

**IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE, DIVISION I**

JOSEPH WEBSTER,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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Case No. 2005-B-1384
Post-Conviction-DNA

Judge Steve R. Dozier

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**PETITIONER'S MOTION TO REOPEN PETITIONER'S POST-CONVICTION
PETITION AND TO ISSUE A WRIT OF ERROR CORAM NOBIS**

I. INTRODUCTION

Comes now Petitioner Joseph Webster, by and through undersigned counsel of record, and pursuant to Tenn. Code Ann. § 40-30-312, Tenn. Code Ann. § 40-30-117(a)(2), Tenn. Code Ann. § 40-30-117(a)(4), and Tenn. Code Ann. § 40-26-105, respectfully moves this Court to reopen and grant his post-conviction petition and to issue a writ of error coram nobis vacating his wrongful conviction. As grounds, the Petitioner submits that there is clear and convincing new evidence—including new and uniformly favorable DNA evidence—that the Petitioner is actually innocent of the offense for which he was convicted and is entitled to have his conviction set aside. Pursuant to Tenn. Code Ann. § 40-30-117(b), the Petitioner's new evidence is supported by affidavit, and the factual bases underlying his claims for relief are set forth below.

II. STATUTORY AUTHORITY AND JURISDICTION

A. Post-Conviction DNA Testing

The Post-Conviction DNA Analysis Act of 2001, codified at Tenn. Code Ann. § 40-

30-301, *et seq.*, provides for post-conviction DNA testing of previously untested evidence under appropriate circumstances. Where, as here, the results of post-conviction DNA testing are “favorable” to a petitioner, Tenn. Code Ann. § 40-30-312 mandates both a hearing and further orders as required or permitted thereafter. *See id.* (“If the results of the post-conviction DNA analysis are favorable, **the court shall order a hearing, notwithstanding any provisions of law or rule of court that would bar the hearing as untimely, and thereafter make orders as are required or permitted by the rules of criminal procedure or part 1 of this chapter.**”) (emphases added). In turn, Part 1 of The Post-Conviction DNA Analysis Act of 2001 enables a court to reopen a post-conviction petition under circumstances when new scientific evidence establishes innocence and a petitioner’s entitlement to have his conviction set aside. *See* Tenn. Code Ann. § 40-30-117(a)(2); Tenn. Code Ann. § 40-30-117(a)(4).

B. Actual Innocence Claims Based on New Non-Scientific Evidence

“Claims of actual innocence not based on new scientific evidence may be brought in a petition for writ of error coram nobis[.]” *Dellinger v. State*, 279 S.W.3d 282, 291, n.7 (Tenn. 2009) (citing Tenn. Code Ann. § 40-26-105 (2006)). In full, Tenn. Code Ann. § 40-26-105—Tennessee’s coram nobis statute—provides as follows:

(a) There is made available to convicted defendants in criminal cases a proceeding in the nature of a writ of error coram nobis, to be governed by the same rules and procedure applicable to the writ of error coram nobis in civil cases, except insofar as inconsistent herewith. Notice of the suing out of the writ shall be served on the district attorney general. No judge shall have authority to order the writ to operate as a supersedeas. The court shall have authority to order the person having custody of the petitioner to produce the petitioner in court for the hearing of the proceeding.

(b) The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the

nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

(c) The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause. In the event a new trial is granted, the court may, in its discretion, admit the petitioner to bail; provided, that the offense is bailable. If not admitted to bail, the petitioner shall be confined in the county jail to await trial.

(d) The petitioner or the state may pray an appeal in the nature of a writ of error to the court of criminal appeals from the final judgment in this proceeding.

Tenn. Code Ann. § 40-26-105.

Although a one-year statute of limitations generally applies to coram nobis claims, *see State v. Mixon*, 983 S.W.2d 661, 670 (Tenn. 1999); *see also* Tenn. Code Ann. § 27-7-103, the Tennessee Supreme Court has instructed that: “Clearly, in a variety of contexts, due process may require tolling of an applicable statute of limitations.” *Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001). To determine whether tolling is required, a court examines “the governmental interests involved and the private interests affected by the official action.” *Id.* In cases where a petitioner seeks to present newly discovered evidence of actual innocence regarding a serious offense and raises “serious questions” regarding his guilt, the Tennessee Supreme Court has made clear that the interest of a petitioner “far outweighs any governmental interest” and requires tolling. *See id.* (“Weighing these competing interests in the context of this case, we have no hesitation in concluding that due process precludes application of the statute of limitations to bar consideration of the writ of error coram nobis in this case. Workman's interest in obtaining a hearing to

present newly discovered evidence that may establish actual innocence of a capital offense far outweighs any governmental interest in preventing the litigation stale claims. Workman has raised serious questions regarding whether he fired the shot that killed Memphis Police Lieutenant Ronald Oliver.”). Cases involving later-arising grounds for relief and attorney misconduct have similarly been found to warrant due process tolling of claims raised after a defendant’s conviction. *See Whitehead v. State*, 402 S.W.3d 615, 623 (Tenn. 2013) (“To date, this Court has identified three circumstances in which due process requires tolling the post-conviction statute of limitations. The first circumstance involves claims for relief that arise after the statute of limitations has expired. . . . The third exception is . . . that attorney misconduct might also necessitate tolling the statute of limitations.”). Independently, the State may waive application of the statute of limitations, *see, e.g., Mills v. State*, No. M2011-00620-CCA-R3PC, 2013 WL 6069276, at *22 (Tenn. Crim. App. Nov. 19, 2013) (“The State has the burden of raising the statute of limitations bar as an affirmative defense in a coram nobis proceeding.”); *Rickman v. State*, 972 S.W.2d 687, 691 (Tenn. Crim. App. 1997) (“the statute of limitations is an affirmative defense which the State must plead and prove. Failure to do so constitutes a waiver of the defense.”) (citing *Smith v. State*, 873 S.W.2d 5, 6 (Tenn. Crim. App. 1993))—a remedial step that is required of District Attorneys by the Rules of Professional Conduct in cases involving clear and convincing evidence of a convicted defendant’s actual innocence. *See* Tenn. R. Sup. Ct. Rule 8, RPC 3.8(h) (“When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in the prosecutor’s jurisdiction of an offense that the defendant did not commit, **the prosecutor shall seek to remedy the conviction.**”) (emphasis added). *See also id.* at cmt. 7 (“Under paragraph (h), once the prosecutor knows of clear and convincing evidence that a

defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction.”).

With respect to the merits of a coram nobis petition, “the focus of a proper petition for writ of error coram nobis is on the facts that should have been made available to the fact-finder *at the time of the trial*.” *Payne v. State*, 493 S.W.3d 478, 485 (Tenn. 2016) (citing *State ex rel. Carlson v. State*, 219 Tenn. 80, 407 S.W.2d 165, 167 (1966)). Upon review of such facts, “[t]he decision to grant or deny a petition for writ of error coram nobis on its merits rests within the trial court's sound discretion.” *Id.* at 484 (citing *Harris v. State*, 301 S.W.3d 141, 144 (Tenn. 2010)).

III. CASE HISTORY AND FACTUAL HISTORY¹

A. Summary of Evidence Leading to Joseph Webster’s Identification as a Suspect and His Conviction for the Murder of Leroy Owens.

In 1998, two men drove down, chased down, and bludgeoned Leroy Owens to death with a cinder block.² Several individuals witnessed the murder itself, but none of them was able to identify either of the two perpetrators involved. With respect to the perpetrators’ height and weight, however, two witnesses provided physical descriptions. One witness—Fred McClain—described the perpetrators as “69 inches tall and about 230 pounds” and “about 68 inches tall and 175 pounds,”³ respectively. Another witness, Robert Nichols, reported that one of the perpetrators was “approximately 73 inches tall

¹ Bates numbers cited in this filing reference a 1467-page packet of materials provided to the Davidson County District Attorney’s CRU. The entire volume of materials is being filed contemporaneously for the Court’s review and is appended to this filing on a flash drive as **Collective Exhibit A**.

² Multiple witnesses testified that the perpetrators were two black males. *See, e.g.*, Webster Trial Transcript, Vol. I, Fred McClain trial testimony, Transcript p. 15, lines 10–12, Bates No. 931; *id.* at Delunn Hyde trial testimony, Transcript p. 48, line 7, Bates No. 964.

³ Fred McClain Interview Report, Bates No. 601.

and about 200 lbs” and had come around “driving a jeep like vehicle”⁴ prior to the murder. Significantly, neither of these descriptions matched Joseph Webster, who was 5’-10” and weighed 300 pounds at the time.⁵

The Petitioner, Joseph Webster, was indicted for Leroy Owens’ murder more than half a decade after it occurred. At the time of the murder, Mr. Webster was identified as a suspect after the white station wagon believed to be involved in Mr. Owens’ murder was spotted outside his then-girlfriend’s grandmother’s home “parked in front of 1245 Lewis Street the night before the murder.”⁶ Thereafter, a woman named Tammi⁷ Nelson picked out Mr. Webster from a photo lineup and identified him as one of the perpetrators.⁸ Consistent with the information that Robert Nichols provided, Ms. Nelson also stated that “the first time [the perpetrators] ever come [sic] to [her] house it was like in a black, it was a real dark color green Jeep . . . An Explorer or something.”⁹ Mr. Webster was ultimately indicted more than half a decade later, but no additional investigation took place in the approximately six years preceding Mr. Webster’s indictment. Based on its minimal investigation, law enforcement also was never able to develop a second suspect.

The same evidence that resulted in Joseph Webster being identified as a suspect was ultimately used to secure his conviction. The evidence introduced at trial that inculpated Mr. Webster specifically—rather than merely establishing that a murder

⁴ Robert Nichols Interview with Pat Postiglione (June 16, 1999) (“He stated that this subject was alone and driving a jeep like vehicle. He states that this subject was approximately 73” tall and about 200 lbs.”), Bates No. 581.

⁵ Coram Nobis Hearing, Transcript p. 63, lines 16–17, Bates No. 709.

⁶ See Coram Nobis Hearing, Transcript p. 69, lines 7–11, Bates No. 715.

⁷ Ms. Nelson’s first name is spelled differently throughout Mr. Webster’s case record, sometimes appearing as “Tammi,” sometimes “Tammy,” and sometimes “Tammie.” This filing uses the spelling “Tammi” except when source materials are quoted directly.

⁸ Ms. Nelson later indicated that she had picked out two individuals from the lineup, which the report of her interview does not reflect. Whether she did or not remains unclear.

⁹ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 209, lines 7–12, Bates No. 492.

occurred—was essentially twofold. *First*, Tammi Nelson—a crack cocaine addict who: (1) paged the perpetrators to inform them where Leroy Owens was, and (2) admittedly lied about that fact for more than seven months and destroyed evidence regarding it—testified at Mr. Webster’s trial that she was certain that her identification of Mr. Webster as one of the perpetrators involved in Mr. Owens’ initial assault was accurate. *Second*, witness Delunn Hyde stated that the souped-up white station wagon used in the murder—which Mr. Webster had previously driven, and which it has since become clear that his brother, Kenny Neal, owned through an alias—was seen parked outside of Joseph Webster’s then-girlfriend’s grandmother’s house the night before the murder.¹⁰ Thus, Tammi Nelson was the only witness who ever directly inculpated Mr. Webster in Leroy Owens’ murder or claimed to be able to identify either of the two perpetrators involved. The District Attorney’s most recent recitation of the evidence underlying Mr. Webster’s conviction—which lists: (1) Nelson’s identification, (2) the testimony of two witnesses (Hyde and McClain) who could not make an identification; and (3) Webster’s testimony that he did not know who Nelson was¹¹—confirms the Parties’ agreement on the matter and the fact that Tammi Nelson’s identification was indispensable to Mr. Webster’s conviction.

Following Mr. Webster’s conviction, Tammi Nelson recanted her trial testimony and her identification of Mr. Webster under oath on three occasions. This Court, however, determined that Ms. Nelson’s recantations were not credible. Even before Ms. Nelson’s three recantations of her trial testimony, though, Ms. Nelson’s identification of Mr. Webster was highly unreliable for myriad reasons detailed below. Tammi Nelson’s

¹⁰ See Delunn Hyde Interview Summary (“Hyde also stated that he is certain that he has seen this vehicle before this incident. He states that he observed this same white station wagon parked in front of a house on Lewis Street. . . . He states that he observed this vehicle parked there on 11/21/98, the night prior to the homicide.”), Bates No. 635. See also Coram Nobis Hearing, Transcript p. 69, lines 7–11, Bates No. 715.

¹¹ State’s Response In Opposition to Petition for Post-Conviction DNA Analysis, p. 2, Bates No. 778.

outright dishonesty in multiple respects before, during, and after Mr. Webster’s trial on a wide variety of matters is similarly clear. Since that time, the evidence that was used to convict Mr. Webster has also been powerfully undermined by a combination of:

- (1) New evidence—including scientific (DNA) evidence—exculpating him;
- (2) New evidence calling into overwhelming doubt the strength and credibility of the evidence admitted against Mr. Webster at trial; and
- (3) New evidence that a man named Kenny Neal—Mr. Webster’s half-brother—was responsible for committing and, indeed, *bragged about* committing Leroy Owens’s murder instead.

A substantial portion of that new evidence¹²—and its relevance to Mr. Webster’s conviction—is detailed at length below.

B. Material Facts That Were Known or Could Have Been Known at the Time of Trial

On November 22, 1998, Leroy Owens was murdered by two African American males.¹³ The two perpetrators assaulted Mr. Owens outside Tammi Nelson’s apartment, chased him down the street, and killed him by striking him in the head with a cinder block.¹⁴ The apparent motive for the murder—stated aloud while Mr. Owens was being bludgeoned to death—was that Mr. Owens owed the man who killed him money.¹⁵

Prior to Mr. Owens’ murder, the two perpetrators came around Tammi Nelson’s apartment in search of Mr. Owens “about five or six times.”¹⁶ Ms. Nelson and Mr. Owens

¹² Due to its relevance to a separate, pending criminal investigation, other evidence has been omitted.

¹³ Multiple witnesses testified that the perpetrators were two black males. *See, e.g.*, Webster Trial Transcript, Vol. I, Fred McClain trial testimony, Transcript p. 15, lines 10–12, Bates No. 931; *id.* at Delunn Hyde trial testimony, Transcript p. 48, line 7, Bates No. 964.

¹⁴ *Id.* at Fred McClain trial testimony, Transcript p. 18, line 13 – p. 19, line 22, Bates Nos. 934–35.

¹⁵ *Id.* at Fred McClain trial testimony, p. 19, lines 20–22, Bates No. 935.

¹⁶ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 193, lines 18–22 and Transcript p. 254, line 2, Bates No. 476.

were friends,¹⁷ and they did drugs together.¹⁸ The perpetrators stated that they were Mr. Owens' "cousins,"¹⁹ but they apparently did not tell Ms. Nelson why they were looking for him. The perpetrators also left their pager number with Ms. Nelson and others with instructions to page them if Mr. Owens ever came back around.²⁰ Ms. Nelson reiterated that they had left their pager number with "a few other people out there" twice.²¹

On November 21, 1998, Leroy Owens returned to Ms. Nelson's apartment. Thereafter—either that evening or the following morning (it is not clear which, because Ms. Nelson gave conflicting statements on the matter²²)—Ms. Nelson paged the perpetrators to alert them that Mr. Owens had returned.²³ Shortly after 11:00 a.m. on November 22, 1998, the perpetrators arrived at Ms. Nelson's unit and asked to see Mr. Owens. After Mr. Owens came outside to meet them, the perpetrators assaulted Mr. Owens in view of Ms. Nelson²⁴ using a stick that they had either brought with them or that they got from Ms. Nelson herself.²⁵

At least one other eyewitness—Lakeeta Smith (a.k.a. Lakeeta Hill, a.k.a. Reena

¹⁷ Tammi Nelson First Interview With Bob Lyons, Transcript p. 12, line 20 ("me and Nick was so close friends"), Bates No. 760.

¹⁸ Tammi Nelson First Interview With Bob Lyons, Transcript p. 13, line 17 ("we used to do drugs."), Bates No. 761.

¹⁹ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 229, lines 5–14, Bates No. 512.

²⁰ *Id.* at Transcript p. 193, line 25 – p. 194, line 6, Bates No. 476–77.

²¹ *Id.*

²² *Compare* Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 198, lines 12–13 & lines 9–10 (stating that she paged the perpetrators "that morning" and "the same day that [Mr. Owens] got killed"), Bates No. 481, *with* Tammi Nelson First Interview With Bob Lyons, Transcript p. 9, lines 15–18 (stating that the perpetrators arrived "the next morning" and that she "didn't call 'em that morning"), Bates No. 757.

²³ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 198, lines 6–13, Bates No. 481.

²⁴ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 201, lines 2–21, Bates No. 484.

²⁵ *Compare* Tammi Nelson trial testimony, p. 201, lines 7–8, Bates No. 484 ("He had a stick in his hand."), *with* Lakeeta Smith Interview with Pat Postiglione (March 5, 1999) ("[Lakeeta Smith] states that they took a stick out of Tammi's hand and hit the victim with it."), Bates No. 580.

Smith, a.k.a Ann Hill), who was apparently unknown to Mr. Webster’s trial counsel despite having been disclosed to him²⁶—witnessed this initial assault as well.²⁷ Ms. Smith had also seen the perpetrators beforehand,²⁸ and at least according to Tammi Nelson, Ms. Smith had actually paged the perpetrators as well.²⁹ Ms. Smith ultimately came forward and provided detectives new and credible information that Tammi Nelson had been the one who paged the perpetrators³⁰—a major turning point in the investigation that forced Tammi Nelson to admit her involvement in it notwithstanding her initial, knowingly false claim “that she was not involved.”³¹

Despite Ms. Smith’s critical importance to Mr. Webster’s defense, Mr. Webster’s trial counsel appears not to have reviewed the State’s complete discovery materials and was thus unaware of Lakeeta Smith’s existence.³² Thus, despite being a highly favorable witness to Mr. Webster who could speak directly to Tammi Nelson’s dishonesty about her role in Leroy Owens’ murder and could possibly identify the actual perpetrators involved,³³ Ms. Smith was never called as a witness at trial or apparently even contacted

²⁶ See Michie Gibson Correspondence (“said documents do not refresh my memory nor do I recall any information about Ms Smith”), Bates No. 1084.

²⁷ Lakeeta Smith Interview with Pat Postiglione (March 5, 1999) (“[Lakeeta Smith] stated that she was present at 169 Old Hermitage Avenue when the two suspects came by and confronted the victim. . . . She states they took a stick out of Tammi’s hand and hit the victim with it.”), Bates No. 580. See also *id.* at Jeffery Bigsby Interview with Pat Postiglione (March 1, 1999) (“Jeffery states that his girlfriend Lakeeta Smith was present”), Bates No. 578.

²⁸ Lakeeta Smith Interview with Pat Postiglione (March 5, 1999) (“[Lakeeta Smith] stated that she was present at 169 Old Hermitage Avenue when the two suspects came by and confronted the victim.”), Bates No. 580.

²⁹ Pat Postiglione Interview with Tammi Nelson (June 8, 1999), p. 1 (“She states Ann Hill aka Reena Smith also paged the two suspects.”), Bates No. 570.

³⁰ Lakeeta Smith Interview with Pat Postiglione (March 5, 1999), Bates No. 580.

³¹ Tammi Nelson Interview with Pat Postiglione (June 8, 1999) (“Tammi stated that she was not involved”), Bates No. 570.

³² Michie Gibson Correspondence (“said documents do not refresh my memory nor do I recall any information about Ms Smith”), Bates No. 1084.

³³ Despite coming forward with credible information, having witnessed the initial assault, and having seen the perpetrators beforehand, the report of Ms. Smith’s interview with law enforcement does not reflect that she was ever asked to attempt an identification.

again by anyone after March 5, 1999.

After Leroy Owens was assaulted outside Tammi Nelson's house, he attempted to escape by running away.³⁴ Mr. Owens initially did escape by running inside a house owned by a man named Delunn Hyde.³⁵ Mr. Hyde told Mr. Owens that he wanted no part of whatever was going on, so he instructed Mr. Owens to leave.³⁶ After Mr. Owens exited Mr. Hyde's house, the perpetrators' white, souped-up station wagon came speeding down the street in pursuit of him.³⁷ Mr. Hyde was only able to identify the occupants of the vehicle as two black males,³⁸ and thus, he could not identify the specific perpetrators involved.

After running Mr. Owens down in their white station wagon, the perpetrators "bum rushed" Mr. Owens, knocking him into a construction worker named Fred McClain.³⁹ Mr. McClain ran around the side of a nearby building thereafter, but he witnessed the events that followed.⁴⁰ According to Mr. McClain's testimony, the perpetrators knocked Mr. Owens down, and one of them began striking him in the head with a concrete cinder block.⁴¹ The perpetrator with the cinder block stated: "Where's my money? Where's my goddamn money?"⁴² Mr. McClain was shown a photo lineup containing Joseph Webster shortly thereafter,⁴³ but he did not identify him or anyone in that lineup as a

³⁴ Webster Trial Transcript, Vol. I, Delunn Hyde trial testimony, Transcript p. 46, line 4 – p. 47, line 6, Bates No. 962–63.

³⁵ *Id.* at Transcript p. 45, lines 12–17, Bates No. 961.

³⁶ *Id.* at Transcript p. 45, line 12 – p. 46, line 23, Bates No. 961.

³⁷ *Id.* at Transcript p. 47, lines 14 – p. 48, line 1, Bates No. 962–63.

³⁸ *Id.* at p. 48, line 7, Bates No. 964.

³⁹ Webster Trial Transcript, Vol. I, Fred McClain trial testimony, p. 13, lines 11–13, Bates No. 929.

⁴⁰ *Id.* at p. 19, lines 10–22, Bates No. 935.

⁴¹ *Id.*, Bates No. 935.

⁴² *Id.* at lines 20–22, Bates No. 935.

⁴³ Webster Trial Transcript, Vol. I, Pat Postiglione trial testimony, Transcript p. 139, lines 9–22, Bates No. 1056.

perpetrator.⁴⁴

Mr. Owens' death was ruled a homicide.⁴⁵ The coroner concluded that Owens' death was caused by the blunt force trauma of multiple cinder block strikes to the head. The coroner also observed several defensive wounds on Mr. Owens' hands,⁴⁶ suggesting that a struggle had taken place and giving rise to at least the possibility that Mr. Owens drew the perpetrators' blood and/or scraped testable DNA from the man who killed him.

The cinder block that was used to kill Mr. Owens was retrieved from the crime scene and secured in the property room.⁴⁷ Portions of it were and remain covered in blood.⁴⁸ Investigators also retrieved an empty Salem cigarette pack from the scene that may or may not have belonged to the perpetrators as well.⁴⁹ Officers also testified that the victim had a "white shirt with some blood on his hand and his shirt" at the time they arrived and secured the crime scene.⁵⁰

At some point thereafter—but years prior to Mr. Webster's indictment—Owens' white t-shirt with blood on it was given to the funeral home where he was buried and then destroyed.⁵¹ There is no indication that Mr. Webster's trial counsel was aware of its existence or the fact that it was destroyed prior to Mr. Webster's indictment and trial.

911 calls at the time of the murder were additionally destroyed years prior to Mr.

⁴⁴ *Id.* at lines 23–25 (Q. "And was Mr. McClain able to identify anyone?" A. "He was not."), Bates No. 1056.

⁴⁵ Webster Trial Transcript, Vol. III, Medical Examiner Dr. Li trial testimony, Transcript p. 324, lines 11–12, Bates No. 1140.

⁴⁶ *Id.* at p. 303, line 25 – p. 306, line 25, Bates No. 1119–1122.

⁴⁷ Webster Trial Transcript, Vol. I, Officer Wayne Hughes Testimony, Transcript p. 79, line 22 – p. 80, line 7, Bates No. 996–97.

⁴⁸ *See* Photograph of cinder block prior to DNA testing, Bates No. 1275.

⁴⁹ Webster Trial Transcript, Vol. I, Officer Wayne Hughes Testimony, Transcript p. 77, lines 8–19, Bates No. 993.

⁵⁰ Webster Trial Transcript, Vol. I, Officer James Jordan trial testimony, Transcript p. 37, lines 21 – 23, Bates No. 953.

⁵¹ Correspondence with Robert Jones, Bates No. 1277–1285.

Webster's indictment pursuant to Metro policy.⁵² There is no indication that Mr. Webster's trial counsel was aware of their existence or the fact that they were destroyed, either.

At the time of Mr. Webster's trial, and prior to it, the bloodstained cinder block that was used to murder Leroy Owens was not tested for DNA.⁵³ Neither were Mr. Owens' fingernails. During Mr. Webster's trial, Detective Wayne Hughes also testified that "the blood stains [would] possibly be good evidence."⁵⁴ In response to questioning regarding whether "either of the victim's blood . . . or the assailant's blood might be on there,"⁵⁵ Detective Hughes testified that "I don't have any idea whose blood it is,"⁵⁶ and he repeated that "it could be anybody's."⁵⁷ The Court similarly noted, also in the presence of the jury, the possibility that the perpetrator's DNA might be on the murder weapon, stating: "anything's possible."⁵⁸ Given the defensive wounds on Mr. Owens' hands, that possibility is not unreasonable.

C. Concerns About the Accuracy and Integrity of Tammi Nelson's Identification of Joseph Webster Both Before and During His Trial

Neither Mr. Hyde nor Mr. McClain was ever able to identify the perpetrators involved,⁵⁹ and as noted above, Mr. McClain specifically did not identify Mr. Webster

⁵² Correspondence from Robert Jones and Department of Emergency Communications regarding spoliated 911 call recordings, Bates No. 1287-89.

⁵³ State's Response In Opposition to Petition for Post-Conviction DNA Analysis, p. 1 ("during the pendency of this trial, [Joseph Webster], on notice of the State's theory, did not himself request any testing of the murder weapon."), Bates No. 777.

⁵⁴ Webster Trial Transcript, Vol. I, Officer Wayne Hughes Testimony, p. 89, lines 13-15 (Q. "And would the blood stains possibly be good evidence?" A. "Yes, sir."), Bates No. 1005.

⁵⁵ *Id.* at Transcript p. 89, lines 16-19, Bates No. 1005.

⁵⁶ *Id.* at Transcript p. 90, lines 7-9, Bates No. 1006.

⁵⁷ *Id.* at Transcript p. 90, line 23, Bates No. 1006.

⁵⁸ *Id.* at p. 90, line 1, Bates No. 1006.

⁵⁹ Webster Trial Transcript, Vol. I, Delunn Hyde trial testimony, Transcript p. 48, line 7 (in which Delunn Hyde identifies the individuals involved only as "two black people"), Bates No. 964; Webster Trial Transcript, Vol. I, Pat Postiglione trial testimony, Transcript p. 139, lines 23-25 (Q. "And was Mr. McClain able to identify anyone?" A. "He was not."), Bates No. 1056.

from a photo lineup that included him.⁶⁰ Not a single witness to Mr. Owens' murder ever provided a physical description that came anywhere close to matching Mr. Webster, either. In particular, Mr. McClain's description of the perpetrators as "69 inches tall and about 230 pounds" and "about 68 inches tall and 175 pounds," respectively, did not match Mr. Webster's approximately 5'10", 300-pound build. Neither did Robert Nichols' statement that one of the apparent perpetrators was "approximately 73 inches tall and about 200 lbs"⁶¹ match Mr. Webster. Thus, Tammi Nelson—the crack cocaine addict who paged the perpetrators to let them know that Mr. Owens had returned to her apartment, leading to his death—provided the only identification of Joseph Webster that has ever been made in this case, and her identification of 300-pound Joseph Webster conflicted materially with physical descriptions that had been provided by other witnesses.

Ms. Nelson initially identified Joseph Webster as having been one of the perpetrators involved in Mr. Owens' death after being shown a six-pack photo lineup provided by Detective Pat Postiglione on November 23, 1998.⁶² Pat Postiglione's report states that he did not tape Tammi Nelson's "initial[]" interview due to her "fear of the suspects."⁶³ Mr. Webster was indicted for and convicted of murdering Mr. Owens almost entirely on the strength of Ms. Nelson's identification approximately seven years later.

At trial, Ms. Nelson stated that she had seen Mr. Owens' killers up close "[a]bout

⁶⁰ Webster Trial Transcript, Vol. I, Pat Postiglione trial testimony, Transcript p. 139, lines 9–25, Bates No. 1056.

⁶¹ Robert Nichols Interview with Pat Postiglione (June 16, 1999) ("He states that this subject was approximately 73" tall and about 200 lbs."), Bates No. 581.

⁶² Pat Postiglione Interview with Tammi Nelson (Nov. 23, 1998) ("Tammi was shown a photo line up that included a photo of Joseph Webster. She immediately picked him out in photo number five as one of the two subjects that came to her apartment and attacked the victim."), Bates No. 575.

⁶³ *Id.* ("When initially interviewed on November 23rd, 1998 Tammi would not give a taped statement expressing fear of the suspects."), Bates No. 571.

five or six times”⁶⁴ prior to the murder. She further stated that she had always seen them in the “afternoon”⁶⁵ and in the “daylight,”⁶⁶ with sufficient lighting that she “could actually see [their] face[s],”⁶⁷ and that there was never anything covering their faces.⁶⁸ Despite being addicted to crack cocaine,⁶⁹ Ms. Nelson was a compelling trial witness. At Mr. Webster’s trial, she also indicated that she was certain that her identification was accurate,⁷⁰ despite having stated shortly before Mr. Webster’s trial that she “really couldn’t identify [the perpetrators] back then” and “just picked out a mug shot of guys that looked like them.”⁷¹

Even before Tammi Nelson recanted her trial testimony under oath three separate times,⁷² though, her initial identification of Mr. Webster suffered from multiple glaring flaws. Compounding these concerns, Ms. Nelson also lied repeatedly about multiple facets of this case, she was not a remotely trustworthy witness, and she played a significant role in Leroy Owens’ murder herself. Indeed, one witness (who did not testify) informed law enforcement that “the victim was killed after he was set up by Tammy.”⁷³ A list of serious concerns about the reliability of Ms. Nelson’s identification—which does not purport to be comprehensive—appears below.

- i. Descriptive inconsistencies, including a glass or plastic eye that “goes up” and no gold teeth.

⁶⁴ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 193, line 22 and Transcript p. 254, p. 2, Bates No. 476.

⁶⁵ *Id.* at Transcript p. 194, lines 14–16, Bates No. 477.

⁶⁶ *Id.* at lines 17–18, Bates No. 477. *See also id.* at Transcript p. 254, lines 13–14 (“every time they’d come to my house it was daylight.”), Bates No. 537.

⁶⁷ *Id.* at p. 194, lines 19–21, Bates No. 477.

⁶⁸ *Id.* at lines 22–24, Bates No. 477.

⁶⁹ *Id.* at p. 184, line 8, Bates No. 467; p. 258, lines 12–15, Bates No. 541.

⁷⁰ *Id.* at p. 224, lines 15–18, Bates No. 507.

⁷¹ Tammi Nelson First Interview With Bob Lyons, Transcript p. 17, lines 14–17, Bates No. 765.

⁷² Second Supplemental Addendum, Tammi Nelson Recantations, Bates Nos. 269–72.

⁷³ Pat Postiglione Interview of Jeffery Bigsby (March 1, 1999), Bates No. 578.

Ms. Nelson’s recollection of the perpetrator’s distinguishing facial features was both provably and materially inaccurate with respect to Mr. Webster. First, she testified that one of the perpetrators had a distinguishing feature that Mr. Webster does not—an eye deformity that caused one of his eyes to “go[] up,”⁷⁴ which she claimed was due to “glass or plastic or something on his eye.”⁷⁵ Mr. Webster does not have an eye deformity. He also does not have a glass or plastic eye.

Further, prior to Mr. Webster’ trial, Tammi Nelson stated unequivocally that the perpetrator did not have gold teeth, and that she would “sure remember gold” if he did.⁷⁶ She also never mentioned gold teeth at any point throughout the investigation to anyone involved in it or thereafter during her trial testimony. Ms. Nelson stuck to her description at trial by identifying only one of the perpetrator’s eyes as having been a memorable facial feature—making no mention of gold teeth whatsoever.⁷⁷ Crucially, however, long before the murder took place, Mr. Webster had twelve extraordinarily prominent, bright yellow gold teeth permanently implanted that would have been visible immediately to anyone who saw him in the daylight—much less someone who saw him repeatedly. Mr. Webster’s dentist—whom Mr. Webster’s trial counsel also failed to call during his trial—confirmed as much.⁷⁸

Ms. Nelson additionally provided conflicting descriptions regarding the perpetrator’s build and “afro” or alternatively “plaited” hair⁷⁹ that did not comport with any description provided by other witnesses—or even her own. Put another way: Ms.

⁷⁴ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, p. 255, lines 8–9.

⁷⁵ *Id.* at p. 255, lines 11–12, Bates No. 538.

⁷⁶ Tammi Nelson Second Interview With Bob Lyons, Transcript p. 6, lines 14–15, Bates No. 773.

⁷⁷ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, p. 255, lines 3–9. Bates No. 538.

⁷⁸ *See* Dentist letter, Bates No. 1291; Webster Post-Conviction Hearing, Transcript pp. 27–36 (relevant testimony of Dr. Ulysses Walls, Mr. Webster’s dentist), Bates No. 809–18.

⁷⁹ *See* Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, p. 255, lines 14–18.

Nelson's identification did not match Joseph Webster, it did not match physical descriptions provided by other witnesses, and it was highly suspect from its inception.

- ii. Serious conflicts between Ms. Nelson's own prior statements and her trial statements, and additional conflicts with other witnesses' accounts.

In addition to conflicting materially with several other witnesses' accounts, Ms. Nelson's trial testimony also differed materially from her own prior statements in several ways. Indeed, Ms. Nelson's pre-trial statements to Bob Lyons—Mr. Webster's investigator at the time of his trial—were incompatible with her trial testimony in almost every material respect.⁸⁰ In some cases, it is not clear whether these inconsistencies were mere memory lapses or innocent mistakes. In other cases, however, it is clear that Ms. Nelson either lied before trial or that she lied during trial.

Most significantly, just before Mr. Webster's trial, Ms. Nelson stated the following during a recorded interview with Mr. Webster's investigator—former MNPD Officer Bob Lyons:

Lyons: “[H]ad these two people [that you identified] walked in right now and you looked at ‘em, could you identify these people if you wanted to?”

Nelson: “**No.**”

Lyons: “It's been that long?”

Nelson: “**I couldn't identify them. . . . I really couldn't identify them back then.**”

Lyons: “You couldn't identify them back then, is that what you said?”

Nelson: “**I really couldn't identify them back then. I just picked out a mug shot of guys that looked like them. I don't know. Just big guys, big black guys.**”⁸¹

⁸⁰ See generally Tammi Nelson's Interviews with Bob Lyons, Bates Nos. 749–775.

⁸¹ Tammi Nelson First Interview With Bob Lyons, Transcript p. 17, lines 8–17, Bates No. 765 (emphases added).

Ms. Nelson further emphasized that: “[The police] showed me some mug shots and **it was two fat boys that I picked out. I don’t know the guys. . . . I couldn’t be accurate on it.**”⁸² Notably, the State disputes that Tammi Nelson ever made two identifications at all; no second identification by Ms. Nelson was ever disclosed; no second suspect was ever developed; and had a second misidentification occurred, the fact of it would, of course, have been *Brady* material. Additionally, if it is true that—contrary to both Ms. Nelson’s trial testimony and her pre-trial statements to Bob Lyons—Ms. Nelson either could not or chose not to identify the second suspect, that fact only compounds concerns about her reliability and the credibility of her identification.

Regardless, just a short time later—during Mr. Webster’s trial itself—Ms. Nelson’s recollection changed dramatically, and she testified that her identification was and had always been ironclad. On direct examination, Ms. Nelson was asked if she had “any doubt whatsoever that the person” she picked out was the defendant sitting in the courtroom.⁸³ Ms. Nelson answered: “I know that’s the person. . . . That’s the person I picked out. He still looks the same right [here] today.”⁸⁴ She further testified: “I told [Detective Postiglione] when I picked out number five, Joseph Webster, that I knowed that was him. And then the other guy that I picked out I was sure, for sure that was the other guy that was with him.”⁸⁵ Again, it remains entirely unclear who “the other guy” that Ms. Nelson claimed under oath to have identified with certainty as the second perpetrator was, because no such second identification was ever disclosed, there is no record of any second

⁸² Tammi Nelson First Interview With Bob Lyons, Transcript p. 10, lines 13–18 (emphasis added), Bates No. 758.

⁸³ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, p. 224, lines 13–14, Bates No. 507.

⁸⁴ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 224, lines 15–18, Bates No. 507.

⁸⁵ *Id.* at p. 253, lines 21–25, Bates No. 536.

identification being made, and no second individual has ever been identified as a suspect in connection with this case at any point.

Other discrepancies were similarly deliberate. For example, when asked if she had witnessed the initial assault that took place at her apartment before the murder, Ms. Nelson told Mr. Webster’s investigator that she “didn’t see any assault” and “didn’t see nothing. None of that.”⁸⁶ She also said that she hadn’t witnessed any “yelling or screaming.”⁸⁷ At trial, however, Ms. Nelson offered a vivid and detailed account of her personal recollection of the initial assault,⁸⁸ and she even claimed to have tried to intervene to stop it.⁸⁹ As part of this recollection, Ms. Nelson also refers in her trial testimony to a “big tall guy”⁹⁰—Mr. Webster is not tall—despite having stated previously that the perpetrators were “two short fat guys.”⁹¹

There are also several details of Ms. Nelson’s account that conflict with the testimony of other witnesses who were interviewed by detectives following Mr. Owens’ murder. For instance, when describing the initial assault that took place, Ms. Nelson testified that the perpetrator “had a stick in his hand” when he approached the victim.⁹² However, Lakeeta Smith—a second eyewitness who was not called at trial—gave a markedly different account. In her interview with Detective Postiglione, Ms. Smith stated that the perpetrators “took a stick out of Tammy’s hand and hit the victim with it”⁹³—

⁸⁶ Tammi Nelson Second Interview With Bob Lyons, Transcript p. 4, lines 15–16, Bates No. 771.

⁸⁷ *Id.* at p. 5, line 1, Bates No. 772.

⁸⁸ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript pp. 201-203, Bates No. 484–86.

⁸⁹ *Id.* at p. 201, lines 18–21, Bates No. 484.

⁹⁰ *Id.* at p. 201, lines 15–16, Bates No. 484.

⁹¹ Tammi Nelson Second Interview With Bob Lyons, Transcript p. 2, line 3, Bates No. 769.

⁹² Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 201, lines 7–8, Bates No. 484.

⁹³ Lakeeta Smith Interview with Pat Postiglione (March 5, 1999) (“[Lakeeta Smith] states that they took a stick out of Tammi’s hand and hit the victim with it.”), Bates No. 580.

suggesting that Ms. Nelson may herself have been involved in the initial assault as well. This theory was also supported by Jeffery Bigsby—another witness who did not testify at trial—who stated that the victim was killed “after he was set up by Tammy.”⁹⁴

Other discrepancies may well have been unintentional, but still demonstrate Ms. Nelson’s extreme unreliability. For example, Ms. Nelson testified at trial that she “paged [the perpetrators] **that day, the same day that [Mr. Owens] got killed,**” and she further specified that she paged them “**that morning.**”⁹⁵ She also testified that the victim “was asleep” at her house at the time she paged the perpetrators, and that she “went and woke [him] up” after she paged them.⁹⁶

In stark contrast, however, during a recorded pre-trial interview with Mr. Webster’s investigator, Ms. Nelson stated that she did **not** call them that morning,⁹⁷ that the perpetrators arrived “**the next morning**” after she paged them,⁹⁸ and that the victim **was not** at her house at the time she called them.⁹⁹ Ms. Nelson also stated both that she had “sold drugs in the past”¹⁰⁰ and that she “ain’t never selled no dope.”¹⁰¹ Such a vast number of wholly contradictory statements cannot innocently be reconciled with one another, and they, too, seriously undermined Ms. Nelson’s credibility even before she recanted her identification on three subsequent occasions.

iii. Ms. Nelson concealed her involvement in the victim’s murder and actively obstructed the investigation into it.

⁹⁴ Jeffery Bigsby Interview with Pat Postiglione (March 1, 1999), Bates No. 578.

⁹⁵ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 198, line 13, Bates No. 481.

⁹⁶ *Id.* at lines 20–21, Bates No. 481.

⁹⁷ Tammi Nelson First Interview With Bob Lyons), Transcript p. 9, lines 15–18, Bates No. 757.

⁹⁸ *Id.* at line 15, Bates No. 757.

⁹⁹ *Id.* at lines 12–13, Bates No. 757.

¹⁰⁰ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 189, lines 23–25, Bates No. 472.

¹⁰¹ Tammi Nelson First Interview With Bob Lyons, Transcript p. 13, line 17, Bates No. 761.

At the time of Mr. Webster's trial, Tammi Nelson's credibility was also subject to serious doubt because she deliberately concealed her involvement in Mr. Owens' death for seven-and-a-half months after his murder and actively obstructed the investigation into it. As indicated previously, Ms. Nelson paged the perpetrators before they came to murder Mr. Owens in order to alert them about where he was.¹⁰² The pager number that Ms. Nelson used to reach the perpetrators could also have been traced to its owner and used to identify Mr. Owens' killer if it had been given to detectives to trace. This lead was never effectively pursued, however, because Ms. Nelson successfully obstructed the investigation into Mr. Owens' death by concealing her involvement in his murder and then destroying evidence related to it.

As an initial matter, despite giving multiple interviews about Mr. Owens' slaying, Ms. Nelson failed to mention either that she was in possession of the perpetrators' pager number or that she had been the one who paged them until fully "seven and a half months after the fact"¹⁰³—and only then after being confronted with evidence on this point gleaned from other sources (specifically, Jeffrey Bigsby¹⁰⁴ and Lakeeta Smith¹⁰⁵). In fact, when first interviewed by Detective Postiglione, Ms. Nelson "denied any knowledge of even knowing the victim initially."¹⁰⁶ Thereafter, Ms. Nelson did not come clean about having paged the perpetrators until after Detective Postiglione "told her that [he] had

¹⁰² Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 198, lines 12–13, Bates No. 481.

¹⁰³ Webster Trial Transcript, Vol. III, Pat Postiglione Testimony, Transcript p. 384, lines 16–17, Bates No. 1200.

¹⁰⁴ Pat Postiglione Interview of Jeffery Bigsby (March 1, 1999) ("He states that the victim was killed after he was set up by Tammi. He states that Tammi went to a telephone and called someone who came to her apartment and confronted the victim."), Bates No. 578.

¹⁰⁵ Lakeeta Smith Interview with Pat Postiglione (March 5, 1999) ("she states that they knew he was there because Tammi Nelson called them and told them he was there."), Bates No. 580.

¹⁰⁶ Webster Trial Transcript, Vol. I, Pat Postiglione trial testimony, Transcript p. 140, lines 21 –22, Bates No. 1057.

information she was involved in this.”¹⁰⁷

According to Detective Postiglione, Ms. Nelson’s failure to come forward with the fact that she had paged the perpetrators until seven-and-a-half-months after the fact materially undermined the investigation into Mr. Owens’ murder. After Ms. Nelson finally came clean about having paged the perpetrators, for example, Detective Postiglione testified that the investigating officers returned to the complex where Ms. Nelson had lived in the hopes of tracing the phone call that she made to the perpetrators’ pager. Upon doing so, however, Detective Postiglione testified that:

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 1999.¹⁰⁸

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 traced, however. Significantly, though, Ms. Nelson also tore up the piece of paper containing the perpetrator’s pager number, preventing detectives from tracing it.¹⁰⁹ Ms. Nelson ultimately gave three conflicting and irreconcilable explanations for her behavior at trial, testifying: (1) that she “didn’t know it was evidence” when she tore it up,¹¹⁰ (2) that she tore it up because she “was scared back then,”¹¹¹ and (3) that perhaps she actually didn’t

¹⁰⁷ Webster Trial Transcript, Vol. III, Pat Postiglione Testimony, Transcript p. 401, lines 8–10, Bates No. 1217.

¹⁰⁸ *Id.* at p. 387, lines 2–12, Bates No. 1092.

¹⁰⁹ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 242, lines 1–18, Bates No. 525.

¹¹⁰ *Id.* at lines 17–18, Bates No. 525.

¹¹¹ *Id.* at p. 243, line 3, Bates No. 526.

tear it up after all but only “think[s]” she did.¹¹² “That’s what I told him [referring to Detective Postiglione]. But I can’t remember [if I tore it up or not],” she stated.¹¹³ These self-serving and irreconcilable explanations for having destroyed critical evidence, too, called Ms. Nelson’s honesty about the underlying events into doubt—especially in light of the fact that Ms. Nelson spent more than seven months lying to detectives about having paged the perpetrators in the first place.¹¹⁴

All of this context matters for two essential reasons. First, it demonstrates that Mr. Webster’s conviction—which depended almost entirely on Tammi Nelson’s identification of him as one of the perpetrators—rested on remarkably shaky ground to begin with, and evidentiary problems are “less likely to be regarded as harmless in a close case.” *Blankenship v. State*, 219 Tenn. 355, 360, 410 S.W.2d 159, 161 (1966). Second, given the avalanche of new exculpatory evidence that has come to light since Mr. Webster’s trial, the weak evidence underlying his conviction makes plain that Mr. Webster’s verdict would have been different if the newly acquired evidence demonstrating his innocence had been introduced during his trial.

D. Three Family Members Come Forward and Testify that Mr. Webster’s Brother Kenneth Neal Confessed to Killing Mr. Owens

Immediately after Mr. Webster was convicted, three of his family members—Mr. Webster’s mother, Marie Burns; his brother, Arthur Gordon; and his then-wife, Katrina Webster—came forward and signed sworn affidavits attesting that Mr. Webster’s brother, Kenny Neal, had privately confessed to killing Mr. Owens.¹¹⁵ These witnesses also

¹¹² *Id.* at p. 242, lines 7–8, Bates No. 525.

¹¹³ *Id.* at lines 13–14, Bates No. 525.

¹¹⁴ Webster Trial Transcript, Vol. III, Pat Postiglione Testimony, Transcript p. 384, lines 16–17, Bates No. 1200.

¹¹⁵ Affidavits of Marie Burns, Katrina Webster, and Arthur Gordon), Bates Nos. 638–45.

provided sworn testimony as to the facts set forth in their affidavits during Mr. Webster's motion for a new trial.

In pertinent part, Marie 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.¹¹⁶

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 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.¹¹⁷

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.'¹¹⁸

Without—at that time—having the benefit of the new evidence set forth in this filing that corroborates their testimony, this Court determined that their testimony did not warrant overturning Mr. Webster's conviction.

¹¹⁶ See *id.* at Affidavit of Marie Burns, paragraph 8, Bates No. 639.

¹¹⁷ See *id.* at Affidavit of Arthur Gordon, paragraphs 4-6, Bates No. 644.

¹¹⁸ See *id.* at Affidavit of Katrina Webster, paragraph 8, Bates No. 642.

E. Ms. Nelson Recants Her Trial Testimony Three Times and Identifies Kenny Neal As the Perpetrator Instead

Even before considering the newly developed evidence detailed below, a further, equally serious reason to doubt the accuracy of Ms. Nelson's identification is that she would go on to recant it three times—all under oath—after Mr. Webster was convicted.¹¹⁹ In two of those instances, she also identified Mr. Webster's brother, Kenny Neal, as the actual perpetrator.

First, on January 21st, 2009, Ms. Nelson handwrote, swore to, 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 yr old 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
1-21-2009¹²⁰

Second, on February 7th, 2014, Ms. Nelson swore to and signed the following typewritten statement, which had been 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

¹¹⁹ Tammi Nelson Recantations, Bates Nos. 269–72.

¹²⁰ *Id.* at Tammi Nelson Sworn Recantation #1, January 21, 2009, Bates No. 269.

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 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 Nelson¹²¹

Third, providing in-court testimony on October 10, 2014, Ms. Nelson testified repeatedly that 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. Specifically, 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.¹²²

With respect to Tammi Nelson's sworn statement that Pamela Anderson offered her an undisclosed deal in exchange for her testimony against Joseph Webster, the District Attorney's Office has taken the position that Tammi Nelson lied about the matter and that Pamela Anderson was wrongfully accused by Tammi Nelson of misconduct that

¹²¹ *Id.* at Tammi Nelson Sworn Recantation #2, February 7, 2014, Bates No. 270.

¹²² Coram Nobis Hearing, Transcript p. 6, line 24 – p. 7, line 6, Bates No. 652–53.

she did not commit. Ms. Nelson, for her part, has also given multiple conflicting statements under oath about having received a deal in this case in exchange for her testimony. At trial, for instance, Ms. Nelson testified repeatedly and without equivocation that she had not received any assistance or any promise of assistance from the State in exchange for her testimony.¹²³ As noted above, however, on January 21, 2009, Ms. Nelson signed a handwritten, sworn statement that: “During the time of this trial I was pressure [sic] into testified [sic] because of my addiction”¹²⁴ And on February 7, 2014, Ms. Nelson signed a second, sworn statement that:

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.¹²⁵

While testifying during Mr. Webster’s coram nobis proceeding in October 10, 2014, Ms. Nelson quickly reverted back to her original position. Specifically, she stated that she did *not* expect any favorable treatment for testifying against Mr. Webster,¹²⁶ that she signed her February 2014 statement “not knowing that [she] was signing it,”¹²⁷ and that the statement she gave orally to the notary was “totally different” from the one that she ultimately signed that day.¹²⁸ Ms. Nelson further testified that she “never saw this woman

¹²³ Webster Trial Transcript, Vol. II, Tammi Nelson trial testimony, Transcript p. 184, lines 17–21, Bates No. 467.

¹²⁴ Second Supplemental Addendum, Tammi Nelson Sworn Recantation #1, January 21, 2009, Bates No. 269.

¹²⁵ *Id.* at Tammi Nelson Sworn Recantation #2, February 7, 2014, Bates No. 270.

¹²⁶ Coram Nobis Hearing, Transcript p. 14, lines 8–11, Bates No. 660. *See also id.* at pp. 42–45, Bates No. 688–91.

¹²⁷ *Id.* at p. 17, lines 5–6, Bates No. 663.

¹²⁸ *Id.* at p. 39, line 7, Bates No. 685.

[District Attorney Pamela Anderson] a day in my life.”¹²⁹

Pamela Anderson was, of course, the lead District Attorney on Mr. Webster’s case. In that capacity, she examined Ms. Nelson for approximately two hours during Mr. Webster’s trial, so Ms. Nelson certainly had seen her before—a misstatement that Ms. Nelson explained away by stating that her memory was seriously impaired by her drug use.¹³⁰ Consequently, like Ms. Nelson’s other conflicting statements and inconsistent testimony throughout this case, it is never entirely clear if she is lying, if she is highly susceptible to suggestion by anyone questioning her, or if her memory is just extraordinarily unreliable as a consequence of her years-long addiction to crack cocaine.

Ms. Nelson did avoid being sentenced to jail time and was placed in community corrections after testifying against Joseph Webster.¹³¹ Other than her sworn statements on January 21, 2009 and February 7, 2014 that she was pressured into testifying and received a deal due to her testimony against Mr. Webster, however—statements that, as noted, Ms. Nelson also repudiated under oath both before and after giving them—there is no indication that Ms. Nelson avoided jail time *in exchange* for her testimony.

F. Post-Conviction Proceedings

Mr. Webster’s petition for post-conviction relief was handled by attorney Theodora Pappas. As relevant here, Page 30, footnote 13 of Mr. Webster’s Amended Petition for post-conviction relief states as follows: “The petitioner and his undersigned counsel are unaware of any other named witnesses, other than Mr. McClain, who claim to have observed Mr. Owens being struck by a cinder block.”¹³² Page 86 of the transcript of Mr.

¹²⁹ *Id.* at p. 17, line 20, Bates No. 663.

¹³⁰ *Id.* at p. 34, lines 4–18, Bates No. 680.

¹³¹ *Id.* at p. 32, line 9, Bates No. 678.

¹³² Second Supplemental Addendum, Pappas Materials, Bates No. 169.

Webster’s post-conviction hearing also reflects that during her questioning of Mr. Webster’s trial counsel, Ms. Pappas indicated her understanding that: “Fred McClain, who was the bricklayer, who was the only eyewitness that the State ever mentioned or that, I believe, is known in this case to’ve actually seen Mr. Owens being killed[.]”¹³³

In fact, however, there were at least two additional eyewitnesses to Mr. Owens’ murder—Anthony Boyce and Richard Henderson. The identities of those two witnesses were disclosed to Michie Gibson—Mr. Webster’s trial counsel—but apparently neither witness had ever been contacted by detectives, asked to detail what they saw, or asked to attempt an identification of (or even describe) the perpetrators. During Mr. Webster’s post-conviction proceeding, neither Mr. Gibson nor the State ever corrected Ms. Pappas’ misimpression regarding the existence of additional eyewitnesses, either. Nor was the misimpression Ms. Pappas’s fault. Specifically, the reason why Ms. Pappas was unaware of Anthony Boyce’s or Richard Henderson’s existence is because Michie Gibson—Mr. Webster’s trial counsel—withheld that portion of Mr. Webster’s casefile.¹³⁴

Michie Gibson’s “discovery” of the withheld portion of Mr. Webster’s casefile came approximately a decade later, in the latter half of 2018, when the District Attorney’s Office began investigating the undersigned’s concern about a potential *Brady* violation relating to these additional eyewitnesses. After undertaking that investigation, the District Attorney’s Office confirmed that Mr. Gibson had, in fact, been given (and still had) the

¹³³ Webster Post-Conviction Hearing, Transcript p. 86, lines 15–18, Bates No. 868.

¹³⁴ See Correspondence with Michie Gibson on Feb. 11, 2017 (claiming “I’ve given my file to someone or no longer have it my possession any more or I would forward it to you.”), Bates No. 1084; Correspondence with Michie Gibson on June 4, 2018, that: “I did find a part of the file when the ADA’s [sic] visited my office.”), Bates No. 1272; Second Supplemental Addendum, Affidavit of Theodora A. Pappas Coleman (detailing that additional eyewitnesses had not been disclosed to her, demonstrating that the Amended Post-Conviction Petition she filed and her questioning during that proceeding reflected as much and that her misimpression was never corrected by either Michie Gibson or this Office during that proceeding, and stating she had never seen the reports mentioning the additional eyewitnesses at issue), Bates No. 164–70.

portion of Mr. Webster’s casefile disclosing Boyce’s and Henderson’s existence—something that Mr. Gibson had flatly denied to the undersigned the year prior.¹³⁵ Thereafter, the undersigned asked Mr. Gibson to turn over the remainder of Mr. Webster’s casefile repeatedly without success, and he ultimately had to threaten to subpoena Mr. Gibson in order to get him to release it.¹³⁶

The critical portion of Mr. Webster’s file that Mr. Gibson withheld indicated that both Anthony Boyce and Richard Henderson were additional eyewitnesses who had been present during Mr. Owens’ murder. Ms. Pappas confirmed thereafter that her “misimpression was never clarified or corrected by either Mr. Gibson or the State at that point in time or since.”¹³⁷ She has also described the withheld documents in Gibson’s file as both “stunning”¹³⁸ and powerful evidence supporting the claims related to Ms. Nelson’s mistaken identification and Mr. Gibson’s ineffective assistance of counsel that she raised on post-conviction review.

IV. NEWLY ACQUIRED EVIDENCE AND CRU INVESTIGATION

Mr. Webster retained the undersigned as his counsel and submitted a formal conviction review application with the Davidson County District Attorney’s Office’s Conviction Review Unit (CRU) in March 2017.¹³⁹ In his application, Mr. Webster

¹³⁵ See Correspondence with Michie Gibson on Feb. 11, 2017 (claiming “I’ve given my file to someone or no longer have it my possession any more or I would forward it to you.”), Bates No. 1084; Correspondence with Michie Gibson on June 4, 2018 (stating that: “I did find a part of the file when the ADA’s [sic] visited my office.”), Bates No. 1272.

¹³⁶ See Correspondence with Michie Gibson on Jun. 11, 2018 (“This is my third and final request that you mail the remainder of Joseph Webster’s file to me at the address previously provided, and that you provide the tracking number for the shipment once you have mailed it. I have previously made this request of you on May 18, 2018 and June 4, 2018. If I do not receive the file by Thursday, I will have a subpoena issued.”), Bates No. 1272.

¹³⁷ Second Supplemental Addendum, Affidavit of Theodora A. Pappas Coleman, p. 3, paragraph 11, Bates No. 166.

¹³⁸ *Id.* at p. 2, paragraph 7, Bates No. 165.

¹³⁹ Second Supplemental Addendum, Webster CRU Application, Bates Nos. 171–96.

requested, among other things, that the District Attorney’s Office “conduct a Y-STR forensic DNA analysis of the murder weapon, the cigarette pack found at the scene, and the victim’s ‘white shirt with some blood’ on it, none of which have ever been tested for DNA[.]” Mr. Webster’s application requested a new investigation into non-scientific evidence regarding his conviction as well.

A. New Scientific (DNA) Evidence

Upon motion and by agreement of the Parties, on May 10, 2017, this Court entered an *Agreed Order for Release of Evidence for DNA Testing* that provided for the DNA testing of the above mentioned untested physical evidence in this case—including the murder weapon¹⁴⁰—at Bode Cellmark Forensics Laboratory, as authorized by Tenn. Code Ann. § 40-30-311. *See id.* (“The court may, in its discretion, make such other orders as may be appropriate.”). **The results of that DNA testing were uniformly favorable to Mr. Webster.** Testable DNA was found on multiple parts of the cinder block that was used to murder Leroy Owens—locations that were selected based on the likelihood that the perpetrator would have gripped them while swinging the block. Exactly one male contributor was identified as the source of all of the DNA found on the murder weapon. Thereafter, Mr. Webster—who voluntarily provided a DNA sample for purposes of comparison—was affirmatively “excluded as a possible contributor.”¹⁴¹

B. New Non-Scientific Evidence

Due to investigative delays in the CRU process, the Parties entered into a tolling

¹⁴⁰ In addition to providing for DNA testing of the murder weapon, the Court’s order provided for DNA testing of a cigarette pack found at the crime scene and the victim’s t-shirt. The cigarette pack was tested thereafter, but it did not yield a DNA profile. As to the victim’s t-shirt, however, following entry of the Court’s order, the Parties came to learn that it had not been preserved and had been destroyed prior to the Petitioner’s indictment.

¹⁴¹ *Id.*

agreement on May 31, 2018.¹⁴² After Mr. Webster's CRU application was submitted, the Parties also conducted new, independent investigations into Mr. Webster's conviction.

i. *Joseph Webster's Reinvestigation*

The undersigned's investigation into Mr. Webster's case yielded, in part,¹⁴³ the following new, material, non-scientific evidence:

1. A woman named **Shawanna Norman**—a witness with information new to both Mr. Webster and the District Attorney's Office who was romantically involved with Kenny Neal in the late 1990s—indicated that Neal had bragged about committing a murder with facts identical to Leroy Owens' murder at the time it occurred.¹⁴⁴ Ms. Norman additionally indicated that a man named Phillip Cotton, who had an eye deformity, was with Neal at the time he bragged about committing that murder. Ms. Norman further explained why the white station wagon would have been spotted outside of Mr. Webster's ex-girlfriend's grandmother's home near the time of the murder; specifically: Shawanna Norman and Katrina Norman lived together, and Neal drove the white station wagon when he came to visit her. Norman also provided additional material information that has since been corroborated independently regarding the cars that Neal drove, including a green Explorer, and his involvement in another drug-related homicide.

2. Eyewitness **Anthony Boyce** was located, and he identified the perpetrator as having been "6 foot, or a little bit better" and having a "skinny build."¹⁴⁵ Mr. Webster—

¹⁴² Tolling Agreement, Bates No. 1335–36.

¹⁴³ Additional evidence was developed related to an ongoing, separate criminal investigation and has been omitted from this filing as a consequence.

¹⁴⁴ See generally First Supplemental Addendum, Transcript of Shawanna Norman Interview, Bates Nos. 13–60.

¹⁴⁵ Second Supplemental Addendum, Anthony Boyce interview, Transcript p. 4, lines 16–20 (Mr. Boyce: "I'd say around 6 – 6 foot, or a little bit better." "He wasn't that big. He was kind of skinny build."), Bates No. 143.

who is both shorter¹⁴⁶ and very heavy set (296 pounds at the time of trial,¹⁴⁷ 300 pounds at the time of the murder¹⁴⁸)—does not come close to matching this description, which comes far closer to matching Kenny Neal (5’ 10” and 190 pounds in June 1998¹⁴⁹). Mr. Boyce’s description of the perpetrators approximates the description given by witness Fred McClain, who described the suspects as “69 inches tall and about 230 pounds” and “about 68 inches tall and 175 pounds,”¹⁵⁰ respectively. Their most important feature, however, is that the descriptions given by every single eyewitness to Mr. Owens’ murder do not plausibly match Mr. Webster.

3. Eyewitness **Richard Henderson** was located and introduced a conflict over whether the passenger or the driver of the car killed Mr. Owens. Mr. Henderson additionally indicated that he was never contacted thereafter, and that he was never shown a photo lineup.¹⁵¹ He also stated that the perpetrators had not been wearing gloves,¹⁵² contrary to Tammi Nelson’s claim otherwise.

4. **The Green Ford Explorer** identified by Tammi Nelson as a vehicle that the perpetrators had driven to her home prior to the murder—which comported with witness Robert Nichols’ description of one of the perpetrators “driving a jeep like vehicle” prior to the murder—was found to have been registered to Kenny Neal’s alias, James McLin, at the time of the murder.¹⁵³

5. **The victim’s bloody shirt**, which may have contained testable DNA

¹⁴⁶ Webster Trial Transcript, Vol. III, Joseph Webster Testimony, Transcript p. 408, lines 18–20, Bates No. 1224.

¹⁴⁷ *Id.* at line 16.

¹⁴⁸ Coram Nobis Hearing, Transcript p. 63, lines 16–17, Bates No. 709.

¹⁴⁹ *Id.* at lines 18–20, Bates No. 709.

¹⁵⁰ Fred McClain Interview Report, Bates No. 601; Webster Trial Transcript, Vol. I, Fred McClain trial testimony, Transcript p. 15, line 15 – p. 16, line 1, Bates Nos. 931–32.

¹⁵¹ K. Dyer Report of Richard Henderson interview, Bates No. 161.

¹⁵² *Id.*

¹⁵³ Webster First Supplemental Addendum, Green Ford Explorer Registration, Bates Nos. 70–71.

evidence, was determined to have been destroyed prior to Mr. Webster's indictment.¹⁵⁴ In addition to reflecting on the merits of this case, the fact of its pre-indictment destruction could have supported Mr. Webster's asserted claim of prejudicial pre-indictment delay.

6. **Tapes of the 911 calls** made regarding Owens' murder, which may have contained relevant evidence regarding who committed it and a contemporaneous description given by Anthony Boyce, were also found to have been destroyed prior to Mr. Webster's indictment.¹⁵⁵ For the same reasons, their destruction could also have supported Mr. Webster's asserted claim of prejudicial pre-indictment delay.

7. **A critical portion of the casefile maintained by Michie Gibson** (Mr. Webster's trial counsel)—which indicated the presence of multiple additional eyewitnesses to Leroy Owens' murder—was found to have been withheld from both Mr. Webster and Mr. Webster's post-conviction counsel.¹⁵⁶ Mr. Webster's post-conviction petition expressly indicates that he and his post-conviction counsel were not aware of any other eyewitnesses. Post-conviction counsel's questioning during Mr. Webster's post-conviction hearing similarly confirms that Mr. Webster's post-conviction counsel was not aware of any other eyewitnesses. Michie Gibson declined to correct post-conviction counsel's misimpression, which he created by withholding a critical portion of Mr.

¹⁵⁴ See generally Correspondence with Robert Jones, Bates No. 1277–1285.

¹⁵⁵ See generally Correspondence from Robert Jones and Department of Emergency Communications regarding spoliated 911 call recordings, Bates No. 1287–89.

¹⁵⁶ See Correspondence with Michie Gibson on Feb. 11, 2017 (claiming "I've given my file to someone or no longer have it my possession any more or I would forward it to you."), Bates No. 1084; Correspondence with Michie Gibson on June 4, 2018, that: "I did find a part of the file when the ADA's [sic] visited my office."), Bates No. 1272; Second Supplemental Addendum, Affidavit of Theodora A. Pappas Coleman (detailing that additional eyewitnesses had not been disclosed to her, demonstrating that the Amended Post-Conviction Petition she filed and her questioning during that proceeding reflected as much and that her misimpression was never corrected by either Michie Gibson or this Office during that proceeding, and stating she had never seen the reports mentioning the additional eyewitnesses at issue), Bates No. 164–70.

Webster's casefile and falsely stating that the entire file had been turned over.

ii. CRU Reinvestigation

Due to a pending investigation bearing on both this case and others, much of the CRU's reinvestigation has not been shared with the undersigned. Until prior to the District Attorney's filing of its *Notice of Intent* on October 29, 2020, though, the undersigned had been made aware of the following:

1. **Shawanna Norman** was interviewed by the CRU. The Parties agree that she provided new, material evidence that persuasively exculpates Mr. Webster and inculpates Kenny Neal of the crime for which Mr. Webster was convicted. The evidence Ms. Norman provided—in particular, the fact that Neal had bragged to her about committing the murder at issue—was not known to either Mr. Webster or the District Attorney's Office at the time of Mr. Webster's trial. The CRU independently corroborated portions of the new evidence that Ms. Norman provided and determined that she is a credible new witness. The undersigned is not in possession of the transcript of Ms. Norman's CRU interview, which relates to a pending investigation.

2. **Anthony Boyce** was located and interviewed by the CRU. The transcript of his CRU interview has been provided and, along with his previously sworn statement to Mr. Webster's investigator, it is attached as part of **Collective Exhibit B**. Mr. Boyce's interview reflects, among other things, that he recalls that the perpetrators "were both skinny," possibly "160 pounds, 150 pounds." It additionally reflects that he was never contacted by detectives or anyone else to provide that description at any point after Mr. Owens' murder. The Parties agree that Anthony Boyce is credible, that his description of the perpetrators cannot plausibly be referring to Mr. Webster and exculpates him, and

that his information is new, material, and was not known to either Mr. Webster or the District Attorney's Office at the time of Mr. Webster's trial.

3. **Richard Henderson** was located and interviewed by the CRU. The transcript of his CRU interview has been provided and is attached as part of **Collective Exhibit B**. Mr. Henderson's interview reflects, among other things, that he recalls that Mr. Owens' killer had a "medium build," "like 200" pounds, and that "I weigh about 300-something myself. . . . [H]e was smaller than me, muscle-like. He wasn't flabby." It additionally reflects that he was never contacted by detectives or anyone else to provide that description at any point after Mr. Owens' murder. The Parties agree that Richard Henderson is credible, that his description of the perpetrators cannot plausibly be referring to Mr. Webster and exculpates him, and that his information is new, material, and was not known to either Mr. Webster or the District Attorney's Office at the time of Mr. Webster's trial.

4. **Phillip Cotton** admitted that Kenny Neal drove a Green Ford Explorer around the time of Leroy Owens' murder, which matches the vehicle that Tammi Nelson described the perpetrators as having driven before Leroy Owens' murder. Mr. Cotton also confirmed that he has an eye deformity, which matches a unique description provided by Ms. Nelson. Mr. Cotton further confirmed that Neal drove and owned the white station wagon that was used during Leroy Owens' murder—a fact that Neal lied about under oath during Mr. Webster's motion for a new trial. Mr. Cotton additionally admitted, *contra* his testimony during Mr. Webster's motion for new trial, that he had, in fact, witnessed Mr. Neal commit a murder and later helped him destroy evidence regarding it.

On October 29, 2020, the District Attorney filed a *Notice of Intent* indicating that it will "request the conviction in this matter be vacated and the case dismissed." *Id.* at p.

1 (emphasis in original). Appended to the *Notice of Intent* is the District Attorney’s CRU report, which the undersigned had not seen previously. The report references extensive new exculpatory evidence—including exculpatory evidence generated during previously unknown interviews with James McLin (Kenny Neal’s alias), Tracy Neal (Kenny Neal’s ex-wife), and Kenny Neal himself (in which Neal apparently “denied easily proven facts” regarding this case) that further bolsters Mr. Webster’s already overwhelming claim of actual innocence. Additional relevant and apparently exculpatory evidence has been redacted and is thus unknown to Mr. Webster or his counsel. The CRU report—along with the above referenced transcripts of interviews conducted with Anthony Boyce and Richard Henderson—is appended as part of **Collective Exhibit B**.

V. GROUNDS FOR RELIEF

A. New Scientific (DNA) Evidence

Based on the new scientific evidence detailed above, this Court should hold a hearing, reopen, and grant the Petitioner’s post-conviction petition pursuant to Tenn. Code Ann. § 40-30-312, Tenn. Code Ann. § 40-30-117(a)(2), and Tenn. Code Ann. § 40-30-117(a)(4). Newly-tested DNA evidence on the murder weapon affirmatively excludes Mr. Webster as its contributor to a scientific certainty. That uniformly favorable DNA evidence also conflicts irreconcilably with statements made to the Petitioner’s jury to the effect that the untested blood stains on the murder weapon could belong to the Petitioner. The Parties now agree that Mr. Webster is excluded as the contributor of the DNA on the murder weapon, and that the DNA in fact belongs to another unidentified male.

The Parties agree that the results of the DNA testing “are favorable” to Mr. Webster within the meaning of Tenn. Code Ann. § 40-30-312, but they disagree about the

significance of that fact. It is Mr. Webster's position that:

(1) in light of what the jury was told regarding the potential significance of the blood stains on the murder weapon and the possibility that they belonged to the assailant;

(2) because the DNA testing of the murder weapon affirmatively excludes the Petitioner as its contributor;

(3) because the DNA testing affirmatively identified the DNA of a single male contributor who is not the Petitioner;

(4) in light of prior predictions made, on the record, about what the DNA testing would likely reveal given the rough surface of the cinder block;

(5) the fact that the assailant would likely have gripped the cinder block at one or more of the locations tested and was not wearing gloves at the time of Mr. Owens' murder;

(6) the fact that Leroy Owens has neither been identified nor excluded as the contributor of the DNA identified on the cinder block; and

(7) the fact that Kenny Neal apparently refused to submit to a requested DNA test, the uniformly favorable results of the Petitioner's post-conviction DNA testing in this case merit relief under Tenn. Code Ann. § 40-30-312, Tenn. Code Ann. § 40-30-117(a)(2), and Tenn. Code Ann. § 40-30-117(a)(4).

Alternatively, the new DNA evidence at least merits relief under Tenn. Code Ann. § 40-26-105, which the Court of Criminal Appeals has held under similar circumstances is subjected to a more liberal standard. *Cf. Mills*, 2013 WL 6069276, at *20-*23 (finding that a petitioner's post-conviction DNA testing did not merit post-conviction relief under Tenn. Code Ann. § 40-30-117(a), but that "the trial court erred in denying the Petitioner a new trial on all of the charges for which he was convicted" under Tenn. Code Ann. § 40-26-105). Based on the uniformly favorable post-conviction DNA testing conducted in this

case, post-conviction or coram nobis relief should issue accordingly.

B. New Non-Scientific Evidence

Based on the above mentioned post-conviction DNA testing and the new non-scientific evidence detailed above, this Court should also issue a writ of error coram nobis vacating Mr. Webster's conviction pursuant to Tenn. Code Ann. § 40-26-105 on the basis that new, credible evidence clearly and convincingly demonstrates that Mr. Webster entitled to have his conviction set aside. In particular, the following new non-scientific evidence merits coram nobis relief:

i. Shawanna Norman Testimony

Mr. Webster was without fault in presenting the testimony of Shawanna Norman because he was unaware of it at the time of trial. Given her agreed-upon credibility, Ms. Norman's new testimony that Kenny Neal admitted to Ms. Norman that he committed—and bragged about committing—what is unmistakably the murder for which Mr. Webster was convicted is powerfully exculpatory. Her testimony regarding Neal driving the white station wagon to her house around the time of the murder similarly exculpates Mr. Webster, as does her testimony that Neal drove a green Explorer during the same time period. All of this new evidence relates to material issues that were litigated at Mr. Webster's trial. Put another way: Ms. Norman's highly exculpatory testimony would have resulted in a different judgment had it been presented at Mr. Webster's trial. Given that Ms. Norman's testimony is newly discovered and the Parties have an applicable tolling agreement that applies to it, due process tolling of the one-year statute of limitations is warranted. *See, e.g., Workman*, 41 S.W.3d at 103.

ii. Testimony of eyewitnesses Anthony Boyce and Richard Henderson

Mr. Webster was also without fault in presenting the testimony of eyewitnesses Anthony Boyce and Richard Henderson, both of whom saw the murder take place and indicated, respectively, that the person responsible for murdering Mr. Owens was “skinny” and at least 100 pounds lighter than Mr. Webster. As an initial matter, these descriptions were unknown to either Mr. Webster or the District Attorney’s Office at the time of Mr. Webster’s trial, because owing to a deficient investigation, neither witness was ever contacted after the day of the murder, asked to attempt an identification, or asked to provide a description of the perpetrators. Further, even the existence of Anthony Boyce and Richard Henderson was unknown to Mr. Webster, because his trial counsel withheld the existence of both witnesses from both Mr. Webster and all of his future attorneys from the time of Mr. Webster’s trial until the latter half of 2018. The new, exculpatory descriptions provided by eyewitnesses Boyce and Henderson relate to matters which were litigated at Mr. Webster’s trial, and they would have resulted in a different judgment had they been presented at trial. Given the fact that their testimony is both newly discovered and could not previously have been identified by either Mr. Webster or his post-conviction counsel due to his trial counsel’s misconduct, and given the Parties’ tolling agreement that covers their newly discovered testimony, due process tolling of the one-year statute of limitations is warranted. *See, e.g., Workman*, 41 S.W.3d at 103; *Whitehead*, 402 S.W.3d at 623.

iii. Neal’s Green Ford Explorer Registration

Mr. Webster was additionally without fault in presenting evidence of Neal’s newly discovered Green Ford Explorer vehicle registration, which comports with descriptions of a vehicle that multiple witnesses—including Tammi Nelson—reported had been driven by Mr. Owens’ killer on occasions prior to his murder. The vehicle at issue turned out to

have been registered under an alias of Kenny Neal's—James McLin—and it was only identified recently. The evidence relates to matters which were litigated at Mr. Webster's trial. In combination with other evidence referenced in this petition, and possibly on its own, the evidence would also have resulted in a different judgment had it been presented at trial. Given that the evidence is newly discovered, and given the Parties' applicable tolling agreement that applies to it, due process tolling of the one-year statute of limitations is warranted. *See, e.g., Workman*, 41 S.W.3d at 103.

iv. Pre-Indictment Evidence Destruction

Mr. Webster was additionally without fault in presenting evidence regarding the spoliation of the victim's bloody shirt and tapes of the 911 calls that were made at the time of Mr. Owens' murder. The evidence was destroyed prior to Mr. Webster's indictment. The fact of destruction also was not disclosed to Mr. Webster prior to his trial, because the Parties only came to learn of it during the course of Mr. Webster's CRU investigation, which began in 2017. The evidence would have resulted in a different judgment and possibly prevented a trial in the first place had it been known to Mr. Webster due to the prejudicial pre-indictment delay that gave rise to its destruction. Given the fact that the evidence is newly discovered, and given the Parties' applicable tolling agreement, due process tolling of the one-year statute of limitations is warranted. *See, e.g., Workman*, 41 S.W.3d at 103.

v. Phillip Cotton Testimony

Both individually and collectively, Phillip Cotton's admissions: (1) that Kenny Neal drove a Green Ford Explorer around the time of Leroy Owens' murder; (2) that Neal drove and owned the white station wagon that was used during Leroy Owens' murder; (3) that

he has an eye deformity that matches a description provided by Tammi Nelson; (4) that he recalled knowing women named “Tammy” around the time of Mr. Owens’ murder; (5) that he had witnessed Mr. Neal commit a murder; and (6) that he helped Neal destroy evidence regarding a murder, all present additional, overwhelming evidence inculpatory Neal and exculpatory Mr. Webster. All of these admissions relate to matters which were litigated at Mr. Webster’s trial, and Mr. Cotton’s testimony would have resulted in a different judgment had it been presented at Mr. Webster’s trial. Given the fact that Mr. Cotton’s testimony is newly discovered, and given the Parties’ applicable tolling agreement, due process tolling of the one-year statute of limitations is warranted. *See, e.g., Workman*, 41 S.W.3d at 103.

vi. New evidence referenced in the District Attorney’s CRU Report

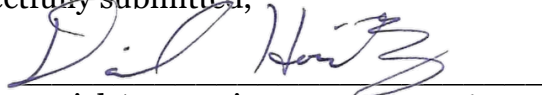
As noted above, on October 29, 2020, the District Attorney filed a *Notice of Intent* indicating that it will “request the conviction in this matter be vacated and the case dismissed.” *Id.* at p. 1 (emphasis in original). Appended to the State’s *Notice of Intent* is the District Attorney’s CRU report. The report references extensive new exculpatory evidence—including exculpatory evidence generated during interviews with James McLin, Tracy Neal, and Kenny Neal himself—that further exculpate Mr. Webster and support his overwhelming claim of innocence.

VI. CONCLUSION

For the foregoing reasons, this Court should reopen and grant the Petitioner’s post-conviction petition and issue a writ of error coram nobis vacating his wrongful conviction.

Respectfully submitted,

By:



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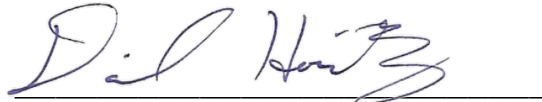
Counsel for Joseph Webster

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2020, a true and exact copy of the foregoing was hand-delivered via the Criminal Court Clerk's drop box to:

Glenn R. Funk, District Attorney
Sunny Eaton, Assistant District Attorney and CRU Director
Office of the District Attorney General
Washington Square Building, 5th Floor
222 2nd Avenue North, Suite 500
Nashville, TN 37201-1649

By:



Daniel A. Horwitz, Esq.