

IN THE CIRCUIT COURT OF LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Petitioner/Plaintiff.,)	
v.)	No. 00 CF 1920
)	
MARVIN WILLIFORD,)	Hon. Chief Judge Shanes, Presiding
)	
Defendant)	

JOINT PETITION FOR RELIEF FROM JUDGMENT

Now come the PEOPLE OF THE STATE OF ILLINOIS, by and through their attorney, Eric Rinehart, State’s Attorney of Lake County, Illinois, through Assistant State’s Attorney, Barbara Buhai, and DEFENDANT MARVIN WILLIFORD, and jointly and respectfully move this Honorable Court to vacate the conviction and sentence and order a new trial in the above-captioned matter pursuant to 735 ILCS 5/2-1401.

In support of this petition, the People and Defendant (“the Parties”) state as follows:

1. The Parties respectfully request that the matter be reinstated and docketed.
2. Under 735 ILCS 5/2-1401 (Section 2-1401), a party may seek vacatur of a final judgment, including a criminal judgment of conviction, following the presentation of new evidence that, if known at the time, may have precluded the judgment in the first place. People v. Vincent, 226 Ill. 2d 1, 9 (2007); see, e.g., People v. Burrows, 172 Ill. 2d 169, 180, (1996) (affirming grant of new criminal trial following the discovery evidence that trial testimony was perjured); People v. Jackson, 2024 IL App (1st) 241356 (vacating criminal conviction and granting a new trial following post-conviction reinvestigation); People v. Johnson, 2021 IL App (1st) 200912, ¶ 3

- (describing grant of a 2-1401 petition and order of a new trial following the presentation of, among other things, new evidence of police misconduct and exculpatory evidence in an undisclosed police report); People v. Davis, 2012 IL App (4th) 110305 (vacating criminal sentence and granting a new trial following post-conviction DNA testing); People v. Waters, 328 Ill. App. 3d 117, 129 (2002) (same).
3. Under Section 2-1401, relief should be granted “when necessary to achieve justice” and “[t]hrough section 2–1401, the General Assembly has provided ... a versatile and effective means of pursuing justice” in criminal cases. People v. Lawton, 212 Ill. 2d 285, 298 (2004). A “request for a new trial based on newly discovered evidence must satisfy two criteria. It must present evidence which was not available at the defendant’s trial and which the defendant could not have discovered sooner through the exercise of due diligence” and “must be of such convincing character that it would likely change the outcome of the trial.” Burrows, 172 Ill. 2d at 180; Waters, 328 Ill.App.3d at 1271.
 4. After the conclusion of the evidentiary hearing in this matter, including before this Court’s ruling was entered or appealed, the People, via the Lake County State’s Attorney’s Office, have conducted an extensive investigation of Defendant’s conviction.
 5. This investigation has led to the discovery of new scientific information—including by DNA and other sciences—as well evidence of police misconduct that ultimately warrant the vacatur of Williford’s conviction and sentence and a new trial pursuant to 735 ILCS 5/2-140, as the new evidence was not available at the time of the original trial and would likely change the outcome of the trial.

6. In addition, after the prior hearing in this matter, the Illinois Supreme Court's issued a decision indicating that the People's prior arguments, accepted by this Court, invoked the wrong legal standard. See People v. Robinson, 2020 IL 123849, ¶¶55-56.
7. The factual basis for this Joint Petition for Relief From Judgment is further set forth in the Stipulations being filed contemporaneously with this petition; the exhibits attached to those stipulations; the exhibits to prior filings; the complete common law record; the record on appeal; and other evidence already provided to this Court (some of which are under seal), all of which is incorporated by reference.

IT IS HEREBY AGREED BY THE PARTIES:



Eric Rinehart - State's Attorney



David Owens – Attorney for Marvin Williford

1.22.25
Date

1/22/2025
Date

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS**

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STIPULATION NO. 1 - NEW TRIAL

IT IS HERBEY STIPULATED, by and between the parties:

1. On January 22, 2000, the North Chicago home of Delwin Foxworth was invaded by three individuals while Foxworth's girlfriend, Delia Conners, was visiting (Exhibit. 1, North Chicago Police Report).
2. Foxworth was beaten by the perpetrators. One of the perpetrators also doused Foxworth with gasoline, and Foxworth caught fire. Foxworth died in August 2002. (R. 947)
3. On August 27, 2004, Marvin Williford was convicted of the murder of Delwin Foxworth.
4. In 2015, Williford filed a petition for post-conviction relief, which was subject to a hearing and denied.
5. The parties agree that there is newly discovered material and noncumulative evidence which if presented to a jury would likely change the result upon retrial warranting relief under 735 ILCS 5/2-1401. See, e.g., People v. Davis, 2012 IL App (4th) 110305 (vacating criminal sentence and granting a new trial following post-conviction DNA testing); People v. Waters, 328 Ill. App. 3d 117, 129 (2002) (same).
6. New evidence includes additional DNA evidence from the Northeastern Illinois Regional Crime Lab (Exhibit 2), additional analysis from Defense expert, Karl Reich, (Exhibit 3), and genealogical DNA analysis from a private lab, Parabon, which are being filed under seal (Sealed Exhibit 4). While the parties disagree about the ultimate import of this DNA evidence, they do agree that the DNA evidence would now provide Williford an opportunity to point to a viable alternative suspect, which he is entitled to do, People v. Beaman, 229 Ill. 2d 56, 75 (2008). The

evidence could also change the result at retrial, particularly because the issue of identity was in dispute at trial. See, e.g., Faulkner v. State, 227 A.3d 584, 613 (2000) (“[A]lternate perpetrator evidence can be very powerful in the defense of a person accused of a crime where the primary issue in dispute is identity.”).

7. Additional new evidence includes developments in the science of eye-witness identification. These developments illustrate the ongoing suggestiveness of showups or other unfair procedures as they relate to subsequent identification procedures; they strongly caution against the use of multiple identification procedures involving the same witness and suspect; and they illustrate the relationship between witness confidence and unreliability. *See, e.g.,* Nancy K. Steblay & Jennifer E. Dysart, 5 J. APPLIED RESEARCH IN MEMORY AND COGNITION 284 (2016), (Exhibit 5); Wixted et al., *Test A Witness’s Memory of a Suspect Only Once*, 22 PSYCH. SCI. IN THE PUB. INT. 1S (2021) (Exhibit 6); John T. Wixted & Gary L. Wells, *The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis*, 18 PSYCH. SCI. IN THE PUB. INT. 10 (2017) (Exhibit 7).
8. Included in these developments are the “White Paper” issued by the American Psychological Association and American Psychological-Law Society in 2020, concerning the scientific consensus among social scientists about memory and identification. Gary L. Wells, et al., *Policy and Procedure Recommendations for the Collection and Preservation of Eyewitness Identification Evidence*, 44 L. & HUM. BEHAVIOR 3, 4 (2020) (Exhibit 8). Among other things, the White Paper details why repeated identification procedures should be avoided and how an initial, unfair procedure can corrupt a subsequent identification. *Id.* at 25-26. Indeed, the White Paper details why it is the fairness (or unfairness) of the first identification procedure that is most relevant for evaluating the reliability of an identification, and that the “importance of focusing on the first identification cannot be emphasized strongly enough,” as “[a]ny subsequent identification test with that same eyewitness and that same suspect is contaminated by the eyewitness’s experience on the initial test.” *Id.*
9. The parties are in agreement that there were three identification procedures — (a show-up in June 2000, a photo lineup in September 2002, and a second photo lineup in February 2003) — that were used for suspect identification by witness Delia Conners. *See* Exhibit 9 (Conners 2000 Grand Jury transcript); Exhibit 10 (North Chicago Police Report, 2002); and Exhibit 11 (North Chicago Police Report, 2003). The parties agree these procedures – in which only Defendant Williford’s photo was included each time - were unduly suggestive and rendered the identification so unreliable that the admission violated due process.
10. The parties also agree that Mr. Williford’s constitutional rights were violated under *Brady v. Maryland*, 73 U.S. 83 (1963), when Mr. Williford was denied the opportunity to present evidence of the circumstances surrounding becoming a suspect, and of the investigating officer both creating and withholding exculpatory evidence. The parties agree that the *Brady* evidence of police misconduct indicates there was perjury at trial that also warrants vacatur of the conviction for retrial pursuant to 735 ILCS 5/2-1401. See, e.g., People v. Burrows, 172 Ill. 2d 169, 180, (1996) (affirming grant of new criminal trial following the discovery evidence that trial testimony

was perjured); People v. Jackson, 2024 IL App (1st) 241356 (vacating criminal conviction and granting a new trial following post-conviction reinvestigation including new evidence of police misconduct); People v. Johnson, 2021 IL App (1st) 200912, ¶ 3 (describing grant of a 2-1401 petition and order of a new trial following the presentation of, among other things, new evidence of police misconduct and exculpatory evidence in an undisclosed police report).

11. The People additionally seek this relief pursuant to their special ethical responsibilities under Illinois Supreme Court Rule 3.8.
12. The Parties agree that Defendant's conviction should be vacated and a new trial ordered.

IT IS HEREBY AGREED BY THE PARTIES:



Eric Rinehart – State's Attorney



David B. Owens, Attorney for Marvin Williford

1-22-25

Date

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STIPULATION NO. 2 - WITNESS MISIDENTIFICATION

IT IS HERBEY STIPULATED, by and between the parties:

1. During the home invasion and attack on Delwin Foxworth, the lead assailant was referred to by Foxworth as "T." (Exhibit 1, North Chicago Police Report 1/23/2000; Conners Trial Testimony, R. 646).¹
2. On June 7, 2000, five months after the attack on Delwin Foxworth, North Chicago Police Officer Lawrence Wade showed Delia Conners a single photo of Defendant Williford as she was walking in to testify before the grand jury. (Exhibit 9, Conners Grand Jury Testimony at pp. 16-17; Conners Trial Testimony, R.698; Det. Wade Tr. Testimony, R. 991-992).
3. In response to Wade's question whether she recognized the single photo, Conners said it was that of "T," who was subsequently identified as the Defendant.
4. The photo was taken by the Cicero Police Department in 1990.
5. On September 19, 2002, the month after Foxworth died, Conners was reminded of the prior show up, re-shown the same 1990 photo of the Defendant, and permitted to "thumb through" five other photographs. (Exhibit 10, September 20, 2002 Report of North Chicago Police Department Commander Holderbaum).

¹ The Record on Appeal includes three different page markings. Citations here are to the original pagination (in the center bottom).

6. According to the report of North Chicago Police Department Cmdr. Holderbaum, Conners picked out the same photo of the Defendant, but she stated that “the offender was heavier built at the time Foxworth was set on fire.” (Exhibit 10.).
7. On a third occasion, on February 13, 2003, Conners was shown a six-photo array by Cmdr. Holderbaum, which contained another photo of the Defendant. She was asked to “view the lineup and if possible, identify the person who she knows as ‘T’ who was the person who doused Delwin with gasoline and set him on fire.” (Exhibit 11, February 17, 2003 Report of Comdr. Holderbaum).
8. Conners wavered in identifying photo #4 or #5, saying “it looks like ‘T’ is either #4 or #5.” Upon further examination, she said #4 looks like him but his face is too thick. She then looked at #5 and identified the Defendant. (*Id.*)
9. Defendant, Marvin Williford, was the only person that Conners was shown in all three identification procedures.
10. The Second Appellate Court (in hearing the second appeal herein, at p. 15) concluded that the single photo show-up to Conners five months after the offense and just prior to her appearance before the grand jury was unnecessarily suggestive, citing People v. Hughes, 259 Ill.App.172, 176 (1994). In further support, the Second District also turned to the U.S. Supreme Court decisions in Simmons v. United States, 377 U.S. 377, 383 19 L. Ed. 1247, 1253, 88 S. Ct. at ___, and Manson v. Braithwaite, 32 U.S. 98, 116, 53 L. Ed. 140, 155, 97 S. Ct. 2243, 2254 (1977). There, the high court noted the increased danger of an erroneous identification if the police show the witness only the picture of a single individual. They further suggested that such identifications from a single photo display may be viewed in general with suspicion.
11. In addition to determining whether the initial one person show-up is inherently suggestive, a court must also determine if the identification was reliable. Factors to be considered include (1) the opportunity of the witness to view the offender at the time of the offense; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the offender; (4) the level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the incident and the identification. People v. Hughes, 259 Ill. App. 3d 172,176 (1994).
12. Conners’ initial identification was subjected to suggestiveness and was unreliable as illustrated in recent developments in social science research. This research, regarding memory and eyewitness identification, demonstrates that initial identification procedures contaminate a witness’s memory when they are unfair or are highly suggestive. *See, e.g.*, Nancy K. Steblay & Jennifer E. Dysart, 5 J. APPLIED RESEARCH IN MEMORY AND

COGNITION 284 (2016) (Exhibit 5); Wixted et al., *Test A Witness's Memory of a Suspect Only Once*, 22 PSYCH. SCI. IN THE PUB. INT. 1S (2021) (Exhibit 6).

13. In 2020, the American Psychological Association and American Psychological-Law Society issued a “White Paper” expressing consensus among social scientists about memory and identification. Specifically, the social scientists identified the process by which a first identification procedure can contaminate a later identification procedure: that is, the eyewitness identifies the suspect in the initial identification procedure and is later given another identification procedure with that same suspect and a different set of fillers. The initial identification, even if mistaken, causes the witness to simply repeat the same identification in the second identification procedure. Gary L. Wells, et al., *Policy and Procedure Recommendations for the Collection and Preservation of Eyewitness Identification Evidence*, 44 L. & HUM. BEHAVIOR 3 (2020) (Exhibit 8).
14. Further, the consortium of researchers recommended that “repeated identification procedures with the same witness and suspect be avoided.” *Id* at p. 24.
15. The researchers also found evidence that the *act* of identifying an innocent person in an initial identification procedure changes the eyewitness’s memory away from the culprit and toward the person identified, a process that is intensified if the witness is given confirming feedback following the initial mistaken identification. *Id* at p. 23.
16. This exact type of scientific evidence—that is, repeated showings of an assailant’s image to an eyewitness causing their memory to be irreversibly contaminated—was recognized by the Los Angeles District Attorney in 2023 in the exoneration of Miguel Solorio. Like the contaminating identification procedures used with Conners, eyewitnesses in the Solorio case were repeatedly shown the same suspect’s photo in multiple photo arrays. The District Attorney agreed that the witness identification procedure was tainted, writing, “New documentable scientific consensus emerged in 2020 that a witness’s memory for a suspect should be tested only once, as even the test itself contaminates the witness’s memory.” (Exhibit 12). Deborah Lohse, *NCIP Wins Exoneration of Miguel Solorio, After 25 Years Wrongfully Behind Bars*, Santa Clara School of Law (Nov. 15, 2023, <https://law.scu.edu/news/ncip-wins-exoneration-of-miguel-solorio-after-25-years-wrongfully-behind-bars>).
17. Applying this new scientific evidence herein, Conners’ initial identification was inherently suggestive because only one photo of Defendant was shown to her and it was viewed as she was walking into the grand jury room, a time fraught with tension and suggestibility in and of itself, and almost 5 months after the incident.

18. Furthermore, as science confirms, Conners' subsequent identifications were tainted by her previous misidentification, when she was shown the identical photo of Defendant, and Defendant's photo was the only one included in each identification procedure. Her memory of the first photo and imprint on her mind could not subsequently be undone.
19. Conners' identification was also unreliable because her description of Defendant vacillated, and her level of certainty wavered.
20. New scientific evidence about Conners' lack of certainty at the third procedure independently demonstrates unreliability a swell. *See* John T. Wixted & Gary L. Wells, *The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis*, 18 PSYCH. SCI. IN THE PUB. INT. 10 (2017) (Exhibit 7). Conners inability to make an immediate selection, and her wavering between #4 and #5 was *itself* evidence of unreliability showing that she lacked confidence in the identification (even if she later said she was confident at trial or another proceeding).
21. In Conners' video-taped statement to the police on the night of Foxworth's attack, she described the perpetrator as "yellow-skinned" (Conners Trial Testimony, R. 683-684, 686 and 696).
22. However, following the video-taped interview, Conners variously referred to the assailant as and "light-skinned." (Exhibit 1, 01.22.2000 North Chicago Police Report @ 9:33 p.m.; Exhibit 9, Conners Grand Jury Testimony, p.4, 6-9, 11; Conners Trial Testimony, R. 663).
23. Williford was inconsistent with the age described by Conners of "T." Conners initially provided a description of the perpetrator to the police, indicating his age to be in the late 30's to early 40's. (Exhibit 9, Conners Grand Jury Testimony, p.4; Conners Trial Testimony, R.686).
24. Defendant, Marvin Williford, was 28 years old at the time of the attack on Foxworth.
25. Finally, in her taped statement to police, Conners stated that the perpetrator had no facial hair. (Conners' Trial Testimony, R. 684). However, each photo in which she identified Defendant showed him with a goatee. Although Conners made the distinction that Defendant was purportedly younger and skinnier in the 1990 photo, she made no mention that he had no facial hair at the time of the attack.
26. The parties agree that Conners' identification of Defendant is not reliable and was subject to suggestibility that could not have been un-done or eliminated by the time of trial, and no physical evidence links Defendant to the Foxworth home invasion.

27. In addition, subsequent forensic evaluation of the crime-scene evidence is more probative than the original DNA testing, *see* Ex. 3 (Report of Karl Reich (“Given the sensitivity and specificity of modern forensic DNA methods and the results of the repeated efforts to obtain DNA profiling results from previously tested items as well as from newly submitted items, the lack of any link to Mr. Williford and the repeated exclusion of the defendant from the most probative items of evidence is itself probative and from a scientific perspective, speaks even more strongly than the results obtained from the original forensic DNA analysis p[r]ior to trial including the additional testing performed ca. 2014.”)).
28. The new genealogical reports from Parabon under seal would support an argument from the Defendant that he was misidentified and that the “yellow skinned” person was the person whose DNA was found on the 2x4 recovered at the scene and identified by Conners as the object “T” used to strike Foxworth shortly before he caught fire.
29. Identity was a significant issue at the original trial, including the defense arguing that Williford could not have been the “yellow-skinned” person, R.1189, 1191, 1194, 1196, & 1207, and the social science and DNA evidence would place these issues in an entirely different light at trial.

IT IS HEREBY AGREED BY THE PARTIES:



Eric Rinehart – State’s Attorney



David B. Owens, Attorney for Marvin Williford

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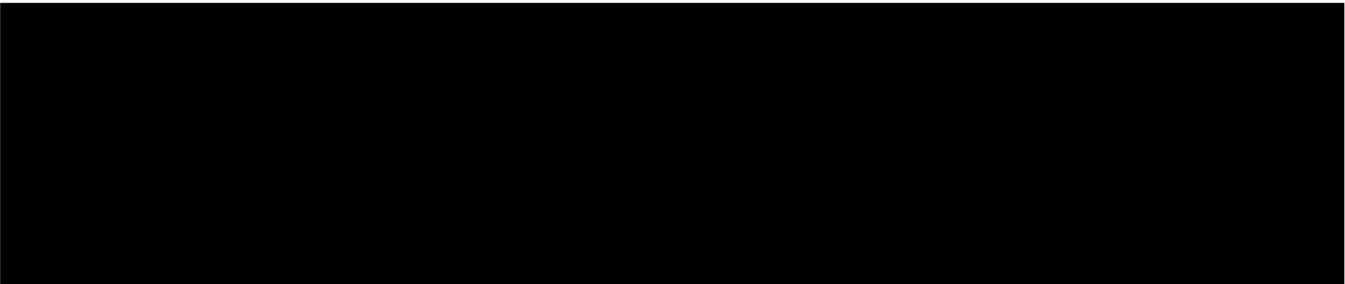
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STIPULATION NO. 3 – CONSTITUTIONAL VIOLATION

IT IS HERBEY STIPULATED, by and between the parties:


1. Evidence disclosed after Willford’s trial reveals that the North Chicago Police Department (specifically Det. Lawrence Wade and Det. Orlander Warner) targeted Williford as the only suspect, and they failed to disclose, and purposely withheld, pertinent information that could have led to a different result at trial.
2. The home invasion of Foxworth took place on January 22, 2000, and police met with eyewitness and victim, Delia Conners that evening.
3. Months later, on April 12, 2000, Det. Warner drafted a Supplemental Report purporting to summarize a meeting he had with Det. Wade on January 24, 2000, as well as his follow-up investigation. (Exhibit 13, April 12, 2000 Supplemental Report of North Chicago Police Department Det. Warner). Warner wrote:
 - a. He met with Det. Wade on January 24, 2000 to discuss information related to the attempted murder of Foxworth, and he advised Wade that “sources on the street would be probed” by Warner for information related to the incident. *Id.*
 - b. He had spoken to Delia Conners, an eyewitness to the home invasion, and she had only given the subject’s first name as “T.” *Id.*
 - c. His search then took him to a confidential source (“C/I”), and in their first meeting on January 26, 2000, the C/I revealed the first name of the alleged perpetrator, “Terrell.” The C/I did not know the identity beyond this, so Warner asked the informant to find out his “real name, date of birth and address.” *Id.*

- d. Four days later, on January 30, 2000, the informant provided the full name of Defendant and his date of birth. *Id.*
4. Warner's timeline is belied by other objective NCPD documents. In fact, on January 25, 2000, before Warner claimed he met with the informant for the first time, he conducted a LEADs search on Defendant Williford. Warner entered Williford's full name and date of birth into LEADs, which disclosed a (1990) arrest in Cicero, IL. This LEADs inquiry was one day before Warner met with the confidential informant. (Exhibit 14, January 25, 2000 LEAD Inquiry).
5. Following an inquiry from Detectives Wade and Warner, the Cicero Police Department sent fingerprints and a mug shot of Williford on January 27, 2000. (Exhibit 15, Cicero Fingerprints and Mug Shot of Williford).
6. Although Det. Warner reported that he did not receive Defendant's identifying information until he met with the confidential informant on January 30, 2000, he had this information five days previously, when he ran Williford's full name and birthdate through LEADs.
7. Det. Warner (with Det. Wade's cooperation) singularly and purposely targeted Williford as the lone perpetrator, even though there were three assailants. LaShaunda "DeeDee" Follins would testify that she was having an affair with both Warner and Williford. (Exhibit 16, January 25, 2024 Affidavit of Jennifer Blagg). The timeline of Warner's investigation in conjunction with Follins claims demonstrate a possible motive for Warner's targeted investigation.
8. Warner's possible motive was unknown to the parties, but Follins would testify that Warner stated after Williford's conviction, "That's what he gets for having sex with my girl" or a statement to that effect. (*Id.*; Exhibit 17, August 26, 2024 Affidavit of Marvin Williford).
9. Based upon an investigation of the Lake County Major Crime Task Force ("LCMCTF") in 2014, Det. Warner's testimony about how he came to learn of Williford's identity as a suspect is also untruthful and unreliable. Warner testified at trial that he had a telephone conversation with a confidential informant, later identified as Scott Henderson, who gave him identifying information about Williford (R.751-52). However, more than a decade later, in November 2014, Warner admitted to the LCMCTF that his conversation with Henderson was in-person and in front of Dee Dee Follins. (Exhibit 18, November 28, 2014 LCMCTF Investigative Report).

10. Defense counsel was not given the opportunity to question either Warner, Henderson or Follins on this discrepancy and the State was not aware of Warner's lie. Further, defense counsel's claim that he was not aware of Henderson's status as the confidential informant takes on more meaning in light of Warner's material omissions about his relationship with Henderson and Follins. Defense counsel also was not given the opportunity to conduct an adequate investigation into the issues related to Warner, Henderson, and Follins before trial in order to adequately prepare Williford's defense at trial.
11. Though it was no fault of the Lake County State's Attorney's Office, the North Chicago Police Department did not disclose this material and impeaching evidence about Warner's relationship with Follins and Henderson, raising an issue under *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and resulting in a violation of Williford's due process. In doing so, the State (unwittingly) suppressed exculpatory and impeaching evidence and instead used false and misleading evidence at trial.
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IT IS HEREBY AGREED BY THE PARTIES:


Eric Rinehart - State's Attorney


David B. Owens – Attorney for Marvin Williford

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