

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

STATE OF MISSOURI,)
)
) **Petitioner,**)
)
 v.) **No. 16CR03006321**
)
) **KEITH CARNES,**)
)
) **Defendant.**)

**DEFENDANT’S MOTION FOR NEW TRIAL BASED UPON NEWLY
DISCOVERED EVIDENCE AND PERJURED TESTIMONY**

COMES NOW defendant, Keith Carnes, by and through counsel, and moves this Court, pursuant to *State v. Terry*, 304 S.W.3d 105 (Mo. banc 2010); *State v. Coffman*, 647 S.W.2d 849 (Mo. App. W.D. 1983); Rule 29.11; Rule 29.12; and in the interests of justice, to grant him a new trial based upon newly discovered evidence that conclusively demonstrates that defendant is innocent of the murder of Larry White and because his conviction was secured through the perjured testimony of prosecution witnesses Wendy Lockett and Lorianne Morrow. In support of his motion, defendant states as follows:

I.

INTRODUCTION

This motion presents the court with an extraordinary set of facts that conclusively demonstrates that Keith Carnes is innocent of the 2003 murder of Larry White, for which he was convicted, after two trials, in 2005 and sentenced to

life without parole for the offenses of first degree murder and armed criminal action. Mr. Carnes' first trial ended in a mistrial. At his second trial, after Mr. Carnes made an ill-advised decision to waive his right to a jury trial, he was convicted as charged based solely upon the uncorroborated and inconsistent testimony of two eyewitnesses, Lorianne Morrow and Wendy Lockett, both of whom had criminal records and gave accounts of the shooting of Larry White that were inconsistent with each other and inconsistent with the physical evidence in the case.

In 2014, Mr. Carnes' case was taken on by the KC Freedom Project ("KCFP"). KCFP director Latahra Smith has conducted an extensive investigation into the facts of the case and interviewed numerous witnesses, which has uncovered clear and compelling evidence that Mr. Carnes is innocent and that his conviction was secured through the perjured testimony of Ms. Lockett and Ms. Morrow.¹ Both of these women have now recanted their trial testimony under oath in sworn affidavits and admitted they committed perjury when they identified Keith Carnes at trial as the man who shot and killed Larry White in the parking lot of the Fishtown Restaurant near 29th & Prospect. (See Exh.'s 2, 3). The KCFP's investigation has also uncovered numerous instances of prosecutorial and police

¹ Mr. Carnes' claim of innocence was chronicled in a recent published article authored by former Kansas City Star reporter Barbara Shelly, that is attached to this motion as Exhibit 1.

misconduct and also uncovered substantial evidence that the actual killer of Mr. White was Reggie Thomas. As a result, the facts of this case present a rare case where a thorough post-conviction investigation has established that a Missouri prisoner convicted of murder is completely innocent because the only witnesses who implicated him have recanted and all of the other evidence in this case, both old and new, demonstrates that Mr. Carnes was wrongly convicted. *See State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003).

Well settled Missouri law gives this Court the power to hold an evidentiary hearing and grant Mr. Carnes a new trial based upon newly discovered evidence of innocence and evidence that he was convicted based upon the perjured testimony of Ms. Lockett and Ms. Morrow. *See State v. Terry*, 304 S.W.3d 105, 111 (Mo. banc 2010). In light of recent legal developments, this Court is the only available forum where Mr. Carnes can obtain a hearing to prove his innocence. Claims of actual innocence are not cognizable in Rule 29.15 proceedings. *See, e.g., Wilson v. State*, 813 S.W.2d 833, 834 (Mo. banc 1991). Such claims are also not cognizable in state habeas corpus actions pursuant to Rule 91 in noncapital cases. *See State ex rel. Lincoln v. Cassady*, WD79854 (Mo. App. W.D. 10/11/16).

The *Terry* decision gives Missouri trial courts the inherent power to consider and hold necessary hearings at any time if a Missouri prisoner can muster newly discovered evidence of innocence and/or evidence that his conviction was secured

through the use of perjured testimony. *Terry*, 304 S.W.3d at 111; *Coffman*, 647 S.W.2d at 851. Therefore, in the interest of justice, this Court should set this matter for a hearing in order to give an innocent man a full and fair opportunity, through his only legally available venue, to prove his innocence.

II.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On October 6, 2003, Larry White was shot to death in the Fishtown parking lot near 29th & Prospect in Kansas City, Missouri. Because the police knew that Mr. White was a drug dealer, the police investigation immediately focused upon Keith Carnes based upon their belief that Mr. Carnes was a rival drug dealer in that neighborhood.

A few days after the shooting both Ms. Morrow and Ms. Lockett were picked up by the police and brought downtown to be interviewed by assistant prosecutor Amy McGowan. Both of these witnesses, in their recent recantations, now admit that they were coerced into identifying Keith Carnes as the killer by Ms. McGowan. (See Exh.'s 2. 3). Both of these witnesses later testified at Mr. Carnes' two trials.

Both of these witnesses testified that Mr. Carnes got into a dispute with Mr. White about drug dealing in that area and Mr. Carnes chased Mr. White down 29th Street and cut through an alleyway while shooting at him. During this foot chase,

Ms. Morrow testified that Mr. Carnes was accompanied by Gary Kitchen. In contrast, Ms. Lockett told the police that Mr. Carnes was accompanied by two other men named Mitchell Powell and Damon Rhodes. (Exh. 4).

Ms. Morrow testified that, after Mr. White collapsed in the Fishtown parking lot, she observed Mr. Carnes stand over him, turn him over, and shoot him five or six times in the head from point-blank range with an AK-47 rifle. (Tr. 132, 145-147). In her statement to police, Ms. Morrow stated that she only heard the shots. (Exh. 5). Ms. Lockett testified that, after Mr. White collapsed in the Fishtown parking lot, that Mr. Carnes stood over him and shot him once in the head with a pistol. Contrary to Ms. Morrow's testimony, Ms. Lockett testified that Mr. Carnes did not turn White's body over before shooting him. (Tr. 227-228, 231-233).

Both of these eyewitness accounts were also inconsistent with the physical and medical evidence in the case. The initial reporting officer testified that he found no shell casings near the victim's body, nor any holes in the asphalt from gunshots near the body. (*Id.* 52). Medical examiner Thomas Gill testified that, among other things, the fatal bullet wound to the head that Mr. White sustained was not fired at close range because of the absence of gunpowder soot and stippling and that the fatal head wound was not consistent with the victim lying in prone position on the ground while the shooter stood over him shooting at point blank range. (*Id.* at 318-340; See also Exhibit 6). These two eyewitness accounts

of the shooting were further discredited during the 29.15 proceedings by expert criminalist Gary Rini.

Despite these glaring weaknesses in the prosecution's case, Mr. Carnes was found guilty at trial by the judge at his second trial and was sentenced to life without parole. Mr. Carnes' convictions were affirmed on direct appeal in *State v. Carnes*, 241 S.W.3d 344 (Mo. App. W.D. 2007). During his 29.15 proceeding, Mr. Carnes secured the expert services of Mr. Rini who testified by way of deposition that, based on the absence of bullets or shell casings in the parking lot near the body and the angle of the bullet wounds on the victim's body, the physical evidence did not support either of the eyewitnesses' testimony that the victim was shot in a prone position in the Fishtown parking lot. (See Exh. 7). After hearing this evidence, the 29.15 motion court and the Missouri Court of Appeals rejected Mr. Carnes' claim that his trial counsel was ineffective in not securing an expert crime scene witness and affirmed his convictions. *See Carnes v. State*, WD72916 (unpub. op. 11/08/2011).

As a result of a painstaking investigation recently completed by the KCFP, unassailable evidence has now been uncovered that both Ms. Lockett and Ms. Morrow lied when they identified Mr. Carnes as the person who shot and killed Larry White. Both of these witnesses have now signed sworn affidavits admitting that their trial testimony implicating Mr. Carnes in the shooting of Mr. White was

false. (Exh.'s 2, 3). Ms. Morrow stated that she was coerced by Ms. McGowan to identify Keith Carnes as the shooter after Ms. Morrow initially told Ms. McGowan that the real killer was Reggie Thomas. (Exh. 2). Because she feared for her safety from Mr. Thomas if she had identified him, she was intimidated by Ms. McGowan to give a statement to the police implicating Keith Carnes as the murderer. (*Id.*). Ms. Morrow also admitted she gave perjured testimony at trial primarily because Reggie Thomas, the actual killer, was present in the courtroom during her testimony and that she feared retaliation from him if she changed her story and told the truth. (*Id.*).

Wendy Lockett has also signed a sworn affidavit admitting she lied at Mr. Carnes' trials. (Exh. 3). She admitted that she was high on crack cocaine at the time the shooting occurred and, like Ms. Morrow, she was coerced by Ms. McGowan to implicate Mr. Carnes as the murderer. (*Id.*). Within the last few years, Ms. Lockett has become clean and sober and has now admitted under oath that she could not identify who shot and killed Larry White and that her testimony implicating Mr. Carnes at trial was false. (*Id.*).

In addition to the recantations of the prosecution's two star witnesses and the exculpatory physical evidence, the KCFP also located and interviewed a number of other witnesses who lived in or near the apartment buildings where the initial confrontation between White and his killer occurred. The KCFP also located a

number of people who actually saw the shooting and other persons who could have testified at trial that Keith Carnes never left the apartment building at 2404 East 29th Street during the time Mr. White was gunned down.

Vernetta Bell, Eugenia Burch, and Kermit O'Neal were all at this apartment building on 29th & Olive with Mr. Carnes at the time Mr. White was shot. (See Exh.'s 8, 9, 10). All three of these witnesses have stated that Mr. Carnes never left the apartment building or chased Mr. White from that building. (*Id.*). Ms. Bell has given an affidavit stating she saw Mr. White arguing with two men earlier in the day but neither of those men was Keith Carnes. (Exh. 8). Ms. Burch was also in the apartment building with Mr. Carnes when the shooting occurred and never saw Mr. Carnes leave the area of the apartment building that night. (Exh. 9). Ms. Burch did not come forward with this information and provide it to the police at that time because there was a warrant out for her arrest. (*Id.*).

Mr. O'Neal told the police he was the doorman for the apartment building at 2404 East 29th Street. As a result, he kept tabs on each person that entered or exited the building. Mr. O'Neal has provided an affidavit that Mr. Carnes remained inside and on the porch of the apartment building throughout the entire incident that led to the shooting death of Mr. White. (Exh. 10). Mr. O'Neal also saw an argument between Mr. White and another man earlier in that day. (*Id.*). He

identified this man as Mitchell Powell. Mr. O'Neal also stated that he saw Powell with a gun. (*Id.*).

Alton Shaw lived at 2915 Wabash and was outside when the shooting began. In his statement, Mr. Shaw saw two men chasing and shooting at Mr. White. (Exh. 11). Because he knows Mr. Carnes and would recognize him, Mr. Shaw is certain that neither of these men who shot Mr. White was Keith Carnes. (*Id.*).

Michael Mathews, who lives at 2816 Prospect, has also provided an affidavit. (Exh. 12). From his apartment, he had a clear line of sight to the Fishtown parking lot at the time Mr. White was shot. After he heard gunshots and saw Mr. White cross Prospect and collapse in the Fishtown parking lot, he got out his binoculars and observed Mr. White's body in a prone position on the lot and did not observe anyone approach Mr. White or shoot him while he was lying in the lot before the police arrived.

During a neighborhood canvass, KCFP located and interviewed Ray Winn. Mr. Winn gave a videotaped statement that contradicted the testimony of Ms. Morrow and Ms. Lockett regarding the location of the shooting. Mr. Winn lived at 2911 Wabash and, after he heard gunshots, Mr. Winn was on his front porch and saw "fire" from the gun as it was being fired. He believed the gun was being fired from up or near the front porch of the corner house at 2846 Wabash. He observed someone chasing Larry White down the driveway of 2846 Wabash and up 29th

Street toward the Fishtown Restaurant. Mr. Winn's statement further discredits the testimony of Ms. Morrow and Ms. Lockett that the shooting occurred in front of the apartment building at 2404 East 29th Street. Mr. Winn's account is further corroborated by the crime scene investigator's report that located numerous shell casings in front of the residence at 2846 Wabash. (Exh. 13).

In addition to the previously noted governmental misconduct involving the coercion of the two eyewitnesses, former detective Avery Williamson has told the KCFP in a recorded conversation that his superiors at the Kansas City, Missouri Police Department were "in on" setting up Keith Carnes for this murder because he was a known drug dealer. This scenario is corroborated by Margo Thomas, who was questioned by the police and prosecutors because she was in the area of the shooting at the time it occurred.

Ms. Thomas has recently provided a sworn affidavit indicating that she was pressured to falsely identify Mr. Carnes as the shooter by prosecutor Amy McGowan. (Exh. 14). Although she initially told the police she could not identify the man she saw jumping the fence in an alleyway after the shooting, she described him as a dark complexioned black male, which does not match the actual description of Keith Carnes. (See Exh. 15).

III.

REASONS FOR GRANTING A NEW TRIAL

BASED UPON THE FOREGOING EVIDENCE, WHICH WILL BE FURTHER AMPLIFIED AT AN EVIDENTIARY HEARING, MR. CARNES HAS OBTAINED NEWLY DISCOVERED EVIDENCE THAT CONCLUSIVELY ESTABLISHES HIS INNOCENCE AND FURTHER ESTABLISHES THAT HIS CONVICTION FOR THE MURDER OF LARRY WHITE WAS SECURED DUE TO THE PERJURED TESTIMONY OF WENDY LOCKETT AND LORIANNE MORROW.

Based on the foregoing facts, Mr. Carnes can easily meet the test articulated by the Missouri Supreme Court in *Terry* to obtain a new trial based on newly discovered evidence of innocence and perjured testimony. *Terry* adheres to the common-law rule that a wrongly convicted prisoner can obtain a new trial by presenting newly discovered evidence that is likely to produce a different result on retrial. 304 S.W.3d at 109-112. Under *Terry*, a new trial is required if it can be shown:

- “1. The facts constituting the newly discovered evidence have come to movant’s knowledge after the end of the trial;
2. Movant’s lack of prior knowledge is not owing to any want of due diligence on his part;
3. The evidence is so material that it is likely to produce a different result at a new trial; and
4. The evidence is neither cumulative only nor merely of an impeaching nature.”

Id. at 109.

The aforementioned recantations of Ms. Morrow and Ms. Lockett, the new witnesses that demonstrate that Keith Carnes was not the killer, the evidence of

police and prosecutorial misconduct, coupled with the evidence previously developed at prior trials and post-conviction proceedings that the two eyewitness' testimony was inconsistent with the account of the other and the physical evidence, establishes that this new evidence is clearly material and would undoubtedly produce an acquittal at a new and fair trial. Moreover, the circumstances under which this evidence was uncovered, through the volunteer efforts of an innocence advocacy organization who agreed to help an indigent prisoner who had no other resources to investigate his innocence, clearly indicates that this evidence is newly discovered and was diligently uncovered once the KCFP agreed to investigate the case.

In addition, the recantations of Morrow and Lockett clearly demonstrate that defendant's conviction was secured through perjured testimony. Thus, under *Coffman* and the other Missouri authorities permitting new trials based on newly discovered evidence of perjury, this evidence provides an independent ground for granting defendant a new and fair trial. The interests of justice require that this Court set this matter for an evidentiary hearing as soon as practicable and thereafter order a new and fair trial that the law and justice requires.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 15th, 2016, the foregoing was filed via case.net which sends notification to all counsel of record. A copy was also sent via U.S. Mail to Dion Sanker, Assistant Jackson County Prosecuting Attorney, Jackson County Courthouse, 11th Floor, 415 East 12th Street, Kansas City, Missouri 64106.

/s/ Kent E. Gipson
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