

**IN THE 16th CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

STATE OF MISSOURI	)	
	)	
	)	Case No. 16CR79000361
v.	)	
	)	Div. 18
KEVIN STRICKLAND,	)	
	)	
Defendant.	)	

**MOTION TO SET ASIDE THE
JUDGMENT AND SUGGESTIONS IN SUPPORT**

Kevin Strickland has spent 43 years in prison based on a single mistaken eyewitness identification. In 1979, Strickland was convicted of one count of capital murder and two counts of second-degree murder after Cynthia Douglas belatedly named him as the man with the shotgun. Ms. Douglas was the sole surviving victim of a heinous crime, and her identification was the only direct evidence against Strickland. Within a year of Strickland's conviction, Douglas realized that she was mistaken in her identification and informed her family members. In the following decades, she spoke about the error with friends and family and sought advice on how to remedy it.

In 2009, Douglas made a formal request to the Midwest Innocence Project stating that she had made a mistake and asking for help. Strickland eventually retained counsel through the Midwest Innocence Project, which contacted the Prosecuting Attorney's Office in 2020. With Ms. Douglas's recantation, additional evidence corroborating that recantation, and fingerprint testing that excludes Strickland from the murder weapon, the Prosecuting Attorney is now in possession of clear and convincing evidence of Strickland's

actual innocence that significantly undermines any confidence in his conviction and, therefore, moves herein to set aside the judgment and conviction in *State of Missouri v. Kevin Strickland*, 16CR79000361.

STANDARD OF REVIEW

Pursuant to §547.031(3), this Court has authority to set aside a judgment, upon the filing of a motion by the prosecuting attorney, where it finds that there is clear and convincing evidence of actual innocence that undermines the confidence in the judgment. § 547.031(3), RSMo. Evidence is clear and convincing when it “instantly tilts the scales in the affirmative when weighed against the evidence in opposition, and the fact finder’s mind is left with an abiding conviction that the evidence is true.” *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003) (internal quotation omitted). Establishing a fact by clear and convincing evidence is a lesser burden than the “beyond reasonable doubt” instruction given in criminal cases, but it is a greater burden than the “preponderance of the evidence” standard in civil cases. *Id.*

In making a determination of actual innocence, the Court is required to consider all evidence presented at the original trial along with any additional evidence that was presented in any direct appeal or post-conviction proceedings. § 547.031(3), RSMo. The Court must also consider any and all information and evidence presented at the hearing on this motion. *Id.* Because the identification, recantation, and corroboration happened over a course of years, and because the Petitioner was acting largely *pro se* until recently, no Court has yet reviewed the evidence related to this case in its entirety.

STATEMENT OF FACTS

On Tuesday, April 25, 1978, four men entered the home of Larry Ingram at 6934 S. Benton Avenue in Kansas City, Missouri. Ingram and his friends Cynthia Douglas, Sherrie Black, and John Walker had spent the evening together drinking cognac, smoking pot, and watching television when the assailants entered the home and held the party up at gunpoint. The intruders tied up Ingram, Douglas, Black, and Walker, and then shot them, killing Ingram, Black, and Walker. Douglas, who pretended to be dead after being shot in the arm and leg, survived.

After the four perpetrators left the crime scene, Douglas untied herself and stumbled to the door of the house, where she was found by two neighbors who were passing by. (Ex.1, Strickland Mistrial Transcript at 76; Ex.2, Strickland Trial Transcript at 340). The neighbors took Douglas inside a nearby home and called the police. Distressed, Douglas called her sister's house and spoke with Randy Harris, her sister's boyfriend. (Ex. 1 at 76; Ex. 2 at 340–41). When the police arrived, Douglas was hysterical as she received first-aid for the gunshot wound on her leg. (Ex. 2 at 223). Soon after, Harris also arrived at the neighbor's home. (*Id.* at 364). Either over the phone or in person, Douglas told Harris that Vincent Bell and Kilm Adkins were the shooters.¹ (Ex. 1 at 77, 103; Ex. 2 at 347).

Before leaving in an ambulance Douglas also repeatedly told police officers that Bell and Adkins were two of the perpetrators. (Ex. 1 at 78; Ex. 2 at 344). Douglas knew

¹ Harris testified at Strickland's first trial that Douglas identified Bell and Adkins as the shooters over the phone before he arrived at the scene. (Ex. 1 at 103). At Strickland's second trial, Douglas claimed she did not provide any names over the phone. (Ex. 2 at 347).

both men. Bell's brother had a baby with her sister, and she knew Adkins through his sister. (Ex. 3, Deposition of Cynthia Douglas 09/08/1978 at 13–14). She did not identify Strickland at the scene, despite the fact that she knew Strickland. (Ex.1 at 87; Ex. 2 at 335 (establishing that Douglas knew Strickland for two or three years before the homicides)).

After receiving treatment, Douglas gave her first official interview with police at 3:20 a.m. (Ex. 4, Police Reports at 136–37). Douglas again identified Bell and Adkins as two of the men who had shown up at Ingram's home that evening. (*Id.*). She also repeated that she could not identify either the man with a bag over his head or the fourth man at the scene who had held a shotgun. (*Id.*; Ex. 3 at 42). In that regard, Douglas's written statement provided:

Q: CYNTHIA, do you know who the man was who was carrying the shotgun?

A: No.

(Ex. 4 at 136; Ex. 1 at 156).

Strickland and Bell were neighbors and associates. (Ex. 16, Bell Guilty Plea at 42; Ex. 1 at 327-328). At some point on the morning of April 26, Strickland and a friend stopped by Bell's mother's home to visit the Bells. (Ex. 2 at 242–43). A police officer conducting surveillance on the house approached the boys, and Strickland identified himself and said that he was there to visit the Bells. (*Id.*). The officer did not run Strickland's name through the police computer or do any further investigation at that time. (*Id.*).

Later in the morning on April 26, police arrested Strickland. (Ex. 4 at 91). The record is unclear as to why and how Strickland became a suspect, but police later claimed

they had heard Strickland's nickname, "Nurdy,"² at the scene of the crime at around 10:00 p.m. on the night of the shooting, supposedly from Douglas, (Ex. 1 at 4, 11–12; Ex. 2 at 225, 227–28, 231–33, 238–40), despite clear evidence to the contrary. Douglas consistently denied being able to identify Strickland until the following day after he had been arrested. (Ex. 1 at 78, 87–88; Ex. 2 at 344; Ex. 15 at 21–22, 27, 42, 43–44; Ex. 23, Deposition of Cynthia Douglas 12/15/1978 at 33). Additionally, the initial police report did not include any reference to "Nurdy" any variation of that nickname, or to Strickland. (Ex. 4 at 11; Ex. 1 at 9). Likewise, the "Pickups Transmitted" report lists only Bell, Adkins, and "3 Other Negro Males No Description."³ (Ex. 4 at 155). The pickup report lists the recorded time of the crime as 9:26 p.m. and another time of 12:30 a.m., but no approximate time of 10:00 p.m. (*Id.*).

The only documented reference to Strickland's nickname in any police report before his arrest is a 3:20 a.m. wanted notice for T.A., which lists "Naudi" as a person potentially in T.A.'s company (Ex. 4 at 61, 157). Wanted notices for Bell and Adkins filled out at 4:00 a.m. did not list any variation of Strickland's nickname. (*Id.* at 63, 65). While T.A.'s wanted notice does indicate that police heard Strickland's nickname at some point on the night of the crime as an associate of T.A., it does not support police claims that Douglas was the source: Douglas did not know T.A., (Ex. 1 at 85; Ex. 2 at 360; Ex. 3 at 39), and thus could

² The monikers "Nurdy," "Nardy," "Naudi," and "Naudy" are interchangeably used throughout the investigation and trial transcripts. Strickland's nickname was "Nurdy."

³ Initially, police thought more than four perpetrators may have been involved. (*See, e.g.*, Ex. 2 at 231–32). By the time of trial, no witness was claiming more than four people were involved, and the State's theory was correctly limited to four. Confessions of the known perpetrators further contradict higher numbers.

not have been the person to either identify him as a suspect or suggest he may be with “Naudi.”

After police took Strickland into custody, Strickland, then a hot-headed teenager, made cocky and sarcastic comments that aroused police suspicion. (Ex. 2 at 385–86, 389–90). At the police station, detectives interrogated Strickland about the crime. (*Id.* at 393). According to the interviewing detectives, Strickland threatened them and made boastful statements about how much he liked shooting guns. (*Id.* at 402, 416). Strickland told detectives that Bell and Adkins, who he knew were wanted as the “killers,” had stopped at his house around 5:00 p.m. (*Id.* at 396–97). Notably, Strickland also mentioned another individual who was with Bell’s group when they stopped at his house. (*Id.*). Throughout, Strickland never confessed to the crime, (*id.* at 418–19), and the detectives later testified that he was uncooperative and sarcastic. (*Id.* at 403, 406).

Later on the morning of April 26, after leaving the hospital, Douglas had another conversation with Randy Harris at her mother’s house. (Ex. 1 at 88; Ex. 2 at 367). Douglas described the physical features of the fourth suspect with the shotgun to Harris, after which Harris told Douglas that it could have been “Nardy,” because Strickland had hair like the fourth suspect she described and had recently been hanging out with Bell and Adkins. (Ex. 1 at 93; Ex. 2 at 345). Douglas had not considered the fourth suspect to be Strickland until Harris suggested his name based on her physical description of the man’s hair. (Ex. 1 at 87–88; Ex. 2 at 345; Ex. 3 at 44). After this conversation with Harris, Douglas called the police and identified Strickland as a suspect in the shooting, unaware that he was already in custody. (Ex. 1 at 79; Ex. 2 at 368).

Douglas was brought to the station for additional questioning that afternoon. (Ex. 4 at 98, 143). During this second official interview, Douglas identified Strickland as the man with the shotgun, using the nickname “Nardy” that Harris had provided to her. (*Id.* at 99). Douglas claimed that her initial failure to identify him was due to the cognac and marijuana she had the night before. (*Id.*). At the end of this interview, Douglas was asked to view an in-person lineup at the station. (*Id.* at 143). Strickland was one of the four individuals participating in the lineup. Police asked Douglas to identify Strickland, as opposed to asking her to identify the perpetrator with the shotgun. (Ex. 5, Ronald Richardson Affidavit). Douglas positively identified Strickland, whom she had known for at least two years, and whose name she did not give in her initial interviews with police. (Ex. 4 at 143).

In the following weeks, police collected various physical evidence, none of which definitively linked Strickland to the crime. From the crime scene, police collected numerous fingerprints, (Ex. 2 at 281–83), none of which matched Strickland, (*id.* at 457). They also collected spent shotgun shells. (*Id.* at 276–77). From Strickland’s home, police recovered an unrelated shotgun and shells belonging to Strickland’s father. (*Id.* at 432–33, 440). A civilian later found the shotgun used in the crime (confirmed through subsequent ballistics testing) near a Pepsi-Cola plant, where it had been hidden by Adkins and another perpetrator, and police collected it, being careful to not leave fingerprints. (*Id.* at 290–93, 298). Finally, police collected fingerprints from Bell’s car, and one from the rearview mirror matched Strickland, (*id.* at 456), who had previously driven the car. (*Id.* at 579–80).

Armed with only a tainted identification and weak physical evidence, it took two trials for the State to convict Strickland. The jury in the first trial was unable to reach a

verdict, an outcome the prosecution blamed on the inclusion of at least one Black juror. After that mistrial, the prosecutor described the seating of that juror as “careless” and a “mistake” that he would not repeat. (Ex. 2 at 874–75).

And he did not. At the second trial in April 1979, Strickland was tried before an all-white jury after the prosecution, who had taken note of the race of every venire person, (Ex. 6, Prosecutor Juror Notes), used its first four peremptory strikes to remove the only four Black jurors remaining after the for-cause challenges. (Ex. 2 at 202). Despite the defense’s objection, the prosecution did not provide a race-neutral reason justifying its targeting of these individuals. Instead, the State objected to any inquiry about the basis for its strikes and argued that it “has a right to exercise [those strikes] in any way it chooses without explanation therefor.” (*Id.* at 874–75). Because the trial preceded *Batson v. Kentucky*, 476 U.S. 79 (1986), the court sustained the State’s objection, (*id.* at 874), and thus, the case, which involved four Black victims and four Black perpetrators, was decided by an all-white jury in a trial, before a white judge, with white attorneys representing all parties.

At trial, the State presented evidence from fourteen law enforcement officers; two forensic analysts; the medical examiner; the civilian who found the shotgun, Randy Harris; and the sole eyewitness, Cynthia Douglas. The State’s theory was that Strickland had committed the crime with T.A., Adkins, and Bell, and it sought to connect Strickland to the crime through Douglas’s belated identification, bolstered by uncorroborated testimony from several law enforcement officers that she had identified “Nurdy” at the scene. The State offered no motive evidence, but asked the jury to “infer...that they went over there

to take over a dope house” because Strickland knew Ingram’s house was a dope house. (*Id.* at 696). Prosecutors offered no evidence that 18-year-old Strickland, who had no prior convictions, was involved in drugs or had any reason to go to the home at all.

Douglas provided the trial’s only eyewitness testimony, recounting her experience during and after the homicides. (*Id.* at 326–45). She identified Strickland as the man with the shotgun, (*id.* at 335), who she had been unable to identify until after talking to Randy Harris the day after the crime, despite having known Strickland for years. (*Id.*).

Even though Strickland’s name was not documented in any police reports or records from the scene, and even though Douglas herself denied it, the State presented uncorroborated testimony from officers that they remembered Douglas naming “Nordy” at the neighbor’s house. These memories were presented for the first time at Strickland’s second trial, nearly a year after the crime. Sergeant Parker, who did not document any mention of Strickland or “Nordy” in his report, testified that he and another officer were “continually questioning” Douglas as she received treatment inside the neighbor’s house and that this was when he first learned the name “Nordy.”⁴ (*Id.* at 224–25). This contradicted his earlier testimony from Strickland’s first trial that Douglas gave him the name from the back of an ambulance. (Ex. 1 at 11). When confronted with this inconsistency, Officer Parker could not recall where and when Douglas gave him the name. (Ex. 2 at 227–28). Douglas, for her part, steadfastly denied giving the name “Nardy” to

⁴ Sergeant Parker also claimed that Douglas named T.A. and described his role in the crime. (Ex. 1 at 4; Ex. 2 at 225). As discussed above, T.A.’s name is also missing from the initial reports, and Douglas did not know T.A.

police at the scene. (*Id.* at 343–45). She was clear in her recollection that the idea of “Nardy” being the person with the shotgun only occurred to her after it had been suggested by Harris. (*Id.*).

Sergeant Gilmer, another officer responding to the scene, testified for the first time at the second trial that Douglas gave him the names of Bell, Adkins, and “Naudy.” (*Id.* at 238–39). According to Gilmer, he requested that the police dispatcher put out a broadcast to pick these individuals up immediately afterwards, at approximately 10:00 p.m. (*Id.* at 240). However, Strickland’s name was not listed in any pick-up order until 3:20 a.m. *See supra*, 5. Gilmer also claimed for the first time that he wrote “Naudy” in his personal investigative notebook. (*Id.* at 249–50). This notebook was never produced or shared with Strickland’s counsel, and the prosecution did not introduce it at trial. Strickland’s counsel was thus deprived of any opportunity to cross-examine or otherwise challenge Sergeant Gilmer’s testimony about what he supposedly wrote in his notebook during his initial investigation of the crime. The notebook has never been located and is not part of Jackson County files associated with this case.

Besides Douglas’s identification, the State had no direct evidence connecting Strickland to the crime. The prosecution instead focused on the fact that Strickland had met with the real perpetrators earlier in the day before the crime, (Ex. 2 at 596–99, 736), that Strickland admitted he had provided shotgun shells to Bell at an unspecified date before the crime, (*id.* at 399, 567, 740), that Strickland’s fingerprint was found in Bell’s car on a rearview mirror, (*id.* at 451–56), and that Strickland made cocky, inflammatory, and sarcastic statements to police in a contentious interview, (*id.* at 386, 394–402, 416, 696–

97, 739). The State also introduced the shotgun used in the crime and elicited testimony that latent fingerprints were taken from the shotgun, but that the prints were of poor quality and could not be compared. (*Id.* at 457–59, 465). Strickland’s counsel did not seek independent testing or analysis of the prints.

In his defense, Strickland presented testimony from multiple witnesses who testified to his whereabouts throughout the evening of the crime. Strickland’s older brother testified that Strickland was at their father’s house at 7:30 p.m. and that Bell, Adkins, and T.A. were not there. (*Id.* at 534). Strickland’s girlfriend testified that she called Strickland four times between 8:00 and 10:30 p.m., talking to him three times and hearing him shout from the bathroom once. (*Id.* at 543–46).

The defense also called Kilm Adkins’s mother to undermine the State’s theory that Strickland was involved in the crime. Adkins’s mother, who knew Strickland, testified that from 7:00-7:30 p.m. Adkins was at her house with Bell, T.A., and “another guy” she did not know and that Strickland was “definitely not” with the group. (Ex. 2 at 508–09). She described the unknown fourth person as a young Black man with light complexion. (*Id.* at 511). This testimony was consistent with the statement she gave to police two days after the murders. (Ex. 4 at 104.)

Despite the State’s weak evidence, Strickland, a 19-year-old with no prior convictions, was convicted of one count of capital murder and two counts of second-degree murder. The trial court sentenced Strickland to life imprisonment without eligibility for probation or parole for 50 years on the capital murder count and ten years on each second-degree murder count, all to be served concurrently. Strickland was the first defendant in

Jackson County to be convicted pursuant to the “hard 50” capital murder law, § 565.008.1, RSMo 1978 (repealed 1984), a punishment that was available in Missouri statutes for only six years. (*Id.* at 785–86).

THE SOLE EYEWITNESS RECANTS

As early as 1979, Douglas realized she was mistaken in her identification of Strickland and so she informed her family. (Ex. 5). After years of torment and consternation over what to do about that mistake, Douglas – then married and known as Cynthia Richardson – sent an email to the Midwest Innocence Project on February 4, 2009. The email, from her work account at Jackson County, stated:

I am seeking info on how to help someone that was wrongfully accused, this incident happened back in 1978, I was the only eyewitness and things were not clear back then, but now I know more and would like to help this person if I can.

(Ex. 7, Email from Douglas-Richardson and MIP Response). The Midwest Innocence Project, which only accepts requests to investigate from the convicted person him or herself, responded accordingly to Douglas. (Ex. 8, Affidavit of Kenneth Blucker). There was no follow-up by the Midwest Innocence Project, and Douglas passed away in 2015. (Ex. 9, Certificate of Death – Cynthia Richardson).

Douglas’s friends and family unanimously affirm that Douglas wished to recant her identification of Strickland. Multiple witnesses attest to her firm belief in Strickland’s innocence. Her former husband discussed Douglas’s recantation in a November 2016 affidavit and an October 2020 sworn statement, affirming that Douglas had recanted her identification and wished to help Strickland prove his innocence. (Ex. 10, Sworn Statement

of Ronald Richardson at 20; Ex. 5). Douglas's daughter, Sherri Jordan, stated that Douglas told her Strickland "wasn't the guy that shot anyone," that Douglas felt guilty for the mistake, and that Douglas was "trying to bring it back to court to get [Strickland] out." (Ex. 11, Sherri Jordan Affidavit)

Additionally, a longtime family friend discussed Douglas's recantation in a May 2020 affidavit. (Ex. 12, Earl Wright Affidavit). He stated that he participated in two conversations in which Douglas "told all of us that [Strickland] was not present for the crime that took place on April 25, 1978 at 6934 S. Benton." (*Id.*). Douglas told everyone that "the detectives told her what to say" and that "everyone was telling her to say it was Nordy." (*Id.*). "Cynthia appeared confident in her assertion that Nordy was not a part of the crime," and she "told numerous people, including friends and people from the neighborhood, that Nordy wasn't actually there that night." (*Id.*).

Douglas's mother also discussed Douglas's recantation in a May 2020 affidavit. (Ex. 13, Senoria Douglas Affidavit). "Cynthia told me that she made a mistake when she identified Kevin Strickland as a participant in this crime." (*Id.*). The police controlled the family's home completely at the time, staying around the clock, and they would answer the door with guns drawn. (*Id.*). Douglas confided to her mother that "she was told by detectives that [Strickland] was the one she should pick." (*Id.*). Douglas's mother stated that Douglas "appeared very disturbed about having made this mistake," and she "wanted Kevin Strickland out of prison, because she picked the wrong person, and she strongly felt that Kevin Strickland was innocent." (*Id.*).

Douglas's sister, Cookie Douglas, also gave a sworn statement about Douglas's recognition she made an error and her sincere desire to correct it. Cookie Douglas stated, "Cynthia told me that Kevin Strickland was not there that night and she tried to contact people about his case after he was convicted to tell them" that she had been mistaken. (Ex. 14, Cecile Cookie Douglas Affidavit.) Cookie also states that Douglas was "troubled" for the remainder of her life by the crime itself and by her misidentification of Strickland. *Id.* "She firmly believed she was wrong in identifying Strickland." *Id.*

Expected testimony in the hearing for this motion will further corroborate Douglas's realization that she was mistaken in her identification of Strickland, as well as her sincere desire to correct the intolerable wrong that followed, leading her to send emails to various entities including the Midwest Innocence Project. Neither Douglas nor anyone close to her has ever indicated that Douglas was encouraged or influenced by anyone to recant. In the long appellate record in this case, no allegation has been made that Douglas stood to receive any benefit from recanting.

The credibility of Douglas's recantation is closely related to the reliability of her initial identification. Eyewitness identification is frequently crucial evidence but can also be fallible without sufficient safeguards. *See, e.g., Perry v. New Hampshire*, 565 U.S. 228, 249-250 (2012) (Sotomayor, J., dissenting) ("This Court has long recognized that eyewitness identifications' unique confluence of features—their unreliability, susceptibility to suggestion, powerful impact on the jury, and resistance to the ordinary tests of the adversarial process—can undermine the fairness of a trial."). An analysis of the first 250 DNA exonerations found that 76% of those exonerations involved

misidentifications while 36% involved multiple eyewitnesses who were wrong. Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, 8-10, 50 (2011).

Certainly, a misidentification in any case does not imply a misidentification in every case. But their prevalence requires that prosecutors and courts alike treat eyewitness testimony with caution. In *Perry v. New Hampshire*, the Supreme Court addressed the question of whether the Due Process Clause requires a preliminary judicial inquiry into the reliability of an identification in the absence of suggestive state conduct. In its opinion the Court spoke broadly about the issue of eyewitness identification, noting both its “importance” and “fallibility.” 565 U.S. at 245. While the Court declined to extend the protections of identifications made with suggestive state influence to those without improper state conduct, the Court underlined the safeguards necessary to ensure that identifications were reliable. Among them were instructions that educated the jury about factors that undermine the reliability of an identification. *Id.* at 246.

To address the concerns raised in *Perry*, Missouri adopted jury instructions in 2015 which inform the jury of factors “that bear on the likelihood of misidentification.” *Id.* at 243 (internal quotation and citation omitted). They include “whether the witness was familiar with the person identified,” “any intoxication,” “whether the witness was affected by any stress or other distraction or event . . . such as the presence of a weapon,” “length of time the witness had to observe the person in question,” and “the passage of time between the witness’s exposure . . . and identification of the defendant,” among other factors of reliability. MAI 4th 410.02 (2017). *Perry*, and the Missouri Approved Instructions that

followed, now guide the Jackson County Prosecuting Attorney's assessment of eyewitness identifications in every case it charges.

Based on what is now known about eyewitness identification, Douglas's testimony, even without her recantation, was highly unreliable. At the time of the crime, Douglas was under the influence of marijuana and cognac, and she testified that she only got "a glance" of the perpetrator. (Ex. 1 at 80-81; 72). The assailants shot Douglas and murdered her friends right in front of her, an event causing unimaginable stress. Furthermore, on the evening of the crime Douglas only named the two perpetrators – Vincent Bell and Kilm Adkins – whom she personally knew. That night, she said she did not know the man with the shotgun, and she only named Strickland the next day after discussion with others who suggested Strickland was the man. In short, the circumstances of Douglas's initial identification of Strickland raise grave reliability concerns given the Court's guidance in *Perry* and Missouri's attendant jury instructions even without her recantation.

Perry, its progeny, and the Missouri Approved Instructions comport with decades of research on the science of memory and the conditions under which eyewitness testimony is reliable. Professor John Wixted, who holds a Ph.D. in clinical psychology and is Distinguished Professor of Psychology at the University of California San Diego, has published extensively on the basic cognitive and brain mechanisms of memory and on eyewitness identification. Professor Wixted reviewed the circumstances of Douglas's 1978 identification of Strickland and concluded that Douglas's initial identification actually supports Strickland's innocence. (Ex. 15, Professor Wixted Report at 2)

Professor Wixted bases his opinion in the scientific consensus regarding both the reliability and fallibility of eyewitness testimony. Eyewitness memory is “highly reliable on an *initial* test of uncontaminated memory using a proper testing procedure.” (*Id.*). Invariably, what the witness says on the initial test of memory is more reliable than what she says on any later test of the same memory. (*Id.*). On the original test of Douglas’s memory of the homicides, she “unambiguously declared that she did not recognize the man with the shotgun.” (*Id.*). Her statement is significant as the initial test of memory, particularly alongside the facts that Douglas had known Strickland for two years and was able to identify the other individuals that she knew. (*Id.*). Professor Wixted notes that “known-person identifications are made automatically . . . even under impoverished viewing conditions.” (*Id.* at 5) (internal citations omitted). Douglas stated unequivocally that she did not know the man with the shotgun and simply described him as “a black dude with a shotgun.” *Id.* Such a description is very unlikely if it were actually Strickland, whom Douglas had known for two years. (*Id.*).

Given Douglas’s initial inability to identify the man with the shotgun on the night of the homicides, the question becomes whether it is possible “to test her uncontaminated memory a second time and obtain more reliable information about who she saw.” Professor Wixted states that “the answer is an emphatic ‘no.’” (*Id.* at 6). Moreover, in this case, the record reflects that Strickland was suggested to Douglas as being the man with the shotgun between her initial response and her identification of Strickland. Professor Wixted concludes that “the eyewitness evidence in this case, properly understood, provides compelling evidence of *innocence*, not guilt.” (*Id.* at 2).

CO-DEFENDANT ACCOUNTS HAVE ALWAYS CORROBORATED DOUGLAS'S MISIDENTIFICATION

Douglas's claim that she made a mistake is corroborated by three of the known culprits, who have all stated consistently and repeatedly, over the course of four decades, that Strickland was not present at the crime. Co-defendants Vincent Bell and Kilm Adkins pled guilty and were sentenced to 20 years, each of them serving less than 10 years. Bell and Adkins affirmatively denied Strickland's involvement, even as they admitted their own guilt. A third, uncharged co-conspirator attested to both a confidant and to an investigator that Strickland was not involved.

On August 13, 1979, while Strickland was pursuing his direct appeal, Vincent Bell pled guilty to three counts of second-degree murder for his role in the deaths of Ingram, Walker, and Black. (Ex. 16). During a three-hour allocution, Bell testified under oath that on the day of the crime, T.A. and Adkins were mad because they believed they had been cheated at craps by Larry Ingram, who they had heard was using loaded dice. (*Id.* at 41). They planned to get their money back as well as a pistol that an acquaintance had recently lost in a craps game. (*Id.* at 39, 45–46). Bell testified that P.H., who was with him, Adkins, and T.A. throughout the day, was the man with the shotgun. (*Id.* at 49, 99). Bell made clear that Kevin Strickland was not involved, telling the court:

I want to [] let them really know what happened out there in society in 1978, April 25, [] and let these people know today that one of the suspects today that Douglas said it was, it wasn't him. I know for a fact 'cause I was there, [] and she mistake that man same as the State mistake that man. (*Id.* at 24).

...[Douglas] made a hell of a mistake between Strickland and Paul, she made a hell of a mistake between them two. . . . I

know for a fact that Mr. Strickland wasn't there because I know who was there, [] and it wasn't Strickland. (*Id.* at 63).

But I'm telling you the truth today that Kevin Strickland wasn't there at the house that day. I'm telling you the truth. Kevin Strickland wasn't at that house. I'm telling the State and the society out there right now that Kevin Strickland wasn't there at that house. I'm telling you today, Kevin Strickland wasn't at that house. (*Id.* at 78).

Bell stated Douglas, influenced by Randy Harris, had mistaken Strickland for a different man due to their similar appearances. (*Id.* at 51, 62, 64, 84–85, 92–93, 99). The other man and Strickland were both short, weighed nearly the same, and looked similar.

On April 30, 1979, Adkins took an *Alford* plea and was convicted of three counts of second-degree murder. Both Adkins and Bell received twenty-year sentences, for which they each served 10 years. T.A. was never charged, despite being identified as a suspect on the night of the crime. Adkins has attested to Strickland's innocence since 1981, declaring in multiple affidavits that "Mr. Strickland was not involved in the homicides." (Ex. 17, 1981 Affidavit of Kilm Adkins; Ex. 18, 2014 Affidavit of Kilm Adkins; Ex. 19, 2020 Affidavit of Kilm Adkins). In his most recent affidavit, Adkins further identified for the first time the same four perpetrators named by Bell in his plea: "Vincent Bell, [T.A., P.H.,] and myself were the only four perpetrators involved in this crime." (Ex. 19). Adkins explains that he was prevented from testifying in Strickland's defense at trial because charges for the triple murder were pending against him at the time. (*Id.*).

Likewise, T.A., who was never charged in relation to this crime and is incarcerated on an unrelated offense, told a fellow inmate while incarcerated in Freemont Correctional

Facility in Colorado in the early 1990s that Strickland was not involved in the crime. (Ex. 20, Kenneth Murray Affidavit). T.A.’s former confidant attests that T.A. told him “with no uncertainty, that Kevin B. Strickland a.k.a. Nordy, had no involvement in the April 1978 crime at 6934 South Benton [sic], Kansas City, Missouri.” (*Id.*). More recently, T.A., while still unwilling to acknowledge his own involvement in the crimes, confirmed to an investigator for Strickland that he “knows Nordy wasn’t there” and that “there couldn’t be a more innocent person than Nordy.” (Ex. 21, Blair Johnson Affidavit).

STRICKLAND’S PRINTS ARE EXCLUDED FROM THE MURDER WEAPON

In late 2020, Strickland learned that fingerprint cards taken from the shotgun used in the crime remained in the possession of the Kansas City Police Department and that one of the latent fingerprints appeared to be of sufficient quality for comparison analysis. This discovery was remarkable in light of testimony elicited by the State at trial that all the latent fingerprints taken from the shotgun were of no value and could not be compared. (Ex. 2 at 457–59, 465).

With the consent and cooperation of the Jackson County Prosecutor, Strickland had the Kansas City Police Department compare this print to Strickland’s own fingerprints. The new testing revealed that one of the fingerprints was indeed suitable for comparison and that it in fact did not match Strickland’s fingerprints. (Ex. 22, KCPD Fingerprint Lab Report). The associated lab report concluded Strickland “was EXCLUDED as the source of the fingerprint of value” on the murder weapon. (*Id.*).

NO EVIDENCE REMAINS TO SUPPORT STRICKLAND'S CONVICTION

With no credible identification to ground them, arguments in support of upholding Strickland's conviction have rested almost entirely on the inflammatory comments Strickland has made, including one allegation, based on hearsay and never entered into evidence at trial, that Strickland supposedly bribed Douglas to stay quiet about the murders.

The genesis of the contention is a police report from April 26, 1978, where Douglas said her sister told her that Marcus Harris, the sister's boyfriend's brother, received a phone call from Strickland during which Strickland said Douglas should be quiet. (Ex. 4 at 106). Police then interviewed Marcus Harris, who said he spoke to Strickland the morning after the homicides and that Strickland had said that "Vincent Bell was involved in the murders and that 'we will pay her to keep her mouth shut. She doesn't need to go through all this [expletive].'" (*Id.*).

Vincent Bell affirmed the idea that Strickland did not want to see him arrested for the homicides. In his plea allocution, Bell says that Strickland got himself into this by "trying to be big, you know, not knowing what was going on. He was telling Marcus Harris to tell Cindy [to] be quiet and he'd give her a couple dollars. . . . So Marcus thought he was involved." (Ex. 16 at 62).

In Douglas's three depositions, she was never asked about being bribed to stay quiet. Further, she was never asked about it at trial. Similarly, Marcus Harris, who also testified at trial, was not asked about that allegation. (*See* Ex. 1 at 366) The State did not introduce the bribe into evidence in either of Strickland's trials, presumably because it is not reliable

evidence, let alone evidence of Strickland's guilt. Even if the allegation is assumed to be true, it is at most evidence of Strickland's association with his neighbor, Bell, an association that Strickland has never denied.

**STRICKLAND IS ACTUALLY INNOCENT
BY CLEAR AND CONVINCING EVIDENCE**

Douglas's assertion that she was mistaken in her identification of Strickland is not controverted by any known evidence. With the retraction of the identification testimony that was the lynchpin of Strickland's conviction, Strickland's case is indistinguishable from Joseph Amrine's, in which the Missouri Supreme Court held:

This case thus presents the rare circumstance in which no credible evidence remains from the first trial to support the conviction. This Court . . . determines based on this record that under these rare circumstances, there is clear and convincing evidence of Amrine's innocence. As such, confidence in his conviction and sentence are so undermined that they cannot stand and must be set aside.

Amrine, 102 S.W.3d at 548–49. For the same reasons, justice demands that Strickland's convictions and sentences be set aside.

In *Amrine*, the Missouri Supreme Court recognized a freestanding claim of actual innocence where no credible evidence remained to convict the defendant. *Id.* at 543–44. In that case, the defendant was convicted of murdering an inmate at Jefferson City Correctional based solely on the testimony of three fellow inmates. At trial, Amrine presented evidence of his own innocence, including evidence that one of the State's witnesses committed the crime and alibi evidence from six witnesses that Amrine was

playing poker in a different part of the room at the time. *Id.* at 544. The jury nonetheless found Amrine guilty, and he was sentenced to death. *Id.*

In the course of Amrine’s state and federal appeals, all three State’s witnesses recanted. *Id.* at 544-45. Amrine petitioned the Missouri Supreme Court for habeas corpus relief, and the Court granted the writ on the basis of Amrine’s innocence, finding that the incarceration of an innocent person sentenced to death is a manifest injustice. *Id.* at 545. With the recantation of all identification testimony, the Court held that “[i]n light of the resulting lack of any remaining direct evidence of Amrine’s guilt . . . Amrine has already met the clear and convincing evidence standard.” *Id.* at 544.

The Court explained that its “confidence in the outcome of the first trial is sufficiently undermined by the recantation of all the key witnesses against him in the first trial to require setting aside his conviction and sentence of death.” *Id.* In particular, evidence is clear and convincing when it “instantly tilts the scales in the affirmative when weighed against the evidence in opposition, and the fact finder’s mind is left with an abiding conviction that the evidence is true.” *Id.* at 548 (quoting *In re T.S.*, 925 S.W.2d 486, 488 (Mo. Ct. App. E.D. 1996)). Under this standard, evidence supporting the conviction must be viewed and reassessed in light of all the evidence now available. *Id.*

The evidence of Strickland’s innocence is clear and convincing. Three of the four actual perpetrators have stated that Strickland was not involved in the homicides. Bell and Adkins have further identified the fourth perpetrator as P.H. Furthermore, the evidence that supported Strickland’s conviction has been undermined, and no reliable evidence of guilt remains. Cynthia Douglas, the victim who survived and was the key witness for the

prosecution at Strickland's trial, recanted her identification of Strickland. Moreover, an eyewitness identification expert has determined Douglas's identification, even without the recantation, was highly unreliable and likely the product of post-event suggestions. No physical evidence has ever directly connected Strickland to the homicides, and we now know that a fingerprint found on the shotgun used in the attack does not belong to Strickland.

Taken individually, the problems with the initial identification, the corroborating co-defendant statements, and the recantation are troubling. Considered in their totality and balanced against the lack of any direct evidence of Strickland's guilt, they constitute clear and convincing evidence that Kevin Strickland is actually innocent. *See Id.* at 544 ("In light of the resulting lack of any remaining direct evidence of Amrine's guilt from the first trial, Amrine has already met the clear and convincing evidence standard...."). Where, as here, "no credible evidence remains from the [] trial to support the conviction," there is clear and convincing evidence of Strickland's actual innocence. *Id.* at 548–49. As such, this Court should find that confidence in Strickland's convictions is so undermined that they cannot stand and must be set aside.

CONCLUSION

At the conclusion of Strickland's second trial, after the jury found him guilty of a crime he did not commit and he received a sentence of 50 years without probation or parole, Judge Louis Lombardo in Division 18 asked Strickland if there was any reason why judgment and sentence should not be pronounced. (Ex. 2, 876-877). Strickland, then still a teenager, replied, "Yes, sir. ... I feel that this whole thing was just prejudiced [against] me

and that I should have . . . a new trial.” (*Id.* 877). Forty-two years later, the State of Missouri joins Kevin Strickland in Division 18 and respectfully asks this Court to set aside the verdict in 16CR79000361. Because clear and convincing evidence establishes that Kevin Strickland is actually innocent and that he should not remain in custody a day longer, the State prays this Court to expeditiously set a hearing on this matter, examine the evidence, set aside Kevin Strickland’s judgment, and grant any further relief as the Court deems equitable and just.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that these suggestions will be electronically served by the e-filing system on all participants in this case on this 28th day of August.

/s/ Kate E. Brubacher
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