

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION I

STATE OF TENNESSEE)

VS.)

JOSEPH DEJUAN WEBSTER)

CASE NO: 2005-B-1384

nc

CRIMINAL COURT CLERK

2020 OCT 29 AM 11:31

FILED

NOTICE OF INTENT

Tenn. Sup. Ct. R.8, RPC 3.8 imposes special responsibilities on prosecutors. Among those responsibilities is subsection (g) which provides as follows:

(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to an appropriate authority, or
- (2) if the conviction was obtained in the prosecutor's jurisdiction, undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

As the elected District Attorney General for the 20th Judicial District the undersigned established a Conviction Review Unit (CRU) whose purpose is to investigate claims of actual innocence consistent with and in furtherance of the ethical duties set forth above.

The CRU has conducted an extensive investigation into the case of Joseph Webster. A copy of the CRU report redacted as it relates to potential ongoing investigations is attached to this Notice. As required by RPC 3.8(h) this Office will seek to remedy the conviction by utilizing an appropriate procedural process to bring this matter within the jurisdiction of this Court. The State will then request the conviction in this matter be vacated and the case dismissed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded to Daniel Horwitz, Attorney for Joseph Webster on this the 29 day of October, 2020.



Glenn R. Funk

**CONVICTION REVIEW UNIT
OFFICE OF THE DISTRICT ATTORNEY GENERAL
20th JUDICIAL DISTRICT, DAVIDSON COUNTY**

JOSEPH WEBSTER

CASE NO. 2005-B-1384

First Degree Murder

Attorney: Daniel Horwitz

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I. SUMMARY OF THE FACTS AND PROCEDURAL HISTORY

A. THE TRIAL

In April of 2005, Joseph Webster was indicted for the first degree murder of Leroy Owens, occurring on November 22, 1998.¹ In 2006, a jury trial took place; the Jury returned a verdict of guilt within hours of being sent to deliberate.

Tammi Nelson, the State's primary witness, testified that she was living in an apartment complex on Old Hermitage Avenue. She and Mr. Owens were friends. They had used drugs together, and sometimes he would stay at her apartment. She knew Mr. Owens as "Lil Nick."²

According to Ms. Nelson, around the beginning of November, a man named Robert Nichols, known as "Big Nick," was seeking drugs. Mr. Owens, aka "Lil Nick," offered to call his "cousin" who was a drug dealer.³ Ms. Nelson claimed that two men, one of whom she later identified as Mr. Webster, arrived at her apartment. The men claimed Mr. Owens already had a current debt to them. Mr. Owens and Mr. Nichols pooled their money together and purchased drugs from the two men. The men left the apartment. Ms. Nelson stated she believed Mr. Owens and Mr. Nichols were going to divide the drugs up for resale to make some money; instead, Mr. Nichols "scammed Lil Nick out of his money."⁴

According to Ms. Nelson, approximately three days later, Mr. Webster and the other unidentified man who sold the drugs to Mr. Owens and Mr. Nichols returned to her apartment looking for Mr. Owens.⁵ Ms. Nelson stated the men came to her apartment five or six times looking for Mr. Owens. The men gave Ms. Nelson a pager number and told her to call them when she saw Mr. Owens.⁶

¹ The delay in prosecution was addressed by a 48(b) Motion to Dismiss heard on February 13, 2006. An order denying the motion was entered on February 28, 2006.

² Trial Transcript, "T.T.," p. 185

³ Mr. Owens told Ms. Nelson the suspects were his cousins.

⁴ Trial Transcript, "T.T." pgs. 188-191

⁵ T.T. p. 185

⁶ T.T. p. 193-194

On November 21, 1998, Mr. Owens came to her house. He and Ms. Nelson got high together and he stayed at her apartment. The following morning, while Mr. Owens slept, Ms. Nelson called the pager number to let the men know the victim was at her apartment. The two men arrived at Ms. Nelson's apartment in a white station-wagon. Ms. Nelson woke Mr. Owens and told him the men were there to see him. Ms. Nelson testified she saw Mr. Webster go to the car, put on gloves, and get a stick.⁷ The other man took Mr. Owens out of the front door of Ms. Nelson's apartment; and according to Ms. Nelson, Mr. Webster began hitting Mr. Owens with his hands. Mr. Owens ran away and escaped over a fence. As he was running away, one of his tennis shoes came off his foot. The two men got into their car to chase Mr. Owens.⁸

Mr. Owens then ran to Delunn "Todd" Hyde's house. According to Mr. Hyde, Mr. Owens entered his house and appeared to have been beaten up, was missing one shoe, and had bruises under his eye. Mr. Owens' pants were halfway down, and he acted scared.⁹ Mr. Hyde told Mr. Owens to leave. Mr. Owens asked Mr. Hyde to look outside for a white car. At that time, Mr. Hyde told Mr. Owens that he did not see a white car outside. Mr. Owens ran across the street and at that time, Mr. Hyde saw a "souped up" station-wagon coming over the hill in the direction of Mr. Owens. Mr. Hyde was able to make out two black men in the car and remembered that he had seen the same car on Lewis Street the night before.¹⁰

Fred McClain testified that on November 22, 1998, at around 11:30am, he was doing concrete work for a small restaurant on the corner of Green Street and Wharf Avenue. He heard a car pull up and brakes "screeching." The next thing he saw was a man running who turned out to be Mr. Owens. He saw a white car pull up, and two men get out. The two men were both black, and Mr. McClain stated one of the men was approximately 5'9" tall and weighed approximately 225-230 pounds.

⁷ Lakeeta Smith told Detective Postiglione that Mr Webster took a stick out of Ms. Nelson's hand. Lakeeta Smith Interview with Pat Postiglione (March 5, 1999). See also Jeffrey Bigsby Interview with Pat Postiglione (March 1, 1999) ("Jeffery states that his girlfriend was present").

⁸ T.T. pgs. 198-203

⁹ T.T. 46

¹⁰ T.T. pgs. 47-48

The other man was smaller, approximately 5'8" and 175 lbs. The car was an older white station-wagon with chrome wheels.¹¹

One of the two men from the car tackled Mr. Owens while he was running. This caused Mr. Owens to bump into Mr. McClain who hit his head on the restaurant window frame. Mr. McClain ran around to the side of the building and peered around the corner. He said it was the larger of the two men standing over Mr. Owens who was lying on the ground. The larger man was hitting Mr. Owens with a cinder block and yelling "Where's my goddamn money?" Mr. McClain saw the man hit Mr. Owens twice with the cinder block before both men left in the station-wagon. Mr. McClain was unable to identify the men.¹²

The Investigation

Detectives Brad Corcoran and Pat Postiglione investigated the murder of Mr. Owens. At the scene Detective Corcoran received information from another officer that they should speak with someone named Todd Hyde.¹³ Mr. Hyde told the detectives that he had seen the white station-wagon follow Mr. Owens, and he had seen the same vehicle on Lewis Street the night before.¹⁴ Based upon this information, Detective Corcoran and Detective Postiglione went to a house on Lewis Street and spoke with Katrina Norman, the woman who answered the door. Detective Corcoran informed Ms. Norman he was trying to locate the white station-wagon described by several witnesses. Ms. Norman told Detective Postiglione she knew the owner and driver of the car but refused to identify them. Ms. Norman had the name "Joseph" tattooed on her neck. She was generally uncooperative. Further investigation revealed Mr. Joseph Webster to be the boyfriend of Katrina Norman.

On the morning of November 23, 1998, Detective Postiglione interviewed Ms. Nelson. Prior to this interview with Detective Postiglione, Ms. Nelson testified she went to the crime scene and asked a police officer whom she recognized if the name

¹¹ T.T. pgs. 9-15

¹² T.T. pgs. 19-24

¹³ Corcoran Supplemental Report: 11/22/98

¹⁴ T.T. p. 48

of the victim was “Big Nick.”¹⁵ She asked about physical features particular to “Big Nick.”¹⁶

To Detective Postiglione, she first denied knowing Mr. Owens or having any knowledge of what occurred.¹⁷ Detective Postiglione put together a photo lineup which included Joseph Webster and showed the lineup to Ms. Nelson. This photo lineup was neither double-blind nor was it video recorded.¹⁸ Ms. Nelson picked a photo of Mr. Webster and identified him as one of the men who came to her door. Ms. Nelson did not provide information about the pager or her role in calling the men until after Detective Postiglione “told her that he had information she was involved in this.”¹⁹

¹⁵ “Big Nick” is an alias for Robert Nichols. The victim in this case was Leroy Owens, aka “Lil Nick.”

¹⁶ T.T. pgs. 211-212, lines 18-10

¹⁷ T.T. p. 140

¹⁸ According to the Department of Justice publication, *Eyewitness Evidence: A Guide for Law Enforcement*, (1999) and reiterated in a 2017 Department of Justice memorandum, Photo Lineup best practices include double-blind administration of a photo array and audio or video-recording of the identification.

¹⁹ T.T. p. 401

B. SYNOPSIS OF THE RELEVANT FACTS LEADING TO MR. WEBSTER'S CONVICTION

1. Within 24 hours of the homicide, Tammi Nelson identified one of the suspects from a photo lineup. Ms. Nelson stated the suspects had been to her home several times looking for the victim, Mr. Owens. She stated she had seen these individuals in the afternoon and in the daylight, with sufficient light to have seen their faces. Ms. Nelson admitted to having done drugs with the victim, Leroy Owens, on prior occasions.
2. Tammi Nelson, Delunn (Todd) Hyde, and Fred McClain all described a white, station-wagon-like vehicle driven by the suspects.
3. Fred McClain gave a description of the suspects as two black males: one being 5'9" and approximately 225-230 lbs.; and the other being smaller, approximately 5'8" and 175 lbs.
4. Mr. McClain stated the larger man hit the victim with the cinder block and yelled at the victim "Where is my goddamn money?"
5. Delunn "Todd" Hyde witnessed the same vehicle chasing the victim, Mr. Owens, prior to the homicide and had seen that vehicle on Lewis Street the night before.
6. The resident of the house where the vehicle was seen, Katrina Norman, admitted, upon interview, she knew the owner and driver of the vehicle but refused to identify them.
7. Katrina Norman had a tattoo on her neck bearing the name "Joseph."
8. Investigation revealed Joseph Webster, Katrina's boyfriend at the time, had driven a white station-wagon type vehicle.
9. In a photo lineup, Tammi Nelson identified Joseph Webster as the suspect who came to her home and assaulted Mr. Owens.

10. At trial, Ms. Nelson again identified Mr. Webster by pointing to him in the courtroom.

C. MOTION FOR NEW TRIAL

The Motion for New Trial was heard on July 24, 2006. The basis for the motion was new evidence demonstrating that Joseph Webster's brother, Kenneth "Kenny" Neal, was the owner of the white station-wagon used in the homicide; he admitted to his and Mr. Webster's mother, Marie Burns, that he had committed the murder. Witnesses Marie Burns, Kenneth Neal, Arthur Gordon, Katrina Webster (Norman), Phillip Cotton, and Joseph Webster were presented in furtherance of that claim.

Mr. Neal denied owning the station-wagon or any actions related to the hiding or destruction of the vehicle.²⁰ He denied admitting to his mother, Ms. Burns, he had committed the murder. However, he did not deny she asked him about it; and he testified he didn't deny to her committing the murder, but rather didn't respond to her.

Marie Burns testified her son, Kenneth Neal, owned a white station-wagon. She denied having told Detective Postiglione that Joseph owned a station-wagon. She testified that immediately after the trial, she approached Mr. Gibson and told him Kenny was the true murderer. She testified she had not said anything prior out of fear.²¹ Arthur Gordon testified Kenneth Neal owned a white station-wagon, and he [Gordon] heard Mr. Neal had taken the vehicle to Kentucky. Mr. Gordon said Mr. Neal did not admit to [Mr. Gordon] that he killed Mr. Owens, but only said he didn't "try to do it."²²

Katrina Norman testified that Joseph stayed at her house sporadically, and that his actual residence was with his mother. She testified that in 1999, Mr. Webster told her he thought Kenny Neal had committed the murder. She stated Mr. Neal had

²⁰ Motion for New Trial "MFNT" Transcript p. 3-8

²¹ MFNT T. p. 17-20

²² MFNT T. p. 49-56

agreed to pay for the attorney, but neither denied nor admitted to the murder to her. She stated she was afraid of Kenny Neal.²³

Phillip Cotton testified Kenny Neal owned and drove a white station-wagon. He said Neal never told him he committed the murder.²⁴ Cotton denied being involved in the murder, being present, or taking the vehicle to Kentucky.²⁵

Joseph Webster testified he had the first conversation with Kenny Neal about the murder immediately after he was contacted by Detective Postiglione regarding the homicide. Mr. Webster testified that Mr. Neal told Joseph he didn't need to worry about it because he [Webster] didn't do it.²⁶ Mr. Webster stated he had driven the car a few times when they first got it.²⁷

Mr. Webster addressed Mr. Neal directly in the courtroom and demanded Mr. Neal "take his time like a man."²⁸ Mr. Webster said he and Mr. Neal went to see defense attorney Michie Gibson together.²⁹ Mr. Webster stated that on a jail call prior to trial, Mr. Neal admitted he committed the murder and threatened Mr. Webster's family.

Mr. Webster testified Phillip Cotton told him Kenny Neal set the station-wagon on fire. Mr. Webster testified Kenny Neal told him he "got rid of the car and there is nothing to worry about."³⁰ He spoke with Kenny Neal in prison, and Kenny Neal told him not to worry about it because it wasn't him [Webster]. Joseph Webster testified he never drove the car on Lewis Street and had never seen Kenny Neal drive the car on Lewis Street.³¹

²³ MFNT T. p. 66-77

²⁴ Polygraph of Phillip Cotton indicated deception when he denied that Kenny Neal admitted to him he had committed the murder. The polygraph was conducted long after the Motion for New Trial and was not evidence presented at that time.

²⁵ MFNT T. p. 99-100

²⁶ MFNT T. p. 105-106

²⁷ MFNT T. p. 106

²⁸ MFNT T. p. 109

²⁹ MFNT T. p. 111

³⁰ MFNT T. p. 119-120

³¹ MFNT T. p. 105-139

General Anderson objected to the affection and closeness between Ms. Burns and Kenneth Neal in the courtroom. Ms. Burns responded to the Court that she was “just trying to get him to admit it.”³²

Detective Postiglione testified that Katrina Webster³³ (Norman) mentioned a homicide before he explained to her it was a homicide he was investigating. He testified that Ms. Burns told him Joseph drove a white station-wagon.³⁴

An order was issued on December 4, 2006, denying the motion.

D. MOTION FOR POST-CONVICTION RELIEF

A Motion for Post-Conviction Relief was heard on June 2, 2009. The basis for the petition was ineffective assistance of counsel primarily centered around Mr. Gibson’s failure to sufficiently cross-examine Ms. Nelson regarding Mr. Webster’s gold teeth and her specific denial of having noticed gold teeth on the suspect she interacted with, and failure to thoroughly address the inconsistencies in Ms. Nelson’s various statements and interviews.

The Defense called Robert Lyons, Dr. Ulysses Walls, Joseph Webster and Michie Gibson.

Robert Lyons testified the first time he interviewed Tammi Nelson she did not recall anything distinguishing about either of the perpetrators’ appearances. She did not recall any tattoos or gold teeth. She was very specific in the interview and said “No, and I’m sure I’d remember gold.”³⁵

The next witness called was Dr. Walls, a licensed dentist. Dr. Walls testified in the past he had performed two different cosmetic dental procedures on Mr. Webster, with the first one taking place in 1995 or 1996. In that procedure he placed six gold teeth in the upper jaw of Mr. Webster. These gold teeth had the letters “J W” on

³² MFNT T. p. 109

³³ Prior to trial but after her interview with detectives, Katrina Norman married Joseph Webster. They are not currently married.

³⁴ MFNT T. p. 141-142

³⁵ PCR T. p. 17-19

them. They are permanent and non-detachable teeth. Dr. Walls no longer had the records related to this procedure.³⁶

Joseph Webster testified about his gold teeth. He stated he has six gold teeth on the top row and six on the bottom row; on the top, there are the initials JW and a dollar sign. He testified they were put in by Dr. Walls at the end of 1995 or the beginning of 1996.³⁷

An order denying the petition for post-conviction relief was entered by the Trial Court on June 15, 2009.

E. PETITION FOR WRIT OF ERROR CORAM NOBIS

In May 2014, Joseph Webster filed a Petition for Writ of Error Coram Nobis, alleging that Tammi Nelson, the key witness against him at trial, had recanted her trial testimony in a sworn statement. The following evidence was presented: Ms. Nelson testified she had previously testified for the prosecution in the Petitioner's case. She said she testified the Petitioner was a "suspect" in the victim's murder. Ms. Nelson said she had, at the time, thought the Petitioner "did the killing" but that he was not guilty of this crime.³⁸

Tammi Nelson testified the Petitioner's mother recently called her and showed her a picture of the Petitioner's brother. Ms. Nelson looked at the photo and realized it *was* a picture of the person she saw the day of the murder, but that it was not the Petitioner.³⁹

She stated at the time of the offense, she had been doing cocaine and did not have a good memory of that time period or the trial. At the time she testified at trial, she was in jail on other charges.

Ms. Nelson was shown a copy of the affidavit submitted with this current petition, and although she acknowledged she signed something for the family of the Petitioner, she denied ever saying she received a deal from the Assistant District

³⁶ PCR T. p. 27-31

³⁷ PCR T. p. 37-40

³⁸ Webster v. State, No. M201402508CCAR3ECN, 2015 WL 7720317, at *5 (Tenn. Crim. App. Nov. 30, 2015)

³⁹ *Id.*

Attorney in exchange for [her] testimony.⁴⁰ She stated she did not remember the Assistant District Attorney from that time period and did not recall having ever seen Assistant District Attorney Pamela Anderson. She claimed she had been told in the past to keep her mouth shut regarding the case.

Pat Postiglione testified he is currently employed as an investigator for the District Attorney's Office, but he had previously been employed as a Metro Nashville Police detective and conducted the investigation on this case prior to trial. He stated that during that investigation, Tammi Nelson identified the Petitioner on more than one occasion. The State introduced photos of the Petitioner and of the brother that were taken contemporaneously with the investigation. The State also introduced a recording of Tammi Nelson's statement. Finally, the State introduced a report detailing the complaints the Petitioner's mother had filed against Investigator Postiglione and the Metro Nashville Police Department.

The Trial Court did not find Ms. Nelson's recantation credible and found that Mr. Webster did not present new evidence that would have resulted in a different verdict. Therefore, the Trial Court denied the Writ. The Court of Criminal Appeals then affirmed due to Appellate Courts not reassessing credibility determinations, and the belief the Trial Court based its conclusion on a reasonable assessment of the evidence.

⁴⁰ *Supra.*

II. CRU INVESTIGATION FINDINGS

1. Anthony Boyce and Richard Henderson were eyewitnesses to the homicide who were neither interviewed nor shown photo lineups by investigating detectives. These witnesses were not called at trial or any of the subsequent proceedings; however, they are noted on the DA file, in a police report from the crime scene, and listed on the indictment.⁴¹ It should be noted trial counsel had these names and also failed to interview these individuals.⁴²
2. Boyce described the person with the cinder block as “skinny, probably 150-160 lbs.” and “probably 5’8”- 6’.” Henderson described the person who hit Owens as “light-skinned” and “muscular, not flabby...around 200 lbs.”⁴³ Mr. Henderson’s memory, particularly, of the incident is vivid and detailed.
3. Henderson stated the suspect who beat Mr. Owens with the block was not wearing gloves.⁴⁴
4. At the time of the homicide, Mr. Webster was 5’10” and approximately 300 lbs.⁴⁵ The descriptions provided by eyewitnesses Anthony Boyce and Richard Henderson do not match the characteristics of Joseph Webster.
5. Lakeeta Smith, the sole other known eyewitness to the confrontation with the two men and Mr. Owens at Ms. Nelson’s house on the day of the homicide, was not shown a photo lineup.
6. Robert Nichols, aka “Big Nick,” directly interacted with the two men who came looking for Mr. Owens and was also not shown a photo lineup.

⁴¹ Corcoran Supplemental Report Dated 11/22/98; DA File; Indictment

⁴² Trial Counsel failed to provide Appellate counsel the reports related to these individuals

⁴³ Dyer Interviews w/ Boyce and Henderson; Eaton/Melby/Turner recorded interviews with Boyce and Henderson

⁴⁴ Dyer interview Summary w/ Henderson

⁴⁵ Trial Transcript, p. 408, lines 18–20, Writ of Error Coram Nobis Testimony page 63, lines 11–12

7. James McLin, Shawanna Norman, Phillip Cotton, Gladys Marie Burns, and Tracy Neal⁴⁶ all confirm Kenny Neal owned and drove a white station-wagon.⁴⁷

8. Shawanna Norman claimed Kenny Neal admitted to her he had beaten a man with a concrete block over a drug debt owed by the victim. Ms. Norman provided information that Neal “had the white station-wagon with tinted windows” and “rims on it.” Norman stated Kenny Neal told her “he had to beat the shit out of a man with a brick, had to chase him down and beat the shit out of him with a brick.” She provided additional details about where the white station-wagon was taken and how it was destroyed.⁴⁸

9. Ms. Norman provided information that Kenny Neal owned a green Ford Explorer,⁴⁹ consistent with Ms. Nelson’s report that one of the men who came to her home looking for Mr. Owens drove a green Jeep or Explorer.⁵⁰

10. Ms. Norman provided information that Kenny Neal used the identity of a man named James McLin to purchase vehicles.⁵¹

11. Ms. Norman alleged that Mr. Neal agreed to pay for Mr. Webster’s legal fees; but, later when she confronted him about his failure to follow through on this promise, Mr. Neal threatened to kill her if she was recording him.⁵²

12. [REDACTED]

13. [REDACTED]

These admissions

⁴⁶ Tracy Neal is the former wife of Kenneth Neal

⁴⁷ Dyer Interview w/ Norman page 5. line 13; MFNT p. 17, line 1; Turner/Hoback interview w/ Mclin p. 10; Phillip Cotton Proffer p.96-97; Turner/Hoback interview w/ Tracy Neal p. 13

⁴⁸ Dyer Interview p. 9-10

⁴⁹ Dyer Interview p. 5, line 24

⁵⁰ This is corroborated by Tracy Neal and James Mclin.

⁵¹ Dyer Interview pgs. 37-38. This is consistent with the statement of Tracy Neal that James Mclin was Kenny Neal’s alias. Turner/Hoback interview p. 43.

⁵² Dyer interview w/ Norman pgs. 17-18.

confirm critical portions of Shawanna Norman's recollection of Kenny Neal's confession.⁵⁴

14. Phillip Cotton confirmed Kenny Neal drove a Green Ford Explorer around the time of Leroy Owens' murder, which matches the vehicle Tammi Nelson described the perpetrators as having driven before Leroy Owens' murder. Mr. Cotton also confirmed Neal owned a white station-wagon.⁵⁵

15. 

16. Three family members of Mr. Webster [and Mr. Neal] have come forward and testified that Mr. Neal confessed to them he killed Mr. Owens. Webster's mother, Gladys "Marie" Burns; his brother, Arthur Gordon; and his now ex-wife, Katrina Webster (Norman), signed sworn affidavits attesting that Mr. Webster's brother, Kenneth Neal, privately confessed to being the real perpetrator. During Mr. Webster's Motion for a New Trial, these witnesses provided sworn testimony as to the facts set forth in their affidavits.

In pertinent part, Ms. Burns swore that:

My son, Kenneth Neal, told me that he committed this murder, but not to worry about it, as he had taken care of the problem and he felt that they could not prove that Joseph committed any murder. He also told me that him and Phillip Cotton had taken the white station-wagon to the country to be destroyed.⁵⁶

Similarly, Arthur Gordon swore that:

My brother, Kenneth Neal, talked to me about the murder in this case, a short time after the incident actually happened. Kenneth Neal admitted to me that he killed a man by hitting him with a

⁵⁴ Cotton Proffer p. 19-83

⁵⁵ Cotton Proffer p. 96-98

⁵⁶ Affidavit of Gladys Marie Burns, paragraph 8

brick. He told me this at his house, which at that time was off of Murfreesboro Road on Plus Park Blvd. It turns out that this is only a matter of minutes from where the crime took place. He told me this after I had inquired about where his white station-wagon had been. He then told me that he got rid of his white station-wagon somewhere out of town. He also stated that he did not intend to kill the man.⁵⁷

Finally, Katrina Webster swore that:

Once Joseph was indicted in this matter, Kenneth and I got into an argument because I told him that Joseph was in trouble for his charge. He got mad and stated that, 'I needed to stay out of his business.'⁵⁸

17. James McLin corroborated information given by Ms. Norman that Kenny Neal purchased vehicles in his name.⁵⁹
18. McLin corroborated information by Burns, Nelson, and Norman that Kenny Neal owned and drove a white station-wagon.⁶⁰
19. McLin corroborated statements by Burns, Nelson, and Norman that Kenny Neal owned and drove a green Ford Explorer.⁶¹
20. A green Explorer was found registered to James McLin.
21. McLin noted Kenny Neal once tried to shoot him over a drug debt⁶² and that once, he witnessed Neal beat someone with a bottle of liquor when the person bought him the wrong-sized bottle.⁶³

⁵⁷ Affidavit of Arthur Gordon, paragraphs 4-6

⁵⁸ Affidavit of Katrina Webster, paragraph 8

⁵⁹ Turner/Hoback w/ McLin interview p. 8

⁶⁰ Turner/Hoback w/ McLin interview p. 10

⁶¹ Turner/Hoback w/ McLin interview p. 10

⁶² Turner/Hoback w/ McLin interview p. 16

⁶³ Turner/Hoback w/ McLin interview p. 24

22. Reports from other witnesses corroborate Ms. Burns' apparent, sincere belief that her other son, Kenny Neal, committed the murder. Ms. Burns approached Tammi Nelson with a photograph of Kenny Neal, asking if this was actually the person who came to her home.⁶⁴ Ms. Burns approached James McLin and asked him to go and answer questions for Webster's attorney."⁶⁵ Finally, Ms. Burns approached Phillip Cotton asking him to tell the police what he knew about Kenny.⁶⁶

23. Mr. Neal has admitted he sold drugs during the time period around the homicide, consistent with the narrative of Leroy Owens being killed over a drug debt.⁶⁷

24. [REDACTED]

25. [REDACTED]

26. Mr. Neal admitted to having purchased vehicles in the name of James McLin.⁷⁰

27. Mr. Neal denied easily proven facts regarding his ownership of the white station-wagon and his dealings with Phillip Cotton.⁷¹

28. Mr. Neal declined to provide either a DNA sample or submit to a polygraph.⁷²

29. During the Motion for New Trial, General Anderson objected to the affection and closeness between Marie Burns and Kenneth Neal in the courtroom. Ms. Burns responded to the Court that she was "just trying to get him to admit it."⁷³

⁶⁴ Nelson Testimony Error Coram Nobis Hearing p. 7, lines 15-25; p. 8, 1-24

⁶⁵ Turner/Hoback interview w/ McLin page 12, lines 5-6.

⁶⁶ Cotton Proffer page 111, lines 16-21, page 112, lines 1-15

⁶⁷ Turner/Hoback interview w/ Neal page 19, line 1

⁷⁰ Turner/Hoback interview w/ Neal page 10, lines 20-21; page 11, lines 16-20

⁷¹ Turner/Hoback interview w/ Neal page 14, lines 6-18

⁷² Turner/Hoback interview w/ Neal page 48, lines 1-2

⁷³ MFNT p. 109

30. Dr. Walls (dentist) testified that he placed a prominent set of gold teeth in Joseph Webster's mouth, prior to the date of the homicide, in 1995 or 1996.



31. Ms. Nelson specifically stated the person who came to her home looking for Mr. Owens did not have gold teeth, and she would have noticed if he did.⁷⁴ Attorney Gibson did not directly address this issue with Ms. Nelson during cross-examination.

32. Detective Postiglione's trial testimony indicated more than one witness stated the person who beat Mr. Owens was wearing gloves,⁷⁵ but police reports would show only Ms. Nelson gave this information. The trial attorney did not challenge this claim.

33. Detective Postiglione's trial testimony indicated the description given of the person identified by Ms. Nelson matched the description given by more than one witness,⁷⁶ but police reports would indicate only one other witness gave a description to police; this witness was not able to give a description of the suspect other than body type. The trial attorney did not challenge this claim.

⁷⁴ Lyons interview w/ Tammi Nelson p. 6; See also Lyons Post-Conviction testimony, p. 18-19.

⁷⁵ T.T. p. 125-126

⁷⁶ T.T. p. 125-126

34. Reportedly, Ms. Nelson immediately went to the crime scene and gave a statement to a police officer, Officer Henderson, summarizing what she knew about the events leading to the murder. This may be true, but neither her testimony nor Detective Corcoran's report indicate this. Detective Corcoran's report states that Officer Henderson had received information from an anonymous witness about a person named "Todd." Ms. Nelson's testimony only suggests she approached Officer Henderson and asked for the identity of the victim, believing it might have "Big Nick." "Big Nick" is the alias of Robert Nichols (Leroy Owens, the victim, went by "Lil Nick"). Robert Nichols is the person with whom Leroy Owens was buying the drugs.

It is unclear how Ms. Nelson would have known "Lil Nick" ran to Hyde's residence after fleeing her from her apartment or why Ms. Nelson would believe that it was "Big Nick" who had been attacked instead of "Lil Nick," given the altercation that had occurred at her apartment just minutes prior only involved "Lil Nick." It does not appear she mistakenly said "Big Nick" instead of "Lil Nick" given that she went on to give descriptors unique to "Big Nick."⁷⁷

35. On three separate occasions following the trial, Ms. Nelson recanted her original identification of Joseph Webster and went so far as to identify Mr. Neal.⁷⁸ Even at trial, Ms. Nelson claimed to have picked two people out of the photo lineup.⁷⁹ The recantations are as follows:

1. On January 21st, 2009, Ms. Nelson handwrote, swore and signed the following statement in her own words:

"January 21, 2009

I Tammi Terrell Nelson is writing this statement to let the State know that I was mistaken identified Joseph Webster as his brother Kenny Neal in court and its been weighing heavily on my heart to where I've been put on medication for stress and having terrible dreams. I'm a 39 year old

⁷⁷ Corcoran Supplemental Report dated 11/22/98; Nelson Trial testimony pgs. 211-212, lines 18-10

⁷⁸ Coram Nobis Hearing Transcript p. 6, line 24 – p. 7, line 6

⁷⁹ T.T. p. 253, lines 21-25

mother with 2 grandchildren. During the time of this trial I was pressure into testified because of my addiction therefore this is my written statement.

Tammi Nelson
1-21-2009⁸⁰

2. On February 7, 2014, Ms. Nelson swore to and signed the following typewritten statement, which was prepared for her after she provided an oral statement to a notary:

“I Tammie Terrell Nelson, being of sound mind and body, and under no threat of bodily harm, do hereby make and sign the following affidavit under penalty of perjury:

In March of 2006 I falsely testified for the State of Tennessee in the murder trial of Joseph D. Webster. At the time of the trial, I was serving time on charges of drug possession, prostitution, and violation of probation. I was also addicted to crack cocaine. Taking advantage of my addiction and desire to get out of jail, district attorney Pamela Anderson offered me a deal to testify against Mr. Webster and help to secure his conviction. In return, I would be sentenced to Davidson County Drug Court instead of prison; upon my completion of this program I would be returned to the streets. I agreed to this deal and it has haunted my conscience since. The truth of the matter is that I DID NOT witness Joseph D. Webster harm anyone and I only said so because of the deal placed before me. And let me be clear by stating that this deal WAS in place long before Mr. Webster’s trial.

Again, I am not under duress whatsoever nor have I been threatened by anyone to sign this affidavit nor have I been offered any monetary gains or anything otherwise. My conscience has been eating away at me and this is just the right thing to do. Mr. Webster is innocent of the crime

⁸⁰ Tammi Nelson Sworn Recantation #1, January 21, 2009

that he is in prison for, and I need to right this wrong that I helped to cause. I pray that this helps. Thank you.

Tammi Terrell Nelson”⁸¹

3. On October 10, 2014, Ms. Nelson testified she had wrongly identified Mr. Webster as the perpetrator, and she further testified that she realized that she had made the error after seeing a photo of Mr. Webster’s brother for the first time. For example, after being asked why she was sure her identification of Mr. Webster was mistaken, Ms. Nelson testified:

“The reason, I saw a picture of—a picture of another person, his brother. And I was like – you know, when I saw the picture, I just broke down crying because I thought all these years, and then about me being in my right mind and not on the drugs like I used to be on that had me all confused. And I know now that it wasn’t – it wasn’t Joseph.”⁸²

Ms. Nelson was asked about being shown the photo of Kenny Neal:

“Did that picture look like the person who had---,”

Tammi Nelson interrupted the question and answered “No, that picture was the person.”⁸³

36. Ms. Nelson admitted to using someone else’s phone to call one of the perpetrator’s pagers and let him know that Mr. Owens was at her apartment. She neglected to tell detectives this fact until months later.⁸⁴ This is troubling because Ms. Nelson interfered with⁸⁵ and destroyed evidence⁸⁶ extremely pertinent to the investigation. According to Detective Postiglione, Ms. Nelson’s failure to come forward until seven-and-a-half months after the fact with the information that she had paged the perpetrators, materially undermined the investigation into Mr. Owens’ murder. After Ms. Nelson finally admitted to having paged the perpetrators, Detective Postiglione testified the investigating officers returned to the complex

⁸¹ Tammi Nelson Sworn Recantation #2, February 7, 2014

⁸² Tammi Nelson Coram Nobis Testimony, pgs. 6-7.

⁸³ Tammi Nelson Coram Nobis Testimony p. 10, lines 10-12.

⁸⁴ T.T. page 387

⁸⁵ Had Ms. Nelson been forthcoming about the phone call and pager, investigators could have traced records related to those numbers. (CRU Panel Interview w/ Pat Postiglione)

⁸⁶ By the time Ms. Nelson admitted her involvement to investigators, she had destroyed the pager number belonging to the suspects.

where Ms. Nelson had lived in the hopes of tracing the phone call that she made to the perpetrators' pager. Detective Postiglione testified that, upon doing so:

“When we went back to check there was no way to go back and just check the phone numbers. Otherwise, clearly that would have been something for obvious reasons we would have been interested in. . . . [W]e went back to those particular addresses and most of them were actually boarded up when we went back there in 1999.”⁸⁷

The fact that Ms. Nelson's outgoing phone call was no longer traceable would not have been so significant if the records from the pager itself had been traceable. This was also not possible because Ms. Nelson “tore up” the piece of paper containing the perpetrator's pager number⁸⁸, preventing detectives from investigating it.

Because Ms. Nelson is the person who set up Mr. Owens to be confronted by the perpetrator in this case, she could have been criminally responsible for Mr. Owens' murder. This, combined with her initial lack of candor, creates doubt as to the accuracy of her identifications, and a jury could consider this as a motive for a misidentification.

37. The DNA collected from six separate points on the concrete block excludes Mr. Webster as a contributor.⁸⁹ This has extremely marginal value as it logically follows that the single source of DNA found on the concrete block likely belongs to the victim, Leroy Owens, based upon the large amount of blood that was lost at the scene by the victim.

38. When polygraphed by Kendall Barham, Assistant Special Agent in Charge of the Tennessee Bureau of Investigation's Polygraph Unit, Joseph Webster showed no deception in answering the polygraph question:

Were you present when Mr. Owens was beaten with a concrete block?⁹⁰
Mr. Webster answered, “No.”

⁸⁷ T.T. page 387

⁸⁸ T.T. page 242

⁸⁹ Bode Cellmark Forensics Report

⁹⁰ Presence was pre-tested with Mr. Webster to include presence at Tammi Nelson's home, in the white car that chased Mr. Owens, at the scene of the homicide, and as being the person who murdered Mr. Owens.

39. When polygraphed by Special Agent Barham, Phillip Cotton, Jr. showed deception in answering the polygraph question:

Did Kenny Neal tell you he had beaten someone with a concrete block?
Mr. Cotton answered, "No."

III. CONVICTION REVIEW UNIT CONCLUSIONS AND RECOMMENDATION

The Conviction Review Unit conducted its own independent investigation and holistic review including analysis of the DA file, evidence presented at trial, subsequent hearings, and the newly discovered evidence not heard by the jury. While all was considered in accordance with CRU policy, the new evidence not presented at trial is central to the forthcoming conclusions and recommendation.

The CRU investigation revealed no evidence whatsoever of prosecutorial or investigative misconduct. Although a claim was made related to a potential Brady violation, that claim has been proven to be without merit. This office, in fact, provided all discoverable evidence to trial counsel, Mr. Gibson; and the documents in question were located in his possession.

As the facts were understood at the time the case was presented to a Grand Jury and tried in front of a Jury, it was a sound prosecutorial decision to go forward with State v. Joseph Webster.

Although the police investigation certainly could have been more thorough, the information gathered led to a logical and reasonable conclusion that Mr. Webster was one of the two men responsible for the death of Leroy Owens.

By his own admission, Joseph Webster was complicit in his conviction by actively participating in the cover-up for his brother, Kenny Neal. At the outset of this investigation, Mr. Webster had the opportunity to speak with detectives and provide information to them that may have led to Mr. Neal's arrest rather than his own. Mr. Webster failed to provide not only relevant, but also crucial information to his own attorney to aid in his defense. Finally, Mr. Webster testified at trial, and once again failed to be forthcoming with this information. The jury was not given the opportunity to hear evidence lending to Mr. Neal's guilt and Mr. Webster's innocence because Mr. Webster actively withheld this evidence from all parties.

Notwithstanding the foregoing, a thorough investigation and analysis by the CRU found the following information to be most pertinent:

**A. New information developed after the trial or by the CRU
Investigation**

1. Eyewitness Anthony Boyce was never interviewed by investigators despite being known to prosecutors and police. He was never shown a photo lineup.

The CRU, with the help of DA Investigator Steve Turner, easily found Mr. Boyce and contacted him. Mr. Boyce reported he witnessed and remembered the killing of Leroy Owens. He gave a description of the killer as “skinny, probably 150-160 pounds,” and “probably 5’8”- 6,” which is inconsistent with the appearance of Joseph Webster. At the time of the homicide, Joseph Webster was 5’10’ and approximately 300 lbs.⁹¹

2. Richard Henderson was also an eyewitness to this crime. His name and contact information were known to police and prosecutors at the time of this investigation and trial. He was neither interviewed nor has he ever been shown a photo lineup.

The CRU, with the help of DA Investigator Steve Turner, easily found Mr. Henderson and contacted him. Mr. Henderson reported he witnessed and clearly remembered the killing of Leroy Owens. He gave a description of the killer as “light-skinned,” . . . “muscular, not flabby,” . . . “medium-build, maybe 200 pounds” which is inconsistent with the appearance of Joseph Webster. Mr. Henderson also stated the killer was not wearing gloves.⁹²

3. The murder weapon, a cinder block, has since been tested for DNA. Mr. Webster’s DNA was not found on six separate points tested on the cinder block. This fact is only marginally probative because the tested DNA would most naturally all be that of the victim Leroy Owens.

4. Five people⁹³ now claim an alternate suspect, Kenny Neal, has either confessed he murdered Leroy Owens or did not deny it when confronted with the information. These claims are corroborated by the following:

⁹¹ Trial Transcript, p. 408, lines 18–20; Writ of Error Coram Nobis Testimony page 63, lines 11-12

⁹² Dyer Recorded Interview w/ Henderson

⁹³ Gladys Marie Burns, Katrina Norman, Arthur Gordon, Shawanna Norman, Joseph Webster

a. Shawanna Norman claims Kenny Neal confessed to her.

i.

[REDACTED]

[REDACTED]

ii. Ms. Norman has also stated the white car involved in this case was owned by Kenny Neal, and both Kenny Neal and Joseph Webster drove it. Mr. McLin, an acquaintance of Kenny Neal, along with Katrina Webster, Marie Burns, and Phillip Cotton all corroborate this.

iii. Ms. Norman provided information that Kenny Neal purchased vehicles in the name of James McLin. Mr. McLin confirmed this information.

iv. Ms. Norman stated Mr. Neal also drove a green Ford Explorer. This information was corroborated by Mr. McLin, Ms. Burns, and Katrina Norman. A green Explorer was found registered to James McLin. Mr. McLin confirmed Mr. Neal owned this vehicle. This is relevant because Ms. Nelson described the suspect as having come by her house in a Green Jeep or Explorer.

b. Ms. Burns, Arthur Gordon, and Joseph Webster said Mr. Neal confessed to them. Katrina Norman stated she confronted Mr. Neal about it, and he did not deny committing the murder. While their written statements are not as detailed, these recorded statements, taken from the most recent interviews, are consistent with each other and Ms. Norman's.

5. In addition to the allegations that Mr. Neal committed [REDACTED] this murder [REDACTED], [REDACTED] James McLin stated Kenny Neal shot a gun at him during the same time period over a minor drug debt.

6. Mr. Neal has admitted he sold drugs during this time period, consistent with the narrative of Leroy Owens being killed over a drug debt.

7. [REDACTED]

8. Mr. Neal admitted to having purchased vehicles in the name of James McLin.

9. Mr. Neal denied easily proven facts regarding his ownership of the white station-wagon and his dealings with Phillip Cotton.

10. Mr. Neal declined to provide a DNA sample or submit to a polygraph.

Contrasting this information which points to Kenny Neal as the perpetrator of this murder, the proof against Joseph Webster consists of the following:

1. Mr. Webster was also a drug dealer.

2. Mr. Webster admitted to occasionally driving the white car involved in this case.

3. Tammi Nelson identified Mr. Webster in a photo lineup and at every court appearance.

B. Analysis of Tammi Nelson's Identification of Joseph Webster

In murder investigations, Metro Nashville Police often have difficulty finding any witness to come forward and make an identification. The evidence that Tammi Nelson, the sole witness who identified Mr. Webster as one of the perpetrators, is unreliable and cannot be trusted to have made either an accurate or honest identification, is substantial.

By all accounts, despite being a self-described crack cocaine addict, Ms. Nelson made a strong trial witness. At trial she gave the appearance she was certain her identification was accurate,⁹⁴ despite previously stating she “really couldn’t identify [the perpetrators] back then” and “just picked out a mugshot of guys that looked like them.”⁹⁵

Notwithstanding Ms. Nelson’s three separate recantations⁹⁶ of her trial testimony, any neutral analysis of her initial identification of Mr. Webster reveals it suffered from significant flaws. Compounding these concerns, Ms. Nelson was not forthcoming with the police about her own involvement in this crime and initially denied even knowing the victim.⁹⁷ In fact, one witness (who did not testify) told Detective Postiglione “the victim was killed after he was set up by Tammi.”⁹⁸

Given the identification of Mr. Webster as the perpetrator rests solely with Tammi Nelson, the Conviction Review Unit cannot maintain confidence in the identification of Joseph Webster as the assailant. A non-exhaustive summary of concerns about the reliability of Ms. Nelson’s identification appears below.

1. In a recorded interview, Ms. Nelson told investigator and former Metro Police Detective Robert Lyons that Mr. Webster was not the person who killed Leroy Owens.⁹⁹
2. Ms. Nelson claimed to Mr. Lyons and testified in Court that she identified two men in the photo lineup.¹⁰⁰ These statements are clearly incorrect but demonstrate that information from Ms. Nelson is not completely reliable.

⁹⁴ Tammi Nelson T.T., p. 224.

⁹⁵ Lyons recorded Interview w/ Tammi Nelson, p. 17.

⁹⁶ Sworn Recantation #1, January 21, 2009, Sworn Recantation #2 February 7, 2014, Nelson Testimony, Writ of Error Coram Nobis

⁹⁷ T.T. p. 140

⁹⁸ Jeffery Bigsby Interview with Detective Postiglione (March 1, 1999).

⁹⁹ Lyons recorded interview w/ Tammi Nelson, p. 17

¹⁰⁰ Lyons Recorded interview w/ Tammi Nelson

3. Ms. Nelson has recanted her identification of Mr. Webster and claimed her identification was made in furtherance of an agreement for consideration by the State.¹⁰¹ This assertion was untrue, and she later reversed course on this claim.¹⁰²

4. On three separate occasions, Ms. Nelson has recanted her trial testimony regarding the identification of Mr. Webster.¹⁰³

5. Other issues gave the CRU pause when considering Ms. Nelson's credibility. These include her drug use,¹⁰⁴ her description of the assailant, her own culpability related to the homicide, and her lack of forthrightness with the police.

C. Polygraphs

As a last step, the CRU contacted TBI Special Agent Kendall Barham. Special Agent Barham is the Special Agent in Charge of the Polygraph Division and supervises all polygraph examinations for the TBI and conducts some examinations himself. At the request of the CRU, Special Agent Barham conducted polygraph examinations on two individuals related to this case:



Given four individuals have said Kenny Neal admitted killing Leroy Owens, the CRU asked him to submit to a polygraph containing the question "Has Kenny Neal ever admitted to you that he beat someone with a brick?" Mr.

¹⁰¹ Tammi Nelson Sworn Recantation #1, January 21, 2009

¹⁰² T.T. page 184

¹⁰³ Tammi Nelson Sworn Recantation #1, January 21, 2009; Tammi Nelson Sworn Recantation #2, February 7, 2014; Tammi Nelson Coram Nobis Testimony pgs 6-7

¹⁰⁴ Tammi Nelson T.T., pp. 184 & 258. See also Tammi Nelson Coram Nobis Testimony p. 12.

Cotton answered "No" to this question. Special Agent Barham has determined Mr. Cotton showed deception on that question.

Joseph Webster is the man convicted in this case, and he has maintained his innocence. He requested and submitted to a comparison of his DNA to the DNA found on the murder weapon. He agreed to submit to a polygraph examination where Special Agent Barham asked him "Were you present when Leroy Owens was beaten with a cinder block?" Mr. Webster answered, "No." Special Agent Barham determined Mr. Webster was not being deceptive in that answer.

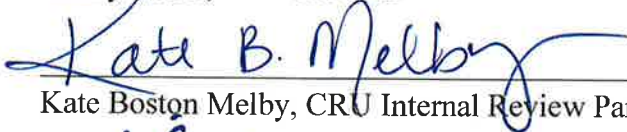
RECOMMENDATION

For all of the above reasons, the Conviction Review Unit no longer has confidence in the conviction of Mr. Webster. We recommend Mr. Webster's conviction be vacated and the charges against him dismissed.

Conviction Review Unit,



Sunny Eaton, CRU Director



Kate Boston Melby, CRU Internal Review Panel



Joey Clifton, CRU Internal Review Panel