blume, et al., *The Delaware Death Penalty: An Empirical Study (2012*), CORNELL LAW FACULTY PUBLICATIONS, Paper 431.

[290] Ex. 135, John H. Blume, Theodore Eisenberg, et. al., *Explaining Death Row's Population and Racial Composition*, (2004), CORNELL LAW FACULTY PUBLICATIONS, Paper 231.

likely to get the death penalty than murderers who kill black people.[291]

- A 2000 study commissioned by then-Florida Governor Jeb Bush found that the state had, as of that time, never executed a white person for killing a black person.[292]
- A 2004 study of Illinois, Georgia, Maryland and Florida estimated that "one quarter to one third of death sentenced defendants with white victims would have avoided the death penalty if their victims had been black."[293]
- According to a 2002 study commissioned by then-Governor Frank O'Bannon (D), Indiana had executed only one person for killing a nonwhite victim, and although 47% of homicides in the state involved nonwhite victims, just 16% of the state's death sentences did.[294]

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[291] Ex. 136, Michael L. Radelet & Glenn L. Pierce*, Race and Death Sentencing in North Carolina, 1980-2007*, 89 N.C. L. REV. 2119 (2011).
[292] Ex. 137, Christopher Slobogin, *The Death Penalty in Florida,* 1 ELON L. REV. 17 (2009).
[293] Ex. 138, David C. Baldus & George Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Face and Perception*, 53 DE PAUL L. REV. 1411 (2004).
[294]Ex. 139, Indiana Public Defender Council, *Death Penalty Facts* http://www.in.gov/ipdc/public/pdfs/Death%20Penalty%20Factsheet.pdf (last updated 6/3/2019; last checked 12/26/2019).

- Studies in Maryland,[295] New Jersey,[296] Virginia,[297] Utah,[298] Ohio,[299] Florida[300] and the federal criminal justice system produced similar results.[301]
- A 2014 study looking at 33 years of data found that after adjusting for variables such as the number of victims and brutality of the crimes, jurors in Washington state were 4.5 times more likely to impose the death penalty on black defendants accused of aggravated murder than on white ones.[302]

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[295]Ex. 140, Raymond Paternoster, Robert Rame, et. al., *Justice by Geography and Race: The Administration of the Death Penalty in Maryland, 1978-1999*, 4 U. MD. L.J. RACE RELIG. GENDER & CLASS 1 (2004).

[296]Leigh Buchanan Bienen, et. al., *The Reimposition of Capital Punishment in New Jersey: The Role of Prosecutorial Discretion*, 41 RUTGERS L. REV. 27 (1988).

[297]Ex. 141, *Broken Justice: The Death Penalty in Virginia*, ACLU (2003).

[298]Ex. 142, Erik Eckholm, *Studies Find Death Penalty Tied to Race of the Victims*, NTY, Feb. 24, 1995 at. B1.

[299] Ex 143, Frank Baumgartner, *The Impact of Race, Gender, and Geography on Ohio Executions* (2016).

[300] Ex 144, Frank Baumgartner, *The Impact of Race, Gender, and Geography on Florida Executions* (2016).

[301]Ex. 145, Excerpt from *U.S. DOJ Survey of the Federal Death Penalty System*, 1988-2000, available at https://www.justice.gov/archives/dag/survey-federal-death-penalty-system.

[302]Ex. 146, Katherine Beckett & Heather Evans, *The Role of Race in Washington State Capital Sentencing, 1981-2014*.

How a defendant's race affects the jury's assessment of his moral responsibility is more difficult to parse. Psychologist Samuel Sommers found that "[r]esearch examining the influence of a defendant's race on individual juror judgments has produced inconsistent results that are difficult to reconcile."[303] Studies have found everything from no effect, to bias for defendants of the same race, to even bias against or harsher judgment of defendants of the same race.[304] However, African American capital defendants suffer an extreme attribution error that whites commit when whites interpret and judge the behavior of minority group members.[305] This is based, in part, on years of media portrayal of criminal defendants (particularly defendants of color) as "others" via predatory language like "roving packs," "thugs," and "terrorists, " and the use of mug shots when reporting on suspects of color.[306]

Racist considerations infect jury rooms – often insidiously, but sometime overtly. Despite evidentiary rules that generally prevent discovery of juror considerations, the Supreme Court held that the need to ferret out juror racism trumps even long-standing evidentiary rules.

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[303]Ex. 147, Erik Ausion, *Empathy Leads to Death: Why Empathy is an Adversary of Capital Defendants*, 58 SANTA CLARA L. REV. 99, 2018.

[304] *Id.*

[305] Ex 148, Rebecca Hetey and Jennifer Eberhardt, *The Numbers Don't Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System*, Assoc. for Psych. Science (2018).

[306] *Id.*; *see also* Ex. 149, Leigh Donaldson, *When the Media Misrepresents Black Men, the Effects are Felt in the Real World*, THE GUARDIAN (Aug. 12, 105).

Peña-Rodriguez v. Colorado, 137 S. Ct. 855 (2017). For centuries, jury deliberations were a sacred space protected by the "no-impeachment rule." *Id.* at 861. Intended to promote "honest, candid, and robust" conversations, jurors were given the assurance that once their verdict was rendered, that verdict could not and would not be questioned based on the comments and conclusions they expressed while deliberating. *Id.* However, when faced with reports that a juror made racist statements during jury deliberations, the Court found that "racial prejudice is antithetical to the functioning of the jury system and must be confronted in egregious cases like this one despite the general bar of the no-impeachment rule." *Id.* at 871. The *Peña* Court found that racism, is a "familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." *Id.* at 868.

G. The inability to eliminate racism from the death penalty requires elimination of the death penalty.

Race continues to be a factor in death determinations. As the four dissenting *McCleskey* justices found "race casts a large shadow on the capital sentencing process." *McCleskey*, 481 U.S at 321-22. Nothing could be more arbitrary under the Eighth Amendment than a reliance upon race in determining who should live and die, be it the victim's, the defendant's, or a combination of the two. The systematic injury that continues to occur in the issuances of death sentences has been left unaddressed for long enough. The Eighth and Fourteenth Amendments to the U.S. Constitution and Article 1 § 16 of the Tennessee Constitution are intended for such a time as this.

Any consideration of race, whether intentional, conscious, unconscious, systematic, individual, or implicit to impose a criminal sanction "poisons public confidence" in the judicial process. *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (citing *Davis v. Ayala,* 135 S. Ct. 2187 (2015)). "It thus injures not just the defendant, but 'the law as an institution . . . the community at large, and ... the democratic ideal reflected in the processes of our courts.'" *Id.* (quoting *Rose v. Mitchell,* 443 U.S. 545, 556 (1979) (internal quotation marks omitted)).

As Justice Blackmun once wrote,

> The fact that we may not be capable of devising procedural or substantive rules to prevent the more subtle and often unconscious forms of racism from creeping into the system does not justify the wholesale abandonment of the *Furman* promise. To the contrary, where a morally irrelevant—indeed, a repugnant—consideration plays a major role in the determination of who shall live and who shall die, it suggests that the continued enforcement of the death penalty in light of its clear and admitted defects is deserving of a "sober second thought." Justice Brennan explained:
>
> > Those whom we would banish from society or from the human community itself often speak in too faint a voice to be heard above society's demand for punishment. It is the particular role of courts to hear these voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life. The Court thus fulfills, rather than disrupts, the scheme of separation of powers by closely scrutinizing the imposition of the

> death penalty, for no decision of a society is more deserving of "sober second thought."

Callins v. Collins, 510 U.S. 1141, 1154–55 (1994) (Blackmun, J., dissenting from denial of certiorari) (quoting *McCleskey v. Kemp*, 481 U.S. 279, 341(1987) (Brennan, J., dissenting) (internal citations omitted)).

As the Supreme Court found in *Buck*, reliance on race to impose a criminal sanction "poisons public confidence" in the judicial process. *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (quoting *Davis v. Ayala,* 135 S. Ct. 2187, 2208 (2015)). It thus injures not just the defendant, but "the law as an institution . . . the community at large, and ... the democratic ideal reflected in the processes of our courts." *Rose v. Mitchell,* 443 U.S. 545, 556 (1979) (internal quotation marks omitted). The courts' continued acquiescence, the continuation of prosecutorial discriminatory policies (both explicit and implicit), and the history and social structures of the nation require this Court intervene to prevent the further erosion of public confidence in the legal system. This Court should find that the use of the death penalty violates evolving standards of decency of the Eighth Amendment and Article 1 § 16 of the Tennessee Constitution.

VI. TENNESSEE IS OUT OF STEP WITH THE EVOLVING STANDARDS OF DECENCY THAT HAVE LED MOST OF THE COUNTRY TO STOP EXECUTING ITS CITIZENS AND WHICH RENDER TENNESSEE'S DEATH PENALTY UNCONSTITUTIONAL.

As the United States Supreme Court has held, a court considering a challenge that a punishment violates the Eighth Amendment must look to the evolving standards of decency:

> The prohibition against "cruel and unusual punishments," like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework we have established the propriety and affirmed the necessity of referring to "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be cruel and unusual.

Roper v. Simmons, 543 U.S. 551, 560-61 (2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 100–101 (plurality opinion)).

Determination of the current standards of decency is not static, but instead courts must continually reassess the current standards of decency as new challenges to punishments are brought under Article I, §16 of the Tennessee Constitution and the Eighth Amendment to the United States Constitution. The Supreme Court modeled the ongoing nature of this analysis in *Roper*, describing the change in the standards of decency in the 16 years between its holding that executing juveniles over 15 but under 18 was not unconstitutional in *Stanford v. Kentucky*, 492 U.S. 361 (1989), and its holding to the

contrary in *Roper* and the similar changes in the 13 years between its holding that executing the intellectually disabled was not unconstitutional in *Penry v. Lynaugh*, 492 U.S. 302 (1989), and its holding to the contrary in *Atkins v. Virginia*, 536 U.S. 304 (2002). *Roper*, 543 U.S. at 561. As the Court summed up its task in *Roper*: "Just as the *Atkins* Court reconsidered the issue decided in *Penry*, we now reconsider the issue decided in *Stanford*." *Id.* at 564.

So too must this Court reconsider whether the current and growing national consensus against the death penalty compels the conclusion that the death penalty in Tennessee is now unconstitutional. Supreme Court precedent dictates the methodology for this analysis:

> The beginning point is a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question. These data give us essential instruction. We then must determine, in the exercise of our own independent judgment, whether the death penalty is a disproportionate punishment . . . .

Id. Within the objective indicia of consensus, courts are to consider the current state of society's views by considering "the rejection of the . . . death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice." *Id.* at 567 (the word "juvenile" omitted).

Here, these factors provide sufficient evidence that there is now a national consensus against the death penalty. Executions are now rare or non-existent in most of the nation. The majority of states—32 out of 50—have either abolished the death penalty or have not carried out an

execution in at least ten years.[307] An additional six states have not had an execution in at least five years, for a total of 38 states with no executions in that time.[308] Moreover, just last month, Gallup released its latest poll reflecting that now, for the first time, 60% of the country favor life in prison over a death sentence.[309] Perhaps most revealing about this poll is the sea change in attitudes occurring in just the last five years. Where, in 2014, only 45% of the country favored a life sentence over death, that number has increased by 15% in only five years. Importantly, the poll also demonstrates that the shift toward favoring a life sentence is apparent in every single major subgroup:

> Since 2014, when Gallup last asked Americans to choose between life imprisonment with no parole and the death penalty, *all key subgroups show increased preferences for life imprisonment*. This includes increases of 19 points among

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[307] Ex. 150, *Indiana Marks 10 Years Without an Execution*, Death Penalty Information Center (DPIC), December 11, 2019, https://deathpenaltyinfo.org/news/indiana-marks-10-years-without-an-execution (last visited Dec. 24, 2019).

[308] Ex. 151, *States with no death penalty or with no execution in 10 years*, Death Penalty Information Center, December 11, 2019, https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions (last visited Dec. 24, 2019).

[309] Ex. 152, *Americans Now Support Life in Prison Over Death Penalty*, Gallup, November 25, 2019, https://news.gallup.com/poll/268514/americans-support-life-prison-death-penalty.aspx (last visited Dec. 24, 2019).

> Democrats, 16 pointes among independents, and 10 points among Republicans."[310]

Particularly significant to Tennessee, conservative Christians have also coalesced in an effort to abolish the death penalty. *Conservatives Concerned About the Death Penalty* was formed on a national level in 2013 to "question the alignment of capital punishment with conservative principles and values."[311] Tennessee has since formed its own chapter.[312] Both the national and Tennessee chapters are opposed to capital punishment for increasingly familiar reasons. *Tennessee Conservatives Concerned About the Death Penalty* cites the following concerns:

- Innocence – Since 1973, more than 150 people have been freed from death row across the country after evidence of innocence revealed they had been wrongfully convicted.[313]
- Arbitrariness – "Just one percent of murders in the United States have resulted in a death sentence over the last decade. But are

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[310] *Id.* (emphasis added).

[311] Ex. 153, Conservatives Concerned About the Death Penalty, https://conservativesconcerned.org/who-we-are/ (last visited Dec. 24, 2019).

[312] Ex. 154, Tennessee Conservatives Concerned About the Death Penalty (TNCC)- Home, http://tnconservativesconcerned.org/ (last visited Dec. 24, 2019).

[313] Ex. 155, TNCC, http://tnconservativesconcerned.org/concerns/ (last visited Dec. 24, 2019. Ex. 170, Samuel Gross, et al., *Race and Wrongful Convictions in the United States*, National Registry of Exonerations (2017).

those individuals truly the 'worst of the worst' – or simply those with inadequate legal representation?"[314]

- Lack of deterrence –The death penalty does not prevent violent crime.[315]

Indeed, these same concerns are recognized in the recent year-end report by the Death Penalty Information Center, which noted that, "innocence remained a crucial concern in 2019, as two people were exonerated from death row more than 40 years after their convictions."[316] Even more poignant, "Two prisoners were executed this year despite substantial doubts as to their guilt and [two more] came close to execution despite compelling evidence of innocence."[317] As to the unconstitutional arbitrariness of capital punishment, the report concluded:

> The 22 executions this year belied the myth that the death penalty is reserved for the "worst of the worst." At least 19 of the 22 prisoners who were executed this year had one or more of the following impairments: significant evidence of mental illness (9); evidence of brain injury, developmental brain damage, or an IQ in the intellectually disabled range

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[314] *Id.*

[315] *Id.*

[316] Ex. 156, *DPIC 2019 Year End Report: Death Penalty Erodes Further As New Hampshire Abolishes and California Imposes Moratorium*, Death Penalty Information Center, December 17, 2019, https://deathpenaltyinfo.org/news/dpic-2019-year-end-report-death-penalty-erodes-further-as-new-hampshire-abolishes-and-california-imposes-moratorium (last visited Dec. 24, 2019).

[317] *Id.*

> (8); or chronic serious childhood trauma, neglect, and/or abuse (13). Four were under age 21 at the time of their crime, and five presented claims that a co-defendant was the more culpable perpetrator. Every person executed this year had one of the impairments listed above, an innocence claim, and/or demonstrably faulty legal process."[318]

The United States Supreme Court has previously found such a rapid in the shift of attitudes regarding the imposition of the death penalty relevant to its Eighth Amendment analysis of the evolving standards of decency. For example, in *Atkins v. Virginia*, 536 U.S. 304 (2002), the Court, in reversing its previous determination regarding the execution of the intellectually disabled, emphasized just how quickly national standards of decency had evolved towards finding such a practice to be unconstitutionally cruel and unusual:

> Much has changed since *Penry's* conclusion that the two state statutes then existing that prohibited such executions, even when added to the 14 States that had rejected capital punishment completely, did not provide sufficient evidence of a consensus. 492 U.S. at 334. Subsequently, a significant number of States have concluded that death is not a suitable punishment for a mentally retarded criminal, and similar bills have passed at least one house in other States. It is not so much the number of these States that is significant, but the consistency of the direction of change. Given that anticrime legislation is far more popular than legislation protecting violent criminals, the large number of States prohibiting the execution of mentally retarded persons (and the complete absence of legislation reinstating such executions) provides

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[318] *Id.*

> powerful evidence that today society views mentally retarded offenders as categorically less culpable than the average criminal. The evidence carries even greater force when it is noted that the legislatures addressing the issue have voted overwhelmingly in favor of the prohibition. Moreover, even in States allowing the execution of mentally retarded offenders, the practice is uncommon.

Atkins, 536 U.S. at 304-05.

While the standards of decency of the nation as a whole have evolved towards rejection of the death penalty, Tennessee has fallen out of step with the rest of the country – particularly in the last eighteen months, during which the State has executed six of its citizens at a rate not seen since before 1960.[319] Post-*Furman* and *Gregg*, Tennessee was one of the last states[320] to resume executions when it executed Robert Coe

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[319]Ex. 157, *Tennessee Executions*, Tennessee Department of Correction, https://www.tn.gov/correction/statistics-and-information/executions/tennessee-executions.html (last visited Dec. 24, 2019).

[320] Of states that have performed executions post-*Furman*, only three states waited longer than Tennessee to resume: New Mexico (2001); Connecticut (2005); and South Dakota (2007). Ex. 158 – *Executions by State and Year*, Death Penalty Information Center https://deathpenaltyinfo.org/executions/executions-overview/executions-by-state-and-year (last visited Dec. 24, 2019). Of those three states, two have since abolished the death penalty all-together, New Mexico doing so in 2009 and Connecticut in 2012. Ex. 159, *States with no Recent Executions*, Death Penalty Information Center, https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions (last visited Dec. 24, 2019).

on April 19, 2000 – the state's first execution in forty years.[321] The State executed another five men between 2006 and 2009.[322] And, it should be stressed that one of those men, Sedley Alley, may well have been innocent of the murder for which he was put to death – an unconscionable reality.[323] The number of exonerations of individuals on death row – three innocent men have been freed from Tennessee's death row, alone[324] – is but one of the features of capital punishment that have led a clear majority of the country to decide that it doesn't represent our standards of decency and should be eliminated. Another, is the completely arbitrary way the death penalty is imposed. Indeed, whether based on race, poverty, or where the crime happens to take place, the imposition of the

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[321] Ex. 157, *Tennessee Executions*, Tennessee Department of Correction, https://www.tn.gov/correction/statistics-and-information/executions/tennessee-executions.html (last visited Dec. 24, 2019).

[322] Sedley Alley – June 28, 2006
Phillip Workman – May 9, 2007
Daryl Holton – September 12, 2007
Steve Henley – February 4, 2009
Cecil Johnson–December 2, 2009. *Id.*

[323] Ex. 160, *Did Tennessee Execute and Innocent Man?* Nashville Scene, May 2, 2019, https://www.nashvillescene.com/news/pith-in-the-wind/article/21067050/did-tennessee-execute-an-innocent-man (last visited Dec. 24, 2019).

[324] Ex. 161, *Tennessee*, Death Penalty Information Center, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/tennessee (last visited Dec. 24, 2019).

death penalty in the United States is not reserved for the worst of the worst but is, rather, completely and unconstitutionally arbitrary.

A. The imposition of the death penalty in the United States and in Tennessee, in particular, is more arbitrary than ever before.

When considering an explanation for why a majority of the American population has determined that capital punishment violates our society's standards of decency, one needs to look to the arbitrary way in which it is determined who gets sentenced to death and who does not. This exact concern led the United States Supreme Court to abolish the death penalty nearly fifty years ago in *Furman*, determining that, when capital punishment is imposed arbitrarily, it is unconstitutionally cruel and unusual:

> It would seem to be incontestable that the death penalty inflicted on one defendant is "unusual" if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices. There is evidence that the provision of the English Bill of Rights of 1689, from which the language of the Eighth Amendment was taken, was concerned primarily with selective or irregular application of harsh penalties and that its aim was to forbid arbitrary and discriminatory penalties of a severe nature.
> *Furman v. Georgia*, 408 U.S. 238, 242 (1972).

Just a few years after *Furman*, the Supreme Court approved supposed legislative corrections designed to eliminate arbitrariness in the imposition of the death penalty. *Gregg v. Georgia*, 428 U.S. 153 (1976). Yet, time and again, these purported fixes, adopted in some form

or fashion by numerous states, have failed to actually result in the death penalty being any less arbitrary. In fact, its imposition in many cases is more arbitrary than ever. As a result, more and more states have ceased executions or abolished the practice all-together.[325]

There are several ways in which the death penalty is imposed arbitrarily. Among them, are the exact concerns – racial and economic disparity – addressed by *Furman*.

1. Racial disparity in the imposition of the death penalty has grown.

Racial disparity in the imposition of the death penalty has actually gotten significantly worse in the last ten years, both nationally and here in Tennessee. Whereas nationally, in the ten years post-*Gregg*, 46% of those sentenced to death were people of color, in the last ten years, that number reached a remarkable 60%.[326] In Tennessee, while African-

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[325] Ten states never had the death penalty post-*Gregg*. An additional eleven states have eliminated their death penalty since that time: Massachusetts (1984); Rhode Island (1984); New Jersey (2007); New York (2007); New Mexico (2009); Illinois (2011); Connecticut (2012); Maryland (2013); Delaware (2016) (state supreme court found unconstitutional); Washington (2018) (state supreme court found unconstitutional); and New Hampshire (2019). Ex. 162, *States with and without the death penalty*, Death Penalty Information Center, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited Dec. 24, 2019).

[326] Ex. 163, *Death and Texas: Race Looms Ever Larger as Death Sentences Decline*, THE INTERCEPT, December 3, 2019,

Americans comprise only 17% of the state's population, 50% of the individuals on Tennessee's death row are African-American.[327] This example of the arbitrary imposition of the death penalty is reason enough to support a life sentence over execution. Yet, there is more.

2. Geographic disparity in the imposition of the death penalty has grown.

The most important factor for determining who is sentenced to death and who is not has nothing to do with the nature of the offense but, rather, where it is committed. Initially, and most obvious of course, is the fact that 21 states do not even have a death penalty. Moreover, as outlined above, an additional 11 have not executed anyone in the last ten years. And in the last five years there have been no executions in almost 80% (38 of 50 states) of the country. But it is even more revealing to take note of the death penalty by county.

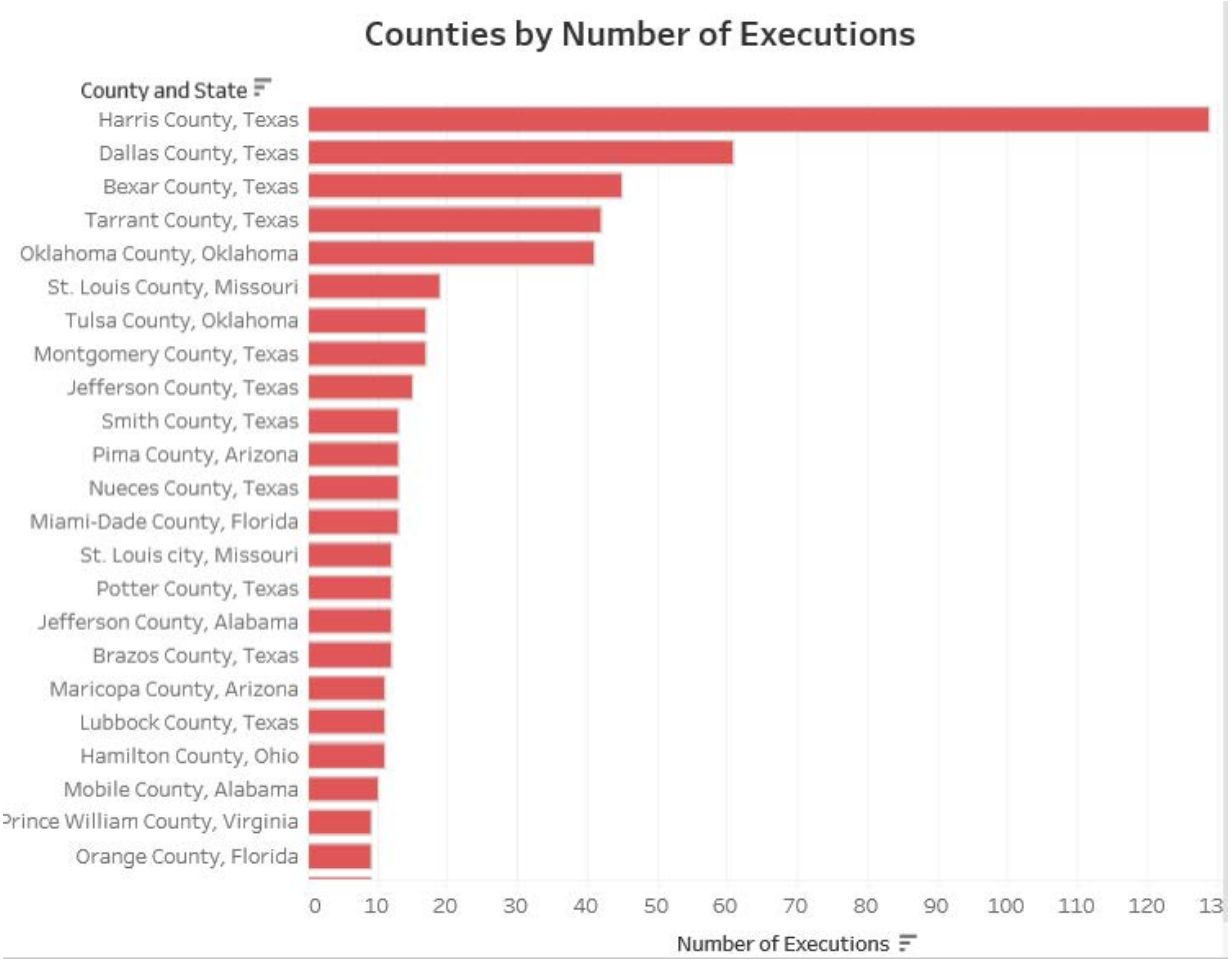
Eighty-four percent (84%) of the counties in the United States have not had an execution (of an individual sentenced to death in that county)

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https://theintercept.com/2019/12/03/death-penalty-race-texas/ (last visited Dec. 24, 2019).

[327] Ex. 164, *Tennessee Death Row Offenders*, Tennessee Dep't of Correction, https://www.tn.gov/correction/statistics-and-information/death-row-facts/death-row-offenders.html (last visited Dec. 24, 2019).

in the past 50 years.[328] As the graph below shows, among the counties that have had an individual sentenced to death in that county executed, Harris County, Texas—Houston—outpaces the rest by an astonishing margin, accounting for more than twice as many executions (at 129 individuals) as the next closest county (Dallas County, Texas, at 61): [329]



[328] Ex. 150, *Indiana Marks 10 Years Without An Execution*, Death Penalty Information Center, https://deathpenaltyinfo.org/news/indiana-marks-10-years-without-an-execution (last visited Dec. 24, 2019).

[329] Ex. 165, *Executions by County*, Death Penalty Information Center, https://deathpenaltyinfo.org/executions/executions-overview/executions-by-county (last visited Dec. 24, 2019).

When it comes to racial and geographic disparities in the imposition of the death penalty, however, it does not get more emblematic than Colorado where not only are all three men sitting on death row black, but they also all went to the same high school.[330]

In Tennessee, the geographic disparity is no less stark. Since 2001, only *eight* (8) of Tennessee's ninety-five (95) counties have imposed sustained death sentences.[331] While Shelby County represents less than fourteen percent (14%) of Tennessee's population, almost half of the men on death row come from Shelby County.[332] And, of the nine trials resulting in a death sentence since 2010, five were from Shelby County.[333]

> Tennessee's death penalty laws are unconstitutional, as standards of decency have evolved such that Tennesseans, Americans, and citizens of the world increasingly reject the cruel and arbitrary ways capital sentences are determined.

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[330] Ex. 166, *The Abolitionists*, The Intercept, December 3, 2019, https://theintercept.com/2019/12/03/death-penalty-abolition/ (last visited Dec. 24, 2019).

[331] Ex. 167, *Tennessee's Death Penalty Lottery*, TENNESSEE JOURNAL OF LAW AND POLICY, Vol. 13, Summer, 2018, at 139-140, https://tennesseelawandpolicy.files.wordpress.com/2018/07/maclean-and-miller-tennessees-death-penalty-lottery1.pdf (last visited Dec. 24, 2019).

[332] Ex. 164, *Tennessee Death Row Offenders*, Tennessee Dep't of Correction, https://www.tn.gov/correction/statistics-and-information/death-row-facts/death-row-offenders.html (last visited Dec. 24, 2019).

[333] *Id.*

Forty-plus years of attempts to correct the unconstitutional arbitrariness of the death penalty have only resulted in ever-greater arbitrariness in determining who gets sentenced to death and who does not. Evolving standards of decency over that time have led a majority of the country to recognize that the arbitrariness in the imposition of the death penalty is unconstitutionally cruel and unusual. This recognition has led to the steadily-increasing rejection of the death penalty which is so clearly outlined by the statistics detailed throughout this section.

The progression towards abolishing capital punishment in its entirety is consistent with the previous evolutions which resulted in the abolition of the death penalty for the intellectually disabled and for juveniles. Just as the Supreme Court held that evolving standards of decency demanded a stop to executing these categories of individuals, this Court should now hold that the death penalty as a whole is unconstitutional in light of the evolving standards of decency documented here (and elsewhere).

B. The evolution in our society's standards of decency that led the Supreme Court to abolish capital punishment for juveniles and the intellectually disabled is occurring now with respect to the death penalty as a whole.

It wasn't until 2005 that the Supreme Court determined that our standards of decency had evolved to the point of concluding that it was unconstitutionally cruel and unusual to execute individuals who were juveniles at the time of their crime. *Roper v. Simmons*, 543 U.S. 551 (2005). And it was only three years before that the Court, also looking to our standards of decency, put a stop to executing the intellectually

disabled. *Atkins v. Virginia*, 536 U.S. 304 (2002). These realities are now so accepted by society that it is almost impossible to fathom a time when they were not. The discussion in *Roper* is instructive, as it demonstrates a clear parallel between the evolution of the standards of decency that led to the abolition of executing children and those that put a stop to executing the intellectually disabled. An identical parallel can now be seen between those evolutions and the one now evident supporting the abolition of the death penalty entirely. Indeed, reviewing how standards of decency previously evolved is particularly instructive to the argument presented here – that Tennessee is simply behind the rest of the country in recognizing that current evolving standards of decency are not commensurate with the execution of individuals who were sentenced to death in such an arbitrary way.

The Supreme Court's discussion in *Roper* begins by pointing out that the Court had previously, in 1988, determined that "our standards of decency do not permit the execution of any offender under the age of 16 at the time of the crime." *Thompson v. Oklahoma*, 487 U.S. 815, 818-838 (1988). *Thompson*, however, did not prohibit the execution of those 16 or older at the time of their crime. One year later, in a 5-4 decision, the Supreme Court again held that the Eighth and Fourteenth Amendments did not prohibit the execution of juvenile offenders over 15 but under 18. *Stanford v. Kentucky*, 492 U.S. 361 (1989). *Roper* also points out the evolution occurring over the almost identical period of time between *Penry* in 1989 (where the Court held it was not unconstitutional to execute the intellectually disabled), and *Atkins* in 2002 (where the

Court held that standards of decency had evolved to the point that executing the intellectually disabled was unconstitutional).

The *Roper* Court noted that "[t]he evidence of national consensus against the death penalty for juveniles is similar, and in some respects parallel, to the evidence *Atkins* held sufficient to demonstrate a national consensus against the death penalty for the mentally retarded." *Roper*, 543 U.S. at 564. The Court then tracked the evolution of the national consensus against executing the intellectually disabled that led to its decision in *Atkins*, and conducted a similar review of the increasing number of states that had prohibited the death penalty for juveniles. *Roper*, 543 U.S. at 564-65. What, perhaps, stands out most in this portion of the *Roper* discussion is the emphasis the Court placed on the fact that, even prior to the Court declaring the death penalty for juveniles unconstitutionally cruel and unusual, the state of Kentucky made this determination on its own and commuted the sentence of the very juvenile it had previously fought for and won the right to execute.

It is critical to note of the factors that were important to the Supreme Court in both *Roper* and *Atkins* in determining just where contemporary standards of decency stood:

Regarding *national consensus*, last month's Gallup poll revealed that 60% of the nation now prefer a life sentence over a death sentence.[334]

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[334] Ex. 168, *2019 Year-End Report*, Death Penalty Information Center (hereinafter "2019 DPIC report"), at 2 (report available at https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-

As to *practice within the states*, there are now 21 states without the death penalty and, as noted at the outset of this section, a total of 38 states (very nearly 80% of the country) have not had an execution in the last five years.[335] Just this year, in addition to the abolition of the death penalty in New Hampshire and the moratorium in California, increasing numbers of states sought to further limit the use of the death penalty.[336] Oregon, already under a moratorium since 2011, significantly narrowed the class of crimes eligible for the death penalty, as did Arizona.[337] Both Wyoming and Colorado introduced legislation to abolish capital punishment in its entirety.[338] And nine different state legislatures considered bills to ban the execution of those with severe mental illness.[339]

Perhaps most important is the *consistency in the trend towards abolition* – the type of evidence the *Atkins* Court referred to as "telling." 536 U.S. at 315. According to the Gallup poll conducted in October 2019, in only five years, the percent of individuals who favor of a life sentence

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end-reports/the-death-penalty-in-2019-year-end-report (last visited Dec. 24, 2019)).

[335] Ex. 159, *States with no death penalty or with no execution in 10 years*, Death Penalty Information Center, December 11, 2019, https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions (last visited Dec. 24, 2019).

[336] Ex. 168, 2019 DPIC Report, at 2.

[337] *Id.* at 3.

[338] *Id.* at 4.

[339] *Id.*

over capital punishment rose 15%, from 45% in 2014 to 60% in 2019.[340] Moreover, this Gallup poll showed a wide demographic preference for life imprisonment over the death penalty, with majorities of men and women, whites and non-whites, and all age and educational demographics responding with this preference for punishing murder.[341] Equally consistent is the almost yearly addition – over the last ten years – of a new state that has abolished the death penalty all-together.[342]

Tennessee was one of only seven states to perform an execution in 2019,[343] and joins only Texas in having any executions scheduled for 2020.[344] Although Ohio previously had executions scheduled, the Governor suspended them in the wake of a court decision comparing its execution process to waterboarding, suffocation and being chemically burned alive.[345] Otherwise, across the United States, 2019 saw the use of

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[340] *Id.* at 14; *see also* Ex. ##, Gallup Poll, https://deathpenaltyinfo.org/news/gallup-poll-for-first-time-majority-of-americans-prefer-life-sentence-to-capital-punishment (last visited Dec. 27, 2019).

[341] Ex. 152, Gallup Poll at 1-2.

[342] New Mexico (2009); Illinois (2011); Connecticut (2012); Maryland (2013); Delaware (2016); Washington (2018); and New Hampshire (2019). Ex. 162, *States with and without the death penalty*, Death Penalty Information Center, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited Dec. 24, 2019).

[343] Ex. 168, 2019 DPIC Report, at 6.

[344]Ex. 169, *Upcoming Executions*, Death Penalty Information Center, https://deathpenaltyinfo.org/executions/upcoming-executions#year2020 (last visited Dec. 24, 2019).

[345] Ex. 168, DPIC Report, at 2.

the death penalty remain near historic lows, as there were but 22 executions and less than 40 new death sentences imposed – the fifth straight year in a row with fewer than 30 executions and fewer than 50 new capital sentences.[346]

There are now entire regions of the country without the death penalty. With New Hampshire's abolition of the death penalty in May of this year, there is no death penalty in any New England state.[347] Moreover, the only northeastern state that still has a death penalty law on its books – Pennsylvania – has a moratorium on executions.[348] Indeed, the geographic disparity for determining who is executed and who is not is more striking than ever as 91% of the executions in 2019 happened in the South and 41% in Texas alone.[349] Tennessee accounted for 14% of all executions in 2019 (3 out of 22),[350] and if the nine requested execution dates are issued, that percentage will be yet higher in 2020 and 2021.

Four decades after *Furman* and *Gregg*, the cruel and unusual nature of the arbitrary imposition of the death penalty is plainly evident. Moreover, such arbitrary imposition does not satisfy our standards of decency. This much is clear from the ever-dwindling number of states—and counties—performing executions and the ever-increasing number of states abolishing the practice all-together. There is clearly a consistent,

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[346] Ex. 168, 2019 DPIC Report, at 2.

[347] *Id.*

[348] *Id.* at 3.

[349] *Id.* at 6.

[350] *Id.* at 6.

national trend towards abolition of the death penalty. As the reality of capital punishment is exposed – whether its racist and otherwise arbitrary imposition or the terrifying fact that scores of innocent people have been sentenced to death and some likely executed – a national consensus has formed declaring that capital punishment does satisfy our standards of decency.

C. This Court has the authority and should exercise its own independent judgment to conclude the death penalty as practiced in Tennessee is unconstitutional, deny the State's request for an execution date and, instead, issue a certificate of commutation.

It is disturbing that the very aspects that have led most of the country to reject the death penalty as arbitrary and thus, cruel and unusual, are ever-present in Tennessee, even as our Attorney General seeks to schedule executions in unprecedented numbers. This Court, however, has the authority – recognizing the realities of capital punishment that are leading the United States consistently towards total abolition – to deny the State's request for an execution date and, instead, commute a death sentence to one of life in prison. As the supreme judicial authority of Tennessee, this Court has the inherent, supreme judicial power under Article VI § 1 of the Tennessee Constitution, *In Re Burson*, 909 S.W.2d 768, 772-73 (Tenn. 1995), and undisputed "broad conference of full, plenary, and discretionary inherent power" under Tenn. Code Ann. §§ 16-3-503-04, to deny the Attorney General's motion to set an expedited execution date and instead vacate Mr. Carruthers' death sentence and modify it to life. *See* *Ray v. State*, 67 S.W. 553, 558 (Tenn.

1902) (modifying death sentence to life); *Poe v. State*, 78 Tenn. 673, 685 (1882) (same).

Mr. Carruthers respectfully request that this Court look to the Washington Supreme Court's recent ruling that the death penalty in that state was unconstitutional. *State v. Gregory*, 427 P.3d 621 (Wash. 2018). The Court's holding was based on its conclusion, as urged here, that the "arbitrary and race based imposition of the death penalty cannot withstand the 'evolving standards of decency that mark the progress of a maturing society.'" *Id.* at 635 (quoting *Trop*, 356 U.S. at 101). The Washington court placed emphasis on the same considerations articulated by the Supreme Court in *Atkins* and *Roper*:

> When considering a challenge under article I, section 14, we look to contemporary standards and experience in other states. We recognize local, national, and international trends that disfavor capital punishment more broadly. When the death penalty is imposed in an arbitrary and racially biased manner, society's standards of decency are even more offended. Our capital punishment law lacks "fundamental fairness" and thus violates article I, section 14.

Id. at 635-36 (citations omitted).

Decades of evidence have clearly demonstrated that the imposition of the death penalty is not for the worst of the worst but is, rather, unconstitutionally arbitrary. This objective truth has led to a clear national consensus favoring a life sentence over death. In this regard, Tennessee has simply fallen out of step with society's evolving standards of decency. Tennessee's death penalty law is unconstitutional. Mr.

Carruthers, therefore, respectfully requests that this Court deny the State's request for an execution date, and, instead, issue a certificate of commutation.

VII. CONCLUSION

Undersigned counsel cares deeply about Tony Von Carruthers. He does not deserve to die. He did not choose to have a serious mental illness. He never wanted, as a consequence of his mental illness, to be forced to defend himself at a trial for his life.

But, against his will, and contrary to justice, he was forced to defend himself. And, he failed. He failed, primarily, because he was not competent to defend himself. Due to mental illness he acted in a manner, and made choices in a way, that assured conviction and the death penalty.

He also failed because the jury was lied to. Alfredo Shaw lied, thrice, about a confession that never happened. The jury was lied to by a medical examiner who told them a horrific myth about three victims being buried alive—and that myth became the prosecutions' essential argument for death. And based on that since repudiated myth and that central, but false, argument, the jury imposed death.

This Honorable Court can stop this train of injustice.

Respectfully, it would be appropriate under our constitutions and our laws for this Honorable Court to (1) refuse to set a date for Mr. Carruthers' execution, (2) issue a Certificate of Commutation based on the unique and powerful extenuating circumstances that have been set-

forth in this Response, and (3) remand this case to the trial court for full and fair hearings where Mr. Carruthers' competency to be executed, competency to stand trial, competency to defend himself, and claim of exemption from execution due to Serious Mental Illness may be heard.

Respectfully submitted this 30th day of December, 2019,

KELLEY J. HENRY, BPR #21113
Supervisory Asst. Federal Public Defender

AMY D. HARWELL, BPR #18691
Asst. Chief, Capital Habeas Unit

RICHARD L. TENNENT, BPR #16931
Asst. Federal Public Defender

JAMES O. MARTIN, III, BPR #18104
Asst. Federal Public Defenders

FEDERAL PUBLIC DEFENDER FOR THE
MIDDLE DISTRICT OF TENNESSEE
810 Broadway, Suite 200
Nashville, Tennessee 37203
Phone: (615) 736-5047/Fax: (615) 736-5265
Email: Kelley_Henry@fd.org

CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that a true and correct copy of the foregoing Response in Opposition to Request to Set Execution Date was served via email and United States Mail to opposing counsel, Amy Tarkington, Associate Solicitor General, P.O. Box 20207, Nashville, Tennessee, 37202.

BY: 
Kelley J. Henry

EXHIBIT 8

This is the statement of JOHNATHAN MONTGOMERY, BLACK/MALE, 23; 679 PEARCE/527-1033; 10; UNEMPLOYED. This statement is made on THURSDAY, March 3, 1994, at 4:13 A.M. in the Property Crimes Office, 201 Poplar, Room 11-16 to SGT. R.D. ROLESON, relative to the DISAPPEARANCE OF DELORES ANDERSON, MARCELLUS ANDERSON AND FRED TUCKER which was reported on February 25, 1994 at 4520 KERWIN by JOYCE LOVETT and which is filed under R & I 94-02-25-7239MF.

JOHNATHAN MONTGOMERY, you are not under arrest, however, this investigation will continue and if the facts so warrant, you could be arrested and charged at a later date.

I am going to ask you some questions regarding the above complaint. You have the right to remain silent and anything you say can be used against you in a court of law. You have a right to have a lawyer, either of your own choice, or court appointed if you are unable to afford one, and to talk with him before answering any questions, and to have him with you during questioning if you wish.

Q: Do you understand each of these rights I have explained to you?
A: YES SIR.

Q: Do you wish to make a statement now?
A: YES SIR.

Q: On Thursday 2-24-94 at approximately 4:30 p.m. while in the 600 block of Dunlap, did you get into a white Cherokee Jeep with Marcellus Anderson?
A: Yes.

Q: Who else was in this jeep?
A: James Montgomery, Marcellus and another male black.

Q: Explain how you got into the vehicle.
A: I was talking to Sean Anderson and the truck pulled up and James got in and they started to pull off but they backed up. James told me to get in and he told Marcellus to come and drop Lulu off at home and take me to pick up my clothes from the cleaners, and that he was going to pick up Tony and they were going to go riding. I asked James could I go and he said he didn't want me to go, so he drove me around to my house on Pearce. I got out and grabbed the mail out of the mailbox and took it in the house. When I came back outside, they were halfway to Orphanage. I went back around on Dunlap and I talked to Charles Smith for 20 minutes and then I went down to Dunlap and Saffarans with some friends of mine. We were smoking weed and I went in the store and played the Street Fighters game and then I went next door over my friend named Troy Paige's house and we smoked some more weed. So he asked me was I going to ride with him to pick up his girlfriend Felecia from work at the airport. We went and picked her up and I asked him to drop me off at home. We made it to my house about 15 minutes to 12. I got out and went in the house and fell asleep and the phone rung. It was James, he told me to meet me over Nicki's house in the morning, he was going to call and wake me up. He called about 5:30, so I walked over Nicki's house and

Exh. #2
MDT. 12/15/94
SUP.
TO: ROLESON

J. M.

when I knocked on the door Nicki answered the door and I started going up the step and James told me to wait a minute, so I came back down the steps. James and Tony came down and told me to come on. They walked across the street and about time I made to the middle of the street, they were talking but I couldn't hear them. But I heard Tony state don't tell Lulu, he might tell Tonya. We walked to Dixie Homes and we split up. I went back home and when I was looking in the drawer for some socks, I saw a 380 automatic in the drawer. I put the socks back over top of the gun and closed the drawer back and caught the bus where I had met my girl friend Tonya at Union and Cleveland. We went to her house and fixed up for the birthday party. We waited for Dashawn to get out of school and then we had the birthday party.

Q; Before getting into the jeep, where were you and James coming from?
A: I was walking up Dunlap and I saw James coming down Orphanage so I stopped. I asked James where was he fixing to go and he said to talk to Little Charles. So I walked on up with him and I sat on the wall while him and Little Charles talked. And Little Charles said there go Cello, let me go back in the house before he see me talking to you. Little Charles went back in the house so I started talking to Sean Anderson.

Q: When James got into the jeep, was he armed with a weapon?
A: I don't know if he had it then or what.

Q: Did your brother James tell you about planning to rob someone?
A: No he told me if he rob somebody that they would come back and get you and Andre was going to let him rob somebody.

Q: Who is Lulu?
A: I, Johnathan Montgomery.

Q: What is Andre's nickname?
A: Bay Bro and Bay June, they call him June too.

Q: Prior to you getting into the jeep, did you observe James drawing a map?
A: Yes sir.

Q: Where is this map at?
A: On our back porch.

Q: Where on the back porch?
A: In an English book on the book shelf.

Q: When and where did he draw this map?
A: At the kitchen table, it could have been Tuesday.

Q: What was this a map of?

J. M.

A: I don't know but it had an X on it.

Q: Who else knows about this map?
A: Tony Carruthers. Because I saw James putting the map in the book and he told me that Tony was going to come and get it and look at it and to tell him to put it back.

Q: Did Tony come and look at it and put it back?
A: He came and went in the back yard. When he came back to the front, he asked me where I was fixing to go. This was Wednesday.

Q: When the three of you left Nicki's house, was either James or Tony carrying anything?
A: No sir.

Q: What is Nicki's address?
A: I don't know, it's on Court Street and McNeil, I think.

Q: Do you know where the three missing people are at this time?
A: NO sir.

Q: Did you see Marcellus, the other guy in the jeep or Delores after you got out of the jeep around 4:30 p.m. on Thursday 2-24-94?
A: No sir, but I heard they went to a party Friday. This guy named Robert Blackburn said Marcellus was there at a party Friday.

Q: Where was this party at?
A: Off Lamar at R.C's Lounge.

Q: Did James have Nicki's portable phone with him?
A: For about a day or so.

Q: Which day?
A: I can't remember.

Q: Who would have driven James and Tony back from Mississippi where the Jeep was burned?
A: Alphonso, he's got a funny last name.

Q: Where does Alphonso live?
A: On Leon Place, east of Ayers.

Q: Describe Alphonso's car.
A: Gray, Bonneville Brougham.

Q: Why do you say Alphonso may have brought them back?
A: Because he don't like for nobody to drive his car. James and Tony don't mess with nobody else.

Q: Have you seen James and Tony with any other guns besides the 380?
A: Yes sir, 357, 44, 45 and a 380.

TM

Q: Where are these guns kept?
A: At my house on Pearce Street, one in the drawer, the others in the closet.

Q: Whose room are these guns in?
A: They ain't in nobody's room, they're in the bedroom but nobody sleeps back there.

Q: Have you ever heard James make a statement no body no crime?
A: NO sir.

Q: Johnathan would you be willing to take Sgt. Roleson and Wilkerson to your home to locate this map?
A: Yes sir.

Q: Will you sign a consent to search of your house for the guns?
A: Yes sir.

Q: Why did you get up at 5:30 in the morning to go meet James?
A: Because he told me to meet him over Nicki's house.

Q: Who is Reginald Miller?
A: I don't know.

Q: Did James ever tell you the important thing he was going to say?
A: No sir.

Q: Did James tell you to deny that he and you got into the jeep on that day?
A: No sir.

Q: Did Tony tell you this?
A: No sir.

Q: Do you know where Delores Anderson and Marcellus Anderson lives?
A: No sir.

Q: Have you ever seen Tony or James driving a car in the last two weeks?
A: No sir.

Q: Did you have any prior knowledge of the three missing people being kidnapped?
A: Not until they showed it on t.v.

Q: What did you think when you seen the information on the tv?
A: I thought to myself that James was the last person I saw with Marcellus.

Q: When you left your house on Pearce at 5:30 a.m. Friday, did anyone see you?
A: No sir.

J.M.

Q: When you met James and Tony at Nicki's house, what were they wearing?
A: James had on some yellow stonewash and a brown jacket with a gold patch on it and Tony had on some black pants and a sweater.

Q: Since the three people have come up missing, has James and Tony been spending more money than they usually would have?
A: I ain't been around them to know.

Q: Would James usually have enough cash money to rent a car?
A: Yes sir.

Q: How does James make his money?
A: He's got a job.

Q: Have you ever been to Delores Anderson's house at 4520 Kerwin?
A: No sir.

Q: Were you present when the jeep was burned in MS?
A: No sir.

Q: Is there anything else that we haven't asked you but you would like to add to your statement that would aide us in our investigation?
A: No sir.

Q: Can you read and write without the aide of eyeglasses?
A: Yes sir.

Q: I will ask you to read your statement consisting of five pages and if it is true and correct to the best of your knowledge, given without threats or promises being made, to initial the bottom right hand corner of the first four pages and sign on the line provided on the fifth page. Do you understand?
A: Yes sir.

Johnathon Montgomery 3-3-94 5:10 AM
SIGNATURE-DATE AND TIME

EXHIBIT # 2 "Motion to Suppress Hearing 12/15/94"
Witness: Sgt. Roleson
Identified and made a part of the record
this 9 day of 4, 1995.

JUDGE

This is the statement of Johnathan Montgomery, B, 02-05-71, 23; 408-23-6498, 679 Pearce, 527-1033; Education: 10 years; Employment address & phone: Unemployed. This statement is made on Friday, March 4, 1994, at 6:30 p.m. in the West G.I.B. Office, 201 Poplar, Room 11-14 to Sgt. R. D. Roleson, IBM#7182 and Lt. J. F. Garner, IBM#2995, relative to the CRIMINAL HOMICIDES of Deloris Anderson, Marcellous Anderson and Fred Tucker, whose bodies were found in Rose Hill Cemetery, which occurred at 2006 Elvis Presley, on Thursday, 03-03-94, at approximately 5:40 p.m. and which is filed under R & I 9403030976MF.

Johnathan Montgomery, you are not under arrest, however, this investigation will continue and if the facts so warrant, you could be arrested and charged at a later date.

I am going to ask you some questions regarding the above complaint. You have the right to remain silent and anything you say can be used against you in a court of law. You have a right to have a lawyer, either of your own choice, or court appointed if you are unable to afford one, and to talk with him before answering any questions, and to have him with you during questioning if you wish.

Q: Do you understand each of these rights I have explained to you?
A: Yes sir.

Q: Do you wish to make a statement now?
A: Yes sir.

Q. Johnathan, have you given two previous statements, to Homicide Officers, in regards to the Homicides of Deloris Anderson, Marcellous Anderson and Fred Tucker?

A. Yes sir.

Q. Were you present, when these three people were killed?

A. Yes sir.

Q. Where were the three people killed at?

A. Rose Hill Cemetery.

Q. Who killed Deloris Anderson?

Exh. #3
MOT. 12/15/94
SUP.
TD: Roleson

A. I don't know.

Q. Who killed Marcellous Anderson?

A. Bobby Wilson.

Q. How did Bobby Wilson kill Marcellous Anderson?

A. He shot him about two times.

Q. Who killed Fred Tucker?

A. Bobby Wilson.

J.M.

Q. How did Bobby Wilson kill Fred Tucker?

A. He shot him either three or four shots.

Q. Who else was present, when these people were killed?

A. Me myself, James Montgomery, Tony Carruthers and Bobby Wilson.

Q. Johnathan, how did you get to the cemetery?

A. Bobby Wilson came and got me from home, at 679 Pearce.

Q. What did you and Bobby talk about, when he picked you up?

A. He said, what's about to happen, don't tell anyone.

Q. Where did you and Bobby go, after he picked you up?

A. To Rose Hill Cemetery.

Q. How did you get to the cemetery?

A. A 4-door, gray car, unknown what kind of car it was. It was the first time I ever saw him in this car.

Q. What happened, after you and Bobby got to the cemetery?

A. We got out the car and walked over where Marcellous, Deloris and Fred was laying. Bobby stated, "I got 38 reasons, why one shot would kill you bitches" and he shot Marcellous twice and then, I ran back to the street, while running, I heard another shot and that's it.

Q. After the shooting, what happened?

A. I got in the car with Bobby, we drove back to my house. I got out and went in the house. They drove off, going towards Jackson Avenue.

Q. Who drove off and how?

A. Bobby was in the gray car, James and Tony were in the white Jeep.

Q. At the cemetery, did anyone else have a weapon, beside Bobby?

A. Not that I could see. I seen Bobby when he pulled the gun out of his pants.

Q. Johnathan, do you know why these people were killed?

A. Yes sir, Andre Johnson, who is Ba Bro., paid Bobby to kill Marcellous, because he owed Andrew $100,000.00 and because he fronted Marcellous some dope, two kilos of cocaine. Marcellous gave Andre some of the money and told Andre that he was robbed of the rest, but Andre said that Marcellous had one of his girlfriends holding the money.

Q. How do you know this happened?

A. Because I heard Bobby talking to Andre on the telephone. Bobby stated, "don't have me doing this, for nothing, or I'll kill you too".

Q. Johnathan, when you got to the cemetery, where were the three people that got shot?

A. Laying beside the grave. The woman had on some panties and either a bra or a shirt. The other two were tied with their hands behind their backs. Bobby and I got out the car and walked over by the hole, they were laying on the other side of the hole. When Bobby pulled the gun up, they stated, "please don't kill us". The hole was already dug and the box was setting out of the hole, like in a T shape.

Q. Who dug the hole deeper?

A. I don't know.

Q. Where were the two vehicles parked, that you all were in?

A. The white jeep was parked on the street, that runs off of Elvis Presley and the gray car was parked behind the Jeep.

Q. Johnathan, were you shown a group of eight photographs, which consisted of 94023021, 90037701, 90047148, 93285041, 92230008, 92060122, 92333006 and 93294073?

A. Yes.

Q. Did you identify anyone in these photographs, as being the person who shot these three people?

A. Yes sir, 93285041.

Q. Who is this a photograph of?

A. Bobby Wilson.

Q. At this time, did you sign and date, the back of this photograph?

A. Yes sir.

Q. Have you heard Bobby Wilson talking to anyone about these three murders?

J.M

A. Yes sir, Bobby stated that, "I buried them bitches, six graves from Clinton's grave". Bobby said this to Reginald Burks, I overheard it. I was in Dixie Homes, outside, when I overheard it.

Q. Do you know where Bobby Wilson is, at this present time?

A. No sir.

Q. How long have you known Bobby Wilson?

A. Its been a long time, sir.

Q. After the shooting occurred and you went home, explain when and where, was the next time that you saw Tony and James.

A. At my cousin, Nikki's house, on Court Street. I walked over there and James and Tony were upstairs. They came downstairs and said, let's go and we went to Dixie Homes.

Q. Was there any conversation about what had happened, between you and James and Tony?

A. They were on the sidewalk and I was about the middle of the street, so, I couldn't hear them.

Q. Since the shooting, have you had any conversation with James and Tony, about what had happened, before they got arrested?

A. No sir.

Q. Johnathan, were you ever in the white jeep, that Marcellous was driving?

A. Yes sir, me, James and Little Charles were on Dunlap, talking, when Marcellous drove down the street. Little Charles stated, let me go in the house, because there go Cellous. James went to the truck, I stood on the sidewalk, talking to Shawn Anderson. Marcellous, James and somebody that I didn't know, started driving off. When the truck stopped and backed up, James told me to get in and he said, come take me around here, to drop Lou Lou off at home and to the cleaners.

Q. What time and what day, did this occur?

A. Thursday, 02-24-94, around about 4:30 p.m.

Q. When you got to your house, what was said in the jeep?

A. I asked, could I ride with them. James said that he didn't want me to go, that they were to the cleaners and then, going to pick up Tony and Bobby.

J.M.

Q. What time did you get the phone call from Bobby, to come and get you and take you to the cemetery?

A. About 12:30 a.m., friday morning.

Q. What time did you get home, from the cemetery, after the shootings?

A. About 1:30 a.m. When I walked into the room, the first thing that I saw was the digital clock, that is over the television.

Q. Johnathan, I'm gonna ask you, to view a photo spread, consisting of booking numbers, 92267004, 93185072, 93173062, 94039120, 91185079 and 91127051, to see if anyone in this photo spread, was present in the cemetery, when the three people were shot?

A. Yes sir, 93173062.

Q. Who is this person that you identified in this photo spread?

A. Tony Carruthers.

Q. Did you sign and date the back of this photograph?

A. Yes sir.

Q. Johnathan, I'm gonna show you a group of photographs, consisting of booking numbers, 90258006, 91086011, 93122095, 91288103, 91043099 and 86338023 and ask you if you can identify anyone in this photo spread?

A. 93122095, this is Andre Johnson.

Q. Did you sign and date the back of this photograph, at this time?

A. Yes sir.

Q. Johnathan, I'm gonna show you a group of photographs, consisting of booking numbers, 89304052, 91086010, 00132641, 0062736, 00089499 and 91169148 and ask you if you can identify anyone in this photo spread, as being present when the three people were shot?

A. 0062736, this is James Montgomery.

Q. Did you sign and date the back of this photograph?

A. Yes sir.

J.M.

Q. Johnathan, I'm gonna show you a group of photographs, consisting of booking numbers, 087991, 90305724, 93158007, 92131101, 91075712, and 92007187 and ask youu if you can identify anyone in this photo spread?

A. 93158007, this is Marcellous Anderson.

Q. Did you sign and date the back of this photograph?
A. Yes sir.

Q. Describe the gun that was used to kill the three people.
A. It was a black revolver, short barrel.

Q. In one of your previous statements, you mentioned a map. What was this a map of?
A. Rose Hill Cemetery.

Q. Do you know where this map is at, now?
A. Its gone.

Q. Did you go to Mississippi, to burn the jeep?
A. No sir.

Q. Do you know who burned the jeep in Mississippi?
A. No sir, the last people I saw in the jeep was Tony and James.

Q. Is there anything else, that needs to be added to your statement, that you have left out?
A. No sir.

Q. Can you read and write without the aid of eyeglasses?
A. Yes sir.

Q. Have you been promised anything, in return for this statement?
A. No sir.

Q. I will ask you to read your statement, consisting of 6 pages and if it is true and correct, given without threats or promises being made, to initial the first 5 pages and to sign your name, date and time, on the 6th page on the line below. Do you understand?

A. Yes sir.

Johnathan Montgomery 3-4-94 7:43

If Johnathan E. Montgomery, B/M 23, DOB: 02-05-70, H/A: 679 Pearce, cooperates in the investigation into the disappearance of Deloris Anderson, Marcellos Anderson and Frederick Tucker, and the information he provides can be verified as truthful, he will not be arrested at this time.

Don W Strother 3/3/94 10AM

DON STROTHER DATE/TIME

Johnathan Montgomery 3-3-94 10 AM

JOHNATHAN E. MONTGOMERY DATE/TIME

Exh. #4
MOT. SUP. 12/15/11
TO: Wright

"Motion to Suppress Hearing 12/15/94"

EXHIBIT # 4.

Witness: Major Wright

Identified and made a part of the record

this 9 day of 4, 1998.

JUDGE

This is the statement of JOHNATHON MONTGOMERY, W/B, 02-05-71, 23; 408-23-6498, 679 PEARCE, 527-1033; Education: 10; Employment address & phone: UNEMPLOYED. This statement is made on THURSDAY, March 3, 1994, at 11:00 P.M. in the West G.I.B. Office, 201 Poplar, Room 11-14 to K.R. FREE AND J.W. RUBY, typed by Heather K. Beatley 0821, relative to the CRIMINAL HOMICIDE OF DELORIS ANDERSON, MARCELLOUS ANDERSON, AND FRED TUCKER, whose bodies were found in Rose Hill Cemetery located at 2006 Elvis Presley, on Thursday, 03-03-94, at approximately 5:40 p.m., and which is filed under R & I 94-03-03-0976. M.F.

JOHNATHON MONTGOMERY, you are not under arrest, however, this investigation will continue and if the facts so warrant, you could be arrested and charged at a later date.

I am going to ask you some questions regarding the above complaint. You have the right to remain silent and anything you say can be used against you in a court of law. You have a right to have a lawyer, either of your own choice, or court appointed if you are unable to afford one, and to talk with him before answering any questions, and to have him with you during questioning if you wish.

Q: Do you understand each of these rights I have explained to you?
A: Yes.

Exh. #5
MOT. 12/15/94
EMP.
TO: Ruby

Q: Do you wish to make a statement now?
A: Yes.

Q: Johnathon, on March 3, 1994, at approximately 4:13 a.m., to Sgt. R.D. Roleson?
A: Yes sir.

Q: Do wish to add anything to the statement that you made?
A: Yes.

Q: Johnathon, On Thursday, March 3, 1994, at approximately 11:25 a.m., did you point out a grave in the Rose Hill Cemetery, to Sgt. Free and Ruby and advise that you believed the three missing people were buried in this grave?
A: I didn't know if all of them was there, but I knew at least one would be there.

Q: What lead you to believe that these persons were buried at this location?
A: I was in Dixie Homes last Saturday, February 26, 1994, at about 3:00 p.m., I over heard Bobby Wilson telling Reginald Burks that he had buried them Bitches six graves down from Clinton.

Q: Who is Clinton?
A: He is Clinton Montgomery, my cousin, he was buried at Rose Hill Cemetery during this past ice storm in Memphis.

Q: Did you attend his funeral?
A: Yes sir.

J.M.

Q: Did Bobby Wilson also attend Clinton's funeral?
A: Yes sir.

Q: While Bobby was at the Cemetery, the day Clinton was buried, did he make any comments about the Cemetery?
A: He said, "Some of these bitches are going to come up missing, and I know where I'm going to put them".

Q: To your knowledge has Bobby ever been employed at a cemetery?
A: Yes, but I don't know which one.

Q: In the prior statement, that you gave, you advised on Thursday evening you were in Marcellous's white Jeep Cherokee along with James Montgomery, Macellous Anderson, and an other unknown M/B. When James let you out at your house located at 679 Pearce, did he tell you where he was going?
A: He said he was going to the cleaners, and then he was going to pick up Tony and Bobby.

Q: Also, in this prior statement, you advised that prior to thursday, February 24, 1994, that you observed James drawing a map with an X on it, while at the table inside 679 Pearce. Who else was present when this map was drawn?
A: Tony Curruthers.

Q: Did James show this map to anyone else?
A: James told Tony to call Bobby to come over to see the map, but I left, and I don't know whether Bobby ever came over there or not.

Q: Were you present when Marcellous Anderson, Deloris Anderson, or Fred Tucker were kidnapped and subsequently murdered?
A: No sir.

Q: Did you have any prior knowledge that they were going to be kidnapped or murdered?
A: No sir.

Q: Were you present when they were buried in the grave in Rose Hill Cemetery?
A: No sir.

Q: In your prior statement, you advised that Marcellous had gone to Robert Blackburn's party, Friday night. Who is Robert Blackburn and where does he live?
A: It's off of Lamar, I don't know the street, but I can get it.

J.M.

Q: After Thursday, February 24, 1994, at any time did James say or do anything that made you believe that he was involved in the kidnapping, possible murder of Deloris, Marcellous, and Fred?
A: On Saturday, I was watching the news, and I saw that they had been kidnapped, and I asked did he mess with those people, he just looked and didn't say anything.

Q: Do you remember what clothing Marcellous was wearing on Thursday, February 24, 1994?
A: Some dark brown looking pants.

Q: Is there anything else you would like to add to this statement?
A: No.

Q: Can you read and write without the aid of eyeglasses?
A: Yes.

Q: Johnathon, I will ask you to read this 3 page statement, and if you find it to be true and correct as given by you without any threats or promises of immunity, I will ask you to initial the first two pages on the bottom right hand corner, and sign your full name, date, and time on the lines provided on the third page, Do you understand?
A: Yes.

Johnathon Montgomery
Signature

11:40 P.M 3-3-94
Time Date

EXHIBIT 9

D2C0+9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE FOR THE

THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

ORIGINAL

STATE OF TENNESSEE)
)
Appellee,)
)
vs.) CASE NOS. 94-02797
) 94-02798
) 94-02799
) 94-08124
TONY V. CARRUTHERS and)
JAMES MONTGOMERY,)
)
Appellants.)

FILED 12/30/97
WILLIAM B. KEY, CLERK
BY Bennett D.C.

HEARING ON MOTION TO SUPPRESS
Thursday, December 15, 1994

VOLUME 22 OF 82 VOLUMES

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES:

FOR THE STATE:

J. ROBERT CARTER, JR.
PHILLIP GERALD HARRIS
Assistant District Attorneys General
Criminal Justice Center - Third Floor
201 Poplar Avenue
Memphis, Tennessee 38103

Vol. 29

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By

KAREN M. OTERI
OFFICIAL COURT REPORTER
THIRTIETH JUDICIAL DISTRICT
MEMPHIS, TENNESSEE

APPEARANCES (Con'd):

FOR THE APPELLANT JONATHAN E. MONTGOMERY:

MARVIN E. BALLIN
Attorney at Law
200 Jefferson Avenue, Suite 1250
Memphis, Tennessee 38103

DEWUN R. SETTLE
Attorney at Law
100 North Main Street, Suite 3232
Memphis, Tennessee 38103

FOR THE APPELLANT TONY V. CARRUTHERS:

COLEMAN W. GARRETT
Attorney at Law
200 Jefferson Avenue, Suite 850
Memphis, Tennessee 38103

CRAIG V. MORTON, II
Attorney at Law
212 Adams Avenue
Memphis, Tennessee 38103

FOR THE APPELLANT JAMES MONTGOMERY:

HAROLD D. ARCHIBALD
Attorney at Law
200 Jefferson Avenue, Suite 900
Memphis, Tennessee 38103

J. C. McLIN
Attorney at Law
301 Washington Avenue, Suite 301
Memphis, Tennessee 38103

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IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION V

STATE OF TENNESSEE	)	
	)	
	)	
vs.	)	CASE NOS. 94-02797
	)	94-02798
	)	94-02799
JONATHAN E. MONTGOMERY, a/k/a LULU, TONY V. CARRUTHERS, and JAMES MONTGOMERY	)	94-08124

This cause came on to be heard and was heard, in part, on the 15th day of December, 1994, before the Honorable Joseph B. Dailey, Judge, holding the Criminal Court for Shelby County at Memphis, Tennessee, and the following proceedings were had, to-wit:

MR. HARRIS: As soon as Mr. Garrett gets out, all the attorneys are here. I had made a suggestion. We had an impromptu conference after court had adjourned. I had made a suggestion, more of a time management suggestion than anything else. I think everybody's in agreement. Of course, we want to be sure that the Court's in agreement and thinks it's the best way to manage our time. As soon as Mr. Garrett's here.

THE COURT: Go ahead and bring the three defendants out, would you, please? Montgomery, Montgomery, and Carruthers.

(Pause)

MR. McLIN: Your Honor, I do have a matter that I'd like to state for the record once my client gets out here.

(Pause)

MR. HARRIS: Your Honor, we have all the attorneys present. I have a suggestion that I made to Mr. Garrett, Mr. Ballin, and Mr. McLin, and the other attorneys who represent these defendants.

We have several evidentiary motions and we have many motions which are, of course, equally important but they don't require the attendance or the testimony of witnesses. I have made this proposal to everyone to see if it would help them manage their time and help the Court.

We have a motion that was filed by Mr. Nance that is styled Motion to Dismiss Indictments for Lack of Probable Cause. That's an evidentiary motion. It involves Mr. Carruthers and Mr. James Montgomery. We have -- Mr. Campbell and I will have to testify for the State in that matter. Should be a fairly perfunctory and short, as far as testimony. It is an important motion.

What we wanted to do is to handle that first. And then the next evidentiary motion is the motion of Mr. Ballin with Jonathan Montgomery and that will entail about seven or eight witnesses, or I forget. What I had suggested to them

is this, if we could handle the one evidentiary motion involving their two clients, then I think with their consent, we could excuse them and their clients and go ahead and handle Mr. Ballin's motions, which are going to require these witnesses, and we could go ahead and get all the evidentiary motions out of the way today. Then we could come back tomorrow and handle the motions that everyone is involved in that involve the constitutionality of the death penalty, the discovery, and all of that.

That was just my suggestion to move, perhaps facilitate the handling of the case. If that's not agreeable, we'll do it whatever way we're told. It doesn't matter to me and I thought they had all agreed that this was the proper way to do it or agreeable with the --

THE COURT: That's fine, with this one exception. Unless the cases are to be severed, if it's the intention to go forward without severing the cases, then I want all three defendants here throughout the afternoon and all eight attorneys here throughout the afternoon. I don't want to excuse anyone from any of these proceedings unless the cases are to be severed.

So if we're proceeding with all three defendants at the same time, then I need everybody here all day. But aside from that, the order doesn't matter to me if it's acceptable to everybody else.

MR. BALLIN: It's all right with me, Your Honor.

MR. GARRETT: If Your Honor please, it appears to me that we've got more than we can say grace over this afternoon anyway, with all due respect to Mr. Harris's suggestion, and I think under ordinary circumstances it would be a good suggestion. But I would have to remind the Court that I was recently appointed to represent Mr. Carruthers in this cause and I have not seen a single motion.

Mr. Morton and I have not had an opportunity to meet and review any of the files and I would object to going forward on any motion as it relates to Mr. Carruthers at this point in time until we've had an opportunity to meet with co-counsel and look these matters over.

I know that a lot of them fall in the category of being rather perfunctory and what have you, but I think under the circumstances of this particular case, there's no such thing as a perfunctory motion.

THE COURT: All right. I don't have any problem with that. And let's get started, then, on the suppression motion. That's the motion that involves the seven or eight witnesses and the out-of-town witnesses. Let's make sure we get through that today. And then we'll take it from there and see what would be appropriate to handle next.

MR. GARRETT: Thank you, Your Honor.

THE COURT: So, for the record, all three defendants are in court and all attorneys are present.

Mr. McLin, did you have anything you needed to --

MR. McLIN: Your Honor, I just heard Mr. Harris, he mentioned about the motion to dismiss, I guess, for failure to grant a preliminary hearing is what it amounts to. That will come after the suppression motion?

THE COURT: We'll handle that after the suppression motion. The first thing I want to do is handle the suppression motions. And then I'll hear from you with regard to that and if Mr. Garrett feels comfortable proceeding on that now, we'll proceed on that as well. If not, I'll be glad to grant him some additional time to further prepare.

Now, before we start the suppression motion, there is one additional matter that Mr. Ballin wanted to raise. He had filed yet another motion to withdraw pursuant to -- and I'll hear from him.

MR. BALLIN: Your Honor, if the Court is comfortable, in view of my motion, for me to go forward -- I haven't shown it to -- I didn't tell Mr. Montgomery that I was going to try to get out of the case based upon his recent attitude both -- and again this morning. And let me just put this on the record so everything will get to be heard.

On Tuesday I came in and reported to the Court that I had met with Mr. Montgomery, that things had gone fairly well except when I tried to speak to him about the particulars of this motion today so I, you know, could be in a situation to at least be able to present his side of the story, if not in direct proof from him, but at least in cross-examination. He refused to discuss the case, said he had already told me enough about it and that was it and he was going.

I didn't -- I came in and reported that to the Court. On yesterday Mr. Settle and I, in an attempt one more time to at least do what we could to be ready, we went down at approximately -- Well, I called Mr. Settle around ten minutes to two and told him that I had called for Mr. Montgomery to meet me in the jail.

I got down to the jail and around -- we waited around, Your Honor, and I realized it was shift change at 2 o'clock so I knew it would be a few minutes. We waited around till about 2:30, 2:45 at which time a guard told Mr. Settle that Mr. Montgomery was once again refusing to come down.

I spoke to Mr. Montgomery this morning briefly and I told him, you know, it's his life at stake and I just needed him to talk to me about this case. And he doesn't want to.

I am -- Your Honor, I have done this, and like Mr. Garrett says, in a case where a man's life is at stake, nothing is perfunctory. I've done this for a number of years, to walk in a courtroom, it's like preliminary hearing or whatever, and I'll do the very best I can today.

But my motion still stands. And I realize the situation I've placed the Court in with these people coming down. But if the Court is satisfied that Mr. Montgomery's rights are being protected with the understanding that I can't get from Mr. Montgomery enough evidence or enough insight into why he gave these statements or whatever, other than what I can perceive on its face. All right?

Let me do that by -- If you're satisfied that I can do that by cross-examination, I'll give him as much as I can. Mr. Settle and I, we've discussed the case, and we'll give him as much as we can. That's all I can do.

THE COURT: All right. Let me state again for the record, as we have on several occasions now, and I'm glad this is being filmed today because not only will it be transcribed at some future date if necessary, but we'll have a video tape of this hearing as well.

As I have indicated to Mr. Jonathan Montgomery on several occasions now, he is in my opinion, represented by two excellent attorneys. Mr. Ballin is the lead attorney. He has tried many, many, many cases in these courts, many

cases of a very serious nature, and in my opinion Mr. Ballin and Mr. Settle have represented Mr. Jonathan Montgomery very well in this case.

They've filed motions, they've gotten their discovery, they've met with, tried to meet with their client, they've appeared in court, they've petitioned for and gained authorization to hire investigator, to hire psychologists, they've retained investigators and psychologists for those purposes; John Billings, the investigator, Dr. John Hutson, the psychologist. They've done all that could reasonably be expected at this point of this case in trying to defend Mr. Jonathan Montgomery.

If Mr. Jonathan Montgomery chooses to not discuss the matter with Mr. Ballin and Mr. Settle, to not work with them, to refuse to come down from his cell to the meeting area when Mr. Ballin and Mr. Settle come over to meet with him, to refuse to discuss the pending motions and how best Mr. Ballin can prepare for the motions and for the trial, that's his prerogative. No one can force him to say anything to anybody.

All we can do is, number one, implore him to talk to Mr. Ballin and Mr. Settle, explain to him the seriousness of the matter, and then make sure the record is clear with regard to the efforts that have been made by everyone to represent Mr. Montgomery, and to meet with him, and to gain

his cooperation in the preparation of this case.

I don't see at this point any purpose to be served by relieving Mr. Ballin from representation in this case, because there's nothing to suggest that the next attorney that came along would meet with any greater cooperation from his client than Mr. Ballin has. There's nothing to suggest, Mr. Jonathan Montgomery has never to my knowledge, to my recollection, filed any request on his part to have Mr. Ballin relieved from the case. And there's absolutely no suggestion that there's any conflict of any sort or that there is -- or really that there's any problem.

The only difficulty has been in that Mr. Montgomery apparently, based on statements by Mr. Ballin and Mr. Settle, has refused to discuss the matter with them. And so there really wouldn't be any purpose to be served by relieving Mr. Ballin, bringing somebody else in and having the next attorney meet with the same results.

So, again, I'm going to deny your request to be relieved in this case and ask you to go forward and do the best you can in this motion and in all other court proceedings and at the trial if that's the situation on the day of trial. I don't know anything else to do. If we were to reset the motions today for a couple of months and bring everybody back down here, fly the witnesses down from Milwaukee, bring the Memphis witnesses in, there's nothing

to assure us that two months from now Mr. Montgomery would have said anything more to you than he's said yesterday and today and we would be in the same situation.

And so if there were some reason for resetting it, I would be happy to, but resetting it just for the sake of resetting it in hopes that he may decide to talk with you I don't think would serve any real purpose.

MR. BALLIN: Your Honor, I don't know if I made myself really clear. I wouldn't -- If you're satisfied that I can go forward today with what I think I can go forward with, I don't have any problem about that. Maybe after today you might want to -- Mr. Montgomery might want to say something to the Court or whatever. I don't know.

But, in other words, what I was trying to tell the Court was that after I filed this motion today, realizing that all these people were down here, realizing what I think that I can do even without Mr. Montgomery's cooperation, if you're satisfied, I don't have any problem about it.

THE COURT: Well, I'm satisfied for the reasons that I just stated.

MR. BALLIN: Okay.

THE COURT: And so we can go forward. Let me also --

MR. BALLIN: I know you may have denied this motion but I'm going to do it again, Your Honor. It's

getting to me.

THE COURT: Well, that's fine. You can re-file it as often as you care to. But unless something changes, my ruling will be the same.

MR. BALLIN: Okay. Right.

THE COURT: But let me also remind you that I will be happy, as I indicated to Mr. Garrett, it was his suggestion, and I think it was a good one, I will be happy with regard to any of these three defendants, if there is any difficulty at all in getting them down for consultation in the jail, let me know a day or two ahead of time. We'll have them brought over to the holding area behind the courtroom and we'll reserve one of the witness rooms back there for that purpose, Mr. McLin, Mr. Settle, Mr. Ballin, and we'll have deputies back there for your assistance if you need assistance. And you can meet with them for as long as you like back there and I can assure you that we'll have them over here. There won't be a problem of sitting down in the jail for an hour and then being told by a deputy jailer that your client has decided not to come down and talk to you. We'll have your clients over here and you can sit there and talk with them for as long as you like in a private and peaceful setting.

So just let me know.

MR. GARRETT: If Your Honor please, if I may

address the Court again by way of a preliminary matter before we get to the motions at hand. I'd like to bring it to the Court's attention that just prior to these proceedings beginning this afternoon, I went back to talk to Mr. Carruthers and he was upset because of the security force that was present in the holding area and indicated to him that they -- indicated to me that they were interfering with his ability to prepare and work on his case and think about his case and requested that I address the Court about it.

He did not represent to me that any individual in the security force had said anything specifically to him, but I wanted to bring it to the Court's attention because he asked me to do so and I would like for the Court to indulge us a moment and give Mr. Carruthers an opportunity to address the Court on what his complaint specifically is in this regard. I don't know of anything -- I wasn't -- I didn't personally observe anything but he is -- he's objecting to the security forces' presence and I didn't get into the details, quite frankly, didn't have an opportunity to get into the details. But it was a concern that he raised and I wanted to bring it to the Court's attention

THE COURT: All right. I'll be glad to hear from you if you would like to consult with your client. But I'm not interested at this point, there's no formal motion

before me with regard to any change in the procedures. If you want to talk to your client, I'll be glad to hear from you. I'm not interested in hearing directly from Mr. Carruthers at this point.

MR. GARRETT: May I reserve the right to discuss the matter with my client and bring the matter up again at an appropriate time --

THE COURT: Absolutely.

MR. GARRETT: -- because I need to have an opportunity to discuss this in detail with him.

THE COURT: Certainly.

MR. GARRETT: And possibly file a formal motion to that effect if we want that --

THE COURT: That's fine. I will say, though, that because of obvious concerns, there will be heightened security throughout these proceedings, which will include the presence of these officers that are here today and will include the presence of that video camera right there. And everything that takes place in lockup and in this courtroom, at least up until the day of trial, will be video taped and will be in the presence of these officers. It will not interfere with any attorney/client communication or any preparation. I'm not going to take any yellow pads and pencils away or deny access to your attorneys or anything of that sort.

But they will be present for security reasons and so you-all are just going to have to deal with that. You're going to have to think through that and work with your attorneys.

MR. MORTON: Your Honor, if I may inquire as to -- Is there going to be a set procedure for trial as to the security measures because --

THE COURT: We'll discuss that as we get closer to trial.

MR. MORTON: Yes, sir. I mean, for obvious reasons, there's a prejudicial effect --

THE COURT: There will be heightened security even at the trial but we'll discuss exactly what and how just prior to trial.

MR. MORTON: Yes, sir. Thank you.

THE COURT: All right. Let's proceed with the suppression motion, then, filed by Mr. Ballin.

MR. HARRIS: Your Honor, in this matter Jonathan Montgomery, he gave numerous statements and this, Your Honor, will be testimony is intertwined. Some officers were here on two or more statements and they took place in different locations, everything. We just ask the Court to bear with us.

As a guideline, I'm only -- By way of opening statement, this is just for guideline, is the first

statement was taken on March the 3rd, 1994, at approximately 4:30 A.M. by Officer Roleson. At a later time that same day, Your Honor, the defendant gave an impromptu statement to Mr. Wright of the Homicide Office that was not reduced to writing. And at that time, Your Honor, the agreement that is the subject of Mr. Jonathan Montgomery's motion, part of the subject of his motion was taking place at around 10 A.M. on March the 3rd of 1994, between Mr. Strother, Mr. Wright, and Mr. Jonathan Montgomery.

At a later time --

THE COURT: Was this the time of the impromptu statement?

MR. HARRIS: Yes, sir, Your Honor.

THE COURT: All right.

MR. HARRIS: There was an additional statement, Your Honor, given to Mr. Jack Ruby of the Memphis Police Department, Homicide Division, that took place at a later time on the night of March the 3rd, 1994.

Proof will show, Your Honor, that Mr. Jonathan Montgomery was released and taken to his home -- or not to his home, but to an address of his choice. He later returned on the night of March the 4th and gave yet an additional statement.

THE COURT: And was the statement on the night of the 3rd a written or oral statement?

MR. HARRIS: It was a written statement, Your Honor.

THE COURT: And the one on the night of the 4th, written or oral?

MR. HARRIS: It was written, Your Honor.

THE COURT: And to whom was it given?

MR. HARRIS: There are at this point, Your Honor, if I could just sum up, there's three writtens and one oral statement that we wish to introduce. A written statement at approximately 4:30 A.M., an impromptu statement given shortly before 10:00 A.M., all on March the 3rd, a written statement given on the night of March the 3rd and a written statement given on April -- or pardon me, March the 4th.

There also -- The Court will see there was a conversation between the defendant, Jonathan Montgomery, and officers of the Memphis Police Department as he guided them to locations which are statements that were not reduced to writing. But they will be -- the Court will hear from them.

At this time on March the 4th after the March the 4th statement, Your Honor, there will be a hiatus in time until, I believe, March 30th, 31st. If the Court would bear with me one second.

Mr. Montgomery was arrested in Milwaukee, Wisconsin, and I think the Court needs to, or will note that at that time, Your Honor, Mr. Jonathan Montgomery was under

indictment. He had been indicted on March the 29th of 1994. He gave statements to officers of the Milwaukee Police Department at approximately 2:00 P.M. He refused to give a statement to officers of the Memphis Police Department, and then he solicited the officers of the Milwaukee Police Department because he said he wanted to talk to them again.

And that is the chronology of the statements.

THE COURT: So how many statements in Milwaukee are you alleging --

MR. HARRIS: Two statements.

THE COURT: Two written statements?

MR. HARRIS: Two oral statements, Your Honor.

THE COURT: To the Milwaukee police officers.

MR. HARRIS: Yes, sir.

THE COURT: All right. And that was on the 30th and 31st?

MR. HARRIS: The 31st. I said the 30th, Your Honor. I was in error. They were both on the 31st, one at approximately 2:00 P.M. and the other one, I think, at around 6:00 P.M.

THE COURT: All right. Any opening statements, Mr. Ballin?

MR. BALLIN: No, Your Honor. There is, Your Honor, one typographical error, at least one in my motion to suppress. I said promises made to him by Mr. Donald

Strother of the Memphis Police Department. And that was just over typing it. It should've been Shelby County Attorney General's Office. Mr. Strother's now employed, I think, with the Sheriff's Department.

THE COURT: Do you have a copy of your motion?

MR. BALLIN: There should be a copy for the Court up there.

THE COURT: When did you file it?

MR. BALLIN: Well, it was -- I thought there was one in there but there's another one filed today. I thought there was one in there. Mr. Carter called to my attention that there wasn't. I assured him that there was. But --

MR. HARRIS: We couldn't find it this morning, Your Honor. We've now been served with a copy of one today.

THE COURT: All right. Call your first witness.

MR. HARRIS: Your Honor, the State would call Mr. R. D. Roleson.

Your Honor, for the record, since this is a motion to suppress, I'm going to ask if I can introduce copies of originals, since we would like to put the originals -- If the evidence is not suppressed, we'd ask that they be put in evidence. We'd like to put in copies of the originals.

MR. BALLIN: No problem.

SERGEANT RICHARD DAVID ROLESON was called and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Would you state your name, please, and who you're employed by?

A. Richard David Roleson, Memphis Police Department.

Q. Mr. Roleson, during the month of February and March of 1994 were you assigned the investigation of a triple homicide, or at that time a missing persons complaint as to Marcellus Anderson, Deloris Anderson, and Fred Tucker?

A. Yes, sir, I was.

Q. On the date of March the 2nd, 1994, did you know where those bodies were?

A. No, sir.

Q. Had you been investigating the case?

A. Yes, sir.

Q. Do you remember the approximate date of disappearance?

A. No, sir. It was a couple of weeks before.

Q. All right. Would it have been in the nature or the time of February 24th of 1994?

A. Yes, sir.

Q. All right, sir. And had you been investigating the case from the time of the missing persons on up to March

the 2nd?

A. No, sir.

Q. All right. When did you become involved in it?

A. Probably the week of March the 2nd.

Q. All right. As part of your investigation did the name Jonathan Montgomery come into play?

A. Yes, sir.

Q. All right. And on March the 2nd did you feel that you needed to speak to Mr. Montgomery?

A. Yes, sir.

Q. And what was -- Very briefly what was the basis of your need to speak to Mr. Jonathan Montgomery on March the 2nd?

A. The investigation revealed that Jonathan Montgomery was one of the last persons to be seen with Marcellus Anderson and Fred Tucker.

Q. And were those two of the missing persons?

A. Yes, sir.

Q. All right, sir. At that time did you make attempts to call or to get in touch with Jonathan Montgomery?

A. Yes, sir.

Q. Now, did you seek the assistance of other officers?

A. Yes, sir.

Q. All right. Were you ever able to get in touch with Mr. Montgomery?

A. On March the 2nd, that morning about 10 o'clock I received a phone call from him and he wanted to know if we were looking for him. And he agreed to meet other officers in Lamar Courts over here and -- But he never showed up.

Q. All right. Did your attempts to contact him, did they -- Did you ever eventually contact him?

A. Yes, sir.

Q. And could you tell us how that occurred?

A. Officer Benjamin made contact with him and he agreed to meet Officer Benjamin. And Officer Benjamin brought him to the Homicide Office.

Q. And approximately what time did Mr. Montgomery arrive there, and tell us what happened once he got there.

A. Well, it was about 9:30 P.M. when I was notified by my commanding officer to report to the Criminal Justice Center because Jonathan Montgomery was at our office with Officer Benjamin. And I think we started talking to him about 10:30, 10:40 P.M. the night of March 2nd.

Q. All right, sir. When you talked to him did you have an occasion to advise him of his rights?

A. Yes, sir.

Q. I want to pass you an Advice of Rights form, ask you, if you would, to look at it and tell me if you can

identify it, please.

(Document passed to witness.)

A. Yes, sir. This is the rights form that I filled out that night at -- and advised Mr. Montgomery at 10:45 P.M. of his rights.

Q. For the record could you read into the record the advice of rights that you made to Jonathan Montgomery?

A. (Reading)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering any time until you talk to a lawyer.

Q. At this time did Mr. Montgomery appear to be under

the influence of any drugs or alcohol?

A. No, sir, he wasn't.

Q. Did he appear to be in any physical discomfort?

A. No, sir.

Q. Did he ask for anything at that time?

A. No, sir.

Q. Now, did he sign the Advice of Rights?

A. Yes, sir, he did.

Q. And I passed you a copy of the original. Can you identify, number one, Mr. Montgomery here in the courtroom today, and his signature on the Advice of Rights form?

A. The one sitting behind Mr. Ballin in the green shirt.

MR. HARRIS: All right. Let the record reflect he's indicated Mr. Jonathan Montgomery.

Q. Now, did he sign the Advice of Rights form?

A. Yes, sir, he did.

Q. Did anyone else help you, or was anyone else from the police department participating in the discussion with Mr. Montgomery at this time?

A. Sergeant Wilkinson.

Q. All right. And did he also sign the Advice of Rights form?

A. Yes, sir.

Q. And what time was this?

A. He was read his rights at 10:45 P.M. and signed it at 10:48 P.M.

MR. HARRIS: Your Honor, if we could, we'd ask that that be introduced as State's Exhibit Number 1.

THE COURT: All right. Exhibit 1.

(State's Exhibit Number 1 was marked and filed.)

Q. (By Mr. Harris) So at 10:45 or 10:48 P.M., March the 2nd, 1994, you have Mr. Montgomery in your office. You've advised him of his rights. I assume you begin talking to him.

A. Yes, sir.

Q. Now, did Mr. Montgomery at a later time give you a written statement that morning?

A. Yes, sir.

Q. What time did he give you a written statement?

A. I believe we sat down in front of the typist a little bit after four A.M. on which would be March the 3rd now.

Q. All right. Now, what happened between 10:45 and 4 o'clock or whenever you started taking the statement in the next morning, what happened?

A. We talked to Mr. Montgomery and he told us

basically one story and then he started -- First it was a statement of denial knowing anything about anything. And then it led up to where he did admit to being -- getting into the vehicle with the victims. And about a certain map that might help us lead to the bodies.

And we took the typewritten statement, and then he agreed to show us where he thought the bodies were at.

Q. All right. Now, if I could, I want to pass you a copy of a statement --

MR. HARRIS: For Mr. Ballin's information it's -- states Thursday, March 3rd, 1994, at 4:30 A.M. I'm sure you have a coy of it.

MR. BALLIN: Yes, sir, we have a copy.

(Document passed to witness.)

Q. Are you familiar with that paper writing?

A. Yes, sir. This is the statement that -- the typewritten statement taken by me and Sergeant Wilkinson.

Q. Now, I want to direct your attention to -- First, if you would, for the record, how many pages are in the statement?

A. Five pages.

Q. At what time did Mr. Montgomery sign it and did he put the time that he signed it?

A. He signed it on March the 3rd, 1994, at 5:10 A.M.

Q. Was he advised of his rights again before he gave

the statement?

A. Yes, sir.

Q. All right, sir. Now, I want to direct your attention to the first page of the statement. Did you ask him who was in the Jeep with Marcellus Anderson other than himself and did he give you an answer?

A. Yes, sir. The question was asked and he did give an answer.

Q. All right. And what was his answer?

A. James Montgomery, Marcellus, and another male black.

Q. All right. Had your attention been directed towards James Montgomery at this time, too?

A. Yes, sir.

Q. All right. And did this testimony corroborate what you had been told?

A. Yes, sir.

Q. All right. Now, after you took this statement, after you had talked to him about this, did you have occasion to go anywhere with Jonathan Montgomery?

A. Yes, sir.

Q. All right. Let me back up. When he came into the Homicide Office at 10:45, was he under arrest?

A. No, sir.

Q. Did you handcuff him?

A. No, sir.
Q. All right. When you left with him, did you handcuff him?
A. No, sir.
Q. Did you threaten Mr. Montgomery?
A. No, sir.
Q. Did you coerce him in any way to make a statement?
A. No, sir.
Q. Were any promises made to him?
A. No, sir.
Q. Now, you said that you talked to him from approximately 10:45 until 4:30 in the morning, a period of time of four and a half or five hours. What was his mental state at this time? Did he appear to be alert?
A. Yes, sir.
Q. All right, sir. You and Officer Wilkinson, what was your state at this time?
A. Well, we had been at work since 8 o'clock the morning of the 2nd and we had worked late that night. And I guess we had been home about an hour or an hour and a half before we were called back to work. So we had been up all night.
Q. All right. And so from 10:45 till 4:30 you talked to him and he gave you a statement?
A. Yes, sir.

Q. All right. Now, after he gave you that statement, had he told you as you talked about where the bodies were? Did you ask him where the bodies were and did he tell you anything about that?

A. Yes, sir. We asked him where the bodies were and he told us he'd have to show us. So we drove out North Second Street out by the concrete company there. And we got out of the car and he led us down an embankment --

Q. Now, let me interrupt you just one more time. Approximately what time did y'all leave the police station?

A. I'd say 5:30, 5:45 A.M.

Q. All right. Was he handcuffed?

A. No, sir.

Q. Was he under arrest?

A. No, sir.

Q. Had he been charged?

A. No, sir.

Q. At this time were you going to charge him?

A. No, sir.

Q. All right. In your mind at this time was he a witness?

A. Yes, sir.

Q. All right. Had you advised him of his rights, though?

A. Yes, sir.

Q. All right. Now, so you're in the police car, you and who else, with Mr. Montgomery?
A. Sergeant Wilkinson.
Q. All right. Now, why did you go on Second Street?
A. That's where he directed us to.
Q. And who is "he"?
A. Jonathan Montgomery.
Q. All right. Now, tell me what happened as you go off on Second Street early that morning.
A. We get out -- Like we get there to where he directs us to, we get out of the -- all three of us get out of the car and we walk down towards where the river comes in there and high grass. And we stomp around, looking for about five or ten minutes. And then he comes to a depression there and says, "They must've moved the bodies".
Q. All right. He told you, "They must've moved the bodies"?
A. Yes, sir.
Q. All right. Now, at this time had he admitted to you any participation in the crime himself?
A. No, sir.
Q. All right. The nature of the statement that he had given you at 4:30 A.M., had he implicated himself in doing anything other than getting in the car with Marcellus and James?

A. No, sir, that's all. He said that he did get into the Jeep with Marcellus, and Mr. Tucker, and James Montgomery, and they went around the block or two to a laundry and that he was let out of the Jeep.

Q. All right. Now, after you didn't find the body there on Second Street, what did you do?

A. We got back in the car and started back towards the Criminal Justice Center. And then he said that they were out Watkins Street past the expressway. So we headed out in that direction.

After we got to the Watkins and the expressway, he said that he was lying, that he didn't know where the bodies were.

Q. So what did you do then?

A. Well, I had to stop and make a phone call. I made the phone call and then we headed back --

Q. If we could, just for a point of reference as to the time, what time is it at this time that you made the phone call?

A. It was a little bit after six because I had to call my wife to make sure she was up to get to work.

Q. All right. Go ahead.

A. All right. After --

THE COURT: Excuse me. Six A.M. you're talking about?

THE WITNESS: Yes, sir.

THE COURT: All right. Go ahead.

A. (By the Witness) We started back towards the Criminal Justice Center and we got to Washington Street and he said again he knew where the bodies were. And then he directed us to Glenview Park.

Q. All right. Now, tell me what happened in Glenview Park.

A. Well, we pulled into Glenview Park. Sergeant Wilkinson was driving. He directed us to a spot near the railroad tracks.

Q. What did he tell you?

A. He said that the bodies were buried over there. We couldn't drive the car up to the spot due to the wetness of the ground. The vehicle was stopped, and we all three exited the vehicle, and Jonathan Montgomery took off running.

Q. All right. Now, was he handcuffed at this time?

A. No, sir.

Q. He took off running?

A. Yes, sir.

Q. Were you armed?

A. Yes, sir.

Q. Did you fire at him?

A. No, sir.

Q. Did Officer Wilkinson fire at him?
A. No, sir.
Q. Was he armed?
A. Sergeant Wilkinson?
Q. Yes, sir.
A. Yes, sir.
Q. All right. What did y'all do?
A. Well, he kinda outrun us. So we put out a broadcast on him and started circling the neighborhood. And during the interview he had told us about his girlfriend's mother lived on Holman, which was just on the other side of the railroad tracks in the direction that he lived.

We had the dispatcher contact his girlfriend to find out the exact address. That was done. And then we went to that address. We were let in the door by the lady that lived there, who happened to be Jonathan's girlfriend's mother. She told us to come on in and look, that Jonathan wasn't there. But we could hear him up in the attic.

We called for uniform officers to meet us and they went up in the attic and got him.

Q. All right. Now, as far as getting him out of the attic, was anything done to Mr. Montgomery?
A. Yes, sir. He wouldn't come out and he wouldn't show his hands. This -- I'm hearing the voices of the officers, because I'm not up in the attic. They did use a

chemical spray, Freeze, on him.

Q. All right. Did you get him out of the attic?

A. Yes, sir. The uniform officers got him out of the attic, handcuffed him, put him in a uniform patrol car, and transported him back to the Criminal Justice Center to our office.

Q. All right. And I assume this is still in the early morning hours?

A. Yes, sir. This had to be somewhere between 7:30 to 8:00 A.M.

Q. After you get him back to the Homicide Office, did you feel it was necessary to be taken to the hospital or that he receive any medical treatment?

A. No, sir. He didn't need any treatment.

Q. All right. And why do you say that?

A. Well, I asked him -- I've been sprayed with the spray and I know it's kind of tough. I asked, went in there and said, "That stuff's kinda tough, ain't it?", and he said, "No, man, it ain't nothing".

Q. All right. And did you talk to him any more that morning?

A. No, sir. At that time he wanted to speak to someone that had more authority than me.

Q. All right. And did you direct someone with more authority than you to talk to him?

A. Yes, sir. Major Wright.

Q. All right. Now, I want to jump forward. Did you have an occasion at a later time on the next day to take a statement from Mr. Montgomery?

A. Yes, sir, about 6 P.M. on the 4th.

MR. HARRIS: Your Honor, if I could -- Excuse me for interrupting, Mr. Roleson.

If I could, Your Honor, I would ask that the statement of March the 3rd at 4:30 A.M. that was signed by Mr. Montgomery at 5:10 A.M. be introduced as State's Exhibit Number 2 for this hearing.

THE COURT: All right, sir.

(State's Exhibit Number 2 was marked and filed.)

THE COURT: Let me see both of the exhibits, please.

All right, sir. You may proceed.

Q. (By Mr. Harris) Now, you didn't talk, or did you talk to Mr. Jonathan Montgomery any more on the day of March the 3rd, 1994?

A. Yes, sir.

Q. All right. Could you tell me what circumstances that occurred or were present when you talked to him and

what happened?

A. Well, he directed us to Rose Hill Cemetery on Elvis Presley. He was transported out there by Sergeants Ruby and Free. And while at the cemetery he found where a relative had been buried earlier that year and counted the graves, six graves back south from there and that's where he stated that the bodies were at, underneath that grave.

Q. All right. After doing that would it be fair to say that it took a while and some doing to get permission to -- and comply with the law to exhume the grave or exhume the bodies from the grave?

A. Yes, sir. It took a while to find out exactly what legal documents -- or what legally can be done to dig up a person in a legal grave.

Q. What was the name of the cemetery?

A. Rose Hill Cemetery.

Q. And you said that Jonathan Montgomery took you to his cousin's grave?

A. It was either a cousin or an uncle. I'd have to refer to the report to make sure.

Q. All right. Do you remember that cousin or uncle's name?

A. No, sir.

Q. All right. Now, what did he do when he got to that grave to identify the grave that the bodies were

eventually found in?

A. He counted six graves back southward.

Q. All right. Now, did he tell you or make any statement to you when he got to the grave in question as to what you would find?

A. He said I'd either find all three or at least one buried underneath the legal person in the grave.

Q. All right. Now, you had had Mr. Montgomery run away from you that morning.

A. Yes, sir.

Q. You had had him -- You had seen him sprayed with this chemical. Is that correct?

A. Well, I didn't see him. I heard it going on in the attic.

Q. But you know he was sprayed with the chemical?

A. Yes, sir.

Q. All right. When you take him out to the cemetery, is he handcuffed or shackled? Or just tell us what he is.

A. He is shackled. I can't remember whether or not he was handcuffed or not.

Q. All right.

A. But he did have leg irons on.

Q. Okay. Now, did you find the bodies of Marcellus Anderson, Deloris Anderson, and Fred Tucker in the grave that Jonathan Montgomery led you to?

A. Yes, sir.
Q. All right. Did you talk to Jonathan Montgomery any more that day?
A. That day, no, sir.
Q. All right. Now, did you turn him over to other officers?
A. Yes, sir. He was -- Like I say, Major Wright talked to him and Mr. Strother of the Attorney General's Office talked to him. And once he pointed out where the bodies were, he agreed to go back and sit in the Homicide Office until we dug the bodies up, to either confirm that they were or were not there. And -- Instead of being placed in the jail under arrest.
Q. All right. Now, did you have an occasion on March the 4th of 1994 to talk to Mr. Montgomery again?
A. Yes, sir.
Q. Now, when you talked to Mr. Montgomery on March the 4th of 1994, was he in custody?
A. No, sir.
Q. Did you go down -- Did you have to go to the jail and get him?
A. No, sir.
Q. How did he get to the Homicide Office on March the 4th of '94?
A. His girlfriend drove him there and come up to the

office with him.

Q. All right. Was that at your request? Had you called him and asked him to come? Or why did he just choose to come to the Homicide Office on March the 4th?

A. Well, an agreement was made between Major Wright and him that they would keep in contact with each other through beepers. And I'm not sure whether or not that Jonathan beeped Major Wright or Major Wright beeped Jonathan. But he come to the office.

Q. All right. Did you take a statement from him at that time?

A. Yes, sir.

Q. Did you advise him of his rights again?

A. Yes, sir.

Q. After that statement was taken on March the 4th of 1994, did you arrest him?

A. No, sir.

Q. Did you place him in jail?

A. No, sir.

Q. What happened?

A. Him and his girlfriend left.

Q. All right. Now, in that statement did he admit to you that he was present when the other two people were killed?

A. Yes, sir.

Q. Or pardon me. When the three people were killed, Mr. Anderson, Marcellus Anderson, Deloris Anderson, and Fred Tucker?

A. Yes, sir.

Q. Did he give you a name of Bobby Wilson as being responsible for killing the three people?

A. Yes, sir.

Q. Now, at a later time did you check that name out of Bobby Wilson?

A. Yes, sir, I did.

Q. And did you determine that Bobby Wilson was -- Just tell us what you did determine as to Bobby Wilson.

A. I determined that Bobby Wilson was wanted and had warrants issued for a murder that he was accused of on Alabama Street. Upon talking to the people in the neighborhood and to his family, learned that he was taken to Nashville approximately a month earlier and let out. And that was the last that anyone had seen or heard from him.

Q. To the best of your knowledge was Mr. Wilson not even in this county during the time the homicide took place?

A. Not that I know of.

Q. All right. And he was a fugitive?

A. Yes, sir.

Q. All right. Now, I want to pass you this statement that we've referred to as taken at 6:30 and ask you if this

is a copy of it.

(Document passed to witness.)

A. (After examining document.) Yes, sir.

Q. All right. In that statement was he advised of his rights?

A. Yes, sir, he was.

Q. Did you do that? Or who did it?

A. I did it.

Q. All right. Did he appear to understand his rights?

A. Yes, sir.

Q. Did he give you a statement?

A. Yes, sir.

Q. In that statement -- First of all, how long is that statement?

A. Six pages.

Q. Did he read the statement after it was typed?

A. Yes, sir, he did.

Q. Did he sign it?

A. Yes, sir.

Q. Was this done in your presence?

A. Yes, sir.

Q. Did you threaten him or promise him anything for that statement?

A. No, sir.

Q. All right. Now, I want to direct your attention now --

MR. HARRIS: If we could, Your Honor, I'd ask for the purposes of this hearing I'd like for that statement to be introduced as State's Exhibit Number 3.

THE COURT: All right.

(State's Exhibit Number 3 was marked and filed.)

Q. (By Mr. Harris) Now, I want to direct your attention back -- Or from that point on did you have occasion to try to re-contact Mr. Jonathan Montgomery after March the 4th?

A. Yes, sir.

Q. And were you able to do so here in Memphis, Tennessee?

A. No, sir. The beeper -- His girlfriend had the beeper. He was beeped, she would return the calls, and didn't know where Jonathan was.

We later learned that a U-Haul truck was backed up to his residence and the family had moved.

Q. Did you find Mr. Montgomery?

A. Yes, sir. He was finally located in Milwaukee, Wisconsin.

Q. All right. And did you have an occasion to go to Milwaukee, Wisconsin, on March the 31st of 1994?
A. Yes, sir, I did.
Q. And who went with you?
A. Sergeant Wilkinson.
Q. All right.
A. And Mr. Harris.
Q. All right. And when you got there, did you attempt to talk to Jonathan Montgomery?
A. Yes, sir.
Q. Did you read him his rights?
A. Yes, sir.
Q. When you did that, who was present?
A. Sergeant Wilkinson and myself.
Q. All right. And you mentioned my name as going with you. For the record, was I present in any way, shape, form, or fashion when you talked to Jonathan Montgomery?
A. No, sir.
Q. All right. Now, did Mr. Montgomery give you a statement there in Milwaukee?
A. Not a written statement. We talked to him for a few minutes and he told us that he didn't want to talk to us any more. He wanted to talk to the Milwaukee officers, meaning Detectives Caesar and Murphy.
Q. All right. What did he tell you there when you

talked to him on the 31st?

A. Basically we were asking who committed the murders and he kept saying that Bobby Wilson did. And when we told him that we knew that Bobby didn't because he was out of town and everything, then that's when he decided he didn't want to talk to us.

Q. All right.

MR. HARRIS: Would the Court bear with me just one second?

That's all. I think that's all, Your Honor.

THE COURT: Mr. Ballin?

MR. BALLIN: Just a second, Your Honor.

CROSS-EXAMINATION

BY MR. BALLIN:

Q. Officer Roleson, tell me again, now, what time was the first contact made with Mr. Montgomery that morning?

A. It was about 10 A.M. on the 2nd of March.

Q. All right. And the reason why is that someone had told -- some witness had told you he had been seen with two of these victims?

A. Yes.

Q. Or with all three?

A. With two of the victims. Yes, sir.

Q. Two of the victims. All right. Did you know this

particular informant? Was it an informant, or was it a citizen, or. . . . ?

A. It was several witnesses.

Q. Several witnesses had told you. All right. And were you the lead officer on this case? Was this your case?

A. Yes, sir.

Q. Okay. And as I understand it, you made arrangements, or someone made arrangements, he was supposed to be there in the afternoon, and then later what time was it that he actually showed up?

A. Well, I was contacted at about 9:30 P.M. so it had to be either within 10 or 15 minutes before that.

Q. All right. Okay. And you got downtown about what time?

A. It was probably about 10:15, around 10:30, because we started talking to him, advised him of his rights about 10:45.

Q. Was this in the Homicide Office?

A. Yes, sir.

Q. All right. And was this in -- For the sake of this record, that Homicide Office is a large open area with many desks in it, right?

A. Yes, sir.

Q. All right. And there's a room within the office itself where you interrogate prisoners, right?

A. Yes, sir.
Q. And this room is sealed off from everything else. I don't believe it has any -- It's been a while since I've been in so I apologize. Does it have windows in it or is it just a completely closed-in room?
A. It's a closed-in room.
Q. All right. And you took Mr. Montgomery in there?
A. Yes, sir.
Q. You and who else?
A. Sergeant Wilkinson.
Q. Were y'all the only officers in Homicide at that time?
A. No, sir. The officers that contacted Mr. Montgomery and brought him to the office were there.
Q. All right. Were these uniform officers or homicide detectives?
A. They were uniformed officers. They were on the felony task force.
Q. All right. What, please, sir, is the felony task force?
A. It's uniform officers that are put in plain clothes to serve warrants.
Q. I see.
A. And we use them certain times to find people for us.

Q. All right. And they then, while they're uniformed officers, they were not in uniform?
A. Correct.
Q. Okay. But they were wearing guns?
A. Yes, sir.
Q. And they did have their -- Well, I don't know if they had their badges but they had guns on their hips, right?
A. Yes, sir.
Q. Did you have a gun?
A. Yes, sir.
Q. And did Sergeant Wilkinson have a gun on?
A. I don't believe so. He usually puts his in his desk drawer.
Q. All right. So y'all go in that office and we've got at least three armed policemen, right?
A. No, sir.
Q. Two? One armed -- Oh, just you and Mr. Wilkinson? Right?
A. Just me and Mr. Wilkinson. Yes, sir.
Q. All right. And did you start to talk to Mr. Montgomery?
A. Yes, sir, we advised him of his rights.
Q. Well, he was not a suspect at that time, was he?
A. Yes, sir.

Q. He was?
A. Yes, sir.
Q. Well, how did he go from suspect to witness in just a few short minutes?
MR. HARRIS: Your Honor, I'm going to object.
MR. BALLIN: Well, they've been telling me he was a witness, Your Honor.
THE COURT: Overruled.
Q. (By Mr. Ballin) All right. How did he go from suspect to witness in just a few short minutes?
A. Well, he was last seen getting into the Jeep with Marcellus Anderson, and Fred Tucker, and James Montgomery.
Q. All right.
A. He was one of the last persons that got into the Jeep. The Jeep was later found burned in Mississippi, so he was a suspect in trying to find out what happened to them.
And after he started talking to us and told us that they had gone to the laundry and let him back out and that he was seen back on the streets down there, then he gradually become more and more of a witness.
Q. Would you kind of run that past me again? And if you'd use names rather than him's and whatever so I'll know which one you're talking about, please, sir?
MR. HARRIS: Your Honor, I think he's answered the question.

MR. BALLIN: Well, Your Honor --

THE COURT: Overruled. You may answer it again, please.

THE WITNESS: Okay. What was the question again?

Q. (By Mr. Ballin) Would you -- I asked you how he came from being just a -- from a suspect that you have to advise of his rights immediately before talking to him, how he got from that situation at 10:45 P.M. to being a witness sometime around 4 o'clock A.M.

Now, tell me what changed it.

A. Well, like I started to say, he was a suspect, because Jonathan Montgomery was one of the last persons seen in the Jeep with Marcellus Anderson, and Fred Tucker, and James Montgomery.

Q. All right.

A. We advised him of his rights because we didn't know what he was going to say. He could've said he had killed them. We don't know until we started talking to him.

Q. Okay.

A. And as he told us his story, the first story, and then he comes up that about a map where he might be able to lead us to the body, he gradually become more -- Seemed like he was becoming more cooperative, giving us information, and he become more of a witness.

Q. All right.

A. When we took the statement, we had no idea that he was present when the people were killed.
Q. All right. Now, we started that at approximately 10:45, right?
A. Yes, sir.
Q. P.M.?
A. Yes, sir.
Q. Was a recording made of that?
A. No, sir.
Q. Any notes made of that?
A. Yes, sir. Notes were made and later reduced to a supplement.
Q. Do you have those with you?
A. No, sir, I don't.
Q. You'll make those available to us, right?
A. Yes, sir.
Q. These were just witness -- These were statements that you've reduced now to writing?
A. Yes, sir.
Q. Okay. And y'all talked 10:45, 11:45, 12:45. Right?
A. Yes, sir.
Q. Who sent out for coffee?
A. We have a coffee pot in the office. We don't have to send out.

Q. Did Mr. Montgomery get any?
A. He refused. He didn't want anything to eat or drink.
Q. All right. And you continued to question him?
A. Yes, sir.
Q. Was there ever a break in the questioning?
A. Yes.
Q. Between 10:45 and 4 -- whatever time it was, 4:13? And 4:13?
A. Yes, sir.
Q. All right. Tell me about that break.
A. Well, there were several times that Sergeant Wilkinson and myself left the room to get coffee. He was taken to the bathroom.
Q. Taken?
A. Yes, sir.
Q. Couldn't he go by himself?
A. This is --
Q. Couldn't you just tell him, down the hall?
A. Well, this is early in the morning, Mr. Ballin, and there's nobody on the floor there but us.
Q. But you've got lights on, don't you?
A. Yes, sir.
Q. But you have to take him. Right?
A. Yes, sir.

Q. Okay. Because he certainly was not under arrest.
A. No, sir.
Q. Okay. Now, you took him to a bathroom. Right?
A. Yes, sir.
Q. Somebody stay in the bathroom with him?
A. Yes, sir.
Q. Okay. Brought him back.
A. Yes, sir.
Q. Then talked to him some more.
A. Yes, sir.
Q. And finally -- Well, was there -- What did y'all continue to talk about? I mean, over and over and over again for six hours? Just tell me what y'all talked about.
A. Basically we listened to what he told us first and then --
Q. And then you told him that wasn't the truth and we want to hear something else.
A. Something to that effect. Yes, sir.
Q. All right.
A. I mean --
Q. And then he'd tell you something else and you would decide that wasn't the truth and you'd tell him you want to hear something else.
A. Yes, sir.
Q. Okay. Well, approximately how many times, if you

can remember, did you tell him to give us another story, we didn't like what you have told us?

A. I don't think I ever used those words.

Q. Well, to get to 4:13. Approximately how many different stories did he tell?

A. Basically two, maybe three.

Q. Three. All right. And that took approximately five hours, right? Someplace around five hours. From 11 o'clock to 4 o'clock, right?

A. Yes, sir.

Q. Okay. And the only respite that this man had was how many trips to the bathroom?

A. I can only remember one.

Q. One trip to the bathroom. And you say he refused any coffee or anything of that nature, right?

A. Yes, sir.

Q. You advised him at that time that he was a witness. Right?

A. I --

Q. At 4:13.

A. At 4:13 I advised -- did not advise him that he was a witness. I advised him of his rights and told him that he was not under arrest at this time but if facts so warrant, that he could be arrested and charged at a later date.

Q. All right. (Reading)

You're not under arrest. However, this investigation will continue and if facts so warrant --

MR. HARRIS: For the record, Your Honor, he's reading off of -- This is what is in the statement on Exhibit Number 2.

MR. BALLIN: Right. Excuse me. I apologize.

MR. HARRIS: This is before the advice of rights. He tells him, (Reading)

You are not under arrest. However, this investigation will continue. If the facts so warrant, you could be arrested and charged at a later date.

Is that right, Mr. Ballin?

MR. BALLIN: Right. I was going to say that.

MR. HARRIS: All right.

Q. (By Mr. Ballin) That's in that statement, right?

A. Yes, sir.

Q. All right. Now, you took that statement.

A. Yes, sir.

Q. He signed it.

A. Yes, sir.

Q. What happened to him then?

A. Well, like I said, he was going to take us to

where a map was that would possibly show us the location of the bodies at his residence.

Q. All right. And that's -- Y'all went out, right?

A. Yes, sir.

Q. And then you went to this other area and that's when he decided to leave, right?

A. Yes, sir.

Q. Well, what happened? Why did you chase him? He wasn't under arrest. Right?

A. Well --

Q. He was free at any time to leave, because if he wasn't free to leave, then he wouldn't be under arrest, right? Then he'd be under arrest, I mean. Isn't that your definition of arrest? If I wanted to walk out of this courtroom and go to the elevator, that's my business.

A. Yes, sir.

Q. But if I was under arrest, the police might chase me.

A. They might. Yes, sir.

Q. Because I would not be free, right? To leave.

All right. Now, he was not under arrest and y'all chased him?

A. Yes, sir.

Q. And he got away.

A. Yes, sir.

Q. All right. Then you found him later?
A. Yes, sir.
Q. And he was not under arrest and you -- whatever that new stuff is -- You -- What do you call it?
A. Freeze.
Q. You sprayed him with some sort of Freeze gas. Right?
A. No, sir, I --
Q. Tell me, you say you've been sprayed with that. What's the effect of that?

MR. HARRIS: Pardon me. If we could, I think he's -- Mr. Ballin, I'm sure, was inadvertent, made a statement that you sprayed him with some Freeze gas. And I believe the record needs to reflect that that was not what the officer testified, that that was done by someone else. I think that should be clear because of the issues involved in the case.

MR. BALLIN: All right. Who --

MR. HARRIS: That Mr. Roleson did not spray him with any kind of anything.

MR. BALLIN: Your Honor, I apologize to Mr. Roleson, and he's known me for as long as he's been on the force. He knows I'm not picking on him and I'm just generically using the words --

Q. (By Mr. Ballin) The police department sprayed him

with Freeze, right?
A. Yes, sir.
Q. All right. Who?
A. It was one of the two officers that went up in the attic after him.
Q. Were these uniform officers?
A. Yes, sir.
Q. Were they with any special services team?
A. No, sir.
Q. All right. Just uniform officers that were assisting you. And one of those officers sprayed him.
A. Yes, sir.
Q. You testified earlier that you have been sprayed with that gas.
A. Yes, sir.
Q. And it's, I think you said, rough?
A. Yes, sir.
Q. Would you kind of elaborate as to what that does to you when you get sprayed with that gas? Or what it did to you?
A. What it did to me is made both eyes slam shut and I couldn't see. And it burned.
Q. Did it burn? Sir?
A. It burned.
Q. Anything else?

A. I guess it -- the burning effect lasted about twenty minutes.

Q. All right. Did you need treatment?

A. No, sir.

Q. So Mr. Montgomery was sprayed with the gas. And he was taken back to this building, police headquarters, right?

A. Yes, sir.

Q. Was he handcuffed?

A. Yes, sir.

Q. Hands behind his back?

A. Yes, sir.

Q. All right. He was brought up to the office, right?

A. Yes, sir.

Q. About what time of day or night was that?

A. It was close to 8 A.M. May have been a few minutes before or after.

Q. All right. And at that time he didn't want to talk any more to you. He wanted to talk to someone else.

A. Yes, sir.

Q. He was not under arrest?

A. Technically he wasn't going anywhere at that time. Yes.

Q. Was he sitting there in the squad room with his

handcuffs on?
A. No, the handcuffs were taken off of him after he arrived at our office.
Q. But he wasn't going anywhere again, right?
A. Yes.
Q. Not without some severe -- He might try but he wasn't going to get anywhere. Would that be a fair statement?
A. Yes, sir.
Q. Okay. So then Major Wright talks to him, right?
A. Yes, sir.
Q. Is that correct? And then Mr. Strother talks to him?
A. Yes, sir.
Q. Were you present when Major Wright spoke to him?
A. No, sir.
Q. Were you present when Mr. Strother spoke to him?
A. No, sir.
Q. Major Wright's with the police department.
A. Yes, sir.
Q. And I keep saying Mr. Strother. Of course, we all know him, but for the sake of the record, would you tell us who Mr. Strother is?
A. At that time he was Mr. Pierotti's assistant.
Q. All right. Executive assistant, right?

A. Yes, sir.
Q. All right. After Mr. Strother talked to him, then you took another statement from him. Or someone did.
A. Later that night. Yes, sir.
Q. At about what time?
A. I'd say around 10 P.M., 11 P.M.
Q. All right. Six-thirty to 11 P.M. And that was on the morning of March -- the evening of March 4th, right?
A. No, we're still on March the 3rd.
Q. Okay. Excuse me. Well, wait a minute. There was another statement taken March the 3rd at 11 o'clock. Were you present when that was taken?
A. No, sir.
Q. You were gone home to go get some sleep, right?
A. Yes, sir.
Q. Which you say you needed.
A. Yes, sir.
Q. But you don't know what Mr. Montgomery may have been doing on the date of March the 2nd, I mean before he got downtown, right? You know you were working, right?
A. Yes, sir.
Q. And you needed some sleep.
A. Yes, sir.
Q. All right. And when did you next speak to Mr. Montgomery?

A. On the afternoon of March the 4th.

Q. All right. And what did y'all talk about at that time?

A. In that statement he tells us that Bobby Wilson committed the murder and that -- I'd have to read the statement over to make sure --

Q. All right. Well, that's the one we've already introduced. That's the one at 6:30 on March the 4th, right?

A. Yes, sir.

Q. All right. Do you know what happened to -- or what time Mr. Montgomery left the police station on March the 3rd? Or did he leave on March the 3rd? Or was it March the 4th?

A. He left -- Well, I think the statement was signed some -- around 11 P.M. I'd have to look and make sure. But after he read and signed the statement, according to my files, then Sergeant Ruby took him to an address at his request and he was let out of the car. And that was the last that we saw him that night until he come to the office on the 4th.

Q. And about what time did he get there on the day of the 4th?

A. I'd say probably around 5:30, between 5:30 and 6:00, somewhere around there.

Q. And you told him again he was not under arrest,

right?
A. Yes, sir.
Q. Had you at this time seen any note or communication between Mr. Strother and Mr. Montgomery where he was told that if he would make some sort of truthful statement, or if he would make some sort of truthful statement, words to that effect, that he would not be placed under arrest? Had you seen that or did you notice that?
A. I have seen an agreement between --
Q. All right.
A. -- Mr. Jonathan Montgomery and Mr. Strother where it's not as to a statement but if he would lead us to the bodies, that he would not be arrested that day.
Q. All right. So to speak, cooperate in the investigation, right?
A. Yes, sir.
Q. Okay. And you then took another statement from him, the one that's, I guess, Exhibit 3 -- 4 or 5. That's the one that you took at approximately 6:30 P.M. Right?
A. On the 4th. Yes, sir.
Q. Okay. And you let him go after that?
A. Yes, sir.
Q. And that statement ended -- Oh, I see. I'm sorry, Your Honor. I've got so many things. . . . .
All right. Okay. And that statement ended about

an hour later at 7:45, 7:43.

All right. And then the next time you saw Mr. Montgomery was in Milwaukee, right?

A. Yes, sir.

Q. And did he speak at all to you at that time?

A. Yes, sir. The Milwaukee officers had him transferred from the jail to their holding facility. And after they picked us up at the airport, we went to their headquarters. We went into an interview room similar to the one we have and advised him of his rights again and started talking to him. And he advised us he didn't want to talk to us anymore, meaning me and Sergeant Wilkinson. He wanted to talk to the Milwaukee officers.

Q. All right. And at this time had he been indicted?

A. Yes, sir.

Q. All right. Did you present the information to the grand jury?

A. Yes, sir.

Q. And your information was what the statements and --

MR. HARRIS: Your Honor, pardon me, if I could. We've gone beyond the parameters of the motion --

MR. BALLIN: Withdraw it, Your Honor.

MR. HARRIS: What he told the grand jury is not relevant at this hearing and it's not part of the motion.

We would respectfully object.

THE COURT: What is the relevance of this?

MR. BALLIN: I'm withdrawing it.

THE COURT: Okay.

Q. (By Mr. Ballin) Now, did you speak at all to Mr. Montgomery at that time? Any statements that he made to you that weren't reduced to writing but that you made some notes about?

A. I don't think we were in there that long enough to even make any notes, Mr. Ballin.

Q. All right.

A. I don't have any in the file as to that conversation.

Q. All right. Okay. But there were notes made and it has been reduced to writing as to all these other statements that Mr. Montgomery made to you between the hours of 10:45 P.M. March the 2nd and 4 o'clock A.M. on the morning of March the 3rd.

A. Yes, sir. Like I said, the -- When we first started talking to him, those -- what he was telling us then was reduced to an oral typed statement in a supplement. Once we got to the information that was in the written statement, we didn't duplicate it in the supplement.

MR. BALLIN: I don't have anything further.

THE COURT: Any redirect?

MR. HARRIS: No, Your Honor.

THE COURT: You may step down.

(WITNESS EXCUSED)

THE COURT: We're going to take about a ten-minute break at this time.

(A recess was had.)

THE COURT: All right, Mr. Carter, you may call your next witness.

MR. CARTER: Call Commander Wright.

MAJOR ROBERT G. WRIGHT was called and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. Would you state your name, please?

A. Robert G. Wright.

Q. And, Mr. Wright, by whom are you employed and in what capacity?

A. I'm a major with the Memphis Police Department.

Q. And, Major Wright, what's your current assignment?

A. I'm the Executive Major at the North Precinct.

Q. Directing your attention back to March of 1994 of this year, what was your assignment at that time?
A. I was the commander of the Homicide Squad.
Q. Was commander your rank at that time?
A. Yes, sir.
Q. Now, Major Wright, were you aware of an investigation going on of what later turned out to be a triple homicide back in the early -- late February, early March of this year?
A. Yes, sir.
Q. All right. Sergeant Roleson was assigned and was leading that investigation, was he not?
A. That's correct.
Q. And like all homicide investigations, one officer may be assigned as the lead officer, but all the other officers work to assist that investigation and to do various parts of it. Is that a fair statement?
A. That's true.
Q. All right. And you as the commander of the entire squad would not generally take an active role in each individual investigation, but instead you were supervising all of the investigations going on at that time?
A. That's pretty much correct.
Q. All right. Directing your attention particularly to March the 2nd and 3rd, were you aware of some leads or

some names that became apparent in the three-person missing case that you-all were looking into?

A. Yes, sir.

Q. All right. And were you aware that Sergeant Roleson had actually come in contact with one Jonathan Montgomery and had actually interviewed him on or about March the 3rd?

A. Yes, sir.

Q. Now, in fact, you were responsible for calling him at home when Mr. Montgomery first appeared at the Homicide Office, were you not?

A. Yes, sir, I called him and Sergeant Wilkinson and told them to report to the office.

Q. And asked them to come down to interview Mr. Montgomery?

A. Yes, sir.

Q. And they did in fact do that interview, did they not?

A. Yes, sir, they did.

Q. And as a result of that interview, did they go out in a car actually looking at some locations -- looking for the bodies?

A. Yes, sir, they called me several times during the night.

Q. All right. Early the next morning did you learn

about events that led up to Mr. Montgomery leaving Officers Wilkinson and Roleson over at Glenview Park?

A. Yes, sir.

Q. And did you learn that Mr. Montgomery had actually been detained, then, once again over on Holman not far from there?

A. Yes, sir. He ran away from them and got up in the attic.

Q. Right. And he was detained at that point and brought back to the Homicide Office, was he not?

A. Yes, sir.

Q. All right. Did Officer Roleson attempt once again, then, to have some conversation with him shortly after he had been brought back to the Homicide Office?

A. Yes, sir, he did.

Q. What was the result of that, if you know?

A. He asked Sergeant Roleson if he'd get him someone with a little bit more authority to talk to.

Q. All right. And you being the commander of that entire Homicide Squad, did Sergeant Roleson ask you to speak to him?

A. Yes, sir, he did.

Q. Okay. And did you do that?

A. Yes, sir, I did.

Q. All right. Did you -- What was the subject of

this contact or this conversation that you had with him?

A. Well, basically Jonathan Montgomery appraised (sic) me of the fact that he was -- had some knowledge about these three people that we were looking for. He advised me that he was afraid about his involvement in it.

And I told him pretty much, you know, depending upon your involvement, it's going to depend on what the actual, you know, consequences are going to be, whether you're going to be arrested or whatever's going to happen here, you know, depending on, you know, what your actual involvement is. And until you tell us, you know, we don't know what's going to happen.

And he was concerned about the fact that he had a girlfriend that was fixing to have twins and that he didn't want to be arrested today. He said, you know, he said, "I just don't want to be arrested now". And I told him, I said, Well, you know, depending on what your involvement is, we could possibly, you know, see about maybe, you know, working out an indictment later on down the road or whatever depending on your cooperation or whatever.

Q. Now, did he in fact tell you -- You said something about his girlfriend having twins. Did he indicate to you that he believed that birth to be eminent?

A. Yes, sir, he did. He said it was just a matter of a few days before she was going to have her babies.

Q. Now, at this time basically what you had were just some suspicions, I guess. Is that correct?
A. Yes, sir.
Q. All right. Did you have any reason to, and in fact, did you charge or arrest Jonathan Montgomery?
A. No, sir.
Q. Now, did you ask him what kind of information that he could provide you with? In particular at that time did you-all even have bodies?
A. No, sir. We did not have the bodies. But Jonathan Montgomery indicated to me that they had put the bodies somewhere where the police would never find them.
Q. Did he indicate to you that he could help you find them?
A. Yes, sir. He told me that he knew exactly where the bodies were and he could lead us to them.
Q. Did he tell you anything about his being willing to do that?
A. Yes, sir. He said if we could get the deal worked out where he wouldn't be arrested, that he'd be -- you know, that he would take us to the bodies. And I told him that I was not in a capacity to make a deal with him, that the Attorney General's Office was. And that's when I called Mr. Strother and asked him to come up to the office and appraised (sic) him of what was happening. And that's when

Mr. Strother spoke with him.

Q. All right. And you did in fact call him and he did in fact come up?

A. Yes, sir, he did.

Q. Did you -- The actual negotiation about this agreement, you understand an agreement was later reached; is that right?

A. Yes, sir. Yes, sir. I had it typed up.

Q. All right. Did you participate in the negotiations with Mr. Montgomery or was that done by Mr. Strother?

A. Mr. Strother did most of that.

Q. All right. And once that agreement was reached, did you -- Did Mr. Strother ask you to have an item typed up?

A. Yes, sir. He told me basically what he wanted the document to read and I went in and had our transcriptionist, who had arrived at work, to type that up and gave it to Mr. Strother. And he read it and then had Jonathan to sign it. And I believe he signed it also.

Q. I'm going to pass you an item and just ask if you can identify it. This is a xeroxed copy of the original.

(Document passed to witness.)

A. (After examining document.) Yes, sir. That's the agreement that I had typed up.

Q. All right. That's actually a copy that you had prepared. Did you participate in the execution of that, or was that done between Mr. Strother and Mr. Montgomery?

A. I was present in the room when they both signed it.

Q. All right. And is that an accurate copy of the document that you both -- that you witnessed them both sign?

A. Yes, sir, it is.

MR. CARTER: I would ask that that be marked Exhibit 4 for purposes of our hearing.

THE COURT: Exhibit 4.

(State's Exhibit Number 4 was marked and filed.)

MR. CARTER: Pass the witness at this time, Your Honor.

THE COURT: Mr. Ballin.

CROSS-EXAMINATION

BY MR. BALLIN:

Q. What time was it that you first got in contact with Mr. Wright -- or excuse me, Mr. Montgomery? About?

A. About what time?

Q. Mmm-hmm (yes).

A. Let's see, after Sergeant Roleson and Wilkinson called me, that was around six or so, I went ahead and got up and got ready for work. I guess I got to the office a little before seven maybe.

Q. All right. They advised you that they had a statement.

A. Yes, sir.

Q. From him, right?

A. Yes, sir. Yes, sir, they did.

Q. And did they advise you that they wanted to talk to him additionally?

A. Yes, sir.

Q. Is that a yes?

A. I believe they did.

Q. All right. And when you got there, was it before 8 o'clock or 9 o'clock?

A. Oh, it was before -- I was on the way to work when Mr. Montgomery ran from them, because I heard it all on the radio.

Q. All right. And when you got to the office, was Mr. Montgomery in the office?

A. Yes, sir.

Q. All right. And how was he? Was he seated at a desk or was he --

A. He was in one of our interrogation rooms.

Q. All right. The one in the Homicide Office?
A. Yes, sir, he was inside the Homicide Office in just one of our little interview rooms that we use when we interview and interrogate pri -- you know, suspects, or witnesses, or whatever.
Q. All right. And do you remember if he was handcuffed or not?
A. No, sir, he was not handcuffed.
Q. All right. And he wanted to talk to you, right?
A. Well, Sergeant Roleson and Sergeant Wilkinson were talking with him when I first got there. And they came out and said that he wanted to talk to somebody with a little bit more authority than them.
Q. He just didn't want to talk any more to them and --
A. Right.
Q. Okay. All right. And tell me again, if you would, please, sir -- And if you could avoid being so gentle about it -- Just tell me what was it that he wanted to know about giving you a statement or talking additionally?
A. He just didn't want to be arrested right then.
Q. Well, and what did you tell him when he said that?
A. Basically what I told him, it was going to depend on what his involvement was, you know, how -- you know, what could be worked out, you know. If he was a principal

involved in this thing or whatever, you know, we might have to think about whether we was going arrest him or not. You know, I said, but I couldn't make any deals with him. I was going to have to get somebody from the Attorney General's Office up there.

Q. Well, how long do you think it would've taken you to make up your mind if a man confessed to being involved in three murders that you'd let him go or not let him go?

A. Like I said, it would depend upon his total involvement in the crime.

Q. Well, I mean, if he said he was involved, how long would that take you?

MR. HARRIS: Your Honor, I object to that. The question's vague. "Involved" is subject to so many interpretations.

THE COURT: Sustained. Rephrase, please.

Q. (By Mr. Ballin) Well, that if he was -- Do you know the term aider and abettor?

A. Sure.

Q. If he was an aider and abettor in a triple killing, how long would it take you to decide whether or not you were going to release him or not?

MR. HARRIS: Once again, and I'm sorry to interrupt, but I respectfully object because there's so many gradations of that word and it's not even the law anymore.

And I just object to it, Your Honor, as it calls for speculation, and we're just asking too much of the witness, I object.

THE COURT: Sustained.

Q. (By Mr. Ballin) All right. Did you suggest to him at all that maybe you might want to talk to a lawyer and let him make that decision rather than the police department as to whether or not you were involved or not? Did you make that suggestion to him?

A. He had already been advised of his rights.

Q. I understand that. But now we're talking about being released if you give us a statement and being able to be home with your girlfriend who is expecting children.

And what I'm asking you is, did you then tell him, now, with those factors in play, don't you think you ought to talk to a lawyer to see if you're safe in making a statement?

A. No, sir. He's a grown man and he knows his rights.

Q. All right. But you told him that maybe something could be worked out.

A. Yes, sir.

Q. Even about a later indictment even, right?

A. Yes, sir.

Q. Even if he put himself into a situation where he

would be harmed -- or not harmed, but arrested, you'd see if it could be worked out where possibly he could be indicted later on?

A. Yes, sir.

Q. Okay. And he would get to go home?

A. Yes, sir.

Q. All right. Did you get Mr. Strother down there?

A. Yes, sir, I did.

Q. And did you explain all of that to Mr. Strother, what you thought, that if you could get this man's cooperation, it might help in the arrest or indictment of whoever might be responsible for the disappearance of these people?

A. Yes, sir.

Q. All right. And were you present when Mr. Strother spoke to him?

A. No, sir. He spoke with him in private.

Q. All right. But you did indicate to Mr. Strother that you told him that, you know, maybe something could be worked out. He wouldn't be arrested at this time, he could be indicted later, something of that nature, right?

A. Basically I told Mr. Strother what had transpired up to that point and what Mr. Montgomery was requesting and let him make that decision.

Q. All right. What you had told Mr. Montgomery.

A. Yes, sir.
Q. You advised him of that?
A. Yes, sir.
MR. BALLIN: I don't have anything further.
THE COURT: Redirect?
MR. CARTER: No, sir. Thank you.
THE COURT: You may step down.

(WITNESS EXCUSED)

THE COURT: Call your next witness.
MR. CARTER: Call Don Strother.

DON STROTHER was called and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. Would you state your name and spell your last name, please, for the record?
A. Don Strother, S-T-R-O-T-H-E-R.
Q. All right, Mr. Strother, by whom are you employed at this time?
A. Shelby County Sheriff's Office.
Q. In what capacity?
A. Legal adviser.

Q. And you're a licensed, practicing attorney in the State of Tennessee, are you not?
A. Yes, I am.
Q. Have been for how long?
A. Since September of 1965.
Q. All right. Directing your attention to -- You've relatively recently become employed by the Sheriff's Department, have you not?
A. That's correct. August of this year.
Q. All right. And before that where were you employed and in what capacity?
A. Shelby County District Attorney General's Office until that time, for the last six or seven years as executive assistant.
Q. And, for the record, is that person basically what you would call the second in command after the elected district attorney?
A. Yes.
Q. And you had been, of course, working with the District Attorney's Office for -- my math is bad -- at least 20, almost 30 years?
A. Twenty-seven years, I think.
Q. All right. Directing your attention to March the 4th of this year, 1994, you were, of course, employed by the Attorney General's Office in the capacity of being the

executive assistant?

A. Yes, I was.

Q. Did you have an occasion to receive a phone call or communication from Major, or then, I guess, Commander R. G. Wright of the Homicide Squad?

A. Yes, I did.

Q. What was the nature of that call?

A. I received a call from Commander Wright, my recollection is, sometime between 9:30 and 10 o'clock on that morning. And he wanted someone from our office to come to the Homicide Bureau to talk with a witness or potential witness regarding a homicide.

Apparently this individual had requested someone from our office before he would give some information to the police department.

Q. All right. And on this particular day had you been aware that there was a missing persons case ongoing that the police were investigating?

A. Yes, in the sense that I had seen it in the media.

Q. Okay.

A. I had had no conversations --

Q. In your official capacity you had not been involved in an investigation or anything of that nature to this point?

A. No, I had not.

Q. All right. And on the morning of March the 4th somewhere around 9:30 -- Was it after people had gone to court? Is that how you know the time?

A. That's my recollection, because I think I considered finding perhaps Mr. Harris or someone else and sending them, but they had all gone to court. So I was around, I didn't have any obligation, I didn't think, for the next hour or so. So I came -- went up to the Homicide Bureau.

Q. And when you got to the Homicide Squad, who did you come in contact with there?

A. I believe my initial contact was with Commander Wright.

Q. And did he advise you of the situation or a situation?

A. Yes, he did.

Q. Did he advise you that basically they were investigating this missing persons case as a potential homicide but they still hadn't located any bodies?

A. That's correct.

Q. All right. What, if you recall, did he tell you basically about what was going on?

A. Well, he told me that they had been talking with an individual whose name, I believe, was Jonathan Montgomery, and that he had purported to them to have some

information regarding the location of the bodies of these individuals, indicating that they were in fact dead, and had indicated that they had in fact been killed.

And that Jonathan Montgomery had some specific requests concerning providing this information and that he wished me to talk with Mr. Montgomery and see if we could comply with those requests.

Q. And did you do that?

A. Yes, I did.

Q. I guess I should ask that in part. Did you talk with Mr. Montgomery?

A. Yes, I did.

Q. Was that there in the Homicide Office?

A. Yes, it was.

Q. All right. Was he shackled or handcuffed or anything in any way at that point to your recollection?

A. I do not believe he was.

Q. And did you have a general conversation with him at first?

A. I think we exchanged pleasantries. I told him who I was, the office that I worked for, and that I was here and that I understood he knew something about the location of the bodies that we were looking for. I say "bodies", I don't know that we were particularly looking for bodies or looking for people. But what, according to information he

had already given, were bodies.

And, yes, we had a general conversation in which he told me --

Q. What did he tell you? I mean, what was the substance of this? Was it a lengthy conversation or a relatively short conversation?

A. I guess we talked for a total, the entire time I was in there, of perhaps four to five minutes at the most.

Q. Did he share with you some of his personal concerns about some things he had in mind, or on his mind?

A. Yes, he did.

Q. Basically what did he tell you or what were the types of things that he shared with you?

A. Well, he indicated, one, that he was very concerned because -- My recollection, and I could be mistaken in the exact details of this -- But the concern basically was about that he had a girlfriend who was pregnant. My memory is that he indicated that she had been to a doctor and she was expecting twins and she was supposed to deliver sometime in the, like the next day or two. And --

Q. All right. He expressed to you a belief that this birth was eminent?

A. Yes. And that he very much wanted to be out and be there, because even though these people -- he was not

married to this woman, he wanted to be there with her when she had this child.

Q. All right. And did he express to you some concern that if he shared this information with you, he might not be free to be there at the birth of these children or child?

A. I guess the answer to that is, yes, he did. He seemed very unsure of what his situation was. And I do remember that he assured me that he had information about this but that he was not personally involved in it.

Q. Did you discuss with him, then, the possibility of his giving this information and being released, you know, or allowed to go on about his business at least for the time being?

A. Frankly, what I asked him is, What do you want? You know, Why is it you sent for me? What is it you want to know from me? And he indicated to me that he wanted assurance that if what he was telling us was the truth, and that he was not involved in this but that he had talked with -- And I remember him -- after the fact and knew what had happened because of that, that he would not be arrested that day. And he was very specific about that you will not arrest me today.

Q. Okay. And as far as you were concerned, what did you think about that or what was your feeling on that subject?

A. Well, my feeling on that subject was that we weren't going to arrest him that day anyway, so it was like almost a no-decision to say sure. And particularly as long as he was willing to specify that what he was telling us for us not to arrest him had to in fact be the truth.

Q. Okay.

A. And be, I believe the statement was, verifiable truth. That he -- Because he assured me that he could present other people who would verify his non-involvement in this and that he was simply a witness to it.

Q. All right. Let me digress for just a minute. During this conversation, can you describe his demeanor? I mean, was he alert?

A. Yes.

Q. I mean, did he respond to your questions as you made them?

A. Yes.

Q. Did he appear to you to be under the influence of alcohol, or some controlled substance, or narcotic or anything? Did he look out of it in any way?

A. Not to me.

Q. All right. I mean, did he appear to you to be lucid, in other words?

A. Totally, yes.

Q. All right. And if anything, did he -- Was he

short with his answers or did he give you detailed answers and details and things about his personal life?

A. He gave -- wanted to provide me with a lot more information, frankly, about his personal life and what was going on there than I actually had any desire to hear. And he talked a great deal about that.

He indicated that he had knowledge of other things that he would perhaps like to talk about that didn't have anything to do with this situation at all. It was as if he kind of wanted to be an informant or something.

Q. All right. Now, did you then ask Commander Wright to reduce an agreement to writing? Did you word an agreement or come up with a wording for an agreement?

A. Yes. I talked with Mr. Montgomery and said, Now, this is what you want me to say. And I went over it two or three times with him. And I think I had a yellow pad and wrote down on a yellow pad, or had something that I made some notes on.

Then I called Commander Wright in and Commander Wright took down the specific requests that he had made, and I believe he was standing there when I gave it. And I said, Now, is that what you want? And he said, Yes, that's the assurance I want. And I said, Fine, we'll have that typed up, I'll sign it, and then we'd like for you to sign it; is that agreeable? And he said, Sure.

Q. All right. May I have what's been marked Exhibit Number 4 passed to the witness, please?

(Exhibit 4 passed to witness.)

Q. Would you examine that for a moment, Mr. Strother, and tell us, if you can, what that is?

A. (Witness complies.) Yes, sir. That is the typed version of the agreement that Mr. Montgomery and myself arrived at on March the 3rd, 1994.

Q. Now, for the record, that is a xerox copy of the original, is it not? Or does that appear to be?

A. I'll be honest, it's so good I couldn't really tell you whether it's a xerox or the original.

Q. Do you recognize your own signature or a facsimile thereof on the agreement?

A. Yes, I do.

Q. And do you see Jonathan Montgomery's signature on a line bearing his name as well; is that correct?

A. I see what appears to be where someone has signed Jonathan Montgomery.

Q. All right. Was it signed by the individual you spoke with that morning?

A. Yes.

Q. In your presence?

A. Yes, it was.

Q. Was there a time on these signatures indicating

when this document was executed?

A. Indicates 10:00 A.M.

Q. All right. And does this document accurately reflect the totality of any agreement that you had on behalf of the District Attorney's Office of the State of Tennessee with Jonathan Montgomery in this case?

A. Yes, it does.

MR. CARTER: I'd pass the witness. Oh, excuse me. If I can have just a moment.

(Pause)

Q. (By Mr. Carter) This agreement that we've discussed, where did it originate? I mean, how did this agreement come to be, I guess, in other words? Who originated this negotiation and that culminated in this agreement?

MR. BALLIN: Well, Your Honor, we've already heard that. Sergeant Wright -- I mean, excuse me -- Executive Major Wright has told us about it. It's just repetitious.

THE COURT: I tend to agree with Mr. Ballin unless there's some specific information that hasn't been elicited.

MR. CARTER: That's fine. I'll withdraw the question. If the Court feels it's already been answered.

THE COURT: I do. I'll sustain the objection.

MR. CARTER: Then in that case I'll pass the witness.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. BALLIN:

Q. Mr. Strother, you've been practicing law, as I understand it, approximately 29 years or a little better, 29 years. Nineteen -- September 1965 until now. Twenty-nine, 29 and a half years, right?

A. That's correct.

Q. And how long a period of time was that in the Attorney General's Office?

A. Well, easiest way I know to put it is all but two years and about four months of it.

Q. All right. And you've been with the Sheriff's Department since your resignation at the Attorney General's Office, right?

A. I like to think of it as retirement. But I guess resignation, too.

Q. Well, right. Excuse me. I apologize. We've been at it about the same time and I don't see retirement in my future.

But, anyway, let me ask you this. You get a call from Major Wright that you've -- he's got a person down there that may or may not be a suspect, but about to develop some leads in an important, what may or may not be a murder

case, right? That was the basis of the call, right?
A. The basis of the call to me was that he had someone who had information about these missing people and the information -- And he'd already given some information. And the information seemed to indicate that if the information were correct, it was a homicide.
Q. All right. And you also had information that this person was, quotation mark, a flight risk, close quotation mark. Right? I mean, he had run off from the police.
A. I don't remember that being mentioned to me at all, Mr. Ballin.
Q. You never knew that?
A. I don't remember anyone indicating to me that this individual was a flight risk.
Q. All right.
A. It may have been but I have no recollection of that.
Q. All right. Okay. But it was important to get additional information, or at least Sergeant -- I apologize -- Major Wright felt that it was important to get some additional information from this person, right? Otherwise, there wouldn't have been any need to call you down, right?
A. I think he certainly wanted to get infor -- If this man had reliable information as to the whereabouts of

these individuals, either as live human beings or bodies, he certainly wanted to get it. Yes.

Q. All right.

A. And felt that would be important information. Yes.

Q. All right. And based upon that you left your office on the third floor and went up to the tenth floor, right? Or whatever floor they're on, tenth, eleventh.

A. I was trying to think of that myself. But I went to the Homicide Bureau.

Q. All right. Now, you went to the Homicide Squad and Mr. Montgomery was in a room; is that correct? Or was he out in the squad room? Was he in a, what they call a misty room or interrogation room?

A. I'm not certain of this. My best recollection of it is, is that Mr. Montgomery was outside the room when I originally got there. And I went up and talked with Mr. Wright. And he was standing in the hallway or somewhere around there. And that when we got ready to talk, just me talk with him, that we went in a room. But he may have already been in that room.

Q. All right.

A. I really didn't know Mr. Montgomery at that time.

Q. All right. And you talked to him about 45 minutes, right?

A. No, sir.
Q. Oh, I'm sorry. I thought you said 45 minutes.
A. No, sir. I talked to him, at the most, four or five minutes.
Q. Oh, four or five. Oh, excuse me. I'm sorry. Okay. Four or five minutes. And during that four or five minutes you told him that if he cooperated in the investigation into the disappearance of Deloris Anderson, Marcellus Anderson, and Fred Tucker, and the information he provides can be verified as truthful, he will not be arrested at this time. Right?
A. Right.
Q. And he assured you that he had witnesses that were going to verify him being truthful?
A. Yes, sir.
Q. Isn't that what you said?
A. Yes, sir.
Q. All right.
A. He assured me that there were other people who had witnessed the same statements that he had heard who could verify what he was saying. That they were there when these statements were made and could verify that these statements were made by these other parties.

And I don't think he got into who the people were but it was --

Q. I understand. Okay. And so that was the big consideration, that it had to be verified truthful first before he would be released, right?

A. It certainly was important in my mind that what he told us was the truth. And I wanted to emphasize to him that it was important that what he tell us be the truth for this to be an agreement. Because what he was telling us meant that he was not involved in the homicide. And it was important for that to be truthful for him to be released.

Q. All right. Did you know how long he had been down there at that time? Did you have any idea? That he'd been there almost 24 hours?

A. I don't believe --

MR. CARTER: I object, Your Honor. I don't think the record bears that out. We've been talking about him leaving and leaving their custody and being out of custody for parts of this period.

MR. HARRIS: Also the record will be from 10:48 P.M. till 10:48 -- or 10 o'clock A.M., which is about 12 hours.

MR. BALLIN: Excuse me. Do you know that he --

THE COURT: Excuse me just a second. Let me make sure I have it straight in my mind.

Was this not the occasion when his girlfriend brought him back? Was that the testimony?

MR. BALLIN: No, sir. No, sir.

THE COURT: Okay.

MR. BALLIN: This was, as I understand it, what the proof has been, that the gentleman came in around 9:30 or so to the police department, 10:40, 10:30 or so. They read him rights, they quizzed him until 4 o'clock. Four o'clock in the morning they went out, he ran away, they found him within -- about 7 o'clock --

THE COURT: Okay. Which was later that same morning.

MR. BALLIN: Brought him down to the office and here we are at 10 o'clock.

THE COURT: Right. Okay.

MR. HARRIS: My objection, Your Honor, is that he's assuming facts not in evidence. The proof is, is from 9:45 till 10 o'clock -- 9:45 P.M. or 9:30 P.M. until 10 A.M. the next morning, that's not 24 hours. That's facts not in evidence. I would ask my objection be sustained.

MR. BALLIN: Excuse my arithmetic.

Q. (By Mr. Ballin) You don't know what time he came in to the police department.

A. No, sir, I don't.

Q. Okay. But you had been advised about him taking a short break from the police department, right? Kind of going away from them for a little while?

A. I think I answered that before and I think my answer was then and is now that I don't specifically remember being told that.

Q. Okay.

A. I may have been but I just --

Q. All right.

A. I don't think I was.

Q. Well, you'd almost have to admit that it would be normal for them to tell you about having to chase somebody down and get other police officers to --

MR. CARTER: Well, object. He's testified --

THE COURT: Sustained. Sustained.

MR. BALLIN: I'll withdraw it. I'll withdraw it.

THE COURT: Let's keep it moving, Mr. Ballin.

Q. (By Mr. Ballin) Let me ask you this, Mr. Strother. Have you done this before on other occasions? Where you made --

A. I have never done this specific thing before. And tell me if I'm being unresponsive to your question.

Q. All right. All right.

A. I have never done this specific thing before, but I have on, I guess, several occasions -- I wouldn't say hundreds by any means, but several occasions gone with members of the -- of various bureaus to talk with witnesses to encourage them to come forward with information.

Q. All right. And you're saying you've never gone to the extent to where you've told them that if you give us a statement, you won't be arrested at this time?

A. I don't remember ever having that specific request made.

Q. All right. And it was certainly a promise that you made to this man that you were going to see that was kept; is that correct?

A. Mr. Ballin, I think I would have done everything within my power that if he kept his part of this promise, to have kept my part of the promise.

Q. All right. Well. . . . .

A. Or whatever you want to call it.

Q. Well, let me ask you this. What was going to happen if what he told you, or what he told the police department could not be verified as truthful? What would have happened then?

A. Then I think that would have negated the agreement and whatever happened would have happened independent of the agreement.

Q. And so do you know if he was released or not?

A. I -- When you say "know", I didn't see him released. But I did, I think, ask a question sometime subsequent to this and I believe was told that he was released.

Q. All right.

MR. BALLIN: I don't have anything further, Your Honor.

MR. CARTER: No redirect. Thank you.

THE COURT: You may step down.

(WITNESS EXCUSED)

THE COURT: Call your next witness.

MR. HARRIS: Your Honor, we call Mr. Jack Ruby.

JACK W. RUBY was called and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Would you state your name, please, and tell us who you're employed by?

A. J. W. Ruby, R-U-B-Y. Shelby County Attorney General's Office.

Q. And I'll ask you if you'll direct your attention back to March the 3rd of 1994. Who were you employed by at that time?

A. Memphis Police Department.

Q. And what were your duties on March the 3rd, 1994, with the Memphis Police Department?

A. I was a sergeant in Homicide.
Q. Okay. If I could, I'll pass you this paper writing dated March the 3rd, 1994, at 11 P.M. Ask you if you could to look at it and tell me if you're familiar with it.
(Document passed to witness.)
A. Yes, sir. This is the statement that we took from Jonathan Montgomery.
Q. And who do you mean by "we"?
A. Sergeant Free and myself.
Q. What time did you start taking this statement from Mr. Montgomery?
A. Eleven P.M.
Q. All right, sir. Now, I want to direct your attention to the statement. Did you advise him of his rights?
A. Yes, sir.
Q. All right. Before you advised him of his rights, did you tell him whether he was under arrest and what that meant?
A. No, sir. He wasn't under arrest.
Q. What did you tell him? If you'll look at the statement.
A. All right, sir. What we told him was we wanted him to -- that he was not under arrest. . . (Reading)

. . .however, this investigation will continue and if the facts so warrant, you could be arrested and charged at a later date.

Q. Did you then advise him of his rights?

A. At that point, yes, sir.

Q. All right. And could you read in the records -- into the record the rights that you advised him of?

A. (Reading)

I am going to ask you some questions regarding the above complaint. You have the right to remain silent and anything you say can be used against you in a court of law. You have a right to have a lawyer, either of your own choice or court-appointed, if you are unable to afford one, and to talk with him before answering any questions and to have him with you during questioning if you wish.

Q. What did he say in response to that?

A. He was asked,

Do you understand each of these rights I've explained to you?

He answered,

Yes.

Then he was asked,

Do you wish to make a statement now?

And he said,

Yes.

Q. All right. And what was the next question you asked him?

A. Was,

Jonathan, on March 3rd, 1994, at approximately 4:13 A.M. . . .

There's a --

MR. BALLIN: Your Honor, I think that's a misprint. It may be that he gave a statement to Sergeant Roleson. That's what I think why the officer's confused about that. Because the way it was typed up, it's a typographical error and I realize that. And there's no problem with us about that.

Q. (By Mr. Harris) All right. So what did you ask him?

A. Did he give a statement to Sergeant Roleson. He answered, Yes, sir.

Q. Then what did you ask him?

A. (Reading)

Do you wish to add anything to the statement that you made?

He answered,

Yes.

Q. All right. And what was your next question?

A. (Reading)

Jonathan, on Thursday, March the 3rd, 1994, at approximately 11:25 A.M. did you point out a grave in the Rose Hill Cemetery to Sergeant Free and Ruby and advise that you believe the three missing people were buried in this grave?

He answered,

I didn't know if all of them was there but I knew at least one would be there.

Q. All right. Now, did you continue to take a statement from him at that time?

A. Yes, sir.

Q. Now, how long was the statement and did he sign it at the end of the statement?

A. The statement didn't last but approximately another 30 or 45 minutes. And, yes, sir, he did sign the statement at 11:40 P.M.

Q. All right. And did he read it before he signed it?

A. Yes, sir.

MR. HARRIS: Now, we would ask that this statement be introduced as State's Exhibit Number 5, Your Honor.

THE COURT: All right, sir.

(State's Exhibit Number 5 was marked and filed.)

Q. (By Mr. Harris) Now, Officer Ruby, you had had a busy day that day, had you not?

A. Yes, sir. That was my day off.

Q. All right. And I believe that you and Officer Free were with Mr. Montgomery at the grave site?

A. Yes, sir.

Q. Now, while you were there at the grave site, did he make any statements to you in your presence that you remember? Did he say anything to you?

A. Sergeant Free talked with him at the grave site, but he told us that the grave that the people, or at least one of the people were buried in, was six graves south of his cousin's grave. He pointed this grave out to us indicating it to be the particular grave of a female black.

Q. Now, who took him back downtown, or do you know?

A. Sergeant Free and myself did.

Q. About what time did y'all do that?

A. Approximately 2 o'clock in the afternoon.
Q. All right. Did you talk to him or to your knowledge did anybody else talk to him between 2 P.M. and 11 o'clock when you talked to him?
A. I don't know, sir. We were in the process of obtaining other legal documents regarding the grave and returning to the grave site.
Q. All right. Where was he held?
A. In the office, at the Homicide Office.
Q. All right. He was not put in jail?
A. No, sir.
Q. All right. Now, was he handcuffed at this time?
A. No, sir, not in the Homicide Office.
Q. All right. When you took the statement from him, was he handcuffed?
A. No, sir.
Q. After you took the statement from him, did you take him down and book him and put him in jail?
A. No, sir.
Q. What did you do with him?
A. I took him home.
Q. What --
A. I took him to an address that he directed me to.
Q. Do you remember what that address was?
A. I believe it was the 3100 block of Mallory.

Q. All right. Why did you take him to that address?
A. He pointed it out. He told me where to go. I asked him, Where do you want me to take you? He told me over on Mallory and told me the approximate location off Robin Hood. I drove there. I said, Point out the house that you want me to take you to. So he pointed the house out, he got out of the vehicle, and last I saw of him, he was going towards the house as I backed out of the driveway.
Q. All right. Now, Mr. Montgomery had been -- I don't know if you knew it or not -- but he had been at the police station off and on since 9:30 the night before. When you took this statement from him at 11 P.M., could you describe how he appeared?
A. He appeared alert and knowing exactly what was going on. He didn't appear to be tired or anything like that.
Q. All right. Now, to your knowledge, did he complain of any physical discomfort?
A. No, sir, not at all.
Q. Did he complain of anything about his eyes, about being sprayed with this Spree (sic) or whatever this chemical was he had been sprayed with?
A. No, sir, he never commented on that to us.
Q. All right. Now, when you took this last statement from him, or this statement on March the 3rd, did you ask

him did he wish to add anything to the statement that he had previously given you?

A. Yes, sir.

Q. All right. Now, did he appear to be under the influence of any intoxicant or any drugs or anything?

A. No, sir.

Q. All right. Did he appear to be alert?

A. Yes, sir.

Q. Did he understand the questions you asked him?

A. He appeared to, sir.

Q. Were his answers responsive to the questions you asked?

A. Yes, sir.

Q. Now, when you took him away from the cemetery, did you offer to buy him lunch?

A. Yes, sir.

Q. What did he say?

A. He turned us down.

MR. HARRIS: Your Honor, I'll pass the witness at this time.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. BALLIN:

Q. All right. Let me ask you just a few questions,

please.

This statement that you were talking about, this was on the night at 11 o'clock that you -- the day -- It was taken at 11 o'clock P.M. on the night of March the 3rd, right?

A. Yes, sir.

Q. All right. And he had -- Mr. Harris asked you if you knew that he'd been with the police, except for a short period of time, since 9:30 or so the night before. Right?

A. Yes, sir.

Q. When you took him back to the office at approximately 2 o'clock was it?

A. Approximately. Yes, sir.

Q. Was he just left to roam the office or did you -- You couldn't just let him roam the office, could you?

A. I believe they allowed him to sit in one of the interview rooms.

Q. And would you describe an interview room for me?

A. It's a room with a desk, chairs. . .

Q. T.V.?

A. No, sir.

Q. Radio?

A. No, sir.

Q. Four walls?

A. Yes, sir.

Q. Windows?
A. No, sir.
Q. So we have a box sort of situation that we keep him in. No radio, no T.V. Magazines?
A. No, sir.
Q. No magazines. No nothing. Other than a desk and a chair. Right?
A. There's more --
Q. How about visitors? Did you let him have visitors?
A. I wasn't there, sir.
Q. All right. Well, in any event, he was there until 11 o'clock -- Oh, excuse me. What time was it when you took this statement?
A. Approximately 11 P.M.
Q. Eleven o'clock P.M. Where was Sergeant Roleson?
A. He was out at the cemetery with us.
Q. Well, where was he at 11 o'clock P.M.?
A. He was in the office.
Q. Was he still in the office?
A. I believe he was, sir.
Q. Or had he gone home?
A. I don't think he had gone home yet, sir. No, sir.
Q. All right.
A. He was the case coordinator.

Q. Case coordinator. Okay. So you went in and you took this statement. Do you know, sir, if statements were taken from any witnesses that whole day in connection with this case?
A. Yes, sir.
Q. Any other witnesses?
A. Other witnesses? Yes, sir.
Q. In connection with this case?
A. Yes, sir.
Q. There were other witnesses. Right?
A. Yes, sir.
Q. All right. You took their statements, right?
A. Yes, sir.
Q. Okay. And you took him home?
A. Yes, sir.
Q. Were you familiar at all with the fact that he had been promised that he could go home if he cooperated with the authorities in the investigation of this matter, and if that cooperation could be verified as truthful, that he could go home?
A. I knew there had been some kind of agreement but I did not know what the wording was.
Q. All right. Some sort of deal had been cut, right?
A. I don't know if you'd call it a deal, sir.
Q. All right. Well, and you were under instructions

that after he finished that statement to take him home, or did the statement have to be reviewed after you took the statement and then you got permission to take him home?

A. No. As soon as we got through taking the statement, I could go ahead and take him home.

Q. Was Major Wright there at 11:40 that night?

A. I don't know, sir.

Q. Sir?

A. I don't know.

Q. Was Attorney General Strother there?

A. No, sir.

Q. Did you ever call him?

A. No, sir.

Q. Did you ever call Major Wright?

A. No, sir.

Q. Do you remember talking to Sergeant Roleson once you took the statement?

A. I would've gone and given him the statement. I would have talked to him. Yes, sir.

Q. All right. And you gave him the statement, and then you left and took him home?

A. Yes, sir.

Q. And he signed this statement at 11:40 P.M., right?

A. Yes, sir.

Q. Do you know about what time you got him home that

evening?

A. It would've been sometime after 12, probably from the time we left there, walked across the street to the garage, got in the vehicle, and he directed me out there, which is out in the Getwell area, it'd probably be close to 12:30.

MR. BALLIN: Your Honor, excuse me one second.

(Pause)

MR. BALLIN: Nothing further, Your Honor.

THE COURT: Redirect?

MR. HARRIS: No, Your Honor.

THE COURT: You may step down.

(WITNESS EXCUSED)

MR. HARRIS: Call Officer Murphy, Dennis Murphy.

OFFICER DENNIS MURPHY was called and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Would you state your name, please?

A. Dennis Murphy.

Q. All right. Mr. Murphy, who are you employed by, please?

A. City of Milwaukee Police Department.
Q. And as such I want to direct your attention back to March the 31st of 1994. What bureau were you assigned to?
A. Criminal Investigation Bureau, Homicide Division.
Q. All right, sir. And as such had you had conversations with officers from the Memphis Police Department?
A. Yes, I did.
Q. Had you assisted or directed the other officers in the arrest of Mr. Jonathan Montgomery?
A. In the arrest itself, no. We informed other officers where he might be.
Q. All right. And after Mr. Montgomery's arrest -- Just briefly, could you tell us when he was arrested and who arrested him?
A. He was arrested on March 31st at approximately 12:45 A.M. I believe it was 5043 North 19th Street. And he was arrested by officers of our task force, Officer Dreeble (phonetic), Wiley, Jones, and I believe there was another officer.
Q. All right, sir. Did you have an occasion after he was arrested to inform the Memphis Police Department of his arrest?
A. Yes.

Q. And I believe that -- Did you have a partner working with you assisting you at this time?
A. Yes. Detective James Caesar.
Q. All right. Did you have an occasion to talk to Mr. Jonathan Montgomery on March the 31st of 1994?
A. Yes.
Q. How many times did you talk to him during that day?
A. We interviewed Mr. Montgomery twice, once at 2 P.M. and another time at 6:55 P.M.
Q. Did you advise him of his rights at 2 P.M.?
A. Yes.
Q. Where did that interview take place and who was present?
A. At our Criminal Investigation Bureau, which is on the fourth floor of our police administration building in Room 407, and Detective Caesar, myself and Mr. Montgomery were present.
Q. All right. And who advised him of his rights or did anyone advise him?
A. I advised him of his rights.
Q. How did you do that?
A. I read his rights to him from my calendar book which has the rights in them.
Q. All right. And could you, for the record, read

the rights that you advised him of at that time?

A. I advised him, (Reading)

You have the right to remain silent.

I asked him if he understood that right. He stated he did. In fact, he repeated it back to me. I stated,

Anything you say can and will be used against you in a court of law.

I asked him if he understood that right. He stated he did. And he again repeated that back. Not word for word but he says, I understand that.

I advised him,

You have the right to consult with a lawyer before questioning and to have a lawyer present with you during questioning.

I asked him if he understood that right. He stated he did. I continued,

If you cannot afford to hire a lawyer, one will be appointed to represent you at public expense before or during any questioning if you so wish.

I asked him if he understood that right. He stated he did.

If you decide to answer questions

now without a lawyer present, you have the right to stop the questioning and remain silent at any time you wish and the right to ask for and have a lawyer at any time you wish including during questioning.

I asked him if he understood that right. He stated he did. Then I said,

Knowing these rights and understanding each and every one of these rights which I have just explained to you, having these rights in mind, do you wish to make a statement to us?

And he stated he did.

Q. All right. Did you have any other conversations with Mr. Montgomery before -- preliminary discussion with him before -- when you first met him before you began the statement?

A. When we brought him to our facility, we introduced ourselves, told him that we were the detectives that were working with Memphis and that Memphis was on the way. And we offered him any soda, food, whatever he liked, cigarettes.

Q. All right. Now, I want to pass you a paper writing and ask if you would to look at it and tell me if

you recognize that paper writing?

(Document passed to witness.)

A. This is a typewritten copy of the statement that we obtained from Mr. Montgomery on March 31st, 1994.

Q. All right. Now, after you talked to him the first time at 2 o'clock, what happened at that time?

A. After we talked with him, we informed him that we were going to the airport to pick up the officers from Memphis. Well, we picked -- Sergeant Roleson and Sergeant Wilkinson were picked up.

We returned to the Criminal Investigation Bureau after a while at which time these officers interviewed Mr. Montgomery. After their interview, they came out and said he wanted to speak with myself and Detective Caesar. And we went back and talked with him again.

Q. All right. Did you advise him of his rights at that time?

A. At that time I says, You understand you have the same rights that we have given you before? You have the right to remain silent. You have the right to have an attorney. He said, Yes, I understand my rights but I want to tell you something. Then he gave us another brief statement.

Q. All right. Did you reduce the statements to writing?

A. Yes.

Q. Did you try to get Mr. Montgomery to sign it or did you just have it reduced to writing as an oral statement?

A. It was an oral statement. We did not have him sign it. We repeated it back to him. He stated that he didn't want to say any more but that he would contact us tomorrow and tell us some more, which would've been the Friday morning.

Q. All right. On Friday morning did he contact you and tell you anything else?

A. No, he did not.

Q. Could you read into the record what he told you at the first time you talked to him around 2 P.M. on March the 31st?

MR. BALLIN: Your Honor, let me suggest this, sir. In all due respect to my friend here from the fourth estate, we haven't gone into any one of the other statements. We're going to have enough publicity problems with this, and I don't mind the Court reading it. But I don't see the necessity to publicize this case any further.

And the Court can read that. It doesn't go to whether or not the statement comes in or not, I don't believe. But if it does, let me let the Court read it and we'll be done with it.

MR. HARRIS: Your Honor, I don't object to doing it that way. And that wasn't the purpose of doing it.

MR. BALLIN: Well, I understand.

MR. HARRIS: But I would -- At this time I would like to pause and let the Court read it.

MR. BALLIN: That's no problem.

(Statement passed to Court and pause while reading same.)

THE COURT: All right. I've completed reading it.

MR. HARRIS: Your Honor, we'd ask that that --

MR. BALLIN: Your Honor, could I just ask you which one -- There were two pieces -- Both pieces of paper you read?

THE COURT: Well, both statements were contained in this one report, both the 2 P.M. and the 6:55 P.M., oral statements reduced to writing by this officer.

MR. HARRIS: I would ask that they be introduced as State's Exhibit Number 6 at this time, Your Honor.

THE COURT: All right.

MR. BALLIN: Could I just see it to compare with --

THE COURT: Sure.

(State's Exhibit Number 6 was marked and filed.)

Q. (By Mr. Harris) Mr. Murphy, when you spoke to Mr. Montgomery the afternoon of March the 31st, did he appear to be sober?

A. Yes.

Q. Were his answers responsive to your questions?

A. Yes.

Q. All right. Did he appear to be under the influence of any intoxicant or any drugs?

A. No, he did not.

Q. Did he complain of any physical discomfort?

A. No.

MR. HARRIS: That's all I have.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. BALLIN:

Q. Would you tell me your name again, please, sir?

A. Dennis Murphy.

Q. All right. Officer Murphy, what we just let -- and what has been introduced as whatever exhibit number, that was a summary that was typed later, right?

A. That was typed -- I had called in -- I had written out the report and that was typed off the written report.

Q. All right. In other words, that's just a summary of -- I've got to pass you this, if I might. . . . .

What time did he come into custody, if you know?
A. At 12:45 A.M. on March 31st.
Q. A.M., right?
A. Yes.
Q. And the statement you took from him was when?
A. At 2 P.M.
Q. On that same day?
A. That's correct.
Q. What had been done with him during that period of time?
A. He had been interviewed by a late shift detective. And then he was taken to the Criminal Justice facility where we picked him up.
Q. All right. And you talked to him at the time -- Or you talked to him at approximately 2 o'clock P.M., right?
A. That's correct.
Q. And what you've handed the Judge is a summary of a handwritten statement that you took from your notes on whatever date it was. Same day, right?
A. It was a typewritten copy of the statements.
Q. All right. How was it that you came into contact with Mr. Montgomery?
A. On March 29th I received a phone call from Sergeant McWilliams of the Memphis Police Department asking for assistance in locating Mr. Montgomery and another

witness. And in this contact we had developed some addresses. And they informed me that indictments would be coming. And the indictments did come and the subject was subsequently arrested through the investigation of where he might be staying.

Q. All right. About what time was he arrested?

A. At 12:45 A.M. on the 31st.

Q. All right. And then you brought him down?

A. No, I didn't.

Q. Somebody else brought him down?

A. That's correct.

Q. And you met him there?

A. No, I did not.

Q. You were on duty?

A. No, I was not.

Q. Well, how did you get there, then?

A. When I came on duty at 8 A.M., we contacted Memphis. We informed them that we had him. We got orders to produce. We brought him to the jail. We took a brief statement from him.

We found out the flights that the sergeants were coming on, and we subsequently went and picked them up, and let them conduct the interview because they had more knowledge of what had occurred.

Q. All right, sir.

MR. BALLIN: Just a second, Your Honor.

(Pause)

Q. And none of these statements were signed by Mr. Montgomery; is that correct?

A. He did not sign our statements. That's correct.

Q. They don't even have a place on them where any person could sign them.

A. Well, they would sign underneath it or anywhere they would wish if they did sign it.

Q. All right. There's nothing on there, I've read this and found this to be true and correct as to anything I might've told you. No place for that type of. . . . ?

A. There is no statement like that on there. That's correct.

MR. BALLIN: I don't have anything further, Your Honor.

THE COURT: Redirect?

MR. HARRIS: No, Your Honor.

THE COURT: You may step down.

(WITNESS EXCUSED)

MR. HARRIS: Your Honor, this concludes our proof on the statements. If we could, we'd ask -- Officer Murphy, excuse me, if I could, just a moment, Your Honor.

Thank you, Your Honor. Pardon me. This concludes our proof in chief on the statements of Mr. Montgomery and we would have some rebuttal proof if there is any defense proof.

THE COURT: All right. We'll take a brief recess and then I'll hear from Mr. Ballin.

Let's take a recess.

(A recess was had.)

MR. BALLIN: Your Honor, are we back in session?

THE COURT: No, let's get the defendants out here.

(The defendants were brought into the courtroom.)

THE COURT: All right, Mr. Ballin.

MR. BALLIN: Mr. Montgomery is present in the courtroom and I have just asked him again if he would like to testify in this hearing. He is shaking his head in the negative or however you say that and indicated to me that he does not want to testify. For the sake of what's going on right now Mr. Settle, my co-counsel, is further discussing the matter with him and he does not want to say anything.

So that's -- If the State has rested, then --

THE COURT: You have no other proof?

MR. BALLIN: No, sir.

THE COURT: Okay. Then if you'd like to make a statement, then, Mr. Harris, I'll hear from you first.

MR. HARRIS: Your Honor, first of all, I would like to agree with Mr. Ballin in his concerns about us bandying things about. I don't think there's anything wrong with it. But I do think that it's probably best if we refer to the statements, and the Court, I am sure, has read them and we don't need to specifically say too much about the contents. I agree with him on that.

But I would like to say that this defendant was advised of his rights in a proper setting by officers. Frankly, Your Honor, I would not like to characterize the setting or the situation, the legal situation that the officers found themselves in to say, oh, he was this, he was this.

I'll submit to you, Your Honor, probably the fairest characterization of this defendant was at the time when he walked in there, he was both. He was at one time a suspect and a witness. And I would not imagine that it probably changed from time to time as they interrogated him.

Because if the Court remembers the substance of the statements, there were things in there that were partially exculpatory and partially inculpatory. The

officers were at a situation where it all started with him getting into a certain vehicle on a certain day with certain people. And that's outlined in the statement. And it went on and went through discussions and he gave the statement at 4:30 A.M.

One of the criteria, Your Honor, that is used in evaluating statements, in weighing whether these statements are voluntary or whether or not, besides the simple advice of the rights, one is the length of the interrogation. Your Honor, there's no way to get around it. We're talking from 10:40 -- or 9:30 when he comes in till when the officers get there until he starts a statement at 4:30. Now, that's a considerable length of time. We agree with that. There's no question about it.

You look at the statement, the essence of the statement, you look at what the officers did after taking the statement. They still didn't know what they had. Number one, they didn't have bodies. They didn't know what he knew. That's just the simple truth. They didn't know what this man knew.

They put him in the squad car and asked him to lead them, to show them. They didn't take him to a specific location. They said you show us. He had talked about a map. He had talked about a location of bodies. They take him to, I believe, two different locations. At the end of

one of their little trips, all these took, not a long time after the first statement, he says, I lied to you. I'm going to carry you now where they are.

They then go over to -- They almost get back to the Homicide Office and then he says, Let's go out to Glenview Park, that's where they are. He takes them out there and then he runs.

After having the Freeze put on him, and there's no question he did have that. I'm not arguing that. He was brought back and he goes into the Homicide Office and he initiates negotiations, Your Honor. He initiates negotiations with Commander Wright. He initiates negotiations with Mr. Strother of our office. And he dictates terms. He dictates terms.

Then he comes back, he does lead them to the grave, he shows them where it is. He then comes back and while they're getting all the stuff that's needed to get the bodies out and verify they are the right bodies, he's back in the Homicide Office.

Now, another statement is taken from him at around 11 o'clock that night. And I want the Court to remember what -- that's Mr. Ruby's statement. The way that statement begins is, is there anything you want to add to the statement you gave Mr. Roleson, and from then on it's a very short statement. He's then released. He comes back of his

own volition after being beeped the next night, gives another statement, Your Honor, with his girlfriend and he then is released again and he's sent out into the community.

To look at the word voluntariness, it's almost, Your Honor, as if this defendant is hustling everybody he's talking to. Everybody he talked to he hustled. He hustled the officers that initially begin talking to him. He hustled them out to two different locations, he brings them back, he says, oh, okay, well, I was lying but, well, I'll tell you what, I'll carry y'all out to Glenview Park.

So what does this person do when he gets out there? He runs off. He's hustling them at this time, Your Honor. And when he comes back and he makes the deal with Mr. Strother and with Mr. Wright, at that time he's calling the shots. He's saying what the terms of the agreement are. He's in the driver's seat. He's telling them what to do.

And I submit that these are the facts that go into the voluntariness of his statement. I don't like to get into questions about, well, was he under arrest, could he have left then, could he have -- I'm not sure. They let him out of the car -- He was not even handcuffed -- shortly after 6:00 A.M. that morning. He runs and leaves the building, not leaves the building, pardon me, but jumps a fence and is gone. And then, of course, they do detain him.

I think, Your Honor, a proper characterization of

this is that these officers very simply, very simply did not know what they had in Jonathan Montgomery. They did not know who they had. They didn't know his involvement. And if you read these statements, Your Honor, it's the most ridiculous compendium of half-truths and outright lies that could be read.

We will have to give Mr. Montgomery this. He has a very good spontaneous imagination. He tells -- If you will look at the Milwaukee statements, Your Honor, from 2 o'clock P.M. until whatever time, I think shortly after 6:00 or 5:50, he does an about-flip on what happened. And I mean he just does a complete flip.

And I will simply say this, Your Honor, when we have these hearings, the primary concern is for the rights of the defendant. These rights are precious. They are to be protected. But in this case, Your Honor, I submit to the Court that Mr. Montgomery was in the driver's seat all the way until he got to Milwaukee, and in that situation he was in custody. There's no question about it.

We have to look at the statements, what he said, what he admitted to, what he told the officers. If you go back to the Miranda and Escobido (phonetic) cases, Your Honor, one of the problems that they had in those cases was that Mr. Ernesto Miranda and Mr. Pablo Escobar (phonetic), if I remember his name, Escobido, these gentlemen were

people of limited intelligence and limited use -- had limited use of the English language.

Ernesto Miranda, I think, was interrogated by numerous officers for a long, long period of time, under much worse conditions than these, and he finally kicked in and confessed to a horrible crime.

Mr. Escobido, I believe, was almost the same thing, only in a different city and different officers, and these gentlemen were, I believe, of Spanish ancestry and they had lived a very short period of time in the United States and it was a concern of the Supreme Court that they even understood the questions, that they would have the requisite mentality to understand the import of the advice of rights.

We have Mr. Jonathan Montgomery who recites the rights back to the Memphis Police Department -- or pardon me, the Milwaukee Police Department. We have Mr. Jonathan Montgomery, Your Honor, who says, hey, I want to talk to somebody above you in the command structure. We've got a man who begins negotiations.

Now, I think, Your Honor, that this is a totally different situation. And his rights are just as important. They need to be protected just as much. But the concerns are not the same. This defendant, Your Honor, was playing with these officers. He was playing with them and he was

negotiating with them. If you -- One of the other standards that the Miranda and Escobido and later cases cited was, it's the nature of the statement. A person who supposedly is under duress and who is under the dominion and control and is frightened by the police department might give an inculpatory statement.

If you look at these statements, Your Honor, most everything is totally exculpatory. This defendant shouted the name of Bobby Wilson to everybody as being responsible and what does he do? We find out later that Bobby Wilson has been out of the county, by all accounts. We can't even put him in the county within a month of the homicides. And this is something, Your Honor, that I think goes to the voluntariness of his statement.

And I simply will close by saying this, Your Honor. The defendant in this case I believe was manipulative of the police officers. And I feel that he is not a person -- a person who we can say his rights were trampled on at any stage in these proceedings.

This is a unique fact situation, Your Honor. There's no question about it. We've got somebody calling and saying, hey, you've got three missing bodies and, okay, I'll take you and show you where they are. I'll take you and show you where they are but I want a deal. That's a unique factual situation that he initiated, that he

initiated.

He wanted a deal for that day. And he can't come back now and say involuntariness. He can't say, oh, well, I gave a statement but it was involuntary. They didn't even take one until 11 o'clock that night and the first question after the advice of rights was, is there anything you want to add to the statement.

And I will close with that, Your Honor. We would further say that the statements were voluntary. The defendant has been properly advised of his rights. I didn't count all the times he'd been advised of his rights. But I find it very important that this defendant was able to recite his rights back to the Milwaukee Police Department officers and I will close with that, Your Honor.

THE COURT: Mr. Ballin.

MR. BALLIN: Your Honor, there are, I believe I'm correct when I say four statements, the one at 4:10 A.M. on the morning of March the 3rd. There is the 11 o'clock -- Well, let me make sure that I don't -- All right. There's the 11 o'clock P.M. statement on March the 3rd and the 6 o'clock P.M. statement on March 4th.

Now, am I -- and then the statement that leads the police to the graveyard at approximately 11 o'clock on the morning of March 3rd. Am I correct? Or was that. . . . .

THE COURT: All right. There is a statement which

is marked Exhibit 2 given at 4:13 A.M., March 3rd, '94. Exhibit 3 is a statement given at 6:30 P.M. on March the 4th to Roleson. Exhibit 4 is the agreement between Mr. Strother and Mr. Montgomery.

MR. BALLIN: And what time is that? That's at 10 o'clock --

THE COURT: 10 A.M. on March 3rd. Then Exhibit 5 is a statement given at 11:00 P.M. on March 3rd. And then Exhibit 6 is the two Milwaukee statements, 2:00 and 6:55 P.M. on the 31st.

So you have on March 3rd, 4:13 A.M. and then 10:00 A.M. agreement, 11:00 P.M. statement, and then there is the 6:30 P.M. statement on March 4th, and then the two Milwaukee statements.

MR. BALLIN: And then there is, of course, the oral statement, something that really hasn't been reduced to writing, but the statement that led the police to the grave site that was taken after -- hadn't been reduced to writing but the statement that the police were wanting to -- additional information. It's not a written statement but there's an oral statement that takes the police to the grave. While it hasn't been --

THE COURT: Hasn't been discussed really. After this agreement was entered into then --

MR. BALLIN: Then Officer Roleson said, as a

result of that --

THE COURT: They went out to the --

MR. BALLIN: And he gave -- he advised them where the grave was, the six or whatever, that's an oral statement, Your Honor, and while it hasn't been reduced to writing, it's certainly subject to this hearing.

All right. Now, we submit to the Court, it's our position that each statement was given under various types of constitutional irregularities, that -- and each statement plays a significant part in the development of this case.

The statement that was taken at 4:13 was taken as a result of some six or seven hours of interrogation, telling him, that's not the truth, we don't want to hear that, we want the truth, we want this, we want that, and if you'll tell us that, you just may be a witness.

They have information that he was seen with the victims but they need something more. They attempt to tell this Court that he's not under arrest, he's free to do whatever, and yet when he tries to leave, when he tries to assert his rights that if he is not under arrest, they chase him, Freeze -- spray him with gas, and bring him back to headquarters in handcuffs.

Now, that's an arrest no matter what. That is a taking away of somebody's freedom. And whether you do it verbally or whether you do it physically or whatever, that

is the taking away of his freedom. And this man's freedom was detained in that same room that the officer testified to that doesn't have anything but a chair and a table and no radio, and no TV, and no whatever other than two police officers going at you for five to six hours.

Sometime after 4 o'clock they take him out and then those incidents transpired. The guilty flee when no man pursueth is what they say. So Roleson and his partner know they got something going on and they come back. And from 8 o'clock or 7 o'clock or whatever time it was when they got back to the police department, they're with this man again.

Now, they're not talking about the World Series or whatever. They're talking about this case. And he doesn't want to talk about it. So, yes, if you want to talk about it, if you won't, we'll make you a deal. He doesn't want to say anything else unless he's sure that he can at least get out of custody.

And they bring in Mr. Strother and words are what they say. Words are, if you tell us, if you -- If Jonathan Montgomery cooperates in the investigation into the disappearance of Deloris Anderson, Marcellus Anderson, and Frederick Tucker and the information he provides can be verified as truthful, he will not be arrested at this time.

Mr. Strother talked about witnesses that would

also -- and he told him that he had witnesses that could verify this. And they talk about having these witnesses to verify his statement, and with those witnesses being verified, he will be released. These very well may be some of the best witnesses money can buy but that's what he was told. And if you do that, you can go home with your pregnant girlfriend and you can be gone and whatever.

It pains me, Your Honor, for a major in our police department to get on that stand and tell you that if a guy confesses or incriminates himself in a three -- in this type of murder case where there's obviously a killing that's not self-defense, whatever, a kidnapping, disappearance, all of this stuff, and he wants you to believe that an incriminating statement is still going to let him not be arrested.

So they cut a deal with this man, a promise of hope or reward. If you can do this and give us this information, then you won't be arrested at this time. And depending on how good it is, you may never be arrested. So tell us.

And acting upon that they take an oral statement that leads them to the grave. They come back to the 5 o'clock statement, they go through the same routine again. They're not going -- you're not under arrest, you're nothing, just tell us one more time your whole thing about

this. And mind you now, he's got a piece of paper from the executive assistant attorney general of this county that you will not be arrested, you're going to go home.

And what did they do to verify that? What did they do? That big verification that you have to have. There's not been one thing in here other than -- maybe they did verify it because all that sergeant did was show that to Mr. -- to Sergeant Roleson and they chauffeur drive him home.

Then he comes back again and that promise of hope or reward is still there except -- you know, the 5 o'clock statement has still got a little Ashcraft -- State v. -- Ashcraft v. State, Ashcraft v. -- well, whatever it was. Here you have a man in custody almost continually for -- and I don't mean to be wrong about the arithmetic, Mr. Harris -- 25 hours, 26 hours. And they want you to believe he's alert, he's this, that, and the other. He is kept in a room apart and away, no attempt to let him call a relative, no attempt to let him do anything. You sit in that room bare.

And that's a form of coercion, Your Honor, or whatever. But he's still got the hope of reward. You talk, whatever you say -- you go ahead and talk, you help us and you will not be arrested at this time. How much better could it be for this man? How much better could it be for this man then to be told that you will not be arrested if

you tell us these things.

And I submit to you, Your Honor, that it has to be Mr. Harris is correct a hundred percent. It has -- You know, it's really not a Miranda type of situation but it's not -- It's a promise of hope or reward. And anything -- If you don't think that there was coercion or whatever at the 4:13 statement A.M., then certainly at the 11 -- or the 10 o'clock agreement with Mr. Strother that in four to five minutes Mr. Strother negotiates out this situation. Okay boys, if he tells you something and you prove it right, or even if you don't prove it right, whatever, it's a -- you know, have you stopped beating your wife type of situation. If he gives them a statement and it doesn't prove to be right, then he gets arrested. If he gives a statement that he gets away with, then he can leave. It's a promise of hope or reward, Your Honor.

I submit to you that the 4 o'clock statement can certainly be considered some sort of coercion. But from the -- after the agreement with Mr. Strother at 10 o'clock, everything else, Your Honor, at least in Memphis, goes down the tubes. I don't know what to tell you about the Milwaukee statements. Officer has spoken. We don't have any proof against it.

So I'm sort of hard-pressed on that. But I think everything that happened after 10 o'clock on March the 3rd

goes down the tube.

THE COURT: Mr. Carter?

MR. CARTER: Briefly, and I know the Court's heard so much. If I understand it correctly counsel's attacks on all the statements are sort of made en masse. And they take one of two tacks. One, that the statements weren't a proper waiver of one's right not to give evidence against himself, Miranda basically and its progeny.

I would submit that those attacks should be pretty much summarily overruled. The situation, the facts as the testimony has come in indicate that the defendant was repeatedly given his rights or made aware of his rights. That's only part of it. It's one thing to tell somebody their rights. But more importantly that he indicated on a continuous basis throughout the process that he understood and was aware of the rights and chose to talk with the officers.

So I think that it's his actions that are as important as those of the officers in that he says, yes, I know my rights, yes, I'm choosing voluntarily not to exercise my right to remain silent but to talk with you.

So I think the Miranda attacks are unfounded. They're -- If anything, it's overkill because they were just constantly reiterated to the defendant and he makes them aware.

So that leaves the only other basis that counsel has raised by which he seeks to have this Court suppress the admission of any of these statements and that is that they were done as the basis of some sort of duress, coercion or a promise or inducement. I think the coercion issue is, once again, something that is pretty apparent. We have to look at the nature of the contact.

The defendant has initiated this. They're looking for him, they beep him, he comes down to the Homicide Office, he says, I understand you're looking for me. He's not gone out, he's not picked up, he's not taken into custody. He's brought in. And it's a gray area when he actually comes to be in custody because he's there, no question about it.

But the Supreme Court recognizes degrees of interference with an individual's right to come and go as they choose. And the court has spoken much more eloquently than I am saying, though, that where suspicion or where investigations are ongoing, the police are free to detain an individual short of arresting that person, and that this detention must be reasonable in its length, and scope, and factors -- and I think that's what we've got here.

If at some point when Mr. Montgomery comes down, it's as a witness. The officers are trying to get information about these three missing persons. And that's

the type of case it was. It was a missing persons case. And they're trying to locate the persons or the bodies, that distinction being more important obviously later on once they're discovered. But he is free to come and go because he's come down voluntarily to give information.

As he tells the officers and shares -- it's kind of like an onion peeling away layer after layer. As he begins to share with the officers more information that's more substantial that makes the officers think that now they may have a homicide and not, you know, missing persons, three people who have run off someplace or something else, then it becomes more suspicious because as a person reveals, whether they demonstrate that they have it or not, but if they maintain that they have more information, well, then their involvement becomes more suspect in that obviously to get close to the facts of a situation, you have knowledge of the facts of the situation, you have to be closer to it.

So his status is really a hybrid situation, part witness or part possibly defendant. And that brings us into the unique relationship between Officers Roleson, Wilkinson, and Mr. Montgomery, when they're riding around trying to determine basically what they've got, whether they've got somebody who knows nothing or whether they've got somebody who does know something and the basis of that information.

It's one thing for an individual to be present at

a crime or to hear of a crime, they're a witness. If that person comes by that information, obviously by participation, then their participation is somewhat different than being a witness. They just don't know what they have when they're dealing with Mr. Montgomery. But his actions out at Glenview Park, whether the officer can verbalize it or not, I would submit when he runs off from them, instead of just saying, hey, I'm tired of this stuff, too, I don't know anything, take me home.

When he takes off, at that point I would suspect that their thoughts about Mr. Montgomery's participation begin to crystalize somewhat and he moved into the -- more of a suspect role. And their actions in going over and getting him out of the attic of his common-law mother-in-law, those were in the nature of at least a detention, if not an arrest, but I would submit that all of the proper procedures, if he were under arrest, although he never was charged and the record bears that out, at that time he wasn't charged, but even if he were going to be, he was once again advised of his rights not to be compelled to make incriminatory statements.

Once again, he waived those rights, which leads us into the negotiation that he initiated with, I want to speak to someone in authority. He initiates the negotiation with Commander Wright who brings in Mr. Strother in order to give

a more legal bent to it. Mr. Strother's, I think, most telling remarks were when he said to Mr. Montgomery, what do you want. Because Mr. Strother wasn't part of the investigation. I mean, he'd been advised or briefed briefly on what's going on. The officers still don't know what to brief him on other than we're missing some people, this guy says he may know something. What do you want? And he tells him his personal situation about the impending birth of children, that he's concerned that if he shares information, he may not be able to attend this.

Mr. Strother gives him what I submit is a truthful statement of the obligation of the prosecuting attorney under the law. If you give us information that we deem to be truthful and the information that's being referred to as explained by Mr. Strother is I have information but I am not a participant. I didn't do anything. I know some things. And that is the statement that's referred to that has to be verifiable. And if in fact that were true, then Mr. Montgomery would be free from arrest, not only that day but forever. If he truly only knew things but were not a participant, he would never be arrested.

But all we have before us, though, is the agreement with the State in the person of Mr. Strother, tell us what you know, if it's verifiable, we'll let you go. The State kept its end of the bargain. He told them some

information. He was not arrested. And obviously we'll get to more of this in the future motions that we have to hear, whether we hear them tomorrow or whatever, on the dismissal of the preliminary hearing.

But what happened was, this investigation continued. The investigation didn't quit with Mr. Montgomery's series of conversations with the police and the exhumation of the bodies. The investigation continued and at a later date more information was developed, more witnesses surfaced, more evidence was adduced. That evidence was submitted to the grand jury which led to his being --

MR. BALLIN: Your Honor, that's just not relevant as to whether or not what happened -- You know, what happened afterwards is not something we're about here.

MR. CARTER: Well, it's absolutely relevant because we're arguing about this promise or inducement and I submit the only inducement or promise made to him was a true statement of the law. And, therefore, that promise couldn't be used or said to make any statement given after it involuntary.

THE COURT: All right. Well, Mr. Ballin, you made numerous references to the State's inability or apparent inability to corroborate statements given by your client and that that somehow was relevant to the State's actions

pursuant to this agreement that was made. And in response to that I'm going to allow Mr. Carter to at least make some reference to the fact that, as he believes will be borne out in further hearings, future hearings, other actions were taken by the State that tended to corroborate some of what Mr. Montgomery was saying, that they didn't just sit on their hands.

MR. BALLIN: After he was released. After he was released. That's what I'm talking about, Your Honor. In other words, if we want to take Mr. Strother's promise as, you know, that you have to be -- that in order for the promise to take effect, we have to verify it, then why release him? Why not hold him? Why not tell him whatever?

THE COURT: Maybe I'm just missing something. It's late in the day. But I would think that your argument would be a lot stronger if the State made a promise to release on certain conditions and they didn't release him. But the fact that they made a promise and, at least from your position, they had not yet corroborated what they indicated earlier that they wanted to corroborate before they actually released your client, how exactly did that prejudice your client? Are you saying that that then gave him hope of greater reward if and when he came back? Or what relevance does that have?

MR. BALLIN: I'm not saying it has any relevance.

What I'm saying is this.

THE COURT: So why are you arguing it?

MR. BALLIN: Well, wait, let me just say this. I understand they made him a promise. Okay?

THE COURT: All right. And before they could actually corroborate that promise --

MR. BALLIN: Then the promise was made --

THE COURT: -- or corroborate his statements, they went ahead and released him.

MR. BALLIN: Right. Because they didn't have any intention of worrying about it at that time anyway. All they wanted, all they wanted was a statement. All they wanted was what they thought they could get from this man. And they had to get it out of him some way.

Something happened, Your Honor, between 7:00 and 10:00. So the only way to get it out of this guy was if he wants to go home with his girlfriend and whatever, let's see what we can get for him. Let's tell him we'll turn him loose. We could always pick him up later. And that's what it's about.

THE COURT: Okay.

MR. CARTER: I think that's an accurate assessment of the defense's position and that's why I think the motion is without merit. What Mr. Ballin is saying is that the State made a promise in order to induce him into giving up

his right to remain silent. And I'm maintaining that any promise that was made, any agreement that was made was nothing more than the State's obligation under the law anyway and, therefore, doesn't constitute any additional -- any promise or any indicia that would override his will and induce him into making some incriminatory statement.

So in summary I think the Miranda matters are all self-contained and explanatory in both the testimony and the exhibits. And I think the inducement argument, that is, the coercion or inducement argument, I think when the Court hears these matters and considers all the circumstances, the Court should find that Mr. Montgomery made his deal, the State said okay. There was nothing done on the part of the State or the police that would somehow suggest to him or convince him to do something which he did not choose to do freely and voluntarily.

THE COURT: All right. First, with regard to the two statements taken in Milwaukee, the proof clearly is, the unrebutted proof clearly is that Mr. Montgomery was read his rights, he acknowledged his understanding of those rights, and he gave those statements freely and voluntarily to Officer Murphy and his partner. And I find that the motion to suppress those two statements is without merit.

Now, with regard to the Memphis statements. . . . .

Well, first of all, with regard to just a literal view of whether or not he was advised of his rights in each instance, clearly he was. Each step of the way he was advised of his rights, whether he was being advised as a witness, or as a suspect, or as a combination of the two, in each of these instances, I guess with the exception of the 10:00 A.M. agreement between Mr. Strother and Mr. Montgomery, it's abundantly clear that he was advised of his rights. And by the time the 10:00 A.M. agreement was reached he had been advised of his rights certainly at least once, if not more, by the police. Certainly at least twice, if not more. We have the advice of rights form from 10:45 P.M. on March 2nd and then the advice of rights before the 4:13 A.M. statement on March 3rd. So as far as his having been advised of his rights, he had been advised of his rights on several occasions.

With regard to whether he -- So I think the only, the only argument that Mr. Ballin has made that I think may even approach having any merit would be the suggestion, as he's made, as he's argued, that this 10:00 A.M. agreement is evidence of an effort by the State, the police and the D.A.'s Office to coerce or induce, offer some inducement in exchange for information, if not a formal typewritten statement, at least information from Mr. Montgomery that could be used in the investigation of the case, information

constituting an oral statement that led the police to this location where these bodies were found.

And in trying to analyze that argument, in my opinion the proof that I have before me today, which is unrebutted except through cross-examination, I suppose, the questions that were asked, but unrebutted through any additional proof, is that when Mr. Montgomery wound up back in the police station in that period of time leading up to Mr. Strother's talking with him, it was in fact Mr. Montgomery that asked to see a -- someone with more authority when Roleson was talking to him. And it wasn't a situation where for three hours under some spotlight in some -- in the bowels of the building Mr. Strother was down there talking to Mr. Montgomery.

Roleson said that Mr. Montgomery wanted to talk to somebody with more authority. So he goes to his supervisor who happened to be Commander Wright. And Commander Wright decides that, well, perhaps we should get somebody in here from the D.A.'s Office. He calls down there.

Mr. Strother's first inclination was to find Mr. Harris or somebody that knew something about the case more than he knew about the case. But everyone had gone on to court. It was after 9:30 or late enough in the morning so that everyone had gone on to court. So Mr. Strother went on up on his own and met with Commander Wright and then met

with Mr. Montgomery. But -- And talked to him for a very brief period of time.

And everything about Mr. Strother's testimony and Commander Wright's testimony would suggest that it was Mr. Montgomery each step of the way that was asking to see somebody with greater authority, explaining what he wanted out of this situation, asking for this relief of being allowed to go on home. And nothing at all about these series of events or this agreement that was signed between Mr. Strother and Mr. Montgomery suggests to me at least that there was any coercion or pressure exerted by the D.A.'s Office or the police department in obtaining these statements, oral statements that led them to the cemetery, the written statements, or this agreement signed Mr. Strother and Mr. Montgomery.

Had two or three lawyers from the D.A.'s Office who were intimately familiar with the case been locked up in a room with Mr. Montgomery for three hours and they emerge with this agreement, that may be different. But the fact that Mr. Strother, who is only vaguely familiar with the case, comes up, has a four or five-minute conversation with Mr. Montgomery, finds out what it is Mr. Montgomery is asking for, reaches this accord with him, and goes on about his way suggest to me just the opposite, would suggest to me that it was in fact Mr. Montgomery who was initiating this

effort each step of the way and who got what he wanted out of it.

So in assessing all of the circumstances, the totality of the circumstances of this case, of these events, the number of times Mr. Montgomery was advised of his rights, the circumstances surrounding the agreement with Mr. Strother, the content of these statements, much of which is exculpatory or at least not incriminatory, it is my determination that the motion to suppress is without merit and should be denied.

I'll ask Mr. Carter or Mr. Harris to enter an order to that effect. In light of the hour, it's twenty to six, we're going to stop for the day at this time and complete these motions tomorrow.

MR. GARRETT: If Your Honor please, if I may address the Court very briefly on behalf of Mr. Carruthers, I would -- considering the lateness of the hour, in reference to the trial date, I would like to request on his behalf that a transcript of this hearing with all the exhibits be made available to counsel for Mr. Carruthers as soon as possible to assist us in preparation of his defense in this cause. And we will prepare the appropriate motion to that effect.

THE COURT: A transcript of the testimony certainly will be prepared. I don't see any need at this

point at least to transcribe all the other statements that have been made today. But I'll certainly --

MR. GARRETT: That's correct. Yes, sir.

THE COURT: But I'll certainly provide you with a transcript of the testimony that has been taken today.

MR. GARRETT: And exhibits, too.

THE COURT: Yes, certainly. And then we'll get back to the motions tomorrow but because of my calendar tomorrow, it'll be late morning at least. So if you want to just check in around 11:00, that will be fine.

MR. BALLIN: Your Honor, could I just leave my beeper number with -- I think I'm fairly well cleared in the morning because I thought we were going to have the evidentiary hearing tomorrow. That's what I had been told. But can I leave my beeper number? I'll check in and whatever.

THE COURT: That's fine.

MR. BALLIN: And we'll be back to fight again, Your Honor.

THE COURT: Yes, sir.

MR. McLIN: I'd just like for the record, and I know this has maybe been mentioned, but I want -- on behalf of my client I want to mention this. He had advised me that he'd been harassed and somewhat intimidated. And I just wanted to bring it to the Court's attention. And other

than --

THE COURT: By these officers that are here? Or by --

MR. McLIN: Well, by personnel in the jail, and he's been sort of isolated within the jail. And I just wanted to bring that to the Court's attention for his own safety and his protection.

THE COURT: Well, the fact that he's been isolated in the jail, I think is an internal security matter for the jail to determine. Now, I'm going to defer to their judgment with regard to what they think they need to do for security reasons within the jail.

And I'm going to exercise my judgment with regard to security measures to be taken during these proceedings and I believe I stated earlier what that was at this time, and that is that I want these officers here or other officers in their squad every time we have a hearing.

Obviously there should be no harassment, or intimidation, or withholding of food, or denial of access to attorneys, or anything of that sort, and obviously that should not occur. But with regard to reasonable security measures in the jail, I'm deferring to their judgment over here. I've already stated what my desire is.

All right.

MR. HARRIS: Your Honor, just one more thing. I

know we're all tired and I apologize to the Court. But Mr. Caesar and Mr. Murphy were here today. Mr. Garrett, Mr. McLin, and Mr. Archibald all asked if they could talk to them. We made them available and they did interview them. I don't know what good came out of it but they were here and they did do that and that's all. I know we're tired.

THE COURT: And you don't anticipate calling them tomorrow for any purpose?

MR. HARRIS: No, Your Honor.

THE COURT: And does anybody else need to talk to them? I assume you're going to release them to return to Milwaukee.

MR. HARRIS: Yes, Your Honor.

THE COURT: All right. If anybody needs to talk to them, just get with Mr. Harris. Otherwise, they're released to return to Milwaukee.

MR. BALLIN: Your Honor, I was back there for part of the visit. You know --

MR. HARRIS: You can talk to them now, if you want to.

MR. BALLIN: Well, I understand that. But I was back there and they advised us at this time that the only thing that they did with this case was what Officer Murphy testified here to in the courtroom and I didn't stay there for all the pleasantries that were going on. I just wanted

to be on the record that I've interviewed them for what I think is all we need to know.

THE COURT: All right. All right, you may adjourn court.

THIS WAS ALL THE EVIDENCE INTRODUCED AND PROCEEDINGS HAD RELEVANT TO QUESTIONS RAISED ON APPEAL ON THE TRIAL OF THIS CAUSE.

- - - END OF REQUESTED TRANSCRIPT - - -

CERTIFICATE

I, the undersigned, Karen M. Oteri, Official Court Reporter for the Thirtieth Judicial District of the State of Tennessee, do hereby certify that the foregoing is a true, accurate and complete transcript to the best my knowledge and ability, of all the proceedings had and evidence introduced in the hearing on the Motion To Suppress Statements heard in the captioned cause in the Criminal Court for Shelby County, Tennessee, on the 15th day of December, 1994.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Witness my signature this 18th day of November, 1996.

Karen M. Oteri
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee

EXHIBIT 10

LATENT FINGERPRINT SECTION
MEMPHIS POLICE DEPARTMENT

Date: January 24, 2022

File #: 9402257239 ME

Latent Case #: 940215

To: Shelby County District Attorney Generals' Office
Attention: A. J. Kant – Criminal Investigator/Special Victims' Unit

Re: Missing Person/Homicide – Deloris Anderson - Victim

Vehicle: 1991 Chev 4 – D Red

Examination Requested By: SCDAG /A. J. Kant

Date Requested: January 21, 202

Specimens Obtained By: W. J. Lee 4795 & J Cushman

Date Obtained: March 03, 1994

Specimens and Results of Examination: Ten Cards bearing transparent lifts marked accordingly.

One latent impression on card marked in part; "Prints lifted from: Inside door knob of N/W bedroom door from hallway" was found to be the same as a left thumb impression belonging to Leventhia Anderson, SCSO R&I# 214189.

There are six latent partial palm impressions of value remaining unidentified. These prints were searched thru the AFIS data-base with negative results and are maintained in the cold case files for future identification.

Examiner: Robert Davis IBM# 13670

EXHIBIT 11

ALAN KEEL CONSULTANT
Forensic Biology & DNA Analysis

Affidavit of Alan Keel

I, Alan Keel, affirm, under penalty of perjury, that the following is true and correct:

1. My name is Alan Keel. I am over the age of 18 and otherwise fully competent to give this statement.
2. I am currently a consultant in Forensic Biology and DNA Analysis. From July 2011 through December 2021 I was the Forensic Biology/DNA Analysis Unit Supervisor and DNA Technical Lead Analyst for Forensic Analytical Crime Laboratory, Inc. (FACL) in Hayward, California. The FACL Forensic Biology/DNA Analysis Unit adheres to the FBI Quality Assurance Standards for DNA testing laboratories pursuant to the 1994 DNA Identification Act and is fully accredited by ANAB, the longest established provider of ISO/IEC 17025 accreditations to forensic testing agencies in the United States. FACL has provided DNA analysis and consulting services to law enforcement agencies, prosecutors, defense attorneys, and civil litigants since 1995. Approximately 40% of that caseload was for law enforcement in the pre-trial investigation of criminal cases.
3. I earned my B.S from Texas A & M University. I am certified by the American Board of Criminalistics in Molecular Biology. I am also a member of the American Academy of Forensic Sciences and California Association of Criminalists. During my career I have over 41 years of experience, 39 of which involved forensic laboratory serological and DNA analysis of physical evidence. I have been involved with and have personally conducted PCR-based DNA analysis casework since 1991. For almost 15 years of my career, I worked as a criminalist in state and police crime laboratories, including the North Louisiana Crime Laboratory in Shreveport, Louisiana, the Oakland, California Police Department Crime Laboratory, the Tulsa, Oklahoma Police Crime Laboratory, and the San Francisco, California Police Department Crime Laboratory. Since 1999, I was in private practice as a criminalist at Forensic Science Associates (FSA), a private laboratory which merged with FACL in 2011, through December 2021. My resume is attached as Attachment #1.
4. Over the course of my 41 years of experience, I have conducted DNA testing in hundreds of cases on thousands of samples from across the country on behalf of prosecutors and defendants in both pre-trial and post-conviction investigations from over 36 states including Tennessee dating back to 1972. I have testified in state courts in 24 states including Tennessee and in federal courts in Texas, North Dakota, Alabama, Pennsylvania, Louisiana, Florida, Illinois, New Jersey, and Washington, DC. I have personally conducted DNA testing in over 150 post-conviction investigations, almost half of which resulted in exoneration. I have also reviewed the work product of numerous analysts and laboratories from across the county, in several hundred pre-trial, post-conviction, and civil litigations.

5. I was asked by Maria DeLiberato, Senior Counsel with the American Civil Liberties Union to submit this Affidavit to advise the Court of the current capabilities of post-conviction DNA testing, about which I have personal knowledge, to obtain new and relevant information from evidence gathered in the investigation of the February1994 murders of Delois Anderson, Marcellos Anderson, and Frederick Tucker and the subsequent prosecution and conviction of Tony Carruthers. Prior to preparing this affidavit I reviewed the basic facts of the case. I have also reviewed various Bode Technology Group (Bode) and Tennessee Bureau of Investigations (TBI) laboratories' DNA testing reports and supporting records.

6. My understanding of the facts in this case are that the victims were discovered March 3, 1994 in a grave beneath the coffin of the person for whom the grave was prepared and buried on February 25, 1994. Each of the victim's hands were bound behind their backs, and Tucker's feet were also bound. Clothing from each victim as well as the bindings were collected. I was asked to review post-conviction examination and DNA testing work done by BODE in 2003 to assess the scope and success of the previous examinations, and to determine whether, in light of subsequent advances in DNA testing technology, additional examination, sampling, and testing might be fruitful in recovering DNA profiles from the perpetrator(s) of this case.

Modern DNA Technology and Current State of the Art

7. There have been several significant advances in forensic DNA testing since 2003, and those advances have completely revolutionized our ability to produce highly discriminating DNA profiles from trace amounts of contact, or "touch" biological material. This potential exists even when the DNA may be degraded due to various environmental insults and the passage of time. These advances have also effectively eliminated interference by inhibitory substances that may co-extract from evidence specimens with the DNA. These advances have led to an explosion of investigative criminal justice requests to crime labs for processing virtually any object not previously considered amenable to DNA testing that might bear a scant amount of relevant human biology. These advances also create the opportunity to generate DNA profiles from common source(s) across different items of evidence.

8. Specifically, these advances include:

"Mega-Plex" STR Typing Kits

i. Traditional short tandem repeat (STR) assays were expanded in 2017 to include *at least* 20 STRs in a single test – capable of providing individual attribution of a miniscule amount of DNA. These 20 STRs now comprise the foundation for our national CODIS DNA identification databank. Of the 20+ STRs in these new mega-plex STR kits, 12 to 14 of them are "mini" STRs which are capable of amplification when the sample DNA is highly degraded. In 2003 Bode employed two separate test kits, Profiler Plus and CoFiler, in their testing of the evidence in this case. Profiler Plus included nine STR locations and CoFiler included four additional STRs. Often, Bode utilized only one or the other test. Conducting both

Profiler Plus, CoFiler, and potentially a mini-STR amplification would require consumption of three separate amounts of DNA. The use of today's mega-STR kit technology greatly expands the amount of genetic information obtainable from a single minute amount of evidentiary DNA and at the same time allows the efficient resurrection of degraded DNA that the older generation STR tests were incapable of amplifying.

ii. The chemistry of these new test kits has also been greatly improved. The new buffer formulations and advanced DNA polymerase enzymes virtually assure any interference from inhibitory substances is neutralized, resulting in successful profiling from most unfavorable specimen conditions. As was the case with Profiler Plus and CoFiler at Bode in 2003, virtually all (286 of 293, or 98%) of their profiling attempts failed, apparently due to inhibition.[1] Today's technology will overcome the DNA inhibitors that appear to have plagued the 2003 Bode investigation. Re-visiting pre-existing DNA extracts, revisiting previously sampled areas, and collecting new samples, particularly "touch" DNA samples, will be much more successful and informative.

DNA Extraction and Purification Procedures

iii. In 2003 Bode relied upon traditional organic and resin-bead chelating (Chelex™) DNA extraction procedures. As is described below in paragraph 10, these DNA extraction methods often produce DNA extracts that are difficult and even intractable to amplification. Although organic and Chelex DNA extraction are effective with uncompromised evidence samples, the vast majority of forensic DNA laboratories (including Bode) now employ robotic silica-coated magnetic bead technology to purify sample DNA, irrespective of the condition of the specimen. This method virtually eliminates co-extraction of inhibitors from the sample substrate.

The Early Detection and Subsequent Targeting of Male DNA

iv. There was no attempt by Bode in 2003 to determine how much of the DNA recovered from a sample was male. Male DNA mixed with female DNA at ratios over about 1:30 is overwhelmed and cannot be detected by autosomal (traditional) STR profiling. Today, our ability to determine how much of a DNA sample is male versus female at the quantification stage *before* attempting DNA profiling is standard operating procedure. Further, today's DNA quantification kits provide an estimate, or degradation index, of how degraded a DNA sample is. This new capability allows us to make highly informed choices as to the optimal profiling strategy to obtain meaningful genetic information from the male DNA in a sample that might produce an investigative lead.

[1] See my comprehensive Summary of Bode DNA Testing, attached as Attachment 2.

v. Male-specific Y chromosome testing assays (Y STRs) has been greatly improved since 2003 and now include 27 locations. Y STR profiles, while not as discriminating as traditional STR profiles, are nonetheless highly discriminating between males that do not share a common paternal ancestor. These expanded Y STR "mega-plex" kits incorporate the same recent chemistry enhancements as the autosomal mega-plex kits. Therefore, armed with the quantification ratio data, any male-female DNA mixtures that might be recovered, particularly from the Delois Anderson evidence, not suitable for traditional STR testing can be more appropriately utilized for Y STR testing. Y STR testing can also help count and discriminate male profiles in traditional male/male DNA STR mixtures.

Computer-assisted Probabilistic Genotyping

vi. Computer-assisted probabilistic genotyping, one of the most recent DNA analysis tools at our disposal, has revolutionized our ability to sort out complex and/or "balanced" DNA mixtures. This capability now allows us to either eliminate, or assign a high probability of inclusion to, a known person as one of several contributors in a DNA mixture. The analysis of fingernail specimens, and clothing, bindings, ligatures, and most any kind of "handled" surface samples, which often produce mixtures of DNA, has benefited greatly from the application of probabilistic genotyping to this problem.

Advances in DNA Profiling Instrumentation

vii. The exquisite sensitivity of today's DNA typing instruments cannot be overstated. In 2003 Bode used slab-gel electrophoretic instrumental analysis – which is now obsolete. Today, virtually all forensic DNA typing laboratories use advanced capillary electrophoresis (CE) instruments which enables optimization of the amount of amplified DNA utilized and the amount "injected" (as a function of time) into the instrument for analysis. This technological advancement enables an analyst to make real-time adjustments on the instrument to produce the most accurate and complete result.[2]

Genetic Genealogy and Alternative DNA Profiling Methodologies

viii. Another recent advancement in forensic DNA testing is genetic genealogy (GG). This approach is useful when traditional STR comparisons and searches (such as CODIS) fail to produce investigative leads, as was the case with the one foreign profile developed by Bode and later confirmed by TBI in this case. Genetic genealogy involves the typing of numerous single nucleotide polymorphisms (SNPs) or whole genome sequencing (WGS) from an evidence sample. This "profile" can then be compared to public ancestry databases (e.g. Gedmatch) to

[2] In 2006 TBI used the first-generation "310" capillary electrophoresis instrument. This instrument is a significant improvement over the slab-gel technology used by Body in 2003. However, the 310 CE has been supplanted by two later generations of the CE instrument, each generation incorporating improvement in signal detection sensitivity and artifact discrimination.

find potential relatives of the source of the evidentiary DNA sample. Once a candidate is determined, a comparison of traditional STR markers will usually confirm or eliminate the person of interest as the evidence source, or re-direct the investigation to a different family member, or different family. This approach has proved highly successful in recent years in numerous cold cases[3], in post-conviction investigations, and missing person cases.

ix. Even more recent advances allow the development of multiplexed *Alu* profiles from the minute amounts of degraded DNA recoverable from the shaft of human hair. Although this approach was developed to exploit nuclear DNA analysis from rootless hairs, it is not limited to hair.

Applying Current DNA Technology in this Case

9. In the 2003 investigation at Bode, the entire focus (with the exception of the Delois Anderson vaginal swab) was blood. In a nutshell, at the request of the defense and as approved by the court, items of physical evidence were visually examined by TBI in November, 2002 and apparent bloodstained items or apparent bloodstain cuttings from these items, were forwarded to Bode for DNA testing. Bode screened the submitted items, mostly the victims' clothing, a white blanket, and various cloth bindings, or cuttings therefrom, and identified approximately 84 discrete human bloodstains present on the items. This survey was described in the June 23, 2003 report of Diane Andryshak.

10. The 84 human bloodstains were pursued with DNA testing in an attempt to 1) determine whether the victims, Mr. Carruthers, and co-defendant James Montgomery could be eliminated as the source of the blood. Any foreign DNA profiles would be searched in CODIS as an investigative lead to other potential perpetrators. Amounts of human DNA from approximately 4.5ng to over 2000ng were recovered via organic extraction from the selected human bloodstain samples.[4] Each of the bloodstain DNA extracts were subjected to a Profiler Plus or CoFiler amplification, or both. During the typing process, Bode encountered extreme difficulty – potentially from inhibitors that co-extracted with the DNA – and tried various dilution, increased DNA, and additional/different extraction and DNA wash measures in an attempt to overcome the problem.[5] In total, Bode attempted 233 amplifications of DNA from the 84 bloodstain samples and ultimately produced meaningful profiles from only four bloodstains: area A of the #06 Marcellos Anderson socks (compatible with two of the victims), areas I and K of the #16 white blanket, and area D of the #23 Delois Anderson red sock (compatible with Delois Anderson). Only one profile is potentially probative: the white blanket areas I and K blood stain profile was that of the same male, and all of the persons of interest to whom this profile was compared were eliminated as the source of the blood. In 2005 TBI replicated the analysis

[3] For example, the serial rape-murdered Joseph DeAngelo, the "Golden State Killer" was identified in 2018 using GG.

[4] See Attachment 2, column "Total DNA, ng."

[5] Inhibition of the DNA polymerase during amplification, presumably from compounds such as humic acid from soil that can co-extract with the DNA, is the obvious suspect for the amplification failure of so many different "muddy" samples. However, in experiments in which Bode spiked the sample DNA with pristine control DNA, the control DNA was not inhibited.

of the #16 white blanket I and K bloodstains. A CODIS search of this male profile failed to produce an investigative lead.

11. Revisiting the "muddy" or otherwise problematic evidence specimens in this case using today's magnetic bead DNA extraction and mega-plex STR amplification technology should easily overcome the problems encountered by Bode in the 2003 investigation. The survey of bloodstains could be focused to a representative sampling(s) of a group of stains on each item, or to small "interesting/isolated" bloodstains – avoiding any large/saturating bloodstains that likely originate from a victim's wound(s).[6] If available, the remainder of the original DNA extracts produced by Bode in 2003 could be "cleaned up" and be re-amplified. Either way, today's technology is likely to produce usable DNA and highly discriminating profiles from this bloodstain evidence – adequate for CODIS search and genetic genealogy.

12. The focus of any contemporary investigation should be expanded to include items from the initial 2002 TBI screening that were *not* obviously bloodstained and hence were not included in the 2003 DNA testing by Bode. Particularly, this includes the mate to Delois Anderson red sock, the Delois Anderson knotted panty hose (apparently used as a binding), and the knotted ties/bindings from Marcellos Anderson.[7] It is likely each of these items, as well as the bindings from Fredrick Tucker that were submitted for bloodstain analysis, bear transfer biology from whomever bound the victims. These binding items as well as those areas of the victims' clothing likely handled during kidnapping, transport, and burial should be sampled for transfer, or touch, biology from an assailant. This transfer biology survey should also include the #16 white blanket. DNA testing of bindings and forcefully handled clothing using current state-of-the-art testing technology has shown to be remarkably successful in generating DNA profiles subsequently proven to be from perpetrators. This approach could also produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket. Such a finding would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the relevance of the foreign blood previously discovered on the #16 blanket as originating from an assailant.

13. We already know that considerable amounts of DNA were recovered from the #16 white blanket bloodstains, both by Bode in 2003 and by TBI in 2005,[8] producing robust complete STR profiles. This DNA, whether remaining from Bode's or TBI's work or from a contemporary re-sampling of the #16 blanket, should be more than adequate for a GG analysis. Similarly, any foreign DNA recovered from other bloodstains as a result of a contemporary investigation as envisioned in paragraph 11 above should also be amenable to GG testing.

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[6] The size, location, and distribution of bloodstains on the evidence specimens was not described in the Bode bench notes or reports, and no photographs were provided.

[7] The Bode reports list only item #20 as various cloth ties from victim Tucker. Apparently, knotted panty hose were recovered from Delois Anderson, and other knotted ties were recovered from Marcellos Anderson.

[8] TBI recovered 50ng from the white blanket area I bloodstain and 10ng of DNA from area K bloodstain in 2006. Only about 2ng of DNA from each sample was consumed in testing.

14. Typically, fingernail specimens (clippings, scrapings, swabbings, etc) are collected from homicide victims at autopsy. Fingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested. It is likely that one or more of the victims struggled with the perpetrator(s) during the assault. I have personally examined fingernail evidence in over 50 cases. My experience attests and the scientific literature documents that most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived. Hence, foreign biology associated with the fingernails of homicide victims is usually relevant to the crime. Biology transferred from a person to another person's fingernails is rarely self-evident and often is not from blood. Any available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation.

15. For example, the unfortunate saga of Nicholas Yarris is a testament to the value of a comprehensive investigative approach considering different forms of human biology and from where it might be recovered. Mr. Yarris was convicted in 1983 of the 1981 rape and murder of a Pennsylvania woman and sentenced to death. In 2003 sperm DNA eliminated Mr. Yarris and the victim's husband as the source of semen on the victim's vaginal swabs, however the relevance of the semen – as originating from her killer or an unknown consensual partner – was unclear. Later during a review I discovered the victim's fingernails clippings and a pair of winter gloves recovered at the scene[9] were available for examination. There was no dispute that the gloves did not originate from the milieu of the victim. My testing of the victim's fingernail clippings and the inside of each glove produced the same male DNA profile from the semen on the victim's vaginal swabs. This redundancy/common DNA source across three different specimens established the relevance of the semen and definitively placed this male at the death scene. Yarris was ultimately exonerated after spending 22 years in prison on death row.

16. Similarly, the investigation of the 1988 rape and murder of Eliza Mae Smith in Nashville, Tennessee demonstrates the value of revisiting evidence that had been examined years previously. In 1988 the TBI Nashville crime lab examined a bedsheet and towel recovered from under the victim on her bed and found no semen. TBI did find semen on a washcloth from the bathroom and determined the semen was from an ABO type A donor. Melvin Crump, an ABO type A secretor, was charged with the crimes in September 1988, but the charges were later dismissed. The defense argued that Mr. Crump, Ms. Smith's handyman, had access to the bathroom and had masturbated onto the washcloth. Seven years later in 2005, I examined the sheet and towel and found large semen deposits on both items. DNA testing identified Mr. Crump as the semen source, and he was convicted in 2006. Over the course of my career and in particular among the over 160 post-conviction cases in which I have been involved, it is not unusual to find relevant DNA evidence where none was found in prior examination by other analysts/laboratories.

[9] The scene was the inside of the victim's car.

Summary

17. As described above in paragraph 4, I have conducted post-conviction DNA testing in over 150 cases and have developed exculpatory evidence in approximately 70 of those cases, all of which had been tested previously in some fashion by other forensic scientists. And as of March 2026 in the United States 455 people have been exonerated based on DNA evidence.[10] It is my professional opinion as an independent expert in forensic serology and DNA analysis that revisiting the previously tested evidence and testing evidence not previously examined using current state-of-the-art methods and technology could provide probative and highly discriminating genetic evidence from the perpetrators of the crimes in this case. This new DNA evidence could undermine Mr. Carruthers claim, or point to other person(s) as the actual perpetrator(s). This testing could likely be completed within 14 business days of receipt of the evidence by the testing laboratory.

18. This new technology includes:

    i. advanced DNA extraction techniques that virtually eliminate PCR inhibition;

    ii. advanced DNA quantification assays that measure the amount of human DNA, male DNA (and female DNA by default), and the state of degradation of the sample DNA allowing more informed profiling decisions;

    iii. new generation “mega-plex” STR typing kits capable of producing unique DNA profiles from a trace amount of DNA, even if the DNA is highly degraded;

    iv. the capability to target small amounts of male DNA Y chromosome STRs commingled with female DNA (e.g. from the Delois Anderson bindings);

    v. new advanced DNA profiling instrumentation such as the Applied Biosystems capillary electrophoresis 3500 genetic analyzer, which is now the instrument of choice in forensic DNA labs, provide exquisite sensitivity allowing the successful profiling of minute amounts of amplified DNA;

    vi. computer-assisted analysis of DNA profile mixtures, or probabilistic genotyping, enables us to interpret complex, low-level, and highly degraded results;

    vii. forensic genetic genealogy utilizing SNP and WGS technology can provide investigative leads when manual comparison to persons of interest and searches of offender and unknown profiles (CODIS) fail to provide a candidate match.

19. This formidable array of new DNA analysis technologies can be applied to evidence in this case previously examined for bloodstains and, equally promising, to that same evidence and other evidence not yet examined, for trace/touch level biology. This evidence includes:

    i. any of the two white blanket DNA extracts produced by TBI in 2005 remaining;

    ii. fingernail specimens;

[10] Wilson Center for Science and Justice at Duke Law, last visited April 3, 2026.

iii. the bindings from Marcellos Anderson;

iv. and the red sock and knotted pantyhose of Delois Anderson.

Further, affiant sayeth naught.

Dated April 6, 2026 Alan Keel

Alan Keel

Sworn and subscribed before me this 6th day of April, 2026 at Emeryville CA.

Arshdeep Kaur

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF Alameda

Subscribed and sworn to (or affirmed) before me on this 6th day of April, 2026 by Charles Alan Keel

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Arshdeep Kaur

(Signature of Notary)

ARSHDEEP KAUR
Commission # 2494294
ALAMEDA County
California - Notary Public
COMM. EXP: JULY 12, 2028

Attachment 1

Resume of Alan Keel

BACKGROUND

Mr. Keel conducted conventional serological and DNA analysis investigations and consultation in criminal and civil forensic cases from 1982 through 2021 from 36 US States and has provided expert testimony in 21 state and federal courts. The first 15 years of Mr. Keel's 40+ year career were spent in law enforcement laboratories. For the last 23 years of his laboratory career he served as a DNA Technical Lead Analyst. Mr. Keel has particular and extensive knowledge in crime scene processing, evidence examination, human body fluid and cellular material identification, DNA purification, polymerase chain reaction (PCR) based amplification of short tandem repeat (STR) genes, single source and mixture autosomal and Y chromosome DNA profiles, classical population statistics, probabilistic genotyping, and genetic genealogy.

Mr. Keel has personally conducted testing in hundreds of pre-trial and over 150 post-conviction forensic biology case investigations. As a private consultant since 2022, he now assists prosecutors, Conviction Integrity Units, defense attorneys, Innocence Projects, and private clients with expert peer review of forensic evidence in pre-trial, post-conviction, and civil litigation, and with recommendations for additional investigation, direct and cross-examination, effective assistance, and client management strategy.

PROFESSIONAL AFFILIATIONS

- American Academy of Forensic Sciences, current.
- California Association of Criminalists, current.
- The American Board of Criminalistics: Certifications:
  - Diplomate, General Criminalistics, 1991-2012.
  - Fellow, Molecular Biology, 1995-2012; November 2015, current.
- DNA Technical Leader/Manager, pursuant to the 1994 Identification Act and DNA Advisory Board Standard 5.2.1.1, advanced degree waiver conferred 1999.

- Licensed by the Texas Forensic Science Commission in Forensic Biology/DNA, December 2018-2022.

EDUCATION

- Bachelor of Science (Zoology), Texas A & M University, College Station, 1978
- Graduate Course Work, Texas A & M University, College Station, 1978-80 in Human Physiology
- Graduate Course Work, University of California, Berkeley, 1993 in Nucleic Acid Biochemistry

PROFESSIONAL EXPERIENCE

- 2011 – 2021 Forensic Analytical Crime Lab, Hayward, CA
  Forensic Biology/DNA Analysis Unit
  DNA Technical Leader/Supervisor/Analyst
- 1999 – 2011 Forensic Science Associates, Richmond, CA
  Criminalist/Consultant in Forensic Biology/DNA Analysis
- 1996 – 1999 San Francisco, CA Police Department
  Forensic Biology/DNA Analysis Unit
  DNA Technical Leader/Supervisor/Analyst
- 1996 Tulsa, OK Police Department
  Forensic Biology/DNA Analysis Unit
  DNA Technical Leader/Supervisor/Analyst
- 1995 – 1996 Consultant in Forensic Science, Shreveport, LA
- 1994 – 1996 Caddo Parish, LA Coroner's Office, Shreveport, Louisiana
  Death Investigator
- 1984 – 1993 Oakland, CA Police Department
  Criminalist III, specialized in Forensic Serology and DNA Analysis
- 1982 – 1984 North Louisiana Crime Lab, Shreveport, Louisiana
  Forensic Serologist

SPECIALIZED TRAINING

- Recombinant DNA Technology, University of California Extension, Berkeley, CA 1986
- Forensic DNA Analysis, University of California Extension, Berkeley, 1989
- The Application of DNA Technology to Forensics, University of California Extension, Riverside, 1990
- PCR/DQA1 Typing Methods, CETUS/California Department of Justice, Berkeley, 1991
- Bloodstain Pattern Interpretation, California Criminalistics Institute, Sacramento, California, 1991
- Advanced PCR Analysis Methods: PM, D1S80, and Quantiblot, Roche Molecular Systems, Alameda, California, 1993
- Advanced Crime Scene Reconstruction, California Criminalistics Institute, Sacramento, CA 1996
- Instrumental DNA Typing and Analysis
  - Capillary electrophoresis 310 instrumentation and GeneScan data collection/Multiplex STR analysis/GenoTyper data analysis, Perkin-Elmer/Applied Biosystems, Foster City, CA 1996
  - Profiler Plus/Cofiler Multiplex STR analysis internal validation SFPD, 1998
  - Identifiler Multiplex STR analysis internal validation FSA, 2001
  - Yfiler Multiplex STR analysis internal validation FSA, 2005
  - Minifiler Multiplex STR analysis internal validation FACL, August 2014
  - ABI Genetic Analyzer CE 3500/Genemapper ID-*X* Multiplex STR analysis: internal vendor training/internal validation FACL, October 2016
  - Investigator 24Plex QS Multiplex STR analysis internal vendor training/internal validation FACL, April 2017
  - STRmix Probabilistic Genotyping: vendor workshop Prague, Czech Republic April 5, 2017; internal validation FACL, January 2018
  - Genetic Genealogy/Next Generation Sequencing, Promega Webinar Series: Part 1: An Inside Look at the Facts and Fiction Surrounding GG, April 13, 2022; Part 2: Closing the Genealogy Gap, from Extraction to Prosecution, May 4, 2022; Part 3: Decoding Laboratory Options for GG, May 25, 2022

  - Genetic Genealogy: Part 1: The Use of GG in Forensic Investigations, October 11, 2023; Part 2: GG 2011-2023 Expectations vs Realities; JFS/AAFS/Wiley Virtual Seminars
  - Probabilistic Genotyping: DNA Interpretation Given Activity Level Propositions. AAFS 76th Annual Scientific Conference Workshop, February 20, 2024, Denver, CO.
  - Investigative Genetic Genealogy: Case Studies, Regional Coordination, and DNA Analysts' Roles in Support. California Association of Criminalists, February 27, 2024
  - Complexities of Trace DNA and Transfer in Assessing Activity Level with Probabilistic Genotyping. American Academy of Forensic Sciences, February 9, 2026

- Technical Writing for Criminalists, California Criminalistics Institute, May 2021

- FBI Quality Assurance Standards Auditor Training, June 2012

PROFESSIONAL PRESENTATIONS

- *A Collaborative Study of DQA1 Typing by PCR* presented to the California Association of Criminalists, 1991 Spring Seminar, Berkeley

- *A Collaborative Study of DQA1 Typing by PCR* presented to the American Academy of Forensic Sciences, 1992 Annual Seminar, New Orleans

- *Penile Swab Evidence in the Investigation of Rape* presented at the 1993 International Forensic DNA Analysis Symposium, Quantico, Virginia

- *Sampling Approach and DNA Analysis of Fingernail Evidence Specimens* presented at the Third Joint International Seminar of the Forensic Science Society [United Kingdom] and the California Association of Criminalists, May 2000, Napa, California

- *Finding the Roscetti Stone: a review of the Lori Roscetti homicide investigation and trial transcripts* presented to the California Association of Criminalists, 2005 Spring Seminar, Oakland

- *The Essential Elements of a Forensic DNA Analysis Laboratory Report*; *The Essential Elements of Expert Peer Review of a Forensic Laboratory DNA Investigation*; *The Utility of and Access to CODIS*; and *Some Potential Adverse Consequences of Regulation and Accreditation on Applied Forensic DNA*

Analysis presented to the California Public Defender's Association, May 2014, Hayward

- *Adverse Effects of Blanket Quality Assurance Criteria on Sample-to-Sample and Lab-to-Lab Variable Genetic Data*, presented to the Joint California Association of Criminalists/Northwest Association of Forensic Scientists Seminar, October 2014, Rohnert Park, CA.

- *Demystifying "Touch DNA,"* presented to the 2015 National Innocence Network Conference, May 2, 2015, Orlando, FL.

- *The Difference between Low-Level DNA Analysis and Low-Copy Number (LCN) DNA Analysis and Why It Matters to You,* presented to the 2015 National Innocence Network Conference, May 2, 2015, Orlando, FL.

- *The Fundamentals of Forensic DNA Analysis*, presented as training to the Federal Habeas Corpus Resource Center, September 2015, San Francisco, CA

- *A Benchmark for Meaningful Forensic DNA Analysis: Field (Beta) Testing of the Qiagen Investigator Quantiplex Pro qPCR Assay*, presented at the 6th Annual Qiagen Investigator Forum, Prague, Czech Republic, April 5, 2017.

- *The Twenty-six Year Investigation of the Kidnapping, Rape, and Murder of Dana Ireland*, presented at the California Association of Criminalists Seminar, May 2017, San Francisco, CA.

SPECIAL RECOGNITION

2008 Innocence Network Conference, Santa Clara, CA: **Freedom and Justice Award** presented by the Northeast Council of the Wrongly Convicted "In recognition of your relentless pursuit of truth through science."

2021 Based in part upon recommendation by the Innocence Project (NY), Mr. Keel was selected as the expert for Special Counsel appointed by California Governor Gavin Newsom to review the 1983-1984 conventional serological testing and the 2002-2004/2019-2020 forensic DNA testing of evidence in light of the actual innocence claims and clemency request of California death row inmate Kevin Cooper.

REFERENCES

Prosecution

Rockne Harmon, Esq., Alameda County, CA District Attorney Office, retired.
Cynthia Garza, Esq., Chief, Conviction Integrity Unit, Dallas County, TX District Attorney Office.
Melissa Montle, Esq., Conviction Review Manager, CRD, Orleans Parish District Attorney's Office.
Kurt Mechals, Esq., DDA, San Diego County, CA District Attorney Office.
Kelly Manderino, Esq., DDA, San Luis Obispo County, CA District Attorney Office.
Sean Gallagher, Esq., DDA, San Mateo County, CA District Attorney Office.
Philip Kearney, Esq., Murphy Pearson Bradley & Feeney, San Francisco, CA, former San Francisco County, CA Deputy District Attorney.
Hon. Braden Woods, San Francisco Superior Court Judge, former San Francisco County, CA Deputy District Attorney.

Defense

Hon. Christopher Plourd, Imperial County, CA Superior Court Judge, former defense counsel.
Hon. Nina Morrison, US District Judge, Eastern District of New York, former Senior Litigation Counsel, Innocence Project, NY.
Innocence Project, New York, NY:
Barry Scheck, Esq., Founder and Special Counsel.
Peter Neufeld, Esq., Founder and Special Counsel.
Vanessa Potkin, Esq., Director of Special Litigation.
Jane Pucher, Esq. and Susan Friedman, Esq., Sr. Staff Attorneys.
Jee Park, Esq., Executive Director, Innocence Project New Orleans, LA.
Richard Davis, Esq., Legal Director, Innocence Project New Orleans, LA.
Victor Abreu, Esq., Supervisory Asst. Federal Public Defender/Capital Trial Unit, Eastern District of Pennsylvania.
George Kendall, Esq., Of Counsel, Squire Patton Boggs LLC, New York, NY.
Paul Casteleiro, Esq., Legal Director, Centurion, Princeton, NJ.
Thaddeus Betz, Esq., Criminal Defense Attorney, Bend, OR.

Forensic Serology/DNA Analysis Scientists

Gary Harmor, Laboratory Director and Chief Forensic DNA Analyst, Serological Research Institute, Richmond, CA.
Karen Lawless, Forensic Edge, Consultant, Portland, OR.
Dave Hansen, DNA Technical Lead Analyst, Forensic Analytical Crime Lab, Hayward, CA.

Attachment 2

Summary of the DNA Testing at Bode in 2003 sorted by Amplification Date

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
06A1/2	C C94-586	M Anderson socks area 1, 3cm x 5cm cutting	human bloodstain	0.5cm^2	3-20-03	organic 4-29-03	50	0.50	25.0	0.9	0.9	25	5-2-2003	5-6-03	v weak partial mixture profile	2
08A1/2	C C94-586	M Anderson socks area 2, 2.5cm x 3.5cm cuttting	human bloodstain	0.5cm^2	3-20-03	organic 4-29-03	50	0.59	29.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	6
09A1/2	C C94-586	M Anderson pants area 2, 9cm x 10cm cutting	human bloodstain	0.5cm^2	3-24-03	organic 4-29-03	50	0.68	34.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	8
12A1/2	D C94-587	Tucker white socks, area A, 8 cm x 8cm cutting	human bloodstain	0.5cm^2	3-24-03	organic 4-29-03	50	1.32	66.0	1.2	1.2	25	5-2-2003	5-6-03	no results	10
15A1/2	D C94-588	D Anderson dress area 2, 4cm x 7cm cutting	human bloodstain	0.5cm^2	3-24-03	organic 4-29-03	50	4.21	210.5	0.92	0.92	25	5-2-2003	5-6-03	no results	18
16i1/2	G C94-586	M Anderson white blanket, 39cm x 64cm, area I stain	human bloodstain	small cutting	3-25-03	organic 4-29-03	50	47.98	2399.0	1	1	25	5-2-2003	5-6-03	no results	23
16K1/2	G C94-586	M Anderson white blanket, 39cm x 64cm, area K stain	human bloodstain	small cutting	3-25-03	organic 4-29-03	50	1.30	65.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	robust unk. male profile	27
17A1/2	F C94-586	M Anderson plaid shirt, area A	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	7.28	364.0	0.92	0.92	25	5-2-2003	5-6-03	no results	29
17B1/2	F C94-586	M Anderson plaid shirt, area B	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.29	14.5	0.52	0.52	25	5-2-2003	5-6-03	no results	34
17C1/2	F C94-586	M Anderson plaid shirt, area C	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.93	46.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	36
17D1/2	F C94-586	M Anderson plaid shirt, area D	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.36	68.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	38
17E1/2	F C94-586	M Anderson plaid shirt, area E	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.67	33.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	40
17F1/2	F C94-586	M Anderson plaid shirt, area F	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.25	62.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	42
17G1/2	F C94-586	M Anderson plaid shirt, area G	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.46	23.0	0.83	0.83	25	5-2-2003	5-6-03	no results	44
17H1/2	F C94-586	M Anderson plaid shirt, area H	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.40	70.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	46
17J1/2	F C94-586	M Anderson plaid shirt, area J	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.51	75.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	48
17K1/2	F C94-586	M Anderson plaid shirt, area K	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	2.43	121.5	0.82	0.82	25	5-2-2003	5-6-03	no results	50
17L1/2	F C94-586	M Anderson plaid shirt, area L	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.35	17.5	0.64	0.64	25	5-2-2003	5-6-03	no results	53
17M1/2	F C94-586	M Anderson plaid shirt, area M	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.25	12.5	0.46	0.46	25	5-2-2003	5-6-03	no results	55
17N1/2	F C94-586	M Anderson plaid shirt, area N	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.04	52.0	0.9 to 1.2	0.9 to 1.2	25	5-2-2003	5-6-03	no results	57
17O1/2	F C94-586	M Anderson plaid shirt, area O	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.25	25.0	0.45	0.45	25	5-2-2003	5-6-03	no results	59
17P1/2	F C94-586	M Anderson plaid shirt, area P	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.57	28.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	61
17R1/2	F C94-586	M Anderson plaid shirt, area R	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.72	86.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	63

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
17T1/2	F C94-586	M Anderson plaid shirt, area T	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.17	58.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	68
17U1/2	F C94-586	M Anderson plaid shirt, area U	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.44	22.0	0.8	0.8	25	5-2-2003	5-6-03	no results	73
17W1/2	F C94-586	M Anderson plaid shirt, area W	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.34	17.0	0.62	0.62	25	5-2-2003	5-6-03	no results	75
17X1/2	F C94-586	M Anderson plaid shirt, area X	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	2.39	119.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	77
17Y1/2	F C94-586	M Anderson plaid shirt, area Y	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	2.31	115.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	82
18A1/2	B C94-586	M Anderson underwear, area A	human bloodstain	small cutting	3-31-03	organic 4-29-03	50	0.45	22.5	0.82	0.82	25	5-2-2003	5-6-03	no results	87
19C1/2	C C94-587	Tucker Jeans, area C	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	0.83	41.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	89
19D1/2	C C94-587	Tucker Jeans, area D	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	0.37	18.5	0.67	0.67	25	5-2-2003	5-6-03	no results	94
19F1/2	C C94-587	Tucker Jeans, area F	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	1.73	86.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	96
19G1/2	C C94-587	Tucker Jeans, area G	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	2.04	102.0	0.82	0.82	25	5-2-2003	5-6-03	no results	98
20A1/2	F C94-587	Tucker, cloth ties, area A	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.07	53.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	102
20B1/2	F C94-587	Tucker, cloth ties, area B	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.61	30.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	104
20BB1/2	F C94-587	Tucker, cloth ties, area BB	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.15	7.5	0.27	0.27	25	5-2-2003	5-6-03	no results	151
20C1/2	F C94-587	Tucker, cloth ties, area C	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.99	99.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	108
20CC1/2	F C94-587	Tucker, cloth ties, area CC	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.26	13.0	0.47	0.47	25	5-2-2003	5-6-03	no results	153
20D1/2	F C94-587	Tucker, cloth ties, area D	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.42	71.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	110
20E1/2	F C94-587	Tucker, cloth ties, area E	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.10	5.0	0.19	0.19	25	5-2-2003	5-6-03	no results	112
20F1/2	F C94-587	Tucker, cloth ties, area F	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.09	4.5	0.16	0.16	25	5-2-2003	5-6-03	no results	114
20G1/2	F C94-587	Tucker, cloth ties, area G	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	2.25	112.5	0.75	0.75	25	5-2-2003	5-6-03	no results	116
20H1/2	F C94-587	Tucker, cloth ties, area H	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.26	63.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	120
20i1/2	F C94-587	Tucker, cloth ties, area i	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.65	32.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	122
20J1/2	F C94-587	Tucker, cloth ties, area J	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.28	14.0	0.51	0.51	25	5-2-2003	5-6-03	no results	124
20K1/2	F C94-587	Tucker, cloth ties, area K	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.13	6.5	0.24	0.24	25	5-2-2003	5-6-03	no results	126

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
20L1/2	F C94-587	Tucker, cloth ties, area L	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.17	8.5	0.31	0.31	25	5-2-2003	5-6-03	no results	128
20N1/2	F C94-587	Tucker, cloth ties, area N	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.31	15.5	0.56	0.56	25	5-2-2003	5-6-03	no results	130
20O1/2	F C94-587	Tucker, cloth ties, area O	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.25	12.5	0.45	0.45	25	5-2-2003	5-6-03	no results	132
20P1/2	F C94-587	Tucker, cloth ties, area P	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.56	28.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	134
20Q1/2	F C94-587	Tucker, cloth ties, area Q	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.19	9.5	0.35	0.35	25	5-2-2003	5-6-03	no results	136
20R1/2	F C94-587	Tucker, cloth ties, area R	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.45	22.5	0.82	0.82	25	5-2-2003	5-6-03	no results	138
20S1/2	F C94-587	Tucker, cloth ties, area S	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.36	18.0	0.65	0.65	25	5-2-2003	5-6-03	no results	140
20V1/2	F C94-587	Tucker, cloth ties, area V	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.18	9.0	0.33	0.33	25	5-2-2003	5-6-03	no results	143
20W1/2	F C94-587	Tucker, cloth ties, area W	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.18	9.0	0.33	0.33	25	5-2-2003	5-6-03	no results	145
20Y1/2	F C94-587	Tucker, cloth ties, area Y	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.21	10.5	0.38	0.38	25	5-2-2003	5-6-03	no results	147
20Z1/2	F C94-587	Tucker, cloth ties, area X	human bloodstain	2 small cuttings	4-15-03	organic 4-29-03	50	0.18	9.0	0.33	0.33	25	5-2-2003	5-6-03	no results	149
22A1/2	E C94-587	Tucker blue shirt, area A additional cutting	human bloodstain	0.5cm x 0.7cm	4-21-03	organic 4-29-03	50	0.84	42.0	1.5	1.5	25	5-2-2003	5-6-03	no results	157
22B1/2	E C94-587	Tucker, blue shirt, area B	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.79	39.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	162
22C1/2	E C94-587	Tucker, blue shirt, area C	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.43	21.5	0.78	0.78	25	5-2-2003	5-6-03	no results	165
22D1/2	E C94-587	Tucker, blue shirt, area D	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.85	42.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	168
22F1/2	E C94-587	Tucker, blue shirt, area F	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.03	51.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	170
22H1/2	E C94-587	Tucker, blue shirt, area H	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.08	54.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	172
22P1/2	E C94-587	Tucker, blue shirt, area P	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.03	51.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	174
22Q1/2	E C94-587	Tucker, blue shirt, area Q	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.67	33.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	176
22R1/2	E C94-587	Tucker, blue shirt, area R	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.09	54.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	178
22S1/2	E C94-587	Tucker, blue shirt, area S	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.64	32.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	180
22T1/2	E C94-587	Tucker, blue shirt, area T	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.24	62.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	182
22V1/2	E C94-587	Tucker, blue shirt, area V	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.39	69.5	0.7	0.7	25	5-2-2003	5-6-03	no results	184

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
23A1/2		D Anderson, red sock, area A	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	10.67	533.5	0.97	0.97	25	5-2-2003	5-6-03	no results	188
23B1/2		D Anderson, red sock, area B	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	8.12	406.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	191
23C1/2		D Anderson, red sock, area C	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	6.45	322.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	193
23D1/2		D Anderson, red sock, area D	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	24.19	1209.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	robust profile (D Anderson)	195
23E1/2		D Anderson, red sock, area E	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	2.96	148.0	1	1	25	5-2-2003	5-6-03	wk partial profile	197
23F1/2		D Anderson, red sock, area F	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	9.70	485.0	0.97	0.97	25	5-2-2003	5-6-03	no results	201
23G1/2		D Anderson, red sock, area G	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	10.81	540.5	0.94	0.94	25	5-2-2003	5-6-03	no results	209
23H1/2		D Anderson, red sock, area H	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	10.37	518.5	0.94	0.94	25	5-2-2003	5-6-03	no results	213
24C1/2	B C94-588	D Anderson, underwear, area C	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	0.40	20.0	0.73	0.73	25	5-2-2003	5-6-03	no results	216
24E1/2	B C94-588	D Anderson, underwear, area E	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	1.67	83.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	218
24F1/2	B C94-588	D Anderson, underwear, area F	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	1.63	81.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	220
24G1/2	B C94-588	D Anderson, underwear, area G	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	1.05	52.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	222
24J1/2	B C94-588	D Anderson, underwear, area J	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	0.97	48.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	224
24Q1/2	B C94-588	D Anderson, underwear, area Q	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	4.00	200.0	0.88	0.88	25	5-2-2003	5-6-03	no results	226
24S1/2	B C94-588	D Anderson, underwear, area S	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	6.29	314.5	0.9	0.9	25	5-2-2003	5-6-03	no results	231
12A1-3	D C94-587	Tucker white socks, area A extract, re-amp ProPlus	previous extract							1.2	n/a	25	5-8-2003	5-12-03	no result	11
12A1-4	D C94-587	Tucker white socks, area A extract, increase re-amp PrPlus	previous extract							5.3	n/a	25	5-8-2003	5-12-03	no result	12
12A1-5	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.48	n/a	25	5-8-2003	5-12-03	no result	13
12A1-6	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.24	n/a	25	5-8-2003	5-12-03	no result	14
12A1-7	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.10	n/a	25	5-8-2003	5-12-03	no result	15
12A1-8	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.05	n/a	25	5-8-2003	5-12-03	no result	16
15A1-3	D C94-588	D Anderson dress area 2 extract, dilution re-amp ProPlus	previous extract			dilution				0.23	n/a	25	5-8-2003	5-12-03	no result	19
17A1-3	F C94-586	M Anderson plaid shirt area A extract, dilution re-amp ProPlus	previous extract			dilution				0.12	n/a	25	5-8-2003	5-12-03	no result	30

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
17K1-3	F C94-586	M Anderson plaid shirt area K extract, dilution re-amp ProPlus	previous extract			dilution				0.33	n/a	25	5-8-2003	5-12-03	no result	51
19G1-3	C C94-587	Tucker Jeans, area G extract, dilution re-amp ProPlus	previous extract			dilution				0.41	n/a	25	5-8-2003	5-12-03	no result	99
20G1-3	F C94-587	Tucker, cloth ties, area G extract, dilution re-amp ProPlus	previous extract			dilution				0.3	n/a	25	5-8-2003	5-12-03	no result	117
22V1-3	E C94-587	Tucker, blue shirt, area V extract, dilution re-amp ProPlus	previous extract			dilution				0.35	n/a	25	5-8-2003	5-12-03	no result	185
23A1-3		D Anderson, red sock area A extract, dilution re-amp ProPlus	previous extract			dilution				0.1	n/a	25	5-8-2003	5-12-03	no result	189
23F1-3		D Anderson, red sock area F extract, re-amp ProPlus	previous extract							0.97	n/a	25	5-8-2003	5-12-03	no result	202
23F1-4		D Anderson, red sock area F extract, increase re-amp Prplus	previous extract							3.88	n/a	25	5-8-2003	5-12-03	no result	203
23F1-5		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.39	n/a	25	5-8-2003	5-12-03	no result	204
23F1-6		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.26	n/a	25	5-8-2003	5-12-03	no result	205
23F1-7		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.19	n/a	25	5-8-2003	5-12-03	no result	206
23F1-8		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.13	n/a	25	5-8-2003	5-12-03	no result	207
23G1-3		D Anderson, red sock area G extract, dilution re-amp ProPlus	previous extract			dilution				0.08	n/a	25	5-8-2003	5-12-03	no result	210
23H1-3		D Anderson, red sock area H extract, dilution re-amp ProPlus	previous extract			dilution				0.09	n/a	25	5-8-2003	5-12-03	no result	214
24Q1-3	B C94-588	D Anderson, underwear area Q extract, dilution re-amp ProPlus	previous extract			dilution				0.22	n/a	25	5-8-2003	5-12-03	no result	227
24S1-3	B C94-588	D Anderson, underwear area S extract, dilution re-amp ProPlus	previous extract			dilution				0.14	n/a	25	5-8-2003	5-12-03	no result	232
25A1NSF	T 94-504	D Anderson, vaginal swab, non-sperm fraction	no semen detected	epithelial cell DNA	5-6-03	diff organic 5-6-03	50	75.4	3765.0	1.2	1.2	9	5-8-2003	5-9-03	robust profile (D Anderson)	239
25A1SF	T 94-504	D Anderson, vaginal swab, sperm fraction	no semen detected	half of 1 swab	5-6-03	diff organic 5-6-03	50	1.2	60	1.2	1.2	9	5-8-2003	5-9-03	weak female profile	235
29A1	94-504-3	D Anderson reference blood	blood	n/a	5-6-03	organic 5-6-03	50	57.6	2880.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	241
30A1	94-499-2	F Tucker reference blood	blood	n/a	5-6-03	organic 5-6-03	50	47.5	2375.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	243
31A1	94-502-3	M Anderson reference blood	blood	n/a	5-6-03	organic 5-6-03	50	71.4	3750.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	245
32A1	95-392	"Montgomery" reference blood	blood	n/a	5-6-03	organic 5-6-03	50	43.9	2195.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	247
06A1-3/4	C C94-586	M Anderson socks area 1 extract, increase re-amps	previous extract							3.6	3.6	25	5-27-2003	5-29-03	no results	4
15A1-4	D C94-588	D Anderson dress area 2 extract, inhibition test ProPlus	previous extract							0.92 15A 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	20

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
16i1-3	G C94-586	M Anderson white blanket area I stain extract, re-amp PrPlus	previous extract							1.3	n/a	25	5-27-2003	5-29-03	robust unk. male profile	24
16i1-4	G C94-586	M Anderson white blanket area 1 stain extract, re-amp CoFiler	previous extract							n/a	1.74	25	5-27-2003	5-29-03	robust unk. male profile	25
17A1-4	F C94-586	M Anderson plaid shirt area A extract, inhibition test ProPlus	previous extract							0.92 17A 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	31
20G1-4	F C94-587	Tucker, cloth ties, area G extract, inhibition test ProPlus	previous extract			dilution				0.75 20G 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	118
22A1-3	E C94-587	Tucker blue shirt, area A extract, inhibition test ProPlus	previous extract							1.5 22A 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	158
22V1-4	E C94-587	Tucker, blue shirt, area V extract, increase re-amp PrPlus	previous extract							2.8	n/a	25	5-27-2003	5-29-03	unknown (no result reported)	186
23E1-3/4		D Anderson, red sock area E extract, increase re-amps P&C	previous extract							4	4	25	5-27-2003	5-29-03	low profile	199
23G1-4		D Anderson, red sock area G extract, inhibition test ProPlus	previous extract							0.94 23G 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	211
24Q1-4	B C94-588	D Anderson, underwear area Q extract, ihibition test ProPlus	previous extract							0.88 24Q 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	228
24S1-4	B C94-588	D Anderson, underwear area S extract, inhibition test ProPlus	previous extract							0.9 24S 0.2 Control	n/a	25	5-27-2003	5-29-03	no result	233
15A2	D C94-588	D Anderson dress area 2 second sampling	(no test)	0.5cm^2	5-28-03	Chelex, org, Centribon	50	4.81	240.5	n/a	1.2	25	6-3-2003	6-3-03	no result	21
17A2	F C94-586	M Anderson plaid shirt, area A second sampling	(no test)	0.5cm^2	5-28-03	Chelex, org, Centribon	50	7.67	383.5	n/a	1.28	25	6-3-2003	6-3-03	no result	32
19G2	C C94-587	Tucker Jeans, area G second sampling	(human bloodstain)	0.5cm^2	5-28-03	Chelex, org, Centribon	50	3.16	158.0	n/a	1.05	25	6-3-2003	6-3-03	no result	100
20CC1/2	F C94-587	Tucker, cloth ties, area CC extract, Chelex wash	previous extract		5-30-03	Chelex wash	36	0.46	16.56	n/a	1.84	24	6-3-2003	6-3-03	no result	154
20S1/2	F C94-587	Tucker, cloth ties, area S extract, Chelex wash	previous extract		5-30-03	Chelex wash	32	1.04	33.28	n/a	1	25	6-3-2003	6-3-03	no result	141
22A	E C94-587	Tucker, blue shirt, area A combined with 4-21-03 cutting	human bloodstain	small cutting	4-16-03	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6-3-2003	n/a	n/a	n/a
22A1/2	E C94-587	Tucker blue shirt, area A extract, Chelex wash	previous extract		5-30-03	Chelex wash	35	0.25	8.75	n/a	1	25	6-3-2003	6-3-03	no result	159
22A2	E C94-587	Tucker blue shirt, area A second sampling	(human bloodstain)	0.5cm^2	5-28-03	Chelex, org, Centribon	50	1.74	87.0	n/a	1.74	25	6-3-2003	6-3-03	no result	160
22B1/2	E C94-587	Tucker, blue shirt, area B extract, Chelex wash	previous extract		5-30-03	Chelex wash	38	0.37	14.1	n/a	1.48	25	6-3-2003	6-3-03	no result	163
22C1/2	E C94-587	Tucker, blue shirt, area C extract, Chelex wash	previous extract		5-30-03	Chelex wash	36	0.30	10.8	n/a	1.8	25	6-3-2003	6-3-03	no result	166

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Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
24Q2	B C94-588	D Anderson, underwear, area Q second sampling	(human bloodstain)	0.5cm^2	5-28-03	Chelex, org, Centribon	50	2.28	114.0	n/a	1.14	25	6-3-2003	6-3-03	no result	229
17R1	F C94-586	M Anderson plaid shirt, area R extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	4.62		1.16	n/a	25	6-10-2003	6-10-03 A2	no result	64
17T1	F C94-586	M Anderson plaid shirt, area T extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	3.00		1.20	n/a	25	6-10-2003	6-10-03 A2	no result	69
17X1	F C94-586	M Anderson plaid shirt, area X extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	8.00		1.14	n/a	25	6-10-2003	6-10-03 A2	no result	78
17Y1	F C94-586	M Anderson plaid shirt, area Y extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	7.17		1.20	n/a	25	6-10-2003	6-10-03 A2	no result	83
19C1	C C94-587	Tucker Jeans, area C extract Centri-Sep purificat, re-amp P+	previous extract			Centri-Sep cleanup	unk.	2.36		1.18	n/a	25	6-10-2003	6-10-03 A2	no result	90
17R1.15	F C94-586	M Anderson plaid shirt, area R extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.16	9	6-11-2003	6-11-03 A1	no result	65
17R1.15 1:8	F C94-586	M Anderson plaid shirt, area R extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.58	9	6-11-2003	6-11-03 A1	no result	66
17T1.15	F C94-586	M Anderson plaid shirt, area T extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.20	9	6-11-2003	6-11-03 A1	no result	70
17T1.15 1:8	F C94-586	M Anderson plaid shirt, area T extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.60	9	6-11-2003	6-11-03 A1	no result	71
17X1.15	F C94-586	M Anderson plaid shirt, area X extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.14	9	6-11-2003	6-11-03 A1	no result	79
17X1.15 1:15	F C94-586	M Anderson plaid shirt, area X extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.57	9	6-11-2003	6-11-03 A1	no result	80
17Y1.15	F C94-586	M Anderson plaid shirt, area Y extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.20	9	6-11-2003	6-11-03 A1	no result	84
17Y1.15 1:12	F C94-586	M Anderson plaid shirt, area Y extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.60	9	6-11-2003	6-11-03 A1	no result	85
19C1.15	C C94-587	Tucker Jeans, area C extract C-Sep purificat, re-amp CoF	previous extract			Centri-Sep cleanup				n/a	1.18	9	6-11-2003	6-11-03 A1	no result	91
19C1.15 1:4	C C94-587	Tucker Jeans, area C extract Centri-Sep purificat, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.59	9	6-11-2003	6-11-03 A1	no result	92
25A1SF (5X)	T 94-504	D Anderson, vaginal swab SF	n/a	n/a	n/a	n/a	n/a	n/a	n/a	12	12	25	7-29-2003	7-29-03	robust profile (D Anderson)	237
33	n/a	Tony Carruthers ref blood	blood	n/a	2-17-05	organic 2-17-05	50	2.56	128.0	1.28	1.28	9	2-23-2005	2-24-05	robust profile	249
34	n/a	James T Mongomery ref blood	blood	n/a	2-17-05	organic 2-17-05	50	3.07	153.5	1.23	1.23	9	2-23-2005	2-24-05	robust profile	251

EXHIBIT 12

BILL LEE
Governor

TENNESSEE BUREAU OF INVESTIGATION
NASHVILLE CRIME LABORATORY
901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639

DAVID B. RAUSCH
Director

OFFICIAL CODIS REPORT

TO: Elaine Shelby
DAG - 30th Judicial District
AGENCY CASE NO: 9402797

DATE ISSUED: 4/5/19
LAB CASE NO: 063001146
COUNTY: Shelby

SUBJECT(S)
JAMES MONTGOMERY
VICTIM(S)
DELOIS ANDERSON

EXHIBIT(S):
02-a Blanket

RESULTS:

Refer to the TBI Official Serology/DNA Report dated 05/01/2006 by Donna Nelson, Memphis Crime Laboratory, for previous results.

02-a Based on new eligibility criteria, this unknown, partial male DNA profile was added to the National CODIS database. Additionally, this profile was searched against the National CODIS database and no matches were detected as of this report date. This profile will remain in the databases and searched weekly. You will be notified in the event of a future investigative lead.

Respectfully Submitted,

Bailey Harmon
Special Agent / Forensic Scientist
The above represents the interpretations and opinions of the analyst.
Technical notes and data supporting the conclusions/findings in this report are maintained within the laboratory case records.

EXHIBIT 13

IN THE CRIMINAL COURTS OF TENNESSE
FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION 4

STATE OF TENNESSEE
VS. NO: (S) 94-02797, 98, 99 CHARGE(S) Murder II

James Montgomery,
DEFENDANT

PETITION FOR WAIVER OF TRIAL BY JURY AND REQUEST FOR ACCEPTANCE OF PLEA OF GUILTY

My true name is James Montgomery and my Attorney Michael Scholl was (retained by me) (appointed by the Court). I have received and read a copy of the indictment, discussed it with my Attorney, and understand the nature of the charges against me. I have told my Attorney the facts and circumstances concerning the accusation against me. My Attorney has informed me as to the nature and cause of the charges against me in the indictment and, if applicable that a different or additional punishment may result by reason of any prior convictions or other factors which may be established in the present action, after the entry of the plea, and the offense to which I seek to plead guilty by the Petition if accepted by the Court:

CONVICTION	SENTENCE	FINE	LOCATION	Range And %
~~Murder II~~				
94-02797	27 years		TDOC	I 30%
94-02798	27 years		TDOC	I 30%
94-02799	27 years		TDOC	I 30%
ABOVE ARE CONCURRENT				

SENTENCE DEFERRED DATE (if applicable) _____

It has been fully explained to me, and I understand that I may, if I so choose, plead **NOT GUILTY** to any offense charged against me, and that if I choose to plead **NOT GUILTY**, the Constitution guarantees, and this Court will provide me the right to a speedy and public trial by Jury, the right to confront and cross-examine all witnesses against me, the right to use the subpoena process of the Court to compel the production of any evidence, including the attendance of any witness in my favor, the right to have a Jury impose any fine in excess of **FIFTY($50.00) Dollars**, the right to have the assistance of counsel in my defense in all stages of the proceedings, and the right not to be compelled to incriminate myself. I understand that upon pleading guilty, the Court or the State may ask me questions about the offense to which I have plead, and if I answer these questions under oath, on the record, and in the presence of my counsel, my answers may later be used against me in a prosecution for perjury or false statement, and, further, that upon the sentencing hearing, evidence of any prior convictions may be presented to the Judge or Jury for their consideration in determining punishment. It has been explained to me and I understand that this conviction(s) may be used in a subsequent proceeding to enhance the punishment for subsequent offenses. I understand that if I plead guilty, I waive my right to a Jury trial and all the above rights.

In the exercise of my own free will and choice, and without any threats or pressure of any kind, or promises of gain or favor from any source whatsoever, and being fully aware of the action I am taking, I do hereby in open Court request the Court to accept my pleas of guilty to the charges, set forth in my attached negotiated plea agreement.

Furthermore, having been advised of my constitutional rights, I freely and voluntarily waive my right to a trial by Jury and right not to be compelled to incriminate myself. I hereby submit my case to the Trial Judge for decision, both as to guilt and punishment, said Petition being concurred in by the District Attorney General. I fully understand my right to have my case reviewed by an Appellate Court, but hereby waive my right to a Motion For New Trial and Appeal. THIS IS AN ALFORD GUILTY PLEA.

X _____
DEFENDANT

APPROVED:

_____
Attorney For Defendant

DATE: 5-1-06

Filed _____
WILLIAM R. KEY, CLERK

_____
Assistant Attorney General

By: _____, D.C.

IN THE CRIMINAL COURTS OF TENNESSEE
FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION 4

STATE OF TENNESSEE
VS. NO: (S) 94-02797, 94-02798, 95-11128, 29 CHARGE(S) Murder II x3
James Montgomery,
DEFENDANT

ORDER ON GUILTY PLEA

This cause came on for hearing before the Honorable Curolynn Blackett, Judge of Division 4 of the Criminal Court of Shelby County, Tennessee, on petition of the above named defendant for waiver of trial by Jury, waiver of his or her right to have a Jury determine his or her guilt, to submit himself or herself to the trial Judge to determine his or her guilt: and fix his or her punishment, and request for acceptance of plea of guilty, said petition being attached hereto and incorporated by reference herein, upon statements made in open Court by the defendant herein, his or her Attorney of record, the Assistant District Attorney General representing the State of Tennessee; and from questioning by the Court of the defendant and his or her counsel in open Court, and

IT APPEARING TO THE COURT after careful consideration that the defendant herein has been fully advised and understands his or her rights to a trial by Jury and to have a Jury indictment against him or her, and the defendant does not elect to have a Jury determine his or her guilt or innocence under a plea of Not Guilty, nor fix his or her fine in excess of **FIFTY ($50.00) DOLLARS**; and has waived the formal reading of the indictment, and

IT FURTHER APPEARING TO THE COURT that the defendant intelligently and understandingly waives his or her right to a trial and his or her right to have a Jury determine his or her guilt and fix his or her fine in excess of **FIFTY ($50.00) DOLLARS** of his or her own free will and choice and without any threats or pressure of any kind or promises, other than the recommendation of the State as to punishment; and reasonably submits himself or herself to the trial Judge to determine his or her guilt and fix his or her punishment; and waives his or her right to a **Motion for New Trial and/or Appeal**.

IT FURTHER APPEARING TO THE COURT, from the testimony of the defendant, from which the Court finds as a matter of fact and law that the defendant has been rendered that standard of representation by his Attorney as commanded by *Baxter v Rose*, 523 SW2d 930 (Tenn. 1975);

IT IS,THEREFORE,ORDERED, ADJUDGED AND DECREED that the petition filed herein be, and the same is hereby **GRANTED**.

Entered this 1st **day of** May, 20 06

JUDGE **DIV.** IV

Filed _____
WILLIAM R. KEY, CLERK

By: _____ D.C.



IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

THE THIRTIETH JUDICIAL DISTRICT

DIVISION IV

STATE OF TENNESSEE	)	
	)	
	)	
	)	
vs.	)	Cause No. 94-02797
	)	94-02798
JAMES MONTGOMERY,	)	94-92799
	)	95-11128
Defendant	)	95-11129
	)	

TRANSCRIPT OF GUILTY PLEA

ORIGINAL

May 1, 2006

THE HONORABLE CAROLYN BLACKETT, PRESIDING JUDGE

FOR THE STATE:
Michelle Parks
Bobby Carter
Assistant District Attorney General
District Attorney General's Office
201 Poplar Avenue -- 3rd Floor
Memphis, Tennessee 38103

FOR THE DEFENDANT:
Marty McAffee
Michael Scholl
Attorneys-at-law
200 Jefferson Avenue, Suite 202
Memphis, Tennessee 38103

VIRGINIA ZISSON
Official Court Reporter
30th Judicial District -- State of Tennessee
201 Poplar Avenue -- Suite 7-16
Memphis, Tennessee 38103

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IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

THE THIRTIETH JUDICIAL DISTRICT

DIVISION IV

STATE OF TENNESSEE	)	
	)	
	)	
	)	
vs.	)	Cause No. 94-02797
	)	94-02798
JAMES MONTGOMERY,	)	94-92799
	)	95-11128
Defendant	)	95-11129
	)	

This cause came on to be heard and was heard on the 1st day of May, 2006, before the Honorable Carolyn Blackett, Judge, holding the Criminal Court for Shelby County at Memphis, Tennessee, and the following proceedings were had, to wit:

THE COURT: Mr. Carter?

MR. CARTER: Your Honor, I think we have a guilty plea for the Court's consideration if the Court will entertain it.

THE COURT: All right. Are you all ready to proceed on the guilty plea at this time?

MR. SCHOLL: Yes, ma'am, Your Honor.

THE COURT: All right. Can we have the defendant out, please?

(The defendant was brought into the courtroom.)

THE COURT: All right. You may proceed.

MR. CARTER: Your Honor, for the record, the defendant's present in court, represented by counsel. For the record, also present are the family of one of the victim's, Frederick Tucker.

And I will say this, for the record also, we were here and ready to go forward for trial as was the defense.

We had some discussion this morning about the possibility of a guilty plea. We would like to present this for the Court's consideration.

I have spoken to the family of Mr. Tucker. They understand the nature of the plea and all of the things that went into making this discussion.

They were aware of it and understand the need for and are -- I hesitate to say happy with that by any means, anything under these circumstances. But they understand and approve the plea.

We have spoken to several family members for two of the other victims, Delois Anderson and Marcelus Anderson. Neither of them will necessarily be

called next of kin, but cousins who have been part of this, and we have discussed the matter with them and told them of our intention to go forward in this fashion, as well, if Your Honor please.

What we are proposing, if Your Honor please, is a guilty plea in this to three counts of murder in the second degree. In each count, the defendant would receive a twenty-seven year sentence as a range two multiple offender. And those are in indictments number 94-02797, 94-02798, and 94-02799.

Indictment number 95-11128 is a three count indictment, charging three counts of especially aggravated kidnapping. In each of those counts, the defendant would receive a twenty-seven year sentence as a range two multiple offender. All of these are A-felonies, for the Court.

And in 95-11129, the defendant was indicted for the offence of especially aggravated robbery, also an A-felony, and upon his plea of guilty would receive a twenty-seven year sentence as a range two multiple offender.

The sentences are to be concurrently with one another in this matter, if Your Honor please.

Had these matters gone to trial and, of course, for the record, they did go to trial and they

went to trial first in April of 1996.

This matter was reversed by the Supreme Court in the year 2000 and sent back for a retrial. And that's how we come to be before this Court.

But had the matters gone to trial again, the State's proof would be that on or about April the 24th of 1994, Mr. Fred Tucker and Mr. Marcelus Anderson were seen by witnesses to get into a Jeep Cherokee vehicle that was owned nominally by one Michael Harris, but was driven all the time by Mr. Marcelus Anderson, and basically known as his vehicle.

They were seen to get into that vehicle with James Montgomery, who is the defendant here, and Jonathan Montgomery, who is the defendant's brother at that time.

That was about four thirty in the afternoon of February 24th, 1994.

They were basically never seen alive again, with a couple of exceptions, if Your Honor please.

On that evening, February 25th, in the early morning hours, about two in the morning, an arson investigator received a phone call in Desoto County, Mississippi, just south of the state line to a burning vehicle.

They got to that location and found a Jeep Cherokee that was fully engulfed in flames and was burning from end to end.

Once the fire was put out, the officers were able to locate a vehicle identification number, a metal strip, and find out that that vehicle was the one that was listed in the name of Michael Harris, that was the vehicle driven by Marcelus Anderson.

In the meantime, if Your Honor please, earlier that day, Ms. Delois Anderson, had been to work and was dropped off by a friend who she rode with and went to her home here in Memphis, Shelby County, Tennessee.

Different relatives started trying to contact her throughout that period and were unable to reach her, giving some pause.

Likewise, Mr. Fred Tucker was not seen and there began to be missing person's calls and reports made. Efforts to locate both Marcelus Anderson and Mr. Fred Tucker as well as Ms. Delois Anderson.

So as of about February 25th, we had seen -- we had individuals who saw Mr. Tucker and Mr. Marcelus Anderson in a vehicle with James and Jonathan Montgomery, and then, the vehicle was found in the wee hours of that morning, burned.

Investigators did go to the home of Ms. Delois Anderson, and along with family members, they found there evidence that a supper had been prepared, and it looked as if someone were in the midst of eating the supper, and it had stopped suddenly.

There was food and a fork and Ms. Anderson's purse was there as well as certain other personal effects that would lead one to believe that she hadn't just gone out someplace. Because she didn't take a purse, and leaving the food and everything, all in one place.

But at that point nothing -- nothing further was known other than that she was missing.

The matter proceeded for a couple of days, and investigation was going on, and there were rumors around as to possibly what happened, but at that point, nobody knew what had happened.

The case turned on a little break when an individual named Charles Smith was stopped for a traffic offence, during which, he tried to run from the police.

He was apprehended and when he was brought back to his car, it was located that he was in possession of a handgun, which was against the law, not only for those reasons, but because he was a convicted

felon.

Officers began to question him about why he would have a handgun knowing he wasn't supposed to have it. And he blurted out some information that he was carrying the handgun because word was on the street that people that he knew, who were the Andersons and Mr. Tucker, had been abducted by James Montgomery and Tony -- excuse me. James Montgomery and Jonathan and Tony Carruthers.

Investigation revealed that at some point during previous incarcerations, both Mr. Carruthers and Mr. Montgomery had been incarcerated together.

Both had been on details that involved maintenance in cemeteries out at the West Tennessee Veterans Cemetery, as well as perhaps some grave digging details.

When it became -- it would be the State's proof that Mr. Carruthers came up with the idea that if they were ever to commit a crime and could dispose of the bodies in such a way that they would never be found, then they could never be charged with these.

During the period in late 1993, Mr. Carruthers also sent some letters to a number of

people, including one Jimmy Mays, in which he stated that they had a master plan, and they had a person picked out, and they had a big scheme to make big money when they got out, but that they had to wait for Mr. Montgomery, Mr. James Montgomery, to be released from prison before they could go forward with this.

One thing lead to another, and the officers began to investigate the matter and Jonathan Montgomery was picked up for questioning and gave a series of statements and information to the police, including the fact that he could lead them to the bodies of the three individuals who -- who were missing.

He did, in fact, lead investigators out to Rose Hill Cemetery and by counting a certain number of graves from a known location, a relative of his, he indicated a grave to the investigators as being the site where the three individuals had been buried.

He indicated that it was an empty grave at the time they were buried. But, of course, the grave was now, in fact, occupied by a legitimate burial.

The burial records reflected that that burial had taken place -- it was -- Rose Hill contains a section of a potter's field, which is an indigent

burial, and individuals who weren't able to afford burial plots of their own are then placed there.

And this individual had been buried on the 25th or 6th of February, 1994, in that grave.

An exhumation order was sought and obtained. That grave was, in fact, exhumed, and a casket removed.

And in the ground underneath the legitimate grave, at the bottom of which was a piece of plywood, that plywood was removed, and it was discovered that, in fact, there were three bodies found.

Those bodies were excavated and did prove to be those of Marcelus Anderson, Delois Anderson, and Frederick Tucker.

The bodies were removed for autopsy purposes and the causes of death were determined by autopsy. Both Mr. Frederick Tucker and Mr. Marcelus Anderson were victims of gunshot wounds that could have ultimately proved fatal. Ms. Delois Anderson was -- the cause of death was ruled to be asphyxia, or strangulation.

They were placed then in this grave, underneath the other grave.

Investigation went on further based on

the confessions and the information that Mr. Jonathan Montgomery made to the authorities.

And officers then went to a location of a home of one Nikita Montgomery, who is a cousin of both James and Jonathan Montgomery, who did testify that on the evening of the 24th, that first James and Jonathan came over with Frederick Tucker and Marcelus Anderson.

And the information that she initially gave to the police, included the fact that she was asked to leave for a while, and then when she came back, that she was asked to go upstairs by Mr. Montgomery, Mr. James Montgomery, who then at one point told her that they would be leaving soon, and she did see from the top of the steps that they left with Mr. Frederick Tucker and Mr. Marcelus Anderson.

And she told the police at the time, that she saw that their hands were, in fact, bound. The bodies when they were found in the graves, all had bound hands, still, at that time. Their hands were tied at that time.

Other evidence revealed from other witnesses that there were in fact -- that Mr. Montgomery and Mr. Carruthers had borrowed a vehicle from those individuals and had returned one of the

vehicles to them, and there were various items of information, including their being very scrupulous about trying to clean out the trunk and some admonitions given to these individuals about, you know, not talking to the police.

Also, Miss Montgomery told that the -- that James Montgomery had told her not to speak to anybody, particularly not the police, about what she had seen on the night in question.

Further information revealed that Mr. Marcelus Anderson always wore a particular large gold ring and that it was very unique and distinctive and that there only a couple like it.

One was each owned by Mr. Andre Johnson, who was a drug dealing associate of Mr. Marcelus Anderson, and they had rings alike, as well as another individual named Trell Adair. The three of them all had rings alike.

When Mr. Anderson's body was recovered, it did not have that distinctive ring on it, giving rise to the especially aggravated robbery charge in this ~~matter~~. 95-11129 WAS ALLEGEDLY FOR ONE MOTOR VEHICLE

Further investigation revealed a number of individuals who would provide background information and piece together -- it would be the State's proof,

had the matter gone to trial that Mr. Anderson --

Excuse me. Mr. Carruthers and Mr. Montgomery, along with Mr. Jonathan Montgomery, who by the way was hung -- was hanged in the jail, and that death has been ruled a suicide prior to the first trial.

The three of them did, in fact, abduct Mr. Marcelus Anderson, Mr. Frederick Tucker, and Ms. Delois Anderson, remove them to the house here on Court Avenue of Nicki Montgomery, and then take them out to the graveyard where they were shot and strangled and buried, ultimately, in the grave there. And thereby committing the offences of murder.

If Your Honor please, that basically, if I can have just a moment --

(Brief pause.)

MR. CARTER: That would basically be the facts that the State would adduce had the matter gone to trial, and would be our proof. We would ask the Court to accept, and counsel to stipulate.

I will state the reason for the -- for proceeding in this fashion, it's obvious from the record, we're now twelve years after the fact.

A number of the witnesses have experienced difficulties. We have two witnesses who are deceased, who testified at the first trial, and other issues that we've discussed with the family.

And we would ask the Court to accept this and for counsel to stipulate.

MR. SCHOLL: If Your Honor please, we would stipulate that those would have been put forth by the State if the matter had gone to trial.

We'll state to the Court that we were prepared to go to trial today. We, for the record, had numerous experts flying in this week to testify in this trial, including a DNA expert.

One of the arguments in trial would have been that there was some DNA found at the scene on Marcelus Anderson that did not belong to any of the victims or to my client or any of the other two co-defendants.

We did come prepared today to take issue with the facts. But after negotiating with the State, we believe that a twenty-seven year sentence on this is more than fair and reasonable negotiation and settlement of this matter.

And my client feels that it's in his best interest to take this plea.

So we would ask that Your Honor accept the plea and we would stipulate that those would have been the facts put forward by the State.

And Judge, I believe the paperwork reflects that is pled under Alford vs. North Carolina.

JAMES MONTGOMERY

having been first duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. State your name?

A. James Montgomery.

Q. Your address?

A. Currently, 201 Poplar.

Q. How old are you?

A. Thirty-eight.

Q. How much education do you have?

A. I went to the eleventh grade, but I went back and got the equivalency diploma, and I have attended a number of vocational schools.

Q. All right. You've heard the facts as they were stated on the record by the State of Tennessee. Are those facts true?

A. I'm entering a plea of guilty under Alford vs. North Carolina.
Q. All right. So in other words, you're not saying that the facts are true but you are pleading guilty because you feel it's in your best interests pursuant to that case, Alford vs. North Carolina. Is that correct?
A. Yes, ma'am.
Q. All right. Do you understand what you're doing here today? That you were supposed to go forward with a jury trial today?
A. Yes, ma'am.
Q. You understand at this time, you're pleading guilty and hoping that the Court will accept this guilty plea today. Is that correct?
A. Yes, ma'am.
Q. Are you on any type of drugs or medication or any type of prescription medication that would limit or prohibit you from going forward with the guilty plea today?
A. No, ma'am.
Q. All right. Is this guilty plea voluntary on your part?
A. Yes, ma'am.
Q. You do understand that you have a right to

have an attorney present at every stage of the proceeding, including an appeal. If you can't afford to retain counsel, one will be appointed for you by this Court. Do you understand that?

A. Yes, ma'am.

Q. In fact, you understand that Mr. Michael Scholl and Mr. Marty McAfee have been appointed by this Court to represent you. Is that correct?

A. Yes, ma'am.

Q. All right. You understand that you have a right to have a jury trial. At that trial, you have a right to testify as well as a right to cross examine and confront witnesses against you at that trial. Is that correct?

A. Yes, ma'am.

Q. For purposes of this particular guilty plea, I'm going to go forward with the petition for waiver of trial by jury that I have in front of me. Did you read this petition?

A. Yes, ma'am.

Q. And you've gone over it with your attorneys?

A. Yes, ma'am.

Q. And this is your signature at the bottom of the page? Is that correct?

A. Yes, ma'am. It is.

Q. All right. I just want to read it into the record because of the number of charges and because of the fact that this case is such as it is. You have received and read a copy of the indictment. You have discussed it with your attorney. You understand the nature of your charges against you. Is that correct?
A. Yes, ma'am.
Q. You have heard the facts and circumstances concerning the accusation against you, and your attorney has informed you as to the nature and cause of the charges against you in the indictment. Is that correct?
A. Yes, ma'am.
Q. You understand that these rights have been fully explained to you and that you are choosing at this time to plead guilty to the cases that have been set forth that I will go over with you very shortly. Is that correct.
A. Yes, ma'am.
Q. You understand that the Court does provide you with the right to a speedy and public trial by jury. You have the right to confront and cross-examine all witnesses against you. You have the right to use the subpoena process of the Court to compel the production of any evidence, including the attendance of

any witness in your favor. And you also have the right to have a jury impose any fines in excess of fifty dollars. The right to have the existence of counsel in your defense in all stages of the proceedings. Is that correct?

A. Yes, ma'am.

Q. You understand further that you have a right not to be compelled to incriminate yourself. Is that correct?

A. Yes, ma'am.

Q. You understand that upon pleading guilty, the Court may ask questions about the offence which you have pled guilty to. You understand that these answers may later be used against you in prosecution for perjury or false statement. And further that the -- upon a sentencing hearing, if there is any, evidence of any prior convictions may be presented to this judge or court for consideration in determining your punishment. Is that correct?

A. Yes, ma'am.

Q. You understand further that you are asking this court to accept your guilty plea. That you have been advised of your Constitutional rights, and that you are freely and voluntarily waiving that right to have a jury trial at this time. Is that correct?

A. Yes, ma'am.
Q. This is your signature at the bottom of the page of this petition for waiver of trial by jury. Is that correct?
A. Yes, ma'am.
Q. You also hereby waive your right for a motion for new trial and appeal at this time. Is that correct?
A. Yes, ma'am.
Q. Pursuant to 95-11129, count one, you have been indicted for especially aggravated robbery, Class A-Felony. Pursuant to TCA 39-134-03, you are pleading guilty to that offence, that's a Class A-felony, looking at twenty-seven years, Tennessee Department of Correction as a multiple range two offender at thirty-five percent. There is no fine in this case. This will be served concurrently with 95-111128, counts one, two, and three, 94-02797, 94-02798, and 94-02799. Is that correct?
A. Yes, ma'am.
Q. You understand that cases pursuant and "pre" to 1995, you will be eligible for parole at thirty-five percent. Is that correct?
A. Yes, ma'am.
Q. 94-02799, count one, you have been indicted

for first degree murder. You are pleading guilty pursuant to TCA 39-132-10 to the offence of second degree murder, a Class A-Felony. Is that correct?

A. Yes, ma'am.

Q. You understand that you're looking at twenty-seven years, Tennessee Department of Correction as a multiple thirty-five percent range two offender. Is that correct?

A. Yes, ma'am.

Q. Again, I'm going over with you, this is an Alford vs. North Carolina plea. Is that correct?

A. Yes, ma'am.

Q. Pursuant to 94-02797, count one, you have been indicted for first degree murder. You are pleading guilty pursuant to TCA 39-132-10, Class A-Felony of second degree murder. Is that correct?

A. Yes, ma'am.

Q. You are looking at twenty-seven years, Tennessee Department of Correction, as a multiple range two offender at thirty-five percent. Is that correct?

A. Yes, ma'am.

Q. 94-02798, count one, you have been indicted for first degree murder. You are pleading guilty to second degree murder, pursuant to TCA 39-132-10, a Class A-Felony. You're looking at twenty-seven years,

Tennessee Department of Correction, as a multiple range two offender at thirty-five percent. Is that correct?

A. Yes, ma'am.

Q. 95-11128, count one, you have been indicted for especially aggravated kidnapping, which is a Class A-Felony. You're pleading guilty to especially aggravated kidnapping, pursuant to TCA 39-133-05, a Class A-Felony, looking at twenty-seven years, Tennessee Department of Correction, as a multiple range two thirty-five percent offender. Is that correct?

A. Yes, ma'am.

Q. All right. And there is no fine as well associated with that. 95-11128, count two, you have been indicted for especially aggravated kidnapping, Class A-Felony. You are pleading guilty to especially aggravated kidnapping, Class A-Felony, pursuant to 39-133-05, TCA, looking at twenty-seven years, Tennessee Department of Correction as a multiple thirty-five percent range two offender. Is that correct?

A. Yes, ma'am.

Q. 95-11128, count three, you've been charged with especially aggravating kidnapping, Class A-Felony, pleading guilty as charged. Looking at twenty-seven years Tennessee Department of Correction as a multiple

range two offender at thirty-five percent. Is that correct?

A. Yes, ma'am.

Q. Are these guilty pleas, each and every one of them, voluntary at this time?

A. Yes, ma'am.

Q. Has anyone made any promises, threats, or tried to force you to do these guilty pleas?

A. No threats, only promised that the sentences would be concurrent.

Q. All right. And the sentences will be concurrent, served with each other, pursuant to these judgement sheets, which means that 95-11128, counts one two and three, will be served concurrently with 95-11129, 94-02797, 94-02798, and 94-2799. Is that correct? That's your understand?

A. Yes, ma'am.

Q. These guilty pleas are voluntary. Is that correct?

A. Yes, ma'am.

Q. All right. Your attorneys, Mr. Scholl and Mr. McAfee, do you have any questions for them?

A. No.

Q. Are you satisfied with the way and the manner they've handled this case?

A. Yes, ma'am.
Q. Is there anything that you wish to ask them or anything you wish to inform the Court that they should have done as far as you're concerned or any other issues that you wish to take up at this time?
A. It just brings closure to the case.
Q. All right. Do you understand this is going to be a conviction on your record?
A. Yes, ma'am.
Q. Do you understand these convictions will be used to enhance and make greater any charges that you receive in the future?
A. Yes, ma'am.
Q. You also understand that there's no appeal from a guilty plea?
A. Yes, ma'am.
Q. You understand what you're pleading guilty to and you understand completely -- the twenty-seven years, you understand that the cases that are pre-1995, you will be eligible for parole at thirty-five percent. Do you understand that?
A. Yes, ma'am.
Q. You understand that there's no guarantee that you will get parole. Is that correct?
A. Yes, ma'am.

Q. You wish to go forward with the guilty pleas at this time. Is that correct?

A. Yes, ma'am.

THE COURT: State, any questions?

MR. CARTER: No, thank you.

THE COURT: Counsel for the defendant?

MR. SCHOLL: No, ma'am, Your Honor.

THE COURT: The Court hereby accepts these guilty pleas and feels they have been freely, voluntarily, and understandingly given and that you fully understand and appreciate the consequences of us going forward with these guilty pleas at this time.

You may step down, please.

(The defendant stepped down from the witness stand.)

THE COURT: Pursuant to the Court's acceptance of these guilty pleas, pursuant to your guilty plea, pursuant to North Carolina vs. Alford, 95-11128, count three, you pled guilty to especially aggravated kidnapping, TCA 39-133-05, Class A-Felony.

The Court hereby sentences you to twenty-seven years, Tennessee Department of Correction as a multiple thirty-five percent range two offender.

There is no fine.

Any cases that are pre-1995 will be eligible for parole at thirty-five percent. These guilty pleas are pursuant to Alford vs. North Carolina.

95-11128, count two, you pled guilty to the offence of especially aggravated kidnapping, pursuant to TCA 39-133-05, Class A-Felony.

The Court hereby sentences you to Tennessee Department of Corrections, to twenty-seven years as a multiple range two offender. And no fine in this case.

As to 95-11128, count one, you pled guilty to the offence of especially aggravated kidnapping, a Class A-Felony.

The Court hereby sentences you to twenty-seven years, at the Tennessee Department of Correction as a range two, multiple thirty-five percent offender and no fine.

94-02798, you've pled guilty to the offence of first degree murder -- excuse me. Second degree murder, a Class A-Felony pursuant to TCA 39-132-10.

The Court hereby sentences you to twenty-seven years, Tennessee Department of Correction, as a multiple thirty-five percent offender, range two,

no fine.

94-02797, count one, you pled guilty to the offence of second degree murder, Class A-Felony, pursuant to TCA 39-132-10.

The Court hereby sentences you to twenty-seven years, Tennessee Department of Correction, as a multiple thirty-five percent offender, range two, and no fine.

94-92799, count one, you pled guilty to the offence of second degree murder, Class A-Felony.

The Court hereby sentences you to twenty-seven years, Tennessee Department of Correction as a range two offender, multiple thirty-five percent and no fine.

As to 95-11129, count one, you pled guilty to especially aggravated robbery, Class A-Felony.

The Court hereby sentences you to twenty-seven years, Tennessee Department of Correction as a range two thirty-five percent offender, and no fine.

Your petition for waiver of trial by jury has been granted by the Court. Your guilty pleas have been accepted by the Court.

Your fines and court costs are payable

ninety days after your release at ten dollars each and every month until the entire amount has been paid, and so ordered by the Court.

Judgement is hereby executed at this time. Thank you.

MR. SCHOLL: If Your Honor please, there still remains one misdemeanor assault case in this matter. If we could have that held over until Thursday at the request of all parties please.

MR. CARTER: We'll get it off the docket on that day.

THE COURT: All right. Thank you.

(End of proceedings heard in this cause on May 1, 2006.)

CERTIFICATE

I, **VIRGINIA ZISSON**, Official Court Reporter, do hereby certify that the foregoing is a true, accurate and complete transcript, to the best of my knowledge and ability, of all the proceedings had and evidence introduced in the hearing of the captioned cause, in the Criminal Court for Shelby County, Tennessee on the 1st day of May, 2006.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Dated this 10th day of June, 2006.

Virginia Zisson
Official Court Reporter

My commission expires: May 27, 2009

VIRGINIA ZISSON
STATE OF TENNESSEE NOTARY PUBLIC
SHELBY COUNTY



Plea ends triple-murder case

'Cemetery' defendant gets 27 years in 1994 slayings, is up for parole

By Lawrence Buser
Contact
May 2, 2006

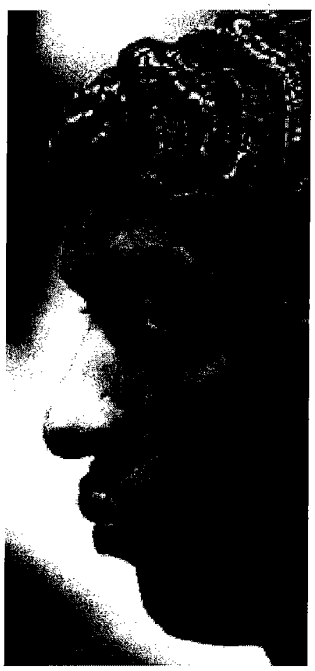
A triple-murder case that generated headlines for several years in the mid-1990s ended quietly Monday as a defendant once on death row pleaded guilty to reduced charges and a 27-year sentence.

James Montgomery was convicted in the so-called cemetery case in 1996, but the Tennessee Supreme Court granted him a new trial four years later, saying co-defendant Tony Carruthers should have been tried separately.

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James Montgomery

Carruthers, whose conviction and death penalty were upheld, represented himself and inadvertently brought out evidence incriminating to both defendants.

As jury selection was set to begin Monday in Criminal Court, lawyers in the case announced an agreement had been reached.

Montgomery, 38, pleaded guilty to three counts of second-degree murder, three counts of especially aggravated k and three counts of especially aggravated robbery.

STORY TOOLS

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Montgomery, who was represented by court-appointed attorneys Michael Scholl and Marty McAfee, was sentenced to 27 ye count, with all sentences to run concurrently. Because he is eligible for parole after serving 35 percent of his sentence and h already served 12 years, he is immediately eligible for parole, although parole is not guaranteed.

Montgomery entered an Alford plea, or best-interests plea, in which he does not necessarily admit to the facts, but accepts t
rather than risk a trial. It has the same legal effect as a guilty plea.

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nvolved the February 1994 abductions and murders of alleged drug dealer
Anderson, 21, his mother, Delois Anderson, 45, and his friend Fredrick
Tucker, 17. Their bodies were found hidden beneath the casket of an elderly woman
buried in the Rose Hill Cemetery on Elvis Presley Boulevard.

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State prosecutor Bobby Carter said the plea bargain was made with the defense in part because problems had developed in the case with the passage of 12 years. He said two witnesses have died and others, who then had pending cases of their own, are now less willing to cooperate.

The case pre-dates the No Deals policy of Dist. Atty. Gen. Bill Gibbons that bans plea bargains in violent crimes including murder.

-- Lawrence Buser: 529-2385

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EXHIBIT 14

Document received by the TN Supreme Court.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

STATE OF TENNESSEE,	*	
VS.	*	NO. 94-02797-8-9
		Division V
TONY V. CARRUTHERS,	*	Set: 7/15/94
Defendant.	*	

SUPPLEMENTAL MOTION FOR DISCOVERY AND INSPECTION

Comes now the Defendant pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure and moves the Court to require the State of Tennessee no later than date prior to trial to permit counsel for Defendant to inspect and copy of photograph the following:

a. Statements made by the Defendant and any Co-Defendant, alleged co-conspirator, alleged accessory, or alleged party to a crime;

b. Defendant's prior record;

c. Tangible objects or documents in the possession of the State and material to the preparation of the defense or intended by the State for use as part of its' evidence-in-chief; and accessibility to buildings or places in the possession, custody or control of the State, which are material to the case of the State or to the preparation of any defense;

d. Reports of any tests or examinations by the State or any of its' agents;

e. Names and addresses of witnesses;

f. Evidence or information which would tend to exculpate the Defendant or mitigate the offense or punishment; and

g. The originals of any electronic recordings of any communications made involving the above case.

Respectfully submitted,

LARRY H. NANCE
Attorney for Defendant
1440 Poplar Avenue
Memphis, TN 38104
901/276-2792
Disc. No. 4374

95

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has forwarded a copy of the foregoing Supplemental Motion for Discovery and Inspection to the Office of the District Attorney General, Suite 3-01, 201 Poplar Avenue, Memphis, TN 38103, by placing same in the United States Mail, postage prepaid, on this the 8 day of June, 1994.

LARRY H. NANCE

Document received by the TN Supreme Court.

EXHIBIT 15

Document received by the TN Supreme Court.

IN THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

FILED 09-30-94
[illegible]

DIVISION VIII

STATE OF TENNESSEE	§	
vs	§	NO. 94-02797, 8 & 9
TONY CARRUTHERS	§	

RESPONSE OF THE STATE OF TENNESSEE TO
MOTION OF DEFENDANT FOR PRE-TRIAL DISCOVERY:
MOTION OF THE STATE FOR RECIPROCAL PRE-TRIAL DISCOVERY:
AND OTHER MATTERS RELATING TO EXCHANGE OF PROOF

Comes now the State of Tennessee and, in response to the motion of defendant for pre-trial discovery, would respectfully state:

1. Statements, if any, made by the defendant and the substance of any oral statement, if any, intended to be offered in evidence at the trial made by the defendant in response to interrogations by any person then known to the defendant to be a law enforcement officer, may be inspected or copied at the office of the District Attorney General.

2. A copy of the prior criminal record, if any, of the defendant is available to counsel for defendant at the Office of the District Attorney General.

3. Counsel for defendant may, at the Office of the District Attorney General, inspect and copy or photograph books, papers, documents, photographs, and tangible objects which are or may come within the possession of the State which are intended for use as evidence in chief at trial.

4. Counsel for defendant may inspect and copy or photograph at the office of the District Attorney General any results or reports of physical examinations and of scientific tests or experiments which are or may come within the possession of the State and which are intended to be introduced at trial as evidence in chief.

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5. The State of Tennessee declines to permit counsel for defendant to discover items excepted from pre-trial discovery under Rule 16(2) Tenn.R.Crim.P.

6. The names and addresses of witnesses to be called to testify on behalf of the State of Tennessee have been endorsed upon the indictment previously delivered to the defendant pursuant to T.C.A. Section 40-17-106: and should any additional witnesses be discovered, the State of Tennessee will supply defendant with a list of their names and addresses.

7. The State of Tennessee has not been informed by counsel for defendant as to any theory or basis for defense and is, therefore, now unable to determine whether information in the possession of the prosecution is exonerative of the defendant or whether Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), applies to any such information. Consequently, until counsel for defendant provides a basis for examination of material in possession of the prosecution, the State relies on U.S. vs. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), and Moore v. Illinois, 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed.2d 706.

8. Having agreed that defendant is entitled to that pre-trial discovery described in paragraphs 1 through 4 herein, the State now respectfully moves the Honorable Court to require the defendant to state upon the record whether evidentiary items within the ambit of Tenn.R.Crim.P. 16 have previously been received, reviewed or copied by defendant or his attorney at any preliminary hearing or at any time from representatives of any law enforcement agency in order that duplicate, repetitive and redundant pre-trial discovery procedures should be avoided.

9. Having agreed that defendant is entitled to that discovery described in paragraphs 1 through 4 herein, and having requested that defendant be required to reveal whether any requested information has been received by defendant previously, the State of Tennessee now respectfully moves this Honorable Court to require defendant to file with the Court in writing a description of those items obtained, copied, or reviewed by

Document received by the TN Supreme Court.

defendant as a result of any pre-trial discovery procedures in order that there shall be a full and complete record of those items made known to the defendant.

10. The State of Tennessee now moves this Honorable Court to direct counsel for defendant to produce at trial any statements by witnesses testifying in behalf of the defendant in this cause, including any written statements or statements otherwise adopted or approved by witnesses, or any stenographic, mechanical, electrical or other recording of a statement or a transcription or summary thereof, which is an essentially verbatim recital of an oral statement made by a testifying witness, as required by Tenn.R.Crim.P. 26.2.

11. The State of Tennessee now respectfully moves this Honorable Court to direct that defendant and counsel for defendant permit pre-trial discovery by the State, as follows:

1) Inspection and copying of books, papers, documents, photographs, tangible objects within possession, custody or control of the defendant which defendant intends to introduce as evidence in chief at trial.

2) Inspection and copying of any results or reports of physical or mental examinations and of scientific tests or experiments within the possession, custody or control of the defendant which defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

3) The names and current addresses of all persons intended to be called as witnesses on behalf of defendant.

Lee V. Coffee

LEE V. COFFEE
Assistant District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing response was caused to be delivered to CRAIG MORTON, counsel for defendant, on this 26th day of September, 1994.

Lee V. Coffee

EXHIBIT 16

430

IN THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

DIVISION 5

FILED
96 FEB -1 AM 9:25
CLERK

BY

STATE OF TENNESSEE	*	
vs.	*	
TONY CARRUTHERS	*	No. 94-02797, 8 & 9 95-11128, 9

MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION

Comes the defendant, Tony Carruthers, Pro se, and pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure and the common law, moves this Honorable court in the following particulars:

1. Pursuant to Rule 16(a)(1)(A), the defendant moves this Court to order the State of Tennessee to furnish the defendant or defendant's counsel, with copies of all relevant written and/or recorded statements of impeaching information made by the defendant, which are within the possession custody and/or control of the State of Tennessee, the existence of which are known, or by due diligence may become known, to the State of Tennessee.

2. Pursuant to Rule 16(a)(1)(A), the defendant moves this Court to order the State of Tennessee to advise the defendant or defendant's counsel, of any oral statement made by the defendant, of impeaching information, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a law enforcement officer, which the State of Tennessee intends to offer in evidence at the trial of this cause.

3. Pursuant to Rule 16(a)(1)(A), the defendant moves this Court to order the State of Tennessee to furnish the defendant, or defendant's counsel with all of the recorded testimony of the defendant, of impeaching information, if any, given before a Grand Jury and related to the offenses charged in the indictment returned in this cause.

4. Pursuant to Rule 16(a)(1)(B), the defendant moves this

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Court to order the State of Tennessee to furnish the defendant's prior record, of impeaching nature, if any, which is within the possession, custody and/or control of the State of Tennessee, the existence of which is known, or by due diligence may become known to the State of Tennessee.

5. Pursuant to Rule 16(A)(1)(C), the defendant moves this court to order the State of Tennessee to permit the defendant, or defendant's counsel, to inspect, copy and/or photograph all books, papers, documents, videotapes, audio tapes, and photographs as well as all other tangible or demonstrative objects which are within the possession, custody and/or control of the State of Tennessee, of any impeaching information, which are (a) intended for use as evidence in chief by the State of Tennessee, (b) material to the preparation of defendant's defense in this cause, and/or (c) exculpatory in nature, and were obtained from or belonged to the defendant.

6. Pursuant to Rule 16(a)(1)(D), the defendant moves this Court to order the State of Tennessee to permit the defendant, or defendant's counsel, to inspect, copy and/or photograph any and all results or repports of (a) physical examinations, (b) mental examination, (c) scientific tests, and/or (d) scientific experiments, which are within the possession, custody and/or control of the State of Tennessee, the existence of which is known, or by due diligence may become known, of impeaching information, to the State of Tennessee and which are material to the preparation of the defendant's defense and/or are intended for use as evidence in chief by the State of Tennessee.

7. Pursuant to T.C.A. Section 40-4001(c)(3) the defendant moves this court to order the State of Tennessee to furnish the defendant, or defendant's counsel, with the arrest histories of all potential prosecution witnesses in this cause.

8. Pursuant to common law rule in this jurisdiction, the defendant moves this court to order the State of Tennessee to furnish the defendant, or the defendant's counsel, with the name, address and telephone number of each person the State of Tennessee intends to call as a witness at the trial of this cause upon the merits.

Document received by the TN Supreme Court.

WHEREFORE, defendant respectfully moves this Honorable Court to grant the relief sought in the premise of this motion pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure, the statutes, and common law of this State.

Respectfully submitted,

Tony X Carruthers

TONY CARRUTHERS, Pro se
201 Poplar Ave.
Memphis, TN 38103

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been delivered to the Office of the District Attorney General this the 31 day of JAN, 1996.

Tony X Carruthers

TONY CARRUTHERS, Pro se

Document received by the TN Supreme Court.

EXHIBIT 17

Document received by the TN Supreme Court.

IN THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

DIVISION VIII

STATE OF TENNESSEE	§	
vs	§	NO. 94-02797, 8 & 9
TONY CARRUTHERS	§	

RESPONSE OF THE STATE OF TENNESSEE
TO MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION

For response to the Motion for Disclosure of Impeaching Information, the State would submit as follows:

1. The State agrees to advise defense counsel promptly of any consideration or promises of consideration given to or made on behalf of government witnesses; however, the request for information in the motion is much too broad and vague and should not be granted as requested. The information requested includes that which could "arguably create an interest or bias in the witness in favor of the state or against the defendant." Such ordinary considerations as placing witnesses on call or furnishing transportation for those who are without it may "arguably" create an interest or bias in favor of the State; however, the State does not believe that the law requires disclosure of such consideration.

2. The State respectfully denies that the defense is entitled under the law to notice of any and all prosecutions, investigations, or pending prosecutions against any witness called by the State of Tennessee.

Document received by the TN Supreme Court.

3. The State respectfully denies that the defense is entitled under the law to any prior criminal convictions of any witnesses not obtainable from the Clerk of the Criminal Court of Shelby County, and would submit that there is no law to support such request.

Respectfully submitted,

LEE V. COFFEE
Asst. District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing response was caused to be delivered to CRAIG MORTON, counsel for defendant, on this the 29th day of September, 1994.

EXHIBIT 18

02C01-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

STATE OF TENNESSEE, Appellee,	*	FILED 12/30/97 WILLIAM R. KEY, CLERK BY _____ D.C.
VS.	*	Cause Nos. 94-02797
	*	94-02798
TONY CARRUTHERS and	*	94-02799
JAMES MONTGOMERY,	*	95-11128
Appellants.	*	95-11129

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE, OPENING STATEMENTS AND CLOSING ARGUMENTS

VOLUME 66 OF 82 VOLUMES

Vol. 43

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:
PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
201 Poplar Avenue - Third Floor
Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:
HAROLD D. ARCHIBALD, ESQ.
Archibald and Halmon, P.C.
Suite 900
22 North Front Street
Memphis, TN 38103

J.C. MCLIN, ESQ.
Attorney at Law
Suite 201
301 Washington Avenue
Memphis, TN 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By

APPEARANCES

FOR ALFREDO BERNARD SHAW:
EDWIN C. LENOW, ESQ.
Attorney at Law
100 North Main Building
Memphis, Tennessee 38103

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WEDNESDAY, APRIL 24, 1996

WITNESS: ALFREDO SHAW
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Mr. Shaw -- he is certainly welcome to testify, but reason to believe that if he does testify he is going to state that testimony he has previously given, sworn testimony before the Shelby County Grand Jury and sworn testimony in this courtroom, was a lie, that he purposefully lied on both of those occasions.

The State has indicated that if that is indeed his testimony today, then they plan to seek indictments for aggravated perjury in both of those instances.

I wanted your client to be fully aware of the legal ramifications and what his rights are with regard to testifying or not testifying on those matters. And so if you would like to confer with him in the back for a while, just let me know what you-all decide.

MR. LENOW: Sure would.

(Whereupon, Mr. Lenow and Alfredo Shaw left the courtroom.)

THE COURT: All right. I've got to make a phone call. We will take a brief recess, and then we'll resume the trial.

MR. LENOW: It would be.

MR. HARRIS: It's up to Mr. Carruthers.

THE COURT: If he does testify, though, I am --

MR. LENOW: He would testify that what he has testified before is all true and correct.

THE COURT: Right. What I'm about to say, though, is that if he were to testify, I'm going to preclude getting into the specific name, for the benefit of attorneys that may be asking him on cross-examination or direct examination, preclude getting into the name that you just showed me or any specific times or dates on this latest current incident.

MR. LENOW: I have no specifics. I just showed you that.

THE COURT: Right. I understand. You can get with the Sheriff's Department and pursue that elsewhere. But for purposes of the testimony today, he is welcome to testify about the latest threats, but we're not going to be getting into the specifics. You're not going to be asking him about the names or specifics because that's yet to be investigated and I don't want to jeopardize anybody in that regard.

DEFENDANT CARRUTHERS: I'd like to know if

EXHIBIT 19

02C01-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

FILED 12/30/97
WILLIAM B. KEY, CLERK
BY Bennett D.C.

STATE OF TENNESSEE, Appellee,	*	Cause Nos. 94-02797
VS.	*	94-02798
TONY CARRUTHERS and JAMES MONTGOMERY, Appellants.	*	94-02799 95-11128 95-11129

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE,
OPENING STATEMENTS AND CLOSING ARGUMENTS
VOLUME 62 OF 82 VOLUMES

Vol. 44

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:
PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
201 Poplar Avenue - Third Floor
Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:

HAROLD D. ARCHIBALD, ESQ.
Archibald and Halmon, P.C.
Suite 900
22 North Front Street
Memphis, TN 38103

J.C. MCLIN, ESQ.
Attorney at Law
Suite 201
301 Washington Avenue
Memphis, TN 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By

APPEARANCES

FOR FOX TV:
DARRELL BAKER, JR., ESQ.
STEVEN S. HEINRICHS, ESQ.
Shuttleworth, Smith, McNabb & Williams
One Memphis Place
200 Jefferson Avenue, Suite 1500
Memphis, Tennessee 38103

FOR ALFREDO BERNARD SHAW:
EDWIN C. LENOW, ESQ.
Attorney at Law
100 North Main Building
Memphis, Tennessee 38103

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again, Mr. Shaw. And they asked you what information you have, and you told them several things. And did you tell them that you were on a three-way phone conversation with me, Tony Carruthers, and Terry or Jerry Durham?

A. Yes.

Q. Did you tell them that, "Tony Carruthers told me why don't I go on get this -- go on get with his -- and get with him and Jerry and Terry and that we going be worth $100,000 apiece and a kilo of cocaine."

A. Yes, I did.

Q. You told them, "A piece for me and a piece for Tony."

A. Excuse me?

Q. You told them, "A piece for me and a piece for Tony."

A. A piece for me, myself?

Q. Yeah.

A. A piece for you?

Q. Yeah.

A. Well, the conversation was that, correctly, what you said. And he said that it was going to be part for me and part for you, correct.

Q. All right. And you stated, "I stated to

Tony that I did not want to be involved in that."
A. Correct.
Q. And you told the detective, "Tony told me, 'Hey, man, come on, man. We can sew this up, man. We can sew this up. We got a sweet plan.'"
A. That's your exact words.
Q. And you stated, "I stated to Tony Carruthers once again that I did not want to be involved in this."
A. Correct.
Q. And you told them, "So around in February Tony Carruthers contacted me again."
A. Correct.
Q. And you told them, "I contacted Jerry," and you told them you contacted Jerry?
A. Jerry who?
Q. Durham.
A. Yes, I had conversations with him.
Q. And you said, "So I was watching the news and this came up, the news about the murders involving Tony Carruthers and others."
A. Correct.
Q. And then you went on to state, "Tony Carruthers was housed in the fourth floor on C pod, and I was in K pod on the opposite side of the fourth

floor."
A. Right.
Q. "We were presently in the legal room at this particular time when Tony was discussing this with -- about the murders -- about the way the murders occurred."
A. Correct.
Q. And you stated, "Tony told me they went to Marcellos' mother's house, Delois, and told her -- asked her where the money was. They went there looking for the money and looking for Marcellos, and Marcellos wasn't there."
A. Correct.
Q. You told the detectives that I told you in the law library that I went to Delois' house and asked her where the money was. "And they went there looking for the money -- and they went there looking for the money and looking for Marcellos and Marcellos wasn't there."
A. Correct.
Q. "And Tony then held Delois there and told her to get Marcellos on the phone."
A. Correct.
Q. "She got Marcellos on the phone and told Marcellos to come on over there, it's something

important."
A. Yes.
Q. "And when Marcellos got there, Tony Carruthers told me they put the gun to Marcellos and made him [sic] all get in the Jeep Cherokee truck and drove them to Mississippi."
A. Correct.
Q. "And this is where Marcellos and Tucker was shot"?
A. Correct.
Q. "And they burned up the truck, burned Marcellos' truck up, to cover up the fingerprints up that was inside the truck."
A. Correct.
Q. "Tony Carruthers then stated that they drove the bodies back to Memphis. Marcellos and Tucker were I'm assuming dead." Is that your statement?
A. Well, I don't know if the victims were dead or not because I wasn't present there at the time. I'm just going by your statement, sir.
Q. I'm going by the statement that you gave the police. "Tony Carruthers stated then that they drove the bodies back to Memphis. Marcellos and Tucker I'm assuming were dead."
A. Once again, Mr. Carruthers, I wasn't sure if

the victims were dead or not. I wasn't present. I'm going by your statements.

Q. And this is the statement that I told you and you told to the police?

A. Correct.

Q. And I'm assuming -- and you said, "I'm assuming that they were dead."

A. I'm not -- how can I -- I'm not going to assume anything, you know what I mean.

DEFENDANT CARRUTHERS: Your Honor, may we approach?

(Whereupon, a bench conference was held on the record in the presence of the jury but out of the hearing of the jury, and the following proceedings were had.)

DEFENDANT CARRUTHERS: Can I give Mr. Shaw a copy of this statement?

THE COURT: Well, do you-all have an extra copy?

MR. MCLIN: Sir?

THE COURT: Does anybody have an extra copy?

EXHIBIT 20

RAY & FRENSLEY

ATTORNEYS AT LAW

CHARLES R. RAY*
JEFFERY S. FRENSLEY

*Also Licensed in Kentucky

TWO HUNDRED ELEVEN
THIRD AVENUE NORTH
P.O. BOX 198288
NASHVILLE, TENNESSEE 37219
TELEPHONE (615) 256-2111
FAX (615) 248-6730
E-MAIL lawdog@attglobal.net

August 6, 2002

John Campbell, Esq.
Assistant District Attorney General
30th Judicial Circuit
201 Popular Avenue
Suite 301
Memphis, Tennessee 38103

RE: State of Tennessee v. Tony Carruthers

Dear Mr. Campbell:

In my investigation of the above captioned matter in an attempt to frame the issues for post conviction relief it has come to my attention that at the time Bernard Alfredo Shaw was in the Shelby County Jail that he may have been a paid agent of the Memphis Police Department and/or Shelby County Sheriff's Department. Since no demand was ever made at trial by any of Mr. Caruthers's prior counsel or counsel for Mr. Montgomery, I would like to make demand pursuant to the holdings in Gigilio v. United States, 405 U. S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) and United States v. Demarco, 415 U. S. 449, 94 S. Ct. 1185, 39 L. Ed 2d 501 (1974) for the District Attorney General's office for the thirtieth judicial district to make inquiry as to whether Mr. Shaw was a paid government agent during the time period in question.

If Mr. Shaw was a paid government agent that I be made aware of that fact and either the Memphis Police Department and or the Shelby County Sheriff's Department produce their complete file on Mr. Shaw setting forth his remuneration, or other consideration he received for his functioning in the Shelby County Jail as a paid agent of the Memphis Police Department and/or the Shelby County Sheriff's Department. Thank you for your cooperation in this matter if you have any questions regarding this matter please fee free to contact me.

Very Truly Yours,

Charles R. Ray

cc: Larry Copeland

Document received by the TN Supreme Court.

JAMES J. CHALLEN III
DEPUTY DISTRICT ATTORNEY GENERAL
KENNETH R. ROACH
ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
CRIMINAL COURT DIVISION
THOMAS D. HENDERSON
ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
GENERAL SESSIONS CRIMINAL/
JUVENILE COURT DIVISIONS
M. CARTER MYERS
GRAND JURY ADMINISTRATIVE ASSISTANT
PRISCILLA C. CAMPBELL
CHIEF ADMINISTRATIVE OFFICER
JERRY HARRIS
CHIEF HOMICIDE PROSECUTOR
JOHN W. CAMPBELL
DIRECTOR
MAJOR CRIMES PROSECUTION UNIT
J. ROBERT CARTER, JR.
DIRECTOR, NARCOTICS PROSECUTION UNIT
JENNIFER S. NICHOLS
DIRECTOR, ANTI-GANG TEAM
KEVIN R. RARDIN
LEAD PROSECUTOR
CHILD PROTECTION INVESTIGATION TEAM
WILLIAM D. BOND, III
DIRECTOR, DOMESTIC VIOLENCE
PROSECUTION UNIT
HENRY P. WILLIAMS
LEAD PROSECUTOR
FRAUD & ECONOMIC CRIME TEAM
GEORGE A. KING
CHIEF INVESTIGATOR
GORDON E. BIGGS
ASSISTANT CHIEF INVESTIGATOR
KENNETH E. BLACKBURN
DIRECTOR, VICTIM-WITNESS UNIT
SANDRA B. TRUITT
CHIEF ADMINISTRATIVE CLERK

P.T. HOOVER, JR.
JAMES A. WAX, JR.
JERRY R. KITCHEN
PATIENCE R. BRANHAM
PAUL F. GOODMAN
RODNEY P. FAULK,JR.
CHARLES W. BELL, JR.
JOHNNY R. McFARLAND
JAMES M. LAMMEY, JR.
REGINALD R. HENDERSON
AMY P. WEIRICH
KAREN COOK
PERRY S. HAYES
GLEN BAITY
ALANDA HORNE DWYER
LEE V. COFFEE
MICHAEL LEAVITT
ROSEMARY S. ANDREWS
JULIE MOSLEY
SCOTT D. GORDON
BETSY CARNESALE
STEPHEN P. JONES
STEPHANIE ZANDER-JOHNSON
DAVID N. PRITCHARD
JOHN TIBBETTS
KATRINA EARLEY
WILLIAM G. RAMSEY
DAVID ZAK, JR.
THERESA McCUSKER
R. SCOTT McCULLOUGH
KIMKEA HARRIS
LINDA KIRKLEN
MICHAEL S. DAVIS
SCOT BEARUP
GAIL VERMASS
DOUGLAS G. GILBERT
MICHELLE L. KIMBRIL
VALERIE L. SMITH
RAYMOND J. LEPONE
ERIC N. CHRISTENSEN
WILLIAM S. CROSSNOE
PAUL HAGERMAN
W. CHRIS SCRUGGS
ASSISTANT DISTRICT ATTORNEYS
CRIMINAL COURT DIVISION

DAVID N. McGRIFF
CHERYL HAYS
MARK K. GLANKLER
DEBORAH A. OWEN
CHARLES SHETTLESWORTH
R. R. DAVIS
RONALD F. WILKINSON
JIMMY CHAMBERS
J. D. HALL
GEORGE DUNLAP
EDDIE D. SCALLIONS
THOMAS A. SHOUSE
DONALD BLACKWELL
DONNA KERNS
ERIC HOLMES
ROBERT HARRISON
EDIE HILL
DONALD J. FLYNN, M.P.D.
ALEXANDER McGOWAN, M.P.D.
RONNIE McWILLIAMS, M.P.D.
RONALD GOODWIN, M.P.D.
ELAINE SHELBY, S.C.S.O.
INVESTIGATORS
CRIMINAL COURT DIVISION

WILLIAM L. GIBBONS
DISTRICT ATTORNEY GENERAL
SHELBY COUNTY, TENNESSEE
CRIMINAL COURT SECTION
201 POPLAR - SUITE 301
MEMPHIS, TENNESSEE 38103-1947
PHONE (901) 545-5900
FAX (901) 545-3937
www.scdag.com

August 26, 2002

Charles R. Ray
Attorney at Law
211 Third Ave. N
P.O. Box 198288
Nashville, TN 37219

Re: Carruthers v. State

Dear Mr. Ray :

I am in receipt of your letter dated August 6, 2002 requesting certain alleged *Gigilio* information regarding Bernard Alfredo Shaw. Without getting into the alleged information, the State's position is that *Gigilio* does not apply to a witness called by the defense. Mr. Shaw was called as a witness by Mr. Carruthers after producing Mr. Shaw for media interviews where he stated that the State was making him lie. He was then called by Mr. Carruthers as a defense witness in his trial.

Sincerely,

JOHN W. CAMPBELL
Assistant District. Attorney General

Document received by the TN Supreme Court.

RAY & FRENSLEY

ATTORNEYS AT LAW

CHARLES R. RAY*
JEFFERY S. FRENSLEY

*Also Licensed in Kentucky

TWO HUNDRED ELEVEN
THIRD AVENUE NORTH
P.O. BOX 198288
NASHVILLE, TENNESSEE 37219
TELEPHONE (615) 256-2111
FAX (615) 248-6730
E-MAIL lawdog@attglobal.net

August 30, 2002

John Campbell, Esq.
Assistant District Attorney General
30th Judicial Circuit
201 Popular Avenue
Suite 301
Memphis, Tennessee 38103

RE: Tony Carruthers v. State

Dear Mr. Campbell:

I have and thank you for your letter of August 26, 2002, which was in response to my letter of August 6, 2002 as concerns Bernard Alfredo Shaw. The time period in question that I am making inquiry as to whether Mr. Shaw was a paid government agent, informant, or servant, encompasses the time period within which he made an appearance before the Shelby County Grand Jury that lead to Mr. Carruther's indictment for three counts of capital murder. Mr. Shaw was certainly a government witness at this stage of the proceeding and I would therefore submit that Gigilo, and DeMarco clearly apply and the disclosure should be made.

On the other hand, Mr. Carruthers was represented by A. C. Wharton, Esq. during this time period and if Mr. Shaw was a paid government agent who allegedly extracts incriminating statements from Carruthers then there was a clear violation of Massiah v. United States, 377 U. S. 701, 84 S. Ct. 1197, 12 L. Ed 2d 246 (1964); see also United States v. Henry, 447 U. S. 264, 100 S. Ct. 2183, 65 L. Ed 2d 115 (1980). Either way whether Mr. Shaw was a paid government agent during this time period should be discovered.

If you are still of the opinion that the State is not going to disclose Mr. Shaw's status as a government employee, informant, and or servant during this time period please advise me and I will file the necessary motions attempt compulsion of the information.

Thank you for your cooperation in this matter.

Very Truly Yours,

Charles R. Ray

cc: Larry Copeland

Document received by the TN Supreme Court.

EXHIBIT 21

IN THE CRIMINAL COURTS FOR SHELBY COUNTY, TENNESSEE
AT MEMPHIS

TONY CARRUTHERS	)	
	)	
V.	)	CASE NO. P-25948
	)	(SHELBY COUNTY POST CONVICTION)
STATE OF TENNESSEE	)	

MOTION TO COMPEL THE STATE TO REVEAL ALL AGREEMENTS, REMUNERATION, OR OTHER CONSIDERATION GIVEN TO THE STATE'S WITNESSES

Comes the Petitioner, Tony Carruthers, through undersigned counsel, and would respectfully moves the Court to compel the State of Tennessee to place the petitioner on notice of any deals, remuneration paid, or other consideration, such as reduction in sentence, decision not to charge or abandoning existing charges in consideration for the testimony of the following witnesses:

1. Alfredo Bernard Shaw;
2. Charles Ray Smith;
3. Andre Johnson;
4. Ben West;
5. Jimmy Lee Maze;
6. Terrell Adair; and
7. Chris Hines.

This request also encompasses any consideration made to any witnesses by agents, employees, servants or assigns of the United States government on behalf of the State of Tennessee.

As concerns Mr. Alfredo Bernard Shaw, the Petitioner would also request that the State of Tennessee be compelled to disclose whether he was a paid government agent at the time that he was allegedly extracting incriminating information from the Petitioner while they both were housed at the Shelby County Jail. At that time, Petitioner was represented by A. C. Wharton, Esq. and this was known to the state. Therefore, Massiah v. United States, 377 U. S. 701, 84 S. Ct. 1197, 12 L. Ed 2d 246 (1964); or United States v. Henry, 447 U. S. 264, 100 S. Ct. 2183, 65 L. Ed 2d 115 (1980), would be clearly applicable and the compulsion of this information of this information should be granted.

Also, during the time that Alfredo Bernard Shaw was testifying as a government witness before the Shelby County Grand Jury which led to the Petitioner's initial indictment for capital

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murder if he was receiving consideration or remuneration of any nature and kind this should be disclosed under the holdings in Gigilio v. United States, 405 U. S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) and United States v. Demarco, 415 U. S. 449, 94 S. Ct. 1185, 39 L. Ed 2d 501 (1974).

Petitioner would respectfully submit that the other witnesses, Charles Ray Smith, Andre Johnson, Ben West, Jimmy Lee Maze, Terrell Adair, and Chris Hines are likewise within the holding of Gigilio and DeMarco and if any consideration or remuneration was conferred upon them by either the State or federal government this fact should have been disclosed to the Petitioner's prior counsel at the trials of this cause, and likewise, should be disclosed to present counsel so as to allow him to frame issues in his post conviction relief petition.

Respectfully Submitted,

Charles R. Ray, Esq. #3188
211 Third Avenue North
P. O. Box 198288
Nashville, Tennessee 37219
615-256-2111

Larry Copeland, Esq. # 18600
648 Poplar Avenue
Memphis, Tennessee 37103
901-526-0898

Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been mailed, first class, postage prepaid, to:

John Campbell, Esq.
Assistant District Attorney General
201 Popular Avenue
Suite 301
Memphis, Tennessee 38103

on this the 12th day of September, 2002.

Charles R. Ray , Esq.

Document received by the TN Supreme Court.

EXHIBIT 22

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE

TONY X. CARRUTHERS,
Petitioner

-vs- NO. P-25948

STATE OF TENNESSEE,
Respondent

RESPONSE OF THE STATE OF TENNESSEE TO PETITIONER'S MOTION TO REVEAL ALL AGREEMENTS GIVEN TO STATE'S WITNESSES

Comes now the State of Tennessee and in Response to Petitioner's Motion To Compel State to Reveal All Agreements Given to State's Witnesses, would submit the following:

The petitioner requests that the State reveal any deals made with the following persons in consideration for their testimony in the petitioner's trial; Charles Ray Smith, Andre Johnson, Ben West, Jimmy Lee Maze, Terrell Adair, Chris Hines. The State submits that no deals were made in consideration for their testimony in petitioner's trial.

The petitioner also seeks the same information on Alfredo Bernard Shaw as well as any proof that Shaw was an alleged "paid government agent" and planted in the jail to obtain evidence on the petitioner. To this the State again submits that Shaw was not given any deal in exchange for his testimony. Furthermore, the State submits that Shaw was not a "paid government agent" planted in the jail to obtain evidence against the petitioner.

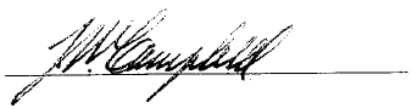
Respectfully Submitted

JOHN W. CAMPBELL
Assistant District Attorney General

Document received by the TN Supreme Court.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was caused to be delivered to Charles Ray, Attorney for the petitioner, on this the 9th day of October, 2002.



Document received by the TN Supreme Court.

EXHIBIT 23

IN THE CRIMINAL COURTS FOR SHELBY COUNTY, TENNESSEE
AT MEMPHIS

TONY CARRUTHERS	)	
	)	
V.	)	**CASE NO. P-25948**
	)	**(SHELBY COUNTY POST CONVICTION)**
STATE OF TENNESSEE	)	

MOTION TO COMPEL

Comes the Petitioner, Tony Carruthers, through undersigned counsel, and would respectfully move the Court for an Order compelling the State of Tennessee to disclose whether Alfredo Bernard Shaw was acting as a government agent either state or federal, during the time he allegedly was party to a conversation with the Petitioner wherein the Petitioner allegedly confessed his role in the instant matter. In its response, the Assistant Attorney General for the State of Tennessee responded that Alfredo Bernard Shaw was not placed into the jail setting with the Petitioner specifically for the purposes of having Petitioner make an incriminating statement to Shaw, but sidesteps the question as to whether Shaw was a paid government agent during this time notwithstanding that he was not specifically placed in the jail to hopefully obtain incriminating statements from Petitioner.

WHEREFORE, for all the foregoing reasons, the Petitioner would respectfully move the Court for an Order compelling the State of Tennessee to divulge whether Alfredo Bernard Shaw was or was not a paid government agent, either state or federal during the time period he allegedly had conversations with the petitioner in the law library of the Shelby County Jail.

Respectfully Submitted,

Charles R. Ray, Esq. #3188
211 Third Avenue North
P. O. Box 198288
Nashville, Tennessee 37219
615-256-2111

Larry Copeland, Esq. # 18600
648 Poplar Avenue
Memphis, Tennessee 37103
901-526-0898

Document received by the TN Supreme Court.

Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been mailed, first class, postage prepaid, to:

John Campbell, Esq.
Assistant District Attorney General
201 Popular Avenue
Suite 301
Memphis, Tennessee 38103

on this the 25th day of November, 2002.

Charles R. Ray , Esq.

Document received by the TN Supreme Court.

EXHIBIT 24

IN THE CRIMINAL COURT FOR SHELBY COUNTY, TENNESSEE

TONY CARRUTHERS,	)	
	)	
Petitioner,	)	
	)	
VS.	)	NO. P-25948
	)	(POST-CONVICTION)
	)	
STATE OF TENNESSEE,	)	
	)	
Respondent.	)	

ORDER

Before the Court is the petitioner's motion to compel the State to reveal whether Alfredo Bernard Shaw was or was not a paid government agent during the time he had conversations with the petitioner in the Shelby County jail. The motion is granted. The State shall file a written response within fifteen (15) days divulging whether Alfredo Bernard Shaw was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with the petitioner in the Shelby County jail.

This the 3 day of Dec, 2002.

WALTER C. KURTZ, JUDGE

xc: Charles R. Ray
Attorney at Law
211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219

Larry Eugene Copeland, Jr.
Attorney at Law
242 Poplar Ave.
Memphis, TN 38103-1946

John Campbell
Assistant District Attorney General
201 Poplar, Suite 301
Memphis, TN 38103

FILED 12-3-02
WILLIAM A. KEY, CLERK
BY D.C.

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EXHIBIT 25

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
DIVISION VII

TONY X. CARRUTHERS,
Petitioner

-vs- NO. P-25948

STATE OF TENNESSEE,
Respondent

RESPONSE OF THE STATE OF TENNESSEE TO PETITIONER'S MOTION TO REVEAL ALL AGREEMENTS GIVEN TO STATE'S WITNESSES

Comes now the State of Tennessee and in Response to Petitioner's Motion To Compel State to Reveal All Agreements Given to State's Witnesses, would submit the following:

The State has previously filed a Response to this Motion and sent a copy to the petitioner stating that Mr. Shaw was not a "paid government agent" planted in the jail to get a statement from the petitioner. Said Response was filed on October 9, 2002. (Copy attached).

The State does not understand why another Response is necessary.

12/10/02
D. Coppedge

Respectfully Submitted

JOHN W. CAMPBELL
Assistant District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was caused to be delivered to Charles Ray, Attorney for the petitioner, on this the 10th day of December, 2002.

Document received by the TN Supreme Court.

EXHIBIT 26

JAMES J. CHALLEN III
DEPUTY DISTRICT ATTORNEY GENERAL
KENNETH R. ROACH
ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
CRIMINAL COURT DIVISION
THOMAS D. HENDERSON
ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
GENERAL SESSIONS CRIMINAL/
JUVENILE COURT DIVISIONS
M. CARTER MYERS
GRAND JURY ADMINISTRATIVE ASSISTANT
PRISCILLA C. CAMPBELL
CHIEF ADMINISTRATIVE OFFICER
JERRY HARRIS
CHIEF HOMICIDE PROSECUTOR
JOHN W. CAMPBELL
DIRECTOR
MAJOR CRIMES PROSECUTION UNIT
J. ROBERT CARTER, JR.
DIRECTOR, NARCOTICS PROSECUTION UNIT
JENNIFER S. NICHOLS
DIRECTOR, ANTI-GANG TEAM
KEVIN R. RARDIN
LEAD PROSECUTOR
CHILD PROTECTION INVESTIGATION TEAM
WILLIAM D. BOND, III
DIRECTOR, DOMESTIC VIOLENCE
PROSECUTION UNIT
HENRY P. WILLIAMS
LEAD PROSECUTOR
FRAUD & ECONOMIC CRIME TEAM
GEORGE A. KING
CHIEF INVESTIGATOR
GORDON E. BIGGS
ASSISTANT CHIEF INVESTIGATOR
KENNETH E. BLACKBURN
DIRECTOR, VICTIM-WITNESS UNIT
SANDRA B. TRUITT
CHIEF ADMINISTRATIVE CLERK

P.T. HOOVER, JR.
JAMES A. WAX, JR.
JERRY R. KITCHEN
PATIENCE R. BRANHAM
PAUL F. GOODMAN
RODNEY P. FAULK,JR.
CHARLES W. BELL, JR.
JOHNNY R. McFARLAND
JAMES M. LAMMEY, JR.
REGINALD R. HENDERSON
AMY P. WEIRICH
KAREN COOK
PERRY S. HAYES
GLEN BAITY
ALANDA HORNE DWYER
LEE V. COFFEE
MICHAEL LEAVITT
ROSEMARY S. ANDREWS
JULIE MOSLEY
SCOTT D. GORDON
BETSY CARNESALE
STEPHEN P. JONES
STEPHANIE ZANDER-JOHNSON
DAVID N. PRITCHARD
JOHN TIBBETTS
KATRINA EARLEY
WILLIAM G. RAMSEY
DAVID ZAK, JR.
THERESA McCUSKER
R. SCOTT McCULLOUGH
KIMKEA HARRIS
LINDA KIRKLEN
MICHAEL S. DAVIS
SCOT BEARUP
GAIL VERMASS
DOUGLAS G. GILBERT
MICHELLE L. KIMBRIL
VALERIE L. SMITH
RAYMOND J. LEPONE
ERIC N. CHRISTENSEN
WILLIAM S. CROSSNOE
PAUL HAGERMAN
W. CHRIS SCRUGGS
ASSISTANT DISTRICT ATTORNEYS
CRIMINAL COURT DIVISION

DAVID N. McGRIFF
CHERYL HAYS
MARK K. GLANKLER
DEBORAH A. OWEN
CHARLES SHETTLESWORTH
R. R. DAVIS
RONALD F. WILKINSON
JIMMY CHAMBERS
J. D. HALL
GEORGE DUNLAP
EDDIE D. SCALLIONS
THOMAS A. SHOUSE
DONALD BLACKWELL
DONNA KERNS
ERIC HOLMES
ROBERT HARRISON
EDIE HILL
DONALD J. FLYNN, M.P.D.
ALEXANDER McGOWAN, M.P.D.
RONNIE McWILLIAMS, M.P.D.
RONALD GOODWIN, M.P.D.
ELAINE SHELBY, S.C.S.O.
INVESTIGATORS
CRIMINAL COURT DIVISION

WILLIAM L. GIBBONS
DISTRICT ATTORNEY GENERAL
SHELBY COUNTY, TENNESSEE
CRIMINAL COURT SECTION
201 POPLAR - SUITE 301
MEMPHIS, TENNESSEE 38103-1947
PHONE (901) 545-5900
FAX (901) 545-3937
www.scdag.com

January 7, 2003

Charles R. Ray
Attorney at Law
211 Third Avenue North
Nashville, TN 37219

Re: Alfredo Shaw

Dear Mr. Ray:

I thought that this matter was resolved by my earlier response. But just incase, I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. To the best of their knowledge, Alfredo Shaw was never a paid informant during the time frame you stated in your letter of December 16, 2002. I do not know how much clearer I can be on this topic.

Sincerely

J. W. Campbell

JOHN W. CAMPBELL
Assistant District Attorney General

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EXHIBIT 27

OFFICE OF THE DISTRICT ATTORNEY GENERAL

30th JUDICIAL DISTRICT ~ SHELBY COUNTY, TENNESSEE
201 Poplar Avenue, Third Floor, Memphis, TN 38103-1947
Tel. 901-222-1300 ~ Fax 901-222-7971
www.scdag.com

AMY P. WEIRICH
District Attorney General

October 28, 2019

Mr. Richard Lewis Tennent
Assistant Federal Defender
Federal Public Defender, Middle District of Tennessee
810 Broadway St., Ste. 200
Nashville TN 37203-3805

RE: Records request of documents regarding Alfredo Shaw

Mr. Tennent,

This Office has received a writing, copy enclosed, requesting certain evidence and documents concerning Alfredo Shaw. This writing was submitted, in part, as a Public Records request pursuant to the Tennessee Open Records Act, T.C.A. 10-5-701, *et seq.*

The Tennessee Open Records Act does not require this agency to sift through its files in an effort to locate the records requested. If there are specific records sought related to the individual listed by you, please provide that information. Your request is vague, overbroad and lacks sufficient specificity for this Office to comply. It is DENIED pending receipt of further clarification provided by you.

Enclosed also is a highlighted copy of the Public Records Policy of the Shelby County District Attorney General's Office. Specifically highlighted are Section II, sub F, Section III, D and F, and Section IV, B. You may refer to this Policy for future requests of records and may direct those requests to this Desk at the above mailing address or via email at publicrecords@scdag.com. You will also find the Public Records Policy at the Office website, www.scdag.com.

Respectfully,
Timothy A. Beacham
Assistant District Attorney General
Public Records Counsel and Request Coordinator
Publicrecords@scdag.com

Document received by the TN Supreme Court.

OFFICE OF THE
FEDERAL PUBLIC DEFENDER
MIDDLE DISTRICT OF TENNESSEE

HENRY A. MARTIN
FEDERAL PUBLIC DEFENDER

810 BROADWAY, SUITE 200
NASHVILLE, TN 37203-3805
TELEPHONE: 615-736-5047
FAX: 615-736-5265

RECEIVED
OCT 0 8 2019
GENERAL WEIRICH'S OFFICE

October 3, 2019

District Attorney General Amy Weirich
Office of the District Attorney General-Shelby County
201 Poplar Avenue, Suite 301
Memphis, Tennessee 38103

Re: Request For Disclosure Of Exculpatory Evidence Regarding Alfredo Shaw, DOB 3-14-1966

Dear General Weirich:

I am counsel for Tony Carruthers. The Attorney General for the State of Tennessee has recently moved that the Tennessee Supreme Court set a date for his execution.

As Mr. Carruthers' counsel, I write to request disclosure of any and all exculpatory evidence (including all documents) in the actual or constructive possession of your office regarding the credibility, reliability, and/or bias of Alfredo Shaw (DOB 3-14-1966), a witness who testified at the 1996 trial of Tony Carruthers in the Criminal Court of Shelby County, Tennessee. I make this request pursuant to all available authority, including the Tennessee Public Records Act.

The exculpatory evidence and documents concerning Alfredo Shaw which I request include, but is not limited to, exculpatory information about Alfredo Shaw regarding the following matters:

(1) The timing and nature of Alfredo Shaw's employment, work for, or assistance to, at any time, your office, other prosecutorial authorities and/or law enforcement authorities, including but not limited to the Shelby County Sheriff's Office, the Memphis Police Department, the Tennessee Bureau of Investigation, the FBI, the DEA, the ATF. It is my understanding that Shaw worked as an informant for Shelby County during the 1990s and even before;

(2) Any agreements or understandings, written or otherwise, between the your office, other prosecutorial authorities and/or law

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enforcement authorities, including but not limited to the Shelby County Sheriff's Office, the Memphis Police Department, the Tennessee Bureau of Investigation, the FBI, the DEA, the ATF, and Alfredo Shaw about any and all consideration Shaw was to receive in exchange for his assistance to your office, other prosecutorial authorities, or law enforcement, including, but not limited to cash payments, reduction of charges, willingness to assist Shaw with pending or past criminal charges, or any other types of consideration to be provided to Shaw;

(3) Copies of checks or any other document reflecting money paid to Alfredo Shaw at any time and for any reason by your office, other prosecutorial authorities and/or law enforcement authorities, including but not limited to the Shelby County Sheriff's Office, the Memphis Police Department, the Tennessee Bureau of Investigation, the FBI, the DEA, the ATF, whether paid to Shaw or any of his family members, without any regard to any alleged reason for the payment. In other words, any and all checks or payments to Shaw for any reason are requested.

As you may know, the courts have held that under *Brady v. Maryland*, 373 U.S. 83 (1963), the duty of the prosecutor and law enforcement to disclose exculpatory evidence is ongoing, and remains in force even during post-conviction proceedings, as in this case. The "duty to disclose is ongoing." *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) and "extends to all stages of the judicial process." *Smith v. Roberts*, 115 F.3d 818, 820(10th Cir. 1997). The state must continue to disclose exculpatory evidence during the course of federal habeas corpus proceedings, which is the case here. *Thomas v. Goldsmith*, 979 F.2d 746, 749-750 (9th Cir. 1992)(state has a "duty to turn over exculpatory evidence at trial, but . . . [also a] present duty to turn over exculpatory evidence relevant to the instant habeas corpus proceeding."). *See also Thompson v. Calderon*, 151 F.3d 918, 935 n. 12 (9th Cir. 1998)(Reinhardt, J., concurring and dissenting)("The *Brady* duty is an ongoing one, and continued to bind the prosecution throughout . . . habeas proceedings.").

In addition, the United States Court of Appeals for the Sixth Circuit has recently overturned a Shelby County, Tennessee murder conviction where the prosecution and authorities did not disclose that a witness against the defendant received a cash payment of $750 from the Federal Bureau of Investigation before the defendant's trial. *Thomas v. Westbrooks*, 849 F.3d 649 (6th Cir. 2017). As in *Thomas*, any payments made by to Alfredo Shaw should thus be disclosed as I request.

Thank you very much for your assistance in this matter. If you have any questions, please feel free to contact me.

Very truly yours,

Richard Lewis Tennent
Assistant Federal Public Defender

Document received by the TN Supreme Court.

PUBLIC RECORDS POLICY

FOR

THE OFFICE OF THE DISTRICT ATTORNEY GENERAL

30TH JUDICIAL DISTRICT, SHELBY COUNTY, TENNESSEE

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the Office of the District Attorney General, 30th Judicial District, Shelby County, Tennessee is hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that all state, county and municipal records shall, at all times during business hours be open for personal inspection by any citizen of this state, and those in charge of the records will not refuse such right of inspection to any citizen, unless otherwise provided by state law. The public records of this Office are presumed to be open for inspection unless otherwise provided by law.

Personnel of this Office will timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy will be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Office, will be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for this Office or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available for inspection and duplication in the office of the Public Records Request Coordinator during regular Office business hours and online at www.scdag.com. This Policy will be reviewed annually or more often if need demands.

This Policy will be applied consistently throughout the various offices, departments, and/or divisions of this Office.

I. Definitions

A. *Public Records*: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. This does not

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include the device or equipment that may have been used to create or store the record. **However, no record of this Office related to a criminal case that results in conviction is considered a public record unless one (1) year has passed from the final judgment in the case, there are no pending post-conviction proceedings and/or other collateral attacks in either State or Federal court(s), and one (1) year has passed since any such post-conviction or collateral attack has been concluded.**

B. *Public Records Request Coordinator*: The individual, or individuals, designated in Section III, A.3 of this Policy, who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA.

C. *Records Custodian*: The office, official, or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

II. Requesting Access to Public Records

A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

B. Requests for inspection only will not be required to be made in writing. The PRRC may request a mailing or email address from the requestor for providing any written communication required under the TPRA.

C. Requests for inspection may be made orally, in writing, or by phone at 901-222-1300, or at publicrecords@scdag.com.

D. Requests for copies, or requests for inspection and copies, must be made in writing to: Public Records Desk, Shelby County District Attorney General's Office, 201 Poplar Ave., Ste. 11000, Memphis, TN 38103, or at publicrecords@scdag.com.

E. Proof of Tennessee citizenship by presentation of a valid state-issued form of identification is required as a condition to inspect or receive copies of public records.

F. All requests must be specific as to the record(s) desired by name, serialization, or other unique characteristic of the case(s) or record(s). This Office does not provide generalized research, analytical, statistical, or other measured data compiled as a result of a review of cases, files or other records. This Office will not create or re-create records that do not exist at the time of the request.

G. No records related to pending or contemplated criminal cases may be requested. Records related to criminal cases are not considered a public record unless one (1) year has passed from the final judgment in the case, there are no pending post-conviction proceedings and/or other collateral

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attacks in either State or Federal court(s), and one (1) year has passed since any such post-conviction or collateral attack has been concluded.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC will review public record requests and make an initial determination of the following:
    a. If the requestor provided evidence of Tennessee citizenship;
    b. If the records requested are described with sufficient specificity to identify them; and
    c. If this Office is the custodian of the records.
2. The PRRC will acknowledge receipt of the request within 10 working days and take any of the following appropriate action(s):
    a. Advise the requestor of this Policy and the elections made regarding:
        i. Proof of Tennessee citizenship;
        ii. Form(s) required for copies;
        iii. An estimate of fees, including labor and redaction costs;
        iv. Aggregation of multiple or frequent requests.
    b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
        i. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
        ii. The request lacks specificity. This Office will attempt to assist in clarifying the request.
        iii. An exemption makes the record not subject to disclosure under the TPRA. Such exemption will be provided in a written denial.
        iv. This Office is not the custodian of the requested records.
        v. The records do not exist.
    c. If appropriate, contact the requestor to see if the request can be narrowed.

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d. Where applicable, may forward the records request to the appropriate records custodian in the Office.

e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC.

B. Records Custodian

1. Upon receiving a public records request, a records custodian will promptly make requested public records available. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, other counsel, or the OORC.

2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian will, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form or other suitable correspondence.

3. If a records custodian denies a public record request, he or she will deny the request in writing.

4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian will use the Public Records Request Response Form or similar method to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian will contact the requestor to see if the request can be narrowed.

5. If a records custodian discovers records responsive to a records request were omitted, the records custodian may contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian will prepare a redacted copy prior to providing access. No record may be copied or inspected without first determining whether any confidential material within the record exists and must be redacted. If questions arise concerning redaction, the records custodian shall coordinate with counsel, the PRRC, or other appropriate parties regarding review and redaction of records. The records custodian and the

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D. Fees will be based on the following schedule.

1. If physical paper copies are produced - $0.15 per page for letter- and legal-size black and white copies, $0.25 per page for letter- and legal-size color copies.

2. $15 for 1st digital disc, flash-drive or other similar device used to convey the record, $10 for each subsequent disc, flash-drive or other similar device as needed.

3. Labor when production time exceeds 1 hour. This rate may vary and will be determined based on the hourly rate of pay the lowest-paid employee engaged in the particular task of each step of the production process; i.e. a lower-paid employee may be assigned to complete a task of producing copies while a higher-paid employee may be tasked to perform any redactions. The time necessary to copy will be charged at the lower rate of pay; the time necessary to complete the redactions will be charged at the higher rate of pay.

4. If an outside vendor is used, the actual costs assessed by the vendor, including any retrieval fee if applicable.

E. Payment is to be made by cash, check or money order payable to the "**Shelby County District Attorney General's Office**" and presented to the PRRC; if by mail, addressed to:

Public Records Desk,
Shelby County District Attorney General's Office
201 Poplar Ave., Ste. 11000
Memphis, TN 38103.

Such payment will deposited by the Office within 7 working days.

F. Payment in advance is required before copies of records are provided.

G. Aggregation of Frequent or Multiple Requests. This Office may aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than three (3) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC. Routinely released and readily accessible records may be excluded from aggregation.

(Adopted July 1, 2017; rev'd July, 2018; May, June 2019)

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PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.

2. Whenever a redacted record is provided, a records custodian will provide the requestor with the basis for redaction, if requested. The basis given for redaction will be general in nature and not disclose confidential information.

IV. Inspection of Records

A. There will be no charge for inspection of public records. After the records have been appropriately redacted, such inspection will be supervised and require the presence of the PRRC or a staff member.

B. The location for inspection of records within this Office will be determined by either the PRRC or the records custodian.

C. The PRRC or records custodian may require an appointment for inspection or may require inspection of records at an alternate location. The PRRC may also require that the inspection be conducted in the presence of the PRRC or other staff.

V. Copies of Records

A. The PPRC or records custodian will promptly respond to a public record request for copies in the most economic and efficient manner practicable.

B. Copies will be available for pickup at a location specified by the records custodian or the PRRC.

C. Upon payment for postage or shipping, copies will be delivered at the requestor's designated address by the United States Postal Service or other delivery service. Records may also be delivered by electronic means where appropriate.

D. A requestor will not be allowed to copy, reproduce or transmit records with personal equipment.

VI. Fees and Charges and Procedures for Billing and Payment

A. Fees and charges for copies of public records will not be used to hinder access to public records.

B. The PRRC or records custodian will provide requestors with an estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested record.

C. When fees for copies and labor do not exceed $15, the fees may be waived. Requests for waivers for fees above $15 must be presented to the PRRC who is authorized to determine if such waiver is in the best interest of this Office and for the public good. Fees associated with aggregated records requests will not be waived.

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NOV 04 2019
Federal Public Defender's Office

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Exhibit 21

Shelby County Sheriff's Office

Bill Oldham, Sheriff

December 19, 2017

Mr. Paul R. Bottei
Assistant Federal Public Defender, Middle District
810 Broadway, Suite 200
Nashville, TN 37203-3805

RE: **Request for Records—Tony Carruthers v. Westbrooks, USDC 08-2425**
Records of Alfredo Shaw from "1990's and even before"

Dear Mr. Bottei:

You have made what we construe to be a Tennessee Public Records Act request wherein you asked that the Shelby County Sheriff's Office provide you, on behalf of your client, certain records pertaining to Alfredo Shaw and his work as a confidential informant. Last month, you provided additional information to assist us in responding.

Several things should be addressed at the outset pertaining to your client's pending writ of habeas petition matter.

1. Your client's appeal of the federal district court's denial of his writ of habeas corpus is now pending before the Sixth Circuit Court of Appeals. By Order filed January 25, 2016, the Sixth Circuit allowed him to proceed on the following issues: (1) whether the trial court violated Carruthers's right to counsel when it compelled him to proceed pro se at trial; (2) whether Carruthers was denied his right to counsel in violation of United States v. Cronic; (3) whether Carruthers was competent to stand trial and to waive his right to counsel; and (4) whether Carruthers procedurally defaulted (1), (2) and/or (3).

It is duly noted that the Sixth Circuit did not grant permission to pursue any claims related to Mr. Shaw.

2. By Order entered October 2, 2013, federal district court Judge Jon P. McCalla denied your client's discovery requests pertaining to Mr. Shaw: (1) a subpoena ad testificandum for the deposition of Alfredo Shaw; (2) require the production, by the Shelby County Sheriff, Memphis Police Department, and federal law enforcement agencies in Memphis, identifying the work done by and/or consideration received by Shaw for his assistance on cases from 1992-2006; and (3) a subpoena ad testificandum to the trial prosecutors on the grounds of their work with, involvement with, discussions with, offers to, assistance to, and contact with Shaw. The Judge noted that your client had been granted, "extensive discovery in the case," that the discovery

201 Poplar Ave., Room 9-15 ✦ Memphis, TN 38103 ✦ 901-222-2116 ✦ Fax 901-222-5657
Debra.Fessenden@shelby-sheriff.org

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Exhibit 21

period was closed, dispositive motions had been filed, and there was no good cause to grant discovery.

Your office is attempting to circumvent the rulings of the federal district court as well as the Sixth Circuit Court of Appeals, in addition to the federal statute governing discovery habeas corpus proceeding.

3. Judge McCalla's Order of October 2, 2013, fully outlines the reasons the State of Tennessee elected not to rely on Mr. Shaw's testimony during the trial of your client:

> The prosecution asserted that because it refused to aid Shaw with his continued arrests, he "called the media and began this program of recantation or attempted recantation." ...The prosecution noted that Shaw's behavior in constantly getting arrested and seeking aid from them was the reason why they announced in open court that Shaw would not testify for the prosecution at trial...The decision was not because the prosecution did not believe that Shaw's prior testimony was true, but because they could not "give [Shaw] carte blanc to go out and get arrested.

4. By filing of October 31, 2012, your client submitted a variety of documents which indicate that Mr. Shaw had cooperated with authorities for some period of time, serving as a "confidential informant." None of this information is "new" or "recently discovered."

5. Without waiving any objection that you are not entitled to any of the records you are seeking, regardless of whether the request is couched as a TPRA request, or any objection that your client is not entitled to records pertaining to confidential informants, and to the extent you are seeking a record of monetary transactions involving Mr. Shaw and the Sheriff's Office, that is being provided. The document provided is a redacted computer record of the funds provided to Mr. Shaw. That took two (2) hours to retrieve from a computer system that is no longer in use. A statement for our services is enclosed.

Records pertaining to criminal investigations or prosecutions involving Mr. Shaw will not be provided absent a Court Order.

Yours very truly,

Debra L. Fessenden
Chief Policy and Statutory Compliance Officer

Enclosures
\\sofdata1\cycom\Wpdocs\D006\P002\00028086.DOC/A17-0120

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Page 1

11/17/99

SHELBY COUNTY SHERIFF'S DEPARTMENT
NARCOTICS DIVISION
OFFICIAL INVESTIGATIVE FUNDS
MONEY IN/OUT ACCOUNT SUMMARIES
FROM 01/01/91 TO 11/17/99
C.I. [redacted] 1241

Out Recpt.	Date Issued	Issued To:	Box	Amount	Acct.#	Description	Property Receipt	In Recpt.	Date Return	Amount Returned	Case Number	Net Expense	Reason Returned
14196	09/23/91	[redacted]	22	20.00	52022	P/C BUY CRACK COCAINE	[redacted]		09/23/91	0.00	[redacted]	20.00	
14216	09/25/91		22	20.00	52022	P/C BUY CRACK COCAINE			09/25/91	0.00		20.00	
10044	10/28/92		22	100.00	54022	'ADVANCE' - NON-RETURNABLE			10/28/92	0.00		100.00	INACTIVE REMOVED
10053	10/29/92		22	225.00	54022	P/C BUY MARIJUANA		[redacted]	10/29/92	225.00		0.00	DID NOT MAKE BUY
1016	11/30/95		22	100.00	55022	P/C BUY MARIJUANA			12/11/95	0.00		100.00	.8 GRMS CRACK
2338	12/06/96		22	75.00	49022	U/C BUY MARIJUANA			12/13/96	0.00		75.00	INFORMANT PAYMENT
2340	12/05/96		22	75.00	49082	UC BUY CRACK COCAINE			12/13/96	0.00		75.00	U/C MARIJUANA
2367	12/12/96		22	75.00	49042	S/W, INFORMANT PMT MARIJUANA			12/13/96	0.00		75.00	
1593	12/16/96		11	75.00	49012	INFORMANT PAYMENT			12/16/96	0.00		75.00	
2386	12/17/96		22	75.00	49082	U/C BUY 1/2 LBS PURCHASE			12/26/96	0.00		75.00	PMT FOR U/C BUY
2426	01/09/97		22	550.00	49082	U/C BUY 1/2 LBS MARIJUANA		[redacted]	01/14/97	50.00		500.00	149.0 GRAM MARIJUANA
2429	01/09/97		22	125.00	49082	U/C BUY , 1 OZ. MARIJUANA			01/14/97	0.00		125.00	22.6 GRAMS MARIJUANA
1599	01/09/97		11	125.00	49082	U/C BUY MARIJUANA			01/09/97	0.00		125.00	149.0 GMS MARIJUANA
1601	01/21/97		11	50.00	49082	U/C BUY MARIJUANA			01/21/97	0.00		50.00	11.0 GSMS MARIJUANA
1602	01/23/97		11	125.00	49082	U/C BUY MARIJUANA			01/23/97	0.00		125.00	307.0 GMS MARIJUANA
2501	01/28/97		22	50.00	49072	CI EXPENSE			02/05/97	0.00		50.00	CI EXPENSE
2526	01/31/97		22	300.00	49082	UC BUY PMT.			01/31/97	0.00		300.00	PMT FOR U/C BUY
2571	02/13/97		22	100.00	49012	ADVANCE			01/06/97	0.00		100.00	
2707	02/24/97		22	60.00	49012	INFORMANT EXPENSE			02/24/97	0.00		60.00	INFORMANT EXPENSE
2789	03/19/97		22	42.00	49012	INFORMANT EXPENSE			03/19/97	0.00		42.00	INFORMANT EXPENSE
2873	04/28/97		22	42.00	49082	INFORMANT EXPENSE			04/30/97	0.00		42.00	INFORMANT
2892	05/02/97		22	75.00	49012	INFORMANT EXPENSE			05/03/97	0.00		75.00	INFORMANT EXPENSE
2908	05/07/97		22	100.00	49012	INFORMANT EXPENSE			05/09/97	0.00		100.00	INFORMANT EXPENSE
2957	05/16/97		22	50.00	49012	'ADVANCE'			05/16/97	0.00		50.00	'ADVANCE'
1108	07/27/98		66	100.00	55022	PC BUY COCAINE			07/28/98	0.00		100.00	
1202	08/31/98		66	100.00	55022	PC BUY COCAINE			09/08/98	0.00		100.00	
1233	09/13/98		66	75.00	55022	PC BUY CRACK COCAINE			09/13/98	0.00		75.00	
Total disbursed:		2909.00											
Total returned:		275.00											
Net:		2634.00											

596a

Exhibit 21

Document received by the TN Supreme Court.

EXHIBIT 28

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION 5

TONY CARRUTHERS	]	
	]	
v.	]	No. 94-02797, 94-02798, 94-02799,
	]	95-11128, 95-11129
STATE OF TENNESSEE	]	

AGREED ORDER DIRECTING THE MEMPHIS POLICE DEPARTMENT TO RELEASE DATA REGARDING ALFREDO SHAW TO THE SHELBY COUNTY JUSTICE REVIEW UNIT

By agreement of the parties and pursuant to the Sixth, Eigth, and Fourteenth Amendments to the United States Constitution, Article 1 § 16 of the Tennesee Constitution, and Tenn. Code Ann. § 40-30-123, this Court hereby orders the Memphis Police Department to release the following information regarding Alfredo Shaw to Kevin Rardin, Asst. District Attorney General, Shelby County District Attorney General Justice Review Unit, 201 Poplar, 8th Floor, Memphis, TN 38103-1945. Specifically, within 30 days of the entry of this Order, the Memphis Police Department shall release the following information:

1. Any and all information about Mr. Alfredo Shaw's activities as an informant, any payments received, any promises made to help him out with any criminal charges, whether or not he was formally charged.
2. Whether Alfredo Shaw was determined to have provided false information

Filed 5.9.24
Heidi Kuhn, Clerk
BY JV D.C.

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in any cases and if so, details regarding these findings.

3. Any information regarding instructions by agents of the Memphis Police Department to Mr. Shaw to contact Crime Stoppers and any payments made to Mr. Shaw by Crime Stoppers.

SO ORDERED this 9th day of May 2024.

Carlyn L. Addison
Criminal Court Judge Carlyn Addison

Document received by the TN Supreme Court.

Approved for Entry:

FEDERAL PUBLIC DEFENDER FOR
THE MIDDLE DISTRICT OF TENNESSEE

Kelley J. Henry (BPR # 021113)
Chief, Capital Habeas Unit
810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Email: Kelley_Henry@fd.org

SHELBY COUNTY DISTRICT ATTORNEY GENERAL
JUSTICE REVIEW UNIT

Kevin Rardin
201 Poplar Avenue, 8th Floor
Memphis, TN 38103-1945
Phone: (901) 222-1450
Email: Kevin.Rardin@scdag.com

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EXHIBIT 29

602a



Name	AKA		
Alfredo Bernard Shaw	Jake		
DOB: Gaithor Co. 66	POB: Shelby County	Occup.	Bof I#
Height: 5'11" / Weight: 165 / Hair: Black / Eyes: Brown		Other	FBI#
Spouse: DNA	Activity		So#
Kin: Floyzell Bailey "mother"	Associates		7618
Memphis, Tenn.			DL#

IDENTISEAL®

F-2100.468

603a

CONSENT TO TAPE RECORD AND (NITOR ALL PERSONAL AND TELEPHO(CONVERSATIONS

I, Alfreda B. Shaw do hereby affix my signature to this document with the understanding that I give freely and voluntarily to the Memphis Police Department, Organized Crime Strike Unit, and any officer assigned to this unit, consent to monitor and tape record all of the conversations that I have with all persons and all telephone conversations with people with whom I may have conversation. I do give this freely and voluntarily, without any prior agreements, promises, or compensation, monetary or otherwise. I understand that any conversations, whether through electronic recording devices or telephone devices, or any conversations that I am a party to will be recorded and they have my consent and my knowledge and my full and voluntary cooperation to record these conversations.

I further understand and know that I may have to at some future time, and I am willing and agreeable to, appear in any court or before the federal or state grand jury or any investigation that is derived from any of these tape recorded conversations.

I give my consent to these officers to do this freely and voluntarily and with full knowledge of what I am doing.

This agreement is for the period of time as indicated below in my handwriting.

from a period of Sept 16, 1986 to Dec. 31, 1986.

Alfreda B Shaw
Signed

WITNESSED BY:

L. M. Torrance

R Thompson

CONSENT TO TAPE RECORD AND MONITOR ALL PERSONAL AND TELEPHONE CONVERSATIONS

I, Alfredo B. Shaw do hereby affix my signature to this document with the understanding that I give freely and voluntarily to the Memphis Police Department, Organized Crime Strike Unit, and any officer assigned to this unit, consent to monitor and tape record all of the conversations that I have with all persons and all telephone conversations with people with whom I may have conversation. I do give this freely and voluntarily, without any prior agreements, promises, or compensation, monetary or otherwise. I understand that any conversations, whether through electronic recording devices or telephone devices, or any conversations that I am a party to will be recorded and they have my consent and my knowledge and my full and voluntary cooperation to record these conversations.

I further understand and know that I may have to at some future time, and I am willing and agreeable to, appear in any court or before the federal or state grand jury or any investigation that is derived from any of these tape recorded conversations.

I give my consent to these officers to do this freely and voluntarily and with full knowledge of what I am doing.

This agreement is for the period of time as indicated below in my handwriting.

From: 3/13/87 to Sept 13, 1987

WITNESSED BY:

L.M. Torrance

R. Thompson

Alfredo B. Shaw
Signed

```
Z ICRS,86108019                    *COURT STATUS*    DKT#:86108019  RI#00082052  ~:01
NAME:SHAW,ALFREDO BERNARD                                SEX:M RACE:B  DOB:       66
ADDRESS:          GAITHER COVE                #        MEMPHIS      ,TN 38106
ARREST:04/18/86,0729 OFFS:#1SANDIDGE RICHARD #2NAME NOT ON FILE
     CURR.COURT SET: 06/27/86 DIV:09 SESS:1  REASON:PRELIM HEARING     #RESETS:04
     ORIG.COURT SET: 04/21/86 DIV:11 SESS:1
TOTAL BOND SET:$    5000
-------------------------------------------------------------------------------
   COURT:GS                      **CHARGE GROUP#:01**  <DISPOSED    >
01              39-1-501     ATTEMPT TO COMMIT FELONY          - F <DISPOSED          >
   DISP:HELD TO STATE    -06/27/86  COMMENTS:                      SENT-DT: 6/27/86
   CRED:   0YRS 0MO 0DYS SENT-LOC:     FINE:$     0 COSTS:$  0.00 AMT-DATE: 6/27/86
                      ***BOND SUMMARY FOR CHARGE GROUP#:01***
BOND#1:D0082        COMPANY:CONTINENTA  AMT:$    5000  STATUS:INACTIVE
                      ****HISTORY DATA FOR CHARGE GROUP#:01****
                       RESET    DATE    DIV  SESS     REASON
                         # 1   04/21/86   11    1     ARRAIGNMENT
                         # 2   05/05/86   10    1     ATTORNEY
                         # 3   05/19/86   10    1     REPORT
                         # 4   06/27/86   09    1     PRELIM HEARING
                         B/W     NUMBER     ISSUED  DIV      STATUS            COSTS


          **INQUIRY COMPLETED** - TRANSMIT TO VIEW CRIMINAL COURT


*Z ICRS,,                                                                      *
  NEXT PAGE.    .     BOOKING #:86108019  R&I #:00082052 BOND SET:    5,000
  NAME:SHAW              ALFREDO      BENARD          SEX:M RACE:B DOB:03/14/66
-------------------------------------------------------------------------------
                        *** PRE-INDICTMENT CHARGES ***
   TCA CODE       T C A   D E S C R I P T I O N     ENTRY    D/W DATE  IND. NO.
  39-1-501     ATTEMPT TO COMMIT FELONY             HTS               86 03908
  39-3-401     BURGLARY  I                          OTHER             86 03908

IND:86 03908 AG:K7622 FOR:BURGLARY  I                                 <  ACTIVE  >
   CURR-COURT SET:09/10/86  DIV:05  REASON:BA
                        *** B O N D   S U M M A R Y ***
POWER NUMBER   IND. NO.   AMOUNT         B O N D   C O M P A N Y        STATUS
01-0000D0082   86 03908      5,000  CONTINENTAL INS & BONDING INC        ACTIVE




        *              I N Q U I R Y   C O M P L E T E                  *
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606a

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KZ AHIS,                                                    *
VEXT PAGE.    .                          *R&I:00082052 SCSD:00000000 MPD:00000000
   NAME:SHAW                  ALFREDO      BERNARD          S/R:M/B
   ADDR:              GAITHER COVE                    MEMPHIS                  TN
-------------------------------------------------------------------------------
)ATE:041886 BOOKING#: 86108019 NAME:SHAW                  ALFREDO      BERNARD
TK BY/ON          CHARGE        GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
)1 MP/AC ATTEMPT TO COMMIT F HS/062786
   AMEND BURGLARY  I                        IN/071886    /091086
                  (NO MORE BOOKING NUMBERS THIS RNI NUMBER )


KZ IRTK,10025,86108019,00,I                 *              DATE 08/28/86  TIME 08:11

   NAME:SHAW                  ALFREDO      BERNARD                  RACE:BLACK
   ADDR:922          GAITHER COVE                                   SEX:MALE
                                                                    DOB:      '66
-------------------------------------------------------------------------------
ARREST BY:MP  ON:PC  DATE:041886  TIME:0729  RPT#:000000       ASN:
 OFFICERS:(1) 07848 SANDIDGE RICHARD C      (2)
ARREST TICKET-01
-------------------------------------------------------------------------------
COMPLAINANT:  RUDY WHALEY    .              .          . .   RACE: .
       ADDR.855   . .WOODLAND                .  .     .      SEX: .
           .MPHS        .TN.          .                     DOB:      .
LOCATION OF ARREST:      .  .THE MED CENTER      .  .     .
                  .MPHS        .TN.        .

VEHICLE - LIC#.          . ST.  . YR.  . TYP.  . VIN.                    .
YR.  . MAK.     . MDL.   . STY.  . CLR.   /   . DISP.                    .

WEAPON - SER#:           . MAK.   . CAL.     . TYP.  .
         SER#:           . MAK.   . CAL.     . TYP.  .

                         LAST RECORD

KZ IRPC,                                                  .*
                                                           R&I #: 00082052

  NAME: LAST SHAW                FIRST ALFREDO      MID BERNARD      SFX
  ADDR: ST NO        . DIR.  . NAME.GAITHER COVE        . SFX.  . APT.    .
        CITY.MEMPHIS     . STATE.TN. ZIP.00000    .
  PHYS: HGT.511. WGT.165. HAIR.BLK. EYES.BRO. SKIN.DRK. RACE.B. SEX.M.
        BIRTH: CITY.MPHS        . STATE.TN. DOB.    66.
 ****** CRIMINAL CHARACTER CODES:ARM. . DNG. . MTL. . SUI. . RST. .
  SSN.          . FBI .938 188 EA7.     OFR LIC.                  . ST.  .
  REMARKS: .HEART LEFT ARM                                                .
           .BULLET HOLE RIGHT ARM PIT                                     .
  BLD.MED. EDUC.   . REL.  . MAR-STAT.S. HNDCPD. . CLASS.  . SEC-TYP.MIN.

  A/C     CODE                  R E M A R K S
  . . .         . .                                          .
  . . .         . .                                          .
  . . .         . .                                          .
  . . .         . .                                          .
  . . .         . .                                          .
  . . .         . .                                          .

        *     INQUIRY TRANSACTION COMPLETE                        *
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607a

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KZ IRRA,$10025,00082052,I,          ,0169918707* R&I NUMBER:00082052

INMATE: LAST: SHAW                  FIRST: ALFREDO      MID: BERNARD      JR/SR:

NAME: LAST .SHAW              . FIRST.GEORGE      . MID.          . JR/SR. .
ST-NO.2436   . ST-DIR.   . ST-NAME.LATHAM              . SUFFIX.   . APT.     .
CHG.N. CITY.MPHS          . STATE.TN. ZIP.000000    . RELATION*FATHER       *

NAME: LAST .BAILEY            . FIRST.FLOYZELL    . MID.          . JR/SR. .
ST-NO.2317   . ST-DIR.   . ST-NAME.SPRINGDALE          . SUFFIX.   . APT.     .
CHG.N. CITY.MPHS          . STATE.TN. ZIP.000000    . RELATION*MOTHER       *

NAME: LAST .BAILEY            . FIRST.SIDNEY      . MID.          . JR/SR. .
ST-NO.2317   . ST-DIR.   . ST-NAME.SPRINGDALE          . SUFFIX.   . APT.     .
CHG.N. CITY.MPHS          . STATE.TN. ZIP.000000    . RELATION*BROTHER      *

NAME: LAST .BAILEY            . FIRST.RACHAEL     . MID.          . JR/SR. .
ST-NO.2317   . ST-DIR.   . ST-NAME.SPRINGDALE          . SUFFIX.   . APT.     .
CHG.N. CITY.MPHS          . STATE.TN. ZIP.0000000   . RELATION*SISTER       *


    *                          NO MORE RECORDS                          *
     NEXT  *     *                                                      SEC-ID *00000*


KZ IRRE,                                  ,*      SEC-ID.00000.  R&I#:00082052

----- REAL NAME & ADDRESS -----

NAME: LAST.SHAW               . FIRST.ALFREDO     . MID.BERNARD     . JR/SR. .

ADDR: ST#.        . DIR.   . NAME.GAITHER COVE          . SUFFIX.   . APT.     .
      CITY.MEMPHIS        . STATE.TN. ZIP.00000     .                  CHANGE.N.


----- EMPLOYER NAME & ADDRESS -----

NAME: .                                         .       NO EMPLOYER DATA FOUND

ADDR: ST#.        . DIR.   . NAME.                      . SUFFIX.   . APT.     .
      CITY.               . STATE.   . ZIP.           . OCCUPATION.            .
                                                                   CHANGE.N.

                          INQUIRY COMPLETE
```

KZ TIES,DS *

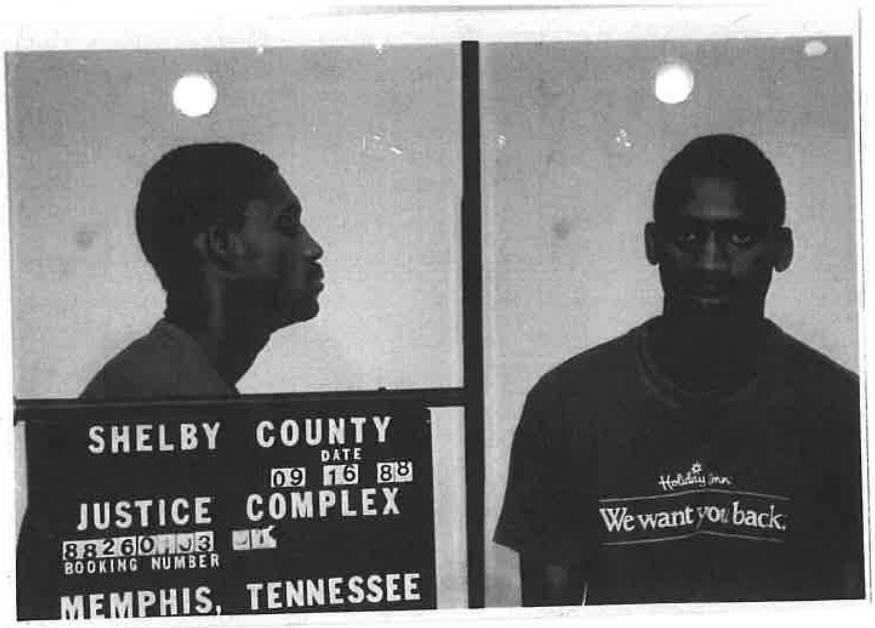
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RR.ILLIC0000
07:51 08/28/00 01052
07:51 08/28/86 00258 TNMPD00B0
KCA79999999
TXT
082886 0752

.GZ110 1086
1C QUEEN VERDENE
723 20TH ST 3 ROCK ISLAND 61201
6L47S5Q278265 75 CADILLAC COUPE
1250-8603-2091

Veh. operated at time Shaw First came OCW

609a



CRIMINAL INTELLIGENCE

SUBJECT'S NAME	RESIDENCE ADDRESS	CITY	RES. PHONE	FILE NO.
Alfredo Bernard Shaw	Gaither Cv.	Mph, TN 38106		1069
ALIASES	**BUSINESS ADDRESS**	**CITY**	**BUS. PHONE**	**B OF I NO.**
"Jake" or "Bernard"				00082052

SEX		DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	TYPE ACTIVITY
M	B	06	5'11"	157 lbs	Blk	Brn.	

VEH. YEAR	MAKE	BODY TYPE	COLOR	LIC. NO.	YEAR	STATE	FBI NO.

VEH. REGISTERED TO:	ADDRESS	CITY	RELATION TO SUBJ.	DRIVER LIC. NO.

NAME OF SPOUSE	OCCUPATION	EMPLOYED BY	SOC. SEC. NO.

PHOTO

HANGOUTS
Girlfriend's House: Bellington

ASSOCIATES
Alice Morris No Phone Above address

MISC. INFO. - ADDITIONAL ADDRESSES

C-2100.161

610a

SUMMARY INFORMANT PAYMENT RECORD

Informant Code Name or Number: 1069

Form A-6

Payment Date	Case or Reference Number	Amount Paid
10-15-03	D 310000545 SH	$ 300.00

This form should be filed on top of the applicable informant file and should reflect all payments made to the informant. Receipts for payment to informants should back up this file.

Revised 09/20/2000

OCUCI 1.0

Memphis Police Department
Organized Crime Unit
Confidential Informant Agreement

I x Alfredo Shaw , understand and will comply with the following Organized Crime Unit regulations.

1. The Confidential Informant must not sell or deliver or cause to be sold or delivered any controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any person who would then in turn sell or deliver said controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any member of the unit or any other person.

2. The Confidential Informant must not use their sex, sexuality, or sexual activity to induce or persuade any individual.

3. The Confidential Informant must not conduct a search of any suspect, person, house, papers, or personal effects.

4. The Confidential Informant must not engage in any activities that would constitute entrapment.

5. The Confidential Informant must not engage in any unlawful acts, except as specifically authorized by Officers of the Organized Crime Unit, and is subject to prosecution for any unauthorized unlawful acts.

6. The Confidential Informant is not an employee of the Organized Crime Unit and may not represent himself /herself as such.

7. When the Confidential Informant is cooperating with the Organized Crime Unit in exchange for consideration by a prosecuting office(s), the Organized Crime Unit cannot make any prosecutive or sentencing promises. Upon the request of the Confidential Informant, the Organized Crime Unit will advise the prosecuting office(s) of the nature and extent of the Confidential Informant's assistance.

8. The Confidential Informant agrees to cooperate with the **ORGANIZED CRIME UNIT** of their own free will and accord, and not as a result of any intimidation or threats.

9. The Confidential Informant understands and agrees that any money issued to him/her for the purchase, as evidence, of controlled substances is to be used solely for that purpose. If no such purchase is made, or if such a purchase is made for less than the total sum furnished, he/she will forthwith refund the sum so furnished or the balance thereof, as the case may be, to the issuing officer of the Organized Crime Unit. In any event, upon demand by the issuing officer of the Organized Crime Unit at any time, he/she will forthwith refund to the issuing officer of the Organized Crime Unit the total amount of any sum thus furnished to him/her that has not yet been expended by him/her for the purchase, as evidence, of controlled substances. Furthermore, it is understood that this money is the property of the **ORGANIZED CRIME UNIT** and that misuse or conversion of the same to his/her personal use will render him/her liable to prosecution.

Signed: x Alfredo Shaw Date: 10-15-03

Contact Officer: Sgt. P. Wright Jr. Alternate: Sgt. J. Griffin

Supervisor : Lt. KJ Adams

OCUCI 2.0

Memphis Police Department
Organized Crime Unit

Consent to Record

I Alfredo Shaw, do hereby affix my signature to this document with the understanding that I give freely and voluntarily, to the Memphis Police Department, Organized Crime Unit, and any officer assigned to this unit, consent to monitor and tape record all of the conversations that I have with all persons, including telephone conversations. I do give this freely and voluntarily, without any prior agreements, promises, or compensation, monetary or otherwise. I understand that any conversations, whether through electronic recording devices or telephone devices, or any conversations that I am a party to, will be recorded and they have my consent and my knowledge, and my full and voluntary cooperation, to record these conversations.

I further understand and know that I may have to, at some future time, and I am willing and agreeable to, appear in any court or before the Federal or State Grand Jury or any investigation that is derived from any of these tape-recorded conversations.

I give my consent to these officers to do this freely and voluntarily and with full knowledge of what I am doing.

This agreement is valid while I am an active Cooperating Individual/Confidential Informant for the Memphis Police Department Organized Crime Unit.

Witness by:

A. Shaw 10-15
Signature Date

Sgt. P. Wright JR. 10-15-03
Contact Officer Date

Lt. R.Y. Adams 10-15-03
Supervisor Date

Sgt. J. Griffin 10-15-03
Alternate Contact Officer Date

613a

OCUCI 3.0

CI Number: 1069 Code Name: Jake Wright Date: 10/15/03

Full Name: Shaw Alfredo Spouse's Name: _____
Last, First Middle

Aliases: _____ SS#: -2864

Home Address: Creek Stone Ct 38127 Home Phone: -5768
Street Address City State ZIP

Occupation: _____ Employer: _____
Name, Address, City, State

License: _____ State: _____ Veh: _____
Year Make Model Color/Description

Race: _____ Sex: _____ DOB: 66 - _____ POB: _____
YY-MM-DD City State

Height: 5'11 Weight: 190 Hair: BLACK Eyes: BRO Photos Attached: (✓) (✓)
Mandatory Front Right Profile

Scars/Tattoos/Other: _____

True Name Signature:	Code Name Signature:
1. Alfredo Shaw	1. Jake Wright
2. Alfredo Shaw	2. Jake Wright
3. Alfredo Shaw	3. Jake Wright
4. Alfredo Shaw	4. Jake Wright
5. Alfredo Shaw	5. Jake Wright

Applicant
Is Is not
( ) (X) A minor (under 18 years old, requires OCU Commander's approval)
( ) ( ) On federal or non-federal parole, probation or supervised release
( ) ( ) Working in a like capacity for any other law enforcement agency
( ) ( ) Active/inactive OCU CI(Prior Contact Officer _____)


Right Thumb Print

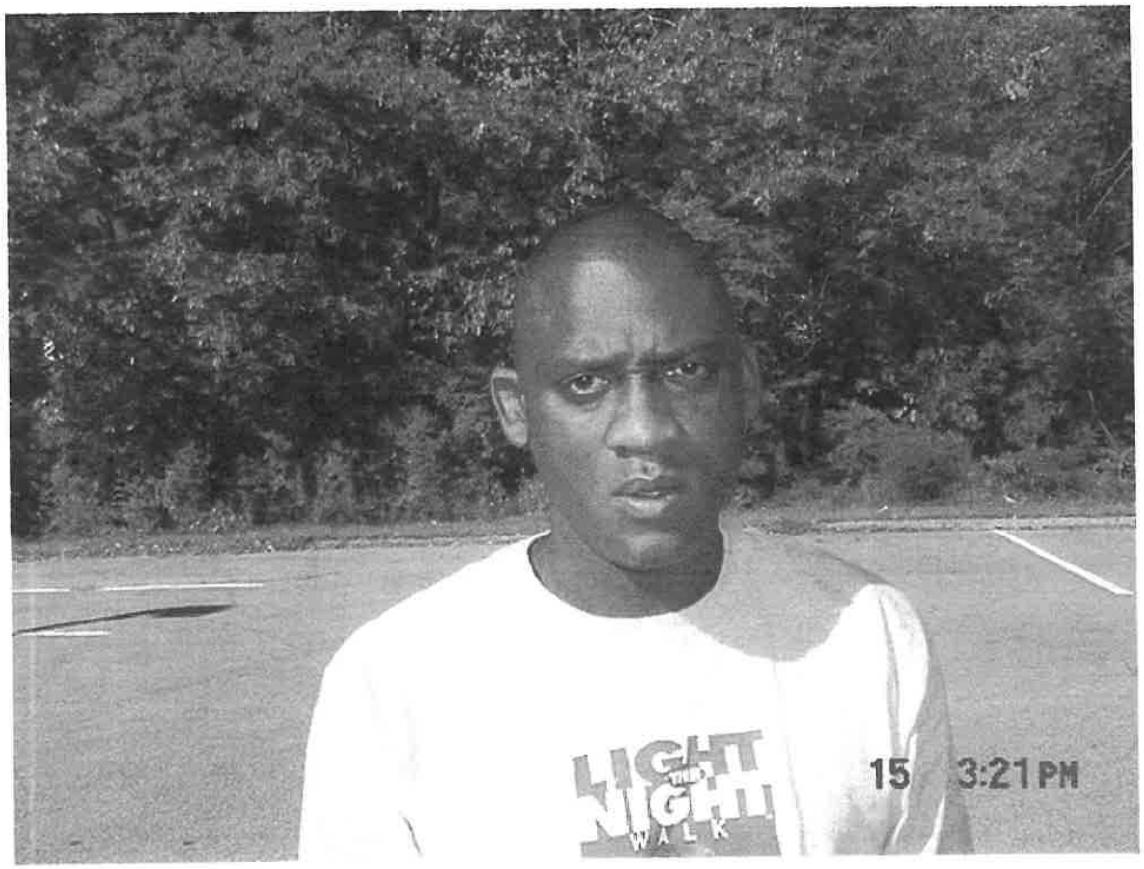
Contact Officer: Sgt. L. Wright JR 9511 Alternate: Sgt. J. Griffin 3162
Name IBM Name IBM

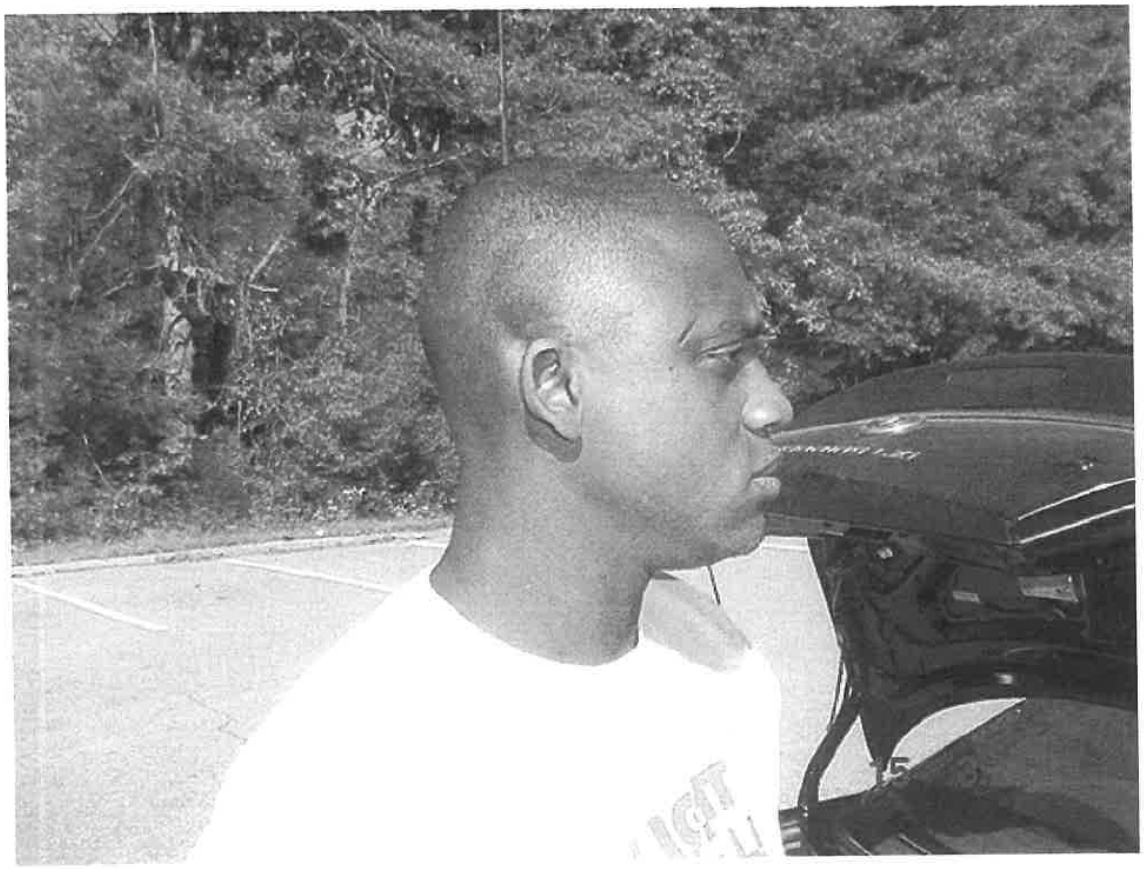
Information Verification/Criminal History Checks - SCATS & NCIC must be completed before supervisor approval. Attach applicable printouts for criminal history, SCATS, NCIC, TN DMV and B of I photo.

SCATS/local arrest check	( ) Positive	( ) Negative	By: _____	Date: _____
NCIC/Criminal History	( ) Positive	( ) Negative	By: _____	Date: _____
Parole/Probation Check	( ) Positive	( ) Negative	By: _____	Date: _____
TN DMV Photo	( ) Positive	( ) Negative	By: _____	Date: _____
OCU CI File Check	( ) Positive	( ) Negative	By: _____	Date: _____

Reviewed and Approved By:

Lt. RV Adams 10-15-03 Capt. JD Hall 10-15-03
Supervisor Date CI Coordinator Date


LIGHT
NIGHT
WALK
15
3:21 PM



```
*Z AHIS#00082052064083763401699186622  38                                01*
NEXT PAGE:                          *R&I:00082052 SCSD:00000000 MPD:00000000
   NAME:SHAW                ALFREDO      BERNARD           S/R:M/B  DOB       6*
   ADDR:           GAITHER CV                        MPHS                  TN
-------------------------------------------------------------------------------
DATE:091688 BOOKING#: 88260103 NAME:SHAW                ALFREDO     BENARD
TK BY/ON         CHARGE         GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
01 SO/WT CR88251002/88214050
02 SO/BS BURGLARY II            BS/091688
03 SO/BS THREATENING/COERCIN    BS/091688

DATE:080188 BOOKING#:88214050 NAME:SHAW                 ALFREDO      BERNARD
01 SO/WT CR88183003
         BURGLARY II            HS/080188 IN/063088 GP/110388       01 003 --   /SC
         GRAND LARCENY          HS/080188 IN/063088
   AMEND BURGLARY II                                 GP/110388       01 003 --   /SC
         REC/CON STOLEN PROP    HS/080188 IN/063088
   AMEND BURGLARY II                                 GP/110388       01 003 --   /SC
              (      MORE ARREST TICKETS                        )
```

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*Z AHIS$000820520605439180016991871 1  36                              02*
NEXT PAGE.                          *R&I:00082052 SCSD:00000000 MPD:00000000
   NAME:SHAW              ALFREDO      BERNARD          S/R:M/B  DOB:     66*
   ADDR:          GAITHER                    COVE  MEMPHIS                TN
-------------------------------------------------------------------------------
DATE:042288 BOOKING#: 88113034 NAME:SHAW                ALFREDO
TK BY/ON        CHARGE        GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
01 SO/WT GS88112078
         THREATENING/COERCIN HS/060388           DW/120188

DATE:040488 BOOKING#:88095018 NAME:SHAW              ALFREDO      B
01 SO/WT GS88091003
         BURGLARY II         NP/050688

DATE:010588 BOOKING#:88005029 NAME:SHAW              ALFAGEDO
01 SO/WT GS87356006
         BURGLARY II         HS/030388 IN/120288 GP/120888          003 --    /SC
                  (     MORE ARREST TICKETS                    )
```

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«Z AHIS»                                                                *
NEXT PAGE.                          *R&I:00082052 SCSD:00000000 MPD:00000000
   NAME:SHAW              ALFREDO     BERNARD          S/R:M/B  DOB:     66*
   ADDR:          GAITHER                          MEMPHIS                TN
-------------------------------------------------------------------------------
DATE:112186 BOOKING#: 86325058 NAME:SHAW                ALFREDO     BENARD
TK BY/ON         CHARGE        GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
01 SO/CV ATTEMPT TO COMMIT F CV/112186

DATE:041886 BOOKING#:86108019 NAME:SHAW                 ALFREDO     BERNARD
01 MP/AC ATTEMPT TO COMMIT F HS/062786
   AMEND BURGLARY  I                    IN/071886
   AMEND ATTEMPT TO COMMIT F                        GP/112186          002 -    /SC
                  (NO MORE BOOKING NUMBERS THIS RNI NUMBER )
```

```
*Z SCWW.
                                                    ASP#.86108036. RNI#.00082052.
  NAME: LAST.SHAW              . FIRST.ALFREDO     . MID.BERNARD     . SFX. .
  ADDR: ST NO.       . DIR.   . NAME.GAITHER COVE        . SFX.   . APT.     .
        CITY.MEMPHIS      . STATE.TN. ZIP.00000     .
  PHYS: HGT.511. WGT.165. HAIR.BLK. EYES.BRO. SKIN.DRK. RACE.B. SEX.M.
        BIRTH: CITY.MPHS         . STATE.TN. DATE.    966.
 ****** CRIMINAL.CHARACTER.CODES: ARM. . DNG. . MIL. . SUI. . RST. .
  SSN.          . FBI..938188EA7   . OPR LIC.                    . ST.   .
  REMARK:   .HEART LEFT ARM
            .BULLET HOLE RIGHT ARM PIT

  WRNT: NO.GS89230110. DATE.081889. TP.SW. CT/DV.GS/12. CASE.00000000.00.
  NAME: LAST.SHAW              . FIRST.ALFREDO     . MID.BERNARD     . SFX. .
  ADDR: .       .   .GAITHER              .CO.     .
        .MEMPHIS      .TN.          .
        ISSUING ST.TN. ISSUING COUNTY.SHELBY          . INDICTMENT#.          .
  CHRGS: .          .39-3-1103   PETIT LARCENY                                 .
         .          .                                                          .
         .          .                                                          .

.****** NO ADDITIONAL WARRANTS FOR THIS INDIVIDUAL FOUND ON THE SYSTEM ******.
```

620a

CI PAYMENTS FOR THIS MONTH

CI NUMBER	OFFICER	ISSUE DATE	AMOUNT SPENT:	RECEIPT 1
0	61	91/12/02	170.00	12261
584	5402	91/12/10	20.00	12324
584	5402	91/12/20	75.00	12422
600	1536	91/12/11	20.00	12342
600	1536	91/12/12	950.00	12364
600	1536	91/12/20	750.00	12421
600	1536	91/12/31	450.00	12445
637	5242	91/12/12	25.00	12357
678	1499	91/12/23	80.00	12424
678	3324	91/12/19	20.00	12407
758	9344	91/12/04	40.00	12293
758	9344	91/12/10	600.00	12332
1069	1536	91/12/05	20.00	12302
1188	655	91/12/02	40.00	12266
1188	1448	91/12/05	150.00	12303
1279	9344	91/12/11	25.00	12348
1293	3581	91/12/20	50.00	12420
1293	3581	91/12/31	60.00	12444
1345	8792	91/12/18	75.00	12393
1458	4662	91/12/04	50.00	12276
1573	8792	91/12/18	200.00	12392
1625	482	91/12/07	700.00	12313
1625	3324	91/12/13	20.00	12372
1625	9255	91/12/19	300.00	12411
1638	3134	91/12/17	75.00	12383
1678	694	91/12/06	75.00	12311
1678	694	91/12/10	500.00	12331
1678	694	91/12/17	75.00	12381
1694	663	91/12/11	800.00	12340
1708	3324	91/12/13	75.00	12369
1767	7291	91/12/13	125.00	12367
1768	694	91/12/04	75.00	12287
1774	482	91/12/13	20.00	12375
1792	482	91/12/20	400.00	12415
1810	655	91/12/18	50.00	12406
1817	3559	91/12/04	975.00	12291
1817	4350	91/12/13	40.00	12376
1819	9291	91/12/12	700.00	12365
1825	3134	91/12/04	20.00	12294
1841	2510	91/12/13	300.00	12370

9195.00S

40T

45

ORGANIZED CRIME UNIT

CI-STATUS CHANGE

The following changes are to be made to the CI-FILE # 1069 effective immediately.

TERMINATION DATE: 12-11-91

WARNING: Kept money

STREET NAME: Bernard Shaw

TYPE OF INFORMANT: _____
INFORMANT DEF/INFORMANT RESTRICT/INFORM

NAME: _____

HEIGHT: 5'1 WEIGHT: 157 HAIR COLOR: BK EYE COLOR: BR

SCARS: ___ TATTOOS: _____

ADDRESS: Gaither Cv HOME PH: 774-9484

CITY: Memphis STATE: Tenn WORK PH: _____

SECOND ADDRESS: _____

COMMENTS: Kept 475.00 on PC Beep

S/C Shaff 12/11/91
OFFICER SIGNATURE DATE

MEMPHIS POLICE DEPARTMENT

ORGANIZED CRIME UNIT

INTER OFFICE MEMO

TO: LT. CHUCK BRYANT

FROM: SGT. C.L. HUFF

DATE: DECEMBER 11, 1991

SUBJECT: LOST BUY MONEY

ON 12-6-91, ALFREDO BERNARD SHAW, C/I #1069, WAS ISSUED $475.00 ON RECEIPT #12309 FOR THE PURPOSE OF MAKING A P/C BUY FOR A SEARCH WARRANT. THE WRITER TOOK SHAW TO SOUTHWALL AND LAMAR WHERE THE C/I GOT OUT OF THE CAR AND WAS GOING TO WALK TO A HOUSE ON SOUTHWALL TO MAKE THE P/C BUY.

AS OF THIS DATE THE C/I HAS NOT RETURNED THE MONEY OR NARCOTICS BOUGHT WITH THE MONEY AND HAS NOT MADE ANY ATTEMPTS TO CONTACT THE WRITER OR THIS OFFICE.

AN OFFENSE REPORT WAS TURNED IN ON TODAY'S DATE, REPORT #9112113682 AND A WARRANT WILL BE OBTAINED FOR HIS ARREST.

MEMPHIS POLICE DEPARTMENT

ORGANIZED CRIME UNIT

INTER OFFICE MEMO

TO: LT. CHUCK BRYANT

FROM: SGT. C.L. HUFF

DATE: DECEMBER 11, 1991

SUBJECT: LOST BUY MONEY

ON 12-6-91, ALFREDO BERNARD SHAW, C/I #1069, WAS ISSUED $475.00 ON RECEIPT #12309 FOR THE PURPOSE OF MAKING A P/C BUY FOR A SEARCH WARRANT. THE WRITER TOOK SHAW TO SOUTHWALL AND LAMAR WHERE THE C/I GOT OUT OF THE CAR AND WAS GOING TO WALK TO A HOUSE ON SOUTHWALL TO MAKE THE P/C BUY.

AS OF THIS DATE THE C/I HAS NOT RETURNED THE MONEY OR NARCOTICS BOUGHT WITH THE MONEY AND HAS NOT MADE ANY ATTEMPTS TO CONTACT THE WRITER OR THIS OFFICE.

AN OFFENSE REPORT WAS TURNED IN ON TODAY'S DATE, REPORT #9112113682 AND A WARRANT WILL BE OBTAINED FOR HIS ARREST.

M.O. INFORMATION — MORE? ____

Type of Business _____ Type of Structure _____
Place of Attack _____ Description of Area _____
Targets _____ / _____ Security Used _____
Point of Entry _____ Point of Exit _____
Tools Used _____ How Tools Used _____
How Entered _____ Weather _____ Lighting _____

Weapon Used _____ Weapon Type _____
Weapon Color _____ Weapon Size _____
Suspect Actions _____ / _____ / _____
Words Spoken _____

WORTHLESS DOCUMENT INFORMATION — MORE? ____

Type Instrument _____ Instrument No. _____ Date ____ / ____ / ____
Card Company _____ Account Name _____ Color _____
Signature _____ Bank Name _____
Instrument Amount _____ Amount of Loss _____
Preparation Method _____ ID Used _____
Who Accepted Transaction (Victim/Complainant/Witness) _____

PROPERTY INFORMATION — MORE? ____

(01) Currency
02 Jewelry, Precious Metal
03 Clothing
04 Office Equipment
05 TV, Stereo, Radio, Camera, etc.
06 Firearms
07 Household Goods
08 Appliances
09 Consumable Goods
10 Livestock
11 Miscellaneous
12 Musical Instruments
13 Sporting Goods

Property Code 01 Item Type $475.00 Item Description Cash / _____
Color _____ Brand Name _____ Model # _____ Serial # _____
Unit/Measure _____ Size _____ Quantity Taken _____ $$ Taken _____ $$ Recovered _____

Property Code _____ Item Type _____ Item Description _____ / _____
Color _____ Brand Name _____ Model # _____ Serial # _____
Unit/Measure _____ Size _____ Quantity Taken _____ $$ Taken _____ $$ Recovered _____

Property Code _____ Item Type _____ Item Description _____ / _____
Color _____ Brand Name _____ Model # _____ Serial # _____
Unit/Measure _____ Size _____ Quantity Taken _____ $$ Taken _____ $$ Recovered _____

Property Code _____ Item Type _____ Item Description _____ / _____
Color _____ Brand Name _____ Model # _____ Serial # _____
Unit/Measure _____ Size _____ Quantity Taken _____ $$ Taken _____ $$ Recovered _____

Property Code _____ Item Type _____ Item Description _____ / _____
Color _____ Brand Name _____ Model # _____ Serial # _____
Unit/Measure _____ Size _____ Quantity Taken _____ $$ Taken _____ $$ Recovered _____

NARRATIVE INFORMATION — MORE? ____

On 12-6-91 the above Decscribed MB who is a CI for Memphis Police Org. Crime Unit was assigned $475.00 on Rec 12304 for the Purpose of making a Probable Cause Buy. The Sgt took the Property & has not returned the Money as Yet. Not able to Contact this Officer as of this date.

EXHIBIT 30

02C01-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

FILED 12/30/97
WILLIAM R. KEY, CLERK
BY Bennett D.C.

STATE OF TENNESSEE, Appellee,	*	Cause Nos. 94-02797
VS.	*	94-02798
TONY CARRUTHERS and JAMES MONTGOMERY, Appellants.	*	94-02799
	*	95-11128
	*	95-11129

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE, OPENING STATEMENTS AND CLOSING ARGUMENTS

VOLUME 20 OF 82 VOLUMES

Vol. 77

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:
PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
201 Poplar Avenue - Third Floor
Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:

HAROLD D. ARCHIBALD, ESQ.
Archibald and Halmon, P.C.
Suite 900
22 North Front Street
Memphis, Tennessee 38103

J.C. MCLIN, ESQ.
Attorney at Law
Suite 201
301 Washington Avenue
Memphis, Tennessee 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By

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CROSS-EXAMINATION BY MR. ARCHIBALD..... 2696
REDIRECT EXAMINATION BY MR. HARRIS..... 2698
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WITNESS: NAKEITA MONTGOMERY SHAW
DIRECT EXAMINATION BY MR. ARCHIBALD..... 2727
WITNESS: MATTIE M. CALHOUN
DIRECT EXAMINATION BY MR. ARCHIBALD..... 2732
DEFENDANT: JAMES MONTGOMERY
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TS-02-77-0006178

you, Delois Anderson was not the first to die. She was alive when she went in. She heard gunshots, and when she heard those gunshots she knew who they were for. That made her last few minutes torture.

Remember, she wasn't out when she went in. She wasn't unconscious. She is in that grave, and she hears gunshots. Who do you think she thought was being killed? Not only is she going to die, but her son, her own blood that she had brought into the world was fixing to die.

Ladies and gentlemen, grossly wicked, reprehensible, abominable, odious, and vile, that's what we have here.

Atrocious means extremely evil or cruel, monstrous, exceptionally bad. There is that name again, abominable. It's the same thing. The same thing.

She is there in that grave breathing in her last breath, and the irony -- it's not irony. The tragedy of it is that as she actually breathed in her last breath she was in effect killing herself, bringing things into her body, dirt being on top of her. What worse could you have?

Cruel means disposed to inflict pain. My goodness, do we have any evidence of a disposition to

EXHIBIT 31

W2006-00376-CCA-R3-PD

Document received by the TN Supreme Court.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

THIRTIETH JUDICIAL DISTRICT OF MEMPHIS
DIVISION 6

TONY CARRUTHERS,)
Petitioner,)
vs.) CASE NO.: P-259491
THE STATE OF TENNESSEE,)
Respondent,)

PETITION FOR POST-CONVICTION RELIEF
AUGUST 29TH - 31ST, 2005
VOLUME 1 OF ~~3~~ 4

Volume 1 of 20 Volumes

THE HONORABLE WALTER C. KURTZ, PRESIDING JUDGE

APPEARANCES

FILED 5-16-06
WILLIAM B. KEY, CLERK
BY _____ D.C.

FOR THE RESPONDENT:
JOHN CAMPBELL
Assistant District Attorney General
Shelby County District Attorney's Office
201 Poplar Avenue - 3rd Floor
Memphis, Tennessee 38103

FOR THE PETITIONER:
WILLIAM T. RAMSEY
JAMES G. THOMAS
AARON MORRIS
Attorneys at Law
150 Forth Avenue, North
Suite 2000
Nashville, Tennessee 37219

LARRY COPELAND
Attorney at Law
242 Poplar Avenue
Memphis, Tennessee 38103

Reported by
Fay Stinson
Court Reporter

FILED
JUL 05 2006
Clerk of the Courts
Rec'd By _____

Vol. 13

Document received by the TN Supreme Court.

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IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

THIRTIETH JUDICIAL DISTRICT OF MEMPHIS
DIVISION 6

TONY CARRUTHERS, Petitioner, vs. STATE OF TENNESSEE Respondent,	)))))	CASE NO. P-25948

This cause came on to be heard and was heard on the 29th day of August, 2005, before the Honorable Walter C. Kurtz, Judge, holding Criminal Court for Shelby County at Memphis, Tennessee.

The following proceedings were had, to wit:

* * * * * * * *

THE COURT: Well, I know we don't have the petitioner yet, but let's just sort of use this time as a kind of a pretrial conference. If counsel for the petitioner can just sort of let me know where we're going here, how much time you think it's going to take and then the state can sort of give me an idea as well.

MR. RAMSEY: Your Honor, we think that our proof will take about two and a half days would be our best guess. We've worked out some matters by

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stipulation with the state. We probably can work out some more and try to streamline putting the proof in and then we would anticipate the state putting on whatever proof it has after that.

THE COURT: Okay. Mr. Campbell, how much proof do you think you're going to have time wise?

MR. CAMPBELL: It's going to depend on what I hear. I may not have anything to put on. It just depends on -- unless there's something raised I feel needs it, but I don't -- I'm just really going to have to hear what their proof is. But at this point I can't tell the Court. It depends on what I hear.

And I did -- this is the record from Jackson, Your Honor, I brought it in if we need it. If Your Honor is going to maybe want it. I think all of the exhibits are in there too.

THE COURT: Well, we had a couple of loose ends that had come up in the last 10 days. The motion related to the potential witness in the federal institution in Louisiana and the issue of the juror. Mr. Thomas, you want to speak to either one of those sort of loose ends? Or are there any other loose ends that I am unaware of?

MR. THOMAS: Your Honor, has heard of Juror 127?

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THE COURT: Yes.

MR. THOMAS: Yeah. We have her under subpoena for sure. And we've communicated to her through the Court's law clerk that she was not -- she did not have to worry about being here today because of her surgical procedure that she had corresponded with Mr. Copeland about. I mean, I guess if push -- I mean, this is obviously the worse -- the least desirable scenario, but if we can't communicate with her by phone, I guess there is the service of the Sheriff's Department to avail, to possibly avail ourselves of. We've never had any ability to communicate with her by telephone.

THE COURT: Okay. Mr. Campbell, I think you had a phone conversation with her, and then I'll tell you what my law clerk was able to discover.

MR. CAMPBELL: She called me I guess it was on Thursday, maybe Wednesday or Thursday. I can't remember which day it was and was concerned -- apparently she talked with Mr. Copeland and Mr. Copeland gave her my name. So she called me and as a told her, I can't do anything about a subpoena. She's subpoenaed for the petitioner. But that she needed to talk to them and see about trying to make some kind of an arrangement. And when I talked to Mr. Thomas, apparently their feeling was that they would work with her at any time this week

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that she could come in. That would be fine. And as far as I'm concerned, that seemed to settle everything. I have not talked to her myself since that time. But I was hoping that may be would have been resolved and we would either have her later in the week or if it became a point where she couldn't get down here, I mean, I don't mind holding her if necessary even by deposition later. But, I mean, it's not -- I don't think it's going to be that big a problem down the road even if she can't make it this week.

THE COURT: Okay.

MR. THOMAS: Your Honor, certainly there have got to be other ways of dealing with it. I think she is a witness that in our judgment the Court would really need to observe her for reasons that I won't go into. So that a deposition would not be satisfactory.

THE COURT: Well, after my office was contacted, I guess this came up while I was in New Orleans. Actually, my law clerk called me. But he was able to -- I told him to try to communicate with Juror 127 and tell her that, given what I thought was just a minor surgery, that we'd be glad to accommodate her by hearing from her either on Wednesday or Thursday morning. But he couldn't find a phone number for her, and I believe -- you don't have --

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MR. CAMPBELL: Well, I can't find the number she gave me. Apparently I accidently filed it back in one of those boxes and I was trying to find it and I couldn't find it. But I didn't think she was going to be this hard to locate.

THE COURT: Well, he got the latest number , from the clerk and left a message on her answering machine that we would accommodate her and would be glad to hear from her either Wednesday or Thursday morning, but nobody has heard from her. And so maybe later in the day we can try to have the deputy clerk call that number again and see if we can confirm some communication with her. That's probably the best we can do. And if we somehow lose her and you all convince me she is necessary, you know, I guess I can hear from her another time or if you think I've just go to view her, we could do a video deposition of her.

MR. THOMAS: Yeah, I hadn't thought about that.

THE COURT: We'll work something out. What do we know about -- is he here? We can bring him in then.

(Defendant present.)

MR. THOMAS: One comment to make about Juror 127 that's a matter of record is that she is the one who returned the questionnaire with -- affirming that there

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had been some discussion about Juror 121 living close by the Carruther's family during the trial. So she is -- that's one reason we consider her significant.

THE COURT: Okay. I might add, you sent me a couple of very last minute ex parte orders which I have signed and I'll give to the clerk during the next break.

MR. THOMAS: Well, one of them of course, one of them, Judge, we -- only came up recently and the other one came up as I was, you know, kind of trying to figure out where we stood with -- in the account with one of the experts. So I apologize for any belatedness that it was.

THE COURT: That's okay. I wanted to let you know that I signed them.

MR. THOMAS: Okay. Thank you. And Your Honor wanted to hear from me about Mr. Holmes. The juror -- not the juror -- the federal inmate in Pollock, Louisiana.

THE COURT: Why, may not be the right word, but if you want to speak to the record about that --

MR. THOMAS: Well, I don't know that I can add a whole lot more to what we put in our papers right now. We would like to hope that the Court might be willing to reconsider the situation with Mr. Holmes as we get further into the proceeding. I had tried to contact --

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I mean, I was willing, you know, our firm has made a commitment to, you know, we're not going to spare any expense here. And I was willing to go down to Pollock and interview him. And I had correspond -- I sent him a letter in early June to which I received no response, and then I made a renewed effort in July. His counselor got me on the phone with him. And Mr. -- as I recited in our papers, Mr. Holmes said he didn't want to talk to me down there.

So I was -- so in terms of the factual showing that I could make to the Court in our papers I was, you know, I was limited. And we had this transcript of this interview that had been done by an investigator back in '96.

THE COURT: I read it.

MR. THOMAS: But as I, you know, as I acknowledged in our papers, it was such a bad interview that you couldn't tell what, if anything, Mr. Holmes might have to say.

THE COURT: Well, there was also an offer of proof by Mr. Holmes.

MR. THOMAS: There was that, but he was cut off. I mean, there was what as we pointed out in our favor, even though he was here in the courtroom, the trial judge cut off the offer of proof so ...

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THE COURT: Well, as I said in the order, I'm unwilling to order a federal prisoner either by Writ of Habeas Corpus Ad Testificandum or by agreement between the sheriff and the Federal Bureau of Prison under the regulations up here to Shelby County just for the purposes of discovery. And I didn't think that the offer of proof was sufficient to convince me that he was a necessary witness given the record in the case. I also might add, that if it's Mr. Holmes' concerns about not wanting to be interviewed down in Louisiana, strike me as a bit odd given the fact that his fellow inmates I would think would be just as curious if he was shipped up here to Shelby County for some mysterious reason as they would if a lawyer came from Nashville to talk to him in private.

I might also add that the Bureau of Prisons, I believe, would be willing to allow his testimony by audio, an audio facility, that they have available where Mr. Holmes would be put in a room with a microphone in isolation and could then testify by phone.

MR. THOMAS: Yes, sir, Your Honor. And that was Your Honor's suggestion. And Mr. Morris -- Mr. Morris contacted some folks down at Pollock and was told that that particular institution doesn't have that capacity.

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THE COURT: Well, I don't believe that that's true. They don't have video capacity, but they do it by phone. But, anyway, the record ought to show that Mr. Carruthers is now in the courtroom. Okay. Short opening statements.

(Defendant present.)

MR. THOMAS: Yeah, Your Honor. I guess in terms of what we're going to focus our live proof on in the next few days, it's -- I guess it's going to be -- can we ask for the Rule while we're -- I don't guess we've called anybody yet.

THE COURT: You can. All of the potential witnesses should step into the hallway. You'll be called when it's your turn to testify. Please do not talk about your testimony with anyone except the lawyers in the case. And I know for on-call witnesses the -- counsel will cooperates in seeing that the Rule is enforced.

MR. THOMAS: Yes. Our first witness, Dr. Blake, is in the courtroom. I assume it will be all right for him to stay.

THE COURT: Yes, unless opponent wants him out during the opening statements.

MR. CAMPBELL: That's okay, Your Honor.

MR. THOMAS: In terms of the proof we're

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planning to put on this week, Your Honor, it revolves -- it revolves around four issues. And these aren't the only issues in the case by any means, but these are the ones that we've concluded we needed live evidence on.

THE COURT: Well, you've got a 123 page petition here so there are many, many issues.

MR. THOMAS: Well, I think -- I wouldn't challenge the proposition that the petition is somewhat repetitious at points.

THE COURT: Okay.

MR. THOMAS: But we were going to be putting on proof of ineffective assistance of counsel both at the pretrial phase and I underscore the term pretrial because of the fact that the -- given the holding of the Court, the Supreme Court, that Mr. Carruthers cannot himself have been ineffective within the Sixth Amendment sense of proceeding pro se. And then we also have the issue ineffective assistance of counsel on appeal which will require a bit of evidence. Then subsumed within the issues (indiscernible) we have just for the Court's to give -- to let you know where we're going, we have subpoenaed all six of the -- of the lawyers who had represented including one lawyer/investigator who represented Mr. Carruthers prior to trial as well as two of the appellant counselors.

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Now, subsumed within the issue of the ineffective assistance and particularly within the -- on the issue of ineffective assistance on appeal, we're saying that counsel was ineffective for failing to raise the anonymous jury issue. That's not going -- that's essentially a matter of record and it won't require very much in the way of live evidence.

The second thing we're saying or that we're underscoring on ineffective assistance of counsel on appeal, is the failure of appellant counsel to make an issue out of the Trial Court's handling of the (indiscernible) defense forensic pathologist expert, Dr. Blake. And we have Dr. Blake here to testify. And we also have a forensic pathologist from Louisville, Kentucky who will be our second witness, Dr. George Nichols on that issue.

The third issue that we're going to be putting live evidence on concerns the failure of appellant counsel to make an issue about the Trial Court's failure to conduct an inquiry when it developed during the course of the trial that one of the anonymous jurors lived literally two doors down from the Carruthers' family.

THE COURT: And that was Juror --

MR. THOMAS: 121. And since he's not

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anonymous, it's Mr. Adams who's outside the courtroom today. There was a Motion for a Mistrial. There was -- counsel for Mr. Montgomery made a Motion for a Mistrial when it was -- when it finally came out that we were talking about that kind of proximity between Juror 121 and the Carruthers' family which the Trial Court denied. But we're saying that that was an issue that should have been factually developed in the context of the Motion for a New Trial and then proceed on direct appeal. Unless Mr. Ramsey has anything to add.

MR. RAMSEY: I can't think of anything.

MR. THOMAS: Oh, whoa, whoa. I'm sorry. And then the late breaking issue, we -- as the Court's aware, we very recently obtained a copy of a DNA forensic testing report from the Bodie Technology Group through Mr. Montgomery. And we have made arrangements to have that lab technician or the -- whatever his title is, testify tomorrow morning.

THE COURT: All right.

MR. THOMAS: And, again, that would go -- that would go to the issue of ineffective assistance of counsel pretrial.

THE COURT: Mr. Campbell, anything you'd like to say before we start?

MR. CAMPBELL: No, Your Honor.

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THE COURT: All right. First witness then, please.

MR. THOMAS: Your Honor, our first witness is Dr. Cleveland Blake.

THEREUPON:

DR. CLEVELAND BLAKE

was called, and upon first being duly sworn, was examined and testified as follows on:

MR. THOMAS: Let me give the witness a moment to get his -- if I may, Your Honor.

THE COURT: Sure.

VOIR DIRE

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Dr. Blake, are you ready to proceed?

A. Yes, I am.

Q. Could you state your name please, sir?

A. I'm Dr. Cleveland Blake.

Q. And where do you reside Dr. Blake?

A. 1439 Central Church Road, Morristown.

Q. And since we don't have a jury here and in the interest of expeditating matters, it's my understanding -- it's my understanding that you're Board Certified in the areas of forensic pathology, clinical

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pathology and anatomical pathology; is that correct?

A. That's correct.

Q. Let me hand up to you what we'll mark for identification as Petitioner's Exhibit 1 and ask if you can identify this please, sir.

A. This is an up-to-date copy of my curriculum vita.

MR. THOMAS: And if -- and I would like to go ahead and offer Exhibit 1 into evidence if I may.

THE COURT: All right.

MR. THOMAS: I'd also like to tender -- I'd also like -- I don't know how the Court normally handles expert witness issues, but I'd like to tender Dr. Blake as an expert in the fields that I have just recited.

THE COURT: Well, Mr. Campbell is probably familiar with his credentials and so -- any need to voir dire him on that, Mr. CAmpbell?

MR CAMPBELL: No, Your Honor.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Dr. Blake, could you --

COURT REPORTER: Could I have one moment?

DEPUTY: She needs to mark this.

MR. THOMAS: I'm sorry. I'm sorry. And, Your

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Honor, I was -- in speaking with Mr. Ray Beck, we talked about the handling of exhibits and his suggestion was that we just number them as we enter them. We haven't tried to prenumber them or anything.

THE COURT: Okay. That will be fine.

(Exhibit 1 marked and entered.)

BY MR. THOMAS:

Q. If you could pass it up to Dr. Blake. Dr. Blake, can you estimate for us approximately how many autopsies you've performed over the course of your career?

A. Somewhat over 6,000.

Q. And, Dr. Blake, over the course of your career, did you have an affiliation with the Tennessee Bureau of Identification?

A. Yes, I did for 22 to 24 years.

Q. And were you actually commissioned by the Tennessee Bureau of Identification in some capacity?

A. Yes, I was.

Q. And could you tell the Court a little bit more about the nature of the work you did for the TBI over the course of your career?

A. I was commissioned by the then director of the TBI, Mr. Arzo Carson, (phonetically) the founder of the independent TBI for teaching and for working with the

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agents in the field, death scene investigation, teaching in Nashville at the head quarters, special class teaching, and all fields of death scene investigation. And that went on for about 22 years.

Q. And did there come a point in time when you were no longer commissioned by the TBI?

A. Yes.

Q. And approximately when was that? The specific date is not critical?

A. Five or -- six to eight years ago. Six years ago.

Q. So 1999, 2000?

A. In that time, yes.

Q. But in the year 1996 you would have been -- you still would have been a commissioned -- you would have had a professional relationship with the Tennessee Bureau of Identification?

A. Yes, I would.

Q. Now, let me ask you to turn to Page 4 of your C.V. which is Exhibit 1.

A. Yes, sir.

Q. And I'll just note very quickly that there are three -- you make three references to your professional relationship with the TBI from 1978 to September 2001, from 1982 to 1992 and from 1992 to September 2001. Do

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you see those?

A. Yes, I do.

Q. Now, I take it you've probably testified in a large number of criminal trials over -- or criminal proceedings over the years?

A. Quite a few.

Q. In general, has your testimony generally been -- have you more often than not testified for the prosecution in these criminal trials?

A. That's correct.

Q. Any estimation of the break down between times you've testified as a prosecution witness and the times you've testified as defense witness?

A. Six or seven to one.

Q. Now, directing your attention, Doctor, to late February 1996, did you receive a call from Judge Joe Dailey here in Memphis about the Tony Carruthers and James Montgomery case?

A. Yes, sir, I did.

Q. Have you ever spoken with or even heard of Judge Dailey before this?

A. No, I had not.

Q. Have you done very much work in Shelby County before 1996?

A. A few cases.

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Q. Had you ever appeared in the Shelby County Criminal Courts that you recall before 1996?

A. Yes, I have.

Q. About how many cases? Any idea? I'm sorry. I didn't really --

A. Three or four.

Q. Now, what was Judge Dailey calling you about?

A. Judge Dailey called me about reviewing some records on a case that I knew nothing of before I started studying and to write an opinion which turned out to be a three-page opinion answering the basic questions as I saw it from the records that were presented.

Q. Okay. So what was the up-shot -- and what was the up-shot of your conversation with Judge Dailey? What was the next step?

A. I had correspondence with him on the 2nd of April '96, and the 19th of April '96. In between those, I had tendered him my opinion which is a three-page document that's probably in the record.

Q. Yes, sir. Let me tender to you what we'll mark for identification as Petitioner's Exhibit 2. And I'll ask you if you can identify that exhibit for us, Doctor?

A. Yes, I can.

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Q. And how would you describe it?

A. It's a communication between Judge Joseph Dailey and myself concerning the informed -- concerning Mr. Carruthers.

MR. THOMAS: And if we may, Your Honor, I'd like to go ahead and offer Exhibit 2 into evidence.

THE COURT: All right.

Q. And I see in the first sentence of the letter from Judge Dailey that he refers to having received your fax of yesterday which would have been February 27. Do you have any recollection of what you would have -- I'm sorry. I need to slow down.

MR. THOMAS: We need to mark the exhibit.

(Exhibit 2 marked and entered.)

BY MR. THOMAS:

Q. Dr. Blake, you have Exhibit 2 there in front of you?

A. Yes, I do.

Q. And I see in the first line of Exhibit 2 that Judge Dailey refers to the fax he received from you yesterday. Do you have any recollection of what you would have faxed to Judge Dailey on February 27, '96?

A. Yes. That would have simply been my agreement to review the material and provide a report.

Q. What about perhaps your curriculum vita?

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A. I would think so.

Q. Now, did you subsequently -- and I think you've already referred to this, but did you subsequently receive some additional materials from Judge Dailey?

A. Yes, I did, on April the 2nd and April the 19th.

Q. Let me -- we're not -- let me back up for a moment, Dr. Blake. I believe there was actually some more -- because I want to focus on the material that Judge Dailey supplied to you before you -- before you generated your report of April 1st and the letter of April 19th. And let me hand up to you what we'll mark for identification as Petitioner's Exhibit 3. Can you identify that for us please, Doctor?

A. Yes. This is a letter to me from Judge Dailey telling me what would be supplied.

Q. And he talks about a letter from Mr. Jerry Harris, the lead prosecutor in the case, along with the autopsy reports on each of the three victims; correct?

A. That's correct.

MR. THOMAS: And I may have got ahead of myself, but I'd like to offer Exhibit 3 into evidence for the petitioner.

THE COURT: All right.

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(Exhibit 3 marked and entered.)

MR. THOMAS: Your Honor, would Your Honor like to be handed courtesy copies of the exhibits as we go along?

THE COURT: I would if you have them.

MR. THOMAS: Let's see. We can -- well, we need to make one more round I guess. We can do that after lunch I guess. Because these are marked up unfortunately.

BY MR. THOMAS:

Q. Let me hand you, Dr. Blake, what we'll mark for identification as Petitioner's Exhibit 4.

MR. THOMAS: I have a suggestion, Your Honor, if the witness could hand up the exhibits after we're through discussing them, I guess that might serve the same.

THE COURT: Okay.

BY MR. THOMAS:

Q. And can you identify Exhibit 4 there, Dr. Blake?

A. It's a letter from Jerry Harris to Judge Dailey indicating that the attached autopsy on the three victims, photographs, autopsy reports, and the crime scene video, was to him naming the victims, one, two and three, some facts about a vehicle that was found burned

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in Mississippi, and the missing person's reports which were submitted, and then how the bodies were discovered and when and where.

Q. And Mr. Jerry Harris is who?

A. Assistant District Attorney General.

Q. Of Shelby County?

A. Yes.

Q. And this is a copy of a letter from your file; correct?

A. Yes, it is.

MR. THOMAS: And I'd like to go ahead and introduce Petitioner's Exhibit 4, Your Honor.

THE COURT: All right.

(Exhibit 4 marked and entered.)

BY MR. THOMAS:

Q. Let me go ahead and hand up collectively what we'll mark as Petitioner's Exhibits 5, 6, and 7 which I represent are copies of the copies of the autopsy reports. Exhibit 5 is the Anderson report. Here's a copy. Marcellos Anderson, that's Exhibit 5. Exhibit 6 will be the autopsy report for Fredrick Tucker. And Exhibit 7 will be the autopsy report for Delores Anderson. Dr. Blake, it's a fair amount of paper, but I have one simple question, are those copies of the autopsy reports that you received from Judge Dailey from

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your file?

A. Yes, sir, they are.

Q. And if you would, Doctor, just take a minute. Are the handwritten notations that appear on the copies, are those your handwritten notations or somebody elses or a combination? If you could take just a moment?

A. There are original handwritten notes on the diagrams of each of these. Those are put on there by those who performed the autopsies. And the notes on the front sheet are some of my notations. That's on the case of Marcellos Anderson. The notes on the front sheet which is called the autopsy report are my writings, and there appears to be a copy of my highlighting for the purposes of processing these. All of the small handwriting on the diagrams, that's from those who prepared the original autopsy report. I'm referring to the Autopsy 140 which is Mr. Fredrick Tucker.

Q. And that's Exhibit 6?

A. That's right, sir. And the microscopic summaries, there's quite a bit of highlighting by myself and a very few words or other marks on that one. Autopsy 141 is that of Delores Anderson. Under cause of death on the front sheet there's some writing by me. And the notes at the bottom, those are all my

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handwriting at the very bottom of that front sheet. Otherwise it's highlighting and small handwritten, small lettering of the handwriting of the different comments on the diagram sheets.

Q. So if I may summarize, the handwriting that appears on what you're referring to as the diagram sheets, were how the documents arrived in your office?

A. That's correct.

MR. THOMAS: Your Honor, at this time I'd like to go ahead and introduce or offer Petitioner's Exhibit 5, 6 and 7 into evidence.

THE COURT: All right.

(Exhibits 5, 6 and 7 marked and entered.)

DEPUTY: They've already been marked.

MR. THOMAS: They've already been marked. Thank you.

A. The handwriting on the bottom of the microscopic summaries, the first page of the microscopic summary, that is my handwriting.

Q. On the Delores Anderson report?

A. Delores Anderson, yes.

Q. Exhibit 7?

A. Yes. That's correct.

Q. Doctor, do you want to go ahead and hand those exhibits up to Judge Kurtz. Now, you may have -- this

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may be a little bit repetitious. But what did you do? So you received from Judge Dailey the letter from Mr. Harris and the three autopsy reports; correct?

A. That's essentially it.

Q. And anything else that you received from Judge Dailey before you prepared your April 1, letter?

A. No. I think that's it.

Q. Okay. Did you ask Judge Dailey for any additional material before your April 1, report that you can remember?

A. I told him that I would like to see the microscopic slides which I haven't seen. But I also pointed out to him that the description of the microscopic findings would be essentially the same as what I would do because the one who prepared those and I were singing from the same song book because of our training and our experience.

Q. Now, I think you've already referred to your report and this was one, Your Honor, that we do have a preexisting clear copy of. Let me hand up to you what we'll marked for identification as Petitioner's Exhibit 9.

COURT REPORTER: This would be 8.

MR. THOMAS: I'm sorry. This is Exhibit 8. I got ahead of myself.

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Q. Petitioner's exhibit -- and ask if you can identify Petitioner's Exhibit 8 for us please, Dr. Blake?

A. That's a copy of my April 1, 1996 response to the case.

MR. THOMAS: And Your Honor, I would note for the record that this -- the three-page letter dated April 1, 1996 appears in the technical record at Pages 703 through 705. And I would at this time offer Petitioner's Exhibit 8 into evidence.

THE COURT: All right.

(Exhibit 8 marked and entered.)

BY MR. THOMAS:

Q. If you can hand Exhibit 8 back to the witness please, sir. Let me just in passing, Dr. Blake, on the top of Page 1 in your letterhead, I see that in your letterhead you identify yourself as a forensic pathology consultant to the TBI. Do you see that?

A. Yes, I do.

Q. And before you had prepared -- and so you sent as evidenced by the fax transmittal sheet, that's the first page of Exhibit 8, you sent this report directly to Judge Dailey in the first instance; correct?

A. That's correct, on April 1.

Q. And before you had prepared your April 1, 1996 report, Exhibit 8, had you had any communications

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whatsoever with Mr. Tony Carruthers?

A. No, I did not.

Q. Have you ever spoken with Mr. Tony Carruthers?

A. No, I have not.

Q. Is this the first time you have seen Mr. Tony Carruthers?

A. That's correct.

MR. THOMAS: And, Your Honor, I don't want to -- I know we don't have a jury here, but if the Court would indulge me and ask Dr. Blake to read the short paragraph that appears on Page 3 towards the bottom of the page, in summary. Would you mind reading that for us, Dr. Blake?

A. In summary it would appear that the two black males were killed somewhat before the female who disappeared later. All three of the victims having their lives snuffed out well before an adequate time to place them and conceal their bodies in the bottom of the already prepared burial site before Daniel's casket and vault were placed in the ground some time on February the 25th.

Q. And was that your opinion as the time based upon the materials that had been provided to you?

A. That I had, yes. I trust that these observations are of some value. I do not note that the

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specific questions concerning the times of the deaths were really addressed by the pathologist, his having simply set out his findings. All three bodies showed similar postmortem changes which certainly all occurred after the interment under the vault. The time was simply too short for any postmortem changes to have occurred in these bodies prior to placement in the ground some time in the early part of day on February the 25th.

Q. And then you say I will contact you about these conclusions?

A. Yes, sir.

Q. And I've already offered it as an exhibit. Let me hand you what we'll mark for identification as Petitioner's Exhibit 9, Dr. Blake. I'll ask if you can identify that document?

A. April 2, '96, a letter to me from Joseph B. Dailey. I received your report dated April 1.

Q. Before you read it, before you read it and it's very short, but before you read from it, Dr. Blake, if I can go ahead and offer Petitioner's Exhibit 9 into evidence:

THE COURT: All right.

MR. THOMAS: And I guess we'll have to mark it.

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(Exhibit 9 marked and entered.)

BY MR. THOMAS:

Q. Dr. Blake, if you could go ahead and pass Exhibit 8 up to Judge Kurtz. That's the one we have. That's the one we gave to him.

THE COURT: Do you want him to have 9?

MR. THOMAS: Yes, sir.

BY MR. THOMAS:

Q. Dr. Blake, since it is so short, if you would just read Judge Dailey's letter to you?

A. April 2nd, '96, Dear Dr. Blake, I received your report dated April 1, '96. I assume that Mr. Carruthers will contact you if he plans on having you testify at the trial. I have indicated to Mr. Carruthers that he's welcome to communicate directly with you and you with him without the necessity of going through me. If you have any questions, please feel free to contact me.

Q. And you -- and you had some handwritten notations on your copy -- on the letter; correct?

A. That's correct.

Q. And why don't you since -- your handwriting is pretty good, but if you would, just read to the Court what you wrote in response to Judge Dailey?

A. In the first line, I assume that Mr.

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Carruthers, and I put a line out, the defendant because I was in the early stages of understanding who was who. Over on the side I have written Mr. C. is in jail. How am I to communicate with him? Go to Memphis, question mark.

Q. So that was your reaction to Judge Dailey's letter?

A. That's my thinking at the time --

Q. Yes, sir. And basically if I can summarize, you were asking yourself how were you supposed to communicate with this man who's in jail in Memphis?

A. That's correct.

Q. If you could hand that up to Judge Kurtz please, sir. Now, let me hand you what we'll mark for identification as Petitioner's Exhibit 10. And have you hand Exhibit 9 up to Judge Kurtz, Dr. Blake? I'm sorry.

THE COURT: He has. The clerk has it now.

Q. And, again, my question, Dr. Blake, is whether you can identify Exhibit 10 for us?

A. The one in my hand?

Q. Yes, sir.

A. It's a letter to Dr. Francisco concerning microscopic slide requests. Following telephone conversations this day with Judge Joseph B. Dailey of your city, also pursuant to phone conversations with a

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private investigator by the name of John Billings as well as his associate, Mr. Leslie Arms, I am hereby requesting access to the microscopic slides, gross photographs and any other material in your file concerning the deaths of Marcellos Anderson, Delores Anderson and Fredrick Tucker.

Q. And, Doctor, I don't mean to be rude, but if I can stop you right there and let me go ahead and offer Exhibit 10 into evidence.

(Exhibit 10 marked and entered.)

BY MR. THOMAS:

Q. And I'm not going to ask you to read from any more of Exhibit 10, but -- and let me -- I'm not going to ask you to read any more from Exhibit 10, Doctor, but Dr. Francisco was the medical examiner here in Shelby County at the time; correct?

A. That's correct.

Q. And let me -- and you can hand that up to Judge Kurtz. That's all I wanted to ask you about that, Doctor. Let me hand you what we'll mark for identification as Petitioner's Exhibit 11. And the standing question, Doctor, is whether you can identify this document?

A. Yes, I can.

Q. And if you would?

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A. It's a letter to me from Dr. J.T. Francisco, professor of pathology who was the Chief Medical Examiner of the state at the time. Dear Dr. Blake, you're certainly welcome to have access to anything we have. Please let me know when you plan to be in town so we can have everything ready here at the center for expeditious review.

MR. THOMAS: And I'd like to go ahead and offer Exhibit 11 into evidence.

(Exhibit 11 marked and entered.)

BY MR. THOMAS:

Q. And again, Dr. Blake, all of the documents that we've gone over to this point are copies of materials from your file; correct?

A. That's correct.

Q. And I may have gotten ahead of ourselves a little bit, but in your April 4 letter to Dr. Francisco, Exhibit 10, you had requested access to the microscopic slides, gross photographs and any other material in your file, Dr. Francisco's file, concerning the deaths of the victims Marcellos Anderson, Delores Anderson and Fredrick Tucker. And that was the subject -- that's what Dr. Francisco was getting back to you on in Exhibit 11; correct?

A. That's correct.

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Q. Did you ever have the opportunity to review those, the microscopic slides, gross photographs and the items referred to in your letter of April 4, Exhibit 10?

A. The gross photographs I have had the opportunity to evaluate. The videos, both from the autopsy which have been transposed into prints. These same pictures in question.

Q. And those are the items that I sent to you very recently?

A. That's correct.

Q. But you didn't have a chance to review the items referred to in Exhibit 10 at the time back in 1996, did you?

A. That's correct.

Q. Because you didn't -- you never travelled to Memphis in connection with this case at the time?

A. That's correct.

Q. And if you could hand Exhibit 11 up to Judge Kurtz, please. Now, let me hand you what we'll mark for identification as Petitioner's Exhibit 12. If you could identify that for us please, sir.

A. It's a letter to me from Judge Dailey on April 8. Dear, Dr. Blake, I was unable --

Q. Let me -- before you read it, let me go ahead and offer Exhibit 12 into evidence.

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(Exhibit 12 marked and entered.)

BY MR. THOMAS:

Q. Okay. Doctor, since it is so short, you can go ahead and read the contents of that letter?

A. Dear Dr. Blake, I was unable to obtain the information you sought pertaining to the burial vault. If you still need it, feel free to directly contact Mr. John Billings, Jerry Harris, or Dr. Smith.

Q. And this is a letter from Judge -- signed -- from Judge Dailey, signed by Judge Dailey?

A. That's correct.

Q. And he's suggesting that you could if you wanted to, contact Mr. Jerry Harris; correct?

A. That's correct.

Q. And, again, Mr. Harris is one of the prosecutors in Shelby County?

A. Yes.

Q. And if you could hand that up to Judge Kurtz please, sir. And now let me -- now, at some point -- I don't know if you were ever properly served, but at some point you received a copy of a subpoena duces tecum from the defense in Mr. Carruthers' trial; correct?

A. I would need to see it.

Q. I'm getting ahead of myself. Let me hand up to you what we'll mark for identification as

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Petitioner's Exhibit 13. And the standing question, Dr. Blake, can you identify that document for us?

A. Yes, I can. This is a subpoena from Shelby County to me at my then address at 850 West Third North, to bring with me all correspondence, reports, materials, information, provided analysis, et cetera, regarding Marcellos Anderson, Fredrick Tucker and Delores Anderson.

MR. THOMAS: And if I may, Doctor, go ahead and offer Exhibit 13 into evidence.

(Exhibit 13 marked and entered.)

BY MR. THOMAS:

Q. And, Doctor, was this subpoena faxed to you on or about April 16th?

A. Fax or delivered by -- no. It says at the top of the page it indicates that it was faxed.

Q. And it was faxed by, it looks like it says All Pro Investigations; correct?

A. Yes.

Q. And what was your understanding of who All Pro Investigations was, if anything?

A. The investigators.

Q. For Mr. Carruthers?

A. Yes.

Q. And if you could go ahead and hand Exhibit 13

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up to Judge Kurtz. Now, I guess this is already clear, Dr. Blake, but you did not travel to Memphis and testify at Mr. Carruthers' trial; correct?

A. That's correct. Because I was informed by Judge Dailey that the defendant had not chosen to use me as his expert based on my report.

Q. Let me hand up to you what we'll mark for identification as Petitioner's Exhibit 14.

MR. THOMAS: And, Your Honor, Exhibit 14 already appears in the technical record at Pages 731 and 732.

Q. And the standing question, Dr. Blake, if you can identify this document for us?

A. It's a letter from me to Judge Dailey on April 19th.

Q. 1996?

A. Correct.

MR. THOMAS: And I'd like to go ahead and offer Exhibit 14 into evidence.

(Exhibit 14 marked and entered.)

BY MR. THOMAS:

Q. Now, let me make sure I understand the sequence of events, Dr. Blake. You faxed this letter to Judge Dailey on or about April 19; correct?

A. That's correct.

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Q. And then Judge Dailey got back to you and told you that your attendance would not be necessary; correct?

A. That's correct.

Q. Let me -- why don't you go ahead and hand that up to Judge Kurtz. Let me ask you this, Dr. Blake, based on your review of the autopsy reports, did you from any opinion as to whether any of the victims in this case had been buried alive?

A. Yes, I did.

Q. And what was that opinion?

A. The potential was that Delores Anderson could have been buried alive but with already some inflicted wounds having been the case including a neck strangulation.

Q. Was it your opinion that any of these victims had been buried alive based on what you saw?

A. That Delores Anderson could have been.

Q. Let me -- let me refer you back to your -- to Exhibit 8 which is your April 1st, 1996 report and particularly Page 3. The paragraph beginning towards the bottom of the page, in summary. Do you see that?

A. Yes.

Q. And that was your opinion -- that was your opinion as of April 1st; correct?

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A. '96, yes.

Q. And in that paragraph you stated that the victims lives were snuffed out well before an adequate time to place them in and conceal their bodies in the bottom of the already prepared burial site; correct?

A. That's correct.

Q. Dr. Blake, when was the -- if you recall, when was the first time you had ever heard the suggestion that any of these victims had been buried alive?

A. When I read the depositions of Dr. Smith.

Q. Dr. O.C. Smith?

A. Correct.

Q. And I supplied you with copies of Dr. Smith's testimony at the trial of Mr. Carruthers's case; correct?

A. That's correct.

Q. Within the past few months or weeks?

A. Correct.

Q. And that's the first -- from reading Dr. Smith's testimony, was the first time you had ever heard any suggestion that any of the victims had been buried alive?

A. That's correct.

Q. Back at the time I believe you had -- at least back in April 1996, I believe you had at least one conversation with Dr. Smith, didn't you?

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A. That's correct.

Q. At that conversation did Dr. Smith suggest to you that any of the victims had been buried alive?

A. No, sir.

MR. THOMAS: May I confirm that you have Exhibit 14 into evidence.

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. All right. Now, let me show you -- let me hand up to you what I'll mark for identification as Petitioner's Exhibit 15. If you can identify Exhibit 15 for us please, Dr. Blake?

A. This is a letter to Judge Dailey from me. It's a bill or an invoice for all the conferences that I'd had and the work that I'd put in the case.

Q. And would it be fair to characterize this as your invoice to Judge Dailey?

A. That's correct.

MR. THOMAS: And if I can go ahead and offer Exhibit 15 into evidence.

(Exhibit 15 marked and entered.)

BY MR. THOMAS:

Q. And if you would, Dr. Blake, now that we have Exhibit 15 into evidence, if you could read -- just read it into the record?

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A. Dear Judge Dailey, please find listed below the charge for forensic services rendered to you by Dr. Cleveland C. Blake in the above mentioned case. Charges are inclusive of conference with Dr. Jerry Francisco, two conferences with Dr. O.C. Smith, multiple phone conferences with Judge Dailey, three conferences with private investigators, John Billings, Richard Billings and Mr. Arms, record review, autopsy review, preparation of summary of opinions, statement for -- opinion statement for Judge Dailey times two, Court standby, et cetera. Total amount $1600.00.

Q. And I want to underscore that in your opening it says -- you say Dear Judge Dailey, please find listed below the charge for forensic services rendered to you. You see that?

A. That's correct.

Q. And if you could hand Exhibit 15 up to Judge Kurtz please, sir. Now, let me -- you may not have seen this. This is one you may not have seen before, Dr. Blake, but let me hand it up to you. Marked for identification as Petitioner's Exhibit 16. Have you seen that before, Dr. Blake?

A. I don't recall that I have.

Q. Okay. We'll just let that be marked for identification as Petitioner's Exhibit 16. If you could

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hand that up to judge Kurtz and we'll --

MR. THOMAS: Your Honor, we'll authenticate Exhibit 16 and offer it at a later point.

COURT REPORTER: You don't want it marked?

MR. THOMAS: Yeah, we can mark it for identification, please.

THE COURT: What is it?

MR. THOMAS: It's a -- it's Judge Dailey's order authorizing Dr. Blake's services at the time of the trial.

THE COURT: Well, I doubt if Mr. Campbell is going to raise an issue about the authentication of Judge Dailey's order. Am I correct, Mr. Campbell?

MR. CAMPBELL: That is correct, Your Honor.

MR. THOMAS: I'm just being -- I was kind of being painfully technical I guess.

THE COURT: Okay. Well, we can go ahead --

MR. THOMAS: Well, If I can go ahead and offer it without objection then it's Petitioner's Exhibit 16.

MR. CAMPBELL: I think it's as petitioner indicated, I think it is contained within the actual Court file.

MR. THOMAS: Well, actually it's not. You would think it would be in the technical record, but it's not. It came -- but it was in the file of the

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administrative office that -- as to which we have an affidavit authenticating.

THE COURT: Okay. We can -- well, we'll mark it as an exhibit.

(Exhibit 16 marked and entered.)

BY MR. THOMAS:

Q. Okay. You may hand that up to Judge Kurtz, Dr. Blake. Now, we're getting towards the end of our documents. Let me ask you if you can identify what we'll mark as Petitioner's Exhibit 17. And the same question, Dr. Blake, can you identify that document?

A. Yes, I can. It's on my letterhead to Judge Dailey. Re: Correspondence from Tony Carruthers to Dr. Blake. Message is, please note my current address but don't give it to Tony. F.Y.I.

Q. And let me go ahead and offer Exhibit 17 into evidence. And again this is -- I'm sorry.

(Exhibit 17 marked and entered.)

BY MR. THOMAS:

Q. And you had received some correspondence from Mr. Carruthers I take it?

A. I had a copy of one or two letters from him.

Q. And you were passing -- you were passing those along to Judge Dailey; correct? You faxed the correspondence from Mr. Carruthers to Judge Dailey under

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the cover of Exhibit 17?

A. I'm not sure.

Q. But in any event, the subject matter of Exhibit 17 was correspondence you had received from Mr. Carruthers?

A. That's correct.

Q. And there was -- if you'll look, there was a total of five pages including the cover sheet. Do you see that?

A. Yes.

Q. So that would indicate that you must have attached the correspondence?

A. Yes, it would.

Q. Turning now to what we'll mark for identification as Petitioner's Exhibit 18.

MR. THOMAS: And, Your Honor, this is another document that does appear in the technical record at Pages 1078 through 1080.

Q. And I'll ask you, Doctor, if you can identify this for us?

A. This is to Judge Dailey from me. Re: for your files and it has to do with correspondence to Mr. Leffler as defense counsel for Tony Carruthers in response to a correspondence to me, handwriting from Tony Carruthers on 11/3/97. Copy of that

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correspondence.

MR. THOMAS: Okay. And if I may go ahead and offer Exhibit 18 into evidence.

A. This was clarifying a record that I was not hired by the State of Tennessee to perform an autopsy and I got it in the record somewhere. That is not the case.

Q. You were hired by -- you were hired by -- you simply reviewed the records and material which was presented to you by investigators or by the Court on behalf of Judge Joseph Dailey. That's what Exhibit 18 says; correct?

A. That's correct.

MR. THOMAS: And let me go ahead and offer Exhibit 18 into evidence and get it marked.

(Exhibit 18 marked and entered.)

MR. THOMAS: And you can go ahead and hand that up to Judge Kurtz, Dr. Blake.

BY MR. THOMAS:

Q. Dr. Blake, let me ask you, you and I, we've spoken -- we, Mr. Morris and I met with you on July 1st of this year at your office in Morristown; correct?

A. Yes.

Q. And you and I have spoken several times by telephone since then?

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A. That's correct.

Q. And we have talked about this buried alive issue before; correct?

A. Yes.

Q. If you had been called to testify at the trial in April of 1996 would you have agreed with Dr. Smith that Ms. Anderson was buried alive?

A. Not directly, no. She was incapacitated in a situation which would have asphyxiated her.

Q. If you had come to testify at the trial in April 1996, would you have testified that Ms. Anderson was conscious when she was placed in the ground?

A. No, because of the ligature issue.

Q. And you certainly wouldn't have testified that -- you certainly would not have agreed with Dr. Smith that either Mr. Tucker or Mr. Anderson was buried alive, would you?

A. No, I would not.

Q. And you wouldn't have testified that they were -- let me -- this is our last exhibit, Dr. Blake. And if you can identify this two-page, looks like a transcript, for us?

A. Telephone conference with Dr. O.C. Smith on 8/26/02

MR. THOMAS: And let me go ahead and offer

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Exhibit 19 into evidence and then we'll get it back to you, Dr. Blake.

(Exhibit 19 marked and entered.)

BY MR. THOMAS:

Q. Let me first ask you, Dr. Blake, if you recall what prompted -- let me back up. What is Exhibit 19?

A. It's a conference that I had with Dr. O.C. Smith.

Q. And you had a telephone conversation with Dr. O.C. Smith on or about August 26th, 2002?

A. That's correct.

Q. And by the way, like all of the other documents we have talked about, this is a document from your file in Morristown; correct?

A. That's correct.

Q. And what prompted -- and this is a transcript or at least a portion of your telephone conversation with Dr. Smith; correct?

A. That's correct.

Q. And what prompted you -- what prompted your telephone conversation with Dr. Smith if you recall? Did you get a call from a lawyer name Charlie Ray out of Nashville?

A. That's what the second line says, so that prompted it.

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Q. All right. And why don't you go ahead and read us the first paragraph of the document?

A. My statement, I have a question here for you as to Dr. Smith. I got a call from Attorney Charles Ray. He's involved in the Tony Carruthers' case. Judge Dailey hired me in '96, '97 to come down and conference with you, look at your records. And this guy says that a letter that I have given to Judge Dailey made reference to other correspondences and he's demanding my entire file. I don't know Charles Ray or anything about him. I frankly don't want anything more to do with Tony Carruthers. The judge called him out of jail and into the courtroom. He read to him my opinion which was the same as yours. He told me that he could call Dr. Blake and talk to him. He never did. I don't need to hear from Tony Carruthers. I don't think you do either.

Q. But as you just read your -- you conveyed to Dr. Smith that Judge Dailey had hired you in 1996 and 1997?

A. That's correct.

Q. All right. And then there's discussion -- let me just ask you to turn over to Page 2. But there's some discussion about the fact that Mr. Ray wanted a copy of your entire file; correct? And you want to take your time to read through the document.

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A. Well, I was telling Dr. Smith that Mr. Ray says that he has been appointed. And Dr. Smith says the letter should be available from the judge or the court docket.

Q. And over on Page 2, if I can direct you to the top of Page 2, Dr. Blake?

A. Dr. Smith says it all depends on the letter whether he has the legal right to demand it or not. He can ask for your notes, but you can say that all you have are your notes.

Q. And then what did you say?

A. I wrote the judge two letters of my opinion. He wants everything I have in my file.

Q. And then what does Dr. Smith say?

A. Telling me it ain't there. It just ain't there. That's Dr. Smith's comment.

MR. THOMAS: Your Honor, I believe that's all we have for Dr. Blake.

THE COURT: You may.

CROSS-EXAMINATION

BY MR. CAMPBELL:

Q. Dr. Blake, I don't think you and I -- my name is John Campbell. I don't think you and I have ever talked about this case before; is that correct?

A. That's correct.

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Q. Now, even though you were at the time, this time frame we're talking about in '96, you had a commission with the TBI. You still handled private cases; is that correct?

A. That's correct.

Q. And nothing about your relationship with the TBI would have effected your decision making or opinions in cases where you were hired privately?

A. In no way whatsoever.

Q. Now, just so I'm clear on this, you discussed or you talked with Mr. Billings who was the investigator for Tony Carruthers on several occasions; is that correct?

A. Some occasions.

Q. Some occasions. Do you remember how many times you talked to him?

A. No, I do not.

Q. Okay. Was this on the phone or did he come to see you in person?

A. I don't remember.

Q. And also you talked to I think you mentioned two other investigators another Billings as well as Mr. Aims?

A. Arms.

Q. Arms. I'm sorry. And, again, were those in

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person or on the phone?

A. I don't recall.

Q. And in regards to your opinion about this case, you indicated as far as Delores Anderson is concerned, in your opinion she was not conscious when she went -- when she was buried; is that correct?

A. In high probability she was not.

Q. But you can't say whether or not she was actually dead when she was put in the grave?

A. Well, that would have to depend on whether means brain dead or whether her heart could have been beating. It would have to be clarified.

Q. Okay. Well, what about heart beat?

A. She could have had a heart beat but unconscious.

Q. And what about brain dead?

A. That would have taken a little bit of time. Because as long as the heart is beating, the brain is getting some blood supply and the heart can beat four to six minutes after there's obstruction of the airway.

Q. And based on your review of the records in this case, your opinion regarding what happened to her in the grave would have been that she could have possibly or the fact that she was underneath these individuals, pressure on her would prevent her from

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being able to breathe if she was -- the weight on her would not have allowed her to expand her chest --

MR. THOMAS: Your Honor, I object to counsel's characterization of the testimony.

MR. CAMPBELL: I'm trying to get clarification of what his opinion is.

THE COURT: I won't let him confuse him, Mr. Thomas. Go ahead.

BY MR. CAMPBELL:

Q. But, anyway, the weight on her could have been the mechanism that ultimately kept her from breathing?

A. Could have been one of the factors.

Q. One of the factors. Now, when you talked to Dr. Smith, that was prior to the trial; is that correct?

A. That's correct.

Q. Okay. Your discussion with Dr. Smith, your review of his autopsy report, you felt that you and he were on the same page regarding the findings?

A. In general.

Q. In general. And Dr. Smith never told you his opinion about whether anybody was alive or dead when they were put in the grave?

A. No, he did not.

Q. Okay. Never came up, did it?

A. No. It's only come up recently.

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Q. Recently. Okay. And other than that statement about whether someone was alive or dead when they went in the grave, you agree with pretty much everything else that he found in those autopsy reports?

A. There's some things I disagree with.

Q. Now, in Exhibit 19, this telephone conversation, this first part where you indicated, I'm referring to the first paragraph, it says the judge called him out of jail and into the courtroom. He read to him my opinion which was the same as yours. He told him that he could call Dr. Blake and talk to him. Where did you get -- you were not in the courtroom at the time that that was done?

A. No, I was not.

Q. Okay. And apparently Mr. Carruthers never called you as a witness or his investigators never told you you were going to be a witness?

A. That's correct.

Q. But they did make arrangements for you to testify if he decided he wanted to call you?

A. That was the purpose of Judge Dailey talking with me in the first place.

Q. Okay. And you got a subpoena duc tecum. So you were on notice for trial?

A. I was on notice.

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Q. But ultimately you were told you weren't going to testify?

A. Yes. Because Mr. Carruthers did not choose to use me as his expert.

Q. Now, what correspondence did you receive from Mr. Carruthers that you refer to in that fax to the judge?

A. I have an envelope from Mr. Carruthers dated 14th of November '97, marked legal correspondence. On 11/3/97, a letter to me from Mr. Carruthers in very neat handwriting in Re: Obtaining a complete file. Dr. Blake, I would like to request from you a complete copy of the work product that you performed for case number blank, blank, blank. I'm preparing my direct appeal from a conviction of a death sentence. You were hired by the State of Tennessee to perform a autopsy for my defense. I need a copy of all reported -- of all reports given to you by the prosecutor Phillips Gerald Harris and the Shelby County Assistant Medical Examiners, O'Brian C. Smith, M.D.F.P. Thank you for your immediate response. And there is a printed letter in large print from him. He's setting out his thoughts. I have a vision that one day we will all be judged equally et cetera, et cetera. I've been misused by the system but I believe that what's ahead for me will

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ultimately effect this country. I have a vision that justice will be served to us all without prejudice, bias, vindictiveness or (indiscernible) and equality. In order to enjoy justice, we must take a stand for that which this is right. In the vision I see freedom and equal justice for us all. Tony X. Carruthers. And then there's a picture of him. A neat picture of a man in glasses, a black man in glasses, Tony X. speaks out. Asking if I'm familiar with case where a man was forced to trial with no attorney. He was (indiscernible) convicted of murder and sentenced to death. Well, here's the truth about the case, that the judge and the prosecutors went out of their way to keep you from knowing. Judge Dailey has been cited in Supreme Court of Tennessee for the violation of the First Amendment of U.S. Constitution by denying freedom of the press and information in a public trial. He did this knowingly and intentionally to keep you, the public, in the dark. He violated your rights too. Did you know that you have the right to know the truth? From all the state's witnesses you only read fragments of their testimony. There were impeached and proven liars, but the defendant -- no, but the public was told to believe that they were credible witnesses, but why? Don't you want to know the truth? Wouldn't you be concerned if you were found out

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that the killers still run loose, free to kill again? This injustice must not go unanswered. The public should know the truth. This crime has not been solved.

Q. Now, these -- this is the correspondence you received from Mr. Carruthers?

A. That's correct.

Q. Was it mailed to you or did you receive it from some third party?

A. It was mailed to me from Tony X. Carruthers Number 139604 Brushy Mountain, Post Office Box Petros, Tennessee. Petros, we pronounce it Petros. Legal correspondence, neatly printed to me, almost calligraphy in its neatness, directly to me at the correct address.

Q. And why did you decide or why did you tell the Court that you didn't want to receive or didn't want Mr. Carruthers to receive your new address?

A. I don't know that I told him. He's got this --

Q. If I can refer back to Exhibit 17. It says please note my current address and don't give it to Tony. Did you not want to receive any more correspondence from Mr. Carruthers?

A. He could have -- he could have called me if he wanted to. This is the address of my previous building right before I moved to my present address. That's 10 years ago.

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Q. Okay.

A. That was a correct address obviously because I got it. On the front of the envelope he's got the correct address.

Q. Okay.

A. At that time.

Q. Did you send your complete file to Mr. Carruthers?

A. I don't think I did.

Q. Did you discuss the case with his counsel, Mr. Leffler?

MR. THOMAS: Objection, foundation.

MR. CAMPBELL: Your Honor, I believe there's a letter here that was introduced earlier.

THE COURT: I think the question is all right. Overruled.

BY MR. CAMPBELL:

Q. Did you discuss your findings with Mr. Leffler who was his counsel for on appeal?

A. On December the 30th, '97, I wrote him a letter. It's in the file on my --

Q. And what does that letter say?

A. On my letterhead that was at the correct address. Dear Mr. Leffler, I'm writing directly to you as defense counsel for Tony Carruthers and specifically

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in response to a correspondence to me in handwriting from Tony X. Carruthers on 11/3/97. Please find attached a copy of that correspondence. For the purpose of clarification I should like to note that I was not hired by the State of Tennessee to perform an autopsy. That's the main point of this letter. I simply reviewed the records and material of the previous autopsy which was presented to me by investigators or by the Court on behalf of Judge Dailey.

THE COURT: Excuse me a second, but that -- we've already got that. That's Exhibit 18, isn't it?

MR. CAMPBELL: Because on the fax it showed that he had Mr. Leffler's name on the bottom of it. I just wanted to see if he talked to him.

THE COURT: Oh, yeah. Okay.

MR. CAMPBELL: That was the purpose.

BY MR. CAMPBELL:

Q. Anyway, that would be your consistence of your correspondence with Mr. Leffler was basically the letter or did you talk to him on the phone?

A. I can't tell you whether I did on the phone or not, but I had some contact with him. This indicates additionally the judge noted that Mr. Carruthers could speak with me. This was never carried out or really indicated as I had presented my entire conclusions at

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that point in my response conclusion dated 4/1/96. I would feel certain that this is in your file. Again, this three-page report to Judge Dailey was presented to Mr. Carruthers for his comments. And I was informed that he declined at the time to utilize my conclusions or findings in any way. No communication was ever received from Mr. Carruthers. And the second communication to Judge Dailey on 4/19/96, the substance of which two-page document is in your possession I am sure. On the Page 2, if it's okay, in a recent inquiry of Judge Dailey he suggested that I respond directly to you on behalf of Mr. Carruthers. Please find attached xerox copies of my letter which were -- was received from Tony Carruthers in late November '97. That's what I read. I trust that this response will adequately answer the questions and concerns posed by Mr. Carruthers. Because I understood at the time that Mr. Carruthers was assigned an expert that Judge Dailey selected me to be. And that he would have two investigators. An expert and two investigators. So I was dealing with those people directly on his behalf.

Q. Okay. That would be Mr. Billings and the other individual that was the All Pro Investigators?

A. Yes.

Q. Did you ever have a discussion with the

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prosecutor in the case, Mr. Harris?

A. Not that I know of.

MR. CAMPBELL: Your Honor, I believe that's all I have.

THE COURT: Now, how were you notified that your testimony would not be needed at the trial?

THE WITNESS: By Judge Dailey.

THE COURT: Personally?

THE WITNESS: On the phone.

THE COURT: He called you personally. He said you don't need to come?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Because the defendant did not choose to use -- after he was shown my three-page conclusion, he did not choose to have me as his expert.

THE COURT: All right. I understood your testimony from that. I was just interested in who communicated that. The second thing is I'm a little confused by your conclusion in this letter of April 1, because at one point you seem to say that Delores Anderson was dead at the time she was buried. Because you say, in summary it would appear two black males were killed somewhat before the female who disappeared later. All three of the victims having their life snuffed out

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well before an adequate time to place them in and conceal their bodies in the already prepared burial site. But now you're saying that it's possible that she could have still been alive. I mean, did you change your mind subsequent to the April 1 letter or revised your opinion?

THE WITNESS: I didn't have at that time, Your Honor, the details of the testimony and description of the grave and her condition and the details about the restraint around her neck that apparently cut off her windpipe. She could have been conscious at the time. I can't prove that one way or the other, but she could have been conscious.

THE COURT: Okay. Could have been conscious.

THE WITNESS: At the time she was put in the grave.

THE COURT: Well, in the parlance of the lawyers who ask these questions, to a reasonable degree of medical certainty, what's your opinion? That she was alive or she was dead?

THE WITNESS: You have to read the description of exactly how she was placed under the bodies of the others in the pit under the grave. Initially I knew nothing of a pit that was under the grave. I was told in Judge Dailey's conference with me that she was

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under a vault into which Mrs. Daniels' casket had been placed on the morning of the 25th when they had her funeral. Well, if there's no additional pit under there and with these three individuals, the vault -- and I think of a vault as a 3 inch thick cast, concrete vault. That's not what this was. This was an O.S.B. board box or strand board, chip board. And by elevating from the bottom of a normal grave which is right at 6 foot, to get in the three individuals, you destroy a space this big if you put them in and put dirt around them. Then you put the chip board box back in and the casket. That's not what happened. Because under the chip board box which had been lifted out, the grave -- the grave was dug and the chip board box was put in it preparing for Mrs. Daniels' casket. And that box had been taken out and there's a second layer of excavation which is referred to in even the testimony and records as the pit under the grave, under the vault. And there's differences clearly described in the technique of the digging, the hand digging of the vault, by one technique down to the bottom of where the grave was to have been. And then the additional pit under that grave which was concealed by the bottom of the chip board box. Hence, the chip board box was not substantially elevated so that the mortician would

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notice that, hey, this is not deep enough. I didn't know about that technicality, because I was told about a vault. Now, to me a chip board box is not a vault. Being a wood worker and having done hundreds of excavations, I understand what those factors may be. But the excavated pit under the box was not the same measurement as the grave which would have accommodated the chip board box in order to hold the casket.

THE COURT: So if you were asked the question to a reasonable degree of medical certainty, was she alive or dead when she was placed down there?

THE WITNESS: She was unconscious and suffocated, and her head was placed down in the corner of this pit at the bottom of the pit and against the wall of the pit and some dirt was described as having been in her nose and mouth, but it was not aspirated or swallowed into her stomach.

THE COURT: Which she would -- your opinion is she would have been unconscious?

THE WITNESS: She would have been unconscious.

THE COURT: Would she have felt any pain?

THE WITNESS: Probably not.

THE COURT: Okay.

THE WITNESS: Because of the prior asphyxiation by ligature.

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THE COURT: Any follow-up questions by counsel?

MR. THOMAS: If I may, Your Honor.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. If I understand your testimony, Dr. Blake, you have more recently reviewed Dr. Smith's testimony at the trial; correct? His guilt phase and his penalty phase testimony?

A. In detail, and also reviewed in detail all the findings of the autopsies.

Q. And at your request, I supplied you with copies of Dr. Smith's testimony; correct?

A. That's correct.

Q. And it's Dr. Smith's testimony or your reading of Dr. Smith's testimony that at least creates an issue in your mind about whether Ms. Anderson might have been buried alive, is that a fair statement?

A. That's correct.

Q. All right, sir. Now, the record will reflect when Dr. Smith testified. But referring to since it's in Exhibit 4, it's the letter from Mr. Jerry Harris to Judge Dailey which was forwarded to you. And Jerry Harris refers to the autopsy reports that have been provided to the defense. And those autopsy reports have

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been introduced as Exhibits 5, 6 and 7, okay?

A. Yes, sir.

Q. Let me ask you, Dr. Blake, you spent a lot of time reading these reports in recent weeks, is that a fair statement?

A. That's correct.

Q. Isn't it a fact that there is nothing in any one of these autopsy reports that would have conveyed to the defense that Dr. Smith was going to testify that anybody was buried alive?

A. Repeat again please, Counsel?

Q. Isn't it a fact that there is nothing in any one of these autopsy reports that would have fairly conveyed to the defense that Dr. Smith was going to testify that any victim was buried alive?

A. That's correct.

Q. And one final question. Referring to Exhibit 15 which is your May 2nd statement. You refer to three conferences with private investigators John Billings, Richard Billings and Mr. Arms. Do you remember that?

A. Yes.

Q. How long was any one of those three conversations? Do you have any recollection?

A. I don't recall.

Q. Was -- do you recall possibly refusing --

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until you realized who he was, and do you remember actually refusing to take Mr. Billings' phone calls or the phone calls of his associates?

A. He had some investigator up that way to try to come and serve a subpoena on me. And I was out of town. I was not intentionally dodging him. I don't even know who his name was, but he was out of Knoxville.

Q. But you weren't going to testify -- you weren't going to come down and testify -- strike that. I'll withdraw that.

MR. THOMAS: That's all we have, Your Honor.

THE COURT: Mr. Campbell.

MR. THOMAS: I'm sorry, Your Honor. Mr. Carruthers --

BY MR. THOMAS:

Q. I think this is clear from your testimony and I apologize, but I think we covered this on direct. But you did not review any of the microscopic -- because you never came to Memphis, you never reviewed any of the microscopic slides and -- well, you never reviewed any of the microscopic slides?

A. Not the slides directly.

Q. Okay.

MR. THOMAS: That's all we've got. Thank you, Your Honor.

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THE COURT: Dr. Blake, thank you. And let's take a recess until five after eleven and we'll pick it up at that time.

(Court in recess.)

(Court in session.)

(Defendant present.)

THE COURT: Okay. Mr. Thomas, your next witness, please.

MR. THOMAS: Okay. Your Honor, the petitioner calls Dr. George Nichols.

THE COURT: All right.

THEREUPON:

DR. GEORGE NICHOLS

was called, and upon first being duly sworn, was examined and testified as follows on:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Good morning. Could you state your name please, sir?

A. Certainly. My name is George Riley Nichols, II.

Q. And where do you live Dr. Nichols?

A. In Louisville, Kentucky.

Q. And how are you -- how are you -- what's your

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occupation?

A. I'm a physician, a practicing pathologist.

Q. And since we don't have a jury with us this morning, I'll just ask you are you Board Certified in the areas of anatomical, clinical, and forensic pathology?

A. Yes, sir.

Q. Let me hand up to you what we'll mark for identification as Petitioner's Exhibit 21, and I'll ask you to identify this document?

COURT REPORTER: Excuse me. I have Number 20.

THE COURT: I think it would be 20. At least if my notes are correct.

MR. THOMAS: Oh, I see what I did. Yes. I apologize. It is 20.

THE COURT: Okay. 20.

BY MR. THOMAS:

Q. Can you identify that for us please, Doctor?

A. Yes. It is a copy of my curriculum vita, the most recently revised form.

Q. I would offer -- I have previously supplied counsel with a copy of Dr. Nichols' curriculum vita and his report and I'd like to go ahead and introduce Exhibit 20 into evidence.

THE COURT: All right.

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(Exhibit 20 marked and entered.)

BY MR. THOMAS:

Q. Dr. Blake -- I mean, Dr. Nichols, I don't intend to go through the entire C.V. for purposes of this hearing, but I would like to just ask -- bring out a couple of things about your background. You were the Chief Medical Examiner for the Commonwealth of Kentucky from 1977 to 1997; is that correct?

A. Yes.

Q. And what just in general, what was the nature of your duties as the Chief Medical Examiner for the Commonwealth of Kentucky?

A. The duties are specified in Kentucky Revised Chapter 72. Basically the chief medical examiner is the executive in charge for a portion of the government of the Commonwealth of Kentucky. The -- in so doing, the chief medical examiner is available -- is to establish a system for scientific investigation of deaths throughout the State of Kentucky and is to be available for consultation with all law enforcement officials and all prosecuting attorneys throughout the State of Kentucky.

Q. And in your capacity as the chief medical examiner for the Commonwealth, did you routinely testify for Commonwealth's attorneys in the State of

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Kentucky?

A. Yes, sir.

Q. Over the course of your career you've testified in a large number of criminal matters I take it?

A. Yes, sir.

Q. Would you -- how would you characterize the breakdown between the numbers of times you've testified for the prosecution as opposed to testifying for the defense?

A. 99 percent for the prosecution.

Q. All right. Doctor, about how many autopsies have you performed in your career?

A. 10,000.

Q. To the button or?

A. Approximately. In excess of 10,000. I stopped counting at 10,000.

Q. All right, sir. Now, in the fall of 2002, did you agree to perform what was called an independent cause of death determination at the request of Charles Ray, an attorney in Nashville, Tennessee?

A. Yes, I did.

Q. And let me ask you, Doctor, what, if any, materials did Mr. Ray supply to you?

A. Mr. Ray supplied to me initially a video tape

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labeled Rose Hill Cemetery crime scene video. A trial transcript dated April 23rd, 1996 of Dr. O.C. Smith, a trial transcript of Dr. Hugh Berryman, five color photographs, microscopic summary for Autopsy A94-140, Fredrick Tucker, an Autopsy Report A94-140, Fredrick Tucker. An Autopsy Report A94-141, Delores Anderson. An Autopsy Report A94-139, Marcellos Anderson. The report of investigation of the County Medical Examiner's Office concerning Fredrick Tucker, Delores Anderson. The certificate of death of Fredrick Tucker. The certificate of death of Marcellos Anderson. Supplementary Offense Report concerning Delores Anderson from the Memphis Police Department, various notes and newspaper clippings. And that was what I received initially on the 23rd of October 2002.

Q. Okay. Have you received additional material since then?

A. Yes. On the 8th of November 2002, I received excerpts, additional excerpts of testimony from Dr. O.C. Smith. On the 27th of June 2005, I received a copy of a letter to Judge Dailey from Dr. Blake dated April 1st, 1996 and an additional one dated April 19th, 1996. On that same date, June 27th of 2005, I received a letter from Judge Joseph Dailey to Dr. Blake dated April 2nd, 1996. And last I received on the 26th of August this

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year, the copy of the certificate of death of Delores Anderson and report of investigation from the Medical Examiner's Office concerning Marcellos Anderson.

Q. And those were -- those last two items you mentioned were items that had not been included in Mr. Ray's original package to you back in 2002 for some reason?

A. Yes, sir.

Q. Or probably no reason.

MR. THOMAS: But, Your Honor, at this time I would like to exhibit to Dr. Nichols testimony the items he's described if I may. And what I have here is a D.V.D. version of the -- what was then a video tape of what was -- of the excavation or portions of the excavation of the grave. If Mr. Campbell wants to verify that that's what it is over lunch. And then also copies of the five photographs that Dr. Nichols referred to. And those would be Petitioner's Exhibits 21 and 22. I have a copy of this. I'd like to make the D.V.D./video Petitioner's Exhibit 21. And the five photographs, Petitioner's collective 22. And I'm not going to ask him anything.

(Exhibits 21 and 22 marked and entered.)

MR. THOMAS: And then, Your Honor, I think we can do this much more quickly than we did with Dr.

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Blake. But I would like to introduce into evidence, unless there's an objection, introduce into evidence as Exhibit 23 a copy of the autopsy report for Marcellos Anderson that Dr. Nichols reviewed. As Exhibit 24 a copy of the autopsy report of Fredrick Tucker. And Exhibit 25, a copy of the autopsy report for Delores Anderson. And I'll hold off while we're getting these exhibits marked.

THE COURT: Well, we didn't already have those 5, 6 and 7?

MR. THOMAS: It's the same document, but these are without Dr. Blake's annotations, I guess. That's the only reason I'm separately marking them, if that's all right?

THE COURT: Sure.

BY MR. THOMAS:

Q. And let me very quickly, Dr. Nichols, if you could identify Exhibits 23, 24 and 25?

A. Certainly. 23 is a complete autopsy, a complete copy of autopsy report A94-139 dealing with the investigation and autopsy of Marcellos Anderson.

Q. And if I may interrupt. That's the one that I just recently supplied you with; correct?

A. That's -- yes.

Q. And you've reviewed it?

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A. Yes. I actually had a copy of this report, all three of these reports in my file. They were just not labeled as that.

Q. Oh, I see. And then Exhibit 24 please, sir?

A. Exhibit 24 is a complete copy of autopsy A94-140 dealing with the determination of death of Fredrick Tucker. And 25 is a complete report concerning the investigation of the death of Delores Anderson.

MR. THOMAS; Your Honor, if I may offer Exhibits 23, 24 and 25 into evidence at this time.

THE COURT: All right.

(Exhibits 23, 24 and 25 marked and entered.)

BY MR. THOMAS:

Q. Now, let me hand you up the next set, Doctor, which will be Exhibits 26, 27 and 28. And once these exhibits are marked I'll ask you the same question, Dr. Nichols. Can you identify those for us, please?

A. I certainly can. This is a document entitled, Report of Investigation by County Medical Examiner for each of the three decedents. The first Exhibit 26, is deals with Fredrick Tucker. The next Exhibit 27, deals with Delores Anderson. And the last Exhibit 28, deals with Marcellos Anderson.

Q. And you reviewed all of those reports as part of the evaluation you did for Mr. Ray?

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A. Yes.

MR. THOMAS: I'd like to offer those Exhibits 26, 27 and 28 into evidence at this time, Your Honor.

THE COURT: All right.

(Exhibits 26, 27, 28 marked and entered.)

BY MR. THOMAS:

Q. The next numbered Exhibits will be 29 and 30 and 31. These are the death certificates for the three victims. And the same question, Dr. Nichols?

A. Yes, sir. Exhibit 29 is a death certificate for Fredrick Tucker. Exhibit 30 is a death certificate for Marcellos Anderson. And Exhibit 31 is the death certificate for Delores Anderson.

Q. And were those materials that you received and reviewed for purposes of performing the determination you made for Mr. Ray?

A. Yes.

Q. Or at Mr. Ray's request?

A. Yes.

(Exhibits 29, 30, and 31 marked and entered.)

BY MR. THOMAS:

Q. And finally one last exhibit we'll mark as Petitioner's Exhibit 32. If we could have that marked please, sir. And with the same request and then we can move on.

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A. Yes, sir.
Q. And it is?
A. Exhibit 32 is the Memphis Police Department supplementary offense report concerning missing person, Delores Anderson.
MR. THOMAS: And I'd like to offer Exhibit 32 at this time, Your Honor.
(Exhibit 32 marked and entered.)
BY MR. THOMAS:
Q. Now, to recapitulate, Dr. Nichols, you reviewed all of these materials at Mr. Ray's request?
A. Correct.
Q. And you also reviewed some items that I have -- they're not exhibits because they're already part of the record -- but you reviewed testimony from Dr. Smith and testimony from Hugh Berryman who was a forensic anthropologist; correct?
A. He still is.
Q. Still is. What Dr. Smith?
A. Dr. Smith is a forensic pathologist.
Q. Do you know what he's doing these days?
A. No, sir, I do not.
Q. And do you recall that you read Dr. Smiths -- there were two parts of Dr. Smith's testimony. His testimony and what we call -- what the lawyers call the

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guilt phase and his testimony at the penalty phase; is that right?

A. Yes.

Q. Now, based upon your review of all of these materials, did you prepare a report?

A. I certainly did.

Q. And let me hand up to you what we'll mark for identification at least as Petitioner's Exhibit 33. And this is an original document. And can you identify that for us please, Doctor?

A. This is the original letter that I sent to Mr. Charles Ray dated November 12th, 2002.

MR. THOMAS: And, Your Honor, since we don't have a jury, I'd like to offer the report into evidence as Exhibit 33.

THE COURT: All right.

(Exhibit 33 marked and entered.

BY MR. THOMAS:

Q. Now, after the -- with that rather lengthy predicate, Dr. Nichols, let me just ask you, did you form -- did you form an opinion as to the cause of death of each victim?

A. I certainly did.

Q. And let's just take them in what order -- whatever order you prefer. But what did you conclude as

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to each?

A. Marcellos Anderson died as a result of a gunshot wound. Specifically there was multiple gunshot wounds. One in the back which produced no significant injury. One, a contact wound in the forehead that resulted in a small amount of intracranial hemorrhage in the subarachnoid space, but the bullet did not actually enter into the cranial cavity. Rather it was restricted into the frontal sinus. What killed him is a gunshot wound which enters the right upper chest traverses into the spinal cord where it results in a laceration of the spinal cord at the level C-7. Associated with this are lacerations of the cervical spine and bleeding in the membranes that surrender the spine and the brain. The subdural and subarachnoid spaces. That's the cause of death. Next --

Q. I'm sorry. Whatever order you prefer.

A. Next Fredrick Tucker. Mr. Tucker died as a result of a gunshot wound to the chest resulting in a massive internal hemorrhage and at the chest called the hemothorax. He has evidence of other injuries, but the cause of death was clearly a gunshot wound. And last Delores Anderson. She died as a result of compressive asphyxia. The compression at this point being around her neck. Resulting in obstruction of blood flow out of

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the head, causing petechiae hemorrhages or small red spots to occur as a result of capillary rupture with at least in the whites and pinks of her eyes. So she died an asphyxia death. There's clear evidence of shooting, firearms injury being fatal in the two males.

Q. Now, you read the testimony of Dr. Smith; correct?

A. Yes.

Q. And you read his testimony that all three victims were buried alive? That was the gist of his testimony or at least part of his testimony, is that a fair statement?

A. Yes.

Q. Do you have an opinion, any opinion as to whether any of these victims were buried alive?

A. My report reads, if I may quote myself?

Q. Certainly?

A. On Page 3, there is absolutely, underlined, no proof of the best evidence of conscious activity of any victim while alive in the grave site. No significant hemorrhage was present in the soft tissues of the wrist any victim which would -- which should have occurred by voluntary movement against restraining devices if alive and conscious. There's no description of cracks, tears, or damage or other damage to fingernails which also

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would have occurred if buried alive and conscious. And last, there is no evidence of inhalation of dirt, mud, dust, or earth in the upper airways, mouth, or lungs of any victim. None of these materials was present (indiscernible) orally or swallowed. There's no evidence, in my opinion, that any person was alive in the site in which their bodies were discovered.

Q. And is there anything else you can tell the Court to elaborate on the basis for your opinion?

A. Well, that's the primary tenet is the fact if conscious and knowingly being buried, you will take whatever means you can to -- in an attempt to escape. There's potential for concussive (phonetically) events to have occurred in several of the victims to have made them unconscious. There's clear evidence in Fredrick Tucker that -- excuse me, not -- in Marcellos Anderson that he was paraplegic made -- rendered paraplegic or at least partial quadriplegic depending upon the neurological deficit from the gunshot wound that could have impaired his motion. But in no case is there evidence of involuntary activity called breathing in which the ambient micro atmosphere would be contaminated with dirt which was placed upon these people as they were placed in a grave site in which it was filled.

Q. Let me ask you just to assume -- assuming for

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purposes of discussion, Doctor, and maybe this is self--evident, but let me ask you to assume that one or more of the victims may have not been yet been brain dead or may not have been completely dead in layman's terms, is there any evidence whatsoever that any of these victims was placed in the ground conscious?

A. No.

Q. Do you have any recollection of what Dr. Smith's, the basis for Dr. Smith's opinion that they were buried alive was?

A. I don't believe he really ever offered one.

Q. Now, you reviewed the three autopsy reports. In particular in reviewing the autopsy -- in reviewing -- well, let's just talk about all the materials, the autopsy reports, the invest -- whatever it's called, the report of investigation by County Medical Examiner, the death certificates, is there anything in any of those documents that would have communicated to an objective reader that any of these victims were buried alive?

A. No.

MR. THOMAS: That's all we have, Your Honor.

MR. CAMPBELL: Just briefly, Your Honor, if I could.

CROSS-EXAMINATION

BY MR. CAMPBELL:

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Q. Dr. Nichols, my name is John Campbell. I don't think you and I have ever --

A. Mr. Campbell, nice to see you.

Q. Nice to see you. Glad to have you from Louisville. Would you -- let me just ask you, in regards to Delores Anderson?

A. Yes.

Q. Anything to give you or led to an opinion that Ms. Anderson may have been unconscious but alive in the grave?

A. She may well have been unconscious in the grave, but she's not ventilating anything. The -- you would find presence in the nose, in the mouth, in the upper airway, in the upper digestive tract of the presence of the foreign matter that would be surrounding her. So there was not evidence of any inhalation, no evidence of any aspiration.

Q. But, again, would that -- would it be possible for her to be unconscious but alive?

A. It would be -- it would be possible that she could be unconscious. She clearly has sufficient trauma to her head to have been -- to have sustained an concussive event.

Q. She had a blow to the head?

A. Several.

Document received by the TN Supreme Court.

Q. And if I understand -- I guess the asphyxia or the, I guess for better want, ligature, strangulation. She had a sock around her neck or a piece of fabric around her neck; is that correct?

A. It's a soak.

Q. Sock. And if I understand, the mechanism is that the blood flow out of the brain was being cut off?

A. That is the way -- that is the exact cause for the spots that were present in her eyes.

Q. Blood pressure increased and caused these little blood vessels to pop?

A. Venous blood pressure, yes.

Q. Again, you were retained by Mr. Ray I guess in 2002 as part -- do you know that it was for the post conviction matter that we're currently involved in?

A. Yes.

MR. CAMPBELL: Your Honor, I believe that's all the questions I have.

THE COURT: Now, among all of these exhibits, did you make his, Dr. Nichols report an exhibit?

MR. THOMAS: 33, Judge.

THE COURT: Okay. That was the last one. Do we have that.

MR. THOMAS: It was the original -- it was the only original document in the group.

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THE COURT: Okay. Doctor, thank you.

THE WITNESS: Am I excused finally, Your Honor?

MR. THOMAS: Let me see.

THE COURT: I was about to say yes.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Let me make sure I understand your testimony. You found no evidence in all of these materials you reviewed, you found no evidence that Ms. Anderson was breathing while she was in the grave?

A. Correct. There's no objective evidence from a science standpoint to show that any of these three people were alive and breathing in that space. None.

MR. THOMAS: Thank you so much, Doctor.

THE WITNESS: You're welcome. Now, I'll ask my question.

THE COURT: And the answer is yes.

THE WITNESS: Thank you.

THE COURT: Next witness, please.

MR. THOMAS: Your Honor, the defense will call Mr. David Adams.

THEREUPON:

DAVID ADAMS

EXHIBIT 32

AFFIDAVIT OF DR. O'BRIAN CLEARY SMITH

Comes now the affiant, after being duly sworn and hereby states the following:

1. I am the Medical Examiner and forensic pathologist responsible for the autopsies on the victims in Tony Carruthers' and James Montgomery's trial in which I testified to certain facts including, but not limited to, the fact that the victims were alive at the time of the burial. This opinion was formed on the basis of the facts that dirt was contained in the airway of one victim and the presence of active bleeding (as signs of life) in the multiple injuries of the other two victims. These injuries are gunshot wounds that would not have been immediately lethal, as well as blunt force injury patterns of the type expected from one person falling atop another, and further compressed by the overburden of the grave and its contents above. The bleeding patterns associated with these injuries were interpreted by me as signs of active bleeding and hence as signs of life.

2. In that regard, and since that time I have continued to observe and be involved in like and similar circumstances and I have also researched the medical literature and found it devoid of any peer-reviewed scientific articles specifically referencing the effects of post-mortem pressures upon a corpse and its ability to mimic active bleeding as a sign of life. Neither have I had opportunity to conduct research of this nature myself. The cadaver research I have conducted in the recent past has shown me that other interpretations of signs of life; such as the "line of vital reaction" and blister formation in burn victims does, in fact occur in dead cadavers as well, hence, they are no longer reliable signs of being alive at the time of the fire. Additionally, further research conducted by myself and others have shown that another well-established concept in

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forensic pathology, such as human heads exploding due to the effects of fire, simply does not occur.

3. Given the above, requiring evidence-based medicine and through an abundance of caution, I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin. The absence of probative research on these issues, must by default, create the opportunity for an alternative hypothesis to explain the appearance of active bleeding as a sign of life, when in fact life is absent.

4. I have addressed this issue with Bobby Carter of the Shelby County Attorney General's Office in regard to a retrial of James Montgomery and believe this lead to a plea agreement.

Signed this the 3rd day of April, 2007.

O.C. SMITH, MD

City of Memphis
State of Tennessee

Before me a Notary Public, personally appeared the person known to me to be O.C. Smith, and who after being duly sworn made oath that the foregoing statements were true to the best of his information, knowledge, and belief and who did in my presence affix his signature in attestation thereof.

Notary at Large Date 4/04/07

Date of Expiration:
3/11/2008

BRYAN PLUNK NOTARY PUBLIC AT LARGE SHELBY COUNTY, TN

Document received by the TN Supreme Court.

EXHIBIT 33

DECLARATION OF ZILLAH FERRARI

I, Zillah Ferrari, a resident of Shelby County, Tennessee, being of lawful age declare as follows:

1. I was a juror at Tony Carruthers's trial.
2. At the time of Tony Carruthers's trial I was told that the victims had been buried alive. I recently learned that the medical examiner had taken back his opinion that the victims were not buried alive.
3. Had I known that the victims were not buried alive, I would have not voted for a death sentence.
4. Mr. Carruthers did a really poor job of representing himself. In my mind, he buried himself.
5. I was recently informed that Mr. Carruthers has serious mental illness. This explains a lot about why he did such a poor job representing himself.
6. Mr. Carruthers's witnesses did not support his innocence. It did not make sense to call these witnesses.
7. For example, Mr. Carruthers called Alfredo Shaw who said Mr. Carruthers confessed to him.
8. I was recently informed that Alfredo Shaw was a paid informant. Had I known that Shaw was a paid informant, I would not have voted for a death sentence.
9. I recently learned that there is unknown DNA on the bindings used to tie the victims' wrists that does not match Mr. Carruthers.
10. I think that Mr. Carruthers should have the chance to have the DNA tested.
11. A DNA match with a different person would make me doubt Mr. Carruthers's guilt.
12. In light of what I have learned, I would support Mr. Carruthers receiving a life sentence. I do not want to see Mr. Carruthers released but I do not support his execution.

The foregoing is true and correct and executed under penalty of perjury under the laws of the State of Tennessee and United States of America on April 20, 2026.

Zillah Ferrari

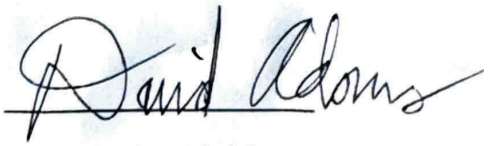
EXHIBIT 34

DECLARATION OF DAVID ADAMS

I, David Adams, a resident of Shelby County, Tennessee, being of lawful age declare as follows:

1. I was a juror at Tony Carruthers's trial.
2. At the time of Tony Carruthers's trial I was told that the victims had been buried alive. I recently learned that the victims were not buried alive and that the medical examiner had changed his opinion.
3. Had I known that the victims were not buried alive, I would have not voted for a death sentence.
4. I would support Mr. Carruthers receiving a life sentence. I do not want to see Mr. Carruthers released but I do not support his execution.

The foregoing is true and correct and executed under penalty of perjury under the laws of the State of Tennessee and United States of America on April 21, 2026.



David Adams

APPENDIX E

Declaration of Zillah Ferrari, Carruthers v. Skrmetti, No. 26-cv-540, (M.D. Tenn. May 8, 2026)

DECLARATION OF ZILLAH FERRARI

I, Zillah Ferrari, a resident of Shelby County, Tennessee, being of lawful age declare as follows:

1. I was a juror at Tony Carruthers's trial.
2. At the time of Tony Carruthers's trial I was told that the victims had been buried alive. I recently learned that the medical examiner had taken back his opinion that the victims were not buried alive.
3. Had I known that the victims were not buried alive, I would have not voted for a death sentence.
4. Mr. Carruthers did a really poor job of representing himself. In my mind, he buried himself.
5. I was recently informed that Mr. Carruthers has serious mental illness. This explains a lot about why he did such a poor job representing himself.
6. Mr. Carruthers's witnesses did not support his innocence. It did not make sense to call these witnesses.
7. For example, Mr. Carruthers called Alfredo Shaw who said Mr. Carruthers confessed to him.
8. I was recently informed that Alfredo Shaw was a paid informant. Had I known that Shaw was a paid informant, I would not have voted for a death sentence.
9. I recently learned that there is unknown DNA on the bindings used to tie the victims' wrists that does not match Mr. Carruthers.
10. I think that Mr. Carruthers should have the chance to have the DNA tested.
11. A DNA match with a different person would make me doubt Mr. Carruthers's guilt.
12. In light of what I have learned, I would support Mr. Carruthers receiving a life sentence. I do not want to see Mr. Carruthers released but I do not support his execution.

The foregoing is true and correct and executed under penalty of perjury under the laws of the State of Tennessee and United States of America on April 20, 2026.

Zillah Ferrari

APPENDIX F

Motion for Order Compelling Disclosure, *Carruthers v. Tennessee,* Nos. 94-02797-99, 95-11129, (Tenn. Crim. Ct. 30th Jud. Dist. at Memphis May 10, 2026)

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.
_____/

MOTION FOR ORDER COMPELLING DISCLOSURE

Lucas Cameron-Vaughn, Esq.
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

Maria DeLiberato, Esq.*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Melanie C. Verdecia, Esq.*
Quarles & Brady LLP
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602
melanie.verdecia@quarles.com
(813) 387-0279

ATTORNEYS FOR MOVANT
TONY VON CARRUTHERS

**pro hac vice* pending or forthcoming

Petitioner, Tony Von Carruthers, by and through undersigned counsel, hereby requests this Court issue an Order directing the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a lab designated by defense counsel for comparison. As grounds in support, Mr. Carruthers states:

1. Mr. Carruthers is set for execution on May 21, 2026.

2. On April 9, 2026, undersigned counsel filed a Motion for Post-Conviction DNA testing in the Tennessee Supreme Court pursuant to Tennessee Supreme Court Rule 12(4)(e).

3. On April 30, 2026, the Tennessee Supreme Court issued an Order concluding:

> Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

4. On May 4, 2026, Mr. Carruthers filed a *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* (the "**DNA Motion**") in this Court.

5. The State filed a response in opposition to Mr. Carruthers' DNA Motion on May 5, 2026, asserting in part, "The Motion also states, without any support, that Mr. Irving's DNA sample is on file with the medical examiner's office." (State's Resp., at 13.)

6. Since Mr. Carruthers filed his DNA Motion in this Court, federal defense investigator Ben Leonard contacted the Shelby County Medical Examiner to try to obtain the biological standards for Mr. Irving—collected when his autopsy was performed. (Decl. Ben Leonard (May 8, 2026), ¶ 3 (attached as **Exhibit A**) [hereinafter Leonard Decl.].) The Medical

Examiner told Mr. Leonard that he needed a court order or subpoena to obtain the biological standards. (Leonard Decl. ¶ 6.)

7. The State should not be permitted to claim that Mr. Carruthers has failed to prove that the samples exist, while simultaneously allowing a state government agency to refuse to discuss the existence of and refuse to disclose those samples absent a court order. *Cf. Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Sotomayor, J., respecting from denial of application for stay of execution and denial of certiorari) ("[T]he Florida Supreme Court appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a 'colorable' Eighth Amendment claim. *Ibid*. The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.").

8. Nor should Mr. Carruthers be stopped from obtaining this information, which could provide valuable information related to his alleged innocence.

9. Accordingly, in addition to the relief requested in his DNA Motion,[1] Mr. Carruthers requests that this Court issue an Order compelling the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a lab designated by counsel for Mr. Carruthers so they can be compared to existing data.

WHEREFORE, Petitioner Tony Carruthers respectfully requests that this Court expeditiously enter an Order (1) granting this Motion, (2) directing the Shelby County Medical Examiner to release the biological standards of Mr. Irving to a qualified lab designated by counsel

[1] Significantly, the disclosure requested herein would *not* moot the request in Mr. Carruthers' DNA Motion but would at least allow Mr. Carruthers to proceed with comparing Mr. Irving's profile to existing information while his DNA Motion is litigated.

for Mr. Carruthers following appropriate chain of custody protocols, and (3) granting all other relief the Court deems appropriate.

Dated: May 10, 2026

Respectfully submitted,

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn, Esq.
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

Maria DeLiberato, Esq.*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Melanie C. Verdecia, Esq.*
Quarles & Brady LLP
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602
melanie.verdecia@quarles.com
(813) 387-0279

ATTORNEYS FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* pending or forthcoming

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed with the court and served by mail with a courtesy copy sent by email on May 10, 2026, upon:

Benjamin L. Barker
Courtney N. Orr
Office of the Attorney General and Reporter
Criminal Appeals Division
P.O. Box 20207

Nashville, TN 37202
Phone: (615) 770-3743
Benjamin.Barker@ag.tn.gov
Courtney.Orr@ag.tn.gov

I further certify that, pursuant to the Court's order, courtesy copies of the foregoing were served by email to:

Judge Carlyn Addison
Criminal Court Judge
Carlyn.Addison@shelbycountytn.gov

Paul Bruno
Capital Case Attorney
Paul.Bruno@tncourts.gov

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn, Esq.

EXHIBIT A

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.

DECLARATION OF BEN LEONARD

I, Ben Leonard, being of lawful age and legal resident of Nashville, Davidson County, Tennessee, declare the following, based on my personal knowledge:

1. I am employed as an investigator in the Capital Habeas Unit of the Federal Public Defender's Office.

2. I have been so employed for 18 years.

3. As part of my duties, on May 4, 2026 I contacted the Shelby County Medical Examiner trying to obtain that office's file for Ronnie Irving who died in 2002.

4. I provided the Medical Examiner with a signed release from Yvonne O'Neal next of kin of Ronnie Irving.

5. I requested the autopsy report as well as the biological standards taken from Mr. Irving, including fingerprints and a DNA swab.

6. The Medical Examiner agreed to provide me with the autopsy report based on the release but said they need a court order or subpoena for biological standards.

I declare under penalty of perjury and the laws of the United States and State of Tennessee that the foregoing is true and correct to the best of my knowledge.

Dated this 8th day of May 2026 in Memphis, Shelby County, Tennessee.



Ben Leonard

APPENDIX G

Order Denying Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001, *Carruthers v. Tennessee,* Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129, P-25948, (Tenn. Crim. Ct. 30th Jud. Dist. at Memphis May 11, 2026)

Filed 5.11.26
Heidi Kuhn, Clerk
BY SC D.C.

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY VON CARRUTHERS,	)	
	)	
Petitioner,	)	
	)	**Case Nos. 94-02797, 94-02798, 94-02799,**
v.	)	**95-11128, 95-11129, P-25948**
	)	**Death Penalty Case**
STATE OF TENNESSEE,	)	**(DNA Analysis Claim)**
	)	**Execution Date: May 21, 2026**
Respondent.	)	

ORDER DENYING PETITIONER'S MOTION FOR DNA TESTING PURSUANT TO THE TENNESSEE POST-CONVICTION DNA ANALYSIS ACT OF 2001

Pending before the Court is Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001*. The motion was filed on May 4, 2026. In his motion, Mr. Carruthers moves the Court for an order allowing him to conduct DNA testing on (1) the fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson (2) the bindings of Marcellos Anderson, and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck) and then to compare those test results (assuming a DNA profile is obtained from any or all of the items) to the DNA profiles of the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and with known profiles in the CODIS DNA database.

Further, Mr. Carruthers moves the Court for an order directing the comparison of the unknown male profile that was found on a white blanket in the grave with the victims (which contained a male profile that excluded Mr. Carruthers, co-defendant James Montgomery, and the victims) with known DNA profiles in the CODIS database and with Ronnie Irving. The profile from the white blanket was last compared to the profiles in the CODIS DNA database in 2019.

Mr. Carruthers seeks to have that unknown male profile re-run in the CODIS DNA database and compared to Mr. Irving. Mr. Carruthers is seeking an expedited ruling without an evidentiary hearing.

On May 5, 2026, the State filed its response in opposition asking the Court to deny the petition, arguing that Mr. Carruthers has not shown (1) a reasonable probability that further testing would have prevented his prosecution, first-degree murder convictions, or death sentences; (2) that the relevant evidence still exists in a suitable state for reliable testing; or (3) that his request was made for any reason other than delay.

The Relevant Statutes

Under T.C.A. § 40-30-304, the court shall order DNA analysis if it finds that:

(1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Under T.C.A. § 40-30-305, the court may order DNA analysis if it finds that:

(1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

In analyzing the motion, the Court references the Tennessee Supreme Court's ruling in *Powers v. State*, 343 S.W.3d 36, (Tenn. 2011). The Court held, "that the Post–Conviction DNA Analysis Act permits access to a DNA database if a positive match between the crime scene DNA and a profile contained within the database would create a reasonable probability that a petitioner would not have been prosecuted or convicted if exculpatory results had been obtained or would have rendered a more favorable verdict or sentence if the results had been previously available." *Id.* at 39. "The definition of 'reasonable probability' has been well-established in other contexts, and is traditionally articulated as ' 'a probability sufficient to undermine confidence in the outcome.' ' *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn.2009) (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984))." *Id.* at 54. "The 'reasonable probability' inquiry under section 40–30–304(1) of the Act requires courts to look at the effect the exculpatory DNA evidence would have had on the evidence at the time of trial or at the time the decision to prosecute was made, not on the evidence as construed by an appellate court in the light most favorable to the State." *Id.* at 57.

"Under section 40–30–304(1) of the Act, however, we begin with the proposition that DNA analysis will prove to be exculpatory. 28 *Payne v. State,* W2007–01096–CCA–R3–PD, 2007 WL 4258178, at *10 (Tenn.Crim.App. Dec. 5, 2007); *Shuttle v. State,* No. E2003–00131–CCA–R3–PC, 2004 WL 199826, at *5 (Tenn.Crim.App. Feb. 3, 2004)." *Id.* at 55. "As one jurisdiction has ruled, 'the trial court should postulate whatever realistically possible test results would be most

favorable to [the] defendant in determining whether he has established' the reasonable probability requirement under that jurisdiction's DNA testing statute." *State v. Peterson*, 364 N.J.Super. 387, 836 A.2d 821, 827 (N.J.Super.Ct.App.Div.2003). *Id.* "While courts must also consider the evidence that was presented against the petitioner at trial, the evidence must be viewed in light of the effect that exculpatory DNA evidence would have had on the fact-finder or the State." *Id.* "We agree that it may be appropriate to look at previous appeals in this setting in order to discern the 'essential facts of the crime at issue.'" *Id.* at 56.

Trial Proof[1]

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. On March 3, 1994, the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery.

In the summer of 1993, Jimmy Lee Maze, Jr., a convicted felon, received two letters from Carruthers, who was then in prison on an unrelated conviction. In the letters, Carruthers referred to "a master plan" that was "a winner." Carruthers wrote of his intention to "make those streets pay me" and announced, "everything I do from now on will be well organized and extremely violent."

Later, in the fall of 1993, while incarcerated at the Mark Luttrell Reception Center in Memphis awaiting his release, Carruthers was assigned to a work detail at a local cemetery, the West Tennessee Veterans' Cemetery. At one point, as he helped bury a body, Carruthers remarked to fellow inmate Charles Ray Smith "that would be a good way, you know, to bury somebody, if you're going to kill them.... [I]f you ain't got no body, you don't have a case."

[1] *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000).

Smith also testified that he overheard Carruthers and Montgomery, who also was incarcerated at the Reception Center, talking about Marcellos Anderson after Anderson had driven Carruthers back to the Reception Center from a furlough. According to Smith, when Montgomery asked Carruthers about Anderson, Carruthers told him that both Anderson and "Baby Brother" Johnson dealt drugs and had a lot of money. Carruthers said he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison.

On January 11, 1994, James Montgomery was released from prison.

On February 23, 1994, Marcellos Anderson borrowed a white Jeep Cherokee from his cousin, Michael Harris. Around 4:30 on the afternoon of February 24, 1994, witnesses saw Marcellos Anderson and Frederick Tucker riding in the Jeep Cherokee along with James and Jonathan Montgomery. About 5 p.m. that day, James and Jonathan Montgomery and Anderson and Tucker arrived in the Jeep Cherokee at the house of Nakeita Shaw, the Montgomery brothers' cousin.

The four men entered the house and went downstairs to the basement. A short time later, James Montgomery came back upstairs and asked Nakeita Shaw if she could leave for a while so he could "take care of some business." When Nakeita Shaw returned home, she saw only Carruthers and James Montgomery. She saw James Montgomery, Carruthers, and the two victims, Anderson and Tucker, leave in the Jeep Cherokee. Prior to trial, Nakeita Shaw told the police that Anderson's and Tucker's hands were tied behind their backs when they left her house. While she admitted making this statement, she testified at trial that the statement was false and that she had not seen Anderson's and Tucker's hands tied when they left her home.

In the meantime, around 8 p.m. on February 24, Laventhia Briggs telephoned her aunt, victim Delois Anderson. When someone picked up the telephone but said nothing, Briggs hung

up. Briggs was living with Delois Anderson at the time and arrived at her aunt's home around 9:00 p.m. Although Delois Anderson was not home, her purse, car, and keys were there. Food left in Anderson's bedroom indicated that she had been interrupted while eating.

Chris Hines, who had known the defendants since junior high school, testified that around 8:45 p.m. on February 24, 1994, Jonathan Montgomery "beeped" him. Jonathan said, "Man, a n––r got them folks." When Hines asked, "What folks?" Jonathan replied, "Cello and them" and said something about stealing $200,000. Jonathan arrived at Hines' home at about 9:00 p.m. and told him, "Man, we got them folks out at the cemetery on Elvis Presley, and we got $200,000. Man, a n——r had to kill them folks."

The Jeep Cherokee that Anderson had borrowed was found in Mississippi on February 25 around 2:40 a.m. It had been destroyed by fire.

On March 3, 1994, about one week after a missing person report was filed on Delois and Marcellos Anderson, Jonathan Montgomery directed Detective Jack Ruby of the Memphis Police Department to the grave of Dorothy Daniels at the Rose Hill Cemetery on Elvis Presley Boulevard. Daniels' grave was located six plots away from the grave site of the Montgomery brothers' cousin. Daniels had been buried on February 25, 1994. Pursuant to a court order, Daniels' casket was disinterred, and the authorities discovered the bodies of the three victims buried beneath the casket under several inches of dirt and a single piece of plywood.

Dr. Hugh Edward Berryman, one of the forensic anthropologists who assisted in the removal of the bodies from the crime scene, noted there was no evidence to suggest that Daniels' casket had been disturbed after she was buried. Thus, it can be inferred that the bodies of the three victims were placed in the grave and covered with dirt and a piece of plywood prior to the casket being placed in the grave.

Dr. O.C. Smith, who helped remove the bodies from the grave and who performed autopsies on the victims, testified that, when found, the body of Delois Anderson was lying at the bottom of the grave and the bodies of the two male victims were lying on top of her. The hands of all three victims were bound behind their backs. Frederick Tucker's feet were also bound and his neck showed signs of bruising caused by a ligature.[2] A red sock[3] was found around Delois Anderson's neck. Dr. Smith opined that each victim was alive when buried.

Carruthers called Alfredo Shaw as a witness. After seeing a television news report about these killings in March of 1994, Alfredo Shaw had telephoned CrimeStoppers and given a statement to the police implicating Carruthers. Alfredo Shaw later testified before the grand jury which eventually returned the indictments against Carruthers and Montgomery. Prior to trial, however, several press reports indicated that Alfredo Shaw had recanted his grand jury testimony, professed that the statement had been fabricated, and intended to formally recant his grand jury testimony when called as a witness for the defense. Therefore, when Carruthers called Alfredo Shaw to testify, the prosecution announced that if he took the stand and recanted his prior sworn testimony, he would be charged with and prosecuted for two counts of aggravated perjury. In light of the prosecution's announcement, the trial court summoned Alfredo Shaw's attorney and allowed Alfredo Shaw to confer privately with him. Following that private conference, Alfredo Shaw's attorney advised the trial court, defense counsel, including Carruthers, and the prosecution, that Alfredo Shaw intended to testify consistently with his prior statements and grand jury testimony and that any inconsistent statements Alfredo Shaw had made to the press were motivated by his fear of Carruthers and by threats he had received from him.

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[2] Each body had ligatures or bondage to the hands. Mr. Tucker also had ligatures on his feet. (1996 Trial Tr., Vol. 13, pp. 1865.)

[3] Petitioner alleges there are two red socks.

Despite this information, Carruthers called Alfredo Shaw as a witness and as his attorney advised, Shaw provided testimony consistent with his initial statement to the police and his grand jury testimony. Specifically, Alfredo Shaw testified that he had been on a three-way call with Carruthers and either Terry or Jerry Durham, and during this call, Carruthers had asked him to participate in these murders, saying he had a "sweet plan" and that they would each earn $100,000 and a kilogram of cocaine. Following his arrest for these murders, Carruthers was incarcerated in the Shelby County Jail along with Alfredo Shaw, who was incarcerated on unrelated charges. Carruthers and Alfredo Shaw were in the law library when Carruthers told Alfredo Shaw that he and some other unidentified individuals went to Delois Anderson's house looking for Marcellos Anderson and his money. Marcellos was not there when they arrived, but Carruthers told Delois Anderson to call her son and tell him to come home, "it's something important." When Anderson arrived, the defendants forced Anderson, Tucker, who was with Anderson, and Delois Anderson into the jeep at gunpoint and drove them to Mississippi, where the defendants shot Marcellos Anderson and Tucker and burned the jeep. According to Alfredo Shaw, the defendants then drove all three victims back to Memphis in a stolen vehicle. Alfredo Shaw testified that, after they put Marcellos Anderson and Tucker into the grave, Delois Anderson started screaming and one of the defendants told her to "shut up" or she would die like her son and pushed her into the grave. Carruthers also told Alfredo Shaw that the bodies would never have been discovered if "the boy wouldn't have went and told them folks." Carruthers told Alfredo Shaw that he was not going to hire an attorney or post bond because the prosecution would then learn that the murders had been a "hit." Carruthers told Alfredo Shaw that Johnson also was supposed to have been "hit" and that Terry and Jerry Durham were the "main

people behind having these individuals killed." Carruthers said that the Durhams wanted revenge because Anderson and Johnson had previously stolen from them.

In response to questioning by Carruthers, Alfredo Shaw acknowledged that he had told the press that his statement to police and his grand jury testimony had been fabricated, but said he had done so because Carruthers had threatened him and his family. According to Alfredo Shaw, one of Carruthers' investigators had arranged for a news reporter to speak with him about recanting his grand jury testimony.

As impeachment of his own witness, Carruthers called both Jerry and Terry Durham, twin brothers, as witnesses. The Durhams denied knowing Alfredo Shaw and said they had never been party to a three-way telephone call involving Alfredo Shaw and Carruthers.

Analysis

The Court will first analyze this motion under T.C.A. § 40-30-304 and will then analyze this motion under T.C.A. § 40-30-305.

Under the *mandatory testing* statute, T.C.A. §40-30-304, prong (1) requires the Court to find: (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. In conducting its analysis of prong (1), the Court must assume, pursuant section 40–30–304(1) of the Act, that DNA analysis will prove to be exculpatory. In addition, "the trial court should postulate whatever realistically possible test results would be most favorable to [the] defendant in determining whether he has established" the reasonable probability requirement under Tennessee's DNA testing statute. *Powers* at 55. Therefore, the Court completes its analysis of prong (1) with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan

Montgomery. The DNA "hit" may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items).

Even with that assumption, the Court does not find a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. It is unlikely that Mr. Carruthers would not have been prosecuted, even if a third party's DNA had been found at the crime scene. With (1) letters referring to "a master plan" that was "a winner," an indication of Mr. Carruthers' intention to "make those streets pay me," and an announcement from Mr. Carruthers that "everything I do from now on will be well organized and extremely violent," (2) the statement of Mr. Carruthers that "that would be a good way, you know, to bury somebody, if you're going to kill them.... [I]f you ain't got no body, you don't have a case," (3) Mr. Carruthers' statement that he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison, (4) Nakeita Shaw's eyewitness account that she saw James Montgomery, Mr. Carruthers, and the two victims, Anderson and Tucker, leave her home in the Jeep Cherokee on the night the victims went missing, (5) the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery (Mr. Carruthers had previously been assigned to a work detail at a local cemetery where he helped bury a body), (6) Mr. Carruthers' confession to Alfredo Shaw, and (7) the likelihood that more than one participant was involved in the homicides given the number of victims and the movement of the victims, the Court does not find that a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. There is simply not "a probability sufficient to undermine confidence in the outcome." The Court finds that prong (1) of T.C.A. §40-30-304 has not been

met.

Prong (2) requires the Court to find the evidence is still in existence and in such a condition that DNA analysis may be conducted. Although the State disputes this prong can be met, it does appear that the Petitioner meets this prong based upon Exhibit 11 to the motion (the Affidavit of Alan Keel). Criminalist and DNA expert Alan Keel concludes that it is likely each of these items "bear transfer biology from whomever bound the victims." The Court finds that prong (2) has been met.

Prong (3) requires the Court to find the evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis. It is appears to the Court that three of the four items ((1) the fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson (2) the bindings of Marcellos Anderson, and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck)) have not been previously tested pursuant to current DNA testing technology. Although the fourth item, the white blanket, was tested and compared to the data in the CODIS DNA database, it has not been compared since 2019. It appears prong (3) has been met.

Prong (4) requires the Court to find the application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of the sentence or administration of justice. Prong (4) requires the Court to find (a) the application for analysis is made for the purpose of demonstrating innocence **and** (b) not to unreasonably delay the execution of the sentence or administration of justice. On one hand, the motion is clearly an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted. In fact, Mr. Carruthers for over thirty years has claimed his innocence, and Mr. Carruthers believes

that further DNA testing may prove his innocence.

On the other hand, and perhaps more apparent, it clearly appears that filing this motion on May 4, 2026 (only seventeen days before Mr. Carruthers' scheduled execution) could very well be an attempt to unreasonably delay the execution of Mr. Carruthers' sentence.[4] This motion could have been filed years ago. This procedural avenue became available in 2001. James Montgomery allegedly identified Ronnie Irving as an additional suspect in 2010 or 2011. This motion could have been filed when Mr. Carruthers filed his *pro se* motion for fingerprint analysis (September 21, 2021). This motion could have been filed shortly after September 30, 2025, when the execution date was set. This motion could have been filed when counsel for Mr. Carruthers filed his *Reply to State's December 23, 2025, Response to Pro Se Petition and/or Amended Petition* regarding the fingerprint motion (December 31, 2025). There is no explanation provided or that the Court can surmise as to why Mr. Carruthers waited until April, 2026, to bring this to this Court's attention if not for the purpose of unreasonably delaying the execution of the sentence or administration of justice. This Court finds the filing of this motion is an attempt to unreasonably delay the execution of Mr. Carruthers' sentence. Prong (4) has not been met.

The Court will now analyze this motion under T.C.A. § 40-30-305. Under the *discretionary testing* statute, T.C.A. §40-30-305, prong (1) requires the Court to find a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction. As noted above, the Court must assume, pursuant section 40–30–304(1) of the Act, that DNA analysis will prove to be exculpatory. In addition, "the trial

[4] It should be noted that Mr. Carruthers originally filed a similar motion in the Tennessee Supreme Court on April 9, 2026. However, the Tennessee Supreme Court denied the motion on procedural grounds. The filing of a similar motion in the Tennessee Supreme Court approximately one month before filing the motion pending in this Court does not impact this Court's analysis.

court should postulate whatever realistically possible test results would be most favorable to [the] defendant in determining whether he has established" the reasonable probability requirement under Tennessee's DNA testing statute. *Powers* at 55. Therefore, the Court completes its analysis of prong (1) with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan Montgomery. The DNA "hit" may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items).

Similarly to the analysis of prong (1) under T.C.A. § 40-30-304, the Court does not find that a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict more favorable if the results had been available at the proceeding leading to the judgment of conviction. Given the facts of this case as noted above, it is unlikely that the verdict in Mr. Carruthers' case would have been more favorable, even if a third party's DNA had been found at the crime scene. Again, there is simply not "a probability sufficient to undermine confidence in the outcome." The Court believes the convictions would remain intact. The Court finds that prong (1) of T.C.A. §40-30-305 has not been met.

When analyzing whether the sentence may have been more favorable, the analysis is somewhat more complicated. In the analysis, the trial facts remain the same. The Court finds this crime was planned over a period of time and was not a spur-of-the-moment idea. The Court also finds the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences. Finally, the Court finds that Deloris Anderson was a truly innocent

victim in this case. There is clearly sufficient proof and a solid basis for the jury returning death sentences in this case.

On the other hand, it is plausible that a DNA profile of a third party at the crime scene (especially on the ligatures) could cause residual doubt in the minds of the jurors due another participant possibly being involved and not prosecuted and could produce questions about Mr. Carruthers' specific role in the offenses. Each of these possibilities may have given at least one juror a reason to not vote for death in this case. The question for this part of the analysis is whether the DNA profile of a third party at the crime scene would result in "a probability sufficient to undermine confidence in the" death sentences.

The Court finds that evidence of a third party's DNA profile at the crime scene would not result in "a probability sufficient to undermine confidence in the" death sentences, given all of the facts of the case at trial. The Court finds that a reasonable probability does not exist that analysis of the evidence will produce DNA results that would have rendered the petitioner's sentences more favorable if the results had been available at the proceeding leading to the judgment of conviction. As such, prong (1) of T.C.A. § 40-30-305 has not been met.

Prongs (2) through (4) of T.C.A. § 40-30-305 are same as prongs (2) through (4) of T.C.A. § 40-30-304. The Court has found herein that prongs (2) and (3) of T.C.A. § 40-30-304 have been met and that prong (4) of T.C.A. § 40-30-304 has not been met. The Court makes the same findings as to T.C.A. § 40-30-305. Using the same analysis as explained above, prongs (2) and (3) of T.C.A. § 40-30-305 have been met and prong (4) of T.C.A. § 40-30-305 has not been met.

Conclusion

WHEREFORE, based on the above-stated reasons, the Court finds prongs (2) and (3) of T.C.A. § 40-30-304 have been met and prongs (1) and (4) of T.C.A. § 40-30-304 have not been

met. The Court further finds that prongs (2) and (3) of T.C.A. § 40-30-305 have been met and prongs (1) and (4) of T.C.A. § 40-30-304 have not been met. Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* is hereby denied.

IT IS SO ORDERED this 11 day of May, 2026.

Carlyn Addison, Judge
Criminal Court, Division V
30th Judicial District, at Memphis

APPENDIX H

Order Granting Jurisdiction Over Appeal, *Carruthers v. Tennessee*, No. W2026-00706-SC-RDM-PD, (Tenn. May 15, 2026)

FILED
05/15/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

TONY CARRUTHERS v. STATE OF TENNESSEE

Criminal Court for Shelby County
No. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129

No. W2026-00706-SC-RDM-PD

ORDER

On May 15, 2026, Tony Carruthers filed a motion pursuant to Tennessee Code Annotated section 16-3-201(d) asking this Court to assume jurisdiction over his appeal currently pending in the Tennessee Court of Criminal Appeals related to his request for DNA testing under the Tennessee Post-Conviction DNA Analysis Act. The Court concludes it is appropriate to exercise its discretion to assume jurisdiction in this case, given the unusual public importance of this case in light of the impending execution date of May 21, 2026. *See* Tenn. Code Ann. § 16-3-201(d)(2). Accordingly, the motion is GRANTED. It is hereby ORDERED that both parties shall file their briefs no later than Monday, May 18, 2026, by 4:30 p.m.

PER CURIAM

APPENDIX I

Opinion and Order Denying Post-Conviction DNA Testing and Motion to Compel, *Carruthers v. Tennessee,* No. W2026-00706-SC-RDM-PD, (Tenn. May 19, 2026)

FILED
05/19/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TONY CARRUTHERS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129, P-25948
Carlyn L. Addison, Judge

No. W2026-00706-SC-RDM-PD

Tony Von Carruthers, a death-row inmate scheduled for execution on May 21, 2026, filed a motion requesting last-minute DNA testing of fingernail scrapings and bindings from the murder victims.[1] Mr. Carruthers sought an expedited ruling on the motion without an evidentiary hearing. After analyzing the request under the mandatory and discretionary provisions of the Post-Conviction DNA Analysis Act of 2001 (DNA Act), the post-conviction court denied the motion. Mr. Carruthers appealed to the Court of Criminal Appeals. Upon motion of Mr. Carruthers, this Court assumed jurisdiction pursuant to Tennessee Code Annotated section 16-3-201(d). Because Mr. Carruthers has failed to establish the statutory criteria for ordering analysis under the DNA Act, we affirm the judgment of the post-conviction court.

Tenn. Code Ann. § 16-3-201(d); Judgment of the Shelby County Criminal Court Affirmed

Lucas Camerson-Vaughn, American Civil Liberties Union (ACLU) of Tennessee, Nashville, Tennessee; Maria DeLiberato, ACLU, Durham, North Carolina; and

[1] Mr. Carruthers also filed in the post-conviction court a "Motion for Order Compelling Disclosure," seeking a court order directing the Shelby County Medical Examiner to release the biological standards of a man whom codefendant James Montgomery allegedly identified as a participant in these crimes. The post-conviction court denied the motion, and the State asserts that Mr. Carruthers has no right to appeal the denial. We need not decide whether Mr. Carruthers has a right to appeal the trial court's denial of his motion because he has failed to establish statutory grounds for DNA testing. Accordingly, we conclude the issue is moot.

Melanie C. Verdicia, Quarles & Brady LLP, Tampa, Florida, for the Appellant, Tony Von Carruthers.

Jonathan Skrmetti, Attorney General and Reporter; Courtney Orr, Deputy Attorney General; and Benjamin Barker, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background Summary

In February 1994, Tony Carruthers, James Montgomery, and Jonathan Montgomery[2] killed Marcellos "Cello" Anderson, his mother Delois Anderson, and Freddrick Tucker and buried them beneath a casket in a Memphis cemetery. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000), *cert. denied*, 533 U.S. 953 (2001). Mr. Carruthers and James were convicted of three counts of murder in a joint trial.[3] *Id.* The jury imposed a sentence of death for each murder. *Id.*

The proof at trial established that, while incarcerated in the summer of 1993, Mr. Carruthers shared his "master plan" to kidnap, rob, and murder Mr. Anderson. *Id.* In the fall, during a work detail at a local cemetery, Mr. Carruthers expressed to a fellow inmate that a grave would be a good way to hide a body if you killed someone, explaining, "[I]f you ain't got no body, you don't have a case." *Id.* The same inmate overheard Mr. Carruthers and James discussing their plans to rob Mr. Anderson because he made a lot of money dealing drugs. *Id.* When Mr. Carruthers was released from prison in late 1993, he told Jonathan Montgomery it would be best to wait until his brother James was released to carry out the plan. *Id.* at 524-25. James Montgomery was released from prison in January 1994, and the plan was carried out in February 1994. *Id.* at 525.

Multiple witnesses saw Mr. Carruthers and James with Mr. Anderson and Mr. Tucker on the evening of February 23. *Id*. at 525-26. Nakeita Shaw saw Mr.

[2] Because James and Jonathan Montgomery share a surname, we will refer to both by their first names for clarity. We intend no disrespect in doing so.

[3] Jonathan was also charged in this case. *Id.* at 524 n.2. Months before trial, Jonathan was found hanged in his jail cell. *Id*. James's conviction and sentences were later reversed, and his case was remanded for a new trial. *Id.* at 524.

Carruthers and James leading Mr. Anderson and Mr. Tucker to a Jeep.[4] *Id*. at 526. Earlier that night, Laventhia Briggs arrived at the home of her aunt, Delois Anderson, with whom she was residing. *Id.* Ms. Anderson was not at home, and it appeared to Ms. Briggs that Ms. Anderson had been interrupted while eating. *Id.* On the evening of February 24, Jonathan told Chris Hines they had stolen $200,000 and had killed "Cello and them" "out at the cemetery on Elvis Presley." *Id*.

On March 3, 1994, Jonathan led authorities to a grave in the Rose Hill Cemetery on Elvis Presley Boulevard in Memphis, where they found the three victims' bodies buried beneath a casket. *Id*. at 527 & n.5. Mr. Anderson and Mr. Tucker had been shot, and Ms. Anderson had been beaten and suffocated. *Id.* at 527-28. Although Mr. Anderson was known to wear "expensive jewelry" and carry large sums of cash, neither was found with his body. *Id.* at 524. After autopsies, the medical examiner opined that the victims had been buried alive. *Id.* at 527-28.

Alfredo Shaw saw the news report about the murders and called CrimeStoppers. *Id.* at 528. Mr. Shaw later testified to a grand jury that during a three-way call with Mr. Carruthers and another man, Mr. Carruthers asked Mr. Shaw to participate in the murders, saying each would earn $100,000 and a kilogram of cocaine. *Id.* at 528-29. Before trial, Mr. Shaw told the media he had lied to the grand jury about Mr. Carruthers's involvement in the murders. *Id*. at 528. Mr. Carruthers, who represented himself at trial, called Mr. Shaw as a defense witness. Mr. Shaw said he lied to the media because Mr. Carruthers had threatened him and his family. *Id.* at 529. Mr. Shaw testified that Mr. Carruthers confessed to the murders while they were jailed together before Mr. Carruthers's trial. *Id*. According to Mr. Shaw, Mr. Carruthers used Ms. Anderson to lure Mr. Anderson and Mr. Tucker to a meeting, and he then shot two of the victims, burned the Jeep in Mississippi, stole a car to return to Memphis, and buried the victims alive. *Id*. Mr. Carruthers also told him Ms. Anderson began screaming when Mr. Anderson and Mr. Tucker were forced into the grave, so Ms. Anderson was pushed into the grave too. *Id.* Mr. Shaw said Mr. Carruthers lamented that the bodies would never have been found if "'the boy wouldn't have went and told them folks.'" *Id*.

Procedural History

After this Court affirmed Mr. Carruthers's convictions and sentences on direct appeal, he unsuccessfully pursued relief in state post-conviction proceedings and in

[4] Mr. Anderson had recently borrowed a Jeep, which was found destroyed by fire on February 25. *Id.*

federal habeas corpus proceedings. *See State v. Carruthers*, No. W1997-00097-SC-DDT-DD, 2026 WL 1257769, at *6–7 (Tenn. May 7, 2026) (summarizing Mr. Carruthers's litigation history in his competency-to-be-executed proceedings).

Mr. Carruthers has made multiple innocence claims during collateral litigation. In fact, such claims began in his original post-conviction proceedings during which Mr. Carruthers alleged trial counsel was ineffective for failing to retain a DNA expert to testify about blood found on a blanket-like cloth at the grave site that did not match the DNA of any of the victims or any of the three defendants. *Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *38 (Tenn. Crim. App. Dec. 12, 2007). The post-conviction court rejected the claim, noting that those DNA results were "only very minimally helpful to [Mr. Carruthers]" and did not "negate all other proof in the case." *Id.* The court remarked that "it is rank speculation to assume that [the DNA evidence] indicates that a third party might have committed this crime. There is no proof as to the age of the blood, or any explanation of how the blood got on the piece of cloth." *Id.* The Court of Criminal Appeals affirmed the trial court's ruling, explaining that any DNA results from the blood on the blanket would be "inconclusive and would not have changed the outcome of trial." *Id.* at *40.

In 2011, Mr. Carruthers filed a motion based on the DNA Act requesting testing of a vaginal swab from Delois Anderson and a blanket collected from the crime scene. *Carruthers v. State*, No. W2012-01473-CCA-R3-PD, 2013 WL 3968787, at *1 (Tenn. Crim. App. Aug. 1, 2013). Mr. Carruthers argued that such testing would exclude him as the source of the DNA and exonerate him of the crime. *Id.* at *3. The post-conviction court dismissed the motion stating, "[I]t appears from the record that DNA testing has already occurred and[,] the results are only minimally helpful to [Mr. Carruthers]." *Id.* The Court of Criminal Appeals affirmed, explaining that there was no indication the biological material on the blanket was left contemporaneously with the murders. *Id.* at *4. It further concluded that, even if DNA analysis excluded Mr. Carruthers, it would "not in any way" provide a reasonable probability that Mr. Carruthers would not have been convicted. *Id.* at *5.

In 2021, Mr. Carruthers filed a pro se petition followed by an amended petition through counsel seeking fingerprint testing under the Post-Conviction Fingerprint Analysis Act of 2021 ("Fingerprint Act"). He alleged that, in 2010, James told an investigator that Mr. Carruthers was not involved and identified another man, Ronnie "Eyeball" Irving, as his accomplice in the murders. *Carruthers v. State*, No. W2026-00226-CCA-R3-PD, 2026 WL 1031140, at *6 (Tenn. Crim.

App. Apr. 16, 2026).[5] The post-conviction court summarily dismissed the petition, concluding that, even if fingerprints found at Ms. Anderson's home belonged to Ronnie Irving, such results would not have affected either the State's decision to prosecute Mr. Carruthers or the outcome of the trial. *Id.* at *8–9. The Court of Criminal Appeals affirmed. *Id.* at *10.

This brings us to Mr. Carruthers's eleventh-hour request for DNA testing. On April 9, 2026, less than two months before his scheduled execution, Mr. Carruthers filed in this Court a "Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. R. 12.4(E)." In his motion, Mr. Carruthers sought DNA testing and comparison of: (1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson; (2) the bindings of Marcellos Anderson; and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck). This Court denied the motion, noting that Mr. Carruthers had not availed himself of an available procedural vehicle in the post-conviction court — the DNA Act. Order, *State v. Carruthers*, No. W1997-00097-SC-R11-DD (Tenn. Apr. 30, 2026).

On May 4, 2026, Mr. Carruthers filed the instant motion pursuant to the DNA Act in the post-conviction court repeating the requests for DNA testing and comparison he raised in his previous motion to this Court. On May 11, 2026, the post-conviction court denied Mr. Carruthers's motion, concluding he had failed to establish the statutory criteria entitling him to either mandatory or discretionary testing under the DNA Act. Mr. Carruthers appealed to the Court of Criminal Appeals and filed a motion asking this Court to assume jurisdiction of his appeal. We granted his motion and established a briefing schedule. As explained herein, we affirm the decision of the post-conviction court.

Standard of Review

Appellate courts apply the abuse of discretion standard when reviewing a post-conviction court's decision on whether to grant relief under the DNA Act. *State v. Wilks*, No. W2014-02304-CCA-R3-PC, 2015 WL 5719926, at *3 (Tenn. Crim. App. Sept. 30, 2015); *cf. Alley v. State*, No. W2004-01204-CCA-R3-PD, 2004 WL 1196095, at *3 (Tenn. Crim. App. May 26, 2004). "A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an

[5] The sixty-day deadline to file an application for permission to appeal pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure has not expired.

incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Black v. Strada*, 721 S.W.3d 223, 226 (Tenn. 2025).

Analysis

The Post-Conviction DNA Analysis Act of 2001

The DNA Act authorizes "a person convicted of and sentenced for the commission of first degree murder . . . [to] file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." Tenn. Code Ann. § 40-30-303. Under the DNA Act's "mandatory" provision, the court *shall* order DNA analysis if it finds that:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-304. Under the DNA Act's "discretionary" provision, the court *may* order DNA analysis if it finds that:

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-305. "Under either the mandatory or discretionary provision, all four elements must be met before DNA analysis will be ordered by the court." *Powers v. State*, 343 S.W.3d 36, 48 (Tenn. 2011). Thus, a petitioner's failure to prove any one of the four criteria is fatal to the petitioner's claim, and the post-conviction court has the authority to dismiss the petition. *See Buford v. State*, No. M2002-02180-CCA-R3-PC, 2003 WL 1937110, at *6 (Tenn. Crim. App. Apr. 24, 2003).

In ruling on a request based on the DNA Act, the post-conviction court considers all "available evidence, including the evidence presented at trial and any stipulations of fact made by either party." *Alley*, 2004 WL 1196095, at *3. The post-conviction court may also consider appellate court opinions from the petitioner's direct appeal or his appeals of prior post-conviction or habeas corpus actions. *Id.* Finally, the post-conviction court presumes the requested DNA analysis would produce results favorable to the petitioner. *Powers*, 343 S.W.3d at 55 n. 28.

In this case, the post-conviction court concluded that Mr. Carruthers failed to establish the first statutory criteria under both the mandatory and discretionary provisions. In conducting its analysis of these criteria, the post-conviction court, consistent with governing precedent, began "with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan Montgomery." It further presumed that "the DNA 'hit' may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items)."

But, even with those assumptions, the post-conviction court concluded that

Mr. Carruthers failed to establish "a reasonable probability that [he] would not have been prosecuted or convicted" as the first criterion of the mandatory provision requires. The court explained:

> It is unlikely that Mr. Carruthers would not have been prosecuted, even if a third party's DNA had been found at the crime scene. With (1) letters referring to "a master plan" that was "a winner," an indication of Mr. Carruthers'[s] intention to "make those streets pay me," and an announcement from Mr. Carruthers that "everything I do from now on will be well organized and extremely violent," (2) the statement of Mr. Carruthers that "that would be a good way, you know, to bury somebody, if you're going to kill them…. [I]f you ain't got no body, you don't have a case," (3) Mr. Carruthers'[s] statement that he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison, (4) Nakeita Shaw's eyewitness account that she saw James Montgomery, Mr. Carruthers, and the two victims, Anderson and Tucker, leave her home in the Jeep Cherokee on the night the victims went missing, (5) the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery (Mr. Carruthers had previously been assigned to a work detail at a local cemetery where he helped bury a body), (6) Mr. Carruthers' confession to Alfredo Shaw, and (7) the likelihood that more than one participant was involved in the homicides given the number of victims and the movement of the victims, the [c]ourt does not find that a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. There is simply not "a probability sufficient to undermine confidence in the outcome." The Court finds that prong (1) of T.C.A. §40-30-304 has not been met.

Indulging these same presumptions, the post-conviction court also found that Mr. Carruthers failed to establish the first criterion under the discretionary provision of the statute. The post-conviction court explained its analysis as follows:

> Similarly to the analysis of [the first criterion of the mandatory provision], the Court does not find that a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict more favorable if the results had been available at the proceeding leading to the judgment of conviction.

> Given the facts of this case as noted above, it is unlikely that the verdict in Mr. Carruthers'[s] case would have been more favorable, even if a third party's DNA had been found at the crime scene. Again, there is simply not "a probability sufficient to undermine confidence in the outcome." The Court believes the convictions would remain intact.
>
> . . . .
>
> When analyzing whether the sentence may have been more favorable, the analysis is somewhat more complicated. In the analysis, the trial facts remain the same. The Court finds this crime was planned over a period of time and was not a spur-of-the-moment idea. The Court also finds the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences. Finally, the Court finds that Deloris Anderson was a truly innocent victim in this case. There is clearly sufficient proof and a solid basis for the jury returning death sentences in this case.
>
> On the other hand, it is plausible that a DNA profile of a third party at the crime scene (especially on the ligatures) could cause residual doubt in the minds of the jurors due to another participant possibly being involved and not prosecuted and could produce questions about Mr. Carruthers'[s] specific role in the offenses. Each of these possibilities may have given at least one juror a reason to not vote for death in this case. The question for this part of the analysis is whether the DNA profile of a third party at the crime scene would result in "a probability sufficient to undermine confidence" in the death sentences.
>
> The Court finds that evidence of a third party's DNA profile at the crime scene would not result in "a probability sufficient to undermine confidence in the" death sentences, given all of the facts of the case at trial. The Court finds that a reasonable probability does not exist that analysis of the evidence will produce DNA results that would have rendered the petitioner's sentences more favorable if the results had been available at the proceeding leading to the judgment of conviction.

We conclude that the post-conviction court did not abuse its discretion by concluding that Mr. Carruthers failed to meet the first criterion of both the mandatory and discretionary provisions of the DNA Act. As the post-conviction court

explained, even presuming the DNA analysis revealed exactly what Mr. Carruthers claims, these results would not amount to a reasonable probability that he would not have been prosecuted or convicted or a reasonable probability that his conviction or sentence would have been more favorable. Overwhelming evidence remains of Mr. Carruthers's involvement in planning and perpetrating the murders, and this evidence would not be undermined by favorable DNA results. This evidence clearly supports both Mr. Carruthers's convictions and the aggravating circumstances the jury found when it imposed sentences of death for each murder conviction. As summarized above, the State's evidence revealed that Mr. Carruthers devised a "master plan" to commit these crimes months in advance. After James was released from prison, Mr. Carruthers and the brothers carried out the plan. Jonathan later led the authorities to the exact location where the victims had been buried alive. Even if DNA results and comparison suggested another person was possibly involved in these crimes, such a suggestion does not undermine the significant remaining evidence against Mr. Carruthers. Because Mr. Carruthers failed to satisfy the first criterion of both the mandatory and discretionary provisions of the DNA Act, the post-conviction court did not abuse its discretion in denying the motion. This conclusion alone is a sufficient basis for this Court to affirm the post-conviction court's decision. *Powers*, 343 S.W.3d at 48; *Buford*, 2003 WL 1937110, at *6.

We also agree with the post-conviction court's conclusion that Mr. Carruthers failed to establish the fourth criterion of the mandatory and discretionary provisions of the DNA Act,[6] which requires the petitioner to show that the request for testing is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice. Tenn. Code Ann. §§ 40-30-304(4), -305(4). In determining Mr. Carruthers failed to make this showing, the post-conviction court reasoned:

> On one hand, the motion is clearly an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted. In fact, Mr. Carruthers for over thirty years has claimed his innocence, and Mr. Carruthers believes that further DNA testing may prove his innocence.
>
> On the other hand, and perhaps more apparent, it clearly appears that filing this motion on May 4, 2026 (only seventeen days before Mr. Carruthers'[s] scheduled execution) could very well be an attempt to

[6] The fourth criterion is identical under both the mandatory and discretionary provisions.

> unreasonably delay the execution of Mr. Carruthers'[s] sentence. This motion could have been filed years ago. This procedural avenue became available in 2001. James Montgomery allegedly identified Ronnie Irving as an additional suspect in 2010 or 2011. This motion could have been filed when Mr. Carruthers filed his *pro se* motion for fingerprint analysis (September 21, 2021). This motion could have been filed shortly after September 30, 2025, when the execution date was set. This motion could have been filed when counsel for Mr. Carruthers filed his *Reply to State's December 23, 2025, Response to Pro Se Petition and/or Amended Petition* regarding the fingerprint motion (December 31, 2025). There is no explanation provided or that the Court can surmise as to why Mr. Carruthers waited until April, 2026, to bring this to this Court's attention if not for the purpose of unreasonably delaying the execution of the sentence or administration of justice. This Court finds the filing of this motion is an attempt to unreasonably delay the execution of Mr. Carruthers'[s] sentence. Prong (4) has not been met.

We agree with the post-conviction court that Mr. Carruthers has had a procedural avenue to seek DNA testing since 2001, yet he waited to file this motion until just over one month before his scheduled execution and almost seven months after this Court set his execution date. The facts fully support the post-conviction court's determination that Mr. Carruthers brought his DNA motion for the purpose of delaying his execution and, in turn, failed to establish the fourth criterion of both the mandatory and discretionary provisions of the DNA Act. Again, we conclude that the post-conviction court did not abuse its discretion in denying the motion for DNA testing.[7]

Conclusion

For the reasons set forth above, we affirm the post-conviction court's judgment.

This opinion is not subject to rehearing under Rule 39 of the Tennessee Rules

[7] Mr. Carruthers's contention that the post-conviction court erred by failing to hold an evidentiary hearing on his motion is factually and legally without merit. Mr. Carruthers asked the post-conviction court to "grant his motion without the need for an evidentiary hearing." And this Court has held that post-conviction courts are not required to hold an evidentiary hearing to adjudicate requests for testing under the DNA Act. *Powers*, 343 S.W.3d at 56.

of Appellate Procedure, and the Clerk is directed to certify this opinion as final and to immediately issue the mandate.

This opinion is designated for publication pursuant to Rule 4 of the Rules of the Tennessee Supreme Court.

PER CURIAM