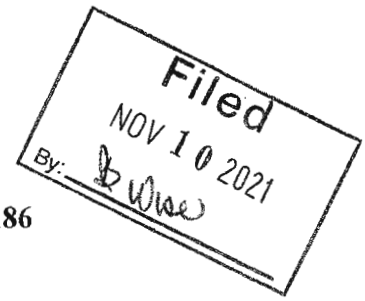
IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE,
AT NASHVILLE, DIVISION II



JOYCE WATKINS &	)	
THE ESTATE OF CHARLIE DUNN[1]	)	
Petitioners,	)	
	)	
vs.	)	**Case No. 87-S-1186**
	)	**Post-Conviction**
	)	
STATE OF TENNESSEE,	)	
Respondent.	)	

MOTION TO REOPEN PETITION FOR POST-CONVICTION RELIEF

The Petitioners, Joyce Watkins and the Estate of Charlie Dunn, by and through undersigned counsel, move to reopen their petition for post-conviction relief pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Tenn. Const. Art. 1, §§ 7, 8, and 9, and the Post-Conviction Procedure Act, Tenn. Code Ann. § 40-30-101 *et seq.*, the authorities cited below and their progeny, and seek relief from their convictions based on new scientific evidence of actual innocence and the constitutional violations that led to their convictions.

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[1] Charlie Dunn passed away in 2015. His surviving son, Nathaniel Dunn, is serving as his next of kin for this Motion. His affidavit is attached as **Exhibit A.**

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Motion to Reopen the Post-Conviction Petition of Joyce Watkins

Mailing Address of Petitioner: Joyce Watkins, c/o Tennessee Innocence Project, 700 Craighead Street, Suite 300, Nashville, TN 37204. Counsel can provide Ms. Watkins' personal address upon request.

Place of Confinement: Ms. Watkins was continuously confined from the date of her conviction on August 5, 1988, until she was granted parole on October 15, 2015.

Department of Corrections Number: TOMIS ID No. 00123093

1. *Name and location (city and county) of court which entered the judgment of conviction or sentence challenged*: The Davidson County Criminal Court at Nashville, Tennessee, Division II.
2. *Date of judgment of conviction*: August 5, 1988
3. *Case number:* 87-S-1186
4. *Length of sentence:* Life imprisonment with a concurrent sixty-year term.
5. *Offense convicted of:* First Degree Murder, Aggravated Rape.
6. *What was your plea?* Not guilty.
7. *Give the following information in regard to the post-conviction proceeding you seek to reopen at this time:*

(a) (1) *Name and location of post-conviction trial court:* The Davidson County Criminal Court at Nashville, Tennessee, Division II.

(2) *Grounds raised:* Ineffective Assistance of Counsel.

(3) *Did you receive an evidentiary hearing on your petition, application or motion?* Yes.

(4) *Result:* The Petition for relief was denied.

(5) *Date of Result:* December 14, 1994.

(b) *Did you appeal to any appellate court the result of the action taken on that petition?* Yes.

8. *What grounds exist under Tenn. Code Ann. § 40-30-117 to justify reopening the first post-conviction petition?* There exists new scientific evidence that establishes that Ms. Watkins is actually innocent of the offenses for which she was convicted.

(b) (1) *What does the scientific evidence consist of?*

1. Scientific evidence that the macrophages observed at autopsy prove these crimes took place before the Petitioners had custody of the victim.

2. Scientific evidence that Dr. Gretel Harlan's trial testimony on the timing of the fatal injury is wrong.

3. Scientific evidence that the medical opinion of Dr. Gretel Harlan on the bruising is wrong.

(2) *On what date did this scientific come into existence?* There are numerous developments in pediatric head trauma, specifically the dating of pediatric head trauma, since this trial in 1988 and the initial post-conviction hearing in 1994. The medical advancements are ongoing. The Motion to Reopen cites studies from 1996, 2003, 2004, 2009, 2019 along with the report of Dr. Adele Lewis, Chief Medical Examiner for the State of Tennessee, and the affidavit from Dr. Shilpa Reddy, Pediatric Neurologist at Monroe Carell Jr. Children's Hospital at Vanderbilt University, prepared on September 30, 2021.

(3) *How and when did you become aware of the existence of this evidence?* Consultation with Dr. Reddy allowed Petitioner to learn about and organize the new scientific evidence which refutes the medical testimony of Dr. Gretel Harlan from the trial in 1988.

(4) *How does this evidence establish your actual innocence?* It proves that the only scientific evidence presented to the jury on the timing of the fatal injury is incorrect. Gretel Harlan conceded the error in her methodology years after the trial. Harlan is no longer licensed to practice medicine in Tennessee. Her husband, Charles Harlan, the Chief Medical Examiner who signed the original autopsy in this case, was prosecuted and stripped of his Medical License by the State of Tennessee for egregious conduct as a Medical Examiner. Ms. Watkins was convicted because Gretel Harlan told the jury that fatal injury had to have occurred while the victim was in her custody. It is now uncontested that testimony was entirely incorrect. No jury has ever heard credible medical proof establishing the timing or causation of the injuries in this case. Joyce Watkins was convicted by debunked scientific evidence.

9. *Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?* No.

10. *Give the name(s) and address(es), if known, of each attorney who represented you on your petition for post-conviction relief.*

(a) *In any post-conviction proceeding:* Carlton Lewis, Floyd Price

(b) *On appeal from adverse ruling in a post-conviction proceeding:* Carlton Lewis

11. *Are you currently represented by counsel?* Yes.

(a) *If Yes, give name and address, if known, of the attorney representing you.*

Jason Gichner
Jessica Van Dyke
Tennessee Innocence Project
700 Craighead Street, Suite 300
Nashville, TN 37204

12. *Has any attorney assisted in drafting or given advice regarding this petition for post-conviction relief?* Yes.

If Yes, give name and address of attorney(s).

Jason Gichner
Jessica Van Dyke
Tennessee Innocence Project
700 Craighead Street, Suite 300
Nashville, TN 37204

13. *In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?* Yes.

14. *Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?* No.

15. *What date is this petition being given to prison authorities for mailing?* Not applicable. Ms. Watkins is no longer incarcerated.

Wherefore, Petitioner prays that the Court grant petitioner's motion to reopen the post-conviction proceedings and grant any relief to which petitioner may be entitled in this proceeding.

Motion to Reopen the Post-Conviction Petition of the Estate of Charlie Dunn

Mailing Address of Petitioner: The Estate of Charlie Dunn, c/o Tennessee Innocence Project, 700 Craighead Street, Suite 300, Nashville, TN 37204. Counsel can provide Mr. Dunn's personal address upon request.

Place of Confinement: Mr. Dunn was continuously confined from the date of his conviction on August 5, 1988, until his death on January 12, 2015.

Department of Corrections Number: TOMIS ID No. 00122864

1. *Name and location (city and county) of court which entered the judgment of conviction or sentence challenged*: The Davidson County Criminal Court at Nashville, Tennessee, Division II.
2. *Date of judgment of conviction*: August 5, 1988
3. *Case number:* 87-S-1186
4. *Length of sentence:* Life imprisonment with a concurrent sixty-year term.
5. *Offense convicted of:* First Degree Murder, Aggravated Rape.
6. *What was your plea?* Not guilty.
7. *Give the following information in regard to the post-conviction proceeding you seek to reopen at this time:*

(a) (1) *Name and location of post-conviction trial court:* The Davidson County Criminal Court at Nashville, Tennessee, Division II.

(2) *Grounds raised:* Ineffective Assistance of Counsel.

(3) *Did you receive an evidentiary hearing on your petition, application or motion?* Yes.

(4) *Result:* The Petition for relief was denied.

(5) *Date of Result:* December 14, 1994.

(b) *Did you appeal to any appellate court the result of the action taken on that petition?* Yes.

8. *What grounds exist under Tenn. Code Ann. § 40-30-117 to justify reopening the first post-conviction petition?* There exists new scientific evidence that establishes that Mr. Dunn is actually innocent of the offenses for which he was convicted.

(b) (1) *What does the scientific evidence consist of?*

1. Scientific evidence that the macrophages observed at autopsy prove these crimes took place before the Petitioners had custody of the victim.

2. Scientific evidence that Dr. Gretel Harlan's trial testimony on the timing of the fatal injury is wrong.

3. Scientific evidence that the medical opinion of Dr. Gretel Harlan on the bruising is wrong

(2) *On what date did this scientific come into existence?* There are numerous developments in pediatric head trauma, specifically the dating of pediatric head trauma, since this trial in 1988 and the initial post-conviction hearing in 1994. The medical advancements are ongoing. The Motion to Reopen cites studies from 1996, 2003, 2004, 2009, 2019 along with the report of Dr. Adele Lewis, Chief Medical Examiner for the State of Tennessee, and the affidavit from Dr. Shilpa Reddy, Pediatric Neurologist at Monroe Carell Jr. Children's Hospital at Vanderbilt University, prepared on September 30, 2021.

(3) *How and when did you become aware of the existence of this evidence?* Consultation with Dr. Reddy allowed Petitioner to learn about and organize the new scientific evidence which refutes the medical testimony of Dr. Gretel Harlan from the trial in 1988.

(4) *How does this evidence establish your actual innocence?* It proves that the only scientific evidence presented to the jury on the timing of the fatal injury is incorrect. Gretel Harlan conceded the error in her methodology years after the trial. Harlan is no longer licensed to practice medicine in Tennessee. Her husband, Charles Harlan, the Chief Medical Examiner who signed the original autopsy in this case, was prosecuted and stripped of his Medical License by the State of Tennessee for egregious conduct as a Medical Examiner. Mr. Dunn was convicted because Gretel Harlan told the jury that fatal injury had to have occurred while the victim was in his custody. It is now uncontested that testimony was entirely incorrect. No jury has ever heard credible medical proof establishing the timing or causation of the injuries in this case. Charlie Dunn was convicted by debunked scientific evidence.

9. *Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?* No.

10. *Give the name(s) and address(es), if known, of each attorney who represented you on your petition for post-conviction relief.*

(a) *In any post-conviction proceeding:* Thomas F. Bloom

(b) *On appeal from adverse ruling in a post-conviction proceeding:* Thomas F. Bloom.

11. *Are you currently represented by counsel?* Yes.

(a) *If Yes, give name and address, if known, of the attorney representing you.*

Jason Gichner
Jessica Van Dyke
Tennessee Innocence Project
700 Craighead Street, Suite 300
Nashville, TN 37204

12. *Has any attorney assisted in drafting or given advice regarding this petition for post-conviction relief?* Yes.

If Yes, give name and address of attorney(s).

Jason Gichner
Jessica Van Dyke
Tennessee Innocence Project
700 Craighead Street, Suite 300
Nashville, TN 37204

13. *In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?* Yes.

14. *Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?* No.

15. *What date is this petition being given to prison authorities for mailing?* Not applicable. Mr. Dunn is deceased.

Wherefore, Petitioner prays that the Court grant petitioner's motion to reopen the post-conviction proceedings and grant any relief to which petitioner may be entitled in this proceeding.

Petitioner's (Joyce Watkins) Verification Under Oath Subject to Penalty for Perjury

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on Nov 9, 2021.
(Date)

Joyce Watkins
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 9 day of November, 2021.

Notary Public CPM

My commission expires: 11/16/2022

CHRISTOPHER PAUL MITCHELL
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY
My Commission Expires Nov. 16, 2022

Petitioner's (Estate of Charlie Dunn) Verification Under Oath
Subject to Penalty for Perjury

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 11-9.
(Date)

Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 09th day of November, 2021.

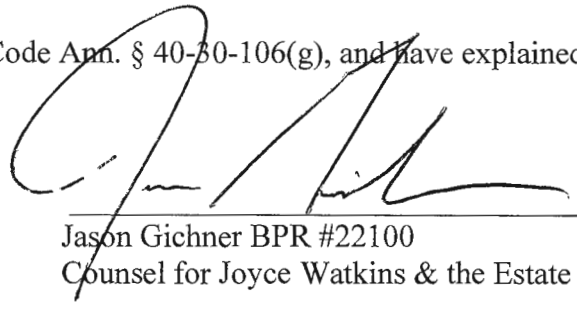
Notary Public Jerrie O'Koon-H

My commission expires: 05/25/2022

JERRIE O'KOON-HUGHES
STATE OF TENNESSEE
NOTARY PUBLIC
SUMNER COUNTY

Certification of Counsel

I, Jason Gichner, *pro bono* counsel, certify that I have thoroughly investigated the possible constitutional violations alleged by Petitioners, including Petitioners' possible constitutional claims and any other ground that Petitioners may have for relief. I have discussed other possible constitutional grounds with Petitioners. I have raised all non-frivolous constitutional grounds warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law which Petitioner have. I am aware that any ground not raised shall be forever barred by application of Tenn. Code Ann. § 40-30-106(g), and have explained this to Petitioners.



Jason Gichner BPR #22100
Counsel for Joyce Watkins & the Estate of Charlie Dunn

Memorandum in Support of the Motion to Reopen the Petition for Post-Conviction Relief

Introduction

In 1987, [redacted] [redacted] four-years-old, died from a head injury. Her great-aunt, Joyce Watkins, along with Joyce's boyfriend, Charlie Dunn, were convicted of first-degree murder and the aggravated rape of [redacted] Ms. Watkins served twenty-seven years of her life sentence before the State Board of Parole released her in 2015. Mr. Watkins died in prison in 2015.

The convictions were grounded upon the incorrect medical opinions of the Assistant Medical Examiner, Dr. Gretel Harlan. Dr. Harlan testified at trial that [redacted] suffered head injuries and a vaginal injury while in the sole custody of Ms. Watkins and Mr. Dunn. There was no other credible evidence of culpability. Ms. Watkins and Mr. Dunn voluntarily spoke multiple times to the police and denied they harmed [redacted] They cooperated throughout the entire investigation, without the aid of counsel. [redacted] was only with Ms. Watkins and Mr. Dunn for nine hours before she arrived at the hospital. The two months prior to that were spent in the care of her great-aunt, Rose Williams, in Ft. Campbell, Kentucky.

The initial investigation focused on the time [redacted] spent in Kentucky due to a variety of unexplained injuries, strange behavior, and illnesses she suffered while in Kentucky. Dr. Harlan's opinion on the timing of the fatal injuries altered the focus of the investigation, the charges, and the convictions.

Dr. Harlan testified that the injuries happened during the 9-hour window the child was with Ms. Watkins and Mr. Dunn, sometime after 1:35 a.m. on June 27, 1987. She based this opinion on the lack of histiocytes[2] observed in the brain tissue, which she examined under a microscope as

[2] Histiocyte, as defined by the Johns Hopkins Pediatric Oncology Department, is a normal immune cell that is found in many parts of the body especially in the bone marrow, the bloodstream, the skin, the liver, the lungs, the lymph glands, and the spleen. Histiocytosis: Johns Hopkins Pediatric Oncology (hopkinsmedicine.org)

part of the autopsy. She further testified that her visual observation of the head bruising confirmed that the injury happened while in the custody of Ms. Watkins and Mr. Dunn. Finally, she stated the vaginal injury may have happened during this same window. Ms. Watkins and Mr. Dunn were convicted almost entirely based upon these medical opinions.

These medical opinions are wrong. New scientific evidence proves these opinions are wrong. The new scientific evidence is presented in this Motion through the medical opinions of Dr. Adele Lewis, Chief Medical Examiner for the State of Tennessee, and Dr. Shilpa Reddy, a Pediatric Neurologist at Monroe Carrell Children's Hospital. Their opinions, given to a reasonable degree of medical certainty, and supported by peer reviewed medical studies, establish critical new evidence:

First, there is no such thing as a histiocytic response that presents in the dura following an injury. Dr. Harlan would not, and could not, see histiocytes under the microscope at autopsy because that is something that never happens. Her testimony about the histiocytic response is not medically possible. The Report from Dr. Lewis, attached as **Exhibit B**, directly addresses Dr. Harlan's incorrect medical opinion. Additionally, the Affidavit of Dr. Reddy, attached as **Exhibit C**, directly addresses Dr. Harlan's incorrect medical opinion. Importantly, Dr. Harlan also admitted at the post-conviction hearing that the histiocytic response theory was incorrect. At that same hearing, she presented a new medical theory on timing of the fatal injury, but it went unrefuted in post-conviction, so the court was unaware of its falsity. Her new theory was also wrong and significantly, not information ever put before a jury.

Second, pathologists cannot date a bruise by a visual inspection. New scientific evidence, of peer reviewed medical studies, attached as **Exhibit D**, prove that Dr. Harlan's opinions on the timing of the injury through visual inspection of the bruising was incorrect.

Third, there is new scientific evidence, presented through the Report of Dr. Lewis, which proves the vaginal injury likely happened in Kentucky, not Tennessee. Specifically, Dr. Lewis relied upon certain cells (macrophages) observed by Dr. Harlan under the microscope at autopsy. It is significant, that Dr. Harlan, witnessed the presence of macrophages. According to Dr. Lewis:

> These cells (macrophages) typically respond to a cite of injury about two to eight days following insult to the tissue. In a critically ill child, this cellular response could be expected to be delayed to several days or even more than a week following an injury, well before [redacted] was in the care of either Joyce Watkins or Charlie Dunn.

New Scientific evidence, presented by the Chief Medical Examiner for the State of Tennessee and a leading Pediatric Neurologist from Vanderbilt University establish that Joyce Watkins and Charlie Dunn are actually innocent. They were convicted based upon unsupported, misleading, and inaccurate medical opinions.

Factual Background

"If this line of irrational thinking has been applied to other cases in the State of Tennessee, then God help you and the rest of the citizens of the State of Tennessee."

– Dr. George Nichols, Chief Medical Examiner for the Commonwealth of Kentucky, September 29, 1995. Letter to the Tennessee Bureau of Investigation addressing the medical opinions from Dr. Charles Harlan's Office, attached as **Exhibit E**.

Just before midnight, on Friday, June 26, 1987, Joyce Watkins and Charlie Dunn picked up Ms. Watkins' four-year-old great-niece, [redacted] from the home of Rose Williams in Fort Campbell, Kentucky. Rose Williams is the sister of Joyce Watkins and the great aunt of [redacted] On Saturday morning, June 27, 1987, at approximately 9:00 a.m., Ms. Watkins brought an unconscious [redacted] to Nashville Memorial Hospital where she was immediately placed on life support. The medical staff diagnosed her with head trauma and a vaginal injury. See Nashville Memorial General Records, attached as **Exhibit F**. The staff transferred [redacted] to Vanderbilt at approximately 3:42 p.m. on that same day. See Vanderbilt Records, attached as **Exhibit G**. Both

hospitals performed tests for proof of sexual assault. Neither returned evidence of spermatozoa. The Vanderbilt physicians removed [redacted] from life support the next morning. Her doctor pronounced her dead at 8:50 a.m., Sunday, June 28. The cause of death was trauma to the head.

[redacted] spent approximately nine hours with Ms. Watkins and Mr. Dunn before she arrived at the hospital. The two months before that were spent with Rose Williams in Fort Campbell, Kentucky.

1. Two Months with Rose Williams in Kentucky

[redacted] arrived in Ft. Campbell, Kentucky in early May of 1987. [redacted] mother, [redacted] lived in Georgia at the time. Following a family reunion in May, [redacted] asked if she could stay in Kentucky for a couple of weeks with her great aunt, Rose Williams.

Two weeks turned into two months. [redacted] stayed with Williams until June 26, 1987, until she was picked up late in the evening by Joyce Watkins and Charlie Dunn. Over the two-month period, there were allegations of abuse, evidence of neglect, concerning behavior and unexplained injuries.

Although Rose Williams never took [redacted] to the doctor, there were disturbing signs that [redacted] needed medical care. [redacted] urinated in her pants daily. She regularly soiled her pants. She vomited at the dinner table, on multiple occasions, without warning. [redacted] drank out of the bathroom toilet, one time with an empty hairspray bottle she retrieved from the trash can.

There were further troubling issues that arose while in Kentucky. At one point, Ms. Williams found [redacted] on the ground, non-responsive in the house. She brought [redacted] to the neighbor, Suzette Fetterman. Ms. Fetterman could not detect a heartbeat. Ms. Williams reached into [redacted] mouth and scooped out a large chunk of peanut butter. Ms. Williams testified that

[redacted] returned to consciousness after that. [redacted] was not taken to the doctor, even after Ms. Williams found her unconscious and not breathing.

Soon after, an anonymous abuse call prompted an investigation by Kentucky Family Services. An Investigator with Kentucky Family Services visited Ms. Williams on June 9, 1987. See Investigative Report, attached as **Exhibit H**. A concerned parent saw [redacted] at Bible Camp with welts on her back and a swollen hand. When the Kentucky Family Services Investigator interviewed Ms. Williams about the reported abuse, she lied. She said that [redacted] was in Georgia with her mother and no longer staying in Kentucky with Ms. Williams. A week later, Ms. Williams called Kentucky Family Services and stated that [redacted] went to the doctor, and she was fine. These were further lies. [redacted] was still in Kentucky with Rose Williams. Nobody ever brought [redacted] to the doctor. Agent Becker, with the Criminal Investigation Unit for military, questioned Ms. Williams again after [redacted] death. Ms. Williams continued to lie. See CID Investigation Report, attached as **Exhibit I**. Ms. Williams told Agent Becker that she never told the prior investigator that [redacted] returned to Georgia and that she never told anyone [redacted] went to the doctor. Ms. Williams lied to investigators on multiple occasions, before and after, [redacted] death. Significantly, these were lies concerned [redacted] medical care.

The week before Ms. Watkins and Mr. Dunn picked up [redacted] was particularly bad. Sometime in late June 1987, [redacted] fell down the stairs in Ms. Williams' home.[3] She was upstairs, drinking water from the toilet, and then tumbled on her way down the flight of stairs. She got up, took a of couple steps, and then fell down unconscious with a head injury. Ms. Williams put her in the car and headed to the hospital. Inexplicably, Ms. Williams stopped on the way to the hospital

[3] The only source of information that [redacted] fell down the stairs is Rose Williams. This fall resulted in visible injuries seen at the hospital upon admission. There is no way of knowing if the version of the fall presented by Ms. Williams is the truth. [redacted] was never brought to a doctor after the event and Ms. Williams told multiple lies about other critical issues concerning [redacted] health.

to get gas with an unconscious 4-year-old in her backseat. Ms. Williams claims that [redacted] woke up, while they were at the gas station, so she turned around and went home. Once again, [redacted] was not taken to the doctor. Ms. Williams later stated that [redacted] received a black eye from this event. The black eye was still visible when Ms. Watkins brought [redacted] to the hospital later that week. The only source of information about the details of this head injury is Rose Williams since she failed to take [redacted] for medical care following the event. After this incident, Ms. Williams called Ms. Watkins multiple times throughout the week, telling Ms. Watkins to come pick up [redacted]

When Ms. Watkins came to get [redacted] around midnight, June 26, 1987, there were visible injuries. She had a black eye. [redacted] mouth was hurting. There was something wrong with [redacted] vaginal area. Ms. Williams stated she observed red on [redacted] vagina. She said [redacted] had a rash from wetting herself daily. It was painful for [redacted] to sit in the bathtub. This was a child that required medical care.

[redacted] was neglected, and likely abused, over the two-month period in Rose Williams' care. Rose Williams was not capable of properly caring for this child. This explains why she was frantically calling Joyce Watkins, pleading with her to come get [redacted] on the evening of June 26, 1987.

2. Nine Hours with Joyce Watkins and Charlie Dunn

Ms. Watkins and Mr. Dunn arrived to get [redacted] on the evening of June 26, 1987. They drove from Nashville to Fort Campbell, in the middle of the night

They arrived in Fort Campbell at around 11:45 p.m. They did not stay long. [redacted] clothes were already packed by Ms. Williams, who was anxious for them to take [redacted] and leave. They left her home and arrived back in Nashville around 1:00 a.m. on June 27, 1987.

[redacted] spent the night in Ms. Watkins' home sleeping in a twin bed. Ms. Watkins spent the night in the room with [redacted] Soon after arrival at Ms. Watkins' home, she noticed blood in [redacted] vaginal area. She called Georgia to speak with [redacted] mother and let her know about the situation. Ms. Watkins also observed the black eye from Kentucky, which she had not initially seen when they first picked up [redacted] It was decided that [redacted] would stay over with Ms. Watkins for the evening and get some rest and there would be further discussion in the morning. Ms. Watkins believed that [redacted] mother was coming to Nashville to see to her daughter's medical care.

On the morning of June 27, 1987, Julia Henry, Joyce Watkins' sister came over to her house and spoke with [redacted] asked for a glass of water while they were talking. Ms. Watkins observed more blood in [redacted] vaginal area. Additionally, she felt [redacted] was acting strange. She decided she had to take [redacted] to the hospital. She could not wait for [redacted] mother to arrive from Georgia. Ms. Watkins brought [redacted] to the hospital just after Julia Henry's visit. While [redacted] was conscious and speaking with Ms. Henry at the home, [redacted] was unconscious by the time they arrived at the hospital. The physicians at Memorial General Hospital treated [redacted] until her transfer to Vanderbilt later that day. She never regained consciousness and died on June 27, 1987.

3. Pretrial Investigation

"I'm going to tell you something, you all can question Joyce all you want and you can question me. You ain't going to find no wrong in either one of us, because we are both good people."

– Charlie Dunn, interview with MNPD, attached as **Exhibit J**.

The initial investigation focused on Rose Williams and [redacted] time in Kentucky. It was not until the autopsy that the focus shifted. The police responded to the hospital on June 27, 1987.

Joyce immediately cooperated and spoke with Detective Bradford and Lt. Arlene Moore. Detective Jerry Pinkelton logged this interview in his report, stating:

> I arrived at the Youth Guidance Office at approximately 5:30 p.m. Detective Bradford was leaving the office and I asked him what type of case I had. He stated to me that the child's aunt, Joyce Watkins, was in the interview room with Arlene Moore and further stated it was his opinion after talking to Ms. Watkins that if a crime occurred it occurred at Ft. Campbell, Kentucky and I probably wouldn't have to work the case. See Pinkelton Report, attached as **Exhibit K**.

Det. Pinkelton next went to Vanderbilt and spoke with Elizabeth Underwood, [redacted] grandmother. Her grandmother and mother drove to Nashville from Georgia when they found out [redacted] was hospitalized. Det. Pinkelton documented this encounter in his report:

> At Vanderbilt, I proceeded to Pediatrics to see [redacted] As I entered, a female (later identified as Elizabeth Underwood) was talking more or less to herself, but in the vicinity of other family members. She was upset and stated, "Rose knows what happened and I'm going to get to the bottom of this." It was my opinion she was accusing Rose of wrongdoing. See **Exhibit K**.

Det. Pinkelton subsequently spoke with [redacted] ([redacted] [redacted] [redacted] mother at the hospital:

> I further stated to Mrs. [redacted] that I overheard a woman stating, "I'll kill her" upon my arrival to pediatrics. Mrs. [redacted] stated that was her sister, and she was referring to "Rosie May" (Rose Williams). I asked Mrs. [redacted] if she thought Rose harmed her daughter and she stated, "She must have, yes I think she did it." See Pinkelton Handwritten Report, attached as **Exhibit L**.

Over the next few days, Det. Pinkelton interviewed Ms. Watkins three more times. Ms. Watkins allowed the police to enter her home, take photographs and recover evidence. She voluntarily gave four interviews to the police that week, all without an attorney. During these four statements, Ms. Watkins consistently maintained her innocence. Additionally, Mr. Dunn spoke multiple times to police without counsel. He fully cooperated with the investigation and denied any wrongdoing.

In his report, Det. Pinkelton alleged that Ms. Watkins was not consistent with the timing of events or her location in the house throughout the morning of June 27, 1987. His report requires scrutiny as there is reason to question its accuracy. The three Pinkelton interviews of Ms. Watkins occurred in June of 1987, the week after [redacted] death.[4] There are no recordings of these interviews. Det. Pinkelton did not prepare a report at the time he conducted the interviews with Ms. Watkins. The only report, where Det. Pinkelton documented the substance of Ms. Watkins' statements are in his typed supplemental report, created in June of 1988. See **Exhibit K**. Det. Pinkelton wrote this report, one year after the interviews took place. He was no longer a police officer in June of 1988 and drafted this report at the request of the District Attorney's Office, two months before trial.

The medical examiner conducted an autopsy after the Watkins interviews. The opinion of the medical examiner shifted the focus of the investigation from Rose Williams to Joyce Watkins and Charlie Dunn because Dr. Harlan alleged the head trauma occurred while [redacted] was in their care. They were eventually indicted, and the case proceeded toward trial. It was at that point the prosecution realized that there were no police reports, from the lead detective on the case, documenting the substance of the Watkins interviews. Det. Pinkelton was asked to put together a report a year later. The prosecutor then used the substance of this report as circumstantial evidence to attack Ms. Watkins and Mr. Dunn at trial.

4. The Trial

Judge Randall Wyatt presided over the trial in August of 1988. Richard Fisher prosecuted the case for the State. Niles Nimmo represented Ms. Watkins and David Vincent represented Mr. Dunn. The State's case consisted of circumstantial evidence, largely from the Pinkelton report,

[4] Arlene Moore conducted the first interview of Joyce at the hospital. There is a transcript of that interview.

and the medical opinions of Dr. Gretel Harlan. The defense offered no evidence to rebut the inaccurate medical opinions and the questionable circumstantial evidence.

5. Incorrect Medical Opinions from Discredited Pathologists

The medical opinions of Dr. Gretel Harlan served as the foundation of the State's case.[5] Dr. Harlan's opinion on the time that [redacted] suffered the fatal head trauma is the critical evidence that led to the convictions. Her opinion on the time of the head trauma is wrong.

In 1987, Dr. Charles Harlan was the Chief Medical Examiner for Tennessee. His wife, Gretel, was his Assistant Medical Examiner, and she performed the autopsy in this case and testified at trial for the prosecution. Charles Harlan approved the autopsy report, prepared by his wife, prior to her trial testimony. Without the medical opinions from Gretel Harlan, supervised by Charles Harlan, there would have been no case against Joyce Watkins and Charlie Dunn.

In 1994, Charles Harlan resigned as medical examiner after three female employees sued him for sexual harassment. Earlier that year, Harlan falsified a death certificate, conduct which resulted in suspension without pay. See Tennessee Bureau of Investigation Report, attached as **Exhibit M**. In 1995, Dr. George Nichols, Chief Medical Examiner for the Commonwealth of Kentucky, reviewed Harlan's findings concerning the death of a 25-day old infant. After evaluating Harlan's medical opinions in the case, the Medical Examiner wrote to the Tennessee Bureau of Investigation, stating, "If this line of irrational thinking has been applied to other cases in the state of Tennessee, then God help you and the rest of the citizens of Tennessee." See **Exhibit E**. In 2005, after two years of hearings, the Tennessee Board of Medical Examiners found Charles Harlan guilty of 20 counts of misconduct and permanently revoked his medical license.

[5] Gretel Harlan was not certified as a forensic pathologist in 1987. This was the first case where she ever testified at trial. She formed her opinion on the most critical issue in the case while sitting in the hallway while waiting to come in to testify.

In July of 2005, Gretel Harlan received a formal reprimand by the Tennessee State Board of Medical Examiners for inappropriate conduct. See State Medical Board of Ohio Investigation, attached as **Exhibit N**. A Tennessee Department of Health investigation revealed that, among the items found in Gretel Harlan's vacated, former residence were autopsy reports and crime scene photographs, human tissue specimens; and miscellaneous items from dozens of cases, all related to her position as Assistant Medical Examiner. Gretel Harlan paid forty-eight civil penalties as a condition of her reprimand. Later that same year, Gretel Harlan voluntarily surrendered her Tennessee Medical License. The tissue samples from this case no longer exist because Charles and Gretel Harlan failed to preserve the evidence. This is consistent with evidence lost or destroyed for numerous autopsies conducted by the Harlans.

6. Dr. Harlan's Incorrect Medical Opinion on Head Trauma at Trial

The key evidence in this case is the dating of the fatal head trauma. Harlan testified that the head trauma, which caused [redacted] death, happened sometime after 1:35 a.m. on Saturday, June 27, 1987. This is critically important because it established that the head trauma only could have happened while [redacted] was with Ms. Watkins and Mr. Dunn, not with Rose Williams. Dr. Harlan first came up with this opinion while sitting in the hallway at the courthouse waiting to testify at trial.

> **Defense Counsel**: So, what you're telling me is, then, that the opinion you've just given to the Jury as to the probabl(e) time span which these traumas may have been suffered by this child occurred to you outside the courtroom?
>
> **Dr. Harlan**: Yes, sir. (Harlan Trial Testimony p. 539-540, attached as **Exhibit O**)

Even more troubling than when Dr. Harlan formed this opinion, is the erroneous science she relied upon in support of the opinion. Harlan testified that the injuries must have occurred after 1:35 a.m.

on June 27, 1987, due to a lack of histiocytic response observed in the brain tissue, under a microscope at the autopsy.

> **Dr. Harlan**: Histiocytic response. These are the cells that arrive to try to clear the blood clot. Certainly, within 12 hours they should get there, and on the outside within 14 hours.
>
> **D.A. Fisher**: Doctor, are you utilizing that to give a time fame within which the head injuries could have occurred?
>
> **Harlan**: Yes, sir; I am.
>
> **D.A. Fisher**: What is the time frame Doctor, within which, in your opinion the head injuries or cause of death to this child occurred?
>
> **Harlan**: Okay. Trying to extrapolate back from when the body's first response would be to the bleeding into the subdural space to the time that this should have occurred, between 3:35 p.m. and 4:45 p.m., when they could no longer get in there, it should be 12 to 14 hours earlier, which would be an outside limit of 14 hours from 3:35 p.m., would be 1:35 a.m.
>
> **D.A. Fisher**: 1:35 a.m. Saturday morning?
>
> **Harlan**: Right. Or later. More likely later.
>
> **D.A. Fisher**: It's your opinion that the blows to the head which caused the death occurred sometime after 1:35 am?
>
> **Harlan**: A.M. Saturday morning. (Harlan Trial Testimony p. 527-528, attached as **Exhibit P**)

This exchange is the totality of evidence offered by the prosecution for the timing of the fatal head trauma in this case. The medical opinion on the timing of the head trauma is wrong. The head trauma in this case cannot be dated with the scientific methodology that Dr. Harlan employed, looking for a histiocytic response. It is not possible. The only testimony at trial establishing that the fatal injury happened while [redacted] was with Ms. Watkins and Mr. Dunn, not Rose Williams, is scientifically inaccurate. Dr. Harlan admitted her methodology was wrong six years later.

7. The Head Trauma Evidence Presented at the 1994 Post-Conviction Hearing

At the 1994 post-conviction hearing, defense counsel questioned Dr. Gretel Harlan's methodology to date the fatal injuries.[6] Dr. Harlan appeared in court and heard testimony from Dr. Kris Sperry, Deputy Chief Medical Examiner for the Fulton County, Georgia Medical Examiner's Office, who testified to the post-conviction court that her technique of dating the injury through the lack of histiocytic response was entirely wrong:

> **Defense Counsel**: Would you briefly describe what was the underlying principle relied upon by Dr. Harlan in dating the injury to the head.
>
> **Dr. Sperry**: The underlying principle, as I gleaned from her testimony was that there was no evidence of what she called a histiocytic response in the brain slides, in the slides from the dura where the subdural hematoma or the subdural membrane was located. And thus, on that basis, she set a time age of 12 to 14 hours for the head injury because of the fact that these cells had not shown up yet or were not apparent in the tissue in the slides from the dura.
>
> **Defense Counsel**: What is your opinion as to the validity of this underlying basis for her opinion that the head injuries occurred from 12 to 14 hours of death?
>
> **Dr. Sperry**: That particular finding of what's called a histiocytic response, another name for histiocytes or macrophages, which are garbage cell collectors. With respect to injuries involving the head, and specifically subdural hemorrhage, histiocytes or macrophages do not migrate into these areas. And in fact, inflammation of any type is not a factor that has ever been described in the healing phases of these types of injuries. This pattern and the way that these injuries heal has been described for well over 50 years. And the general descriptions of the sequence that healing undergoes with subdural hemorrhage has been known and understood easily for half a century, and there is no element of this that has macrophages or histiocytes as part of it. So, basically, if using that, the absence of histiocytes in this area as an indicator of how old or how new the hemorrhage was erroneous because there is no such thing.
>
> **Defense Counsel**: The underlying basis, the idea of histiocytic response or the absence of it, that is irrelevant then to the dating of head injuries or is it relevant?
>
> **Dr. Sperry**: Well, from the standpoint of specifically subdural hemorrhage, which is what she was talking about and then using that criteria to determine how old the injury was that caused the subdural hemorrhage, that histiocytes are something that

[6] No defense experts were presented at trial to address the histiocytic response theory.

are not there. They're not found, and they're not in any of the classification tables that ...have been known for over 50 years.

...

Defense Counsel: Is the basis of her opinion patently contradicted in the medical literature?

Dr. Sperry: Well, yes, to utilize that criteria as a way of establishing the age of subdural hematoma is inherently erroneous because no such criteria exists at all. That is not one of the criteria that's used and recognized. It is not recognized because it's not there. And it cannot be used in that way,

Defense Counsel: It is that it is not merely controversial, is that true or not?

Dr. Sperry: No, there's no controversy about it at all because there is no such migration of these cells into that area. (Sperry Post-Conviction Testimony p. 139-142, attached as **Exhibit Q**)

Dr. Harlan conceded her error to the post-conviction court, yet maintained her timing of the injury, again relying on incorrect medical opinions.

D.A. Fisher: Now, are there any differences in what your testimony would be today and your testimony back then, particularly in light of the accusations made by Dr. Sperry?

Dr. Harlan: The word "histiocyte" was incorrect. That should have been fibroblasts.

...

The Court: And so, you're now saying that you actually used a word that was inappropriate?

Dr. Harlan: Right. They are both fixed tissue cells, and I did not use the correct term.

...

The Court: But you still, though, maintain that the opinion you gave to the Jury...as to the time of death, cause of death, too, the time of death is somewhat critical or significant to the issue that has been raised by the defendant.

Dr. Harlan: Correct.

The Court: You've reached the same result?

Dr. Harlan: Yes, sir. (Harlan Post-Conviction Testimony p. 248-251, attached as **Exhibit R**)

There are important points revealed by this line of questioning. First, Harlan acknowledges that the medical opinion she offered at trial, which was the only direct evidence tying Ms. Watkins and Mr. Dunn to the fatal head trauma, was wrong.

Secondly, Dr. Harlan attempts to mitigate her incorrect testimony by telling the court she merely misspoke and used an "inappropriate" term. She meant to say fibroblast, not histiocyte. Fibroblasts and histiocytes are two entirely different cells that present differently in the human body. More importantly, the jury never heard the term fibroblast at trial. The only science a jury ever heard in support of the timing opinion for the head trauma was based on a lack of histiocytic response. Harlan's opinion on fibroblasts was new evidence, a scientific theory, that was not presented to a jury. Fibroblasts were never mentioned at the trial.

Third, Dr. Harlan's fibroblast theory, presented at the post-conviction hearing, is also wrong. Dr. Harlan testified that the fatal injuries happened after 1:35 a.m. She argued that under her new theory, a lack of visible fibroblasts meant the timing in the case did not change. The problem with this opinion is that fibroblasts do not appear in the dura within 12-14 hours of the injury. Her own testimony on fibroblasts, which constitutes new evidence, establishes this point:

> **Defense Counsel**: Fibroblastic starts at the junction of the dura at 36 hours and the and the layer of fibroblasts two to five cells thick present after four to five days.
>
> **Dr. Harlan**: That's correct.
>
> **Defense Counsel**: And you testified to 12-14 hours, you should have seen this.
>
> **Dr. Harlan**: That's correct.
>
> **Defense Counsel**: But it could have been 36 hours?
>
> **Dr. Harlan**: For the fibroblastic response. And 24 hours for the fibrin.
>
> **Defense Counsel**: Which is longer than 12-14 hours.

Dr. Harlan: Yes. (Harlan Post-Conviction Testimony p. 284-285, attached as **Exhibit S**)

Dr. Harlan's post-conviction testimony was that the timing of the injury holds up due to a lack of fibroblasts observed under the microscope, but this was inconsistent with her own testimony on when fibroblasts first appear following an injury. She testified that fibroblastic activity starts at 36 hours following injury and fibroblasts appear after four to five days. This means that the lack of fibroblasts under the microscope does not establish that the fatal injuries occurred after 1:35 a.m. on June 27, 1987. The injuries likely happened earlier in Kentucky.

The convictions in this case are grounded upon Dr. Harlan's opinion on the timing of the fatal injury. Given the critical nature of this opinion, two leading practitioners reviewed the medical records, trial testimony and post-conviction testimony to address the accuracy of Dr. Harlan's conclusions on timing.

8. New Scientific Evidence of Actual Innocence

a. Dr. Adele Lewis, Chief Medical Examiner for the State of Tennessee

Dr. Adele Lewis is the Chief Medical Examiner for the State of Tennessee. She has held this position since 2019. Prior to serving as the Chief Medical Examiner for Tennessee, she served as the Deputy State Chief Medical Examiner for Tennessee, Deputy Chief Medical Examiner for Davidson County, and as an Associate Medical Examiner for Forensic Medical Management. She received her medical degree from the University of Alabama, completed a residency in anatomic pathology and general surgery at Vanderbilt University, and completed a fellowship in surgical critical care and forensic pathology. She is Board Certified in forensic pathology and anatomic pathology. She has held faculty positions at Vanderbilt University, Meharry Medical College, Middle Tennessee State University and the National Forensic Academy. Additionally, she served as Faculty for the National District Attorney's Association.

Dr. Lewis conducted a thorough review of the available materials to specifically address the timing of the injuries in this case. Dr. Lewis disputes the methodology employed by Dr. Gretel Harlan. Additionally, Dr. Lewis disagrees with Dr. Harlan's conclusions on timing. Below are her findings on the head injury, which constitutes new scientific evidence presented to this Court:[7]

> At trial, Dr. Harlan initially asserted that the subgaleal hemorrhages "have been put on the head within the past 48 hours, more likely 24 hours, somewhere in that time frame...Q: Okay. 48 to 24 hours prior to what? A: Prior to the patient's pronouncement of death." When asked again regarding the age of the subgaleal hemorrhages, she replied: "Yes, sir; these are, again, acute...Q: And what does acute mean in that instance---...A: within 48 hours." Later on in her testimony, however, Dr. Harlan somewhat inexplicably pivots from "within 48 hours" to "within 12 hours...and on the outside within 14 hours" based on what she referred to as a "histiocytic response" within the dura. She then extrapolated that the injuries to [redacted] must have occurred after 1:35 on the morning of June 27, 1987, when the child was in the care of Mr. Dunn and Ms. Watkins. As Dr. Sperry noted in his post-conviction testimony, there is no such entity accepted by the forensic pathology community as a "histiocytic response" within the dura. Even if such an entity existed, asserting its appearance or presence within such a narrow time frame, especially given the impaired blood flow to and from the intracranial structures as demonstrated in this case, is fraught with uncertainty. (Lewis Report, **Exhibit A**)

Pathologists know far more about pediatric head trauma in 2021 than was known in 1987. Dr. Lewis's report constitutes new scientific evidence which proves that Dr. Harlan's approach in 1987 was fraught with uncertainty.

b. Dr. Shilpa Reddy, Pediatric Neurologist, Monroe Carrell Jr. Children's Hospital, Vanderbilt University

Dr. Shilpa Reddy is Board Certified in Neurology with a Special Qualification in Child Neurology. She is an Assistant Professor and Associate Program Director of the Clinical Neurophysiology Fellowship at the Monroe Carrell Jr. Children's Hospital at Vanderbilt University Medical Center. She concluded that Harlan inaccurately testified to the jury that the head trauma must have occurred after 1:35 a.m. on June 27, 1987. Dr. Reddy concludes that it is

[7] Dr. Lewis additionally offers an important opinion on the timing of the injuries based upon evidence from the vaginal injury. That opinion is discussed in detail later in the motion.

not possible to accurately date the head trauma, however, the window for when the head injury occurred is significantly larger than what Dr. Harlan opined. Dr. Reddy estimates that when the head injury occurred would certainly extend to 48 hours prior to presentation at the hospital. The medical records reflect that [redacted] suffered from edema (swelling), secondary to ischemia. Ischemia is a lack of oxygenated blood to the brain which results in injury and cell death. [redacted] suffered a head injury, which resulted in swelling, pressure, and a lack of oxygen to the brain. The timing of these events, and the developments in science since 1987, are important. (See Reddy Affidavit, **Exhibit C**).

Dr. Shilpa relied upon new scientific evidence on head trauma to reach her conclusions. A 2003 study on head trauma, entitled, "Edema fluid accumulation within necrotic brain tissue as a cause of the mass effect of cerebral contusion in head trauma patients," concluded that edema and increased intracranial pressure can occur anywhere from 24-72 hours after a traumatic brain injury. This means that the swelling in [redacted] brain which caused the pressure, and eventually her death, could have developed up to 72 hours after she sustained the head injury. Dr. Harlan's opinion on the timing of the injury is grounded upon a flawed methodology and inconsistent with what the medical community now knows about pediatric head trauma. Dr. Reddy relied upon this 2003 study in forming her opinions.

The opinions of these two leading practitioners, which rely upon medical developments over the last 30 years, contradict the medical opinions which led to the convictions in this case.

c. Dr. Harlan's Trial Testimony on Bruising

Dr. Harlan testified at trial that she dated the bruising on [redacted] scalp by looking at the injuries with her naked eye. She never examined the bruising under a microscope, but still testified that the scalp bruising occurred within 48 hours of the time of death. Dr. Harlan placed the time

of death at about 3:35 p.m. on June 27, 1987.[8] Under this theory, the bruising could have happened days earlier, in Kentucky.

The broader problem with this bruising opinion, however, is that Dr. Harlan had no scientific basis to date a bruise by looking at it with her naked eye. Pathologists cannot do this. There is new scientific evidence on this issue, established since the trial in this case. A peer-reviewed study was performed in 2004 to investigate whether it is possible to determine the age of a bruise on a child in clinical practice. The conclusion of the study was:

> A bruise cannot accurately be aged from clinical assessment in vivo or on photograph. At this point in time the practice of estimating the age of a bruise from its color has no scientific basis and should be avoided in child protection proceedings. See Original Article, Can you age bruises accurately in children? A systematic review, S Maguire, MK Mann, J Sibert, A Kemp, attached with medical documents as **Exhibit C**.

An even more comprehensive study was published in Pediatrics, the Official Journal of the American Academy of Pediatrics in 2003, entitled, Dating of Bruises in Children: An Assessment of Physician Accuracy. The study assessed physician's ability to accurately age bruising in fifty children that presented to the emergency room. The study determined that physicians are not able to accurately date bruising. The specific conclusions of the study were:

> Physician estimates of bruise age within 24 hours are inaccurate and seem to be not much better than chance alone. With larger time frames, physicians may be accurate; however, given the large individual variability and poor interrater reliability, caution must be used when interpreting these estimates. This is highlighted by the fact that the observers could not even agree on the individual colors seen or the presence of tenderness or swelling for a given injury. This study supports earlier studies, urging extreme caution in estimating bruise age, even when such estimates are based on direct examination of the injured area. See Dating of Bruises in Children: An Assessment of Physician Accuracy, Erika Bariciak, Amy Plint, Isabelle Gaboury, Sue Bennett, Pediatrics 2003, attached with medical documents as **Exhibit C**.

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[8] Harlan came up with this time of death by looking at a nurse's note while sitting in the hallway of the courthouse waiting to testify. The actual treating physician did not declare the child dead until June 28, 1987.

Physicians cannot date a bruise with a naked eye inspection. New scientific evidence, established through peer reviewed study, established this fact following the trial in 1987.

d. The Timing of the Genital Injury Is Further Proof of Wrongful Conviction

The timing of the vaginal injury is the best evidence of when [redacted] was injured. When assessing the timing of this injury it is important to keep certain facts in context. Rape kits were performed at both hospitals. Neither produced evidence of spermatozoa. The prosecution argued that Mr. Dunn caused the vaginal injury because he was the only man with [redacted] before she was brought to the hospital. But at trial the State was unable to provide a coherent theory for how the genital injury occurred – they simply argued Mr. Dunn did it.

There was no compelling evidence tying Mr. Dunn to a sexual assault other than his gender. Mr. Dunn was a man with no criminal record in 1987. He had multiple grandchildren. He was never accused of any type of inappropriate behavior before. It does not make sense that he raped and beat a four-year-old girl, who he did not even know he was going to see that day. There is further new evidence that is critical to this point. Attached as **Exhibit A** is the Affidavit of Nathaniel Dunn, Charlie Dunn's surviving son. Nathaniel was a teenager in high school in 1987. Nathaniel remembers the evening his father went with Ms. Watkins to pick up [redacted] He remembers because his father invited him, and his brother William, to join them on the ride to Clarksville. The boys knew Ms. Watkins and had spent the night at her home before. They chose not to go along for the ride because there was a school function in Gallatin, they wanted to attend that evening. Had they joined, they would have stayed the night at Ms. Watkins' home with Mr. Dunn and [redacted]

This is further evidence that Mr. Dunn was wrongfully convicted. It makes no sense that Mr. Dunn would invite his two teenage boys into the home of Joyce Watkins' were he intended to commit a rape and murder, evidence that jurors never heard.

There is new scientific evidence on the timing of the genital injury which shows that the injuries to [redacted] likely happened in Kentucky, not Tennessee. Dr. Lewis took a close look at the perianal injury, and found the microscopic results from the autopsy to be compelling:

> Perhaps a more reliable indicator of timing of this child's injuries is found in the perianal injury, where Dr. Harlan notes of the presence of macrophages within the wound. In a healthy person, these cells (macrophages) typically respond to a site of injury about two to eight days following the insult to the tissue. In a critically ill child, this cellular response could be expected to be delayed to several days or even more than a week following an injury, well before [redacted] was in the care of either Joyce Watkins or Charlie Dunn.
>
> In short, it is my opinion to a reasonable degree of medical certainty that both the injuries to the head and to the external genitalia of this child, [redacted] could very well have occurred prior to the time that the child was in the custody of Ms. Watkins and Mr. Dunn. (Lewis Report, **Exhibit B**).

The Chief Medical Examiner of the State of Tennessee is stating that Dr. Harlan's opinion on timing is wrong. The jury convicted because they were told [redacted] was injured while she was in the care of Ms. Watkins and Mr. Dunn. A closer look at the healing nature of the perianal injury shows otherwise.

9. Weak and Misrepresented Circumstantial Evidence

The circumstantial evidence in the case is weak and cannot stand alone without the flawed medical opinions from Dr. Harlan. Furthermore, the prosecutor misrepresented the evidence to the jury. The circumstantial evidence consists of: a bedsheet the prosecution argued at trial that Ms. Watkins washed to hide evidence of the sexual assault, [redacted] shoes photographed in the master bedroom and Ms. Watkins' statements made during her interviews.

The State argued that Ms. Watkins gave inconsistent statements on the timing of events and her location in her home throughout the evening of June 27, 1987. The source for these alleged inconsistencies is the typed Pinkelton report, which he drafted from memory a year after the interviews. See **Exhibit K**. These alleged inconsistencies are immaterial. It does not matter whether they arrived back in Nashville at 1:00 a.m. or 2:30 a.m. It does not matter if Ms. Watkins slept the entire night in one bedroom or moved between the two bedrooms. There is no question that [redacted] was only with Ms. Watkins and Mr. Dunn from midnight until the next morning when she arrived at the hospital. Ms. Watkins and Mr. Dunn were convicted because Dr. Harlan, inaccurately, told the jury that [redacted] was raped and beaten during this timeframe. They were not convicted because Ms. Watkins did not remember the exact time they got home.

The bedsheet evidence does not hold up to close inspection. The State argued in close that [redacted] was raped in the master bedroom and Ms. Watkins washed the bedsheet to conceal the evidence. This seems strange considering that Ms. Watkins did not wash [redacted] underwear. Ms. Watkins did not wash the bedsheet in [redacted] twin bed with blood on it. If Ms. Watkins was destroying evidence, she missed the most critical items. Second, close inspection of the evidence shows that Ms. Watkins never removed or washed the bedsheet from the bed in the master bedroom. The only evidence supporting this allegation comes from a handwritten report Lieutenant Arlene Moore created on June 20, 1988, in which she documents a conversation a year earlier with Ms. Watkins about the bedsheet. See Moore Report, attached as **Exhibit T**. Lt. Moore claims Ms. Watkins told her that she washed the bedsheet before taking [redacted] to the hospital. Ms. Watkins was interviewed by the police four times. None of the records documenting these interviews mentions this bedsheet. This is the second example of a critical police report created from memory, a year after the incident, on the eve of trial.

The trial testimony regarding the bedsheet creates further doubt that Ms. Watkins removed it from the bed. Detective Bradford went to Joyce's home on Saturday, June 27 to gather evidence from the scene. He was asked about the bedsheet at trial:

> **DA Fisher**: The next photograph is just the photograph of the bed in the bedroom next to the child's room?
>
> **Det. Bradford**: Yes sir.
>
> **DA Fisher**: That bed does not have a sheet on it, does it?
>
> **Det. Bradford**: No, sir; it doesn't.
>
> **DA Fisher**: Did it have a sheet on it at the time you arrived there?
>
> **Det. Bradford**: Yes, I believe it did. I can't remember. (Bradford Trial Testimony p. 21, attached as **Exhibit U**)

Det. Bradford goes on to say that Officer Merrill was the person who photographed the bedroom, and he would be the person to ask if the bedsheet was on the bed when they arrived. The State then called Officer Merrill, and he testified that Officer Tommy Elder is the person who photographed the bedroom. (Merrill Trial Testimony p. 58, attached as **Exhibit V**). Officer Elder was never called to the stand and never provides evidence on whether the bedsheet was on the bed upon his arrival to process the scene. There is no actual proof at trial to support Arlene Moore's allegation that Joyce stripped the bed and washed the sheet. She was not there when officers processed the room, and her report was written a year after the event. The only officer, Detective Bradford, who remembers anything, said he thought the sheet was on the bed.

There is additional evidence that the sheet was not washed, and the prosecutor misrepresented this fact to the jury. There is a handwritten report, dated June 29, 1987, prepared by Laura Treese, a Counselor with the Department of Human Services. Ms. Treese testified at

trial, but her report never came up and it is unclear if defense counsel ever saw it.[9] Ms. Treese went to Ms. Watkins' house after speaking with her at the hospital. She discussed the investigation with Detective Bradford, who was at the house gathering evidence. Treese and Bradford specifically discussed the bedsheet from the master bedroom, which the prosecutor argued at trial that Ms. Watkins washed to conceal evidence. Her report acknowledges that the dirty sheets were available for collection. It states, "Off. Bradford said the sheets from the master bedroom bed were in the dirty laundry." See Treese Report, attached as **Exhibit W**. This was the only report concerning the master bedroom sheets created at the time of the incident when evidence was gathered. According to this report, the sheets were not washed, were with the dirty laundry, and were available for collection. Det. Bradford did not collect the dirty sheets, and then the prosecutor argued to the jury that Ms. Watkins concealed evidence. This Treese Report is evidence that rebuts the prosecution's theory of guilt. It is material misrepresentation made to the jury, and later relied upon as important evidence by the appellate court.

The only other circumstantial evidence was that [redacted] shoes were found in the master bedroom. The shoe location is not evidence of anything. There are countless explanations for why the sandals ended up in one bedroom versus the other.

10. Misrepresentations and Inappropriate Conduct by the Prosecutor

The inappropriate arguments, presented by the prosecutor, contributed to the wrongful convictions. Consider the statements made by Assistant District Attorney Richard Fisher, the prosecuting attorney in this case:

> I knew before you ever sat there that I was going to put you through your own personal torture, because you had no idea when you got that notice, you were going

[9] It is clear from the trial transcript that this was not an "open file" discovery case. The trial transcript shows that defense attorneys were provided documents from the prosecution during trial that they did not have prior to trial. It is very unlikely that the defense attorneys had this document in advance of trial. It is not possible to discuss this issue with defense counsel as Mr. Vincent passed away in 2007 and Mr. Nimmo is in poor health.

> to be a juror and when you walked into this courtroom, that you were going to be exposed to what humanity in Nashville, Tennessee, may be all about in some pockets of town or to some evil deviants who have no control. (Fisher Closing Argument p. 70, attached as **Exhibit X**).

Consider what ADA Fisher means when he is talking to the jury about evil deviants, from *some pockets of town.*

Other times ADA Fisher openly misstates the evidence:

> Now it's apparent, I submit, from the evidence that the child was vaginally raped and an effort made through inadvertence in a moment of passion or just by misdirection an effort at anal penetration as well. (Fisher Closing Argument p. 66, attached as **Exhibit Y**).

ADA Fisher is arguing to the jury, contrary to the medical testimony, that there was an attempted anal rape of the child. Dr. Harlan testified to this very issue:

> **DA Fisher**: And the anal tears would be consistent with an effort to hit the vagina but to miss and hit the anus instead?
>
> **Dr. Harlan**: No, sir; they are consistent with entry into the vagina also. We are dealing with a very small vaginal length…I cannot substantiate an attempt to penetrate the rectum. I see no internal injuries…I cannot say that there was an attempt to enter the rectum or the anus. (Harlan Trial Testimony p. 548-549, attached as **Exhibit Z**).

ADA Fisher's argument that there was an attempted anal rape directly contradicts the testimony of his witness. This is a misstatement of the evidence.

There are other examples of ADA Fisher misstating the physical evidence. He argued in close that Mr. Dunn caused the scratches on [redacted] back while raping her:

> Scratches on the back of her neck, not so significant, but fresh and consistent with a sexual assault. (Fisher Closing Argument p. 92, attached as **Exhibit AA**).

ADA Fisher's point is that there is additional physical evidence proving a sexual assault, beyond just the vaginal injury. This corroboration is critical, especially since there was no

evidence on the cause of the vaginal injury. This argument is untrue for two distinct reasons. First, Dr. Harlan testified about these scratches as minor, healing injuries.

> **Dr. Harlan**: There were some small abrasions, which are again scrapes, present on the posterior junction of the neck and back, which we call the nucle area.
>
> ...
>
> **DA Fisher**: These abrasions and bruises that you've described, can you gauge the seriousness?
>
> **Dr. Harlan**: These that I have thus far described are all minor and they are all healing. (Harlan Trial Testimony p. 490, attached as **Exhibit BB**).

Second, Rose Williams testified that these scratches happened while [redacted] was in Kentucky. ADA Fisher asked Ms. Williams about any injuries she had before Ms. Watkins picked [redacted] up:

> **Williams**: She had something like on her back like scratches or something.
>
> **DA Fisher**: Had she fallen off any of any of the playground equipment there?
>
> **Williams**: Yeah. (Williams Trial Testimony p. 210, attached as **Exhibit CC**).

No evidence was presented at trial that the scratches on [redacted] back were related to a sexual assault. Two of the State's witnesses established that the scratches happened in Kentucky. ADA Fisher still argued to the jury that Mr. Dunn caused these injuries while sexually assaulting her.

ADA Fisher later argued that there was no need to consider Rose Williams as a suspect because she was investigated and cleared.

> The Kentucky authorities could find no fault and an assault upon that child by anyone before she left the State of Kentucky, which is consistent with the medical professionals and all other evidence you have here. (Fisher Closing Argument p. 82, attached as **Exhibit DD**).

This is an inaccurate statement. Rose Williams was investigated for potential child abuse and lied to the investigators on multiple occasions. As a result of her lies, no investigation ever occurred. She was questioned after [redacted] death and lied again. The original investigation focused on Ms. Williams because of all the concerning incidents that took place over the two

months in Kentucky. Rose Williams was not investigated and cleared. She was not investigated at all.

Additionally, ADA Fisher tried to bolster the testimony of Dr. Harlan by incorrectly telling the jury that the emergency room physician independently confirmed her dating opinion. During closing argument, ADA Fisher addressed Dr. Harlan and the emergency room physician together, stating:

> These are two medicals entirely unrelated, two medical professionals who testified to their opinion that the child suffered the rape and suffered the death at a time when she was in the exclusive custody and control and at the residence of Joyce Watkins and Charlie Dunn. (Fisher Closing Argument p. 74, attached as **Exhibit EE**).

Dr. Warren Hill, the emergency room physician, did not say this. He never offered an opinion on the timing of the head trauma at trial or in any of the medical records. ADA Fisher told the jury that two doctors independently testified that the injuries must have happened while Ms. Watkins and Mr. Dunn were caring for the child. This testimony never happened. Dr. Harlan's opinion on the timing of the injury was incorrect, but this erroneous medical testimony was exacerbated by ADA Fisher arguing to the jury that Dr. Harlan's theory was independently confirmed by another doctor.

This is how innocent people are wrongfully convicted. The science is flawed, the arguments misstate the evidence, and perhaps most importantly, the prosecutor is implying that these people must be guilty because they are deviants from the wrong part of town.

11. The Denial of Post-Conviction Relief in 1994

The new scientific evidence presented in this motion shows that Ms. Watkins and Mr. Dunn were wrongfully convicted. It is important to address, however, why they were not granted relief at the post-conviction hearing in 1994. Dr. Sperry pointed out the flaw in Dr. Harlan's methodology at the hearing and Dr. Harlan conceded that her methodology was wrong.

Judge Wyatt denied relief, which was affirmed by the Court of Criminal Appeals, for several reasons, which need to be addressed. First, Dr. Harlan testified that because she did not observe fibroblasts, her opinion on timing was the same. As shown above, this opinion is undermined by her own statements on when fibroblasts appear. The lack of fibroblasts only prove that the head injury could be days old. This is consistent with the opinions of Dr. Lewis and Dr. Reddy. Dr. Harlan provided the Court with inaccurate medical information which influenced Judge Wyatt's ruling.

Second, the emergency room physician, Dr. Hill stated that the genital injury appeared to be an acute injury. The problem with this testimony is that Dr. Hill merely performed a visual inspection of the injury while focusing his efforts on the more serious head trauma. He did not have the benefit of a far more accurate microscopic inspection of the genital injury, which showed evidence of macrophages, or evidence of healing. As. Dr. Lewis points out, in her 2021 report, these cells typically respond to a site of injury in two to eight days following an injury, well before [redacted] was in the care of Ms. Watkins and Mr. Dunn. Again, Judge Wyatt did not have the benefit of this critical information.

Finally, Judge Wyatt relied upon testimony from a family nurse practitioner who testified that [redacted] suffered a penetrating injury, likely consistent with an assault. The nurse practitioner is probably correct in her analysis. The new scientific evidence presented in this motion does not refute the nature of the injury, the new scientific evidence addresses the timing of the injury. It likely was a penetrating injury which happened in Kentucky, not Tennessee, in the few hours [redacted] was with Ms. Watkins and Mr. Dunn.

The final problem with the post-conviction hearing in 1994, and specifically the appellate affirmation of the denial, concerns the circumstantial evidence presented. All the medical evidence

presented through Dr. Harlan was considered in the context of the circumstantial evidence, specifically the proof that Ms. Watkins washed the bedroom sheet to destroy evidence. This is powerful circumstantial evidence that the Court of Criminal Appeals relied upon in affirming the denial of relief. This evidence is wrong. We now know, from the investigative reports which Petitioners likely never saw before their convictions, that this "fact" presented by the State was a misrepresentation. The State's reports prove that Ms. Watkins did not wash the bedsheet and the investigators failed to gather the evidence. Petitioners did not receive a fair trial or a full and fair post-conviction hearing because the prosecutor misrepresented this critical evidence to the post-conviction court.

The reason Judge Wyatt denied relief in 1994 is because he was presented with incorrect medical opinions and misrepresented circumstantial evidence. This was not a full and fair hearing. If Judge Wyatt knew in 1994 what we know now through new scientific evidence and discovery of the investigative report on the bedsheet, Ms. Watkins and Mr. Dunn would not have spent the next two decades in prison.

Argument

Petitioners assert their claims of actual innocence through alternative pleading pursuant to Tennessee Code Annotated § 40-30-102(b)(2). First, pursuant to *Dellinger v. State*, Petitioners asserts an unequivocal claim of actual innocence based on new scientific evidence as a standalone claim that need not be tied to any independent constitutional violation.

Additionally, if this Court were to find that a constitutional claim must be articulated for a conviction to be vacated, the Petitioners raise constitutional violations pursuant to Article I, Section 8 and 9 of the Tennessee Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

In both instances, the prejudice is the same: two innocent people were convicted of crimes they did not commit because incorrect scientific evidence was presented at trial. New scientific evidence proves that Petitioners were wrongfully convicted. If all scientific evidence were presented to a jury, no reasonable juror would vote to convict.

Post-conviction relief is available "when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." TENN. CODE ANN. § 40-30-103. The Petitioner bears the burden of proving the allegations of fact in his post-conviction petition by clear and convincing evidence. *Dellinger v. State*, 279 SW.3d 282, 293 (Tenn. 2009); TENN. CODE ANN. § 40-30-110. "Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *State v. Holder*, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999) (quoting *Hodges v. SC Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)).

The Post-Conviction Procedure Act does not directly define the standard for what constitutes "new scientific evidence that the petitioner is actually innocent" for purposes of a motion to reopen. As such, it is instructive to look at the standard set out in the Post-Conviction DNA Analysis Act of 2001 along with relevant federal habeas authority. The Post-Conviction DNA Analysis Act employees a reasonable probability standard, permitting DNA testing for actual innocence when there is a finding of whether a *reasonable probability exists that the petitioner would not have been prosecuted or convicted. See* T.C.A. § 40-30-304(1). The standard for actual innocence in the Post-Conviction Procedure Act at § 40-30-102(b)(2), should be read in concert with the standard for actual innocence in the Post-Conviction DNA Analysis Act, which are two related statutes dealing with post-conviction actual innocence claims, one dealing with known

scientific evidence of actual innocence and the other dealing with DNA testing of known evidence for actual innocence.

Under federal habeas authority, a compelling claim of actual innocence not only provides a gateway for defaulted constitutional claims to be reviewed in a federal habeas corpus petition that are otherwise barred, but can independently form the basis for habeas relief from a conviction and sentence. The gateway innocence standard, established in *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 and discussed in *House v. Bell*, 547 U.S. 518, 536-37 (2006) states:

> [P]risoners asserting innocence as a gateway to defaulted claims must establish 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." 513 U.S., at 327, 115 S. Ct. 851, 130 L. Ed. 2d 808. ...[A] petition supported by a convincing *Schlup* gateway showing "raise[s] sufficient doubt about [the petitioner's] guilt to undermine confidence in the result of the trial without the assurance that that trial was untainted by constitutional error"; hence, "a review of the merits of the constitutional claims" is justified. 513 U.S., at 317, 115 S. Ct. 851, 130 L. Ed. 2d 808.

House v. Bell, 547 U.S. 518, 536-37 (2006).

> At the same time, though, the *Schlup* standard does not require absolute certainty about the petitioner's guilt or innocence. A petitioner's burden at the gateway stage is to demonstrate that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt – or, to remove the double negative, that more likely than not any reasonable juror would have reasonable doubt.

House v. Bell, 547 U.S. 518, 538 (2006).

This court can employ the reasonable probability standard articulated in Tennessee's Post-Conviction DNA Analysis Act or the federal habeas standard of "no reasonable juror would have found petitioner guilty". Petitioners are entitled to relief under either standard.

I. The Court Should Reopen the Post-Convictions in This Case Due to New Scientific Evidence Showing That Petitioners Were Wrongfully Convicted, and the Court Should Vacate These Convictions

Section 40-30-117(a)(2) allows a petitioner to file a motion to reopen a previous post-conviction petition "if the following applies:": "[t]he claim in the motion is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted" and it "appears" there is "clear and convincing evidence" that the conviction must be set aside. Tenn. Code Ann. §§ 40-30-117(a)(2), (4). *Dellinger v. State*, 279 S.W.3d 282, 291 (Tenn. 2009) (§ 40-30-117(a)(2) "allows a petitioner to reopen the first post-conviction petition by claiming actual innocence based on new scientific evidence").

The Tennessee Supreme Court defined actual innocence in the simplest terms possible: "that the person in question truly did not commit the crime for which they have been convicted." *Keen v State*, 398 S.W.3d 594, 610 (Tenn. 2012). In *Keen*, the court undertook a detailed analysis of the what the term means under Tenn. Code Ann. § 40–30–117(a)(2), a petitioner must "demonstrate actual innocence of the underlying crimes for which he was convicted." *Keen*, 398 S.W.3d at 612, *citing Van Tran v. State,* 66 S.W.3d at 822 (Barker, J., dissenting).

In such a motion to reopen, a petitioner can raise a "freestanding claim of actual innocence based on new scientific evidence." *Dellinger*, 279 S.W.3d at 290. Or the petitioner can present a constitutional violation, such as a claim that a violation of due process has resulted in the conviction of an evidently innocent person. *See generally Waterford v. State*, No. M2017-1968-CCA-R3-PC, 2018 Tenn. Crim. App. LEXIS 772, *49 (Tenn. Crim. App. July 17, 2018). Petitioners assert both an independent freestanding claims of innocence, along with evidence of significant due process violations which resulted in wrongful convictions. No statute of limitations bars either claim.

The Post-Conviction Procedure Act carves out a specific exception to the one-year statute of limitations in cases with "new scientific evidence of actual innocence." TENN. CODE ANN. §

40-30-102(b)(2) and 40-30-117(a)(2).[10] Unlike 102(b)(1) and 102(b)(3), which both require filing of the post-conviction petition within one year of the establishment of a new constitutional right or the invalidation of a conviction used to enhance the Petitioner's sentence, section 102(b)(2) and 117(a)(2) pertaining to actual innocence does not mandate any one-year filing requirement. The Tennessee Supreme Court confirmed that section 40-30-102(b)(2) provides an avenue for relief when new scientific evidence of actual innocence becomes available after the filing of a post-conviction petition is time-barred. *See Dellinger v. State*, 279 S.W.3d 282, 291 (Tenn. 2012).

Tennessee law allows Petitioners to seek relief from this Court under both a freestanding claim of actual innocence, and alternatively, through proof of innocence tied to a constitutional violation. *See Dellinger v. State*, 279 S.W.3d 282, 291 (Tenn. 2012).

II. Freestanding Claim of Actual Innocence

A freestanding claim of actual innocence asserts that new scientific evidence demonstrates that the petitioner is actually innocent of the crime and such a claim need not be tied to a constitutional violation. *See Herrera v. Collins,* 506 U.S. 390, 416-17 (1993). No Tennessee case has ever set out a definition of "new" within the meaning of "new scientific evidence of actual innocence." The absence of a one-year requirement from "time of discovery" would indicate that the scientific evidence upon which the Petitioner relies must simply be "new" relative to the conviction which he or she seeks to vacate. Sections 102(b)(2) and 117(a)(2) do not use the same language that is plainly written into the error *coram nobis* statute of "newly discovered" or recently discovered. By comparison, a post-conviction petition may be based on "new scientific

[10] 40-30-102(b)(2) governs the filing of a petition (including an initial petition) based on new scientific evidence of actual innocence. 40-30-117(a)(2) governs the motion to reopen the first post-conviction petition based on new scientific evidence of actual innocence. Section 102(b)(2) does not have a significant amount of case law, and section 117(a)(2) has even less. Because these two statutes are the same plain language for the same exact purpose – establishing actual innocence of the offense for which the petitioner was convicted – the Petitioner will be citing to relevant case law for both statutes.

evidence"—without reference to "subsequent discovery" or a showing of diligence—that establishes the petitioner's actual innocence. TENN. CODE ANN. § 40-30-117(a)(2).

In *Dellinger,* the Tennessee Supreme Court established that a petitioner may raise a freestanding claim of actual innocence based on new scientific evidence in either an initial post-conviction petition or a motion to reopen that petition. *Dellinger,* 279 S.W.3d at 290.

There is significant new scientific evidence in this case establishing innocence. As explained in detail in the fact section of this motion, the medical opinions of Dr. Gretel Harlan are wrong. These opinions were the basis of the convictions of Petitioners. Without these incorrect medical opinions, these two people are not convicted.

Specifically, Dr. Harlan incorrectly dated the timing of the injuries by employing a flawed methodology, lack of a histiocytic response, that did not meet any degree of reasonable scientific certainty. There is new scientific evidence proving her error. Dr. Adele Lewis, the Chief Medical Examiner for Tennessee, called Harlan's approach, "fraught with uncertainty." (Lewis Report, attached as **Exhibit B**). Dr. Shilpa Reddy states in her affidavit, "Dr. Harlan's methodology for dating the head injury based upon a lack of histiocytic response in the brain tissue is not a legitimate method for dating pediatric head trauma." (Reddy Affidavit, attached as **Exhibit C**). Dr. Kris Sperry discussed Dr. Harlan's approach by stating, "To utilize that criteria as a way of establishing the age of subdural hematoma is inherently erroneous because no such criteria exists at all." These opinions come from the top physicians in their field. Significantly, these opinions are not contested. Dr. Harlan admitted in 1994 that the histiocytic response methodology was incorrect. Prior to this Motion, no judge or jury has ever heard accurate science to date the injuries in this case.

Developments over the last thirty years in dating pediatric head trauma provides far better insight on dating the head injury. Dr. Reddy states in her affidavit:

> The exact time [redacted] sustained her head injury cannot be confidently determined, as edema and increased intracranial pressure can occur anywhere from 24-72 hours after a traumatic brain injury. This means that the swelling in [redacted] brain which caused the pressure, and eventually her death, could have developed up to 72 hours after she sustained the head injury. (Reddy Affidavit, attached as **Exhibit C**).

Dr. Reddy relies upon studies conducted long after this trial in 1988, or the post-conviction hearing in 1994 to reach this conclusion. Specifically, she relies upon the 2003 study, Edema fluid accumulation within necrotic brain tissue as a cause of the mass effect of cerebral contusion in head trauma patients to support her statement that increased intracranial pressure can occur anywhere from 24-72 hours after a traumatic brain injury. This means that swelling in [redacted] brain which resulted in her death could have developed 24-72 hours after the time of injury. Additionally, it is not possible, given what is known in 2021 about pediatric head trauma to state with any certainty when the head injury happened. What all the experts in this case say, with certainty, is that Dr. Harlan incorrectly testified about the window when this injury happened to exclude anyone other than Ms. Watkins or Mr. Dunn.

Importantly, there is new scientific evidence, never presented to a court, that shows the injuries in this case likely happened in Kentucky, not Tennessee. Dr. Lewis did not just review this case to provide an opinion on Dr. Harlan's methodology. Dr. Lewis looked at this case to try and determine when these injuries actually occurred. Her statements on this issue are critical:

> Perhaps a more reliable indicator of timing of this child's injuries is found in the perianal injury, where Dr. Harlan notes of the presence of macrophages within the wound. In a healthy person, these cells (macrophages) typically respond to a site of injury about two to eight days following the insult to the tissue. In a critically ill child, this cellular response could be expected to be delayed to several days or even more than a week following an injury, well before [redacted] was in the care of either Joyce Watkins or Charlie Dunn.

> In short, it is my opinion to a reasonable degree of medical certainty that both the injuries to the head and to the external genitalia of this child, [redacted] [redacted] could very well have occurred prior to the time that the child was in the custody of Ms. Watkins and Mr. Dunn. (Lewis Report, attached as **Exhibit B**).

The only evidence the jury and post-conviction court ever heard is that these injuries must have occurred after 1:35 a.m. on June 26, 1987. New scientific evidence definitively proves this was wrong. Given what we now know about the macrophages observed in the perianal injury, it is unlikely these injuries took place in Tennessee. There is no compelling evidence that Joyce Watkins or Charlie Dunn committed these offenses. The correct science proves that they were wrongfully convicted.[11]

III. Petitioners Are Entitled to Relief Based on Significant Due Process Violations

Alternatively, if this Court finds that a freestanding claim of actual innocence must be connected to a constitutional claim, Petitioners assert that their constitutional right to due process was violated when inaccurate, and now disproven medical testimony, was used as the basis for these convictions. Additionally, Petitioners assert that the material misrepresentations of the evidence by the prosecutor constitute a due process violation.

The Due Process Clause guarantees the fundamental elements of fairness in a criminal trial." *Spencer v. Texas,* 385 U.S. 554, 563-64 (1967). In assessing this guarantee, the court must determine whether the challenged conduct undermined the fundamental fairness of the entire trial. *Han Tak Lee v. Houtzdale SCI*, 798 F.3d 159, 162, 166, 168 (3d Cir. 2015) (affirming habeas corpus relief for petitioner who articulated a due process claim based on the fact that scientific

[11] There is further new scientific evidence on bruising, discussed in the statement of facts. Dr. Harlan's visual inspection of the bruising to determine the time of injury is an outdated and unreliable practice. Attached articles and studies on bruising, all published after the trial in this case show that this is a flawed methodology.

evidence used to convict him had subsequently been discredited); Discredited scientific evidence, presented at trial, constitutes a due process violation.

In *Waterford v. State*, 2018 Tenn. Crim. App. LEXIS at *49, the Tennessee Court of Criminal Appeals, cited the Third Circuit *Lee* case, for the proposition that discredited scientific evidence presented at trial constitutes a due process violation. In *Lee*, the defendant was convicted of first-degree murder and arson. He sought federal habeas relief, arguing that new developments in fire science discredited the fire science presented at trial. The Third Circuit Court of Appeals held, "if the defendant's expert's independent analysis of the fire scene evidence – applying principles from new developments in fire science – shows that the fire expert testimony at trial was fundamentally unreliable, the [defendant] will be entitled to federal habeas relief on his due process claim." *Lee*, 667 F.3d at 407-08.

Other courts agree that discredited scientific evidence, presented at trial, constitutes a due process violation. In *Drake v. Portuondo*, 553 F.3d 230 (2d Cir. 2009), the prosecution offered testimony from a prison psychologist to establish that the defendant had the requisite intent to commit murder. The expert testified that the defendant suffered from a psychological condition called picquerism, which led the defendant to commit violent offenses in a certain manner. The Second Circuit Court of Appeals granted a federal habeas petition, finding that the expert's conclusions were not based on reliable science.

In *United States v. Freeman*, 124 F.3d 794 (7th Cir. 1997), the Seventh Circuit Court of Appeals granted relief on due process grounds finding that defendant was convicted based upon false testimony offered at trial. While the case largely centered on the presentation of evidence that prosecutor should have known was false, the relevant issue is that due process served as the basis for the relief.

The trial and post-conviction hearing in this case were both fundamentally unfair, constituting a due process violation. There are two significant issues that caused the due process violation. First, both the jury and post-conviction court were presented with incorrect, discredited science. Just as in *Lee*, the scientific evidence which was the basis for the convictions was wrong. Leading experts in the field state that the methodology and opinions were wrong. Dr. Harlan, herself, admitted her original testimony was improper. While Dr. Harlan acknowledged she used an "inappropriate" term, she refused to acknowledge the impact it would have had on the substantive timing in this case. The fundamentally flawed scientific evidence presented at trial and at the post-conviction hearing constitutes a due process violation.

The Court should also consider the material misrepresentations presented by the prosecuting attorney at trial. The prosecutor intentionally misrepresented the medical evidence in his closing argument. Additionally, the prosecutor presented circumstantial evidence that Ms. Watkins destroyed evidence when she washed the bed sheet from the master bedroom. We know now, this is not true and the investigative documents, created and possessed by the State, prove this is untrue. This is particularly important because the Court of Criminal Appeals relied upon this evidence when it affirmed the denial of post-conviction relief.

The evidence in this case was never presented accurately or fairly at any stage in the proceeding. These due process violations led to the wrongful convictions.

IV. The Claims Raised in This Motion Were Not Waived or Previously Determined

A post-conviction petition must allege facts supporting claims for relief that have not been previously determined after a full and fair hearing. *See* TENN. CODE ANN. §§ 40-30-106(f); 40-30-108(c)(6). The issues raised in this petition have not been previously determined. Although a post-conviction petition, previously filed by Petitioners in 1994, alleged ineffective assistance of

counsel related to medical opinions presented at trial, that petition does not preclude this motion for several important reasons: (1) Petitioners did not receive a full and fair hearing in 1994; (2) Petitioners present new scientific evidence in this Motion, never considered or reviewed by any court; (3) the State of Tennessee may waive any procedural default.

No judge or jury has ever heard the accurate scientific evidence in this case at a meaningful hearing. Should any doubts remain concerning this Court's ability to consider the claims raised in this post-conviction petition, due process principles, as recognized by the Tennessee Supreme Court, counsel in favor of allowing the assertion of actual innocence to have a full hearing now. As explained by the Court of Criminal Appeals, the purpose of the previous determination bar "is to protect the State's interest in finality." *Allen v. State*, No. M2009-02151-CCA-R3-PC, 2011 Tenn. Crim. App. LEXIS 287, at *23-24 (Tenn. Crim. App. Apr. 26, 2011) (citing *Villaneuva v. State*, 883 S.W.2d 580, 581 (Tenn. 1994)). That, however, is not the only consideration, and it may be "overcome:"

> The due process clause, however, requires that, in order for a state to terminate a claim for failure to comply with procedural requirements, "potential litigants [must] be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner" *Harris v. State*, 301 S.W.3d 141, 145 (Tenn. 2010). Due process concerns, therefore, overcome the Act's bar on previously determined issues in some instances. *See Sample v. State*, 82 S.W.3d 267, 272-75 (Tenn. 2002) (holding that due process may prohibit strict application of the Post-Conviction Procedure Act's statute of limitations); *Phedrek T. Davis v. State*, No. M2009-01616-CCA-R3-PC, 2010 Tenn. Crim. App. LEXIS 386, 2010 WL 1847379, *1-2 (Tenn. Crim. App., at Knoxville, May 14, 2010) (applying *Sample* to the Post-Conviction Procedure Act's bar on reconsideration of previously determined issues), no Tenn. R. App. P. 11 application filed. *Allen*, at *23-24. *Id.* at *24 (noting that the justification for relaxation of the Post-Conviction Procedure Act comes "[m]ost commonly" in the context of "intentional misconduct on the part of the State"). *See also Nichols v. State*, No. E2018-00626-CCA-R3-PD, 2019 Tenn. Crim. App. LEXIS 640, at *28 (Tenn. Crim. App. Oct. 10, 2019) (noting that due process concerns may overcome the Act's bar on previously determined issues in some instances but that the petition had failed to allege how he was prevented from presenting claims at a meaningful time and in a meaningful manner).

As discussed above, the State intentionally misrepresented the circumstantial evidence at trial and at the post-conviction hearing. The medical opinions presented at trial and at the post-conviction hearing were fundamentally flawed and inaccurate. There was not a meaningful, full and fair post-conviction hearing.

Since Petitioners never received a meaningful full and fair hearing, all medical evidence presented at this stage, constitutes new scientific evidence. Judge Wyatt, presiding over the post-conviction hearing in 1994, only heard inaccurate scientific evidence and misrepresentations about the circumstantial evidence. The Court was never given the opportunity to grant relief because the Court was misled on the evidence. That is not a full and fair hearing.

Additionally, the State has the option to waive procedural defaults or defenses. The Sixth Circuit recently affirmed the principle that, "When the state makes an 'explicit and deliberate waiver' of a procedural-default defense, we cannot revisit the issue." *Miller v. Genovese*, 994 F.3d 734, 746 (6th Cir. 2021) citing *Maslonka v. Hoffner*, 900 F.3d 269, 276 n.1 (6th Cir. 2018). This makes sense given that the State would likely choose the option to waive default in a case where there is a wrongful conviction, and the State has an ethical obligation to address it.

This principle is perhaps best articulated in the concurrence of Georgia Supreme Court Presiding Justice Nahmias in the Court's denial of an interlocutory appeal in an actual innocence case:

> Prosecutors, however, may always exercise their discretion to seek justice – to do the right thing. Everyone involved in our criminal justice system should dread the conviction and incarceration of innocent people. Denial of Interlocutory Appeal - *Kevin Sprayberry, Warden v. Devonia Tyrone Inman*, (GA. 2019).

By supporting this Motion, the State is exercising its discretion to seek justice. The State is not arguing for a procedural default because the State, commendably, is doing the right thing. The State is acknowledging that justice requires the relief sought by Petitioners.

V. Prejudice: Petitioners Are Actually Innocent, and the Claims in This Motion Are Presumptively Prejudicial

Petitioners were prejudiced by the errors in his case, and each ground for relief named in this petition is supported by prejudice. However, because this is an "actual innocence" case, there is no required showing of prejudice before Petitioners are entitled to relief. *See, e.g.*, *Clardy v. State*, No. M2017-01193-CCA-R3-PC, 2018 Tenn. Crim. App. LEXIS 779, at *23-24 (Tenn. Crim. App. Oct. 17, 2018) (noting that the "State contends that Petitioner has failed to show his innocence with clear and convincing proof" and that a "freestanding claim of actual innocence may be brought under the Tennessee Post-Conviction Procedure Act").

To the extent this Court concludes that a post-conviction petitioner must establish prejudice for standalone innocence claims and/or its companion due process violations, counsel submits that prejudice may be presumed when a petitioner presents evidence of actual innocence, as it is for certain types of ineffective assistance claims, per *United States v. Cronic*, 466 U.S. 648, 658 (1984). *Accord Howard v. State*, 604 S.W.3d 53, 58 (Tenn. 2020) (describing difference between *Strickland* and *Cronic* standards, concluding that presumption of prejudice is appropriate when process has become "presumptively unreliable"); *id.* (explaining that presumptively prejudicial circumstances "include" "(1) 'the complete denial of counsel'; (2) when 'counsel entirely fails to subject the prosecution's case to meaningful adversarial testing'; and (3) when circumstances are such that 'the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial'") (quoting *Cronic*, 466 U.S. at 659-60).

Certain errors are structural in nature; in those instances, prejudice is presumed and need not be proven, shown, or found in order for relief to be granted. "Structural constitutional errors are errors that compromise the integrity of the judicial process itself." *State v. Rodriguez*, 254

S.W.3d 361, 371 (Tenn. 2008) (citing *State v. Garrison*, 40 S.W.3d 426, 433 n.9 (Tenn. 2000)). A structural error renders a criminal proceeding fundamentally unfair "or an unreliable vehicle for determining guilt or innocence." *Neder v. United States*, 527 U.S. 1, 9 (1999). Accordingly, structural errors are not amenable to harmless error review or a finding of prejudice and "require automatic reversal when they occur." *Rodriguez*, 254 S.W.3d at 361. For due process to be satisfied, "justice must satisfy the appearance of justice." *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986). The conviction and punishment of an actually innocent person certainly does not satisfy the appearance of justice and would be unconstitutional. *Herrera v. Collins*, 506 U.S. 390, 419 (1993) ((Kennedy & O'Connor, JJ., concurring). When that occurs and actual innocence is exposed, the error is structural and no showing or finding of prejudice to the person wrongfully convicted is required.

However, if this Court concludes that proof of actual innocence is not presumptively prejudicial, counsel submits that because convicting an innocent person is actually prejudicial, the question becomes whether Petitioners "might not have been convicted," in accordance with *Reed v. Ross*, 468 U.S. 1, 12 (1984) (noting concession that defendant suffered "actual prejudice" when required to prove lack of malice and self-defense, standing that "were it not for the fact that Ross was required to bear the burden . . . he might not have been convicted of first-degree murder"). *Cf. Howard*, 604 S.W.3d 58 (noting that the *Strickland* "reasonable probability" standard is "a probability sufficient to undermine confidence in the outcome").

The medical evidence presented at this trial was wrong. The medical evidence presented at the post-conviction hearing was wrong. The prosecutor intentionally misrepresented the circumstantial evidence to the jury and court. New scientific evidence proves that Joyce Watkins

and Charlie Dunn were wrongfully convicted of a murder and rape they did into commit. The travesty of these wrongful convictions is fundamentally prejudicial.

Conclusion

Joyce Watkins served 27 years in prison for crimes she did not commit. Charlie Dunn served 27 years in prison, and died before his release, for crimes he did not commit. Petitioners ask this Court to grant relief by reopening their post-convictions and vacating their sentences.

Respectfully submitted,

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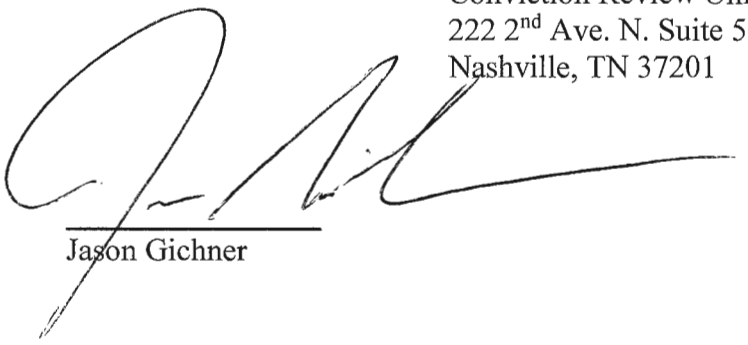
Attorneys for Joyce Watkins and Charlie Dunn

Certificate of Service

The undersigned certifies that the foregoing Petition for Writ of Error Coram Nobis, has been forwarded to the following via hand delivery or by mailing said document via United States Mail, first class postage prepaid this 12th day of May 2021:

Glenn Funk, District Attorney General, and
Sunny Eaton, Assistant District Attorney General
Conviction Review Unit, 20th Judicial District
222 2nd Ave. N. Suite 500
Nashville, TN 37201



Jason Gichner

EXHIBIT LIST

EXHIBIT	DESCRIPTION
A	Affidavit of Nathaniel Dunn
B	Report and Curriculum Vitae of Dr. Lewis
C	Affidavit and Curriculum Vitae of Dr. Reddy
D	New scientific evidence of peer reviewed medical studies
E	Dr. Nichols Letter to the Tennessee Bureau of Investigation (Sept. 29, 1995)
F	Nashville Memorial General Medical Records (June 27, 1987)
G	Vanderbilt University Medical Center Records (June 27-28, 1987)
H	Kentucky Family Services Investigative Report (June 9, 1987)
I	CID Investigation Report (June 27, 1987)
J	Transcript of Charlie Dunn statement to MNPD (June 29, 1987)
K	Pinkelton Typed Report (June 13, 1988)
L	Pinkelton Handwritten Report (June 27, 1987)
M	Tennessee Bureau of Investigation Report
N	State Medical Board of Ohio Investigation File on G. Harlan (Dec. 13, 2006)
O	Harlan Trial Testimony p. 539-540
P	Harlan Trial Testimony p. 527-528
Q	Sperry Post-Conviction Testimony p. 139-142
R	Harlan Post-Conviction Testimony p. 248-251
S	Harlan Post-Conviction Testimony p. 284-285
T	Moore Handwritten Report (June 20, 1988)
U	Bradford Trial Testimony p. 21
V	Merrill Trial Testimony p. 58
W	Treese Handwritten Report (June 29, 1987)
X	Fisher Closing Argument p. 70
Y	Fisher Closing Argument p. 66
Z	Harlan Trial Testimony p. 548-549
AA	Fisher Closing Argument p. 92
BB	Harlan Trial Testimony p. 490
CC	Williams Trial Testimony p. 210
DD	Fisher Closing Argument p. 82
EE	Fisher Closing Argument p. 74

*All exhibits are filed under seal with the unredacted motion. Additionally, the redacted motion is filed without the attached exhibits.