IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
WESTERN SECTION, AT JACKSON

CARLOS STOKES,	§	
	§	
Petitioner-Appellant,	§	
	§	
v.	§	W2023-00421-CCA-R3-ECN
	§	
STATE OF TENNESSEE,	§	Shelby County Criminal Court
	§	Case No. 16-05861
Respondent-Appellee.	§	

REPLY BRIEF OF APPELLANT CARLOS STOKES

DANIEL A. HORWITZ, BPR #032176
LINDSAY SMITH, BPR #035937
MELISSA K. DIX, BPR #038535
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
daniel@horwitz.law
lindsay@horwitz.law
melissa@horwitz.law
(615) 739-2888

Counsel for Appellant

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III. INTRODUCTION

After rapidly presenting newly-discovered evidence of actual innocence and impeachment evidence that would have changed the outcome of his trial, Mr. Stokes was improperly denied an evidentiary hearing. Because the errors that plagued the trial court's order are so glaring that the proper outcome of this appeal is not debatable—and because the State's contrary arguments are either unpersuasive or improper—the trial court's judgment should be **REVERSED**.

IV. ARGUMENT

A. THE STATE REPEATEDLY MAKES UNSUPPORTED, UNCITED CLAIMS THAT THE RECORD DOES NOT SUPPORT.

Factual contentions in a party's brief require "appropriate references to the record[.]" Tenn. R. App. P. 27(a)(7)(A). Further, "[i]f reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages in the record at which the evidence was identified, offered, and received or rejected." Tenn. R. App. P. 27(g).

The State's brief repeatedly violates these rules. As one example, to discount Theodis Turner's credibility, the State offers six uniformly unsupported and uncited factual claims. Government's Br. at 18. Those claims feature material, never-found falsehoods, like assertions that Mr. Turner "would have been aware that Petitioner was a gang member who called the shots on the murder" and that Mr. Turner "repeatedly changed his testimony to be more favorable to Petitioner." *Id.* No citations to such findings appear in the State's brief. They also were not found or relied upon by the trial court below, and many aren't true.

Among other issues, Mr. Turner did *not* repeatedly change his testimony to be more favorable to Mr. Stokes. To the contrary, Mr. Turner first told police that he "denied" seeing Mr. Stokes with the involved participants.[1] Then, after Mr. Turner was threatened by police, he signed a statement that police prepared for him that inculpated Mr. Stokes.[2] After that, the Government acknowledges that Mr. Turner testified at Mr. Stokes' preliminary hearing consistently with the police-prepared statement that he signed[3] after he says he was threatened. At trial, *to the State's benefit*, Mr. Turner then claimed he could not recall what happened due to a stroke, thus allowing the State to introduce his preliminary hearing testimony against Mr. Stokes based on Mr. Turner's supposed unavailability.[4] On January 11, 2021, Mr. Turner then executed an affidavit that parallels his original statement—that "I have no personal knowledge that Carlos Stokes wanted, ordered, participated in, or had anything to do with the murder of Kristan Williams"—and explained that he changed his account afterward because police threatened to charge him with conspiracy if he did not falsely inculpate Mr. Stokes.[5]

The Petitioner has always denied gang membership, too—though the issue did not come up below and the trial court never made any

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[1] Supp. R. at 6.
[2] *Id.*; *see also* Supp. R. at 2–3.
[3] Government's Br. at 8.
[4] *State v. Clayton*, No. W2018-00386-CCA-R3-CD, 2019 WL 3453288, at *11 (Tenn. Crim. App. July 31, 2019).
[5] Supp. R. at 2–3.

findings on the matter. There certainly isn't any evidence that Mr. Turner "would have been aware that Petitioner was a gang member who called the shots on the murder" as the State's Brief asserts. Government's Br. at 18. Indeed, the latter claim conflicts with Mr. Turner's affidavit. Supp. R. at 3.

The State should not be making such false claims. Nor should it be characterizing—without citation—other witnesses as "Petitioner's gang affiliates" when the record does not support the claim and the trial court never made such a determination. *Id.* at 21. Such flagrant violations of briefing rules are disappointing.

B. WAIVER RULES PRECLUDE THE STATE FROM RAISING NEW ARGUMENTS ON APPEAL THAT IT DID NOT PRESENT BELOW AND THAT THE TRIAL COURT DID NOT ADJUDICATE.

The State did not oppose Mr. Stokes' coram nobis petition below.[6] Generally, that results in waiver of the right to present new issues on appeal. *State v. Garrett*, No. M2001-00540-CCA-R3CD, 2002 WL 489163, at *4 (Tenn. Crim. App. Mar. 28, 2002) ("an issue not timely presented to the trial court is waived on appeal.") (citing Tenn. R. App. P. 36(a); Tenn. R. Crim. P. 52(b); *State v. Eldridge*, 951 S.W.2d 775, 783-84 (Tenn. Crim. App. 1997)).

There are some exceptions to this rule, one of which is relevant here. In particular, the State may defend the trial court's ruling on the grounds the trial court relied on. *Lunneen v. Vill. of Berrien Springs, Michigan*, No. 22-2044, 2023 WL 6162876, at *12 (6th Cir. Sept. 21, 2023) (citing *Duncan Place Owners Ass'n v. Danze, Inc.*, 927 F.3d 970, 974 (7th

[6] *See generally* R.

Cir. 2019)). However, "[t]o the extent the [State] wants to raise arguments that go beyond the legal grounds offered by the [trial] court, the [State] forfeits those claims." *Heyward v. Cooper*, 88 F.4th 648, 655 (6th Cir. 2023) (citing *Humphrey v. U.S. Att'y Gen.'s Off.*, 279 F. App'x 328, 331 (6th Cir. 2008)).

In general, this Court may also "'affirm a judgment on different grounds than those relied upon by the lower courts when the lower courts have reached the correct result[.]'" *Woodard v. State*, No. M2022-00162-CCA-R3-PC, 2022 WL 4932885, at *4 (Tenn. Crim. App. Oct. 4, 2022) (quoting *State v. Hester*, 324 S.W.3d 1, 21 n.9 (Tenn. 2010)). But here, the State has not asserted, in its Statement of the Issues, that the trial court's ruling should be affirmed on other grounds. Government's Br. at 5. To the contrary, the sole issue that the State presents on appeal is that the coram nobis court's ruling "was proper." *Id.* Thus, all other issues are waived—even when argued in the argument section of the State's brief. Tenn. R. App. P. 27(a)(4); *State v. Burgins*, No. E2021-00602-CCA-R3-CD, 2022 WL 1693582, at *11 (Tenn. Crim. App. May 26, 2022) (finding waiver of an issue raised only in the argument section of the brief and not identified in the statement of issues presented for review), *no perm. app. filed*. "The party-presentation principle" also precludes this Court from reaching other issues on its own. *State v. Bristol*, 654 S.W.3d 917, 923–25 (Tenn. 2022).

The upshot is this: though the State is entitled to seek affirmance based on the grounds set forth in the trial court's order, all other arguments are waived and forfeited. As such, all other arguments for

affirmance—in other words, most of what the State argues outside of pages 20–22 of its briefing—should be rejected as waived.

C. THE STATE'S WAIVER CLAIM IS BASELESS.

The trial court found—without a corresponding citation—that "[t]he Petitioner is not entitled to an equitable tolling of the statute" because "[t]he affidavits submitted by the Petitioner, alleged to be newly discovered, were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict."[7] As Mr. Stokes has noted, though, this finding is unsupportable, because "only one affidavit (Mr. Turner's) was submitted" and Mr. Turner's affidavit "was not executed until about three years after Mr. Stokes' trial and sentencing." Appellant's Principal Br. at 32.

The State's attempts to defend this major error are dishonest. First, the State reformulates the trial court's holding. Rather than reciting what the trial court held—that "***[t]he affidavits*** submitted by the Petitioner . . . were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict"[8]—the State misrepresents that the "[t]he coram nobis court found that ***the evidence***" was available and known to all parties before sentencing. Government's Br. at 17 (emphasis added). This alteration matters, because it is impossible for Mr. Turner's "affidavit" to have been available to Mr. Stokes three years before it was executed, which is what the trial court held. Thus, the State intentionally mischaracterizes the trial

[7] R. at 436.
[8] *Id*. (emphasis added).

court's statement as a generalized reference to "evidence" instead, the nature of which is unspecified.

Next, the State claims that Mr. Stokes "failed to include transcripts or other court files from the sentencing hearing or trial, despite the court specifically indicating that it relied upon these materials in making its order." *Id.* The trial court's finding—on page 436 of the record—that "the affidavits submitted by the Petitioner . . . were in fact available" years earlier was not supported by any citation, though. Thus, it is not accurate to say the trial court "specifically indicate[d]" that this finding was based on record evidence. Instead, the State has misleadingly cited the trial court's general reference to having examined "the files, record, transcripts, and correspondence relating to the judgment under attack"[9]—a statement that the trial court made three pages earlier that has no apparent connection to the critical finding at issue.

The problems do not end there, either. As the State knows, Mr. Stokes' Rule 24 Notice instructed that the entire coram nobis record—inclusive of "all papers filed in this Court" from Mr. Stokes' post-conviction petition to the trial court's March 21, 2023 ruling—be included in the record on appeal.[10] And despite the entire record having been filed, the State cannot identify a single document in the record that supports the trial court's finding that Mr. Turner's recantation—not to mention the other evidence included in his affidavit—was "in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the

[9] R. at 433.
[10] R. at 441.

jury's guilty verdict."[11]

As a result, the State suggests that the trial court considered something *outside* the coram nobis record to support its finding on the matter. This would be error, of course, since trial courts may not consider materials outside the record unless they take judicial notice of them (which did not happen here). *See* Tenn. R. Evid. 201.

It is also hard to know what outside-the-record evidence (the State suggests they are "transcripts") the State could be imagining. Even so, the State maintains that the trial court's factual finding should be presumed correct—even without any record evidence to support it—because "Petitioner failed to include transcripts or other court files from the sentencing hearing or trial" in the record. Government's Br. at 17.

If the State is suggesting that testimony about Mr. Turner's recantation was given earlier in his trial proceedings, that claim, too, is false. The record on appeal includes a record of the testimony given at Mr. Stokes' trial proceedings as summarized by this Court itself.[12] Review of that testimony reveals no reference to Mr. Turner having recanted his testimony or detailed detectives' coercive threats against him.[13] The State's waiver claim fails accordingly. Out of an abundance of caution, Mr. Stokes will also file his trial-stage transcripts separately—public judicial records that were filed in Mr. Stokes' direct appeal and are properly subject to judicial notice here—so that this Court can confirm anew that the State is not being honest about the matter.

[11] R. at 436.
[12] R. at 32–36.
[13] *Id.*

See State v. Nunley, 22 S.W.3d 282, 288 (Tenn. Crim. App. 1999) ("Court records fall within the general rubric of facts readily and accurately determined.").

* * *

Prosecutors enjoy "the freedom to strike hard blows, but they must not be foul ones." *State v. Smith*, 803 S.W.2d 709, 710 (Tenn. Crim. App. 1990). Here, the State's waiver claim—which bristles with dishonest claims—is flag-worthy. In any case, it should be rejected because it is meritless.

D. THE STATE'S CONTRARY ARGUMENTS ARE UNPERSUASIVE.

In response to Mr. Stokes' remaining claims, the State makes several contrary arguments. None is persuasive.

1. <u>The trial court failed to weigh the Parties' relevant interests in tolling.</u>

In his Principal Brief, Mr. Stokes argued that the trial court applied an incorrect legal standard when it failed to "weigh, analyze, or mention either the government's interests *or* Mr. Stokes' interests" for or against tolling. Appellant's Principal Br. at 24. In response, the State insists that "[t]he court properly applied controlling law in summarily dismissing the petition" because it cited the Tennessee Supreme Court's decision in *Workman v. State*, 41 S.W.2d 100 (Tenn. 2001). *See* Government's Br. at 20 (citing R. at 434).

That the trial court cited *Workman* does not mean that it applied the legal standard that *Workman* requires, though. Review of the trial court's opinion also makes plain that it failed to mention (let alone weigh or consider) either the government's interests or Mr. Stokes' interests in

determining whether tolling applied.[14]

This was error. Further, as Mr. Stokes has observed, "[h]ad the trial court applied the correct analysis, it would have looked much like *Workman's*." Appellant's Principal Br. at 24. Indeed, Mr. Stokes' claim for tolling was easier than Mr. Workman's, both because Mr. Stokes' later-obtained evidence was fresher and because he "filed his coram nobis petition rapidly—just three weeks after obtaining Mr. Turner's affidavit[15]—rather than waiting 'thirteen months after discovery of the evidence at issue' to present it." *Id.* at 26 (citing *Workman*, 41 S.W.3d at 103). Further, rather than asserting "its typical interest in 'the prevention of stale and groundless claims' below," *see id.* at 27 (quoting *Workman*, 41 S.W.3d at 103), the State here "agreed that Mr. Stokes' claims should be stayed until an innocence review could be completed." *Id.* at 27 (citing R. at 412).

The State now argues that the balance of interests merits denying tolling—including because Mr. Turner was not credible, Government's Br. at 17–18, and because the State asserts (without further analysis) that "the interests of the government are not limited to those of the Shelby County District Attorney General[,]" *id.* at 20. But these unsupported and "skeletal" claims lack necessary citations and development, and "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her

[14] R. at 433–437.
[15] R. at 57–71.

contention or merely constructs a skeletal argument, the issue is waived." *Sneed v. Bd. of Prof'l Resp.*, 301 S.W.3d 603, 615 (Tenn. 2010). As importantly, these claims were not raised by the State below; the trial court's order did not rely on them; and the State has not raised as an issue on appeal whether the trial court's order should be affirmed on other grounds. As a result, they are waived, and this Court should reject them.

2. The trial court's errors were obvious and material.

In his Principal Brief, Mr. Stokes explained that "[t]he trial court's order dismissing Mr. Stokes' petition is littered with [five] factual and legal errors." Appellant's Principal Br. at 29–42. The State's contrary arguments are unpersuasive.

i. Mr. Turner's Sworn Affidavit. The State first concedes that Mr. Turner's affidavit was sworn even though the trial court erroneously held otherwise. Government's Br. at 21. Yet it insists that "[t]his is not an error so grave that it warrants rejection of the coram nobis court's full decision." *Id.* The difference between a sworn recantation and an unsworn recantation given "without the imprimatur of an oath" is critical, though. *See Austin v. State*, No. W2005-02591-CCA-R3CO, 2006 WL 3626332, at *4 (Tenn. Crim. App. Dec. 13, 2006). Thus, the trial court's material mischaracterization of Mr. Stokes' new evidence matters. *Id.*

ii. New Exculpatory and Impeachment Evidence. Next, the State insists that the trial court's "description of [Mr. Stokes'] grounds for relief as 'recantation of witnesses' previously sworn testimony' . . . was an acceptable way to briefly describe Petitioner's grounds for relief."

Government's Br. at 21. But the fact that Mr. Turner recanted his preliminary hearing testimony is not the only reason his affidavit matters. Instead, Mr. Turner *also* provided powerful new evidence exculpating Mr. Stokes and new impeachment evidence. Mr. Stokes' petition noted as much,[16] though the trial court overlooked the matter.

That Mr. Turner's preliminary hearing testimony was not only recanted, but *coerced*—and that the State concealed its misconduct from Mr. Stokes afterward in contravention of its *Brady* obligations—also carry surpassing importance when assessing the timeliness of Mr. Stokes' coram nobis claim. *See Nunley v. State*, 552 S.W.3d 800, 820 n.15 (Tenn. 2018) ("As we have acknowledged, a coram nobis claimant may appropriately assert that prosecutors withheld evidence (so-called '*Brady*' evidence) in order to explain why he was without fault in not presenting newly-discovered evidence at trial and/or to support a request for equitable tolling of the statute of limitations."). The trial court's order makes no mention of Mr. Turner's account that the State threatened him into testifying falsely and concealed its misconduct afterward, though.[17]

According to the State, these major omissions provide no reason for concern, because (the State insists) "the court clearly referenced Mr. Turner's affidavit as well as other statements provided by Petitioner." Government's Br. at 21. That the trial court referenced Mr. Turner's affidavit but both omitted mention of much of what it said and did not meaningfully address its contents is the problem, though. The trial

[16] R. at 64.
[17] R. at 433–37.

court's reference to what the State calls "other statements"—which the trial court erroneously called "affidavits,"[18] even though they were transcribed audio recordings—does not suggest that the trial court meaningfully reviewed the other evidence supporting Mr. Stokes' petition, either.

The State's brief also makes no effort to grapple with Mr. Turner's serious allegations of coercive misconduct: allegations that—if true—not only entitle Mr. Stokes to an evidentiary hearing, but *relief*. Instead, unburdened by citations to the record, the State simply declares Mr. Turner to be unreliable. Government's Br. at 17–18. Despite the sufficiency of Mr. Turner's affidavit, the trial court never assessed Mr. Turner's credibility at a hearing, though, which is the problem. *See State v. Hart*, 911 S.W.2d 371, 375 (Tenn. Crim. App. 1995) ("if the affidavits are sufficient, and justify an evidentiary hearing, the trial court should not determine the merits of the petition on the strength of the affidavits alone."). What's more, Mr. Turner's allegations are corroborated by a detective's own otherwise inexplicable reference to "confront[ing]" Mr. Turner "with co-defendant statements" during an April 21, 2015 interview.[19]

Thus, simply declaring—without an evidentiary hearing—that Mr. Turner provided "incredible testimony," *see* Government's Br. at 19, is not something that this Court's precedent permits a trial court to do. *See Austin*, 2006 WL 3626332, at *4 ("once a coram nobis petitioner alleges

[18] R. at 435.
[19] Supp. R. at 6

in his petition that the trial testimony was false and that the new statement is true and buttresses his petition with the witness' affidavit, a hearing may well be necessary to determine the issue because, without a hearing, the petitioner would have no opportunity to present the live testimony of the recanting witness so that the coram nobis court could fathom his or her credibility."). That is also particularly true when Mr. Turner attributed the change in his account to a corroborated claim that the State threatened him into testifying falsely.[20]

iii. Mr. Turner's Later-Arising Affidavit. As to Mr. Stokes' claim that the trial court erred by holding that "[t]he affidavits submitted by the Petitioner, alleged to be newly discovered, were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict[,]"[21] the State offers no substantive response. Instead, all the State musters is a mischaracterization of the trial court's order (reimagining its statement about "affidavits" to mean "evidence" of Mr. Turner's recantation) paired with a claim that the necessary evidence can be found somewhere outside the record, even though the entire coram nobis record was filed on appeal. *See supra* at 10–12. Neither argument is honest, though. More importantly, the State's effort to address the issue is not faithful to what the trial court held.

What the trial court's order actually states is that:

> The most recent unsworn affidavits reflecting the 'newly discovered evidence' submitted by others involved with successfully implicating the Petitioner . . . do not — *individually or collectively*—constitute credible newly

[20] Supp. R. at 2–3.
[21] R. at 436.

> discovered evidence for the purposes of Error Ceram Nobis relief. . . . The affidavits submitted by the Petitioner, alleged to be newly discovered, were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict.[22]

Thus, the trial court referenced "affidavits"—plural—twice, even though the only affidavit in the coram nobis record was Mr. Turner's. It also found that these "affidavits [sic] . . . were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict[,]"[23] even though Mr. Turner's affidavit was not executed until three years later.[24]

"Without a time machine," though, the trial court's essential factual finding that Mr. Turner's affidavit was available to Mr. Stokes "prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict"[25] cannot be accurate. *Cf. Thompson v. DeWine*, 7 F.4th 521, 524 (6th Cir. 2021). That ends the matter. The finding must be vacated—and the trial court's judgment reversed—as a result.

In an apparent attempt to avoid this result, the State elsewhere argues that: "Petitioner admitted that 'Mr. Turner has not proved difficult to reach.' (I, 14.) Yet, Petitioner provided no explanation for why he waited until January 2021 to obtain an affidavit of Mr. Turner's statements. (II, 158-59.)" Government's Br. at 17. But this argument was neither raised below nor relied on by the trial court, so it is waived.

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[22] R. at 435–36.
[23] *Id*.
[24] Supp. R. at 2–3.
[25] R. at 436.

The argument is also easily refuted. To begin, Mr. Stokes' observation that Mr. Turner "has not proved difficult to reach" was made in connection with a post-conviction claim that his trial counsel failed to satisfy his investigative duties. Being able to reach Mr. Turner is not the same as being able to procure an affidavit from him, though, and that difference in availability matters. *Cf. Suttles v. State*, No. E2013-01016-CCA-R3-PD, 2014 WL 2902271, at *15 (Tenn. Crim. App. June 25, 2014) ("Generally, to qualify as newly discovered evidence, the evidence must not have been known to the defendant at the time of trial. . . . A narrow exception, however, exists where " 'although not newly discovered evidence, in the usual sense of the term,' " the " '*availability*' " of the evidence " 'is newly discovered.' ") (cleaned up).

Further, Mr. Stokes' ability to present his claims promptly was hampered by the State's misconduct and resulting *Brady* violations. The State's Brief—like the trial court's order before it—also makes no attempt to address the State's threats against Mr. Turner and the resulting *Brady* violations, even though Mr. Stokes has asserted them and "a coram nobis claimant may appropriately assert that prosecutors withheld evidence (so-called '*Brady*' evidence) in order to explain why he was without fault in not presenting newly-discovered evidence at trial and/or to support a request for equitable tolling of the statute of limitations." *Nunley*, 552 S.W.3d at 820 n.15.

The record also demonstrates that—although Mr. Turner was willing to speak to Mr. Stokes' investigator on November 23, 2020[26] and

[26] R. at 161–175.

December 5, 2020,[27] Mr. Turner was still scared about what officers would do to him *even then*.[28] Thus, Mr. Turner did not provide an affidavit—a prerequisite to coram nobis relief—attesting under oath that his account was true until January 11, 2021.[29] With fresher evidence and dramatically more haste than other petitioners whose coram nobis claims have been considered timely by the Tennessee Supreme Court, Mr. Stokes then timely petitioned for coram nobis relief three weeks later. *Cf. Workman*, 41 S.W.3d at 103.

iv. The trial court's application of the post-hearing standard for *granting* a coram nobis petition. As to Mr. Stokes' claim that "[t]he trial court erroneously applied the post-hearing standard for *granting* a coram nobis petition, rather than the standard that determines whether to conduct an evidentiary hearing[,]" *see* Appellant's Principal Br. at 34–39: the State's Brief does not address the issue. *See* Government's Br. Instead, it skips from the trial court mischaracterizing the evidence supporting Mr. Stokes' petition to the Fifth Amendment penalty that the trial court applied. *Id.* at 21. Thus, the State leaves undefended the trial court's decision to rule on whether Mr. Stokes should be "grant[ed] . . . coram nobis relief[,]"[30] rather than determining—correctly—whether Mr. Stokes was entitled to an evidentiary hearing. Opposition is waived accordingly.

The closest the State comes to addressing the claim is arguing that

[27] R. at 176–187.
[28] R. at 163:16–21.
[29] Supp. R. at 2–3.
[30] R. at 436.

the coram nobis court was required "to weigh the strength of the proffered evidence in determining whether it was credible 'newly discovered evidence' worthy of due process tolling." *Id.* at 19. This summation makes hash of the relevant standard, though, which does *not* allow trial courts to make credibility assessments on the face of a petition and instead requires courts to treat claims made in facially sufficient affidavits "as true." *See Hart*, 911 S.W.2d at 375; *see also Harris v. State*, 102 S.W.3d 587, 593 (Tenn. 2003), *overruled on other grounds by Nunley*, 552 S.W.3d 800 ("coram nobis claims are not easily resolved on the face of the petition and often require a hearing."). Then, "if the affidavits are sufficient, and justify an evidentiary hearing, the trial court should not determine the merits of the petition on the strength of the affidavits alone." *Hart*, 911 S.W.2d at 375 (citation omitted). Faithful adherence to this standard is also especially important where—as here—Mr. Turner's testimony was the "primary factor" supporting Mr. Stoke's conviction. *Compare Lane v. State*, No. W2008-02504-CCA-R3-CO, 2009 WL 4789887, at *5 (Tenn. Crim. App. Dec. 11, 2009), *with Clayton*, 2019 WL 3453288, at *17 (holding, on direct appeal, that Mr. Stokes' conviction could be sustained only because Carl Johnson's accomplice testimony "was at least slightly corroborated by Mr. Turner"). Doubly so where abundant corroborating evidence—including statements exculpating Mr. Stokes given by every knowledgeable witness involved here—support Mr. Stokes' claim that he had nothing to do with Ms. Williams' homicide.[31] Under these circumstances—where Mr. Stokes' coram nobis petition was

[31] Supp. R. at 2–3; R. 158–59; *id.* at 194; *id.* at 232–33; *id.* at 253–54.

as strong as any petition realistically can be—the State's insistence that Mr. Stokes' petition was "patently non-meritorious," *see* Government's Br. at 17 (a finding the trial court itself never made[32]), protests too much.

Here, the sum total of evidence the State can identify to support Mr. Stokes' guilt is: (1) the since-repudiated testimony of Mr. Turner; (2) the since-repudiated testimony of Mr. Johnson, an accomplice who gave multiple conflicting stories before trial and admitted at trial that he was testifying in exchange for leniency; and (3) the "Petitioner's own statements of indifference of the child's murder"—a reference to the fact that Mr. Stokes told police that he was preoccupied mourning his own murdered sister. Government's Br. at 18–19. Against this evidence—the last of which does not even inculpate Mr. Stokes (and which this Court itself did not hold was corroborating after review, *see Clayton*, 2019 WL 3453288, at *17)—Mr. Stokes has offered either sworn or unsworn new exculpatory statements given by every knowledgeable witness involved here and as-yet-uncontested, corroborated evidence that the State suborned perjury by threatening Mr. Turner if he did not testify falsely. *See* Supp. R. at 2–3. As a result, the evidence of Mr. Stokes' guilt was slight to begin with, while the later-obtained, post-trial evidence exculpating him is now overwhelming. Mr. Stokes is thus entitled to an evidentiary hearing. By contrast, the narrow exception identified in *Skinner v. State*, No. W2022-00563-CCA-R3-ECN, 2023 WL 1960866, at *11 (Tenn. Crim. App. Feb. 10, 2023)—involving a third-time coram nobis petitioner's attempt to secure relief eighteen years after his conviction

[32] R. at 433–37.

despite: (1) overwhelming evidence of guilt, (2) his wholesale failure to address the untimeliness of his petition, and (3) proffered affidavits featuring hearsay statements *about* a recantation offered by someone other than the recanting witness—does not plausibly apply.

v. Fifth Amendment penalty. Last, in defense of the trial court's decision to punish Mr. Stokes for exercising his Fifth Amendment rights at trial, the State asserts that "the *coram nobis* court was addressing whether Petitioner had previous opportunities to present the information in Mr. Turner's affidavit[.]" Government's Br. at 22. There is no record evidence that Mr. Stokes knew that the State threatened Mr. Turner into testifying falsely, though, and the State identifies none. Nor does the record support a finding that Mr. Stokes had any personal knowledge that, following his stroke, Mr. Turner still remembered the "details of what had occurred."[33] Thus, ruling that Mr. Stokes should be denied coram nobis relief because *he* should have testified about these matters—which constitute "the information in Mr. Turner's affidavit[,]" Government's Br. at 22—would make no sense. *See* Tenn. R. Evid. 602 (personal knowledge required to testify).

Alternatively, the State contends that "Petitioner has suffered no punishment from the coram nobis court for his failure to testify at trial." Government's Br. at 22. This is nonsense. In the clearest possible terms, the trial court ruled that "the Petitioner is not without fault" when it came to presenting his coram nobis claim because knew he was innocent

[33] Supp. R. at 3, ¶ 12.

and "had the absolute right to testify at his trial" but "did not."[34] There is no way to interpret this ruling as anything other than a determination that Mr. Stokes should be punished with the loss of his right to obtain coram nobis relief because he exercised his right not to testify at trial. This was error. Indeed, it was recusal-worthy error, particularly when the disturbing chronology preceding it is considered. The trial court's judgment should be reversed accordingly.

V. CONCLUSION

The trial court's judgment should be reversed.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
DANIEL A. HORWITZ, BPR #032176
LINDSAY SMITH, BPR #035937
MELISSA K. DIX, BPR #038535
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
daniel@horwitz.law
lindsay@horwitz.law
melissa@horwitz.law
(615) 739-2888

Counsel for Appellant

[34] R. at 436.

CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Under Tennessee Supreme Court Rule 46, § 3.02, the relevant sections of this brief contain 5,000 words pursuant to § 3.02(a)(1)(a), as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font pursuant to § 3.02(a)(3).

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz

CERTIFICATE OF SERVICE

I certify that on this the 10th day of January, 2024, a copy of the foregoing was served via the Court's e-filing system, via email, or via USPS mail, postage prepaid, upon:

Attorney General and Reporter
Ronald L. Coleman
Office of the Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207
Telephone: (615) 741-3491
Fax: (615) 741-2009
ronald.coleman@ag.tn.gov

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz, BPR #032176