

**IN THE SUPREME COURT OF MISSOURI**

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**NO. SC98736**

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**KEITH CARNES,**

**Petitioner,**

**v.**

**MICHELE BUCKNER,**

**Respondent.**

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**MASTER'S FINAL REPORT TO THE MISSOURI SUPREME COURT**

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**WILLIAM E. HICKLE, SPECIAL MASTER**

**IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI**

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| <b>KEITH CARNES,</b>                      | ) |                                   |
|   | ) |                                   |
| <b>Petitioner,</b>                        | ) |                                   |
|   | ) |                                   |
| <b>v.</b>                                 | ) | <b>No. 21PH-CV00030</b>           |
|   | ) | <b>(Related Case No. SC98736)</b> |
| <b>MICHELE BUCKNER, Superintendent,</b>   | ) |                                   |
| <b>South Central Correctional Center,</b> | ) |                                   |
|   | ) |                                   |
| <b>Respondent.</b>                        | ) |                                   |

**MASTER’S FINAL REPORT TO THE MISSOURI SUPREME COURT  
AND FINDINGS OF FACT**

**I.**

**INTRODUCTION**

On September 17, 2020, Petitioner, Keith Carnes, filed a petition for a writ of habeas corpus in the Missouri Supreme Court challenging his Jackson County convictions for first degree murder and armed criminal action, for which he received a sentence of life without parole. This petition raised three claims for relief: (1) a claim of freestanding and gateway innocence (2) a due process claim alleging that his convictions were secured through using perjured testimony; and (3) a Sixth Amendment claim alleging that two defense attorneys for Petitioner had a conflict of interest which adversely affected their representation of Petitioner,

On December 22, 2020, the Missouri Supreme Court appointed the undersigned as Master in the above cause.

An evidentiary hearing was conducted on September 23-24, 2021.<sup>1</sup> At this hearing, Petitioner presented the testimony of the following case-in-chief witnesses:

- 1) Lorianne Morrow
- 2) Alton Shaw
- 3) Michael Matthews
- 4) Kermit O'Neal
- 5) Vernetta Bell
- 6) Jacqueline Buycks
- 7) Latahra Smith

At the close of Petitioner's case-in chief, Respondent called the following witnesses:

- 8) Willis Toney
- 9) Wendy Lockett Cahill
- 10) Reginald Thomas
- 11) Amy McGowan
- 12) Brady Twenter
- 13) Dawn Parsons
- 14) Detective Robert Blehm
- 15) Mark Forest

Thereafter, Petitioner called the following rebuttal witnesses:

- 16) Damon Rhodes
- 17) Vernon Huth
- 18) Huie Cunningham

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<sup>1</sup> Certain material has been redacted from this report. For the convenience of the witnesses, the evidentiary hearing was held at the Jackson County Courthouse.

- 19) Dr. Avery Williamson
- 20) Avis McGary
- 21) Dequai Wilson
- 22) Alvin Brooks
- 23) Shuanta Clark
- 24) Kevin Carnes
- 25) Anthony Wates
- 26) Arthur Mitchell

After the evidentiary hearing, on October 5, 2021, Petitioner requested and was granted leave by the Missouri Supreme Court to file his first amended petition, to conform to the evidence. The amended petition added a fourth claim under *Brady v. Maryland*, 373 U.S. 83 (1963) alleging suppression of exculpatory evidence. Both parties subsequently submitted affidavits, in lieu of live testimony, to fully develop the record pertaining to the new *Brady* claim.

## II.

### **PETITIONER’S CLAIMS AND SCOPE OF THIS REPORT**

In appointing the undersigned as Special Master in this case pursuant to Rule 68.03, the Missouri Supreme Court on December 22, 2020 ordered that the undersigned “shall prepare a report limited to his factual findings as to Petitioner’s gateway innocence and constitutional claims.” This order was supplemented by further order entered October 21, 2021 requiring that the undersigned “make

factual findings as to the additional claim raised in the Petitioner's amended motion." Thus, the scope of this report will be limited to providing factual findings, and will not include conclusions of law.

Petitioner's claims are as follows:

Claim 1: A gateway innocence claim, in which Petitioner asserts that in light of new evidence it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt. Petitioner asserts that two witnesses, Wendy Lockett and Lorianne Morrow, recanted their trial testimony years after the trial, and that those recantations, coupled with other new evidence involving eyewitness accounts and evidence pointing to another person as the actual murderer, establish actual innocence, opening the gateway to review procedurally defaulted constitutional claims.<sup>2</sup> (First Am. Pet., 37-44).

Claim 2: A due process claim, in which Petitioner asserts that the State knowingly used perjured testimony of Wendy Lockett and Lorianne Morrow to secure his convictions. Petitioner claims that these two witnesses admitted that they lied at trial, and that the witnesses claim that they were coerced by one of the

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<sup>2</sup> Claim 1 also includes a freestanding claim of actual innocence, which is outside the scope of this report.

prosecutors in the case, Amy McGowan, to falsely implicate Petitioner as the murderer of Larry White. *Id.* at 45-52.

Claim 3: A claim that Petitioner's Sixth Amendment rights were violated arising from trial counsel Willis Toney's and prior retained counsel Mark Forest's conflict of interest involving their prior and ongoing representation and relationship with Reginald Thomas. *Id.* at 52-59.

Claim 4: A due process claim arising out of the failure by the prosecution to disclose exculpatory impeachment evidence in the form of a prior inconsistent statement of Wendy Lockett given to police less than twenty-four hours after the murder occurred. Petitioner asserts that until the October, 2021 evidentiary hearing he was not aware of the basis for this claim. *Id.* at 59-69.

### **III.**

#### **PROCEDURAL HISTORY**

Larry White was murdered on October 6, 2003. Petitioner was charged and subsequently convicted on April 20, 2005 after a three-day jury trial of first degree murder and armed criminal action in Case No. 16CR-03006321-02. On June 9, 2005, Mr. Carnes filed a motion for new trial claiming that the Court erred in failing to exclude the testimony of Wendy Lockett, as the prosecution had failed to

make her available to the defense for interview or deposition before trial and then produced her without warning on the third day of trial. On August 2, 2005, Petitioner's motion for a new trial was sustained. (Resp. Ex. 6, pp. 116, 146).

The case proceeded to bench trial before Senior Judge Gene R. Martin in November, 2005. Petitioner's bench trial lasted four days. On November 22, 2005 Petitioner was found guilty of first degree murder and armed criminal action. On March 10, 2006 Petitioner was sentenced to life imprisonment without the possibility of parole for first degree murder, and life imprisonment for armed criminal action, the sentences to run concurrent with one another. (Resp. Ex. 6, pp. 262-265).

Petitioner thereafter appealed his conviction and sentence to the Missouri Court of Appeals, Western District. Petitioner's conviction and sentence were affirmed on October 2, 2007. *State v. Carnes*, 241 S.W.3d 344 (Mo. App. W.D. 2007).

Petitioner then filed his *pro se* motion for post-conviction relief pursuant to Rule 29.15 on February 15, 2008. Public defender, Susan Hogan, entered her appearance in the case on May 28, 2008. An amended motion was filed by Ms. Hogan on August 7, 2008. After an evidentiary hearing held on May 6, 2009, the motion court denied Petitioner's motion on July 26, 2010. The Missouri Court of

Appeals, Western District affirmed the denial of post-conviction relief on November 8, 2011. (Resp. Ex. 7). *Carnes v. State*, 363 S.W.3d 45 (Mo. App. W.D. 2012). Petitioner then unsuccessfully sought federal habeas corpus relief, pursuant to 28 U.S.C. § 2254. (Resp. Ex. 8).

Petitioner filed the underlying petition for a writ of habeas corpus in the Circuit Court of DeKalb County on February 14, 2017. The Circuit Court denied the petition on August 14, 2017. (Pet. Ex. 20). On September 28, 2017, Petitioner filed the same petition in the Missouri Court of Appeals, Western District. The petition was denied on October 4, 2017. (Pet. Ex. 21).

Petitioner then filed his habeas petition in the Missouri Supreme Court on September 17, 2020. The undersigned was appointed as a Special Master on December 22, 2020. After briefing was conducted in the matter, an evidentiary hearing was held on September 23-24, 2021. After Petitioner was granted leave to amend his petition to add a *Brady* claim, additional evidence was presented by the parties by way of affidavits.

#### IV.

#### **SUMMARY OF THE ISSUES**

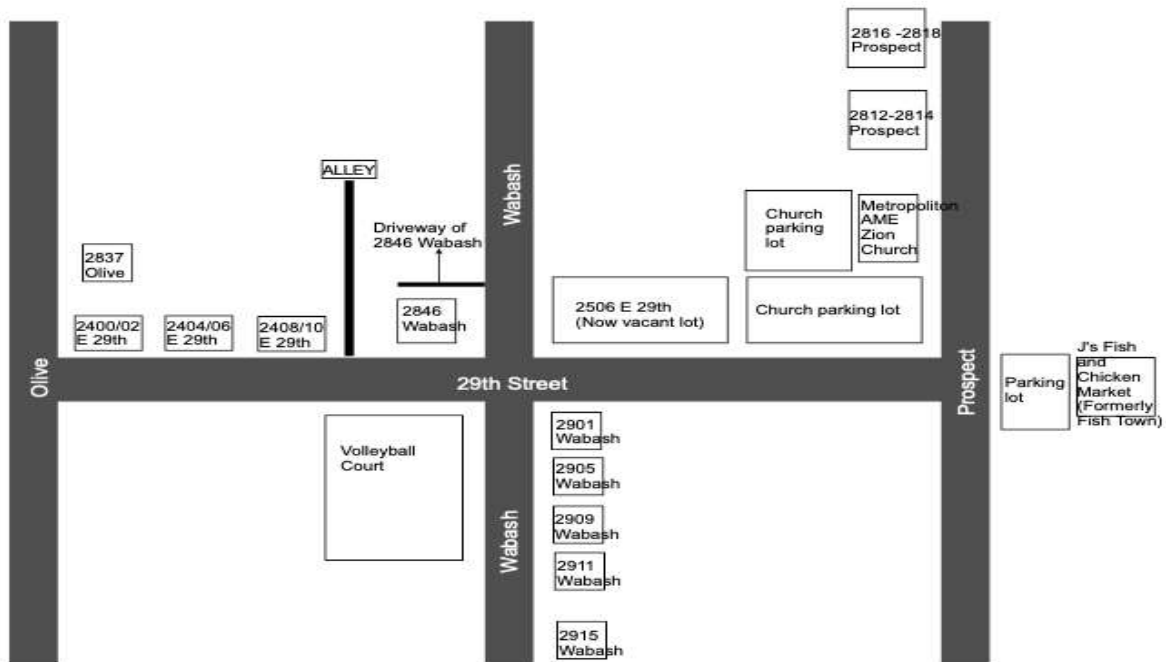
##### **A. November, 2005 Bench Trial Summary**



The trial transcript from the November, 2005 bench trial resulting in Petitioner's convictions is admitted as Respondent's Exhibit 4. References to the bench trial transcript will be noted as "Bench Tr. \_\_\_\_"). References to the Rule 91 habeas hearing transcript will be noted as "Hrg. Tr. \_\_\_\_").

On October 6, 2003, Larry White was shot to death in the Fish Town parking lot located at 29th and Prospect in Kansas City, Missouri, less than three miles southeast of the Jackson County Courthouse. The first officer to arrive at the scene, John Campbell, was dispatched at 8:50 p.m. and arrived in a matter of minutes. (Bench Tr. 49-50). He testified that when he arrived the victim was lying face up. No shell casings were found in the area of the Fish Town parking lot, and no damage to the asphalt from a bullet was found. (Bench Tr. 52). Officer Van Ryn, a member of the crime scene unit, was dispatched to the scene as well, looked for shell casings in the Fish Town parking lot and did not find any. He testified that he would have expected to find shell casings if shots were fired in that parking lot. (Bench Tr. 89).

Exhibit 77 reprinted herein is a diagram of the scene, not drawn to scale, as it existed in October, 2003.



Officer Campbell and others secured the crime scene, and canvassed the area for witnesses. One block west of Fish Town, on the premises of 2846 Wabash, twelve expended shell casings were found. They were located east of the house, either on the front porch, or in the east front yard. One additional casing was found farther east on 29th Street at 506 E. 29th. (Bench Tr. 65-6, 76-82, 90, 91). The house at 2846 Wabash has a fence completely encircling it. (Bench Tr. 91-94). The distance from the yard at 2846 Wabash to Fish Town at 2831 Prospect is 681 feet. (Bench Tr. 48).

Robert Blehm was the case detective for the case, and was responsible for the direction of the case and developing investigative leads. (Bench Tr. 252-254). He testified that the next day, on October 7, the homicide unit at K.C.P.D. received information that led to obtaining a search warrant of an apartment building located west of Wabash, at 2404 E. 29th. The building located at that address is the middle building of three apartment buildings located on the north side of 29th Street, between Olive and Wabash. (Bench Tr. 62-70, 260-1). A search of that building yielded ammunition and a Norinco MAK-90 rifle wrapped in a towel hidden in the freezer portion of a refrigerator. (Bench Tr. 62-69, 346). Ballistics analysis determined that the shell casings from the crime scene matched the Norinco MAK-90 rifle found in the freezer at 2404 E. 29th. (Bench Tr. 343-349). The caliber of the rifle is 7.62 x 39, an AK-47 style rifle. (Bench Tr. 94, 346-9).

After the execution of the search warrant, a person “in that apartment or in that area” provided information. Officer Blehm testified that the information “led us to a Wendy Lockett – or I’m sorry, Lorianne Morrow.” (Bench Tr. 261). The investigation then stalled until October 12, when they were able to locate Lorianne Morrow. Ms. Morrow in turn provided the

names of two additional witnesses that homicide then needed to locate: Wendy Lockett and Felicia Jones. (Bench Tr. 261-2, 159). Detectives then spoke separately with both Wendy Lockett and Felicia Jones on October 14.

Lorianne Morrow testified at trial that on the night of the murder she was standing on the corner of 29th and Olive talking with Larry White. Wendy Lockett was across the street with “Red.” Petitioner, known as “Tre,” appeared on the balcony of the middle apartment building, 2404 E. 29th, with “Kiki,” whose real name is Gary Kitchen. (Bench Tr. 136). She knew it was Tre because of the patch over his eye. (Bench Tr. 112). Tre was yelling to Larry that he is on Tre’s territory and he couldn’t sell drugs out there. (Bench Tr. 114). Next, Tre and KiKi came off the balcony and started chasing Larry. Tre had an AK-47 and KiKi had a handgun. (Bench Tr. 132, 122). While running behind Larry, Petitioner shot at him three times. (Bench Tr. 134, 137). After running around the house located at 2846 Wabash, Larry continued to run east on 29th Street where he then collapsed in the Fish Town parking lot. Ms. Morrow testified that Petitioner followed victim to the Fish Town parking lot, rolled him over and shot him five to six more times from right up over him. (Bench Tr. 144-147). She knew it was Petitioner in the

parking lot because of the patch over his eye. (Bench Tr. 119). Ms. Morrow admitted engaging in buying and selling drugs, and stated that she was taking darvocet and prednisone at the time of trial, which might make her confused. (Bench Tr. 127-128, 152).

Felicia Jones testified that she bought crack from Petitioner. She testified that in October, 2003 she was homeless, a prostitute, and a “crackhead.” (Bench Tr. 159-163). She stated:

Q. October 6th of 2003, do you remember where you were?

A: No telling, smoking crack.

Q. Okay. Do you remember a shooting?

A. No, ma’am.

Q. Do you remember, were you in the area of 29th and Olive?

A. No doubt, I was.

(Bench Tr. 165).

Ms. Jones then was impeached with her prior statement, which was admitted into evidence under section 491.074, RSMo. (Bench Tr. 165-167; Resp. Ex. 13). In her statement given October 14, 2003, she said that she went up to Reggie’s, who was on the couch. Reggie said, “Make him disappear.” Ms. Jones understood Reggie to be referring to the “kid selling on the corner.” She then left Reggie’s apartment. In front of the apartment she

saw “Puffy” standing there. “Tray” went across the street to his car and pulled out guns. They started walking slowly towards the east going towards Prospect. Ms. Jones then left in another car and looked back and saw Tray on the porch of the house at the corner of 29th and Wabash “shooting at the dope dealer that was selling on the corner.” Puffy was standing in front of the apartment shooting at the same kid, who was running towards Fish Town. Ms. Jones did not see the victim make it to Fish Town because she had left in the car. She identified Mitchell Powell as Puffy, Petitioner as Tray, and Reginald Thomas as Reggie. She identified Gary Kitchens as a person inside the apartment building, but he did not come out of the apartment complex with a gun. She made no mention of an eye patch or that Petitioner was wearing one. *Id.*

Wendy Lockett testified that she had known Petitioner for two years as of October, 2003. She on occasion bought drugs from him. At the time she sold crack cocaine and would sometimes use it. (Bench Tr. 184-186). Petitioner always wore an eye patch when she knew him, and was the only patched drug dealer that she knew. (Bench Tr. 186-7). On October 6, 2003 she was at the corner of Olive and 28th [sic] selling drugs. She was with

Larry, Felicia, and Red. Ms. Lockett and Larry were standing on the corner. Tre and others were on the porch of the middle apartment building. Larry was selling drugs that day. (Bench Tr. 183-190). Petitioner was on the porch and told Larry that he could not stand there selling drugs. Petitioner wore his patch and was dressed in black. Larry didn't say anything. The next thing that happens is "gunfire." (Bench Tr. 189-191). They were still on the corner when the gunfire started. The gunfire came from the direction of the porch, but Ms. Lockett did not see it. She looked to the ground. Everybody then scattered. She did not see who started the shooting. (Bench Tr. 191-2, 214). The shot was from the area of the porch, though she was unsure whether it came from the balcony. She heard two shots. (Bench Tr. 214-5). She jumped and ran north on Olive, then to the back and side of the apartment buildings. There were gaps in the fences that made it possible to go through. She came out north of 2846 Wabash, then crossed Wabash. She reached the parking lot of the church when she saw Larry running. He stumbled into the Fish Town parking lot. She then saw two figures cross Prospect and approach him. Larry hit the ground. The two people approached. One of the persons stood up on him and shot him. Ms. Lockett did not know who shot him until the

shooter turned around and she saw the patch, which made her believe that it was Petitioner. She can say it was Petitioner because she saw the patch. (Bench Tr. 238, 230). She got a brief look at the person real quick as he turned around after shooting the victim, then she started running north on Prospect. (Bench Tr. 233-34). The distance from her vantage point on the church parking lot to the location of the body was measured to be 189 feet, just over sixty yards. (Bench Tr. 387-390). A streetlight illuminated the area. (*Id.*) Ms. Lockett stated that the gun was not a rifle. It was similar to a pistol. One shot was fired. (Bench Tr. 230 - 32). She did not know who the other person was in the Fish Town parking lot, and did not know whether the person had a gun. *Id.* She admitted to smoking crack cocaine in the early morning hours of that day, and had been at the corner selling drugs almost 24 hours. (Bench Tr. 235, 189-190).

Detective Donie Hoffman testified that on October 14, 2003 the residence of Petitioner at 4224 E. 58th Street was searched. Bundles of currency in the amount of \$12,083 was found behind the drawer of the stove. (Bench Tr, 246-8). Also, a rifle was found underneath a vehicle parked in front of the residence, wrapped in a plastic bag. (Bench Tr. 244-5). The rifle



was a Norinco SKS 7.62 x 39, which is the same caliber as the Norinco MAK-90 rifle found in the freezer at 2404 E. 29th. The rifle used to shoot the rounds found at the crime scene was the Norinco MAK-90 found in the freezer, not the Norinco SKS found at Petitioner's residence. (Bench Tr. 346, 349-352). Detective Blehm testified that Gary Kitchen, also known as Kiki, admitted to being in "possession, ownership" of the gun found in the freezer of the apartment building at 2404 E. 29th Street, and that he was storing it there. (Bench Tr. 281, 286).

Thomas Gill, M.D., the deputy medical examiner for Jackson County, conducted the autopsy. He testified that Larry White suffered from four gunshot wounds: (1) a head wound, entering above the right ear on the right side of the scalp; passing from right to left, from the back to the front, and upwards, coming out on the left side of the forehead about at the hairline; (2) a wound entering the right, back side of the chest and passing from right to left, back to front, and upwards, exiting out on the right side of the midline in the front chest; (3) a wound entering below and slightly in front of the second wound, passing from right to left, going from back to front, exiting on the left side of the abdomen; this wound produced temporary cavitation causing

disruption of the intestines, requiring surgical intervention; and (4) a graze wound passing from left to right, front to back, and downwards. (Bench Tr. 308-314). There were also abrasion injuries over the left eye and nose, and a laceration to the lip. (Bench Tr. 314).

Dr. Gill stated that the two chest wounds were the next step up from a graze, because they simply tunnelled underneath the skin, “don’t do that much damage,” and were not life threatening. The cause of death was the gunshot wound to the head. (Bench Tr. 337-340, 322-3). No evidence was introduced as to whether the victim could walk, run or stumble with the head injury, or alternatively, whether the head wound would have caused instant loss of consciousness. The victim apparently lived for some amount of time after the shooting as he underwent surgery for his abdominal injuries. (Bench Tr. 310-11).

All of the shots were fired from more than two and one half to three feet away because of the absence of stippling. Stippling is a burn injury to the skin in a circular pattern around the entrance wound caused by burning gunpowder expelled out of the barrel of the gun as it discharges. Stippling only occurs for a gunshot fired within the range of two and one half to three

feet from the muzzle of the gun. (Bench Tr. 315-316). The rounds causing the wounds were “presumed rifle” rounds, meaning high-velocity projectiles, as opposed to rounds from a handgun. (Bench Tr. 314-315). The shots causing the chest wounds appear not to have been fired while the victim was facing the shooter. (Bench Tr. 338).

Marva Gray was working the night of the murder as a cashier at Fish Town. The cash register faces north, and there are windows on the north and west side of the building. She testified that if someone were standing in the parking lot shooting, she would have heard it. That night she heard gunshots down the street from Fish Town towards Wabash, but heard no gunshots in the parking lot of Fish Town. Several minutes later she heard one more shot, which she believes came from the church across the street. (Bench Tr. 374-387). She is “sure” that no gunshots were fired in the parking lot of Fish Town that evening. (Bench Tr. 380).

Vernetta Bell testified that she knew Larry White, as he went with her niece at the time. She also knew Petitioner, but knew Mr. White better. She would typically stay with Mr. White if he showed up in the neighborhood. He called her “Auntie” as did others in the area. (Bench Tr. 403-406). She

testified that Mr. White was standing on 29th between Wabash and Prospect dealing drugs. When the shooting started, she ran west on 29th towards Olive and towards the apartment buildings. Petitioner hollered “Auntie, come up here.” Petitioner was standing in the doorway of the middle apartment building. (Bench Tr. 408-409). He said, “Auntie, get up here out of the way.” He did not have a gun and was not shooting at anyone. He was “up there peeking like everybody else was.” (Bench Tr. 410). Ms. Bell arranged “serves” for Larry White and for Petitioner – that is, she would have customers come to Mr. White or Petitioner, as a “middleman.” (Bench Tr. 414-5).

In closing argument, the prosecutor, Dawn Parsons, argued that the three identifications by Lorianne Morrow, Wendy Lockett and Felicia Jones were reliable because of Petitioner’s unique identifier, his eye patch. She argued:

“Now the interesting thing about the defendant, and I think the most important key piece of evidence, is the defendant’s unique identifying characteristic. He has a patch. He’s the only drug dealer in that area that has a patch. . . He’s probably the only drug dealer in Kansas City with an eye patch. . .” (Bench Tr. 446).

“. . . [A]ll of these women went to the defendant, the drug dealer with an eye patch. . . “ (*Id.*).

“[Lorianne Morrow] sees Larry run up the street and then the defendant, the guy with the patch. . . . Yes, she told you there were five shots and there is no evidence to support that there were five shots in the parking lot, but that doesn’t mean that the defendant wasn’t shooting.” (Bench Tr. 447-8).

“So then we move to Felicia. . . . She saw the defendant with a patch. . . . This man is the most important man in her life at this point, the drug dealer with the patch.” (Bench Tr. 448).

“Next we move to Wendy Lockett, who knows the defendant. . . . There is no other person that she buys from or works with that has an eye patch.” (Bench Tr. 449).

“[H]e has such a unique identifying characteristic. I think if he didn’t have that patch it would be a significantly different case.” (Bench Tr. 454).

Thereafter, as previously noted, the Court found Petitioner guilty of murder in the first degree and armed criminal action.

### **B. 29.15 Post Conviction Relief Motion**

Petitioner’s convictions after bench trial were affirmed on direct appeal in *State v. Carnes*, 241 S.W. 3d 344 (Mo. App. W.D. 2007). During his 29.15 proceeding, Mr. Carnes secured the expert services of criminalist Gary Rini who testified by deposition that, based on the absence of bullets or shell

casings in the parking lot near the body and the angle of the bullet wounds on the victim's body, the physical evidence contradicted the testimony of each eyewitness that the victim was shot in a prone position in the Fish Town parking lot. The 29.15 motion court rejected Petitioner's claim of ineffective assistance of trial counsel for failing to secure an expert crime scene witness, and the Court of Appeals affirmed. (*See Carnes v. State*, WD72916 (unpub. op. 11/08/2011); Resp. Ex. 7)

### **C. New Evidence**<sup>3</sup>

In 2014, Latahra Smith began investigating Petitioner's case. Ms. Smith subsequently formed the KC Freedom Project ("KCFP") and obtained her license in 2017 as a private investigator. The KCFP investigation resulted in additional evidence which was introduced at the September, 2021 evidentiary hearing. Both Wendy Lockett and Lorianne Morrow, in sworn affidavits executed in 2014, stated that they committed perjury when they testified at trial that Petitioner shot and killed Larry White in the parking lot of the Fish Town Restaurant. The KCFP investigation also discovered

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<sup>3</sup> Citations will be omitted in subsection C since the evidence will be described in detail in the remaining portions of this report.

evidence leading to a claim by Petitioner that the actual killer of Mr. White was Reggie Thomas. Further, evidence was discovered leading to a conflict of interest claim arising from Petitioner's trial counsel's previous representation of Reggie Thomas in a 1997 felony drug case in Laclede County.

Lorianne Morrow stated that she was pressured to identify Keith Carnes as the shooter after initially disclosing that the real killer was Reggie Thomas. Because she feared for her safety from Mr. Thomas if she had identified him, she claimed that she was intimidated by the prosecutor, Ms. Amy McGowan, to give a statement to the police implicating Keith Carnes as the murderer. Ms. Morrow also stated that she provided perjured testimony for the prosecution at trial in part because Reggie Thomas was present in the courtroom during her testimony and that she feared retaliation from him if she changed her story and told the truth.

Wendy Lockett also signed a sworn affidavit in December of 2014 asserting that she lied at Mr. Carnes' trials. She stated that she was high on crack cocaine at the time the shooting occurred and, like Ms. Morrow, was coerced by Ms. McGowan to implicate Mr. Carnes as the murderer. Ms.

Lockett stated in her affidavit that she could not identify who shot and killed Larry White and that her testimony implicating Mr. Carnes at trial was false.

At Ms. Lockett's pre-hearing deposition in April 2021 and at the September, 2021 evidentiary hearing, she recanted her affidavit and stated that the testimony she gave at trial was truthful.

The KCFP located and interviewed other witnesses who lived in or near the apartment buildings where the initial confrontation between Mr. White and his killer occurred. A number of people were identified who state that they actually saw the shooting or were present in the immediate area of the shooting.

Vernetta Bell, Eugenia Burch, and Kermit O'Neal all stated that they were at the 2404 E. 29th apartment building with Petitioner at the time Mr. White was shot. Each witness stated that Mr. Carnes never left the apartment building or chased Mr. White from that building. Ms. Bell, previously testified at the bench trial that Petitioner called her into the apartment building for her protection and that he was not the shooter. Ms. Burch provided an affidavit in 2015 stating that she was also in the apartment building with Petitioner when the shooting occurred and that she never saw Petitioner leave



the area of the apartment building. Ms. Burch did not come forward with this information and provide it to the police at that time because there was a warrant out for her arrest.

Mr. O'Neal provided an affidavit in 2014. He was the doorman for the apartment building at 2404 E. 29th Street, monitoring people who entered or exited the building. Mr. O'Neal stated in his affidavit that Petitioner remained inside or on the porch of the apartment building throughout the shooting and that Petitioner was not the shooter.

Alton Shaw lived at 2915 Wabash and was outside when the shooting began. He was never interviewed by the state or defense before the trial. He provided an affidavit in 2016 stating that he saw two men chasing and shooting at Mr. White. Mr. Shaw states that he knows Petitioner and that neither of these men who shot Mr. White was Petitioner. He provided another affidavit in 2018 and testified at the habeas hearing in September, 2021 that Reggie Thomas was the shooter.

Michael Matthews, who lived at 2816 Prospect, also provided an affidavit and testified at the recent hearing. From his apartment, Mr. Matthews states that he had a clear line of sight to the Fish Town parking lot

at the time Mr. White was shot. He heard gunshots, saw Mr. White cross Prospect, saw him collapse in the Fish Town parking lot, and, using binoculars, observed Mr. White's body in a prone position on the lot. He declared that no one approached Mr. White, shot him, or turned him over while he was lying in the lot before the police arrived. Mr. Matthews did not know Mr. Carnes, Mr. Thomas, or Mr. White.

In 2015, Margo Thomas provided an affidavit indicating that she was pressured to falsely identify Mr. Carnes as the shooter by prosecutor Amy McGowan. Although she initially told the police she could not identify the man she saw jumping the fence in an alleyway after the shooting, she described him as a dark-complexioned black male. Petitioner asserted that this does not match the actual description of Keith Carnes and instead matches the description of Reggie Thomas.

Crime scene reconstructionist, Gary Rini, was retained on Petitioner's case as an expert before trial. Tennille Benton, who was Petitioner's girlfriend at the time, retained Mr. Rini to conduct a critical review of the crime scene. However, Petitioner asserts that his attorney failed to provide Mr. Rini with the necessary items he needed to conduct his review and that

thus he was unable to testify at either trial. Petitioner claims that Mr. Rini was unable to complete his report until three months after the bench trial because of the lack of information. Mr. Rini disclosed in his report that the crime scene evidence was inconsistent with the eyewitness accounts and that no evidence linked Petitioner to the crime scene.

On September 15, 2020, Mr. Rini provided a supplemental report of his findings. Mr. Rini passed away in December, 2020 and thus did not testify at the September, 2021 evidentiary hearing. In the supplemental report, Mr. Rini concluded the following: 1) the eyewitness accounts of the events of the shooting of the victims are not supported by the physical evidence; 2) the absence of critical evidence at the crime scene of the body directly refutes the eyewitness accounts; 3) the absence of this type of evidence, as well as the findings from the autopsy report and the evaluation of the bloodstain pattern evidence, support the conclusion that there was no physical evidence which linked Petitioner to the crime; and 4) had he testified at Petitioner's trial, he would have been able to cover all of the above issues and discuss how they supported Petitioner's innocence.

Finally, Petitioner claims that the state failed to disclose a crucial police report documenting a statement made by Wendy Lockett to police on October 7, 2003, the day after the shooting. The statement was made by Ms. Lockett to Officer Vernon Huth, who prepared the handwritten report that same day.

According to the report, Ms. Lockett

told the officer that she saw two black males chasing a third black male through an alley by 29th and Wabash, shooting at him. The report does not indicate that Ms. Lockett recognized either shooter or that there were any identifying characteristics of either shooter other than the description of them as “black males.”

The statement was not disclosed to defense until after the two trials and direct appeal proceedings had ended. The statement was discovered by the defense during the 29.15 litigation, and was not discovered until after the amended 29.15 motion had already been filed. Petitioner asserts that the failure to timely disclose the existence of the statement deprived Petitioner of important impeachment material, in that (a) the suppression of the statement allowed the state to advance its trial theme that the eyewitness identification of Petitioner was reliable because the Petitioner was wearing a readily