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STATE OF MISSOURI)

22ND JUDICIAL CIRCUIT

JUL 22 2024

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**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

Circuit Attorney, 22ND Circuit of
Missouri, ex rel. Christopher Dunn,

Movant/Relator.

No. 2422-CC00222

Division No. 18

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT

The Court has before it the Circuit Attorney of the City of St. Louis's ("the Circuit Attorney") motion to vacate or set aside Christopher Dunn's ("Dunn") convictions for first degree murder, two counts of assault in the first degree, and three counts of armed criminal action, for which he received a sentence of life without parole plus ninety (90) years in cause number 901-1555. The Missouri Attorney General ("the Attorney General") opposes the motion. A hearing was held on May 21 and 22, 2024. After the hearing, the Circuit Attorney and the Attorney General submitted post-hearing briefs. After considering the entire record, the arguments of the parties, and the post-hearing briefs, the Court now rules as follows.

PROCEDURAL FACTS

Dunn was convicted by a jury on July 18, 1991 for the May 18, 1990 murder of Ricco Rogers.¹ Dunn was also convicted of two counts of assault in the first degree and three counts of armed criminal action arising out of the same occurrence. Dunn was subsequently sentenced to life without parole and consecutive sentences of ninety years.

¹ In various documents, Ricco Rogers is referred to as Ricco, Recco, Ricky, or Rico.

Subsequently, Dunn filed a timely notice of appeal and a motion for post-conviction relief pursuant to Missouri's then existing consolidated post-conviction review system in criminal cases. At the hearing on the motion, Dunn, Martha Dunn, Arnetta Dunn, and Janis Good testified. The motion for post-conviction relief was denied. On consolidated appeal, Dunn's convictions and the denial of his motion for post-conviction relief were affirmed in State v. Dunn, 889 S.W.2d 65 (Mo. App. E.D. 1994). Dunn also unsuccessfully sought federal habeas corpus relief pursuant to 28 U.S.C. § 2254.

More recently, Dunn filed a petition for a writ of habeas corpus in Missouri court. On May 30, 2018, Dunn had a hearing on his writ of habeas corpus before the Honorable Judge William Earl Hickle in Texas County, Missouri. At the hearing in that proceeding, DeMorris Stepp ("Stepp"), Curtis Stewart ("Stewart"), Nicole Bailey ("Bailey"), and Eugene Wilson ("Wilson") testified. The Circuit Attorney's Exhibit 32 is Judge Hickle's order and judgment issued after proceeding. The judgment was issued September 23, 2020. In the proceeding, Dunn raised a freestanding claim of actual innocence under State ex rel. Amrine v. Roper, 102 S.W.3d 541 (Mo. banc 2003) as a basis for relief. The Court conducted an evidentiary hearing and evaluated the testimony of Stepp, Stewart, Bailey, and Wilson. With regard to Stepp, Judge Hickle concluded:

It is next to impossible to determine which version of events related by Mr. Stepp is the most credible. However, regardless of which of Mr. Stepp's multiple statements are true, it is beyond dispute that [Dunn] was convicted based upon the eyewitness testimony of a person who at this point has told multiple contradictory versions of what he claims to have observed the night of the shooting. Judge Hickle also detailed Davis's initial statement and his recantations. Judge Hickle also noted Stepp and Davis's recantations were bolstered by Wilson's testimony, which he found credible. Judge Hickle found Wilson's testimony credible because he believed he had no obvious motive to lie. Judge Hickle found Wilson did not speak to the police because he did not see who did it and

did not believe he had any relevant information to add to the investigation. Further, Judge Hickle noted, Wilson's credibility was enhanced because he had lived with Ricco Rogers's family since he was fourteen years old and was very close to Ricco Rogers's mother, giving him no apparent motive to hinder the investigation into who killed Ricco Rogers.

Judge Hickle also explained Wilson testified that Ricco Rogers's mother's boyfriend had a motive to commit the crimes because Ricco Rogers, Stepp, and Davis had beaten him up three days earlier after he had physically abused Ricco Rogers's mother. Further, one of Ricco Rogers's brothers, who was also involved in beating up his mother's boyfriend, was shot and killed three months later.

Judge Hickle also found Dunn's claim of innocence was corroborated by Catherine Jackson (who provided an affidavit) and Bailey's testimony, Stewart's testimony, and the testimony of the alibi witnesses at the Missouri Supreme Court Rule 29.15 hearing, and evidence that Dwayne Rogers, Ricco Rogers's other brother, had made statements that Dunn was not the man who had killed his brother and that he knew the identity of the actual shooter.

Ultimately however, Judge Hickle denied Dunn's freestanding claim of actual innocence because, at that time, such a claim was only cognizable for a petitioner who had been sentenced to death. However, in evaluating Dunn's gateway claim of actual innocence, Judge Hickle noted new evidence had emerged, in addition to the recantations, that made it likely that reasonable, properly instructed jurors would have reasonable doubt and would find [Dunn] not guilty. Judge Hickle specifically found this new evidence was Wilson's credible testimony, which buttressed the recantations of Stepp and Davis. Thus, coupled with Dunn's alibi, Judge Hickle did not believe any jury would now convict Dunn under these facts.

Then, finally, the Circuit Attorney initiated this proceeding pursuant to Section 547.031, RSMo (2021).² At this proceeding, Wilson, Stewart³, Davis⁴, Scott Roder, Bailey, Arnetta Dunn, Martha Dunn⁵, Dr. Nancy Franklin, Ph.D., Detective Gary Stittum⁶, Jeffrey Mancini, and Steven Ohmer provided testimony.

LEGAL STANDARD

Section 547.031 provides, in full:

1. A prosecuting or circuit attorney, in the jurisdiction in which a person was convicted of an offense, may file a motion to vacate or set aside the judgment at any time if he or she has information that the convicted person may be innocent or may have been erroneously convicted. The circuit court in which the person was convicted shall have jurisdiction and authority to consider, hear, and decide the motion.

2. Upon the filing of a motion to vacate or set aside the judgment, the court shall order a hearing and shall issue findings of fact and conclusions of law on all issues presented. The attorney general shall be given notice of hearing of such a motion by the circuit clerk and shall be permitted to appear, question witnesses, and make arguments in a hearing of such a motion.

3. The court shall grant the motion of the prosecuting or circuit attorney to vacate or set aside the judgment where the court finds that there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment. In considering the motion, the court shall take into consideration the evidence presented at the original trial or plea; the evidence presented at any direct appeal or post-conviction proceedings, including state or federal habeas actions; and the information and evidence presented at the hearing on the motion.

4. The prosecuting attorney or circuit attorney shall have the authority and right to file and maintain an appeal of the denial or disposal of such a motion. The attorney general may file a motion to intervene and, in addition to such motion, file a motion to dismiss the motion to vacate or to set aside the judgment in any appeal filed by the prosecuting or circuit attorney.

² All further statutory references are to RSMo (2021).

³ Stewart's testimony at the current proceeding consisted of reading designations of his testimony at the habeas corpus proceeding before Judge Hickie into the record. He did not provide live testimony.

⁴ Davis's testimony consisted of a taped audio statement.

⁵ Arnetta and Martha Dunn's testimony at the current proceeding consisted of reading designations of their testimony at the post-conviction relief hearing into the record. They did not provide live testimony.

⁶ Gary Stittum retired as a sergeant of police at the St. Louis Metropolitan Police Department, but the events at issue here occurred when he was a detective so the Court will refer to him as Detective Stittum.

Thus, the standard this Court is applying from subsection 3 is that if this Court “finds that there is clear and convincing evidence of actual innocence . . . that undermines the confidence in the judgment,” this Court shall vacate or set aside Dunn’s conviction. There is no constitutional error asserted in this case.

While Section 547.031 was enacted in 2021 and has only been applied in a few cases,⁷ the clear and convincing evidence of actual innocence standard first appeared in Missouri in State ex rel. Amrine v. Roper, 102 S.W.3d 541 (Mo. banc 2003).⁸ In that case, the Supreme Court explained a freestanding claim of actual innocence is evaluated on the assumption that the trial was constitutionally adequate. Id. at 547. As a result, the evidence of actual innocence must be strong enough to undermine the basis for the conviction so as to make the petitioner’s continued incarceration and eventual execution manifestly unjust even though the conviction was otherwise the product of a fair trial. Id. Moreover, because an actual innocence claim necessarily implies a breakdown in the adversarial process, the conviction is not entitled to the nearly irrebuttable presumption of validity afforded to a conviction on a direct appeal challenging the sufficiency of the evidence. Id. at 548. In addition, in Amrine, the Supreme Court found it was not required to impose as high a standard as would a federal court in reviewing a freestanding claim of actual innocence, for, as discussed, the Supreme Court is not affected by the federalism concerns that limit the federal courts’ jurisdiction to consider non-constitutional claims of actual innocence. Id.

⁷ Trial court proceedings include Circuit Attorney, 22nd Judicial Circuit of Missouri, ex rel. Lamar Johnson, 2222-CC09375; State v. Kevin Strickland, 16CR79000361-01; and Sandra Hemme v. Chris McBee, 23LV-CC00008. Appellate Court proceedings include State v. Johnson, 654 S.W.3d 883 (Mo. banc 2022).

⁸ Prior to the enactment of Section 547.031, RSMo, Missouri did not permit freestanding claims of actual innocence unless the convicted person faced execution. Section 547.031 now provides the vehicle for freestanding claims of actual innocence regardless of whether the convicted person faces execution.

Thus, the Supreme Court found the appropriate burden of proof for a habeas claim based upon a freestanding claim of actual innocence should require the petitioner to make a clear and convincing showing of actual innocence that undermines confidence in the correctness of the judgment. Amrine, 102 S.W.3d at 548. The burden of establishing a fact by clear and convincing evidence is heavier than the “preponderance of the evidence” test of ordinary civil cases and is less than the “beyond reasonable doubt” instruction that is given in criminal cases. Id. Evidence is clear and convincing when it instantly tilts the scales in the affirmative when weighed against the evidence in opposition, and the fact finder’s mind is left with an abiding conviction that the evidence is true. Id.

In applying this standard in Amrine, the Supreme Court noted in reviewing a claim under this standard, the evidence supporting the conviction must be assessed in light of all of the evidence currently available. The Supreme Court found:

Although the evidence at trial was constitutionally sufficient to support the conviction, the evidence was not overwhelming. There was significant evidence indicating Amrine’s innocence from the beginning. At trial, officer Noble identified Terry Russell as the perpetrator. He did not identify Amrine as the killer. Nor did the six inmates who testified that Amrine was playing cards in another part of the recreation room. There was no physical evidence linking Amrine to the murder. Instead, Amrine was convicted solely on the testimony of three fellow inmates, each of whom have now completely recanted their trial testimony.

This case thus presents the rare circumstance in which no credible evidence remains from the first trial to support the conviction. This Court, sitting as an original habeas court, determines based on this record that under these rare circumstances, there is clear and convincing evidence of Amrine’s innocence. As such, confidence in his conviction and sentence are so undermined that they cannot stand and must be set aside.

Id. at 548–49.

In Judge Wolff’s concurring opinion, he notes the law usually does not condone recantations; they are not normally recognized to overturn a lawful conviction or sentence. Amrine,

102 S.W.3d at 549. Then he addresses the question of who should determine which time the witnesses were lying. Were they lying when they testified against Amrine or when they recanted? The only thing we know for sure is they are liars. Judge Wolff ultimately concluded if a credibility determination needs to be made, it should be made by a jury in a new trial; the State should get no benefit from the original judgment because it was based solely on the testimony of liars. Id. at 550.

The Supreme Court has explained that a clear and convincing showing of “actual innocence” is one that is strong enough to undermine the basis for the conviction so that the continued imposition of the sentence is manifestly unjust. Id. at 547. While the Court normally looks at the plain language of a statute to determine its intent, in this situation, the phrase “actual innocence” has a particular meaning in the context of Section 547.031. In evaluating a gateway claim of actual innocence, the United States Supreme Court has noted “[t]he meaning of actual innocence . . . [is that] in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” Schlup v. Delo, 513 U.S. 298, 329 (1995). The Court’s task is not to make an independent judgment regarding what likely occurred or whether reasonable doubt exists, but rather to make a probabilistic determination about what reasonable, properly instructed jurors would do in light of the new evidence. Id.

As the Missouri Supreme Court noted in Amrine, in light of the resulting lack of any remaining direct evidence of Amrine’s guilt from the first trial, Amrine has already met the clear and convincing evidence standard, for our confidence in the outcome of the first trial is sufficiently undermined by the recantation of all the key witnesses against him in the first trial to require setting aside his conviction and sentence of death. Amrine, 102 S.W.3d at 544.

As noted above, Section 547.031.3 requires the Court to consider “the evidence presented at the original trial or plea; the evidence presented at any direct appeal or post-conviction proceedings, including state or federal habeas actions; and the information and evidence presented at the hearing on the motion.” Here, the Attorney General argues that much of the record in this proceeding consists of hearsay and inadmissible evidence that should not be considered. However, Section 547.031.3 specifically directs the Court to consider “information and evidence” presented at the hearing. Other Missouri Courts have found “the inclusion of the word ‘information’ in addition to ‘evidence’ indicates that the Court may properly consider relevant offerings made during the hearing that might not otherwise constitute admissible evidence.” See State v. Kevin Strickland, 16CR79000361-01. Thus, the Court concludes this broad admissibility standard includes affidavits and hearsay evidence.

With this in mind, the Court will turn to an accounting of the relevant evidence and information that was entered into the record in this proceeding.

FINDINGS OF FACT

The following sections will detail the evidence the Court has found relevant in this inquiry after reviewing the entire record. The Court will begin by presenting Stepp and Davis’s statements and demonstrating how the statements have evolved over the years.

DEMORRIS STEPP’S STATEMENTS

May 19, 1990

The Circuit Attorney’s Exhibit 21 is a transcript of the taped statement of Stepp, which was taken by Detective Gary Stittum on May 19, 1990 at 2:50 a.m.⁹ Stepp was fourteen years old when

⁹ As the Court begins to provide quotations from these different sources, the Court will note that many of them contain numerous typographical, grammar, and spelling errors. Instead of attempting to correct and signify the corrections of these errors, which would be a distraction, the Court has chosen to leave the quoted language in its original form.

he gave this statement. Stepp stated that he, Ricco Rogers, and Michael Davis were on the porch "talking and dancing" when they heard gunshots. Stepp stated "the first gun shot fired and that -- it missed my head by an inch and I ducked from it. And the second gun shot I started running, and I called Recco, and Mike had ran east of the pig of Pig's house, around the corner. And I was running and I, and as I looked back, I seen Recco fall." At some point, Stepp stopped running and went back to the scene with others. Detective Stittum asked Stepp if he saw what direction the gun or bullet was fired from to which he replied "No sir." Detective Stittum then asked if he saw anybody else outside other than the people that were there with him. Stepp responded that he saw "Christopher Dunn" or "Trap," which was allegedly his nickname. Stepp then stated Dunn was "around the corner from -- next door to the people that live Pig (inaudible). It, it, it was a lot, it's a lot right there, and he was hiding around the corner." Detective Stittum clarified, "Okay. And that, would have been to the -- the west of 5709?" Stepp responded, "Yes sir." Detective Stittum asked him how he knew it was Dunn to which Stepp responded:

I looked at his face, but you know, you know how you see somebody and you don't see 'em, you know . . . [y]ou know, I thought my mind, you know, was playing games and I looked dead in his face, and I guess he fired, he thought I seen him, so he shot at me first . . . [i]t missed me just by an inch, and I had -- then after the first shot I had ducked, and I had start running and.

Detective Stittum then followed up by asking if he saw Dunn prior to the shots being fired. Stepp responded "He was shooting the gun." Detective Stittum then asked what he had on, and Stepp responded that had on a white shirt and a blue baseball cap. Later, Detective Stittum asked if anybody was having any problems or exchanged any words with Dunn, and Stepp responded "not that I know of, no sir."

Trial—July 16-18, 1991

At trial, Stepp was fifteen years old and testified that he, Ricco Rogers, and Michael Davis were talking on the porch at 5607 Labadie at around 11:20 p.m. on May 18, 1990. Stepp also testified he was familiar with Dunn from seeing him around the neighborhood. Stepp testified a Marlin Tolliver, Darian Smith, and Nooky were around, but had departed to go to the China Man Restaurant. Stepp testified "I looked around on the side of the gangway where the two gangways were, and I seen Christopher Dunn . . . [h]e was between the gangways . . . I'd say about twelve, thirteen feet" away from him. Thus, already at trial, Stepp's earlier equivocation where he stated "you see somebody and you don't see'em" has given way to certainty. Then the following examination occurred between the prosecutor and Stepp:

Q And when you saw him, what happened next?

A Nothing. I really didn't bother to worry about it. And as I was still standing there, I heard shots and I seen firing over my head, as the shots went past, and I ducked and I looked and I began to run.

Q Did the defendant, Christopher Dunn, say anything before these shots?

A No, sir, he didn't.

Q Did you see a handgun at all?

A Yes, sir.

Q Or weapon of any sort?

A Yes, sir. It was nickel-plated. I don't know what kind of gun it was.

Q You saw that in the Defendant's hand?

A Yes, sir.

Q Now, after you heard the shots, what did you do?

A I began - at first I dropped. And as I ran, I tried to grab Rico, because he was behind me.

Q Now, which way were you starting to run?

A I was running west.

Q All right. Now, as you started to run, what if anything did you do?

A As I ran I was trying - the guys were behind me, and they was running. So I was hopping the gate. And when I looked back, I seen Rico and David fall, and so when they fell, I kept on running.

Q Where did you run?

A I ran and hopped the gate, and I was going down by the China man, where Marlin and them had went.

Q Now, did you see where Christopher was going as this went on?

A No, sir, I didn't pay no attention.

This exchange marks the first time Stepp stated that he saw the gun. Subsequently, Stepp testified he heard three shots and when it was over, he went back to the porch to find Ricco Rogers and Michael Davis lying on the ground. Then they realized Ricco Rogers had been shot and Marlin's mother called the police. Stepp also testified he had seen Dunn earlier in the day, but that he had not had any problems with him that day or ever.

On cross-examination, Stepp testified the shooting happened at the "[d]arkest part of the night," but that he saw Dunn before the shooting began. Stepp also testified that he was also facing charges in an unrelated case and the prosecutor had agreed to dismiss the armed criminal action count in exchange for his testimony in the Christopher Dunn case. Stepp testified that was "very important to [him]" because it gave him a chance at probation.¹⁰

Affidavit—October 21, 2005

The Circuit Attorney's Exhibit 8 is Stepp's affidavit dated October 21, 2005. In this affidavit, Stepp states:

On May 18, 1990, I sat on the front with four friends when (4) four people started to shoot at us, at first I didn't see anyone then I heard more shots and ran, I thought it was "Trap" Chris Dunn, because at the time I was just afraid and didn't like him and because I was told to say it was him by the police, the police didn't want Dunn out there because they said he was a real trouble maker for them. I made a mistake by lying and going along with the police officers, I lied on Chris Dunn, to save myself, I I lied during trial because the prosecutor said I would go home if I said everything he asked me to say about Chris Dunn to get the conviction, I was facing 15-30 years in prison so I was given a deal to lie, who wouldn't have. I was only a young juvenile at the time and didn't know any better. I was afraid if I didn't say it was him the police would beat me up or kill me, Tony Kelly was there but they didn't want to use his statement because it didn't go with the police statement. Michael Davis said it was Dunn because I said it was him, Mike asked me who was it, but the police helped us with our statements. It was not Dunn that committed the killing, and I, and God know it. I wasn't sure who did the shooting

¹⁰ The same day that he testified Stepp did plead guilty in the separate case in front of the same judge with the same prosecutor. After a lot of discussion with the judge and family members who were present, Stepp did receive probation in that case.

I couldn't see, it was too dark to see anything that night on a lot at the trial it was easy because they helped us say it all.

The guy who shot Ricky was in pigs gangway next door in between 5607 & 5605 yellow house. The police showed me pictures of Dunn prior to the police line-up. But Dunn was not the shooter I tried to tell them that I made a mistake but they wouldn't listen because they wanted Dunn off the streets. Honestly I was a juvenile scared and didn't know any better, and thought that if I didn't say that Dunn did it, I would be hurt or killed. Because the guys sold drugs for the police.

I'm willing to come forward with the truth after all these years, because my conscious has been eating a way at me for all these years AND I just want to do what is right now and tell the truth.

In this statement, Stepp recants his prior statement and trial testimony where he said it was Dunn. Stepp states he was lying previously and he also says there were four people shooting at them, among other things.

Habeas Corpus Proceeding—May 30, 2018

Stepp testified the night of the murder he was at 5607 Labadie with Michael Davis, Ricco Rogers, Marvin Tolliver, Tony Kelly, and "Geno." Stepp testified they were laughing and talking on the porch when shots rang out. Later, Stepp testified before the gunshots he saw a shadow in the gangway between the houses. He also testified he did not see who was firing the shots because it was dark. He then testified he knew Dunn, but was not friends with him and he stated he did not see him so he could not say he was there that night. Stepp also testified it was a lie when he told the police Dunn was the shooter. Stepp was then asked why he said it was Dunn to which he replied:

A I believe I was – police and a few other people just keeping saying, you know, it was him. And anytime you going through some type of turmoil or losing a friend, you want to do something so bad to try to rectify what's going on. And I think it just was a whole other time, and that's what was being put out there and I think that's what I repeated to the detectives.

Q Did you have any personal animosity against Mr. Dunn?

A No, I don't think so.

Q Okay. Did you not like him?

A No, I don't think so.

Q Now you testified, I believe, also later at the trial the following year; is that correct?

A Yes, sir, I think so.

Q And you also identified Christopher Dunn as the guy you saw shooting the — and who killed your — your friend; is that right?

A I did.

Q Was that true?

A No. No, it was not.

Q So what, if you were — what — what is the truth?

A Well—

Q What did you actually see?

A I think that I just told you. I just told you why I said what I said and why I believed, at that point, that Christopher Dunn was or could have been the individual, because there was a heated argument that took place between — supposedly took place between him and Ricco, and this is what everybody was saying out of their mouth, that that's who it was.

Q So before you talked to the police, did you and Michael Davis talk and agree that you were going to say Christopher Dunn did it?

A Well, he asked me, and I told him, yeah, to say that.

Q So he — he followed your lead on that, right?

A Yes.

Q Now you're saying there was a — an incident between Ricco and Christopher Dunn a few — was it the day before or when did that happen?

A I believe it was the same day.

Q And what was that about?

A Don't know.

Q You didn't — you didn't witness it?

A Didn't witness it.

Q You just heard about it?

A Ricco told me about it.

Q Now do you recall —

A Excuse me.

Q -- testifying at the trial, at page 143, that you knew of no problems or no motives for Christopher Dunn to have any problems with you or Ricco, or anybody else on the porch?

A I don't — I don't recall anybody else, but I know, as far as myself, I didn't have any problems.

Stepp went on to testify that it was dark when the shooting happened and he did not see a gun, though he saw shots being fired from the gangway, but did not see a person's face or anything like that. Further, he testified he did not see Dunn shoot his friend and did not see him holding a handgun that night. Stepp then testified the same day he testified at Dunn's trial, he later went

back with the same judge and prosecutor and pleaded guilty to a separate incident for which he was promised he would receive probation.¹¹

Stepp was then asked about the affidavit he executed in 2005 where he admitted he lied at Dunn's trial, and he stated it was true that he had lied at the trial.

Stepp was also questioned about an interview he did with an investigator for the Attorney General. Stepp testified he mentioned to the investigator a prior fight between Ricco Rogers and Dunn, but at trial he had not mentioned that and actually testified he did not know of any bad blood between himself, Dunn, or Ricco Rogers.

Stepp was also questioned about his earlier statement that he saw two men that night and one was Dunn. Stepp stated he recalled that, but that it was not true and he was lying when he said he saw Dunn there that night. Stepp also testified he was lying when he identified Dunn, and his motivation in all of this was to be freed in his separate case to which he was pleading guilty.

On cross-examination, Stepp testified he, Michael Davis, and Ricco Rogers were the only ones present for the shooting. Stepp also admitted telling an investigator he strongly believed Dunn was there when the shooting happened, but he did not know why he said that and he did not see Dunn there that night. Stepp also testified he did not know Tony Kelly.

On redirect, Stepp testified the people who went to the Chinaman could have seen something on their way back. Then Stepp reaffirmed that he was lying at Dunn's trial because he could not see who fired the shots because it was dark.

Other Statements

The Court notes the Attorney General sent an investigator to interview DeMorris Stepp before this proceeding. However, the Attorney General did not timely disclose this potential

¹¹ Judge Hickie concludes in his written judgment and this Court agrees it is clear from the record that Stepp was not actually promised probation, but was given a chance at probation, and he ultimately did get probation.

witness to the Circuit Attorney. As a result, the Court excluded the witness. However, as a compromise, the Court did *sua sponte* writ Stepp in and made him available for both parties to call as a witness if they desired. Neither party called him as a witness.

After reviewing the above, this Court agrees with Judge Hickle's conclusion that "[i]t is next to impossible to determine which version of events related by Mr. Stepp is the most credible."

MICHAEL DAVIS'S STATEMENTS

May 19, 1990

The Circuit Attorney's Exhibit 28 is a transcript of the taped statement given to Detective Stittum by Davis at 3:00 a.m. May 19, 1990 when he was twelve years old. Davis stated he, Stepp, and Ricco Rogers were talking on the porch and "I know we just heard some shots, and we -- we ready -- run then. We heard another one, and the shot (inaudible) and DeMorris grabbed Recco, but Recco got shot, and he fell, and DeMorris went across Lukey yard, into another yard, on down the street and I fell on the ground, play like I was dead, and I -- I looked back up and I seen -- the -- Trap glasses and --." At that point, Detective Stittum interrupted and asked what was Trap's real name and Davis responded Dunn. Detective Stittum then asked how Davis knew it was Dunn, and Davis responded "Cause I see the way his glasses on his face. The way he wears his glasses . . . [p]ressed against his face." Davis was then asked to describe the glasses, and he stated "[t]hey are, they ain't prescription glasses, they just little bitty sun glasses like. With the -- the one's that -- the things that go across the ears in the back." Davis also stated Dunn was wearing a white tee shirt and was standing "on the side of a neighbor house." Davis also stated after they heard a shot, he and Stepp "looked around" and did not see a muzzle flash and then they ran. Davis also stated to his knowledge no one had any bad feeling toward or altercation with Dunn.

The Court notes that Davis mentions identifying Dunn by his glasses, which were not mentioned by Stepp. Further, Davis does not mention a baseball cap, which Stepp did mention.

Trial—July 16-18, 1991

Davis, who was thirteen years old at the time of the trial, testified. Davis described Ricco Rogers, Stepp, and Dunn as friends. Davis testified the he, Ricco Rogers, and Stepp were talking on the porch when somebody started shooting. Davis also testified he saw the shooter only after a shot had been fired and it was Dunn. Davis also testified he did not even know anyone was there until a shot was fired, and after the shot he looked when Ricco Rogers fell and then he laid on the ground. Davis also testified the shooter was not in the gangway, but was on the side of a white house west of where Ricco Rogers was killed.

The Court notes that both Stepp and Davis initially reported seeing Dunn around the side of the westerly neighboring house. However, Stepp's trial testimony diverged, placing Dunn in the gangway between the westerly neighboring house and the house where Ricco Rogers was killed.

Interview Transcription—November 17, 2015

The Circuit Attorney's Exhibit 29 is a transcription of Davis's interview with Craig Speck, a private investigator. This interview took place November 17, 2015. In this interview, Davis states he did not see the shooter. When asked who brought up Dunn's name, he responded, "I think we brought up his name because we didn't like him. He was terrorizing the neighborhood." Davis was then asked to clarify who he meant when he said "we" and he said himself and Stepp. When asked to elaborate on why they would say it was Dunn, the following conversation transpired:

- A Christopher Dunn was a Crip living in a Blood neighborhood.
Q Okay.

A So he was hated regardless. And then he was pushing his weight around the neighborhood. He came in contact a few times with Ricky and um, but, you know, I don't know what that ended up to but um in all actuality we didn't see him shoot. We didn't know who the shooter was. We just know somebody fired off some shots. It could have been anybody.

Q So tell me again why was Chris Dunn's name brought up in this investigation to police officers?

A Because he was the last person who got in an argument with Ricky.

Q Okay. Do you know what that argument was about?

A Maybe some gang-banger stuff probably. It had to be some gang-banger stuff.

Q Did you or [Stepp] ever tell the police or the prosecutor that Ricco had shot a man the day before?

A Um, yes.

Q And did you tell the police or the prosecutor or both?

A We just told the – we never talked to no prosecutors and that. We just talked – we just did an actual interview with the police afterwards – after the shootin' and then several years down the line they come and pulled me from California back down to St. Louis, showed me some pictures and tell me what – well they had – Ricky's mom had contacted me in California cause I wasn't gonna come. You know what I'm saying because by that time I'm at the age of where it seemed like snitchin'. You know what I mean and so I wasn't gonna come. So they had Ricky's mom called me and coerced me and called and cried and coerced me down. But, you know what I'm saying. So I went down. Then when I got there to St. Louis I denied it again and they showed me pictures of Ricky that night and then it was like this is what he did to your friend. You better go up in there and get him out of the way cause he can do it to somebody else, you know what I'm saying, if not. And so I went in there on that and just said it was him. I didn't know it was him. Never seen him. I'd only seen him a few times in my whole life anyway. Didn't know him. You know what I'm saying. By conversation we never said anything to each other. It was just out of animosity we said it was him basically. We wanted somebody to pay for it. He argued with Ricky so we said it was him. We didn't know it was him. We never had no ID. We didn't know who shot at us that night. You know what I'm saying. We don't even know if he was trying to shoot – we don't even know if they were shooting at Ricky or all us. It could have been some Bloods, some Crips shooting at us cause we was Bloods at the time. It ain't no telling who shot. Ricky was just the unfortunate one to get shot that night.

Q Okay. And so – so just to back up and clarify, the police department – the detectives with the police department did they interview you the day after Ricky was shot?

A No, they interviewed us that night and never interviewed us again.

Q Okay. They interviewed you that night?

A Yeah.

Q And they showed you a picture of Ricky after he was shot?

A No. No. We went in there – like I said, we went in there as animosity that night that Ricky got shot and we said it was him. Right. Okay, now that's all they

did is that initial interview after who was the witnesses. You know how the police say who was the witnesses, they take you downtown, they interview you. You know what I'm saying so they can go after their suspect or whatever and that was it. I didn't hear from the police until I was like already, you know what I'm saying, 19 or whatever age I was at but I was already in California for several years before I heard from the police again. I guess he fought his trial for so long and it was time for him – you know what I'm saying – to get – he was going to trial, you know what I'm saying and that's when they came again. That's when I came down there and then I don't know if it was the same detectives if they were still around at the time or if some more detectives had taken over the case but they was the ones who showed us pictures before because I wasn't gonna go back up in there and testify on the stand. You know what I'm saying. Once they got me down there and then that's when they showed me pictures right then and there. Several years later. Like this is your friend. You are gonna let them do this to your friend. You know what I'm saying. Whoa, whoa, whoa and so they coerced me to go up in there and say he did it. So I went and went under oath and I lied. I said he did it. I never seen him do it. You know what I'm saying.

Q Okay. When you say – when you use the word coerced – did they offer you an incentive for your testimony against Christopher Dunn?

A They didn't offer me nothing. They just offered us – they didn't offer nothing.

Q So they just encouraged you to continue pointing Christopher Dunn as the suspect in the shooting of Ricky?

A Yes sir.

Q Um, so did you see the man who Ricco shot the day before? Ricky – Ricco aka Ricky had shot the day before?

A Um, yeah, his mother's boyfriend I think.

Q Ricky's mother's boyfriend?

A I think so. I think it was that.

Q Do you know what his name was?

A No.

Q Did he look similar – did he look like Christopher Dunn? Did those two –

A Christopher Dunn – I know one thing, Christopher Dunn is light-skinned and I know Ricky's dad was dark-skinned. Or Ricky's stepdad I think. So, if I ain't mistaken.

Q Okay. So the person – the man who Ricky shot the day before did not look anything like Chris Dunn?

A Uh-uh.

Later, Davis was asked why he decided to tell the truth about Dunn and the shooting incident now. He responded,

Cause I know that we wasn't telling the truth at the time. I know we didn't know. We just mad at Christopher Dunn because he was a Crip in our neighborhood

stirring up a lot of mess and we wanted him – we just – he was really not liked in our whole neighborhood. Put it like that. And we just wanted to get rid of him I guess. We was kids, you know what I'm saying. That's the way it went. That's how the story went and, you know, out of the back of my mind it always hit me with, you know what I'm saying, after I got to jail and seeing people getting convicted for murder and all that it comes back to you like man, I testified on a man that I don't even know if he did that. You know what I'm saying. So here now I'm given a second chance, you know what I'm saying, to reverse my testimony so I went with it.

Then when asked if he recalled what the shooter was wearing, Davis answered,

We – it was like a sniper. We never seen the shooter. It was dark. We never seen the shooter . . . we didn't know. He was like a sniper. It was bullets – bullets came out. We didn't know. We have idea where they came from from the sounds of the shots, you know what I'm saying and it wasn't nobody but probably me – me and [Stepp] nobody else wanted to come. Cause there was more than me and [Stepp] on the porch at the time of the shots. There was probably about four of us I think. Four or five of us on the porch. And then the rest of our friends were going to the store. They just walked off and they ran back because they heard the shot. Um, he was like a sniper. We never seen the shooter.

Affidavit—March 10, 2016

The Circuit Attorney's Exhibit 9 is Davis's affidavit dated March 10, 2016. In this affidavit, Davis states:

1. My name is Michael Davis, Jr. I am currently incarcerated at the Solano County Justice Center Detention in Fairfield, California 94533 awaiting disposition of charges currently pending against me in Solano County, California.
2. I was born August 9, 1977 and grew up in St. Louis until I left when I was 13 years old. I am currently 38 years old.
3. On May 19, 1990, I was 12 years old and lived at 5563 Terry in St. Louis, Missouri.
4. On May 18th and 19th I was with my childhood friends, Nukey, Pig (Nukey's brother), Demorris Stepp and Ricco (Ricky) Rogers. Everyone by Demorris, Ricco and I left to go to the neighborhood store. While the three of us were sitting on the front porch steps of Marvin Tolliver's home at 5607 Labadie, Mr. Rogers was shot and killed.
5. From my vantage point at the time the shots were fired, I could not see or identify the shooter. I could not even say where the shooter was or where the shots came from. I also know that because of where Demorris Stepp was sitting, he could not have seen or been able to identify the shooter. He told me that night he did not see the shooter and he was next to me on the porch and could only see what I could see, which was nothing.

6. I knew of Christopher Dunn from the neighborhood and from my friend Demorris Stepp. It was rumored that Dunn was a member of a rival gang, the Crips, but was nonetheless living in a Blood neighborhood which would have been hostile territory.
7. People in the neighborhood hated Dunn because of his rival gang affiliation, because he was pushing his weight around, and because he was messing with (dating) a girl in the neighborhood.
8. I was interviewed the night of the shooting by members of the St. Louis Metropolitan Police Department. That night, before we were interviewed by the police, Demorris Stepp and I had decided to tell the police that Dunn was the shooter even though neither of us saw him at the scene or believed that our statements were true. After Demorris Stepp and I had talked, we decided that we would both testify that it was Christopher Dunn who killed Ricco. The truth is that we did not know who shot at us and killed Ricco.
9. I along with Demorris and other members of our gang (Bloods) wanted Dunn out of the neighborhood and claiming that Dunn had shot Ricco seemed like an easy way to get that done. We told the police that Dunn shot and killed my friend Ricco Rogers. I was told that he and Ricco had an argument earlier that same day. I don't know exactly what the argument was about but I believe it had to do with gang affiliation. I was not interviewed by the police again until July of 1991 during Dunn's trial. (*State of Missouri v. Christopher Dunn*, Circuit Court of the City of St. Louis, Cause #901-1055)
10. Approximately two weeks after the shooting, I moved from St. Louis to California with my mother. In July 1991, during Dunn's trial, I was taken by the police from California to Missouri and questioned. During the interrogation I was shown pictures of Ricco's body. When I hesitated about having actually seen the shooter, they showed me pictures of Ricco's bloody dead body near the front porch. When they showed me the pictures they were saying things like: "This is your friend." "This is what he did to your partner." "Are you gonna let me do this to your friend." I felt that I was being coerced to testify that Christopher Dunn was the shooter, and despite having sworn to tell the truth, I lied and testified just as the police told me to—that Christopher Dunn shot Ricco Rogers.
11. The police also had Ricco's mother call me. She was crying and asking me to help them get rid of this guy, saying things like he did not deserve to be on the street and that he was a "monster." This phone call only added to the pressure.
12. The police told me that I needed to testify and identify Dunn in the courtroom as the shooter so that he could not shoot or harm someone else. They continued to push me to testify that the shooter was Christopher Dunn and I eventually testified in court claiming I had seen Dunn at the time of the shooting. That testimony was false.
13. Because we identified ourselves as members of the Bloods street gang, we talked ourselves into believing that it could be some Crips shooting at all of us. I do not believe that Ricco was targeted but that he was a casualty that resulted from shots being fired at the group.

14. I decided to come forward and tell the truth because I know now what can happen to someone if they are convicted based on a witness who lies and falsely testifies that the wrong person is the guilty party. I have been told that Mr. Dunn was sentenced to life in prison and it hit me that my testimony was responsible for taking his life away even though I did not see him shoot at anyone, nor did I see him anywhere in the vicinity of the Labadie house the night that Ricco was shot.

Private Investigator Interview—June 9, 2017

The Circuit Attorney's Exhibit 14 is a transcript of a private investigator's interview with Davis that occurred on June 9, 2017. Essentially, the private investigator explains that he is attempting to get Davis's reaction to a statement Stepp gave on May 11, 2017. Davis indicated it was accurate that he and Stepp arrived at the house where Ricco Rogers was later killed at between 10:45 and 11:45 p.m. However, he clarified that the reason people thought Dunn was the shooter is Ricco Rogers had stated he and Dunn had recently had a confrontation where Dunn slapped Ricco Rogers. Davis then stated that "Nobody seen Dunn do it." Davis explained they just assumed that because Ricco Rogers was angry with Dunn. The private investigator then asked Davis about Stepp's statement that he saw Dunn and another person in the gangway before the shooting. Davis explained that is what they first told the police, but in actuality "I didn't see nobody. I never seen the dude." Then when asked about Stepp's statement that it was Dunn and another person and the other person had the gun, Davis stated "I don't recall nothing cause when shots rang out I ran." Davis also commented on how dark it was, noting "There ain't no way in the world you're gonna see somebody back there . . . nobody seen any shots." Davis also indicates there were four people on the stoop when the shots began. Davis also stated "So really, all I'm saying like whatever stories we gave or whatever it is it's the fact of the matter that we didn't see nobody who shot." The private investigator also asked Davis about another version of the story where there were four gunmen and one had a shotgun. Davis expressed his disbelief in that version and noted "they're always gonna have statements saying . . . this and that because they're on

Ricky's side. I'm on Ricky's side too but the fact of the matter though I don't want nobody pinpointing me and putting me in prison for something I didn't do . . . and I shouldn't be the one putting nobody else in prison for what they didn't do." Davis also mentioned being shown pictures of the body of Ricco Rogers and having Rogers's mother call them crying and asking them to help convict Dunn in this interview.

OTHER RELEVANT STATEMENTS

Eugene Wilson

The Circuit Attorney's Exhibit 10 is Eugene Wilson's affidavit dated April 20, 2016. In this affidavit Wilson states, in pertinent part, that he was friends with Dunn and on the night of May 18, 1990 he

had been sitting with Recco Rogers, Marvin Tolliver, Demorris Stepp and Mike Davis on Marvin Tolliver's porch steps at 5607 Labadie. We had just been to Chinaman's Restaurant and we were sitting there talking and eating our rice.

Suddenly, someone started shooting at us, 'boom...boom...boom.' The shots came from in front of the house to the west. It was dark where the gunshots were coming from. None of us could see the shooter. We got up to run and I saw Recco wasn't getting up to run. We stopped running when the gunshots stopped. I realized Recco had been shot.

Almost immediately after the shots were fired and we had returned to Recco, I heard one of the others say, "Maybe it was Chris Dunn...it must have been Chris Dunn."

I knew Chris Dunn and I knew he would not have shot at us, because he was friends with myself and Marvin Tolliver.

Chris Dunn had recently been incarcerated. While he was locked up, our neighborhood had become a '*Blood*,' neighborhood. During that same time, Chris had become affiliated with the '*Crips*,' while in jail.

Because of that, Chris was not liked by many of the younger kids in the neighborhood, all of whom had begun presenting a '*Blood*.' But Chris was still welcomed by us older guys, like myself, and Marvin Tolliver.

I was standing right next to Recco when he was shot. I am positive that none of us could see or identify the shooter. All I knew was I never heard a car drive off, so I assumed the shooter or shooters must have been on foot.

I knew that Chris Dunn was light-skinned like myself, so if it had been Chris, I might have seen him, or his light skin in the dark, but I could not see anything about the shooter, which would allow me or any of us to identify the shooter.

When [the private investigator] told me that DeMorris Stepp had told police the shooter wore a white shirt and blue baseball cap, I knew it was not possible that DeMorris could have seen a shirt or a cap on the shooter. It was too dark.

When [the private investigator] showed me that Mike Davis told police the shooter wore a white shirt and sun glasses, I knew it was not possible that Mike could have seen those items.

I looked and I was not able to see any identifiable characteristics related to the shooter.

Immediately following the shooting of Recco, before the police arrived, about one hundred people from throughout the neighborhood had gathered around the Tolliver house and Recco's body.

I was standing in the crowd when the police arrived. I never talked to the police. I later went with Marvin Tolliver and others, looking for Chris Dunn. But I knew that Chris Dunn had not shot Recco.

No attorney for the state or for Chris Dunn had ever contacted me. If they had, I would have told them what I am stating here, that it was not possible for any of us to identify the shooter. I would have testified that Chris Dunn's name came up immediately after the shooting as speculation, and from there, people began to believe the shooter had been Chris Dunn, even though none of us could see the shooter.

Habeas Corpus Proceeding—May 30, 2018

Wilson testified he was walking back from the Chinaman and was approaching the house when they "saw fire" and all ducked down. Wilson also testified everything was pitch dark. Wilson testified after the shooting Stepp yelled out that it was Dunn, but he could not see anything but the gunfire. Wilson also testified when the shots began, the boys on the porch were looking toward him and the others as they walked back with food so they could not have seen the shooter.

Wilson also testified that Dunn did not even know Ricco Rogers and Stepp and they did not know Dunn. Wilson also testified Ricco Rogers's little brother was killed a short time after Ricco was killed. Wilson was then asked on cross-examination about discrepancies between his affidavit and his testimony, and he explained the person taking his affidavit must have taken it down incorrectly and he really did not have a chance to review it before he signed it. He was also cross-examined regarding why he never came forward to tell the police they had the wrong person.

Current Proceeding

Wilson testified he grew up with Dunn and that he was "real close" with the Dunn family. Wilson also testified he was "real close" with Ricco Rogers and "consider[ed] him as a little brother at that time," and he was actually living with Ricco Rogers and Ricco Rogers's mother. Wilson testified he did not know Stepp or Davis as well, but knew they did not really like Dunn because they believed he was a member of a rival gang. Wilson also testified Ricco Rogers did not know Dunn. Wilson testified he was walking back from the China Man and was almost to the house when shots were fired. Stepp, Davis, and Ricco Rogers were all looking at him when the shots were fired the other side and the boys never turned their heads, according to Wilson. Wilson testified it was very dark the only thing he saw were flashes of the gun. Wilson also testified there was a tree in front of the streetlight. Wilson said after the shooting Stepp and Davis stated it had to be Dunn, but he did not believe it because three days earlier Ricco Rogers, Wilson, and others beat up Ricco Rogers's mother's boyfriend, and they never saw him again after Ricco Rogers was killed. Wilson testified when the police arrived, he was comforting Ricco Rogers's mother, and he never spoke with police or prosecutors. Shortly thereafter, Ricco Rogers's mother got cancer and Wilson moved out of the neighborhood. Eventually, when Wilson learned Dunn was still in prison in 2017 or 2018, he was shocked. Wilson testified the inconsistency between his testimony

and his affidavit, which stated he was sitting on the porch eating rice when the shots were fired, was because the interviewer misconstrued what he was saying.

On cross-examination, Wilson testified he knew the police were looking for Dunn as a suspect in the shooting, but he never talked to the police. Wilson also testified he was very good friends with Dunn and had known him since the age of five or younger. Wilson also testified Dunn would never shoot at him or Marvin Tolliver, but did not have the same friendship or loyalty with Stepp, Ricco Rogers, or Davis because he did not know them. Wilson also testified that immediately after the shots stopped, Stepp yelled out that it was Dunn.

On re-direct, Wilson was asked why he did not speak to the police, and he responded that he had a lot of bad experiences with the police at a young age.

Alibi Witnesses

The Circuit Attorney's Exhibit 11 is Catherine Jackson's ("Jackson") affidavit dated April 14, 2016. In that affidavit Jackson states, in pertinent part, that Dunn was a good friend of hers and that she recalled talking on the phone with Dunn the night of May 18, 1990 beginning sometime between 10:00 and 11:00 p.m. and lasting thirty to sixty minutes. Jackson remembered talking to a public defender once, but then her mother prevented her from being involved in the case any further because of fear for her safety as the neighborhood had become dangerous with street gang activity.

The Circuit Attorney's Exhibit 13 is Bailey's affidavit dated April 4, 2016. In this affidavit Bailey states, in pertinent part, Dunn had been a long-time friend of hers, she had given birth via c-section the evening of May 17, 1990, and she recalled spending a long time on the phone the night of May 18, 1990, the night Ricco Rogers was killed. In particular, Bailey recalled talking to Dunn as she watched "Hunter" on television and long after the show had ended until a nurse came

in to check her vitals around 1:00 a.m. The Circuit Attorney's Exhibit 19 is a collection of medical records for Bailey. Among other things, it corroborates the statement in her affidavit that a nurse came to check her vitals around 1:00 a.m. Further, the Circuit Attorney's Exhibit 20 is a television schedule from the St. Louis Post-Dispatch from Friday, May 18, 1990 that demonstrated "Hunter" was on at 11:00 p.m. that night.

In the current proceeding, Bailey, who was fifteen years old in 1990, testified. She testified she and Dunn were childhood friends who grew up together. She also testified she and Dunn talked on the phone often. Bailey testified she had a baby girl on May 17, 1990 via caesarian section. Bailey testified she did not know Ricco Rogers, but learned he had been killed when she called Arnetta Dunn, Dunn's sister. Bailey testified that on the night of May 18, 1990, she talked to Dunn on the phone while they watched "Hunter," which began at 11:00 p.m. Bailey testified Dunn's demeanor was fine and they talked and laughed until a nurse came to check her vitals around 1:00 a.m. Bailey also testified she knew Dunn was at home because she talked to Arnetta. Bailey also testified she came forward after Dunn was arrested to explain she was on the phone with him the night of May 18, 1990, but no one contacted her to testify at the trial and it surprised her to learn they had attempted to contact her to testify after Dunn was convicted. She did testify at subsequent proceedings.

After Dunn was convicted, he filed a motion for post-conviction relief and an evidentiary hearing was held on April 5, 1993. The hearing began with Dunn's attorney requesting a continuance because she had not had time to contact Bailey to be a witness. The Court denied the continuance, but left unresolved the question of whether Bailey could testify at a later date. Dunn testified at the hearing. He testified he told his trial counsel about Martha Dunn, Arnetta Dunn, Delores Dunn, Wilford Richman, Bailey, and Larry Dunn, all of whom could have testified as to

his whereabouts late on May 18, 1990 through May 20, 1990. None of these witnesses testified at trial.

At the post-conviction relief evidentiary hearing, Martha Dunn, Dunn's mother, testified on the night of May 18, 1990, she was watching "Hunter" with her three daughters, Dunn, Wilford Richman, and Terrence Long. She also testified that Dunn was watching television initially, but then was talking to Bailey, who had just had a baby. Martha Dunn testified the phone call began around midnight and lasted about thirty minutes.

In the police report, it was documented that Martha Dunn told the police Dunn left the residence at 11:00 or 11:30 p.m. on May 18, 1990, and returned around 2:00 a.m. on May 19, 1990. At the post-conviction relief evidentiary hearing, Martha Dunn was asked about these statements in the police report and she denied telling the police Christopher left at 11:30 p.m. on May 18, 1990 and returned around 2:00 a.m. on May 19, 1990. Martha Dunn then testified she told the police Dunn was not there because he had prematurely left a halfway house and thought they were looking for him for that.

Arnetta Dunn, Dunn's sister, also testified at the post-conviction relief evidentiary hearing. Arnetta Dunn testified on the night of May 18, 1990, she was watching "Hunter" with her mother Martha Dunn, her sister Angela, Dunn, and Wilford Richman. She also testified that Dunn was watching initially, but then was talking to Bailey, who had just had a baby, which she knew because Dunn was telling everyone about it while he was on the phone. Arnetta Dunn testified that Dunn was on the phone with Bailey around midnight, but that Dunn had been there all night and never left.

Christopher Dunn also wanted to call Bailey at the post-conviction relief evidentiary hearing, but she was not present. Thus, the Court granted a continuance, keeping the evidence

open. However, Bailey did not appear on the rescheduled date. As a result, an offer of proof was made that she would have testified she spoke to Dunn on the phone for five or ten minutes the night of May 18, 1990 "after the 'Hunter' program was over."

Curtis Stewart

Stewart also provided testimony at the habeas corpus proceeding. Stewart testified that he was in the City of St. Louis's Medium Security Institution awaiting trial for murder and he was housed with Stepp in 1991. At that time, he overheard Stepp talking on the phone saying he did not really know who had killed Ricco and "I don't really give a fuck no way. You know, I'm getting a deal out of it." Stewart testified shortly after this Stepp got into a fight because of what he said and was transferred out of the dorm.

Detective Gary Stittum

Detective Stittum was the lead detective in the Ricco Rogers murder case. Detective Stittum testified he noted in his police report that Stepp and Davis said Dunn was the shooter. Detective Stittum also testified Dunn told him he had been out that evening and went to a woman's residence and spent the night, returning home at 7:00 a.m. on May 19, 1990. Further, at around 2:00 a.m. on May 19, 1990, Detective Stittum went to Christopher Dunn's home and he was not in his room.

The Police Report

The police report also notes that while the first-arriving officers were securing the scene Stepp and Davis approached them, and Stepp told them Dunn was the shooter. The police report also noted there was mercury vapor lighting on the south or opposite side of the street and the incident occurred during "the hours of darkness."

The police report includes statements from George and Monica, who lived at 5609 Labadie, that they heard "several footsteps running along the east gangway of their residence" and then three or four minutes later, they heard gunshots.

The police report also notes Marvin Tolliver stated he was walking east on the 5500 block of Labadie when he heard gunshots. At that point, he ran home and was advised by Stepp that Dunn had been the shooter. Tolliver further stated Dunn had been there earlier in the evening indicating he was a "Crip" and had just returned from prison. Tolliver had known Dunn since grade school.

Also, the police report states Darey D. also stated he had been walking east when he heard gunshots. He then stated Stepp had run to his location and advised him that Dunn was the shooter.

Dr. Nancy Franklin, Ph.D.

Dr. Nancy Franklin, Ph.D., ("Dr. Franklin") testified during the current proceeding. The Court qualified her as an expert on eyewitness identification. Dr. Franklin testified that her basic opinion was the identifications of Dunn by Stepp and Davis were highly unreliable and were likely the result of post-event suggestion and possibly coercive influences and incentives. Dr. Franklin testified and wrote in her report that factors that can increase the risk of misidentification include, but are not limited to, face identification as a function of familiarity, opportunity to view the face (duration of exposure, lighting, distance), event stress, weapons, inference and self-suggestion, post-event suggestion by others, co-witness contamination, identification administrators' and observers' knowledge of who the subject is (non-blind administration of a photo array or line-up), photo array or line-up filler quality and number, exposure effects, confidence, coerced eyewitnesses, in-court identifications as comparable to highly suggestive show-ups.

Dr. Franklin testified regarding the circumstances of Stepp and Davis's identifications. She noted Stepp claimed Dunn had on a baseball cap, and Davis claimed Dunn was wearing sunglasses. However, Davis did not mention a baseball cap, and Stepp did not mention sunglasses. Even setting aside these differences, both of these descriptions constitute a partial disguise or concealing of the shooter's face, which also increases misidentifications. Dr. Franklin also noted that Davis's reliance on the sunglasses as a way of identifying Dunn was a red flag because the sunglasses draw attention away from the actual facial features, which means the observer is relying on something external in a situation.

Further, this case included short exposure time, low lighting, distance, and stress, which can all individually make proper identifications more difficult and can also combine to exacerbate the difficulty. Dr. Franklin also discussed how identifications suffer when a weapon is present because it draws the focus away from the subject's face. Dr. Franklin eventually concluded that regarding Stepp and Davis's identifications, the perceptual conditions and the early statements they gave indicate to her that their ability to effectively see the perpetrator's face was insufficient such that the risk of misidentification was quite high.

Dr. Franklin also discussed how Stepp and Davis's beliefs about Dunn causing trouble and being in a rival gang, whether correct or incorrect, could lead to an inference that it was him. Dr. Franklin also testified that she believes there was co-witness contamination between Stepp and Davis because numerous accounts point out that it was Stepp who first exclaimed that Dunn was the shooter and Stepp told the younger Davis to say it was Dunn. Thus, Stepp's seemingly authoritative exclamation may have influenced Davis. Dr. Franklin also found it problematic that the police presented photo array included a photo of Dunn that both Stepp and Davis signed on the

back. She infers that whoever signed second saw the signature of the first signer, thus bolstering his confidence in his identification.

Dr. Franklin also explained that to create a photo array, the police should begin with a witness's description and find pictures or "fillers" that match the description to populate the array. Here, Dr. Franklin notes there was no record of a description and it is unclear Dunn was the best match to some feature they associated with that name, whether or not they actually knew what he looked like. Dr. Franklin also noted the entire field of studying eyewitness identifications was in its relative infancy in 1991, and our understanding in this field has expanded greatly since then.

On the other hand, Dr. Franklin testified and also notes in her report "people who have reached the status of being truly well known (e.g., family member, close friend) can generally be recognized in tenths of seconds or under conditions of undivided attention, assuming conditions otherwise support sufficient perceptual processing of facial details." However, under inadequate viewing conditions, the risk substantially increases that observers will inaccurately identify a stranger as having been a specific familiar person, particularly if contextual cues and/or the observer's existing beliefs provide grounds for such an inference.

CONCLUSIONS OF LAW

The Statements of Stepp and Davis

In Amrine, the state's case rested on the testimony of inmate witnesses Terry Russell, Randy Ferguson, and Jerry Poe. There was no physical evidence linking Amrine to the murder. In any case, Amrine was found guilty of Barber's murder and sentenced to death. Subsequently, all three of those witnesses recanted their testimony identifying Amrine as the murderer. As noted above, the Missouri Supreme Court found "[i]n light of the resulting lack of any remaining direct evidence of Amrine's guilt from the first trial, Amrine has already met the clear and convincing

evidence standard, for our confidence in the outcome of the first trial is sufficiently undermined by the recantation of all the key witnesses against him in the first trial to require setting aside his conviction and sentence of death.” Amrine, 102 S.W.3d at 544.

Similarly here, Dunn’s conviction was attained based on the testimony of Stepp and Davis. As in Amrine, we know for certain Stepp and Davis lied at some point. Stepp and Davis’s accounts of the shooting over time present a variety of inconsistencies. There are also inconsistencies between their respective accounts. For example, was the shooter wearing glasses or a hat and was the shooter in the gangway or on the opposite side of the house? At times, their accounts are internally inconsistent – recounting facts and impressions that are dubious on their face, for example, when asked how he knew Dunn was the shooter, Stepp told Detective Stittum “I looked at his face, but you know, you know how you see somebody and you don’t see’em.” Also, their accounts evolved presenting inconsistencies between their initial statements, their trial testimony, and, of course, their subsequent recantations. These inconsistencies have been demonstrated at length earlier in this judgment. The Court will now summarize the key inconsistencies that arose as Stepp and Davis’s respective accounts evolved.

First, in his recorded statement to Detective Stittum on May 19, 1990, Stepp does not describe the gun used in the shooting. At trial, however, Stepp testified that he saw Dunn fire a nickel-plated handgun. When Stepp recants his identification of Dunn as the shooter, he states that he did not see a gun. Second, in his recorded statement to Detective Stittum, Stepp said he saw Dunn “around the corner from – next door to the people that live Pig (inaudible). It, it, it was a lot, it’s a lot right there, and he was hiding around the corner.” Detective Stittum clarified, “Okay. And that, would have been to the – the west of 5709?” To which Stepp responded, “Yes sir.” At trial, however, Stepp placed Dunn closer, testifying that he saw Dunn “between the

gangways. There's a gangway right on this side." The only gangway bordering 5709 Labadie is on the east side of that property, which is roughly half the distance from where he initially reported seeing Dunn. In addition, it is notable that in the initial accounts Stepp mentioned the shooter was wearing a blue baseball cap, and Davis did not.

As for Davis, he initially told Detective Stittum that he could identify Dunn as the shooter "Cause I seen the way his glasses on his face. The way he wears his glasses. ... Pressed against his face ... they ain't prescription glasses, they just little bitty sunglasses like. With the – the one's that – the things that go across the ears in the back." At trial however, Davis failed to mention that his identification of Dunn was predicated on Dunn wearing sunglasses. In fact, he failed to mention sunglasses at all. In his 2015 interview, Davis alleged he told police prior to trial that he was not sure whether Dunn was the shooter. He alleges that he testified at trial that Dunn was the shooter after police and Ricco's bereaved mother encouraged him to do so.

The inconsistent accounts and the recantations lead this Court to believe similar to Judge Hickie's finding that it is next to impossible to determine which version of events related by Stepp is the most credible. Further, the Court finds that while it is difficult to know which of Davis's statements are true and he definitely lied at some point, at least his recantations have remained fairly consistent over time. Moreover, regardless of which of the multiple statements are true, it is beyond dispute that Dunn was convicted based upon the eyewitness testimony of a two people who, at this point, have told multiple contradictory versions of what they claim to have observed the night of the shooting.

In the Attorney General's post-hearing brief, he contends Stepp's recantation was forced and Stepp was threatened, coerced, pressured, or manipulated into swearing to his outlandish 2005 affidavit. However, the Attorney General provided zero evidence to support these allegations.

The best evidence would have been to have Stepp testify and to ask him about these allegations.

The Court, *sua sponte*, issued a writ and brought Stepp in and made him available to both sides.

The fact that neither side took the opportunity to call him to the stand leads the Court to believe that everyone involved believes Stepp has zero credibility.

The Attorney General also argues the Court should take an adverse inference from the fact that Stepp did not testify in the instant hearing. However, given the fact that he was made available to both sides and neither side called him, the Court finds an adverse inference as to Stepp would be inappropriate, especially because the main reason he was made available was as a compromise after the Court excluded a witness for the Attorney General, who was to testify about an interview with Stepp, because that witness was not timely disclosed. The only inference that seems legitimate is that Stepp has thoroughly discredited himself and should not be trusted for anything regarding this case.

Therefore, as noted above, the evidence supporting the conviction must be assessed in light of all of the evidence currently available. The Court concludes a reasonable, properly instructed jury evaluating the totality of Stepp and Davis's statements would not vote to find Dunn guilty beyond a reasonable doubt. As in Amrine, the recantations of Stepp and Davis result in the lack of any remaining direct evidence of Dunn's guilt from the first trial. As such, Dunn has already met the clear and convincing evidence standard, for the Court's confidence in the outcome of the first trial is sufficiently undermined by the recantation of the key witnesses against him in the first trial to require setting aside his conviction.

This conclusion is bolstered by the fact that, as Judge Hickie also found, Wilson's statements are credible and consistent over the years. While the 2016 affidavit indicates Wilson was on the porch, all of his other statements consistently assert he was walking back from the

China Man when the shots were fired, and Wilson testified his positioning on the porch in the affidavit was the result of the interviewer misconstruing what he was saying and Wilson not having an opportunity to correct it. Wilson maintained he had been good friends with Dunn since the age of five; however, the record also shows he was living with Ricco Rogers and was very close to Ricco Rogers's mother. Thus, it would seem Wilson's close relationship with Dunn and Ricco Rogers would minimize any incentive for Wilson to be untruthful. Thus, when Wilson testified it was dark and no one could see the shooter, the Court tends to believe him. However, it is important to note the Court does find it troubling that someone with an interest in finding out who killed Ricco Rogers while also making sure his friend Dunn was not wrongfully convicted never came forward to talk to the police until many years later.

This leads into another aspect of this case the Court finds troubling. In particular, the Court does not find the testimony of the alibi witnesses to be very helpful. First, Dunn did not present any alibi at trial. The Court can only speculate as to why. Maybe it was because he told the police a story inconsistent with his alibi. Maybe his alibi was not as tight as his counsel believed was necessary. In any case, Dunn did not attempt to assert an alibi until his post-conviction proceeding. When he did attempt to assert an alibi, the witnesses supporting it were either family members or close friends of Dunn. Second, there are differing statements as to when and how long the calls lasted. In other words, there is sufficient uncertainty to prevent the alibi from being airtight. Third, Martha Dunn admitted to lying to the police so it is difficult to put any credence in her testimony, especially where she contends the police lied in their report about what she said. Further, as alluded to above, Dunn's statement to the police is inconsistent with the "Hunter"/Bailey alibi. Dunn told the police he was at home until 10:00 p.m. May 18, 1990 when he left and rode around with Winford Rickman. Then at around 12:00 a.m. May 19, 1990, he went to a woman's

apartment, where he slept before returning home at 7:00 a.m. Dunn did not provide the police with any further information that they could investigate to substantiate his alleged alibi.

Dunn's potential efforts to offer a false alibi could give rise to an inference of his guilt. See State v. Hibbert, 14 S.W.3d 249, 253 (Mo. App. 2000). However, the alibi or lack thereof is not essential to the Court's finding here. The fact of the matter is with Stepp and Davis's recantations, no credible evidence of Dunn's guilt remains. After the shooting, numerous accounts have stated Stepp was the first to say it was Dunn. The first person he said that to seems to be Davis. Then that initial allegation took on a kind of inertia that carried through the investigation, trial, and subsequent appeals. There was no reason for it to stop or be questioned because Stepp and Davis seemed to be competent witnesses. However, their recantations caused a new examination because their testimony was the only thing linking Dunn to the crime.

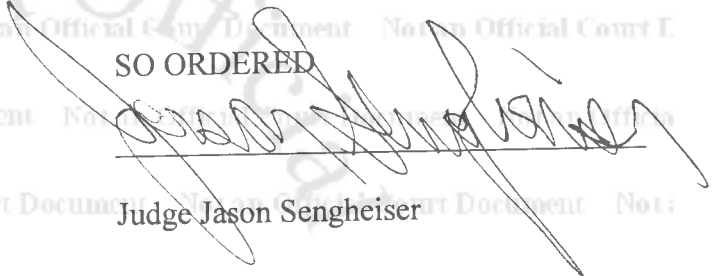
The Attorney General also argues the Court should take an adverse inference from the fact that Dunn did not testify. However, this adverse inference is inapplicable in this proceeding. Adverse inferences are inappropriate when the evidence would merely be cumulative of other evidence presented. State v. Dizer, 119 S.W.3d 156, 165 (Mo. App. E.D. 2003). Here, Dunn's testimony could not add anything to this Court's evaluation of the recantations, which are the foundation of this judgment. Further, other Missouri courts, including Amrine, have granted actual innocence claims where the movant did not testify and have never made such an inference.

In conclusion, the only evidence inculpatory Dunn has been recanted. Considering Stepp and Davis's recantations combined with what we now know about eyewitness identifications as excellently elucidated by Dr. Franklin combined with the particular circumstances and inconsistencies of Stepp and Davis's identifications, the Court finds, even with a few troubling aspects of this case, the Circuit Attorney has made a clear and convincing showing of "actual

innocence” that undermines the basis for Dunn’s convictions because in light of the new evidence, no juror, acting reasonably, would have voted to find Dunn guilty of these crimes beyond a reasonable doubt.

Therefore, the Circuit Attorney’s motion to vacate or set aside Christopher Dunn’s convictions for first degree murder, two counts of assault in the first degree, and three counts of armed criminal action is hereby GRANTED. The State of Missouri shall immediately discharge Christopher Dunn from its custody.

SO ORDERED


Judge Jason Sengheiser

Date: July 22, 2024