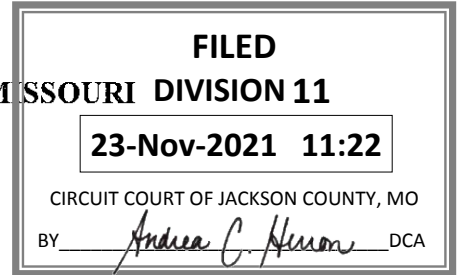


IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI DIVISION 11  
AT KANSAS CITY



STATE OF MISSOURI, )  
)  
*Plaintiff,* )  
)  
vs. )  
)  
KEVIN B. STRICKLAND, )  
)  
*Defendant.* )

Case No. 16CR79000361  
Division 60

**JUDGMENT**

This matter comes before the Court on the Jackson County, Missouri Prosecuting Attorney’s Motion to Set Aside the Judgment of Conviction of Defendant Kevin B. Strickland pursuant to RSMo. § 547.031, filed August 28, 2021. Prosecutor Jean Peters Baker appears with Assistant Prosecuting Attorneys Kate E. Brubacher and Terrence M. Messonnier and Special Assistant Prosecuting Attorney Edward D. Robertson, Jr. (hereinafter “Movant”). Defendant Kevin Strickland appears in person and by counsel Robert J. Hoffman, Tricia J. Rojo Bushnell, and Logan M. Rutherford. The Missouri Attorney General appears by Assistant Attorneys General Gregory M. Goodwin, Andrew J. Crane, Christine H. Krug, and Andrew J. Clarke.

An evidentiary hearing on Movant’s motion commenced on November 8, 2021, and concluded November 10, 2021. After all participants rested, the Court took the matter under advisement pending receipt of further written arguments from counsel, as well as transcripts and exhibits from prior proceedings as required by the statute.

Now on this 23<sup>rd</sup> day of November, 2021, having heard the evidence, reviewed the records from prior proceedings, and considered the written submissions provided by counsel, the Court makes the following findings of fact, conclusions of law, and judgment.

**I. FINDINGS OF FACT:**

In the early evening hours of April 25, 1978, Larry Ingram, John Walker, Sherri Black, and Cynthia Douglas were drinking and smoking marijuana together in a house located at 6934 South Benton Avenue in Kansas City, Missouri. This location was known as a place where marijuana could be purchased and gambling regularly occurred. Vincent Bell, Kilm Adkins, and two other men entered the house, brandishing pistols and a shotgun. All four occupants were tied up and shot by the intruders. Ingram, Walker, and Black died from the injuries sustained at the scene. Douglas, despite being shot in the arm and leg, survived the attack. After the perpetrators had fled, neighbors found Douglas outside of the house and took her to a nearby home, where they summoned the police. Douglas called her sister's house and spoke to Randy Harris, who immediately ran to meet her. By all accounts, Douglas was hysterical at the time, suffering from two gunshot wounds and having just witnessed the execution of three friends.

Sergeant Larry Gilmer was one of the first law enforcement officers to arrive. He first checked on Douglas, who remained in a nearby home, and then proceeded to the scene of the murders. Soon thereafter, Sergeant Gilmer returned to question Douglas as first aid was administered. Douglas immediately identified two of the four assailants as Vincent Bell and Kilm Adkins. Sergeant Gilmer would later testify that Douglas also identified a third suspect, understanding Douglas's statement to have been, "Naughty shot me." Douglas subsequently denied ever making that statement to Sergeant Gilmer.

After receiving treatment at a nearby hospital for her gunshot wounds, Douglas was initially interviewed at the police station in the early morning hours of April 26, 1978. There, she again identified Bell and Adkins as two of the four perpetrators, but was unable to identify

the two remaining assailants. Indeed, she specifically denied knowing the identity of the man armed with a shotgun. While recovering from her injuries at her mother's home the day following the murders, Douglas engaged in additional conversations with Randy Harris, at which time she provided Harris with a physical description of the man with the shotgun. Based on the physical features she described, Harris suggested that the man could have been Kevin Strickland. Through these discussions, Douglas became convinced that the previously unidentified assailant carrying the shotgun was in fact Kevin "Nardy" Strickland.

Kevin Strickland was a known associate of Bell and Adkins. Strickland, whose middle name is Bernard, was commonly referred to throughout the neighborhood by his nickname "Nardy". Strickland was arrested by police early in the morning on April 26, 1978. Unaware Strickland was already in custody, Douglas called the police later that same day to identify Strickland as the third assailant who had wielded the shotgun. Soon thereafter, she chose Strickland from a live lineup. Throughout subsequent depositions and two murder trials, Douglas's identification of Strickland never wavered.

No direct physical evidence linked Strickland to the triple homicide, and Douglas offered the only eyewitness testimony implicating him. Strickland's first trial ended in a mistrial when the jury was unable to reach a unanimous verdict. A second trial soon commenced, and on April 26, 1979, Strickland was convicted of one count of capital murder and two counts of murder in the second degree for the deaths of Ingram, Walker, and Black. The State waived the death penalty, and Strickland was sentenced to life without the possibility of parole for fifty years on the capital murder conviction and ten years on each of the second-degree murder convictions. The three sentences were to run concurrently.

On August 13, 1979, Vincent Bell pled guilty to three counts of second-degree murder. While minimizing his role in the killings, Bell testified at length during his plea allocution about how and why the murders occurred. He remained adamant that Strickland was not present at the crime scene and played no part in the commission of the triple homicide. Bell specifically identified the four assailants responsible for the deaths of Ingram, Walker, and Black – himself, Kilm Adkins, Terry Abbott, and Paul Holloway. As to Douglas's identification of Strickland as the man armed with a shotgun, Bell maintained that she had been mistaken.

Likewise, Kilm Adkins pled guilty for his role in the triple homicide on April 30, 1979. Unlike Bell, Adkins did not mention Strickland during his plea colloquy. However, beginning in 1981 and on multiple occasions since, Adkins has signed affidavits attesting to Strickland's innocence and identifying the four men who actually committed the murders as himself, Vincent Bell, Terry Abbott, and Paul Holloway.

Within a year of Strickland's conviction and the guilty pleas of Bell and Adkins, Douglas began disclosing to those closest to her that she had misidentified the shotgun-wielding assailant as Strickland. Douglas's coworker, mother, sister, daughter, and then-husband all testified to Douglas's consistent recantations and the heavy toll the guilt resulting from the misidentification had taken on her. Despite being firmly convinced she had made a mistake, Douglas was hesitant to act because she feared she could face perjury charges if she were to publicly recant statements previously made under oath. Eventually, however, Douglas contacted her childhood friend Eric Wesson in 2008 and confided in him, detailing how she had incorrectly identified Strickland as one of the four men responsible for the triple homicide three decades earlier. Wesson suggested she contact various people and organizations,

including the Midwest Innocence Project, the University of Missouri – Kansas City School of Law, and several elected officials, to attempt to rectify the situation.

On February 4, 2009, Douglas sent an email to the Midwest Innocence Project from her work computer using her employer-provided email address with the subject line “Wrongfully charged”. In her message, Douglas wrote:

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

Douglas fell ill in 2012 and died in 2015.

Sometime after Douglas had contacted the Midwest Innocence Project via email, Strickland sought the assistance of the Midwest Innocence Project. Through its efforts, Strickland filed a Writ of Habeas Corpus, seeking a review of his conviction. With the legislature’s imminent passage of RSMo. § 547.031, the Midwest Innocence Project contacted the elected Jackson County Prosecuting Attorney Jean Peters Baker regarding Strickland’s case in 2020. After an investigation into the matter was completed and § 547.031 became law, Prosecutor Peters Baker filed this motion, and Strickland dismissed his pending habeas petition.

## **II. CONCLUSIONS OF LAW:**

### **a. Applicable Law Prior to § 547.031:**

Until § 547.031 became effective in August of 2021, Strickland had no procedural mechanism available to him through which he could successfully challenge his conviction absent a showing of constitutional defect in his prosecution or trial. Prior to the legislature enacting § 547.031, the claim presented to this Court could only serve as a gateway allowing

Strickland to present procedurally defaulted constitutional error claims in a traditional habeas proceeding.

In 2003, the Supreme Court of Missouri first recognized the freestanding claim of actual innocence that required no showing of constitutional defect in *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003). The Supreme Court's holding in *Amrine*, however, extended only to death penalty cases. See *In re Lincoln v. Cassady*, 517 S.W.3d 11, 21-22 (Mo. Ct. App. 2016) ("*Amrine* cannot be read, therefore, to have broadly recognized a freestanding claim of actual innocence in non-death penalty cases."). As such, *Amrine* provided no additional legal avenue through which Strickland could present the claim now pending before this Court.

The legislature enacted § 547.031 in response to this gap in available post-conviction processes. However, even now that the statute is effective, Strickland's claim can only be pursued through the intercession of the prosecuting attorney. Section 547.031.1 permits a prosecuting attorney to file a motion to set aside a criminal conviction upon information that the person convicted is innocent or was erroneously convicted. The statute further provides that the Court shall sustain the prosecutor's motion "where the court finds that there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment." § 547.031.3.

**b. Participation of the Attorney General:**

The State of Missouri has a compelling interest in defending criminal convictions. In a proceeding initiated pursuant to § 547.031, that responsibility falls to the Attorney General. The statutory language is clear that the Attorney General is entitled to participate in this proceeding, and "[a] common-sense reading of the statute" makes it equally clear that the

Attorney General's participation must be meaningful. *State ex rel. Schmitt v. Harrell*, No. WD84772, 2021 WL 4058350, at \*2 (Mo. Ct. App. Sept. 7, 2021). To meaningfully participate in circumstances such as these, the Attorney General must be afforded the time necessary to prepare to defend the conviction at an evidentiary hearing, which includes conducting an investigation and engaging in discovery. *See id.* at \*3. Anything less would undermine this Court's confidence in the hearing it conducts.

The reliability of this Court's findings of fact and conclusions of law is grounded in the adversary system. Accordingly, the arguments of each side must be subject to the scrutiny of its opposition in order to expose the strengths and weaknesses of any given position. Ultimately, no court maintains any investigative authority of its own. Instead, it must rely on the adversary system to discern both facts and applicable law. The contention that the role of the Attorney General should be limited so as to inhibit the effectiveness of the adversary system minimizes the vital role the adversarial nature of these proceedings maintains in the judicial system. The Court presumes the legislature recognized the importance of the adversarial process in the functioning of the judicial system when enacting § 547.031. *See generally, Exec. Bd. of Missouri Baptist Convention v. Missouri Baptist Univ.*, 569 S.W.3d 1, 18 (Mo. Ct. App. 2019) ("The legislature is presumed to have acted with a full awareness and complete knowledge of the present state of the law, including judicial and legislative precedent.").

**c. Admissibility of Hearsay Evidence:**

The statutory language prescribes the scope of what must be considered by the Court in ruling on a motion to vacate or set aside a judgment pursuant to § 547.031. Notably, the statute directs the Court to consider all "information and evidence presented at the hearing on

the motion.” RSMo. § 547.031.3. Furthermore, the Court must consider “the evidence” previously presented at the original trial, any direct appeal, and all post-conviction proceedings, such as state and federal habeas actions. *Id.* As to the admissibility of hearsay evidence at the evidentiary hearing on Movant’s motion, the Court finds that the inclusion of the word “information” in addition to “evidence” indicates that the Court may properly consider relevant offerings made during the hearing that might not otherwise constitute admissible evidence.

The Court’s determination is bolstered by its reading of the statute. Specifically, the statute requires the Court to consider the evidence from prior habeas proceedings, which are often presented and disposed of through sworn affidavits. Accordingly, interpreting the statute so as to require this Court to consider hearsay contained in affidavits from prior habeas actions while simultaneously precluding hearsay affidavits and other offerings presented at the hearing itself is nonsensical. Indeed, one of the most fundamental tenants of statutory construction provides that statutes are to be construed so as to avoid unreasonable, illogical, or absurd results. *See Townsend v. Jefferson County Sheriff’s Dep’t*, 602 S.W.3d 262, 265 (Mo. Ct. App. 2020) (“We must interpret a statute in context, not reading any portion of the statute in isolation. Additionally, we must construe statutes so as to avoid unreasonable, oppressive, or absurd results.” (internal citations omitted)). Because an interpretation requiring the Court to consider some hearsay evidence while prohibiting the introduction of other hearsay evidence leads to an inherently absurd result, the Court declines to adopt the same.

Nevertheless, even if the Court were to interpret the statute as limiting the admissibility of hearsay evidence, the testimony from various witnesses regarding Douglas’s recantations



is admissible under an exception to the hearsay rule. Under Missouri law, “[a] declaration against interest is an exception to the rule prohibiting hearsay testimony.” *State Farm Mutual Auto. Ins. Co. v. DeCaigney*, 927 S.W.2d 907, 911 (Mo. Ct. App. 1996) (citing *Olinger v. General Heating & Cooling Co.*, 896 S.W.2d 43, 50 (Mo. Ct. App. 1994)). “Declarations against interest are ‘made by persons not a party or in privity to a party to the suit, are secondary evidence and constitute an exception to the hearsay rule, admissible only when the declarant is unavailable as a witness.’” *Nettie’s Flower Garden, Inc. v. SIS, Inc.*, 869 S.W.2d 226, 230 (Mo. Ct. App. 1993) (quoting *Carpenter v. Davis*, 435 S.W.2d 382, 384 (Mo. banc 1968)).

Under the statement-against-interests hearsay exception, evidence that would otherwise constitute inadmissible hearsay is admissible if:

- (1) the declarant is unavailable as a witness, (2) the declaration, when made, relates to a fact against the apparent pecuniary, proprietary or penal interest of the declarant, (3) the declaration concerns a fact personally cognizable by the declarant, and (4) the declaration is made under circumstances which render it improbable that a motive to falsify exists.

*Id.* (citing *United Services of America, Inc. v. Empire Bank of Springfield*, 726 S.W.2d 439, 444 (Mo. Ct. App. 1987)). Douglas’s statements meet all four requirements. First, Douglas’s 2015 death renders her unavailable to testify. Second, Douglas believed, however improbable, that recanting her previous testimony could subject her to prosecution for perjury. Third, as the only eyewitness to the triple homicide, the identification of the assailant armed with the shotgun is a fact personally cognizable by Douglas alone. And fourth, the circumstances under which Douglas disclosed she had misidentified Strickland involved private conversations with trusted confidants, rendering her recantations significantly more trustworthy given the absence of any apparent motivation to fabricate her statements.

Accordingly, even if the language of § 547.031 limited the Court's consideration to traditionally admissible evidence – which it does not – testimony detailing Douglas's recantations would nevertheless be admissible under the statement-against-interests hearsay exception.

**d. Weight Assigned to Disputed Facts:**

The Court finds the testimony of Sergeant Gilmer credible. The nickname "Naughty" was given to Sergeant Gilmer by Douglas at the scene immediately after the murders. Sergeant Gilmer later understood this to have been a reference to Strickland. Nevertheless, this statement is largely inconsequential given Douglas's subsequent in-court identifications of Strickland. Sergeant Gilmer's testimony before this Court was important only insofar as it undermines the basis of the opinions offered by Dr. Nancy Franklin. Dr. Franklin, a psychologist specializing in memory function and eyewitness identifications, was called by Strickland as an expert witness to testify to the reliability of Douglas's identification of Strickland. While Dr. Franklin's testimony provided informative background knowledge on the mechanics of the human memory and eyewitness identifications, the Court relies on its own determinations as to the facts in this case and the credibility and weight to be assigned to those facts.

Similarly, Douglas's identification of Strickland at the live lineup conducted by police is also of little importance in this hearing. It was Douglas who initiated contact with law enforcement the day after the murders to identify Strickland by name as the man with the shotgun accompanying Bell, Adkins, and a fourth unknown assailant. At the time she provided his name to law enforcement, Douglas had known Strickland for several years. The proposition that the lineup played any role in her subsequent in-court identifications of

Strickland is tenuous at best. Indeed, Douglas's eyewitness testimony and in-court identifications of Strickland at the two trials conducted in 1979 were unequivocal. The trial courts and the juries were entitled to rely on them.

The focus of the evidentiary hearing conducted by this Court is not Douglas's prior identifications of Strickland. This Court is instead primarily concerned with determining the effect, if any, the subsequent recantations of her eyewitness identification has on the Court's confidence in the outcome of those proceedings. Douglas's in-court identification of Strickland as one of the four perpetrators was the lynchpin of his conviction at the second trial for the murders of Ingram, Walker, and Black. There was no forensic evidence directly linking Strickland to the triple homicide or the crime scene then or now. Absent Douglas's positive, unequivocal identification of Strickland, there would have been no charge, no trial, and certainly no conviction. In this regard, the facts of this case are remarkably similar to those before the Supreme Court of Missouri in *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003).

The recantations Douglas made to her family and friends are reliable. They were numerous and consistent. The email she authored in February of 2009 is a reliable written recantation of her prior testimony identifying Strickland. Further, these statements were made when Douglas believed she could be prosecuted for perjury if she recanted her previous in-court identifications of Strickland. Because Douglas's statements were made despite her belief that they were against her perceived penal interests, they fall within the statement-against-interests exception to the hearsay rule, thereby constituting admissible evidence entitled to be accorded greater evidentiary weight.

Moreover, Douglas's recantations are not the only evidence adduced that undermines this Court's confidence in Strickland's 1979 conviction. The Court has also reviewed the transcript of Vincent Bell's guilty plea. During his plea allocution, Bell voluntarily testified that Strickland was not present at the scene of the triple homicide and did not participate in the crime in any capacity. According to Bell, Douglas incorrectly identified the assailant carrying the shotgun as Strickland due to physical similarities between them, but her identification was mistaken.

Ordinarily, little or no weight can be afforded to the testimony of an alleged coconspirator. Bell, however, positively identified all four men responsible for the murders. Rather than naming people who had died, were unable to be located, or were even nonexistent, Bell named known associates. Bell's testimony exculpating Strickland was not available at either of Strickland's trials. Plausibly identifying all participants in the triple homicide while explicitly excluding Strickland lends credibility to Bell's sworn testimony from his 1979 guilty plea. Likewise, another man convicted for these murders, Kilm Adkins, has also testified that Strickland was not involved in the killings.

### **III. CONCLUSION:**

Movant has met her burden of providing clear and convincing evidence that undermines the Court's confidence in the judgment of conviction. There was no apparent error at trial that resulted in Strickland's conviction. The fact that his first trial – which presented nearly identical evidence as that adduced at his second trial – ended in a mistrial provides some indication that the evidence presented was not overwhelming in either case but was certainly constitutionally sufficient to support the conviction. No physical evidence directly implicated Strickland in the triple homicide. Instead, Strickland was convicted solely on the

eyewitness testimony of Douglas, who subsequently recanted her statements identifying him as one of the four perpetrators. Both Bell and Adkins say Strickland was not involved in the murders.

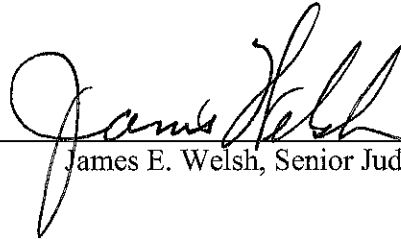
Under these unique circumstances, the Court's confidence in Strickland's conviction is so undermined that it cannot stand, and the judgment of conviction must be set aside. Accordingly, Movant's Motion to Set Aside the Judgment is hereby **GRANTED**. Because Movant is the only party with the authority to refile charges against Strickland, no conditional discharge is necessary, and the Court hereby orders Strickland's immediate release.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of conviction previously entered herein be set aside. The State of Missouri shall immediately discharge Kevin Bernard Strickland from its custody.

**IT IS SO ORDERED.**

11/23/21

Date



James E. Welsh, Senior Judge

*Certificate of Service*

I hereby certify that a true and accurate copy of the foregoing was sent via electronic mail and automatically forwarded to all attorneys of record through the Court's eFiling system on November 23, 2021.



Andrea C. Herron, Law Clerk