IN THE CIRCUIT COURT OF ST. FRANCOIS COUNTY, MISSOURI

RODNEY CARR, Petitioner, vs. RICHARD ADAMS, Warden, Respondent.	)))))	Case No. 24SF-CC00034

ORDER AND JUDGMENT

Before this Court is Petitioner Rodney Carr's petition for a writ of habeas corpus, pursuant to Missouri Supreme Court Rule 91; Respondent Warden Richard Adams' response to this Court's show cause order; Petitioner's reply; Respondent Warden Adams' supplemental responses to this Court's show cause order and Petitioner's reply thereto; all exhibits attached to those filings; all testimony and evidence submitted at the evidentiary hearing held on July 15–17, 2025; and all other filings and evidence admitted in this case.

After considering all the foregoing, this Court **denies** Petitioner's petition.

On February 16, 2024, Petitioner, an inmate in the custody of the Missouri Department of Corrections ("the Department"), filed a petition for a writ of habeas corpus, seeking to challenge his 1985 conviction for one count of capital murder. The Circuit Court of Dent County sentenced Petitioner to life imprisonment without the possibility for parole for fifty years.

Petitioner's petition raised approximately fifty claims, which fall into three broad categories: (1) allegations that the prosecutor withheld various pieces of evidence, in violation of Brady v. Maryland, 373 U.S. 83, 87 (1963); (2) allegations of prosecutorial misconduct through the knowing use of perjured testimony, in violation of Napue v. Illinois, 360 U.S. 264, 269 (1959); and (3) allegations that Petitioner is actually innocent

of capital murder. Respondent Warden Richard Adams is the warden of the Eastern Reception, Diagnostic and Correctional Center and Petitioner's custodian. Rule 91.07.

Procedural History

This Court finds the following actions involving Petitioner are relevant to Petitioner's present state habeas corpus action and this opinion:

Trial: State v. Carr, CR384-5F (Dent Cnty. Cir. Ct.).[1]

Direct Appeal: State v. Carr, 708 S.W.2d 313 (Mo. App. 1986) (Carr I) (SD14353).[2]

Post-Conviction Motion: Carr v. State, CV388-87CC (Dent Cnty. Cir. Ct.).[3]

Post-Conviction Appeal (pre-remand): Carr v. State, 819 S.W.2d 84 (Mo. App. 1991) (Carr II) (SD17280).[4]

Post-Conviction Appeal (post-remand): Carr v. State, 829 S.W.2d 101 (Mo. App. 1992) (Carr III) (SD17940).[5]

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[1] The trial transcript from State v. Carr, CR384-5F (Dent Cnty. Cir. Ct.), was submitted to this Court as Petitioner's Exhibit 6.

[2] The opinion in this matter was also submitted to this Court as Respondent's Exhibit 1.

[3] The transcript from the evidentiary hearing held in this matter was submitted to this Court as Respondent's Exhibit 78. The pre-remand and post-remand findings of fact and conclusions of law from the motion court were submitted to this Court as Respondent's Exhibits 50 and 51, respectively.

[4] The opinion in this matter was also submitted to this Court as Respondent's Exhibit 2.

[5] The opinion in this matter was also submitted to this Court as Respondent's Exhibit 3.

Circuit State Habeas: Carr v. Groose, CV195-1187CC (Cole Cnty. Cir. Ct.) (Carr IV).[6]

Appellate State Habeas: Carr v. Groose, WD51787 (Mo. App.) (Carr V).[7]

Federal Habeas: Carr v. Dormire, 4:95-CV-02435-CDP (E.D. Mo.).[8]

§ 547.035 Motion: State v. Carr, CR384-5F (Dent Cnty. Cir. Ct.) (Carr VI).

§ 547.035 Appeal: State v. Carr, SD29437 (Mo. App.) (Carr VII).[9]

§ 547.035 Transfer: State v. Carr, SC90430 (Mo.).

Summary of Prior Testimony and Proceedings

I. Trial

In 1985, a jury found Petitioner guilty of capital murder for his involvement in the stabbing death of Officer [redacted]. Carr I, 708 S.W.2d at 314. He was sentenced to life in prison without the possibility of parole for fifty years. Id. Petitioner's capital murder conviction arises from the stabbing death of a corrections officer, Officer [redacted]., at the Moberly Training Center for Men ("MTCM") on July 3, 1983. Carr III, 829 S.W.2d at 102.

On the evening of July 3, several inmates assigned to one of MTCM's housing units, including Petitioner, had been drinking "homemade" alcohol to a state of intoxication. Carr

[6] The petition and denial were submitted to this Court as Respondent's Exhibits 6 and 7, respectively.

[7] The petition, denial, and docket sheet were submitted to this Court as Respondent's Exhibits 8, 9, and 10, respectively.

[8] The opinion in this matter was submitted to this Court as Respondent's Exhibit 5.

[9] The opinion in this matter was submitted to this Court as Respondent's Exhibit 4.

I, 708 S.W.2d at 314. Officer [redacted] was one of the three corrections officers tasked with entering the housing unit and removing one of the intoxicated inmates, Inmate [redacted] Carr III, 829 S.W.2d at 102. When Officer [redacted] and his colleagues, Lieutenant [redacted].[10] and Officer [redacted].[11], entered the wing, they were able to secure Inmate J.J. largely without incident, but as the officers attempted to escort Inmate J.J. out of the wing and into the adjoining rotunda, a group of thirty-five-to-forty inmates rushed toward the officers. See id. A melee ensued, as inmates began attacking the corrections officers exiting the housing unit, as well as officers stationed in the rotunda just outside the unit. Testimony from Petitioner's 1985 trial showed as follows.

A. Captain [redacted].[12]

Captain [redacted] saw Inmate [redacted] holding Officer [redacted]. and unsuccessfully tried to pull Officer [redacted] free, but the captain could not because of resistance from Inmate R.R. and other inmates. Pet. Ex. 6 at 197–99.[13] Captain [redacted]., who knew Petitioner before the riot, id. at 200, saw Petitioner make a lunging motion toward Officer [redacted], who was already covered with blood. Id. at 200–01. Simultaneously with the lunge, Captain [redacted] saw "a horrible distressful look" on Officer [redacted].'s face, manifesting severe pain. Id. Captain [redacted].

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[10] Lieutenant [redacted]. passed away on July 26, 2003. Resp. Ex. 21.

[11] Officer [redacted]. passed away on April 10, 2007. Resp. Ex. 45.

[12] Captain [redacted]. passed away on February 6, 2004. Resp. Ex. 22.

[13] The following citations refer to the transcript of Petitioner's 1985 criminal trial, submitted as Petitioner's Exhibit 6.

did not see Petitioner holding a knife, id. at 214, but did testify that Petitioner was wearing gray pants. Id. at 215. Captain [redacted] also testified that he saw Inmate [redacted]. holding Officer [redacted] Id. at 196–97. This Court finds the trial testimony of Captain [redacted]. to be credible, as did the jury. No credible evidence refutes this testimony.

B. Officer [redacted].[14]

Officer [redacted]. was present during the riot. Id. at 223–24. Officer [redacted]. testified that he saw a knife in Petitioner's hand, id. at 226, and that he saw Petitioner stab Officer [redacted] while Officer [redacted] was being held by Inmate R.R. Id. at 227–29. Officer [redacted]. testified he was three-to-four feet away when he saw the blade go in. Id. at 230. Officer [redacted] also testified that Officer [redacted]. was already bleeding when Petitioner stabbed him. Id. at 228. Petitioner then stabbed Officer [redacted]. in the shoulder, also cutting Officer [redacted].'s finger, after stabbing Officer [redacted]. Id. at 230–32. Officer [redacted]. testified that Petitioner was wearing a blue tank top and gray pants. Id. at 233. Officer [redacted] also testified that he saw Inmate [redacted]. holding Officer [redacted], id. at 239, and that he did not recall seeing Inmate [redacted] stab Officer [redacted]. Id. at 238. This Court finds the trial testimony of Officer [redacted]. to be credible, as did the jury. No credible evidence refutes this testimony.

C. Officer [redacted][15]

Officer [redacted]. was also present during the riot. Id. at 251. Officer [redacted]. testified that

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[14] Officer [redacted] passed away on August 24, 2018. Resp. Ex. 31.

[15] Officer [redacted]. passed away on January 29, 2010. Resp. Ex. 24.

Petitioner was holding the door to the control center. Id. at 254. In an attempt to reach Officer [redacted]., Officer [redacted]. grabbed Petitioner, and Petitioner cut Officer [redacted]'s hand with a knife. Id. at 254–55. Officer [redacted]. released Petitioner when the officer was cut, and saw Petitioner run back toward the housing wing and Officer [redacted]. Id. at 255. Officer [redacted]. then saw Petitioner lunge forward toward Officer [redacted] and stab Officer [redacted]. in the lower stomach. Id. at 255–56. Officer [redacted]. recalled there was already blood on Officer [redacted] shirt when Petitioner stabbed Officer [redacted]. Id. at 256. Officer [redacted]. saw Officer [redacted]. double up when Petitioner lunged at him. Id. Officer [redacted]. identified Petitioner as wearing gray trousers and a blue tank top. Id. Officer [redacted]. also testified that he saw Inmate [redacted]. holding Officer [redacted] id. at 257, and that he did not recall seeing Inmate [redacted]. with a weapon or stabbing Officer [redacted]. Id. at 257, 259–60. This Court finds the trial testimony of Officer [redacted]. to be credible, as did the jury. No credible evidence refutes this testimony.

D. Officer [redacted].[16]

Officer [redacted]. was assigned to the unit where the riot occurred and knew Petitioner before the riot. Id. at 312–13, 315. Officer [redacted]. testified that he saw Petitioner holding Officer [redacted]. around the neck, holding a knife, and "fixing to stick it in him." Id. at 316. Officer [redacted] hit Petitioner with a baseball bat in an attempt to free Officer [redacted]., and Petitioner and the knife fell to the floor, making an audible sound that Officer [redacted]. heard. Id. at 316–17. Officer [redacted]. testified that he did not see Petitioner stab Officer [redacted], id. at

[16] Officer [redacted]. passed away on October 24, 1993. Resp. Ex. 16.

319, and that Petitioner was wearing gray trousers during the riot. Id. at 319–20. This Court finds the trial testimony of Officer [redacted]. to be credible, as did the jury. No credible evidence refutes this testimony.

E. Dr. [redacted]. and Coroner [redacted].[17]

At Petitioner's trial, the medical examiner, Dr. [redacted]., testified that "[t]here were basically four stab wounds [on Officer [redacted]]: [t]hree on the left side of the chest and one on the left side of the abdomen at the level of the belly button." Id. at 371–72. He further testified that Officer [redacted]. "died as a result of the stab wounds to the heart." Id. at 373. He testified that he was unable to determine whether all the wounds were caused by the same weapon. Id. at 374. Dr. [redacted]. testified that, if it was an inch wide, State's Exhibit 22—a knife made from a ruler—could have caused Officer [redacted] injuries. Id. at 375. He testified that it was possible that State's Exhibit 27—a white-tape-handled knife—could have caused one, but not all of, Officer [redacted] wounds. Id. at 376. At Inmate [redacted]'s second trial, Coroner [redacted]. testified that he found that Officer [redacted] cause of death was a "laceration [to] the heart and multiple stab wounds." Pet. Ex. 10 at 828.[18] This Court finds the trial testimony of these witnesses to be credible, as did the jury. No credible evidence refutes this testimony.

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[17] Dr. [redacted]. passed away on November 12, 2002. Resp. Ex. 20. Coroner [redacted] passed away on March 21, 2020. Resp. Ex. 33.

[18] Petitioner's Exhibit 10 is the transcript from Inmate [redacted]'s second trial in 1999.

F. Inmate [redacted][19]

At Petitioner's trial, Inmate [redacted] testified he saw Petitioner "stick a brown shirt." Pet. Ex. 6 at 339. He further testified that he did see Petitioner stab a guard in the abdomen or lower part of the stomach, using his right hand. Id. at 340−41. Inmate [redacted] testified that, after witnessing the first stabbing, he went behind Petitioner into the wing and down the stairs. Id. at 341. He testified that he "turned around and [saw] [] [Petitioner] Carr. . . sticking at a guard, a brown shirt." Id. "He [could not] say for sure if [Petitioner] was hitting him or not, but [Petitioner] was sticking at a guard that was being pulled away." Id. Inmate [redacted]. testified that he also saw Inmate [redacted]. and Inmate [redacted]., and that, after he got back into the wing, Inmate [redacted]. "c[a]me running down the hallway saying 'I killed the freak. I killed the freak.'" Id. at 343. He testified that he was pretty sure that Inmate [redacted]. was holding the guard down while Petitioner stabbed him. Id. at 345. Inmate [redacted] testified that he had seen State's Trial Exhibit 22—a knife made from a ruler—with Inmate [redacted]., as Inmate [redacted]. had made the knife in the sign shop. Id. at 346−47. He further testified that the inmates had to wear gray pants. Id. at 349. This court finds the trial testimony of this witness to be credible. No credible evidence refutes this testimony.

G. Inmate [redacted]

Inmate [redacted] testified at Petitioner's trial that he saw Inmate [redacted]. assemble a knife before the riot. Id. at 294−95. Inmate [redacted] testified that he saw Inmate [redacted]. stab Officer

[19] Inmate [redacted]. passed away on June 1, 1990. Resp. Ex. 15.

[redacted]. once while Inmate [redacted]. held Officer [redacted] Id. at 300. Inmate [redacted] saw Petitioner with a knife a few feet from Officer [redacted]., but he went back to his cell after Inmate [redacted] stabbed Officer [redacted] Id. at 302−04. He testified that he did not see Petitioner stab Officer [redacted] Id. at 306. This Court finds this testimony to be credible. No credible evidence refutes this testimony.

H. Inmate [redacted]

At Petitioner's trial, Inmate [redacted] testified that he saw Inmate [redacted] stab Officer [redacted] "in the chest area." Id. at 328. He testified that, after seeing Inmate [redacted]. stab Officer [redacted], he was pushed into the rotunda by a crowd of people. Id. He testified that he did not see Petitioner in the group of people in the rotunda area. Id. at 328−29. Inmate [redacted] testified that he saw Inmate [redacted]. swing the knife at Officer [redacted] "several times," id. at 331, but he only saw "the knife actually go into [Officer [redacted]'s] shirt one time." Id. This testimony has little probative value one way or the other as to Petitioner's guilt or any other issue in the case.

I. Petitioner

At his trial, Petitioner testified that before the riot Inmate J.J. had a pipe and an iron bar taken off one of the bunks, and that he was out in the hallway flashing it around. Id. at 390. Petitioner testified that officers came to get Inmate J.J. Id. at 392. Petitioner testified that he had moved up to the doorway to the rotunda where the officers were taking Inmate J.J. and that he asked Officer [redacted]. what the problem was and where Inmate J.J. was going when 30 to 35 inmates rushed up to the rotunda and knocked Petitioner off his feet in front of the rotunda door. Id. at 393. Petitioner testified that, at the time of the riot, he was

wearing "a pair of cutoff blue jeans, shirt, and a pair of blue tennis shoes." Id. at 397. He then conceded that "the standard issue pants [were] the gray trousers." Id. at 398. He further testified that he did not see Inmate [redacted]. with a weapon, or stabbing anyone. Id. at 399. He also testified that he did not stab anyone. Id.

Petitioner said that he had seen State's Exhibit 22—a knife made from a ruler—in the sign shop being sharpened by Inmate [redacted]. Id. at 399–401. Petitioner also identified Exhibit 27 at trial, the white tape handled knife that was seized on the night of the riot. Id. at 403. Petitioner testified that *that knife* was in the hand of Inmate [redacted]. *after* the riot when Inmate [redacted]. had returned to cell 414. Id. at 404. He testified that, on the evening of the riot, he had a moustache. Id. at 404–05.

Petitioner testified on cross-examination that the only person he saw fighting with guards was Inmate [redacted]. who had already been sentenced to death. Id. at 409–10. Petitioner then testified that he was up in front of the control center because he was curious and that other inmates actually knocked him into the control center. Id. at 410–11. Petitioner testified that in order to get from his cell to the control center he had to travel the entire length of the corridor, and that he had never had a knife while in prison although he was five foot seven and weighed one hundred thirty-five pounds. Id. at 412–13.

Petitioner testified that he never really knew Officer [redacted]. Id. at 417. But Petitioner testified that Officer [redacted]. and the other officers knew him because they had saved his life when he was almost killed in his cell in 1981, but that anybody who said that they could describe in detail what happened were lying because that was impossible with all the

confusion. Id. at 417–18.

II. Direct Appeal

Petitioner raised two claims challenging his convictions and sentences on direct appeal. See Carr I, 708 S.W.2d at 314−15. His first claim provided that "the trial court erred in sustaining the state's challenges for cause to certain jurors who stated [that] they could not return the death penalty." Id. at 314. His second claim alleged that "the trial court erred in overruling his objection to the state's [closing] argument [in which it] referr[ed] to [h]ow many felonies [] [he] [had] commit[ted,] as this inferred [that he] had offered violence to other correctional officials[.]" Id. (internal quotation marks omitted).

On March 20, 1986, the Missouri Court of Appeals denied both claims. Id. at 313, 315. The Missouri Court of Appeals denied the first claim because the Supreme Court of Missouri had previously denied similar claims, creating binding precedent that the court had to abide by. Id. at 314. Further, in denying his second claim, the Missouri Court of Appeals found that Petitioner could not prove prejudice as to this statement because "[e]arlier in [his] trial, testimony was offered, without objection, that [Petitioner] had also used a knife to inflict injury on two other officers." Id. at 315.

III. Post-Conviction Relief Proceedings

On post-conviction review, Petitioner raised three claims. His first claim argued that his trial counsel was ineffective for failing to "conduct a prompt and satisfactory inquiry into the facts and circumstances surrounding the crime[.]" Resp. Ex. 55 at 32. Petitioner's second claim alleged that his trial counsel was ineffective for failing to "interview the

witnesses endorsed by the prosecution." Id. And his third claim provided that his trial counsel was ineffective for failing to interview witnesses Petitioner has suggested should testify for the defense at trial. Id. Ultimately, the post-conviction motion court denied his motion following an evidentiary hearing. Id. at 35.

Petitioner testified at that evidentiary hearing. Resp. Ex. 78 at 4–65.[20] Petitioner testified that in his lineup photo he looked exactly the same as had during the riot and he could not have changed clothes. Id. at 38–42. In the lineup photograph, Petitioner is wearing gray prison pants. See Resp. Ex. 77.

At that evidentiary hearing, now-deceased trial counsel testified that before Petitioner's trial he had transcripts from trials of both Petitioner's co-defendants, copies of the depositions in each of those cases, copies of a report done by the Division of Public Safety investigating alleged beatings of prisoners, copies of discovery from the prosecutor's file, which included statements taken by the guards at the prison from other inmates about this event, as well as copies of the inter-office communications reports done by the guards. Resp. Ex. 78 at 71. This Court has no reason to disbelieve this sworn testimony by a member of the bar. And nothing in the record plausibly refutes this testimony.

On November 5, 1990, the motion court denied Petitioner post-conviction relief. Id.

[20] Respondent's Exhibit 78 is a copy of the evidentiary hearing held in Petitioner's post-conviction relief action. Due to the age of the case, many copies of this transcript are incomplete, and thus the page numbers in these citations will refer to the page numbers that appear within the document, in the bottom right corner of each transcript page.

at 35. In denying his motion, the court concluded that "[t]here was adequate discovery . . . and there [w]as [] no showing. . . that even if trial counsel [] ha[d] done what [Petitioner] [] [] ask[ed] that the outcome of the trial would have been different or that there was evidence that would have been favorable to [] [Petitioner]." Id. at 34. It further provided that Petitioner's trial counsel was not ineffective in failing to call the witnesses Petitioner had requested, as these witnesses "were either hostile to [] [Petitioner] or had just received the death penalty in their own cases arising of this incident." Id. at 34−35.

Petitioner then raised the following three claims on post-conviction appeal: "(1) [that he] was abandoned by his post-conviction counsel . . ., (2) [that he] received ineffective assistance from his defense counsel at trial. . . and (3) [that] the [motion] court failed to enter findings of fact and conclusions of law on one complaint of ineffective assistance[.]" Carr II, 819 S.W.2d at 85. More specifically, Petitioner alleged that his trial counsel was ineffective for objecting to the State's admission of a photograph lineup including a photo of him, because this photo would have rebutted evidence that he was wearing a blue tank top and had a mustache at the time of the murder. Id. at 87−89. He further asserted that his trial counsel was ineffective for waiving his right to confront Inmate [redacted]. in stipulating to the admission of part of Inmate [redacted]'s deposition without first obtaining his authorization. Id. at 89−90.

On November 13, 1991, the Missouri Court of Appeals issued its first opinion on post-conviction appeal. Id. at 84. Despite the court of appeals finding that "the clothing [Petitioner] Carr was wearing at the time of the homicide was unimportant in his

identification [,]" id. at 88, and affirming the motion court's denial of post-conviction relief "in all [other] respects [,]" id. at 89, it remanded the case for findings of fact and conclusions of law on whether trial counsel was ineffective for allegedly waiving Petitioner's right to confront witness Inmate [redacted]. Id. at 89–90.

On December 18, 1991, the motion court once again denied Petitioner's post-conviction motion, concluding that Petitioner "was not denied his right of confrontation through the use of the [Inmate [redacted].] deposition." Resp. Ex. 55 at 9–10. In reaching this conclusion, the court provided that Petitioner's counsel stipulated to the State reading Inmate [redacted]'s deposition into the record at Petitioner's trial, which Petitioner was present for, because Inmate [redacted]. refused to testify when called to the stand during Petitioner's trial. Id. at 8. The court further noted that, when asked if there were other witnesses his trial counsel refused to call, Petitioner had previously responded that there were not. Id. at 8–9.

Petitioner once again appealed the motion court's denial, raising only the Inmate [redacted]. confrontation claim on post-conviction appeal. See Carr III, 829 S.W.2d at 101. On May 1, 1992, the Missouri Court of Appeals issued its second opinion on post-conviction appeal. Id. at 101. The Missouri Court of Appeals affirmed the motion court's denial in finding that Petitioner had not objected to the use of Inmate [redacted]s deposition at trial, that Petitioner's trial counsel had a sound strategic reason for stipulating to the admission of Inmate [redacted]'s deposition—as Inmate [redacted]. had testified during this deposition that he did not see anyone stab Officer [redacted]., and that Petitioner had "failed to demonstrate prejudice . . . especially in view of substantial eyewitness testimony that [Petitioner] stabbed [] [Officer

[redacted]" Id. at 103−04.

IV. Prior State Habeas Proceedings

In his first state habeas action, Petitioner raised two claims. In his first claim, Petitioner asserted a Brady[21] violation, arguing that the State withheld exculpatory evidence in the form of an interview transcript. Specifically, Petitioner alleged the transcript of an interview of Officer [redacted] conducted while Officer [redacted] was under hypnosis, had not been disclosed prior to Petitioner's trial. Resp. Ex. 6 at 2, 9−14. In his second claim, Petitioner alleged the State had also failed to disclose a report containing his polygraph test results prior to his trial, and that this new evidence proved his innocence. Id. at 2, 14−15. On October 10, 1995, the Cole County Circuit Court denied his petition. Resp. Ex. 7.

Petitioner then raised these same claims in a new state habeas petition which he filed in the Missouri Court of Appeals. Resp. Ex. 8 at 2. On October 19, 1995, the Missouri Court of Appeals also denied his petition. Resp. Ex. 9.

V. Federal Habeas Proceedings

On federal habeas review, Petitioner raised the following nine claims: (1) that his trial counsel was ineffective for failing to present the photo lineup taken of him the day after Officer [redacted].'s murder; (2) that his trial counsel was ineffective for waiving his right to confront Inmate [redacted] without his authorization; (3) that his trial counsel was ineffective

[21] Brady v. Maryland, 373 U.S. 83 (1963).

for failing to object to, and failing to file a motion in limine to prevent the admission of, evidence of Petitioner assaulting two other correctional officers; (4) that his appellate counsel was ineffective for failing to raise the aforementioned failure to object claim on appeal; (5) that his appellate counsel was ineffective for failing to raise a claim on appeal about the verdict-directing instruction on accomplice liability given at his trial, which allegedly allowed for the jury to convict him without finding that he had deliberated; (6) that the trial court erred in overruling his counsel's objection to the prosecutor's discussion of the aforementioned uncharged crimes; (7) that the trial court erred in sustaining the State's striking for cause jurors who had indicated that they could not return the death penalty; (8) that the State suppressed an interview of Officer [redacted]., which would have established Petitioner's innocence; and (9) that the court should consider his polygraph test results from shortly after Officer [redacted]'s murder, as it demonstrated his innocence. Resp. Ex. 5 at 5−33.

On April 28, 1998, the United States District Court for the Eastern District of Missouri issued a memorandum and order on federal habeas review. Id. at 35. In denying Petitioner's first claim, the district court provided that it was a reasonable trial strategy for his trial counsel to object to the introduction of the photo lineup because Officer [redacted]. "had been shown [Petitioner]'s photograph prior to the line-up." Id. at 9. The court further clarified that Petitioner could not establish prejudice as to this claim because Petitioner's trial counsel had already impeached Officer [redacted]'s testimony using his prior inconsistent statements, id. at 9−10, making the admission of the photo unnecessary, and also because

"the clothing that [Petitioner] was wearing at the time of the homicide was not necessary in his identification [,]" id. at 10, as he had been identified as the stabber by several other witnesses. Id. at 10−11.

In denying his second claim, the district court found that Petitioner effectively waived his right to confront Inmate [redacted] when he did not object to his counsel stipulating to the reading of Inmate [redacted] deposition at trial. Id. at 14. The court denied Petitioner's third claim as procedurally defaulted. See id. at 16. It denied his fourth claim because Missouri law did not permit his appellate counsel to raise an ineffective assistance claim on direct appeal, and "[a]s a matter of logic, [Petitioner]'s appellate counsel [could not] have been ineffective for failing to raise a claim that Missouri law did not permit him to raise." Id. at 17.

In denying Petitioner's fifth claim, the district court provided that his appellate counsel acted reasonably in not raising this issue on appeal because the Supreme Court of Missouri had recently denied a "virtually identical" instruction challenge in a different case. Id. at 23−26. The court denied Petitioner's sixth claim because he failed to establish that the State's statement made during its closing "so infected his trial with unfairness as to make the resulting conviction a denial of due process." Id. at 28 (quoting Darden v. Wainwright, 477 U.S. 168, 181 (1986)) (citation omitted). It denied his seventh claim, as binding United States Supreme Court precedent at the time provided that "the Constitution d[id] not prohibit states from 'death qualifying' juries in capital cases[.]" Id. at 29.

In denying his eighth claim, the district court found that Petitioner's Brady claim

lacked merit because Officer [redacted]'s statements made in the transcript at issue were consistent with the statements he made at trial, indicating that Petitioner failed to establish the materiality of said transcript. Id. at 31−32. Finally, the court denied his ninth claim because his polygraph was not new evidence and actual innocence claims were not cognizable on federal habeas review. Id. at 33.

VI. Section 547.035 Proceedings

In 2005, Petitioner filed a § 547.035 motion alleging that a shirt and pants in the custody of the Phelps County Sheriff's Department were identified by witnesses for the State at his trial as the clothes he was wearing at the time of Officer [redacted]'s murder. *See* Resp. Ex. 4 at 6. He further pled that:

> the shirt and pants were not tested for DNA because the technology was not readily or reasonably available; (2) identity was at issue at trial; and (3) because the clothes in question were worn by the person with the knife during the commission of the crime . . . DNA testing would finally prove[] that person was not [Petitioner] Carr.

Id. (alterations and internal quotation marks omitted).

In October of 2008, the motion court denied Petitioner's motion without an evidentiary hearing. Id. at 7. In denying Petitioner's motion, the Circuit Court of Dent County found that, "while identity was at issue at trial, the identity of the perpetrator was not determined exclusively by the use of clothing worn, but rather by identification through personal observation of [ ] [Petitioner]." Id.

Petitioner appealed the motion court's denial, and, on August 31, 2009, the Missouri Court of Appeals issued its order and memorandum affirming said denial. Id. at 2.

Petitioner raised two claims on appeal. His first claim alleged that "the motion court clearly erred in denying his motion without an evidentiary hearing." Id. at 8. His second claim argued that "the motion court clearly erred in denying relief because [Petitioner] Carr was abandoned by the attorney appointed to assist him." Id. at 10.

In denying Petitioner's first claim, the Missouri Court of Appeals, found that DNA testing would not be exculpatory, as the clothes Petitioner was wearing were not important in his identification. Id. The Court also denied his second claim, finding that Petitioner was only entitled to counsel if an evidentiary hearing been ordered on his motion, and that Petitioner had no right to effective assistance of post-conviction counsel. Id. at 11.

Findings from Present Proceedings

On February 16, 2024, Petitioner filed a petition for a writ of habeas corpus in this Court. On February 22, 2024, this Court issued an order directing Respondent Warden Richard Adams to show cause why the petition should not be granted, and that order was served on Warden Adams on February 29, 2024. Warden Adams timely filed his response to this Court's order to show cause on June 20, 2024. Petitioner filed his reply on July 24, 2024. On December 3, 2024, this Court set this matter for an evidentiary hearing, which was scheduled for July 15–18, 2025. This Court entered a scheduling order on December 11, 2024, which included various discovery deadlines.

After this matter was set for an evidentiary hearing, and during the course of Respondent Warden Adams' investigation, the parties supplemented the record before this Court. On January 22, 2025, Respondent Warden Adams filed a motion seeking the

disclosure of relevant third party protected health information, which this Court granted, after argument by both parties, on February 6, 2025. On both April 9, 2025, and April 22, 2025, Respondent Warden Adams filed a supplemental response to this Court's original show cause order, alleging additional, newly-discovered defenses to Petitioner's allegations. This Court granted Petitioner until May 13, 2025, to file a reply to Respondent Warden Adams' supplemental responses, and Petitioner timely filed his reply on May 20, 2025. On May 23, 2025, Respondent Warden Adams requested a setting for argument as to the supplemental responses, which was held on June 10, 2025. Both parties filed additional exhibits in advance of the argument. After this argument, both parties were granted leave to submit proposed orders. Respondent Warden Adams' supplemental responses were ordered to be taken with the case. An evidentiary hearing was held from July 15– 17, 2025. This Court summarizes the proffered testimony from that evidentiary hearing, in the order the witnesses were presented, and makes the following findings.

A. Professor [redacted].

Professor [redacted] is a law professor who, while in practice working at the Missouri Capital Punishment Resource Center, once interviewed Inmate [redacted] one of Petitioner's co-defendants, about Inmate [redacted].'s possible involvement in an unrelated matter. Tr. at 84.[22] Professor has no direct knowledge of the events of Officer [redacted]'s murder in 1983. Id. at 84–86. Professor [redacted]. testified before this Court that Inmate [redacted]. had made a statement

[22] In this opinion "Tr." will be used to refer to the combined transcript of the evidentiary hearing held in this matter on July 15-17, 2025.

to him about Officer [redacted]'s murder in or around 1995, when Professor [redacted]. was interviewing Inmate [redacted]. about an unrelated matter. Id. at 84. According to Professor [redacted]'s testimony, Inmate [redacted] stated that he had acted alone in murdering Officer [redacted] in 1983, and that Petitioner was innocent. Id. at 87–88. Professor [redacted]. testified that he wrote a letter stating the same in 2019, which was submitted on Petitioner's behalf with Petitioner's executive clemency application. Id. at 90. Professor [redacted] also testified that he had given public presentations in the years following the lawful execution of Petitioner's other co-defendant, Inmate [redacted] in 1999, asserting that Inmate [redacted]. was also innocent. Id. at 92–93.

While this Court finds that Professor [redacted]. testified credibly as to his own actions, this Court finds that Professor [redacted]'s testimony unhelpful in disposing of the claims raised by Petitioner. This Court finds the testimony has no logical relevance to any issue in the case as there is no free-standing innocence in Missouri where an offender is not sentenced to death. See In re Lincoln v. Cassady, 517 S.W.3d 11, 22−23 (Mo. App. W.D. 2016).

The Court also finds that the testimony has no legal relevance, as it is based on the hearsay statement of Inmate [redacted]., which has no substantial probative value and which cannot be cross-examined. Any purported statements made by Inmate [redacted]. lack credibility, as discussed below. This Court gives no weight to the testimony of Professor [redacted].

B. Widow [redacted]

Widow [redacted] is the widow of Inmate [redacted]., to whom she was married for twenty-two years. Tr. at 104. At the evidentiary hearing held in this matter, Widow [redacted]. testified about

conversations she had with Inmate [redacted]. over the course of their twenty-two-year marriage regarding the night that Officer [redacted] was killed. Id. at 116–17, 120–24.

Widow [redacted] testified that Inmate [redacted]. told her that Inmate [redacted]. was all over the place with a pipe. Id. at 121. According to her testimony, she was told that, following Inmate [redacted]'s disturbance and removal from his cell, Inmate [redacted]. and others followed the corrections officers who were removing Inmate [redacted]. to the door connecting the housing wing to the central rotunda in order to tell the officers to let Inmate [redacted]. stay in the housing wing. Id. Widow [redacted]. testified that Inmate [redacted]. told her that he had stabbed Officer [redacted] two or possibly three times. Id. at 116. She testified that Inmate [redacted]. told her that he and Petitioner "resembled one another" at the time, so witnesses might have thought that Petitioner was the person stabbing Officer [redacted]., and not Inmate [redacted]. Id. at 122.

But Widow [redacted] testimony also casts doubt on the very statements on which her testimony entirely relies. Widow [redacted]. testified that she was "sure there w[ere] times [Inmate [redacted].] wasn't honest." Id. at 132. She also testified that she saw no reason why Inmate [redacted] "would tell the truth about what he did at his trials[,]" in lieu of "presenting his case as he saw it." Id. Moreover, Widow [redacted] further testified that she could not even remember the statements Inmate [redacted]. had made to her with any reliable clarity. Id. at 132–35. Widow [redacted] testified that Inmate [redacted]. passed away in 2010, Id. at 132, and stated that she "hadn't thought about all [of this] in years[,]" Id. at 135. Widow [redacted]. testified that, because she could not remember, she prayed and "relied upon the Lord bringing things to [her] memory..." Id.

This Court finds the reliability of Widow [redacted]'s testimony at the evidentiary hearing held in this matter to be dubious at best. Widow [redacted]. admitted to having difficulties remembering her conversations with Inmate [redacted]., and, most pertinently, her testimony relied almost entirely on hearsay statements made by Inmate [redacted]. while he was still alive. Inmate [redacted], however, entirely lacks credibility because, according to Widow [redacted]'s own testimony, Inmate [redacted]. would make statements solely to benefit his present goals and without regard for an oath to tell the truth or the impact his testimony may have on others.

The Court further finds that, because Widow [redacted] could only testify about hearsay admissions allegedly made by Inmate [redacted]. while he was still alive, her testimony has no logical relevance to any issue in this case, as there is no free-standing actual innocence in Missouri where an offender is not sentenced to death. See In re Lincoln, 517 S.W.3d at 22–23. And, even if Petitioner could assert a claim of free-standing actual innocence here, hearsay testimony from a co-defendant who did not testify at his trial, and who now attempts to exculpate his former co-defendant, is not newly discovered evidence of innocence. See Meadows v. Delo, 99 F.3d 280, 282 (8th Cir. 1996).

This Court also finds that Widow [redacted]s testimony has no legal relevance to the present matter, as her testimony is almost entirely based on the hearsay statements of Inmate [redacted], which have no probative value due to Inmate [redacted].'s complete lack of credibility.

C. Attorney [redacted]

Attorney [redacted]. represented Petitioner's co-defendant, Inmate [redacted]., at Inmate [redacted].'s

third trial in 2004.[23] Tr. at 145–46. Attorney [redacted]. was part of the legal team that had sent a particular pair of jean shorts, along with other items, to be tested for DNA in 2003, but Attorney [redacted]. testified that he has no idea if Petitioner was wearing jean shorts the night of the riot. Id. at 148. In addition to the fact that he was not present during Officer [redacted].'s murder in 1983, Attorney [redacted] testified that he could only testify from his twenty-year-old memory because his defense file from the case "was absolutely destroyed." Id. at 165. Attorney [redacted]. testified that, to the best of his recollection, Inmate [redacted]. had told him that, of the inmates in the housing wing when the murder took place, "everybody was wearing non-state issued clothes." Id. at 166. Attorney [redacted]. testified that he remembered being surprised by Inmate [redacted]'s statement because he was surprised that inmates "would be walking around a cell block not in state issued clothing". Id. at 166.

While this Court finds that Attorney [redacted]. testified credibly as to his own actions, his testimony does not support the claim that Petitioner was wearing shorts during the prison riot. This testimony has no logical or legal relevance to issues in the case, except to the extent that Attorney [redacted].'s testimony further undermines the credibility of Inmate [redacted] in that Inmate [redacted]. fed Attorney [redacted]. a story that inmates were not required to wear prison clothing while in prison and could wear whatever they wanted.

As discussed above, this Court does not find the hearsay statements of inmate [redacted] to be credible and therefore gives them no weight.

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[23] Inmate [redacted].'s conviction for his role in the murder of Officer [redacted]. was overturned during the appellate process after both of Inmate [redacted]'s previous trials in 1984 and 1999, respectively.

D. Former Inmate [redacted]

Former Inmate [redacted]. was Inmate [redacted]'s cellmate for a time while the two were still incarcerated in the early 2000s. Tr. at 192–93. At the evidentiary hearing held in the present matter, Former Inmate [redacted]. testified that he and Inmate [redacted] "got to know each other well, and... bec[a]me friends." Id. at 193. Former Inmate [redacted]. testified about conversations he had with Inmate [redacted]. regarding the stabbing of Officer [redacted] Id. at 193−95. He testified that Inmate [redacted] told him that Inmate [redacted]. had stabbed Officer [redacted] and Rodney Carr "had nothing to do with it." Id. at 195. Former Inmate [redacted]. provided that he discussed Inmate [redacted]'s admissions with Petitioner when they were in prison together sometime between 2017 and 2020. Id. at 196−97. Former Inmate [redacted]. also testified that he believed that Inmate [redacted]. told Widow [redacted]. the same things Inmate [redacted]. told him, but he thought Widow [redacted]. would not testify on Petitioner's behalf while Inmate [redacted]. was alive because she would "protect[] her husband." Id. at 198. And Former Inmate [redacted]. testified that, after Inmate [redacted] was released, he believed that Inmate [redacted]. did not come forward because he was concerned about being prosecuted once again. Id. at 199.

Generally, this Court finds that Former Inmate [redacted].'s testimony at the evidentiary hearing held in this matter was not credible because his testimony relied heavily on hearsay statements made by Inmate [redacted], who, as discussed in section B above, lacks credibility entirely. The Court further finds that Former Inmate [redacted]'s testimony has no logical or legal relevance for the same reasons previously discussed in section B.

Moreover, Inmate [redacted].'s lack of credibility is confirmed by Former Inmate [redacted].'s

testimony that neither Inmate [redacted]., nor Widow [redacted]., felt obligated to come forward about Petitioner's alleged innocence while Inmate [redacted]. was alive.

E. Inmate [redacted]

Inmate [redacted] testified that the riot's catalyst was certain corrections officers attempting to remove an inmate who made a snide comment, and then a raspberry noise, during a time when the officers were counting inmates. Tr. at 222. This is contrary to the other testimony on how the riot started, including that of Petitioner, which had the riot starting because a drunken inmate was swinging a pipe and the guards tried to remove him. Id. at 756. Inmate [redacted] testified that he and Petitioner went up to the rotunda to see what was going on. Id. at 224. Inmate [redacted]. testified he never lost sight of Petitioner, who, he claimed, was hit in the head with a bat even though he had not committed violence against any guard. Id. at 225–26. Inmate [redacted]. testified that Inmate [redacted]. was stabbing correctional officers. Id. at 226. Inmate [redacted]. also testified that Petitioner stepped through the door into the rotunda, and was not pushed into the rotunda, as Petitioner had previously claimed. Id. at 229.

Inmate [redacted]. acknowledged that, in a deposition taken before Inmate [redacted].'s first trial in 1984, he had claimed that he was at the back of the housing wing, in front of his cell during the riot, and that he had then retreated into his cell, only discovering that an officer had been killed when other officers came and questioned him later. Id. at 248–51. Inmate [redacted]. identified his assigned cell at the time of the riot, which was located at the opposite end of the housing wing, 187 feet from the rotunda. Id. at 254. Inmate [redacted]. made statements

to this Court that, rather than being in his cell, he had really walked 187 feet away from his cell, right to the doorway to the rotunda, just to see what was going on during the riot. Id. at 269. Inmate [redacted]. testified that he has never told anyone this version of events before because he does not live by the rules of the street but by the rules of prison. Id. at 230.

Inmate [redacted]. also testified that after the riot, but before he was photographed, guards hit him in the face with a twelve-gauge shotgun causing him to have a ring around his eye for a month. Id. at 233. He testified that when removing him from the cellblock guards dislocated both his shoulders, then broke both his thumbs when he would not sign a statement, then cut him with a buck knife. Id. at 276–91. But a photograph of Inmate [redacted] in jean shorts taken on July 4, 1983, after these purported assaults took place, shows no injuries and no blood on his clothing. Pet. Ex. 85.

This Court finds the balance of Inmate [redacted].'s testimony lacks credibility. With the exception of Inmate [redacted].'s testimony regarding the clothing procedures of inmates in administrative segregation, which can be corroborated by Inmate [redacted].'s appearance in Petitioner's Exhibit 85, this Court gives no weight to the testimony of Inmate [redacted].

F. Attorney [redacted]

Attorney [redacted]. was Inmate [redacted]'s counsel at Inmate [redacted] third trial, and testified in this matter via video deposition. Tr. at 341–42. Attorney [redacted] testified that after Inmate [redacted]. completed his sentence Inmate [redacted] worked for Attorney [redacted]. as an investigator for six years until his death in 2010. Id. at 342–43. Attorney [redacted]. testified that Inmate [redacted] told him that Petitioner did not participate in the murder of Officer [redacted]. after Inmate [redacted].

was released from custody in or around 2004. Id. at 346–47. Cross-examination of Attorney [redacted] pointed out testimony from Inmate [redacted]'s third trial, wherein it is apparent that Attorney [redacted]. was attempting to establish that Petitioner was the sole perpetrator in Officer [redacted]'s murder, although Attorney [redacted]. insisted that the defense was reasonable doubt. Id. at 350, 354–56. During that very trial, however, Inmate [redacted] took the witness stand and testified that he had nothing to do with Officer [redacted]'s murder

This Court finds Attorney [redacted]s recitation of hearsay statements made by Inmate [redacted]. to have no logical relevance to any issue in the case as there is no free-standing innocence in Missouri where an offender is not sentenced to death. See In re Lincoln, 517 S.W.3d at 22−23. The Court also finds that the testimony has no legal relevance, as Attorney [redacted].'s testimony is based on the hearsay statements of Inmate [redacted]., which have no probative value. As discussed above, this Court does not find the hearsay statements of Inmate [redacted]. to be credible and therefore gives them no weight. Additionally, when Attorney [redacted]. represented Inmate [redacted]., Inmate [redacted]. testified under oath that Inmate [redacted]. had nothing to do with the murder, which obliviously contradicts the claim that Inmate [redacted]. was the sole killer. While this Court finds that Attorney [redacted]. testified credibly, the Court gives little weight to his testimony.

G. Attorney [redacted]

Attorney [redacted]. represented Inmate [redacted]. at his second trial. Tr. at 390–91. Attorney [redacted]. testified that he wrote a letter to the prosecutor saying he went to the Moberly Correctional Center to review records and the investigator there was extremely helpful. Id.

at 418. He indicated that an Attorney General's Office investigator had set up this review of records. Id. at 420–21. Attorney [redacted]. testified he had no knowledge of what was or was not disclosed in Petitioner's case. Id. at 433.

This Court finds that Attorney [redacted] testified credibly as to his actions in representing Inmate [redacted]. However, his testimony has no relevance to any issue in this case except for the fact that Attorney [redacted]. recalled helpfulness with discovery in Inmate [redacted]'s case that creates an inference that the State would have also been helpful in Petitioner's case. This Court gives no substantial weight to the testimony of Attorney [redacted]. as it is not relevant to the claims raised by Petitioner.

H. Investigator [redacted].

Investigator [redacted]. was the investigator for Petitioner's accomplice Inmate [redacted]. for the public defender's office. Tr. at 449. He received a tip about a weapon at the prison possibly used in the July 3, 1983 riot being in Wing B cell 414, and went to investigate on October 30, 1984. Id. at 457. The tip came from inmates. Id. at 458. He was told it could be in the heating unit. Id. Investigator [redacted]. found knives in a subbasement under 8 to 10 inches of water after it fell out of a heating pipe. Id. at 461.

Investigator [redacted]. testified that it is entirely possible that Inmate [redacted]. gave him the tip about the knife. Id. at 479. Investigator [redacted] testified that holes in the heating unit inside the cell are so small one cannot put a finger through them. Id. at 481. Inmate [redacted]. had been sent from that cell on July 4, 1983 and had not resided there since. Id. at 482. Investigator [redacted]. had no personal knowledge of how many inmates occupied cell 414 between July 4,

1983 and October 30 1984, nor who they were. Id. at 484–85. Investigator [redacted]. was unable to access the areas the tip told him to look from cell 414. Id. at 489. The area had to be accessed from an access panel that was *outside* the cell and screwed down with a special fastener. Id. at 492. Investigator [redacted]. dropped down into the subbasement from a door or hatch that was not inside cell 414. Id. at 492–93.

Investigator [redacted] and a Department of Corrections investigator, Investigator [redacted]., used a hanger to pull on some insulation in the heating pipe and a sock and a knife fell into the water. Id. at 493–96. Investigator [redacted]. had no direct knowledge of how the knife got to where it was recovered Id. at 499. Investigator [redacted]. testified about the recovering of the knife at [redacted]'s trial, which took place before Petitioner's trial. Id. at 502. Investigator [redacted]. did not dispute that testing showed no blood on the knife. Id. at 505–06. Investigator [redacted] testified at the habeas hearing that the only connection between the knife and the prison riot was that he, an investigator for one of the prison riot defendants, recovered it 16 months after the riot. Id. at 506, 526.

This Court finds that Investigator [redacted] testified credibly as to his actions in recovering a knife from the Moberly prison. However, that testimony has no relevance to the claims raised by Petitioner. Investigator [redacted]'s testimony supports the conclusion that the knife he found 16 months after the riot, in an area that was only accessible from *outside* the cell of Inmate [redacted] has, no connection to the prison riot. The knife has not been credibly connected to any issue in this case.

There was also testimony the knife was the subject of testimony from a defense

investigator at the trial of Inmate [redacted]. Petitioner's attorney testified he had that trial transcript at the time of Petitioner's trial. It is reasonable to infer defense counsel in Petitioner's case was aware of the knife. It is also a reasonable inference that the tip about this knife was a ruse to deflect suspicion from the real killers, including Petitioner.

I. Sergeant [redacted]

Sergeant [redacted] is the supervisor of property control for Troop F of the Missouri State Highway Patrol ("the Highway Patrol"). Tr. 552−53. At the evidentiary hearing held in this matter, Sergeant [redacted]. testified that a box in his custody contained Petitioner's blue denim shorts, taken into the Highway Patrol's custody on July 4, 1983. Id. at 556−57 (internal quotation marks omitted). Sergeant [redacted]. further testified that a property transfer sheet, detailing evidence *sent back* from the Highway Patrol's crime lab to the Moberly Training Center for Men after testing, Id. at 561−62, unsurprisingly did not list Petitioner's shorts because they had been retained by the Highway Patrol. See Id. at 556−57. And Sergeant [redacted]. affirmed that he was not working for the Highway Patrol when the shorts were taken into custody in 1983. Id. at 567.

The Court finds that, despite Sergeant J.S. testifying honestly and to the best of his ability, his testimony is irrelevant because he did not work for the Highway Patrol in 1983, and would have no knowledge of what the State disclosed to Petitioner's trial attorney.

J. Investigator [redacted].

Investigator [redacted]. testified that he contacted the prosecutor who secured Petitioner's conviction on two occasions in 2022, to obtain a signature on a letter requesting clemency

for Petitioner. Tr. at 585–86. He indicated that the prosecutor may have signed the letter on March 25, 2019. Id. at 592. Investigator [redacted]. testified that the prosecutor told him "that there was no testimony or direct evidence that linked Petitioner to the actual homicide itself." Id. at 598.

The testimony of Investigator [redacted]. shows that in March 2019, when Attorney [redacted]. signed the letter in support of clemency in Investigator [redacted]'s presence, Attorney [redacted]. was then suffering from a sizeable brain tumor and had recently been discharged from the hospital against medical advice. Investigator [redacted].'s testimony also shows that Attorney [redacted]. had little or no recollection of Petitioner's trial. It is clear from the record that multiple eyewitnesses provided testimony that Petitioner stabbed Officer [redacted]

This Court finds that [redacted]'s letter supporting clemency provides no support for the claim that the prosecutor knowingly used perjured eyewitness testimony at trial. His letter does not bear on the issues at hand, without more, and does not support a claim of innocence.

While Investigator [redacted]. testified credibly as to his actions, his testimony is given no substantial weight.

K. Inmate [redacted]

Inmate [redacted]. testified that before the riot Inmate [redacted]. got into an argument with another inmate, and Inmate [redacted]. was chasing that inmate around with a metal bar. Tr. at 665. He testified that Inmate [redacted]. threw the bar under his bunk when officers came. Id. at 665–66. Inmate [redacted] testified that Inmate [redacted]. yelled rush them when officers were taking

Inmate [redacted] Id. at 666–67. Inmate [redacted]. testified that he was one of the first ones up to the rotunda. Id. at 667. Inmate [redacted]. testified that he punched Officer [redacted]. in the face while Officer [redacted]. was being stabbed in the gut by Inmate [redacted]., and that Inmate [redacted]. cut both Inmate [redacted] and Officer [redacted] Id.

Inmate [redacted] testified he jumped on an officer and was riding the officer piggy-back until he was knocked off the officer by being hit with a bat Id. at 667–68. Inmate [redacted]. testified that he saw Petitioner standing two stairs from the top of the stairs leading to the rotunda but not around any guards or inmates. Id. at 668. He testified that at the direction of a guard he took Officer [redacted]. to the infirmary. Id.at 669. Inmate [redacted] testified that at the time of the riot he did not tell anyone he punched Officer [redacted] Id. at 674. Inmate [redacted] testified he saw no one else except Inmate [redacted] stab Officer [redacted]. Id. at 681.

Inmate [redacted]. testified that he agreed to cooperate with the State following the Moberly Prison Riot. Id. at 673. He testified that he did so in the hopes of getting better treatment and perhaps an early release. Id. He further testified, however, that he received no benefit from the State for his cooperation. Id. at 674. Inmate [redacted] also testified that officers never asked anyone to cooperate or give statements while the inmates were being beaten following the riot. Id. at 679.

Insofar as Inmate [redacted]. now testifies that he saw Petitioner standing by himself near the rotunda, but not near any guards or inmates, this Court finds the testimony not to be credible. Similarly, the current testimony from Inmate [redacted] that he punched Officer [redacted]. in the face, and then rode another officer piggy-back, does not ring true and is not consistent

with eyewitness accounts. The hearing testimony that Inmate [redacted] swung underhand and stabbed Officer [redacted]. in the abdomen is not credible, given the eyewitness testimony to the contrary contained in the record. This Court gives no weight to these portions of Inmate [redacted]'s testimony.

This Court does find credible the testimony of Inmate [redacted]. regarding the treatment of inmates following the riot. Inmate [redacted]'s testimony makes it clear that, despite their wishes to the contrary, inmates that did cooperate with the State received no benefit for that cooperation. This Court gives great weight to these portions of Inmate [redacted].'s testimony.

L. Petitioner's Investigator [redacted].

Petitioner's Investigator [redacted]. is a private investigator who was hired by Petitioner and his legal team in this action. Tr. at 697. In 2023 she interviewed and drafted an affidavit for Former Officer [redacted]. who, roughly forty years ago, had been a member of the emergency squad that responded to the riot at the Moberly prison in July 1983. Id. at 698–99. The Court admitted the affidavit, which was dated May 1, 2023. However, at a subsequent deposition Former Officer [redacted] did not remember that there was a prison riot nor did he remember signing the affidavit, despite recognizing his signature and initials. Id. at 702–13.

The Court sustained an objection to Petitioner's Investigator [redacted]. testifying to things that Former Officer [redacted]. allegedly told her, but to which he would not sign an affidavit. Id. at 702–04, 717. Petitioner's Investigator [redacted]. testified on cross-examination

that Former Officer [redacted] originally did not remember testifying at the trial of Inmate [redacted] until she showed him transcripts. Id. at 721–22.

This Court finds that the affidavit of Former Officer [redacted], Petitioner's Exhibit 41, has little probative value, and even less credibility, due to the unreliability of the information contained therein. In the affidavit Former Officer [redacted]. states he does not remember the name "Rodney Carr," and that his memory is that the third person convicted was an entirely different inmate. Pet. Ex. 41. He also indicates that he made false reports about the aftermath of the riot. Id. He indicates that an unnamed offender told him that the killers were in a cell together, but that cell contained Petitioner's accomplices but not Petitioner. Id. This statement is hearsay within hearsay from an unknown declarant and even if true would not exculpate Petitioner. This Court gives no weight to Petitioner's Exhibit 41, the affidavit of Former Officer [redacted].

This Court finds that the testimony of Petitioner's Investigator [redacted] has no probative value except to undermine the recollection and credibility of Former Officer [redacted] Because Investigator [redacted].'s testimony is based on the unreliable hearsay statements of Petitioner's Exhibit 41, it has no probative value. While this Court finds that Petitioner's Investigator [redacted]. testified credibly as to her own actions, this Court finds that her testimony is irrelevant to the claims raised by Petitioner. Thus, this Court gives no weight to the testimony of Petitioner's Investigator [redacted].

M. Petitioner

Petitioner also testified in this action. See Tr. at 753–881. Petitioner testified that,

on the evening of July 3, 1983, Inmate [redacted]. pulled out a pipe and tried to create some problems in the housing wing. Id. at 755. Petitioner testified that Inmate [redacted] then threw the pipe under his bed, but that corrections officers heard the pipe being thrown and stepped into the housing unit to remove Inmate [redacted]. Id. at 756.

Petitioner testified that, as corrections officers were taking Inmate [redacted]. out of the housing wing, he stepped in front of the door to the rotunda to speak to Officer [redacted]. and ask where officers were taking Inmate [redacted] Id. Petitioner testified that he knew that he had spoken to Officer [redacted]., specifically, because the two men knew each other from an incident two years prior, when Officer [redacted] was one of the corrections officers who had stepped in to save Petitioner's life when another inmate stabbed Petitioner sixteen times while he was asleep in his cell, nearly killing him. Id. at 756–57.

Petitioner testified that State's Trial Exhibit 27, the knife that was found on the floor, looked like the knife he alleged Inmate [redacted] had that night, not that Inmate [redacted]. had State's Trial Exhibit 27 that night after the riot as Petitioner had testified at trial Id. at 766–67. Petitioner testified that he did not need a knife to defend himself as he had learned how to defend himself with his hands. Id. at 809.

Petitioner testified that he was wearing denim cut offs at the time of riot. Id. at 816. Petitioner identified the lineup photo taken after the riot and that he was wearing gray pants in the lineup photo. Id. at 816–17. Petitioner initially said he had stated at his *preliminary hearing* that he was wearing the same clothes in the photograph as in the riot, but claimed he had not seen the photo then, and he had really been stripped naked after the riot, kept

naked all night, and dressed in gray prison pants the next morning because all inmates in administrative segregation are always stripped naked before being placed in administrative segregation for security reasons. Id. at 820–21.

When confronted with his *post-conviction review* testimony that he was wearing the same clothes in the lineup photo as during the riot, Petitioner said he was mistaken in his sworn post-conviction testimony. Id. at 821. Petitioner testified that he had wanted counsel to put the lineup photo into evidence at trial even though Petitioner had never seen it. Id. at 873.

Petitioner also testified that he was present during his post-conviction hearing when his now deceased trial counsel testified that counsel had the transcripts and depositions from the trials of his co-defendants, as well as the Division of Public Safety reports on the alleged beatings; the prosecutor's file, including all statements by guards and inmates; and even copies of the interoffice communications made between Department of Corrections staff members. Id. at 942–43.

This Court finds the testimony of Petitioner not credible. Petitioner's recounting of the night of July 3, 1983, indicates that his memories of the night are dubious at best. But this is not, itself, surprising, since Officer [redacted]'s murder occurred more than forty years ago. Petitioner also testified that he had been drinking heavily throughout the evening of July 3, 1983, and that he was quite drunk before the altercation between inmates and corrections officers even began. Id. at 777. Moreover, Petitioner also testified that he was hit in the head with a bat by one of the corrections officers trying to quell the riot, an injury

which knocked Petitioner to the ground and later required nine stitches to remedy. Id. at 774–75.

Petitioner's testimony about the clothing he is shown wearing in the lineup photo, Respondent's Exhibit 77, is specifically not credible. This testimony appears to have probative value only in the sense that it shows consciousness of guilt. Petitioner's statements appear to be an attempt to explain away his own testimony at his post-conviction evidentiary hearing, where Petitioner told the post-conviction motion court that he had no opportunity to change clothes between the riot, on the evening of July 3, and the lineup photo, taken on July 4. Resp. Ex. 78 at 40–42. It is a reasonable inference that Petitioner's statements are merely an attempt to bolster his Brady claim about the jean shorts he claims he was wearing during the riot.

But Petitioner has not shown that he was wearing jean shorts during the riot on July 3. Indeed, Inmate [redacted].'s testimony about the photo taken of him in the same series tends to disprove Petitioner's claim that he was stripped and spent the night naked in administrative segregation for security reasons. See id. at 820–21. Petitioner testified that prison officials "never put you in a AdSeg cell without taking your clothes from you. That is a security thing. They strip you naked, make sure you don't have any contraband on you." Id. at 821. But Inmate [redacted].'s testimony never mentions being stripped naked and Inmate [redacted]. acknowledges that he was wearing the same clothes in the photograph taken on July 4 as he was during the riot on July 3, after Inmate [redacted] was also placed in administrative segregation. Id. at 284.

The direct comparison certainly casts doubt on Petitioner's testimony that he was stripped before being put into an administrative segregation cell for security reasons, according to a standard procedure. But the shorts are not relevant or material anyway to the question of Petitioner's guilt, since the Court of Appeals has already found that what clothes Petitioner was wearing was not material to his identification by multiple witnesses who did not identify him by his clothes.

Taken as a whole, Petitioner's testimony lacks credibility. At critical points he is directly contradicted by his prior sworn statements and those of his co-defendants, or the record. This Court gives no substantial weight to the testimony of Petitioner.

Legal Standard

I. Procedural Default

Claims which "could have been raised, but were not raised, on direct appeal or in a post-conviction proceeding" are procedurally barred. Clay v. Dormire, 37 S.W.3d 214, 217 (Mo. 2000). "Petitioners can overcome this procedural bar by showing cause and prejudice, or that manifest injustice would occur without habeas relief." State ex rel. Dorsey v. Vandergriff, 685 S.W.3d 18, 24 (Mo. 2024).

"The manifest injustice standard requires the habeas corpus petitioner to show that a constitutional violation has probably resulted in the conviction of one who is actually innocent." Branson v. Shewmaker, 710 S.W.3d 531, 535 (Mo. 2025) (quoting Clay, 37 S.W.3d at 217) (internal quotations omitted).

The second exception is cause and prejudice. "The 'cause' component…refers to the 'cause' for the defendant's procedural default. That cause 'must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule.'" State ex rel. Koster v. McElwain, 340 S.W.3d 221, 246 (Mo. App. 2011) (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)). "Thus, the procedural default must have been caused by something that cannot fairly be attributed to the defendant." Id. (internal citations and quotation omitted). To establish the requisite prejudice, the petitioner must show that "prejudice resulted from the underlying error that worked to [the petitioner's] actual and substantial disadvantage." Brown v. State, 66 S.W.3d 721, 731 (Mo. 2002).

II. Gateway and Freestanding Actual Innocence

The Missouri Court of Appeals has rejected the idea of free-standing innocence claims in non-capital cases. In re Lincoln, 517 S.W.3d at 19–23. The Missouri Supreme Court in State ex rel. Johnson v. Blair, 628 S.W.3d 375, 387 (Mo. 2021) found that a petitioner could raise a free-standing innocence claim "because he is sentenced to death." It necessarily follows that an offender not sentenced to death cannot raise a free-standing innocence claim in habeas corpus.

In Missouri, the manifest injustice exception, which permits review of defaulted claims in habeas corpus in the absence of cause and prejudice excusing the default, is, as in federal court, also referred to as gateway actual innocence. Duvall v. Purkett, 15 F.3d 745, 747 n.3 (8th Cir. 1994) (holding that the manifest injustice exception resembles the

federal actual innocence standard); Clay, 37 S.W.3d at 217–18 (holding that the Missouri manifest injustice exception permitting review of defaulted claims in habeas corpus is "essentially the same" as the federal gateway actual innocence standard set out in Schlup v. Delo, 513 U.S. 298 (1995)).

Missouri's gateway actual innocence procedural default exception parallels the federal exception under Schlup. See Brown, 66 S.W.3d at 726; Clay, 37 S.W.3d at 217; State ex rel. Nixon v. Jaynes, 63 S.W.3d 210, 216 (Mo. 2001). Under this exception, the offender must show that a constitutional violation has probably resulted in the conviction of one who is actually innocent. Clay, 37 S.W.3d at 217 (citing Schlup, 513 U.S. at 327). The offender must show that it is more likely than not that no reasonable juror would have convicted him in light of "new evidence of innocence." Id. (quoting Schlup, 513 U.S. at 327). Without new evidence of innocence, even a meritorious constitutional claim is insufficient to establish a miscarriage of justice. Id. (quoting Schlup, 513 U.S. at 315–16). The burden of proof under the Schlup standard is substantial.

> To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.

Schlup, 513 U.S. at 324.

"Evidence is 'new' only if it was 'not available at trial and could not have been discovered earlier through the exercise of due diligence.'" State ex rel. Nixon v. Sheffield, 272 S.W.3d 277, 284–85 (Mo. App. 2008) (quoting Amrine v. Bowersox, 238 F.3d 1023,

1029 (8th Cir. 2001)); see also State ex rel. Clemons v. Larkins, 475 S.W.3d 60 (Mo. 2015) (adopting the master's finding that the due diligence requirement applies to new evidence in actual innocence); State ex rel. Barton v. Stange, 597 S.W.3d 661, 664 n.4 (Mo. 2020) (threshold for considering an actual innocence claim is new evidence that was not available at trial).

Evidence that merely shows a conflict with the State's evidence at trial is insufficient to show probable innocence under Schlup. "The existence of such a 'swearing match' would not establish that no reasonable juror could have credited the testimony of the prosecution witnesses and found [that petitioner] guilty beyond a reasonable doubt." Moore-El v. Luebbers, 446 F.3d 890, 902–03 (8th Cir. 2006); McKim v. Cassady, 457 S.W.3d 831, 843–52 (Mo. App. W.D. 2015) (six new pathologists arguing in habeas case that expert who testified at trial was wrong about the cause of death presents a conflict in testimony, not proof of actual innocence); Barton, 597 S.W.3d at 664–65 (defense blood spatter expert and additional impeachment of State's witness would create conflicting testimony, not a claim of actual innocence); Johnson v. Norris, 170 F.3d 816, 818–19 (8th Cir. 1999) (reversing grant of habeas relief, finding that much of the evidence—witnesses' memory loss and potentially conflicting testimony of witnesses—is not new and reliable); Gomez v. Jaimet, 350 F.3d 673, 679–81 (7th Cir. 2003) (holding that petitioner's own statements and statements of petitioner's co-defendants were insufficient to warrant applying the extremely rare actual innocence exception); Bosley v. Cain, 409 F.3d 657, 665 (5th Cir. 2005) (rejecting claim where new evidence consisted only of testimony from

four relatives of petitioner). Merely putting a different spin on evidence that was presented to the jury does not satisfy the Schlup requirement. Bannister v. Delo, 100 F.3d 610, 618 (8th Cir. 1996).

In the case of witness statements, even a previously unseen witness affidavit is not "newly discovered evidence" if the factual basis for it existed prior to the habeas litigation. Meadows v. Delo, 99 F.3d 280, 282 (8th Cir. 1996); see also Barton, 597 S.W.3d at 661 n.4 (threshold for considering an actual innocence claim is new evidence that was not available at trial).

III. Prosecutorial Misconduct

"Under Brady, due process requires that the prosecution disclose to the defendant any evidence in its possession that is favorable to him and that is material to his guilt or punishment." State ex rel. Engel v. Dormire, 304 S.W.3d 120, 127 (Mo. 2010) (citing Brady, 373 U.S. at 87). "To prevail on [a] Brady claim, [a petitioner] must show that: (1) the evidence at issue is favorable to him either because it is exculpatory or impeaching; (2) the evidence was, either willfully or inadvertently, suppressed by the state; and (3) he suffered prejudice as a result of the state's suppression." Clemons, 475 S.W.3d at 78 (citing State ex rel. Woodworth v. Denney, 396 S.W.3d 330, 338 (Mo. 2013)).

"To determine whether suppressed evidence prejudices a defendant, [courts] assess whether the evidence is material." Ferguson v. Dormire, 413 S.W.3d 40, 54–55 (Mo. App. W.D. 2013). When evaluating prejudice, "a [petitioner] must show 'a reasonable probability' of a different result.'" Woodworth, 396 S.W.3d at 338 (quoting Kyles v.

Whitley, 514 U.S. 419, 434 (1995)). "A 'reasonable probability' of a different result is…shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Kyles, 514 U.S. at 434 (quoting United States v. Bagley, 473 U.S. 667, 678 (1985)). "[T]he Brady standard of materiality lies somewhere between the newly-discovered evidence standard, in which a new trial is warranted only if the new evidence would have changed the outcome of the original trial, and the harmless error standard." Wallar v. State, 403 S.W.3d 698, 707 (Mo. App. W.D. 2013). Courts determine "whether the 'undisclosed evidence would have been significant to the defendant in the way that he tried his case… [If so], the evidence is material under [the] Brady analysis.'" Ferguson, 413 S.W.3d at 55 (quoting Wallar, 403 S.W.3d at 707) (alterations in original).

A prosecutor's knowing use of perjured testimony to obtain a criminal conviction is another form of prosecutorial misconduct. Trotter v. State, 736 S.W.2d 536, 539 (Mo. App. 1987). "To succeed on the theory that the State knowingly used perjured testimony," State v. Cummings, 400 S.W.3d 495, 504 (Mo. App. S.D. 2013), a petitioner must show "(1) the witness testimony was false; (2) the state knew it was false; and (3) the conviction was obtained as a result of the perjured testimony." Ferguson v. State, 325 S.W.3d 400, 407 (Mo. App. W.D 2010). "Perjured testimony is testimony that is false *and* related to a 'material fact' in the case." Cummings, 400 S.W.3d at 504 (citing State v. Albanese, 9 S.W.3d 39, 50 (Mo. App. W.D. 1999)) (emphasis in original).

Legal Analysis

The Court denies Petitioner's petition for the reasons set forth herein.

First, the plain language of § 532.040, RSMo[24] and Missouri Supreme Court Rule 91.22 prevent this Court from granting relief through habeas corpus when a higher court has already denied habeas relief in a challenge to the same judgment of conviction and sentence.

The Court likewise considers the equitable doctrine of laches which would appear to preclude relief because the crime in this case occurred over forty years ago, and the claims raised in the petition cannot be fairly litigated due to the passage of time and the resulting fading of memories, death and incapacity of witnesses, and the destruction of evidence. While that consideration is not the reason for the Court's decision, it is an important consideration.

Most importantly, however, the claims raised in Petitioner's petition are without legal merit.

For all of these reasons, this Court cannot grant relief, and hereby denies Petitioner's petition for a writ of habeas corpus.

I. Petitioner's claims

This Court finds, after consideration of the pleadings and the evidence adduced at evidentiary hearing, that Petitioner has asserted the following claims.

A. Brady Allegations

First, Petitioner alleges that the State failed to disclose that prison authorities

[24] All statutory citations will be to RSMo 2025 unless otherwise identified.

collected the cutoff jean shorts which he alleges he wore during the murder. He also alleges that the State failed to disclose that those shorts allegedly tested negative for blood in 2003. Next, Petitioner alleges that the State did not disclose that a white tape-handled knife was found in the former cell of Inmate [redacted]. It was actually found in a subbasement accessible from a common area sixteen months after the riot.

Then, Petitioner alleges the State did not disclose the transcripts of the trials of his co-actors, referring to the transcripts from [redacted], although official transcripts were not prepared until after Petitioner's trial, and the transcripts from [redacted] and [redacted], which were held years after Petitioner's trial.[25] As part of this fourth claim, Petitioner alleges that the transcripts indicate "inconsistencies" in the testimony of six witnesses. *First*, Petitioner alleges inconsistencies in the testimony of Captain [redacted], alleging that, in [redacted] years after the offense, Captain [redacted]. essentially did not remember his testimony in the preliminary hearing and prior trials and testified differently. *Second*, Petitioner alleges inconsistencies in the testimony of Officer [redacted]., alleging that statements Officer [redacted] gave while hypnotized are inconsistent with his trial testimony. *Third*, Petitioner alleges inconsistencies in the testimony of Officer [redacted]. *Fourth*, Petitioner alleges inconsistencies in the testimony of Inmate [redacted]. Specifically, Petitioner alleges that

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[25] As used in this opinion, [redacted] refers to the trial of Inmate [redacted], State v. Roberts, CR384-1F (Marion Cnty. Cir. Ct. 1985). The trial transcript in that matter was submitted as Petitioner's Exhibit 9. [redacted] refers to the 1984 trial of Inmate [redacted]. in State v. Driscoll, CR384-21FX (Phelps Cnty. Cir. Ct.). The trial transcript in that matter was submitted as Petitioner's Exhibit 8. [redacted] refers to Inmate [redacted]'s 1999 re-trial in the same case number, and [redacted] refers to Inmate [redacted]'s 2004 re-trial. The transcripts in those matters were submitted as Petitioner's Exhibits 10 and 1, respectively.

in Inmate [redacted]s testimony at the joint preliminary hearing, in [redacted] in [redacted] and in [redacted] Inmate [redacted]. mentioned Petitioner stabbing Officer [redacted], but did not do so at Petitioner's own trial. *Fifth*, Petitioner alleges inconsistencies in the testimony of Inmate [redacted] in identifying which corrections officer Inmate [redacted]. saw Petitioner stab. *Sixth*, Petitioner alleges inconsistencies and other impeachment of Inmate [redacted] Notably, Petitioner does not allege that Inmate [redacted] ever testified, at any trial, that Petitioner stabbed Officer [redacted] instead, Petitioner alleges that, if he had all the transcripts that did not yet exist, he could have impeached Inmate [redacted]. with alleged inconsistencies and claims of bias.

Next, Petitioner alleges that the State did not disclose information from Inmate [redacted]., who alleges that, although he was not in the Moberly prison on the day of the riot, he assisted certain inmates in "brokering deals" with the prosecution in this matter. Petitioner also alleges that Inmate [redacted] was later retaliated against for revealing his alleged involvement. Additionally, Petitioner alleges that the State did not disclose information from Inmate [redacted]., contained in a 2021 affidavit, which might have corroborated Petitioner's claims that he was wearing jeans the night of the riot and that he did not have a weapon or stab Officer [redacted]. Petitioner also alleges that the State did not disclose Inmate [redacted]'s deposition, taken before [redacted] which he alleges contains similar information.

Finally, Petitioner alleges that the State did not disclose information from Former Officer [redacted]., contained in an affidavit from 2023, alleging that the guards did not write their own reports and that an unidentified "elderly inmate" made a report to corrections officers after the riot that the perpetrators of the murder were in a particular cell, which cell

allegedly contained Inmate [redacted] and Inmate [redacted] but not Petitioner.

B. Prosecutorial Misconduct Allegations

First, Petitioner alleges that the prosecutor knowingly used false testimony to convict him. Petitioner does not allege that any specific witness claimed, at his trial, that Petitioner participated in the assault on Officer [redacted] but, at some other proceeding, contradicted himself and said Petitioner was not involved. Instead, Petitioner takes issue with time frames and sequences of events from the sworn accounts of multiple witnesses, given in multiple trials occurring over multiple decades, in describing a chaotic prison riot.

Second, Petitioner alleges the prosecutor hid shifting fact patterns through Brady violations. Petitioner, here, restates the Brady allegations that were discussed above, cites to the alleged "inconsistencies" in the testimonies of the aforementioned six witnesses, and seems to allege that these alleged actions must somehow be connected.

Third, Petitioner alleges that the State intimidated and threatened witnesses. He alleges that Inmate [redacted]., Inmate [redacted]., Inmate [redacted]., Inmate [redacted]., and Former Officer [redacted] were threatened or intimidated into testifying against him.[26]

C. Actual Innocence Allegations

First, Petitioner alleges that Attorney [redacted]., one of the attorneys who represented Inmate Driscoll during [redacted], claims that Inmate [redacted]. told Attorney [redacted] that

[26] Only Inmate [redacted] and Inmate [redacted]. actually testified at Petitioner's trial. See Pet. Ex. 6.

Petitioner is innocent.[27] *Second*, Petitioner alleges that Inmate [redacted]. s wife, Widow [redacted]., claims that Inmate [redacted]. told Widow [redacted] that Petitioner is innocent. *Third*, Petitioner alleges that [redacted]., an attorney who once visited Inmate [redacted]., while Inmate [redacted]. was alive and still in prison, to interview him about his involvement in a different prison stabbing, claims that Inmate [redacted] told Professor [redacted]. that Petitioner is innocent. *Fourth*, Petitioner alleges that Former Inmate [redacted]., one of Inmate [redacted]'s former cell mates, claims that Inmate [redacted]. told Former Inmate [redacted]. that Petitioner is innocent. *Fifth*, and finally, Petitioner alleges that Inmate [redacted]. claimed that Petitioner did not participate in Officer [redacted]'s murder.[28]

II. This Court may not grant habeas relief in this matter because Petitioner has not, and cannot, comply with the requirements of Rule 91.

In Missouri, proceedings in habeas corpus must abide by the edicts of Rule 91. Rule 91.01(a). The requirements of Rule 91 are not mere suggestions.

A. Petitioner did not comply with Rule 91.04.

Missouri Supreme Court Rule 91.04 requires a habeas petition to state: "That no petition for…relief…has been made to any higher court to the one to which the petition is presented or that the higher court denied the writ without prejudice to proceeding in a lower court." Rule 91.04(a)(4). The petition in this case contains no such affirmative statement. See Pet. at 6.

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[27] Inmate [redacted]. passed away on February 28, 2010. Resp. Ex. 56.

[28] Inmate [redacted] passed away on March 6, 2010. Resp. Ex. 25.

Petitioner's petition does state: "Carr has exhausted all of his appeals. State v. Carr, 708 S.W.2d 313 (Mo. App. 1986)[;] Carr v. State, 819 S.W.2d 84 (Mo. App. 1991)[;] Carr v. State, 829 S.W.2d 101 (Mo. App. 1992)[.] The instant petition follows." Pet. at 6.[29] But a petition challenging Petitioner's judgment of conviction and sentence has already been filed in, and denied by, a higher court. See Resp. Ex. 8; Resp. Ex. 9.

In 1995, Petitioner filed a state habeas petition, pursuant to Rule 91, in the Cole County Circuit Court. Carr v. Groose, CV195-1187CC (Cole Cnty. Cir. Ct. Oct. 5, 1995).[30] In that petition, Carr alleged that the State withheld evidence in violation of *Brady*, and that he had new evidence showing his innocence. See Resp. Ex. 6. The Circuit Court of Cole County denied the petition, stating: "Petition for writ of habeas corpus, denied." Resp. Ex. 7 at 1.

Petitioner then filed a petition for a writ of habeas corpus in the Missouri Court of Appeals, Western District. Carr v. Groose, WD51787 (Mo. App. Oct. 19, 1995). This petition also alleged a Brady violation and new evidence of actual innocence. See Resp. Ex. 8. The Missouri Court of Appeals denied the petition, stating: "Petition for Writ of Habeas Corpus is denied." Resp. Ex. 9 at 1. The existence of these previous filings is significant, as this means Petitioner's petition before this Court is not, and cannot be, compliant with Rule 91.04(a)(4).

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[29] The cases to which Petitioner cites are his direct appeal and post-conviction relief appeals. See also Resp. Ex. 1; Resp. Ex. 2; Resp. Ex. 3.

[30] This case does not appear to be available on Case.net.

B. Petitioner cannot comply with Rule 91.22.

Petitioner's former filings also mean that his petition before this Court runs afoul of Rule 91.22. In State v. Thompson, 324 S.W.2d 133, 139 (Mo. 1959), the Supreme Court of Missouri found that a movant could not raise claims in a Rule 27.26 motion that it had already rejected in a habeas corpus action. The Supreme Court of Missouri quoted § 532.040, which states: "Whenever an application under this chapter for a writ of habeas corpus shall be refused, it shall not be lawful for any inferior court or officer to entertain any application for the relief sought from, and refused by, a superior court or officer." § 532.040. In State v. Goodwin, the Supreme Court of Missouri again held that a litigant could not raise claims in a Rule 27.26 motion which had already been denied in a habeas action before a higher court. 396 S.W.2d 548, 549 (Mo. 1965) (denial of rehearing en banc) (citing the Court's previous denial of habeas relief in Ex parte Goodwin, 359 S.W.2d 601, 601 (Mo. 1962)).

In Hicks v. State, the Missouri Court of Appeals, in denying an attempt to proceed in a Rule 27.26 petition after a habeas denial by a higher court, quoted Missouri Supreme Court Rule 91.22. 719 S.W.2d 86, 88 (Mo. App. S.D 1986). Rule 91.22 reads: "When a petition for a writ of habeas corpus has been denied by a higher court, a lower court shall not issue the writ unless the order in the higher court denying the writ is 'without prejudice to proceeding in a lower court.'" Rule 91.22. The Missouri Court of Appeals held that, where the order of denial "did not state it was without prejudice to proceeding in a lower court," neither the trial court, nor the Missouri Court of Appeals, has the power to grant

relief on the ground raised. Hicks, 719 S.W.2d at 88 (quoting Rule 91.22).[31]

In denying a stay of execution based on an allegation of actual innocence by reason of DNA evidence, in State v. Williams, the Supreme Court of Missouri noted that it had already twice rejected DNA-based actual innocence claims in habeas actions. 696 S.W.3d 316, 317–18 (Mo. 2024). Indeed, the orders in both cases were summary denials. See State ex rel. Williams v. Steele, SC94720 (Mo. Jan. 31, 2017); State ex rel. Williams v. Larkin, SC96625 (Mo. Aug. 15, 2017). In these cases, and consistent with Hicks, the Supreme Court of Missouri treated summary denials as merits decisions, where the denials did not explicitly state that the habeas denials were without prejudice. See id.

Although the cases enforcing Rule 91.22 and § 532.040 appear to deal with higher court denials rejecting the same or similar claims, the plain language in § 532.040 and Rule 91.22 does not limit itself to petitions in lower courts that mirror the habeas claims rejected by higher courts. It would not be proper for this Court to add language to the statute or rule changing their plain meaning. Li Lin v. Ellis, 594 S.W. 3d 238, 243–44 (Mo. 2020) (courts must read a statute as written by the legislature and may not add language where it does not exist). Therefore, under the plain language of the applicable statute and Rule, this Court denies all claims in Petitioner's present petition for habeas corpus.

III. The equitable doctrine of laches applies to discourage this Court from granting

[31] However, in denying habeas relief in McKim, the Missouri Court of Appeals, Western District, acknowledged the holding in Hicks but explicitly declined to follow it, denying the habeas petition on other grounds. 457 S.W.3d at 839–40 n.14. This finding, however, must be dicta, as the Missouri Court of Appeals ultimately denied the habeas petition for other reasons. Id.

Petitioner habeas relief.

Petitioner has delayed the assertion of his rights for an excessive amount of time, and Respondent Warden Adams has been demonstrably prejudiced thereby. Therefore, this Court finds that the equitable doctrine of laches applies and appears to preclude habeas relief. However, the Court has considered that defense *only in light of the evidence and arguments presented at the evidentiary hearing*.

A. Legal Standard

Laches is the equitable equivalent of a statute of limitations defense. Kansas City Area Transp. Auth. v. Donovan, 601 S.W.3d 262, 275 (Mo. App. 2020). "To successfully invoke the affirmative defense of laches, the defendant must demonstrate that the plaintiff knew of the facts giving rise to his rights and delayed assertion of his rights for an excessive amount of time, and that the defendant suffered legal detriment as a result." Id. (citation omitted). In the context of extraordinary writs, where there is no statute of limitations defense, it is the general rule that the writ must be applied for in a reasonable time or it may be refused; or, if it is improvidently issued, it should be dismissed. State ex rel. Taylor v. Blair, 210 S.W.2d 1, 2–3 (Mo. 1948). "Prejudice in an evidential frame of reference contemplates a loss of demonstrative evidence or the unavailability of witnesses which or who could support the position of one seeking to invoke the doctrine of laches." Kimble v. Worth Cnty. R-III Bd. of Educ., 669 S.W.2d 949, 954 (Mo. App. 1984).

In a federal habeas corpus action, which occurred prior to Congress's enactment of the Antiterrorism and Effective Death Penalty Act of 1996, which adopted a one-year

statute of limitations in federal habeas corpus actions, the Eighth Circuit applied the affirmative defense of laches where a petitioner had delayed ten years before seeking habeas relief. Cotton v. Mabry, 674 F.2d 701, 704–05 (8th Cir. 1982) (ten-year delay was unreasonable, and affidavits from witnesses showed that they had insufficient recollection of events). This doctrine has also been applied in Missouri state habeas corpus actions. For example, this Court previously found, in Robinson v. Adams, that the doctrine of laches prevented habeas relief where the petitioner had delayed for twelve years before filing his habeas petition, and which delay "prejudiced Respondent's ability to defend against his allegations." Order at 3–4, Robinson v. Adams, 22SF-CC00053 (St. Francois Cnty. Cir. Ct. Oct. 2, 2023). This Court determined that laches was applicable because that petitioner did not assert his challenge when records were more readily available and witnesses had more accurate recollections of the underlying events. Id.[32]

B. Petitioner unreasonably delayed bringing this action.

Officer [redacted] was killed forty-two years ago. Petitioner's conviction itself is more than forty years old. Despite actively litigating numerous appeals from the time of his conviction to a post-conviction DNA action ultimately denied in 2010, Petitioner waited to bring this action until February of 2024.

Petitioner's forty-year-delay in bringing this action is both unreasonable and unexplained. Petitioner does not claim that the information upon which his claims are based

[32] Petitioner Robinson's habeas corpus petition was also denied by the Missouri Court of Appeals in a summary order. Order, In re Robinson v. Adams, ED112918 (Mo. App. Sep. 5, 2024).

was not discoverable at some earlier time. Instead, Petitioner asserts that his *present counsel* did not discover the underlying information until sometime after 2019. For example, while counsel for Petitioner contends that the instant petition had to be delayed in order for a transcript of [redacted] to be created, the record in this matter reflects that Petitioner was aware that a [redacted] transcript had not been created, and could have requested its transcription, as early as 2005. See Resp. Ex. 35. Even Petitioner's five-year delay, from 2019 to 2024, is unreasonable in this matter, in light of the prejudice afforded Respondent.

C. Petitioner's delay has prejudiced Respondent.

Petitioner's delay is not without consequence. Respondent Warden Adams has suffered demonstrable prejudice in his ability to defend against Petitioner's claims.

1. Witnesses are no longer available.

In the intervening time since Petitioner was convicted of capital murder, numerous individuals involved in Petitioner's conviction, and the underlying events, have died, including Petitioner's defense counsel from his 1985 trial, the doctor who performed Officer [redacted]'s autopsy, and many corrections officers and inmates who were directly involved in the riot which resulted in the officer's death, some of whom also testified at Petitioner's trial. Other individuals have become otherwise incapable of testifying.

Significantly, of the witnesses who testified at Petitioner's 1985 trial, every witness

who testified that they saw Petitioner stab Officer [redacted] has passed away.[33] Only a single witness who testified that he saw Petitioner with a weapon during the riot is still alive.[34] The death or incapacity of nearly every relevant witness severely hampers Respondent Warden Adams in defending against Petitioner's claims by making any additional investigation into the original prosecution nearly impossible.

2. Time has eroded the memories of available witnesses.

Even where witnesses are alive, however, the forty years that have passed since Petitioner's conviction have significantly reduced the possibility that any witness could have an independent recollection of the events underlying Petitioner's claims. The testimony of a Moberly guard, taken in a deposition to preserve in this matter, is a quintessential example of these problems. In presenting his petition to this Court, Petitioner ostensibly relied, at least in part, on the testimony of a former corrections officer, Former Officer [redacted]., from co-actor Inmate [redacted]'s first trial, in 1984. See Pet. Ex. 8 at 11. Former Officer [redacted]'s testimony appears to be further discussed in an affidavit, submitted as Petitioner's Exhibit 41, which appears to have been signed on May 1, 2023. See Pet. Ex. 41. In his 2024 deposition, however, Former Officer [redacted]. failed to recall even signing the affidavit in 2023, let alone details about his 1980s employment with the Missouri

[33] Inmate [redacted]., Captain [redacted]., Officer [redacted]., and Officer [redacted]. each testified that they saw Petitioner stab Officer [redacted]. in the abdomen. Pet. Ex. 6 at 200–01, 227–28, 255–56, 348–49. These individuals passed away in 1990, 2004, 2010, and 2018, respectively. Resp. Ex. 15; Resp. Ex. 22; Resp. Ex. 24; Resp. Ex. 31.

[34] This witness, Inmate [redacted]., has not changed his testimony and declined to participate in Petitioner's present action.

Department of Corrections or the events of July 3, 1983. See Resp. Ex. 38.

Petitioner's Exhibit 4, a letter ostensibly written by Attorney [redacted]., the prosecutor in Petitioner's underlying criminal case, dated "March 18, 2019," further exemplifies the problems presented by Petitioner's delayed petition. See Pet. Ex. 4 at 1. This prosecutor, whom Petitioner accuses of misconduct, and from whom Petitioner presents a letter which claims that Petitioner "was not the person who actually stabbed the victim." See Pet. Ex. 4. Evidence adduced at the evidentiary hearing in this matter, however, undermines that claim. Attorney [redacted]. has been declared legally incompetent as a result of medical complications and dementia, and, thus, is no longer available to the parties, or this Court, to testify about the veracity of the comments made in the letter or about his memory of the original trials. Resp. Ex. 11; Resp. Ex. 12; Resp. Ex. 13.

3. Physical evidence is no longer available.

Investigation records kept by the Department are retained for twenty-five years and are then destroyed in accordance with the Department's publicly-available retention schedule. MO. SEC'Y OF STATE, DEP'T OF CORR., OFF. OF THE DIR., OFF. OF PRO. STANDARDS, *Investigation Files*, Agency Records Disposition Schedule, Series 18418 (Approved on Dec. 17, 2008) ("Investigations may involve but are not limited to murder…violation of state statute and department policies, of both criminal and non-criminal matters."). That twenty-five years expired in 2008, approximately sixteen years before Petitioner filed the instant petition.

Judicial records relevant to Petitioner's claims have also been impacted by his delay in bringing the instant petition. Court Operating Rule 8.03 allows Missouri circuit courts

to purge certain documents, including "discovery documents" and "depositions," such as the deposition Petitioner alleges was not disclosed, "three years after disposition." Ct. Operating Rule 8.03(a)(3), (15). Even the judicial records to which Petitioner cites in his petition have been impacted by his delay. Petitioner's first exhibit, Petitioner's Exhibit 1, is a "Partial Transcript of Proceedings" from Inmate [redacted]'s third jury trial in this matter, "held March 18, and March 22 through 26, 2004." Pet. Ex. 1 at 1.[35] On the sixth page of Petitioner's Exhibit 1 is a note, which states:

> Court Reporter Note: On March 23-25, 2004, [B.M.J.], CCR #530, was the acting official court reporter for Division I of the Phelps County Circuit Court; she was present and reported the proceedings in State of Missouri vs. [Inmate] [redacted]., Case No. CR384-0021FX.
>
> [[redacted].] passed away October 25, 2020, prior to any request for preparation of transcript. This transcript has been prepared from her notes and files.

Pet. Ex. 1 at 6. The court reporter's certificate is only signed by A.V., CCR #1155, as "a true and accurate reproduction of [redacted]'s] notes of the proceedings as transcribed by [A.V.] to the best of [A.V.'s] ability." Pet. Ex. 1 at 650.

At bottom, a period of time that is exponentially greater than the twelve-year period at issue in Petitioner Robinson's case has passed. Further, this passage of time has drastically complicated Petitioner's case and materially prejudiced Respondent Warden Adams' ability to defend against his allegations. The prosecutor from Petitioner's trial, against whom many of Petitioner's allegations are leveled, is no longer able to defend

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[35] While the first page of Petitioner's Exhibit 1 notes this date range, the exhibit produces "Excerpt[s]" of the jury trial proceedings only from March 23, 24, and 25. See Pet. Ex. 1 at 2–5.

himself from Petitioner's present allegations, and the same is true for all of the deceased corrections officers, investigators, inmates, and attorneys named by Petitioner in these proceedings.

It is now impossible for the witnesses to the murder to refute claims of knowing use of perjured testimony as they are now dead. It is impossible for the prosecutor to refute claims of knowing use of perjured testimony or failure to disclose material evidence as he is no longer competent and before he was declared incompetent he appeared to have lost memory of the facts of the case. It is impossible for defense counsel to say what was disclosed to him and what was not as he is now dead. The death or incapacitation of nearly all of the relevant witnesses in this matter makes it difficult, if not impossible, to evaluate the veracity of Petitioner's allegations using live testimony. In stark terms, if there were ever a case in which one party's ability to defend their position was decimated by the passage of time, this is that case.

Therefore, this Court applies the equitable doctrine of laches as a basis, **but not the only basis,** for denying habeas relief.

VI. The claims raised in Petitioner's petition are without legal merit.

The habeas corpus petitioner "has the burden of proof to show that he is entitled to habeas corpus relief." State ex rel. Engel v. Dormire, 304 S.W.3d 120, 125 (Mo. 2010) (citing State ex rel. Nixon v. Jaynes, 73 S.W.3d 623, 624 (Mo. 2002)). Petitioner has failed to carry this burden, and this Court therefore denies the petition for writ of habeas corpus.

A. Brady Allegations

"Under Brady, due process requires that the prosecution disclose to the defendant any evidence in its possession that is favorable to him and that is material to his guilt or punishment." Engel, 304 S.W.3d at 127 (citing Brady, 373 U.S. at 87). "To prevail on [a] Brady claim, [a petitioner] must show that: (1) the evidence at issue is favorable to him either because it is exculpatory or impeaching; (2) the evidence was, either willfully or inadvertently, suppressed by the state; and (3) he suffered prejudice as a result of the state's suppression." Clemons, 475 S.W.3d at 78 (citing Woodworth, 396 S.W.3d at 338).

"To determine whether suppressed evidence prejudices a defendant, [courts] assess whether the evidence is material." Ferguson, 413 S.W.3d at 54–55. When evaluating prejudice, "a [petitioner] must show 'a reasonable probability' of a different result." Woodworth, 396 S.W.3d at 338 (quoting Kyles v. Whitley, 514 U.S. 419, 434 (1995)). "A reasonable probability of a different result is…shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Kyles, 514 U.S. at 434 (quoting Bagley, 473 U.S. at 678). "[T]he Brady standard of materiality lies somewhere between the newly-discovered evidence standard, in which a new trial is warranted only if the new evidence would have changed the outcome of the original trial, and the harmless error standard." Wallar, 403 S.W.3d at 707. Courts determine "whether the 'undisclosed evidence would have been significant to the defendant in the way that he tried his case… [If so], the evidence is material under [the] Brady analysis.'" Ferguson, 413 S.W.3d at 55 (quoting Wallar, 403 S.W.3d at 707) (alterations in original).

Additionally, "Brady applies where, after trial, the defense discovers new information that the prosecution knew at trial. If the defense knew about the evidence at the time of trial, no Brady violation occurred." Barton v. State, 432 S.W.3d 741 (Mo. 2014) (citing Gill v. State, 300 S.W.3d 225, 231 (Mo. 2009)). "There is no Brady violation if the defendant[s], using reasonable diligence, could have obtained the information themselves." United States v. Jones, 130 F.3d 473, 479 (8th Cir. 1998) (internal citations omitted).[36] Moreover, evidence that is equally available to the defense does not constitute Brady material. United States v. Willis, 997 F.2d 407, 412–13 (8th Cir. 1993) (holding that a prosecutor was not required to supply plea agreements of co-defendants which could be found in the legal file or transcripts of sentencings of co-defendants).

1. There has been no Brady violation in relation to the jean shorts.

First, Petitioner alleges the State failed to disclose the fact that prison authorities collected the cropped jean shorts, which Petitioner alleges he wore during the riot. The fact that prison authorities collected shorts from Petitioner's cell after the riot is neither exculpatory nor impeaching. The prosecution at Petitioner's trial never claimed that Petitioner did not own a pair of cropped jean shorts. Instead, the prosecution asserted that Petitioner was wearing gray trousers during the riot, and several witnesses testified to that fact.

Petitioner testified at his trial that he was wearing the jean shorts at the time of the

[36] Federal decisions interpreting the Due Process Clause also provide guidance for Missouri Courts. Doe v. Phillips, 194 S.W.3d 833, 841 (Mo. 2006) (the Due Process Clause of the Missouri Constitution is co-extensive with the United States Constitution).

riot. Petitioner appears to assert that the jury might have deemed him a more credible witness, in a sort of reverse-impeachment, if, at trial, Petitioner had entered into evidence the fact that he owned a pair of shorts like the shorts he claimed he was wearing during the riot. But the simple fact that Petitioner owned a pair of cropped jean shorts at that time is not information which could have impeached any of the State's witnesses who testified that Petitioner was wearing gray pants during the riot. The mere existence and collection of these jean shorts is not favorable to Petitioner.

Nor can Petitioner show that the prison authorities' confiscation of his jean shorts was suppressed. Indeed, Petitioner seemingly would have been in the best position to know that his jean shorts had been confiscated after the riot, as he would have been the most likely individual to notice their absence from his prison cell, meaning that their confiscation was not, and could not have been, suppressed under these circumstances. Moreover, without testimony from either the prosecutor or defense counsel at Petitioner's 1985 trial, or even reference to their files, Petitioner cannot affirmatively show that this evidence was, in fact, suppressed.

Petitioner also alleges that the State failed to disclose the fact that those shorts allegedly tested negative for blood in 2003. Since the testing was not done until after his trial, however, Petitioner cannot show that the evidence, which did not yet exist, was suppressed before his 1985 trial. Nor can he show that this testing is favorable. The Missouri Court of Appeals addressed a similar claim by Petitioner in the appeal of the denial of a § 547.035 motion for DNA testing. Resp. Ex. 4. The Missouri Court of Appeals

found that the clothes Petitioner was wearing were unimportant in his identification and a negative DNA test would not be exculpatory. Resp. Ex. 4 at 7–9. There is no Brady violation here.

Additionally, Petitioner's own prior testimony is further evidence that he was not wearing the jean shorts during the riot. When Petitioner testified at his post-conviction review hearing, he testified that a lineup was conducted the day after the riot took place and noted that there were photographs taken of the lineup. Resp. Ex. 78 at 39–40. According to Petitioner, he "looked exactly the same" in his lineup photograph as he had during the riot, as he could not have changed clothes due to being locked in a cell "all night" right after the incident. Id. at 40–42. In this lineup photograph, Petitioner is wearing gray prison pants. Resp. Ex. 77.

Although Petitioner testified at the habeas hearing that he was wearing denim cutoffs at the time of riot, he identified the lineup photograph taken after the riot and acknowledged he was wearing gray pants in the photograph. Tr. at 816–17, 819. When asked if he had ever testified under oath about wearing gray pants the night of the riot, Petitioner initially said he had stated at his *preliminary hearing* that he was wearing the clothes he wore during the riot in the lineup photograph, but he claimed he had not seen the photo then. Id. at 819–20. He further testified he had the denim cutoffs on after the riot, but he claimed that "[w]hen they put [him] in a cell in Ad. Seg., they stripped [him] naked. Put [him] in a cell, and kept [him] in that cell naked all night. And when [he] came back out in the next morning, they put them gray pants on [him]." Id. at 820–21.

After he was confronted with his sworn *post-conviction review* testimony that he was wearing the clothes he wore during the riot in the lineup photograph, he said he was mistaken in his sworn post-conviction testimony. Id. at 821–27, 862–64. Petitioner also testified he had wanted counsel to put the lineup photograph into evidence at trial even though he had never seen it. Id. at 873. Ultimately, these inconsistencies between Petitioner's post-conviction review hearing testimony and his habeas hearing testimony further refute his Brady claim concerning the jean shorts.

2. Petitioner alleges that the State did not disclose that a white tape-handled knife was found in the cell of Inmate [redacted].

Petitioner alleges the transcript of the first trial of Inmate [redacted]., [redacted] indicates that a white tape-handled knife was found in the former cell of Inmate [redacted]. in October 1984.

Testimony and evidence presented at the habeas hearing refutes any claim of a Brady violation in connection with this knife. Investigator [redacted]. and Investigator [redacted]. found the knife on October 30, 1984, over a year after the July 3, 1983 riot. Tr. at 459–60, July 16, 2025. It remains unclear, however, whether the knife was placed in the heating unit at some point prior to the riot or at some point during the subsequent fifteen months.

Additionally, files from the Department and testimony from Inmate [redacted]. and Inmate [redacted]. demonstrated the inhabitants of cell 2B 414, Inmate [redacted]. and Inmate [redacted], were transferred from MTCM on July 4, 1983, the day after the riot. Id. at 279. Investigator [redacted] was unable to provide details regarding the number or identity of inmates who had resided in cell 2B 414 between July 3, 1983 and October 1984. Id. at 484–85. Investigator [redacted] testified the pipe chase in cell 2B 414 ran from the floor to the ceiling in the cell, but he

was unable to say whether an inmate in one of the vertically adjoining cells may have had better access to the pipe chase than the inmates occupying cell 2B 414. Id. at 480–81, 489–90. Further, according to Investigator [redacted]., the white tape wrapped around the handle of the knife was one of the most common tape colors used by inmates in constructing homemade knives at MTCM. Id. at 461. This testimony indicates the identity of the person who put the knife in the pipe chase remains unclear.

Further, evidence related to the knife was presented during Inmate [redacted].'s first trial, [redacted] Specifically, MSHP Lab Analyst [redacted] testified that she tested this knife for blood after it was recovered, and this testing did not indicate the presence of blood on the knife. Pet. Ex. 8 at 1237–1238. [redacted] was tried before Petitioner's trial, and Petitioner's trial attorney testified during Petitioner's PCR hearing that he had the [redacted] transcript at the time of Petitioner's trial. Resp. Ex. 78 at 83.

It is reasonable, therefore, to infer defense counsel in Petitioner's case was aware of the knife, as well as the results of the testing conducted on the knife. Ultimately, the foregoing testimony and evidence presented at the habeas hearing refute Petitioner's Brady claim regarding the knife.

3. Petitioner alleges the State did not disclose the transcripts of Petitioner's co-defendant's trials, even though the official transcripts in [redacted] and [redacted] were not prepared until after Petitioner's trial, and the trials in [redacted] and [redacted] were held after Petitioner's trial.

Petitioner alleges the State did not disclose the transcripts of the trials of his co-actors, referring to the transcripts from [redacted], and [redacted], but evidence that does not exist at the time of trial does not implicate Brady.

According to the record, however, the official transcript from [redacted] as filed with the Missouri Court of Appeals, was not completed until August of 1985, months after Petitioner's trial. Pet. Ex. 8 at 2166. Likewise, the official transcript in [redacted] was not completed until July of 1985. See Pet. Ex. 9. The prosecutor cannot have committed a Brady violation by failing to turn over transcripts that did not yet exist before Petitioner's trial.

Similarly, the prosecutor cannot have committed a Brady violation by not turning over the transcripts from Inmate [redacted]'s second and third trials, which had not yet happened at the time of Petitioner's trial. [redacted] and [redacted] had not been contemplated at the time of Petitioner's trial. [redacted] which went to trial in November and December of 1999, was not transcribed until July of 2000. [redacted], which went to trial in March of 2004, was not transcribed until Petitioner eventually requested such a transcript be made, which request was completed in 2023.

Petitioner could have had an attorney, investigator, paralegal, or even a family friend, attend the trials and make notes if he wished. He could have and apparently did obtain unofficial transcripts before Petitioner's trial. At the post-conviction review hearing, now-deceased trial counsel testified that before Petitioner's trial, he had transcripts from [redacted] and [redacted], copies of the depositions in each of those cases, copies of a report done by the Division of Public Safety investigating alleged beatings of prisoners, copies of discovery from the prosecutor's file, which included statements taken by the guards at the prison from other inmates about this event, as well as copies of the inter-office

communications reports done by the guards. Resp. Ex. 78 at 71.

The prosecutor had no responsibility under Brady to transcribe the co-defendants' trials while trying their cases and then turn this over to Petitioner so that he could search for inconsistencies that may or may not have occurred at his own trial. Petitioner cannot show that this evidence, which did not yet exist in the form of official transcripts, was suppressed by the prosecution. Moreover, Petitioner cannot show that these transcripts are favorable to him, nor can Petitioner show the requisite Brady prejudice.

a. Petitioner alleges inconsistencies in the testimony of Captain [redacted]

Captain [redacted] testified at Petitioner's trial that he saw Inmate [redacted]. holding Officer [redacted]. and unsuccessfully tried to pull Officer [redacted]. free, but he was unsuccessful because of resistance from Inmate [redacted] and other inmates. Carr II, 819 S.W.2d at 86. Captain [redacted]., who knew Petitioner before the riot, saw Petitioner make a lunging motion toward Officer [redacted], who was already covered with blood. Id. Simultaneously with Petitioner's lunge, Captain [redacted] saw "a horrible distressful look" on Officer [redacted]'s face, manifesting severe pain. Id. Captain [redacted]. did not see a knife. Id.

As discussed above, the prosecutor was not required to disclose official transcripts that did not exist yet. Further, the core testimony of Captain [redacted]. that Petitioner jabbed at Officer [redacted] is confirmed in Driscoll I. See Pet. Ex. 8 at 891–93. Similarly, the testimony in [redacted] confirms Captain [redacted].'s testimony. See Pet. Ex. 9 at 267–68. Petitioner alleges that in [redacted] years after the offense, Captain [redacted] essentially did not remember his testimony in the preliminary hearing and prior trials and testified differently. That is not

surprising. But there is no Brady violation. The testimony in Petitioner's trial, years nearer to the time of the crime, is more likely to be accurate.

b. Petitioner alleges inconsistencies in the testimony of Officer [redacted].

Officer [redacted]. was present during the riot. Carr II, 819 S.W.2d at 86. Officer [redacted] testified that he saw a knife in Petitioner's hand and saw Petitioner stab Officer [redacted] while Officer [redacted] was being held by Inmate [redacted]. Id. Officer [redacted]. testified that he was three-to-four feet away when he saw the blade go into Officer [redacted]'s abdomen. Id. Officer [redacted] agreed that Officer [redacted]. was already bleeding when Petitioner stabbed him. Id. Officer [redacted] testified that Petitioner cut Officer [redacted]'s finger and stabbed Officer [redacted]. in the shoulder after stabbing Officer [redacted]. Id. Officer [redacted]. testified that Petitioner was wearing a blue tank top and gray pants. Id.

Petitioner alleges that various details about Officer [redacted]'s account vary between the various trials. As discussed above, the prosecutor was not required to disclose transcripts that did not yet exist. Further, Petitioner has not shown that any true inconsistencies exist between Officer [redacted]'s testimonial accounts, let alone that any perceived inconsistencies are favorable or material to Petitioner.

The record shows, and Petitioner appears to agree, that in [redacted] Officer [redacted] testified that Petitioner had a knife and stabbed Officer [redacted]. Pet. Ex. 8 at 1044–47. Likewise, the record reflects, and Petitioner agrees, that in [redacted] Officer [redacted]. testified that he saw Petitioner with a knife in his hand and saw Petitioner stab Officer [redacted]. Pet. Ex. 9 at 313–14. The record reflects, and Petitioner agrees, that in [redacted] Officer [redacted]

testified he saw Petitioner with a knife and saw Petitioner stab Officer [redacted]. Pet. Ex. 10 at 939–42. Even in [redacted] tried twenty years after the riot, Officer [redacted]. testified that he saw Petitioner stab Officer [redacted]. Pet. Ex. 1 at 263–66. Petitioner attacks inconsistencies in the details of the riot in each version, but the core fact that Petitioner stabbed Officer [redacted] was present in Officer [redacted].'s testimony each time he testified.

Petitioner also alleges that statements Officer [redacted]. gave while hypnotized are inconsistent with his trial testimony. The United States District Court for the Eastern District of Missouri rejected a similar Brady claim in Petitioner's federal habeas corpus action, which was based on the statements Officer [redacted]. gave under hypnosis. The federal motion court determined that the claim was procedurally barred and, further, found that the claim was without merit because the testimony under hypnosis was consistent with Officer [redacted].'s testimony at Petitioner's trial. Resp. Ex. 5 at 29–33.[37]

c. Petitioner alleges inconsistencies in the testimony of Officer [redacted]

Officer [redacted]. was present during the riot. Carr II, 819 S.W.2d at 86. Officer [redacted]. testified that Petitioner was holding the door to the control center. Id. Officer [redacted]. grabbed Petitioner, and Petitioner cut Officer [redacted].'s hand with a knife, causing Officer [redacted] to release his hold on Petitioner. Id. Officer [redacted]. testified that he then saw Petitioner run towards Officer [redacted]. and stab Officer [redacted] in the lower stomach. Id. Officer [redacted]. recalled there was already blood on Officer [redacted].'s shirt and that Inmate [redacted] was holding Officer

[37] Respondent's Exhibit 5 is a copy of the memorandum and order issued in Petitioner's federal habeas corpus action, Carr v. Dormire, 4:95-CV-02435-CDP (E.D. Mo. Apr. 28, 1998).

[redacted]. while the officer was stabbed. Id. Officer [redacted]. testified that he saw Officer [redacted] double up when Petitioner lunged at him. Id. Officer [redacted] identified Petitioner as wearing gray trousers and a blue tank top. Id.

Petitioner again alleges that there are various inconsistencies in Officer [redacted].'s account of the riot. As discussed above, the prosecutor was not required to disclose official transcripts that did not exist yet. Further, yet again, the core of Officer [redacted]'s testimony does not change between the trials. In [redacted] the record reflects, and Petitioner agrees, that Officer [redacted]. testified that Petitioner stabbed Officer [redacted] Pet. Ex. 8 at 1007–09. In [redacted], the record reflects, and Petitioner agrees, that Officer [redacted]. testified that Petitioner stabbed Officer [redacted]. Pet. Ex. 9 at 301–02. The record reflects, and Petitioner appears to agree, that in [redacted] and [redacted] Officer [redacted] continued to identify Petitioner as an individual who stabbed Officer [redacted]. Pet. Ex. 10 at 980–82; Pet. Ex. 1 at 181–82. There is no Brady material here.

d. Petitioner alleges inconsistencies in the testimony of Inmate [redacted]

Inmate [redacted]. testified at Petitioner's trial that he saw Inmate [redacted]. assemble a knife before the riot. Carr II, 819 S.W.2d at 86. Inmate [redacted] testified that he saw Inmate [redacted]. stab Officer [redacted] one time while Inmate [redacted]. held Officer [redacted] Id. Inmate [redacted]. then testified that he saw Petitioner with a knife, standing a few feet away from Officer [redacted]., but that he went back to his cell just after Inmate [redacted]. stabbed Officer [redacted]., and thus did not see Petitioner stab Officer [redacted] Id.

Petitioner alleges that, in the joint preliminary hearing and [redacted] Inmate [redacted]. mentioned Petitioner stabbing Officer [redacted] but did not mention Petitioner stabbing Officer

[redacted]. in his testimony at Petitioner's own trial. Petitioner makes similar complaints about Inmate [redacted].'s testimony in [redacted] and [redacted] As discussed above, the prosecutor was not required to disclose official transcripts that did not yet exist. Further, Petitioner has not shown that this difference, even if it did rise to the level of a distinction, rather than being attributable to mere different questions being asked of Inmate [redacted]. in the different trials, would have been favorable to him.

Petitioner argues that a Brady violation occurred because, during Petitioner's trial, Inmate [redacted] did not testify that he saw Petitioner actually stab Officer [redacted] but that Inmate [redacted]. gave less favorable testimony in other cases, testifying that he saw Petitioner stab Officer [redacted]. Petitioner claims that it would have been favorable to his defense to cross-examine Inmate [redacted]. on that point at his own trial. But such a cross-examination technique would require the defense to admit Inmate [redacted].'s testimony, wherein Inmate [redacted]. asserted that he did, in fact, see Petitioner stab Officer [redacted]., into the record at Petitioner's trial for his involvement in the stabbing of Officer [redacted]. Were these transcripts relevant to Brady analysis, there would be no Brady violation from testimony that was more favorable to Petitioner at his own trial than at the joint preliminary hearing or other trials.

e. Petitioner alleges inconsistencies in the testimony of Inmate [redacted]

Inmate [redacted] testified that he saw Petitioner stab a "brown shirt," prison jargon for a non-supervisory guard, who was being held by Inmate [redacted] Carr II, 819 S.W.2d at 86. The autopsy showed three stab wounds in Officer [redacted]s chest and one in the abdomen. Id. The pathologist was unable to determine whether all the wounds were caused by the same weapon. Id.

Petitioner alleges inconsistencies in the testimony of Inmate [redacted] in identifying which corrections officer Inmate [redacted]. saw Petitioner stab. As discussed above, the prosecutor was not required to disclose official transcripts that did not exist yet.

Petitioner alleges that, at the joint preliminary hearing, Inmate [redacted] testified that he saw Petitioner stab an unknown corrections officer. Petitioner alleges that at Inmate [redacted]s deposition in [redacted] Inmate [redacted]. then testified that he saw Petitioner stab a "brown shirt." Petitioner alleges that Inmate [redacted].'s identification must have changed in [redacted] when Inmate [redacted] testified that he saw Petitioner stab a brown shirt, who, Inmate [redacted] testified, could have been Officer [redacted]., and who Inmate [redacted] then testified was Officer [redacted]. Petitioner does not allege any discrepancy with Inmate [redacted]'s testimony admitted at the [redacted] trial or in [redacted] and [redacted]. This is not Brady material. The key testimony, that Petitioner stabbed a "brown shirt," or a corrections officer, is consistent.

f. Petitioner alleges inconsistencies and other instances of impeachment of Inmate [redacted]

Petitioner alleges inconsistencies and other instances of impeachment of Inmate [redacted]. Notably, Petitioner does not allege that Inmate [redacted] ever testified, at any trial, that Petitioner stabbed Officer [redacted] Instead, Petitioner alleges that, if he had all the transcripts, he could have impeached Inmate [redacted]. with alleged inconsistencies and claims of bias. This is not Brady material. Moreover, Petitioner cannot show that it would have been favorable to his defense to attempt to impeach a witness who, at trial, testified that he did not see Petitioner with a weapon or stabbing Officer [redacted]

At the habeas hearing, Inmate [redacted]. testified that he saw Petitioner standing by

himself near the rotunda, but not near any guards or inmates. Tr. at 667–68. This Court finds the testimony not credible. Similarly, the current testimony from Inmate [redacted]. at the hearing, that he punched Officer [redacted] in the face, and then road another officer piggy-back, is not consistent with eyewitness accounts. The hearing testimony that Inmate [redacted] swung underhand and stabbed Officer [redacted]. in the abdomen is not credible, and it appears to the Court to have been added to support Petitioner's story that he did not stab Officer [redacted]. in the abdomen despite eyewitness testimony to the contrary. This testimony does not support a Brady violation or any other claim of error.

4. Petitioner alleges that the State failed to disclose impeachment information about Inmate [redacted]., who did not testify at Petitioner's trial.

Petitioner alleges that, at a deposition taken in [redacted] which was disclosed, Inmate [redacted] testified that certain inmates, who were at MTCM at the time of the riot, later told Inmate [redacted] about what had happened, and that Inmate [redacted]. then helped these inmates negotiate "deals" with the prosecutor. But Petitioner admits that the deposition was, in fact, disclosed. Without the requisite suppression element, Petitioner has not shown a Brady violation occurred. And even if Petitioner did not agree that the deposition testimony was disclosed to the defense, Inmate [redacted].'s deposition testimony is neither exculpatory nor impeaching, and, thus, is not favorable to Petitioner. Inmate [redacted]. testified that he was not at MTCM when the riot occurred, and his recitations of the alleged accounts of other inmates and allegations of discussions with the prosecution would be inadmissible hearsay.

Petitioner also alleges that the State failed to disclose that Inmate [redacted]. was allegedly later retaliated against for revealing this information. Alleged retaliation that allegedly

happened *after trial* cannot be Brady material. There is no Brady violation in relation to Inmate [redacted].

5. Petitioner alleges that the State failed to disclose impeachment information from Inmate [redacted]

Petitioner alleges that the State did not disclose information from Inmate [redacted], contained in a 2021 affidavit, which might have corroborated Petitioner's claims that he was wearing jeans the night of the riot and that he did not have a weapon or stab Officer [redacted]. Petitioner alleges that the State did not disclose Inmate [redacted]'s deposition, taken before [redacted] which he alleges contains similar information.

Inmate [redacted]'s 2021 affidavit is not Brady material, since it was created thirty-six years after Petitioner's 1985 trial. Further, Petitioner has not shown any of the requisite elements to prove a Brady violation. First, Petitioner cannot show that Inmate [redacted]'s information would have been favorable to his defense. In the deposition that Petitioner alleges was not disclosed, Inmate [redacted]. testified that he only saw a little bit of what happened during the riot, as he was standing outside his cell at the back of the housing wing. Pet. Ex. 48 at 4–5. Inmate [redacted]. testified he saw what he took to be inmates fighting, guards trying to break it up, and saw no weapons. Id. at 5–6. That is not exculpatory Brady material.

Second, Petitioner cannot affirmatively show that Inmate [redacted].'s deposition was suppressed. Petitioner's allegation is based on his assertion that, forty years after his trial, he cannot find a record confirming that the deposition was, in fact, not disclosed. But this is not surprising. Petitioner has submitted files kept by the Circuit Court of Dent County to

this Court in support his claim of a Brady violation. Petitioner claims that the absence of the deposition from this file shows that the deposition was not turned over; however, Court Operating Rule 8.03, in effect since 1983, allows Missouri circuit courts to purge "discovery documents" and "depositions" just three years after a case's disposition. Ct. Operating R. 8.03(a)(3), (15).

Even if the record was not purged by 1988, the complexity of this case, involving three defendants in four counties investigated by at least three different agencies and tried over a twenty-year period, along with the age of Petitioner's conviction, would test even the most meticulous clerk or archivist. And it is impossible to call either the prosecutor or Petitioner's defense attorney to testify in this matter about the contents of any possible disclosures, since both the prosecutor and defense counsel are unavailable to testify.

Even if these individuals could be produced to testify, this Court recognizes the extreme difficulty that an experienced trial attorney, as both the prosecutor and defense counsel in Petitioner's trial were, would have in accurately recalling whether a single record, among thousands of other records, was or was not disclosed, nearly forty years after the fact. At bottom, it is Petitioner's obligation to show that the evidence was suppressed, and he has not done so. In fact, at Petitioner's post-conviction motion hearing, trial defense counsel, Attorney [redacted] testified that he had reviewed the depositions from Inmate [redacted].'s trial. Resp. Ex. 78 at 71.[38]

[38] Attorney [redacted]. passed away on August 19, 2016. Resp. Ex. 28.

Even if Petitioner could show that Inmate [redacted]'s account was suppressed, he cannot show the requisite prejudice. At best, Inmate [redacted].'s account indicates that Inmate [redacted] watched the riot from the far side of the housing wing. This distanced account was not and is not material to Petitioner's defense. There is no Brady violation here.

This Court finds the hearing testimony of Inmate [redacted] not to be credible. The only probative value it has is that it tends to disprove Petitioner's habeas hearing testimony that he was stripped and spent the night naked in administrative segregation for security reasons. Because Inmate [redacted]. acknowledges that he was wearing the same clothes on July 4 as he was during the riot after being in administrative segregation, it is a reasonable inference that Carr was also not stripped for security reasons despite his claim to the contrary.

6. Petitioner alleges that the State failed to disclose information from Former Officer [redacted]. contained in an affidavit executed in 2023.

Petitioner alleges that the State did not disclose information from Former Officer [redacted]., contained in an affidavit from 2023, alleging that the guards did not write their own reports and that an unidentified "elderly inmate" made a report to corrections officers after the riot that the perpetrators of the murder were in a particular cell that allegedly contained Inmate [redacted]. and Inmate [redacted], but not Petitioner. A document created forty years after the crime is not Brady material.

Further, whether Petitioner was in the same cell as his accomplices at some unidentified time during the brief period after the riot, but before all of the inmates were moved to the Missouri State Penitentiary the next day, is not Brady material, as the

unconfirmed allegation is neither exculpatory nor impeaching. Moreover, Petitioner cannot show that this evidence was, in fact, suppressed, nor that any alleged suppression would have been material. There is no Brady violation here.

This Court finds that the affidavit of Former Officer [redacted], Petitioner's Exhibit 41, has little probative value and little credibility. In the affidavit, Former Officer [redacted]. states he does not remember the name Rodney Carr, and that his memory is that the third person convicted was an entirely different inmate. Pet. Ex. 41. He also indicates that he made false reports about the aftermath of the riot. Id. He indicates that an unnamed offender told him that the killers were in a cell together, but that cell contained Petitioner's accomplices and not Petitioner. Id. This statement is hearsay within hearsay from an unknown declarant and would not exculpate Petitioner even if true. There is no Brady violation here.

7. Petitioner alleges the State failed to disclose various documents mentioned in a letter written by Attorney [redacted].

Petitioner alleges the State failed to disclose a number of documents mentioned in a letter written by Attorney [redacted]., who represented Inmate [redacted] in [redacted] to Attorney [redacted]., who represented the State in [redacted] prior to Inmate [redacted].'s second trial in 1998. Pet. at 84; Pet. Ex. 33. According to Petitioner, none of the records mentioned in Attorney [redacted]'s letter was disclosed to him except for a record reflecting "the detainer being dropped in Nevada[.]" Pet. at 84.

Attorney [redacted]. stated to Attorney [redacted]. in the letter that he had enclosed "a copy of a conviction of [Inmate [redacted]] from Bryan County, Georgia, and a death certificate of [Sheriff [redacted]]." Pet. Ex. 33. Attorney [redacted]. then mentioned a visit he made "to the

Department of Corrections to review the records of [Inmate [redacted], [Inmate [redacted]], and [Inmate [redacted].]." Pet. Ex. 33. According to Attorney [redacted]., his review found the following: (1) Inmate [redacted]., Inmate [redacted]., and Inmate [redacted]. "were all released on September 4 and/or 5 of 1985"; (2) a Nevada Probation and Parole detainer on Inmate [redacted]. was dropped "in March or April of 1984"; (3) a single letter "written to Probation and Parole by [Attorney [redacted]]"; (4) Inmate [redacted]'s records reflected "threat(s)" made by Inmate [redacted] "not to testify if not treated better[,]" along with "wild tales" and "threats to escape from MECC"; and (5) Inmate [redacted].'s records reflected "threats to escape from MECC made prior to the date of the offense." Id. According to Petitioner, "[t]hese materials reviewed by [Attorney [redacted] should have been disclosed to Carr and could have been used to impeach the Lucky Three and the entirety of the prosecution." Pet. at 84.

Based on the evidence presented at the habeas hearing, however, there was no Brady violation with regard to these materials. Attorney [redacted]. was able to review all of these records at the Department in 1998, almost thirteen years after Petitioner was convicted. Pet. Ex. 33. Even assuming Petitioner's defense counsel never reviewed these records, "[t]here is no Brady violation if the defendant[s], using reasonable diligence, could have obtained the information themselves." Jones, 130 F.3d at 479. Moreover, evidence that is equally available to the defense does not constitute Brady material. Willis, 997 F.2d at 412–13.

Petitioner fundamentally cannot carry his burden of demonstrating that this evidence was suppressed. Both the prosecuting attorney and defense counsel are

unavailable to testify, and neither trial file has been retained in full. And, pursuant to Court Operating Rule 8.03, Missouri circuit courts are not required to retain discovery documents longer than three years after a criminal case's disposition. Ct. Operating R. 8.03(a)(3), (15). Thus, there is no reliable way to determine what was and was not disclosed by the State prior to Petitioner's trial beyond the record, which supports that there was no Brady violation. The fact that a piece of evidence may or may not have been used during Petitioner's trial is not, itself, a reliable way of making this necessary determination, especially in light of the unavailability of both the prosecutor and defense attorney. There is a myriad of trial strategies that would lead each attorney to leave a particular piece of evidence out of their case-in-chief at Petitioner's trial, and speculation thereto is not within the purview of this Court in this action.

Likewise, Petitioner cannot carry his burden of showing that the evidence, even if suppressed, was favorable to his defense. Petitioner has submitted to this Court Inmate [redacted]'s deposition transcript, which he claims was not disclosed. Petitioner, likewise, has submitted photos and reports about the cropped jean shorts, as well as the knife found in a cell in 1984. This evidence, even when considered in light of the uniquely extensive factual record in this case, is not favorable to Petitioner. Petitioner has not presented information which would require habeas relief. Petitioner's Brady allegations are denied.

B. Prosecutorial Misconduct Allegations

A prosecutor's knowing use of perjured testimony to obtain a criminal conviction is another form of prosecutorial misconduct. Trotter, 736 S.W.2d at 539. "To succeed on the

theory that the State knowingly used perjured testimony," Cummings, 400 S.W.3d at 504, a petitioner must show "(1) the witness's testimony was false; (2) the state knew it was false; and (3) the conviction was obtained as a result of the perjured testimony." Ferguson, 325 S.W.3d at 407. "Perjured testimony is testimony that is false *and* related to a 'material fact' in the case." Cummings, 400 S.W.3d at 504 (citing Albanese, 9 S.W.3d at 50) (emphasis in original).

1. Petitioner alleges that the prosecutor knowingly used false testimony to obtain his conviction.

Generally, "[i]nconsistencies in testimony . . . result from mistakes by witnesses, and do not necessarily show perjured testimony, let alone knowing use of perjured testimony." See Murray v. Delo, 34 F.3d 1367, 1374–76 (8th Cir. 1994). But, in Smith v. Groose, the United States Supreme Court found that a due process violation occurs where the State presents "inherently factually contradictory theories" of the crime at the trials of codefendants. 205 F.3d 1045, 1049–52 (8th Cir. 2000). In Smith, the State, at the trial of the first codefendant, presented witness testimony that the first codefendant was present at the time of the murder, and, at the trial of the second codefendant, the same witness testified that the first codefendant was not present at the time of the murder. Id. Such directly contradicting and adverse testimony is not present in Petitioner's case.

Petitioner does not allege that the State had knowledge of any specific witness perjuring him or herself at his trial. Instead, Petitioner attempts to support these allegations using the differing accounts of the chaotic prison riot, provided by several witnesses, throughout multiple different trials. Pet. at 102−04.

The consistent theme throughout the trials of Petitioner and his codefendants was that Petitioner, Inmate [redacted]., and Inmate [redacted]. acted together in killing Officer [redacted] The verdict directing instruction requiring the jury to make such a finding before convicting Petitioner is laid out in the opinion denying Petitioner's federal habeas petition. Resp. Ex. 5 at 18–19. That instruction required findings that Petitioner or Inmate [redacted]. stabbed Officer [redacted], causing his death, and that Petitioner acted together with Inmate [redacted]. in committing the offense. Id.

Further, in State v. Roberts, the Supreme Court of Missouri set out the evidence in the case that Inmate [redacted]. stabbed Officer [redacted]. three times in the chest, and Petitioner stabbed Officer [redacted]. once in the abdomen. 709 S.W.2d 857, 858–60 (Mo. 1986). And the Supreme Court of Missouri relied on the same theory in State v. Driscoll. 711 S.W.2d 512, 514 (Mo. 1986) (briefly reciting the facts and referring to the facts in Roberts); see also State v. Driscoll, 55 S.W.3d 350, 351–52 (Mo. 2001) (finding Inmate [redacted], then Petitioner, stabbed Officer [redacted].).

The record simply does not reflect a use of contradictory theories of the crime, see Smith, 205 F.3d at, 1049–52, or knowingly used perjured testimony, as mere inconsistencies do not necessarily establish perjury. See Murray, 34 F.3d at 1374–76.

The eyewitnesses who saw Petitioner stab Officer [redacted] are dead, see Resp. Ex. 15; Resp. Ex. 16; Resp. Ex. 22; Resp. Ex. 24; Resp. Ex. 31, thus they cannot now reaffirm the truthfulness of their testimony. Similarly, Attorney [redacted]. is incapacitated and appears to have little memory of the evidence presented at Petitioner's trial, see Resp. Ex. 11; Resp.

Ex. 12; Resp. Ex. 13; Resp. Ex. 14, so he also cannot defend himself from allegations that he knowingly used perjured testimony.

For these reasons, Petitioner's prosecutorial misconduct claims are denied.

2. Petitioner alleges that the prosecutor committed prosecutorial misconduct by hiding shifting fact patterns through Brady violations.

Petitioner appears to restate his Brady allegations as a distinct prosecutorial misconduct claim. Pet. at 104−05. He alleges that the following evidence, taken together, establishes prosecutorial misconduct: (1) the jean shorts, which the Missouri Court of Appeals has, on several occasions, found to be insignificant in the context of his identification, Resp. Ex. 2 at 4; Resp. Ex. 4 at 9−10; (2) the white tape-handled knife, which was found in a subbasement near what, fourteen months before, had been Inmate [redacted].'s cell, see Tr. at 457, 461, 482; (3) the deposition of Inmate [redacted]., in which Inmate [redacted]. testified that he saw "a little bit" of what happened, Pet. Ex. 48 at 5; and (4) the affidavit of Former Officer [redacted]. which was taken decades after his involvement in investigating the riot. See Pet. Ex. 41 at 1.

Petitioner cannot establish that the State purposefully hid this evidence in order to present contradictory theories of the cases, or to knowingly present perjured testimony. As discussed in sub-section VI.B.1 above, the State's core theory of the case in all of the codefendant's cases was the same, indicating that the State's alleged hiding of this evidence did not rise to the level of a due process violation. See Smith, 205 F.3d at 1049–52. And Petitioner has failed to show that the discrepancies at issue were anything more than mere inconsistencies in witness testimony, which do not establish that perjury occurred, see

Murray, 34 F.3d at 1374–76, let alone that the State hid evidence in an attempt to present the case differently each time simply to secure convictions.

3. Petitioner alleges that the State intimidated and threatened witnesses.

Petitioner alleges that Inmate [redacted]., Inmate [redacted] Inmate [redacted] Inmate [redacted]., and Former Officer [redacted]. were threatened or intimidated into testifying against him. Pet. at 106–07. Notably, however, only Inmate [redacted] and Inmate [redacted]. actually testified at Petitioner's trial. See Pet. Ex. 6. Inmate [redacted] testified that he did not see Petitioner at all during the riot, Pet. Ex. 6 at 338–39, and Inmate [redacted]. testified that, while he did see Petitioner with a weapon during the riot, Id. at 302–03, he did not see Petitioner stab Officer [redacted] Id. at 310.

Affidavits from inmates and a former corrections officer, who did not testify at Petitioner's trial, given decades after the trial, have little probative value. This is especially true where, as here, the affiants did not testify at all, or provided testimony limited in scope and relevance, at the petitioner's trial. And none of the affidavits Petitioner presents in support of this claim come from the only witness who actually testified adversely against him at trial. Plainly, Petitioner has not shown that witnesses from his trial were illegally threatened or intimidated. And, due to the passage of decades, the prosecutor has since been found to be incapacitated, so he is in no position to defend himself against these allegations. See Resp. Ex. 11; Resp. Ex. 12; Resp. Ex. 13; Resp. Ex. 14.

C. Actual Innocence Allegations: There is no new reliable evidence of actual innocence.

Petitioner also raises a freestanding claim of actual innocence. Petitioner's claim is

not cognizable in habeas corpus. Even if his claim could be cognizable, however, Petitioner has not shown new evidence of actual innocence.

1. Petitioner's freestanding actual innocence claim is not cognizable.

The Missouri Court of Appeals has rejected the idea of free-standing innocence claims in non-capital cases. In re Lincoln, 517 S.W.3d at 19–23. In State ex rel. Johnson v. Blair, the Missouri Supreme Court found that a petitioner could raise a free-standing innocence claim "because he is sentenced to death." 628 S.W.3d at 387. It necessarily follows that an offender not sentenced to death cannot raise a free-standing innocence claim in habeas corpus. The parties agree that Petitioner was not sentenced to death for his role in the murder of Officer [redacted]., and thus Petitioner cannot raise a cognizable claim of freestanding actual innocence in this habeas corpus action. See In re Lincoln, 517 S.W.3d at 19–23. Petitioner's freestanding claim of actual innocence ought to fail for this reason.

2. Even if Petitioner's claim is cognizable, however, Petitioner has not presented new evidence of actual innocence.

The Court is mindful that evidence establishing a freestanding claim 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." State ex rel. Amrine v. Roper, 102 S.W.3d 541, 547 (Mo. 2003). The petitioner must "make a clear and convincing showing of actual innocence that undermines confidence in the correctness of the judgment." Id. at 548. There are at least three components to the showing a petitioner is required to make: there must be evidence; that evidence must be new; and that evidence

must show "actual innocence." See id. at 547–48.

First: the evidence supporting such a claim must meet the substantial applicable evidentiary standard.

> To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.
>
> Schlup, 513 U.S. at 324.

Second: the evidence must be "new." "Evidence is 'new' only if it was 'not available at trial and could not have been discovered earlier through the exercise of due diligence.'" Sheffield, 272 S.W.3d at 284–85 (quoting Amrine, 238 F.3d at 1029); see also Clemons, 475 S.W.3d at 60 (adopting the master's finding that the due diligence requirement applies to new evidence in actual innocence); Barton, 597 S.W.3d at 664 (threshold for considering an actual innocence claim is new evidence that was not available at trial). In the case of witness statements, even a previously unseen witness affidavit is not "newly discovered evidence" if the factual basis for it existed prior to the habeas litigation. Meadows, 99 F.3d at 282; see also Barton, 597 S.W.3d at 661 n.4 (threshold for considering an actual innocence claim is new evidence that was not available at trial).

Third: the evidence must show "actual innocence." Evidence that merely shows a conflict with the State's evidence at trial is insufficient to show probable innocence under Schlup. "The existence of such a 'swearing match' would not establish that no reasonable juror could have credited the testimony of the prosecution witnesses and found [that

petitioner] guilty beyond a reasonable doubt." Moore-El, 446 F.3d at 902–03; McKim, 457 S.W.3d at 843–52 (six new pathologists arguing in habeas case that expert who testified at trial was wrong about the cause of death presents a conflict in testimony, not proof of actual innocence); Barton, 597 S.W.3d at 664–65 (defense blood spatter expert and additional impeachment of State's witness would create conflicting testimony, not a claim of actual innocence); Johnson, 170 F.3d at 818–19 (reversing grant of habeas relief, finding that much of the evidence—witnesses' memory loss and potentially conflicting testimony of witnesses—is not new and reliable); Gomez, 350 F.3d at 679–81 (holding that petitioner's own statements and statements of petitioner's co-defendants were insufficient to warrant applying the extremely rare actual innocence exception); Bosley, 409 F.3d at 665 (rejecting claim where new evidence consisted only of testimony from four relatives of petitioner). Merely putting a different spin on evidence that was presented to the jury does not satisfy the Schlup requirement. Bannister, 100 F.3d at 618.

Petitioner has failed to present any new evidence of actual innocence, and therefore this Court denies Petitioner's actual innocence allegations.

a. The statements and testimony of the five individuals referenced in Petitioner's petition do not establish new evidence of actual innocence.

In his petition, Petitioner references five exhibits containing the statements of five individuals in support of his claims of actual innocence: Attorney [redacted]., Widow [redacted],

Professor [redacted]., Former Inmate [redacted]., and Inmate [redacted].[39] Pet. at 109–13. Neither the attached exhibits nor the testimony of these five individuals establishes new evidence of actual innocence.

Attorney [redacted]. was Inmate [redacted].'s counsel at Inmate [redacted].'s third trial and he testified in the habeas hearing by video deposition. Tr. at 219–20. Attorney [redacted]'s testimony in this matter is ultimately about the hearsay statements of the deceased Inmate [redacted]. So, too, is the ultimate import of Widow [redacted]'s testimony, which is almost exclusively based on what she believes Inmate [redacted]. told her when he was still alive. Id. at 104–05, 113. Professor [redacted]'s testimony, too, is entirely reliant on a hearsay statement made by Inmate [redacted]., who Professor [redacted]. admits that he only spoke with on a single occasion. Id. at 87–91. The testimony from Former Inmate [redacted] is the same, as Former Inmate [redacted]'s testimony is entirely reliant on statements he believes he remembers Inmate [redacted] making while the two were cellmates in prison more than twenty years ago. Id. at 192.

Insofar as the witnesses testified about hearsay statements allegedly made by Inmate [redacted]. at some unidentified time while Inmate [redacted]. was still alive, such statements are unreliable. Moreover, the statements, wherein these witnesses claim that Inmate [redacted]. told them that he was the sole killer, lack any probative value, due in large part to the utter incredibility of Inmate [redacted]'s statements about this matter. The real core of Petitioner's

[39] At the evidentiary hearing in this matter, Petitioner did not offer Inmate [redacted].'s affidavit into evidence, and therefore this Court deems Petitioner's claim of actual innocence based on Inmate [redacted].'s affidavit to have been abandoned. Even if not abandoned, however, Inmate [redacted].'s affidavit does not provide new evidence of actual innocence for the same reasons discussed below.

actual innocence claim is that Inmate [redacted]. allegedly told various people that he was the sole killer, after previously denying being involved in the murder at all while under oath. The various contradictory hearsay statements of Inmate [redacted]., made in the decades that followed the murder of Officer [redacted] are insufficient to establish a claim of actual innocence.

Moreover, testimony from the evidentiary hearing in this matter even undermines the underlying allegation that Inmate [redacted]. was the sole killer. Widow [redacted] indicated that Inmate [redacted]. said he stabbed Officer [redacted] two or possibly three times. That does not account for the three wounds in the chest and the additional single wound to Officer [redacted]'s abdomen, which was caused by Petitioner. Similarly, the detail that "they" went up to the front to convince the guards to let Inmate [redacted]. stay in the wing makes no sense and undermines the credibility of the story. There is no plausible way Inmate [redacted]. and/or Petitioner could have believed that they could have talked the guards into letting a pipe wielding drunk stay in the wing with the rest of the offenders. Additionally, the witness's acceptance of the concept that it is normal and acceptable for offenders to lie, even when under oath to make their case, is a concept that undermines Widow [redacted].'s credibility, along with further undermining the credibility of Inmate [redacted]. None of these witnesses provide new evidence of Petitioner's actual innocence, and this Court therefore denies Petitioner's actual innocence allegations.

b. And no other exhibit or testimony from the record before this Court nor the evidentiary hearing held in this matter establishes new evidence of actual innocence.

Testimony from the remaining witnesses called by Petitioner at the evidentiary hearing in this matter also does not establish new evidence of Petitioner's actual innocence.

Although the aforementioned witnesses were ostensibly the only witnesses called by Petitioner in the evidentiary hearing before this Court in support of his claims of actual innocence, as a matter of completeness, this Court addresses the remainder of the testimony, here. None of the testimony at the hearing, nor any other evidence in the record, supports a finding of actual innocence.

The testimony of Attorney [redacted]. and Attorney [redacted]. fails to meet the demanding evidentiary requirements for the same reasons as the testimony from the witnesses discussed above, in that both Attorney [redacted].'s and Attorney [redacted].'s testimony is largely reliant on the statements made by the now-deceased and inherently-unreliable Inmate [redacted] Tr. at 145–46, 165, 390–91, 433.

Testimony from Investigator [redacted]. and Petitioner's Investigator [redacted]. fails to meet the standard for much the same reason. Both individual's testimony is largely reliant on statements made by individuals who have since become unavailable, and whose subsequent unavailability also calls into question the reliability of the prior statements. Id. at 585–86, 702–13.

And the testimony of Investigator [redacted]. is neither new nor sufficient to show actual innocence. His relevant testimony before this Court was also included in Investigator [redacted]'s public testimony in Inmate [redacted].'s first trial, held several months before Petitioner's trial. Id. at 502. Moreover, Investigator [redacted]. has no direct knowledge of the events of the riot. Id. at 499. The knife Investigator [redacted]. allegedly found, sixteen months after the riot, in the MTCM subbasement, which runs underneath all of housing wing 2, does not tend to

show Petitioner's actual innocence, since the knife cannot be directly tied to the events of July 3, 1983, in any way.

Nor does the testimony of Sergeant [redacted]. establish Petitioner's actual innocence. Sergeant [redacted] is the current evidence custodian at the Missouri Highway Patrol, but was not the Patrol's evidence custodian in 1983, when the evidence associated with Officer [redacted]'s death was selected, collected, and stored. Id. at 556–57, 567.

The testimony of Inmate [redacted]. does not establish actual innocence, since his testimony in this matter does not substantially deviate from his testimony at Petitioner's trial about Petitioner's involvement in Officer [redacted].'s murder. And the testimony of Inmate [redacted], who did not testify at Petitioner's 1985 trial, also does not, and indeed cannot, establish actual innocence. This Court does not place significant weight in Inmate [redacted].'s testimony about an event more than forty years ago during a prison riot at a time Inmate [redacted]. admits that he was significantly inebriated.

Even if believed, however, Inmate [redacted]'s testimony about Petitioner's involvement in Officer [redacted]'s murder cannot establish Petitioner's actual innocence, because Inmate [redacted].'s testimony merely shows a conflict with the State's evidence at trial is insufficient to show probable innocence under Schlup. "The existence of such a 'swearing match' would not establish that no reasonable juror could have credited the testimony of the prosecution witnesses and found [that petitioner] guilty beyond a reasonable doubt." Moore-El, 446 F.3d at 902–03; McKim, 457 S.W.3d at 843–52 (six new pathologists arguing in habeas case that expert who testified at trial was wrong about the cause of death

presents a conflict in testimony, not proof of actual innocence); Barton, 597 S.W.3d at 664–65 (defense blood spatter expert and additional impeachment of State's witness would create conflicting testimony, not a claim of actual innocence); Johnson, 170 F.3d at 818–19 (reversing grant of habeas relief, finding that much of the evidence—witnesses' memory loss and potentially conflicting testimony of witnesses—is not new and reliable); Gomez, 350 F.3d at 679–81 (holding that petitioner's own statements and statements of petitioner's co-defendants were insufficient to warrant applying the extremely rare actual innocence exception); Bosley, 409 F.3d at 665 (rejecting claim where new evidence consisted only of testimony from four relatives of petitioner).

Nor does Petitioner's testimony establish new evidence of his actual innocence. Petitioner testified at the hearing as he did at trial that he did not commit the murder. This Court finds the testimony of Petitioner not be credible and to have probative value only in the sense that it shows consciousness of guilt. Petitioner's testimony at the hearing differs from his trial testimony concerning State's Trial Exhibit 27 at trial. At trial he placed that exhibit, which was gathered from the floor in or near the rotunda, in Inmate [redacted]'s hand near his cell after the riot. But at the hearing Petitioner placed a knife that *looked like* State's Trial Exhibit 27 in Inmate [redacted]'s hand in an apparent attempt to bolster his claim that a knife found sixteen months after the riot in a subbasement under the wing of cells was really the knife Inmate [redacted]. allegedly used to stab Officer [redacted]. Both situations cannot simultaneously be true. The knife recovered sixteen months after the riot is irrelevant and has no probative value as it could have been place there by anyone, at any time.

Petitioner's habeas hearing testimony attempting to explain away his post-conviction testimony that he had not changed clothes between the riot and the lineup photo in which he was wearing gray prison pants is not credible. It is a reasonable inference that the explanation was an implausible attempt to bolster a Brady claim about the shorts. But, as discussed elsewhere, the shorts are not relevant or material. Petitioner has not proved he was wearing shorts. And even if he had that would not be material as the Missouri Court of Appeals has already found that what clothes Petitioner was wearing were not material to his identification by multiple witnesses who did not identify him by his clothes.

Even if believed, Petitioner's testimony in this matter cannot establish new evidence of actual innocence sufficient to satisfy the standard for a freestanding claim of actual innocence. Petitioner has failed to present evidence of actual innocence sufficient to sustain habeas corpus relief.

For all the foregoing reasons, the Court denies Petitioner's petition.

WHEREFORE, it is ORDERED, ADJUDGED, AND DECREED that Petitioner Rodney Carr's petition for a writ of habeas corpus is hereby **DENIED**.

IT IS SO ORDERED.

Dated: 11-14-25

PATRICK L. KING
Judge