

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

CIRCUIT ATTORNEY,)	
22 ND JUDICIAL CIRCUIT)	
OF MISSOURI, ex rel.)	Cause No. _____
CHRISTOPHER DUNN)	
)	
Movant/Relator)	
)	

**MOTION TO VACATE OR SET ASIDE THE JUDGMENT OF CHRISTOPHER DUNN
AND SUGGESTIONS IN SUPPORT**

COMES NOW the Circuit Attorney of the City of St. Louis (“Circuit Attorney”) and moves, pursuant to § 547.031, RSMo., to vacate or set aside the judgment of Christopher Dunn in cause no. 901-1555, having concluded that there is clear and convincing evidence of Christopher Dunn’s actual innocence that undermines the confidence in the judgment against him.

In 1991, then-nineteen-year-old Christopher Dunn (“Dunn”) was convicted of first-degree murder and received a sentence of life without the possibility of parole in the shooting death of Ricco Rogers based solely on the testimony of two teenage eyewitnesses who have now recanted. In 2018, a Missouri judge ruled that “this Court does not believe that any jury would now convict Christopher Dunn under these facts.” Order, *State ex rel. Dunn v. Bowersox*, 17TE-CC00059, at 19 (22nd Cir. Ct. Mo, Sept. 23, 2020) (Hickle, J.). Despite this ruling, Judge Hickle was bound by Missouri jurisprudence to dismiss Dunn’s freestanding innocence claim on purely procedural grounds. Now, § 547.031 (enacted one year after Judge Hickle’s ruling) gives this Court the ability to grant the relief that Judge Hickle could not.

The recantations of the two teenage eyewitnesses alone is enough for Christopher Dunn to show clear and convincing evidence of actual innocence. *Amrine v. Roper*, 102 S.W.3d 541, 544 (“In light of the resulting lack of any remaining direct evidence of Amrine’s guilt from the

first trial, Amrine has already met the clear and convincing evidence standard....”). While already meeting the clear and convincing standard, Dunn can also present evidence that corroborates the recantations, including the testimony of another person present at the shooting, the testimony of an eyewitness identification expert who is prepared to opine to the lack of reliability of the now-recanted identifications, and multiple alibi witnesses who can attest that Dunn was at home and on the phone when the shooting occurred. Pursuant to § 547.031, Christopher Dunn’s judgment should be set aside because there is clear and convincing evidence of Dunn’s actual innocence that undermines the court’s confidence in his conviction.

VENUE

A Circuit Attorney in the jurisdiction in which a person was convicted of an offense may file a motion to vacate or set aside the judgment, and the circuit court of conviction has jurisdiction to hear and decide on such motion. RSMo. § 547.031(1). Christopher Dunn was convicted in cause no. 901-1555 in the Circuit Court of the City of St. Louis. Venue is proper in this Court. RSMo. § 547.031(1).

FACTUAL BACKGROUND

1. The Shooting

On May 18, 1990, shortly before midnight, 14-year-old DeMorris Stepp (“Stepp”), 12-year-old Michael Davis (“Davis”), and 15-year-old Ricco Rogers (“Rogers”) sat on the steps of 5607 Labadie Avenue. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 5:20-7:17; Ex. 9 [Davis Aff.] at ¶ 3. Their friends, Eugene Wilson (“Wilson”) and Marvin Tolliver (“Tolliver”), were walking west towards the house after picking up food for the group a few blocks away. Ex. 1 [R. 91 Hr’g Tr. (Wilson)] at 73:23-74:5. While the group talked, a person (the “Shooter”) approached the house from the west side. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 9:20-10:6; Ex. 16 [Wilson Aff.] at p. 1. The Shooter

then shot at the three boys on the porch, firing at least two shots. Ex. 1 [R. 91 Hr'g Tr. (Stepp)] at 10:24-11:1. The three boys fled, running east in the opposite direction of the Shooter. One of the bullets struck Rogers in the back of the head as he fled. Ex. 2 [Trial Tr. (Stepp)] at 141:13-143:10; Ex. 2 [Trial Tr. (Dr. Graham)] at 172:9-12. Davis fell to the ground and played dead; Stepp continued to run, jumping over a gate until he reached Wilson and Tolliver, who were within eyesight of the house when the shooting began. *Id.* at 141:13-143:3 Stepp, Wilson, and Tolliver returned to 5607 Labadie, where Rogers was unresponsive. *Id.* at 142:11-143:10; Ex. 1 [R. 91 Hr'g Tr.] at 77:22-78:4. Rogers was then taken to the hospital, where he was pronounced dead. Ex. 2 [Trial Tr. (Goldacker)] at 169:2-14; Ex. 2 [Trial Tr. (Dr. Graham)] 171:9-172:24.

2. Christopher Dunn's Alibi

While Rogers and his friends sat on the porch at 5607 Labadie, Christopher Dunn was at his mother's home.¹ Ex. 3 [R. 29.15 Hr'g Tr. (Martha Dunn)] at 11:7-19.² Between 10 p.m. and 11 p.m., Dunn used the family's landline to talk to a friend of his, Catherine Jackson ("Jackson"). Ex. 4 [Jackson Aff.] at p. 1. According to Jackson, Dunn was "happy and acting normal" during the call. *Id.* The call lasted approximately 30-60 minutes. *Id.* Around 11 p.m., Dunn received a call from Nicole Bailey (née Williams) ("Bailey"), another friend. Ex. 1 [R. 91 Hr'g Tr. (Bailey)] at 60:4-61:2; 61:21-62:11. Bailey was in the hospital after having a baby via C-section. *Id.* at 57:22-58:8. She often spoke with Dunn late at night and remembered calling him that night to talk about the birth of her child. *Id.* at 57:10-15, 59:24-60:2, 61:11-16. Bailey recalls being on the phone with Dunn from 11 p.m. until 1 a.m. when a nurse came in to check Bailey's vitals and made her get

¹ Christopher and Martha Dunn testified that the people in Martha Dunn's home that night were her three daughters (Arnetta, Angela, and Dolores), Christopher Dunn, Larry Dunn, Wilford Rickman, and Terrence Long. Ex. 3 [R. 29.15 Hr'g Tr. (Dunn)] at 7:1-9; Ex. 3 [R. 29.15 Hr'g Tr. (Martha Dunn)] at 11:7-19.

² Due to page numbers of the Rule 29.15 Hearing transcript being indiscernible and/or not present, citations will be referring to the page numbers of the Exhibit itself, but line numbers will refer to the lines indicated on the transcript.

off the phone. *Id.* at 60:14-61:2, 61:21-62:11. Bailey remembers the approximate time she spoke to Dunn because she remembers watching *Hunter*, a popular television show, while they were on the phone.³ *Id.* at 60:4-8; Ex. 5 [Bailey Aff.] at p. 1.

On May 19, 1990 at approximately 2 a.m., police arrived at the Dunn home to arrest Christopher Dunn for the shooting death of Ricco Rogers. Ex. 3 [R. 29.15 Hr’g Tr. (Martha Dunn)] at 12:18-13:9. Fearing her son would be arrested because he was supposed to be staying in a halfway house, Martha Dunn lied to police, saying that Dunn was not home at the time. *Id.* at 16:1-7.

3. The Eyewitnesses

At approximately 2:50 a.m. on May 19, 1990 (approximately three hours after the shooting), Stepp gave a recorded statement to the police at a police station. Ex. 7 [Stepp Recorded Statement]. Notably, in Stepp’s initial narrative of the shooting, he did not state that he saw the Shooter. Instead, Stepp stated that he, Davis, and Rogers were talking and dancing when they heard gunshots. *Id.* at pp. 3-4. Stepp stated that he ducked, then started running after the second gunshot. *Id.* As he was running, he looked back and saw Rogers fall. *Id.* When asked if he saw from what direction the gun or the bullet were fired from, Stepp responded, “No sir.” *Id.* at p. 5. It was not until police asked if Stepp had seen anyone else outside that Stepp stated that he had seen Christopher Dunn. When asked how Stepp knew it was Dunn, Stepp responded “[b]ut you know how you see somebody and you don’t see ‘em, you know... I thought my mind, you know, was playing games...” *Id.* at p. 6. Stepp also stated that he had seen Dunn earlier in the day in the neighborhood. *Id.* at pp. 6-7. The interview ended at 2:59 a.m. after nine minutes of questioning. *Id.* at p. 9.

³ A TV guide from the St. Louis Post-Dispatch shows that *Hunter* aired at 11 p.m. on May 18, 1990. Ex. 6 [Habeas Ex. 13, TV Guide].

At 3:04 a.m. on May 19, 1990, police interviewed Michael Davis at the police station. Ex. 8 [Davis Recorded Statement]. The detective began the interview by stating, “Michael prior to this recording we had sat here and discussed, briefly, the incident, as you saw it, last evening.” *Id.* at p. 2. Like Stepp, Davis told police that he had seen Dunn earlier in the day. *Id.* at p. 7. Davis also stated that he was not aware of anyone at the address having any type of altercation with Dunn. *Id.* at p. 9 (Q: “no exchange of words, no bad feeling, or nothing like that?” A: “No sir.”). In Davis’ first recounting of what he saw, he stated that he heard shots, began running, and saw Rogers fall to the ground. *Id.* at p. 2. He then watched Stepp run into another yard, at which point Davis fell to the ground and played dead. *Id.* at p. 2. Davis stated that he then turned and looked around, seeing Christopher Dunn wearing sunglasses (despite the shooting occurring close to midnight). *Id.* at p. 3. The interview ended at 3:14 a.m. after ten minutes of questioning. *Id.* at p. 10. Later that afternoon, police arrested Dunn. Ex. 2 [Trial Tr.] at 126:17-127:4.

Approximately two weeks after the death of Ricco Rogers, Michael Davis moved to California with his mother. Ex. 9 [Davis Aff.] at ¶ 10. In July 1991, police brought the now thirteen-year-old Davis back to Missouri to testify against Dunn. *Id.* When he arrived back in Missouri, Davis told police that he did not want to testify because he did not know whether Dunn was the Shooter. Ex. 10 [2015 Davis Interview] at 8:10-26. Davis expressed to police that he was unsure that he had actually seen the Shooter. *Id.* at 8:10-26; Ex. 9 [Davis Aff.] ¶10. When he hesitated, police showed Davis graphic photos of Ricco Rogers’ body. Ex. 9 [Davis Aff.] ¶10. Police encouraged Davis to name Christopher Dunn, stating, “This is your friend... This is what he did to your partner... Are you gonna let them do this to your friend?” *Id.* Police also arranged a phone call between Davis and Ricco Rogers’ mother. *Id.* at ¶ 11. Ricco Rogers’ mother implored Davis to name Christopher Dunn, crying and asking Davis to help get rid of Dunn. *Id.* Davis stated

that he felt “coerced” to testify “just as the police told me to -- that Christopher Dunn shot Ricco Rogers.” *Id.* at ¶ 10.

On January 24, 1991, DeMorris Stepp and another individual went on a robbery spree. Stepp used a sawed-off shotgun to rob a cab driver and steal a Pontiac Lemans. Ex. 11 [Stepp Sentencing Hr’g Tr.] at 5:7-17; Ex. 12 [Stepp Order] at MIP000074. Stepp then used a sawed-off shotgun to rob another individual of cash, eyeglasses, and a bookbag. Ex. 12 [Stepp Order] at MIP000075. Stepp then used a sawed-off shotgun to rob two other individual of cash. *Id.* at MIP000075-76. Stepp also attempted to rob a fifth individual with the sawed-off shotgun. *Id.* at MIP000076. Police later apprehended Stepp while Stepp drove the stolen vehicle. Ex. 11 [Stepp Sentencing Transcript] at 5:13-17. Police also found a concealed weapon in the stolen vehicle. *Id.* Stepp was arrested for the robberies and prosecuted as an adult. Ex. 12 [Stepp Order] at MIP000078. At the time of his arrest, he had previously appeared in juvenile court for robbery and assault charges stemming from a home invasion where a co-defendant shot a one-year-old in the eye. *Id.* at MIP000077; Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 19:3-10, 23:6-14; Ex. 13 [Habeas Ex. 16 Police Report].

4. Christopher Dunn’s Trial

On July 17, 1991, Christopher Dunn’s trial began. Ex. 2 [Trial Tr.] 1:1. The trial lasted one and a half days. *Id.* at 211:3-9. On July 18, 1991, the jury took only forty-two minutes to deliberate before convicting Dunn of first-degree murder, three counts of armed criminal action, and two counts of assault in the first degree. Ex. 14 [Texas County Order] at p. 1; Ex. 2 [Trial Tr.] at 23:10-13. Dunn was sentenced to life without parole. Ex. 14 [Texas County Order] at p. 1.

At the trial, the Assistant Circuit Attorney’s (“ACA”) case-in-chief relied solely on the eyewitness identifications of DeMorris Stepp and Michael Davis. Ex. 2 [Trial Tr.] at pp. 135-159,

173-182. The ACA presented no ballistics evidence, no physical evidence, and no motive. *See id.* at p. 193:8-195:7 (stating “that’s all the evidence in the case” after recounting the testimony of DeMorris Stepp and Michael Davis). Dunn’s public defender presented no evidence. *Id.* at 186:3-5. She made no opening statement. *Id.* She called no witnesses. *Id.* Her representation of Dunn consisted of only cross examinations and a short closing statement. *See generally id.* at pp. 126-127, 133-134, 158-160, 165-168, 178-182, 197-205. Dunn later testified in 1993 that his public defender only met with him three to four times, each visit lasting two to five minutes in duration. Ex. 3 [R. 29.15 Hr’g Tr. (Dunn)] at 7:12-16. During these visits, Dunn told her that he was at home that night. *Id.* at 7:1-4. He tried giving her the names of alibi witnesses, including Martha Dunn, Arnetta Dunn, Nicole Williams, Wilford Rickman, and Larry Dunn. *Id.* at 7:5-11. However, they did not discuss the details of Dunn’s case. *Id.* at 7:17-24. Dunn also testified that he tried to asked for another attorney. *Id.* at 10:5-8.

On July 17, 1991, the same day that Stepp testified against Christopher Dunn, Stepp appeared in front of the same judge to plead guilty to first degree robbery, first degree tampering and unlawful use of a weapon, and carrying a concealed weapon. Ex. 11 [Stepp Sentencing Hr’g Tr.] at 2:16-18; Ex. 1 [R. 91 Hr’g Tr.] at 21:18-21. These charges stemmed from the robbery that occurred on January 21, 1991. Ex. 11 [Stepp Sentencing Hr’g Tr.] at 5:7-17. In exchange for Stepp’s testimony against Christopher Dunn, the same ACA that was prosecuting Dunn dismissed an Armed Criminal Action charge levied against Stepp. *Id.* at 3:3-6. Stepp faced a maximum sentence of forty-two years in prison for the crimes he pled guilty to; the ACA recommended only 15 years. *Id.* at 2:12-14, 4:2-5.

On August 30, 1991, Stepp appeared for his sentencing hearing. Stepp’s family members and public defender asked the judge to grant Stepp probation. The ACA present at the sentencing

hearing made no statements against probation, nor did she ask the court to follow the original plea recommendation. *Id.* at pp. 8-14. When arguing in favor of probation, Stepp's public defender stated, "Mr. Stepp did testify in a murder case... and **his testimony was, in fact, instrumental in causing that particular person to be convicted** of a murder case." *Id.* at 9:5-8 (emphasis added). The same judge that presided over Christopher Dunn's murder trial ultimately granted DeMorris Stepp three years of probation. *Id.* at 13:25-14:7.

5. Christopher Dunn's Post-Conviction Relief Proceedings

At Christopher Dunn's Rule 29.15 hearing in 1993, Christopher Dunn's mother, Martha Dunn, and sister, Arnetta Dunn⁴, testified on behalf of Dunn. Martha testified that before midnight on May 18, 1990, Martha was at home with Dunn and her three daughters watching *Hunter*. Ex. 3 [R. 29.15 Hr'g Tr. (Martha Dunn)] at 11:7-23. She testified that Dunn was on the phone with Nicole Bailey around midnight to 12:30 on May 19, 1990. *Id.* at 12:3-13. Arnetta also testified that Dunn was on the phone with Bailey around midnight while the family watched *Hunter* in the television room. Ex. 3 [R. 29.15 Hr'g Tr. (Arnetta Dunn)] at 16:23-18:3.

In 2005, DeMorris Stepp signed an affidavit recanting his previous testimony. Ex. 15 [Stepp Aff.]. Stepp stated that he did not see anyone on May 18, 1990. Ex. 15 [Stepp Aff.] at ¶ 1. Stepp stated that he identified Dunn because he: (1) did not like Dunn, (2) was afraid from witnessing his friend's murder, and (3) was told to identify Dunn by the police. *Id.* Stepp stated that, when facing 15-30 years in prison for his robbery charge, he was told by the ACA that he could go home if he testified in the trial against Christopher. *Id.* Stepp admitted that "**it was too dark to see anything that night**" and he "**wasn't sure who did the shooting.**" *Id.* (emphasis added).

⁴ Martha Dunn and Arnetta Dunn are referred to by their first names to avoid confusion.

6. Christopher Dunn's Habeas Corpus Proceedings

In 2017, Christopher Dunn filed a petition for habeas corpus. In his petition, Dunn included numerous affidavits to support his innocence, including Stepp's 2005 affidavit. He also included the affidavit of Michael Davis, the other eyewitness who testified at trial. Davis also recanted his previous testimony. Ex. 9 [Davis Aff.] at ¶ 5. Davis stated that he "could not see or identify the shooter" because he "could not even say where the shooter was or where the shots came from." *Id.* at ¶ 5. Davis stated that he identified Dunn because Davis and Stepp wanted Dunn out of the neighborhood. *Id.* at ¶ 9. Davis later felt "coerced" to testify against Dunn due to police pressure and pressure from the victim's mother. *Id.* at ¶ 10-11.

Dunn also presented the affidavit of Eugene Wilson, another eyewitness to the shooting. Wilson stated that he remembers seeing the shooting. Ex. 16 [Wilson Aff.] at p. 1. Wilson recalled it being so dark that "none of us could see the shooter." *Id.* Wilson stated "It was too dark" and "**I was not able to see any identifiable characteristics related to the shooter.**" *Id.* at p. 2.

Additionally, Dunn presented the affidavit of Catherine Jackson. Jackson stated that on May 18, 1990, she spoke to Dunn on the phone between 10 and 11 pm for thirty to sixty minutes. Ex. 4 [Jackson Aff.] at p. 1. She stated that Dunn sounded happy on the phone and was acting normal. *Id.* Finally, Dunn presented the affidavit of Nicole Bailey. Bailey stated that on May 17, 1990 at 7:43 p.m., her daughter, Brittany, was born. Ex. 5 [Bailey Aff.] at p. 1. Bailey recalled speaking with Mr. Dunn while watching *Hunter* from her hospital bed on May 18, 1990. *Id.* Bailey recalled talking long after *Hunter* ended. *Id.*

At Christopher Dunn's 2018 habeas hearing, DeMorris Stepp, Nicole Bailey, Curtis Stewart, and Eugene Wilson testified. Stepp reiterated that he did not see the Shooter on the night of May 18, 1990; he could only see the fire coming from the gun. Ex. 1 [R. 91 Hr'g Tr. (Stepp)]

at 11:12-19; 17:6-9. Stepp testified that he knew Dunn by sight and identified him as the Shooter because police and other people told Stepp that Dunn was the Shooter. *Id.* at 12:5-8; 14:9-18. Stepp stated that he made his false statement to police because after losing a friend, “you want to do something so bad to try to rectify what’s going on.” *Id.* at 14:11-12.

Stepp also testified that the ACA promised Stepp probation if Stepp testified in the case against Christopher Dunn. *Id.* at 23:17-19. Stepp reviewed his affidavit at the hearing and agreed that it was the truth. *Id.* at 26:9-27:4. Stepp testified that what motivated him to falsely identify Dunn was Stepp’s “freedom” and the “guarantee” of probation. *Id.* p. 33:11-16. Stepp also testified that he told Michael Davis to give Christopher Dunn’s name. *Id.* p. 15:10-12.

During his testimony, Stepp was also asked about statements he made to the Attorney General during an interview in 2017. The only evidence submitted of the 2017 interview was a memorandum created by the Attorney General’s office. Ex. 17 [R. 91 Exhibit H, Stepp interview]. The Attorney General offered no recording or sworn statement of Stepp to corroborate the investigator’s interview memorandum. Stepp testified that what he remembered telling the interviewer was “that I didn’t think that Mr. Dunn was the shooter. I think that that was basically what I told her when we came to that.” Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 31:9-21. Stepp denied that the statements in the interview memorandum were true. *Id.* at 31:9-14, 32:23-33:2. Despite what the Attorney General wrote in its memorandum, Stepp stated that he did not recall saying that he was “positive” he saw Dunn, and he did not recall giving a percentage of how confident he was in his identification. *Id.* at 36:3-15. When asked why Stepp “lied” in the interview, Stepp responded “I think it was the questions she posed.” *Id.* at 38:1-4.

Curtis Stewart testified that he was incarcerated with DeMorris Stepp in the “city workhouse” in 1991. Ex. 1 [R. 91 Hr’g Tr. (Stewart)] at 49:11-50:4. Stewart recounted overhearing

Stepp talking on the phone with an unknown person stating that he did not know who really killed Ricco Rogers. *Id.* at 50:3-14. Stewart testified that he heard Stepp say “You know, I’m getting a deal out of it.” *Id.* This caused issues in the jail, but Stepp reiterated that he did not care because he was getting a deal for testifying against Dunn. *Id.* at 51:2-25. When asked why Stepp named Dunn, Stepp told Stewart, “We got beef,” which Stewart believed to mean that Stepp and Christopher had problems on the street. *Id.* at 51:12-22.

Eugene Wilson testified that on May 18, 1990, he and Marvin Tolliver were walking back with food from a nearby Chinese restaurant when they saw fire come from the west side of Marvin Tolliver’s home. Ex. 1 [R. 91 Hr’g Tr. (Wilson)] at 75:2-17. Wilson testified that a tree obscured the street light to where it was pitch dark and “you couldn’t see nothing at all.” *Id.* at 75:2-10. Wilson compared it to “going camping” with “no moonlight out.” *Id.* at 77:4-6. Wilson testified that Christopher Dunn’s name was immediately thrown out by the younger boys after the shooting because they did not know Christopher Dunn in the same way that Wilson and Tolliver did. *Id.* at 80:7-11. Wilson remembered that the boys “didn’t too much care for Christopher Dunn,” even though Dunn did not know Rogers or Stepp because the boys were much younger than Dunn. *Id.* at 80:7-17. Wilson stated that because of Stepp and Davis’ young age, “they liked to point fingers because they wanted to be with the group, older group.” *Id.* at 80:18-21.

Wilson also testified that a few days before the shooting, Rogers got into an altercation with his mother’s boyfriend. *Id.* at 80:25-81:6. According to Wilson, Rogers’ mother’s boyfriend abused Rogers’ mother. *Id.* In retaliation for the abuse, Rogers, Tolliver, Wilson, and a few others then beat up the boyfriend “real bad.” *Id.* at 80:25-81:16.

Nicole Bailey testified that on May 17, 1990, she was admitted to the hospital after giving birth to her daughter. Ex. 1 [R. 91 Hr’g Tr. (Bailey)] 57:22-58:6. Bailey recalled speaking to

Christopher Dunn on his home phone number the night of May 18, 1990. *Id.* at 59:24-60:2, 61:11-16. Bailey testified that she spoke to Dunn while watching *Hunter* and continued speaking with him until nurses came in to check her vitals. *Id.* at 60:4-8. Because *Hunter* came on at 11 p.m., Bailey testified that she was on the phone with Dunn from 11 p.m. to 1 am when nurses came to check her vitals. *Id.* at 60:14-61:1, 61:21-62:11. Dunn’s counsel submitted Bailey’s medical records, which show that her vitals were checked at 10 p.m. on May 18, 1990 and were not checked again until 1 a.m. on May 19, 1990, corroborating Ms. Bailey’s memory. Ex. 18 [R. 91 Exhibit 12, Bailey Medical Records] at p. 18. Dunn’s counsel also submitted the St. Louis Post-Dispatch TV Guide for May 18, 1990, which shows that *Hunter* aired on Channel 11 at 11 p.m. Ex. 6 [Habeas Ex. 13, TV Guide].

On September 23, 2020, Judge Hickle issued an order and judgment on Christopher Dunn’s writ of habeas corpus. Ex. 14, Order and Judgment, *Dunn v. Bowersox*, case no. 17TE-CC00059 (Sept. 23, 2020) (the “Texas County Order”). Judge Hickle’s recitation of facts included evidence from the 2017 habeas hearing along with evidence from Mr. Dunn’s trial and Rule 29.15 hearing. *Id.* at pp. 3-13. When discussing DeMorris Stepp’s multiple statements and recantations, Judge Hickle observed:

It is next to impossible to determine which version of events related by Mr. Stepp is the most credible. However, regardless of which of Mr. Stepp's multiple statements are true, it is beyond dispute that Petitioner was convicted based upon the eyewitness testimony of a person who at this point has told multiple contradictory versions of what he claims to have observed on the night of the shooting. As Judge Wolff observed in the *Amrine* case, the only witnesses who implicated Petitioner in the crime are proven liars. *Amrine*, 102 S.W.3d at 550 (Wolff, J ., concurring).

Id. at p. 8.

Judge Hickle then discussed the interviews and recantations of Michael Davis, ultimately stating, “The recantations of DeMorris Stepp and Michael Davis are bolstered by the testimony of

an independent eyewitness, Eugene Wilson, who was present at the house and witnessed the shooting death of Ricco Rogers.” *Id.* at p. 10. Judge Hickle found Wilson’s testimony credible and stated that Wilson “would have no apparent motive to hinder the effort to hold accountable the murderer of Ricco Rogers.” *Id.* at p. 11-12.

In his conclusions of law, Judge Hickle held that new evidence emerged that made it “likely that a reasonable, properly instructed jury **would find Christopher Dunn not guilty.**” *Id.* at p. 19 (emphasis added). After considering the testimony of Wilson, the recantations of Stepp and Davis, and the alibi evidence, Judge Hickle stated, “[T]his Court **does not believe that any jury would now convict Christopher Dunn under these facts.** Instead, this Court concludes that, based on all the evidence considered under the dictates of *Schlup*, **it is more likely than not that any reasonable juror would have reasonable doubt.**” *Id.* at p. 19 (emphasis added).

Despite these findings, Judge Hickle dismissed Dunn’s freestanding innocence claims on procedural grounds. *Id.* at p. 17 (“Unless *Lincoln* is overruled... Petitioner’s freestanding innocence claim is denied without further analysis.”). Judge Hickle explained that under *State ex rel. Lincoln v. Cassady*, 511 S.W.3d 11 (Mo. App. W.D. 2016) and related habeas case law, freestanding innocence claims⁵ are not available unless a person has been convicted of a death sentence. Order p. 16-17. Because Dunn was given life without parole, Judge Hickle found that Dunn was barred from bringing a freestanding innocence claim. *Id.*

⁵ A freestanding innocence claim is one “in which a Petitioner sets forth a compelling case of actual innocence independent of any constitutional violation at trial.” *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 547 (Mo. bane 2003).

After finding that Christopher Dunn met the gateway innocence test,⁶ Judge Hickle examined Christopher Dunn's otherwise barred due process claims, ultimately dismissing both claims. *Id.* pp. 19-24.

LEGAL STANDARD

Upon the filing of a motion by the Circuit Attorney, the court shall order a hearing and shall consider (1) all evidence presented at the original trial, (2) any additional evidence presented in direct appeals or post-conviction proceedings, and (3) any and all information and evidence presented at a hearing on this motion. RSMo §547.031(3). Upon considering all the evidence presented, this court shall set aside a judgment where it finds clear and convincing evidence of actual innocence that undermines its confidence in the judgment. RSMo §547.031(3). The legislature adopted the standard in §547.031(3) from *Amrine v. Roper*, where the Supreme Court of Missouri granted the freestanding innocence claim of Joseph Amrine after he was wrongfully convicted and sentenced to death. *Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. 2003). As explained in *Amrine*, evidence is clear and convincing when it “instantly tilts the scales in the affirmative when weighed against the evidence in opposition, and the fact finder’s mind is left with an abiding conviction that the evidence is true.” *Id.* “Clear and convincing” is a lower burden than “beyond a reasonable doubt” but higher than “preponderance of the evidence.” *Id.* Under section 547.031, a finding of actual innocence is proper where there is clear and convincing evidence that “no reasonable juror would find [the convicted person] guilty beyond a reasonable doubt.” *See House v. Bell*, 547 U.S. at 538.

⁶ To establish a gateway claim of actual innocence, petitioner must show that “a constitutional violation has probably resulted in the conviction of one who is actually innocent.” *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. 2000) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). “A petitioner’s burden at the gateway stage is to demonstrate that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt or, to remove the double negative, that more likely than not any reasonable juror would have reasonable doubt.” *House v. Bell*, 547 U.S. 518, 538 (2006). A petitioner must pass through this “gateway” to have their otherwise barred constitutional claim considered on the merits. *Clay*, 37 S.W.3d at 217.

Joseph Amrine was convicted of murdering an inmate at Jefferson City Correctional based solely on the testimony of three fellow inmates. *Id.* at 544. A jury found Amrine guilty, and he was sentenced to death. *Id.* In the course of Amrine’s state and federal appeals, all three of the State’s witnesses recanted. *Id.* at 544-45. Amrine petitioned the Supreme Court of Missouri for habeas corpus relief, which the court granted. *Id.* at 545. In applying the clear and convincing standard, the court noted, “There was no physical evidence linking Amrine to the murder. Instead, Amrine was convicted solely on the testimony of three fellow inmates, each of whom have now completely recanted their trial testimony.” *Id.* at 548. With the recantation of all identification testimony, the Court held:

In light of the resulting **lack of any remaining direct evidence** of Amrine's guilt from the first trial, Amrine **has already met the clear and convincing evidence standard**, for our **confidence in the outcome of the first trial is sufficiently undermined** by the recantation of all the key witnesses against him in the first trial to require setting aside his conviction and sentence of death.

Id. at 544 (emphasis added).

In setting aside Amrine’s conviction, the court noted, “This case thus presents the rare circumstance in which no credible evidence remains from the first trial to support the conviction.”

Id. at 548.

ARGUMENT

When considering all of the evidence now available in Christopher Dunn’s case, including evidence from Dunn’s trial, Rule 29.15 proceedings, and habeas proceedings, there is clear and convincing evidence that undermines any court’s confidence in Christopher Dunn’s conviction. Judge Hickle, considering all of the evidence that this Court will be required to consider under § 547.031(3), concluded that no jury would convict Christopher Dunn today. Ex. 14 [Texas County

Order] at p. 19. Judge Hickle’s opinion demonstrates how Christopher Dunn’s case is identical to Joseph Amrine’s. Like in *Amrine*, Dunn was convicted solely through the testimony of eyewitnesses, all of whom have recanted, and there was no physical evidence presented at trial that links Dunn to the murder. *Amrine*, 102 S.W.3d at 544, 548. In 2024, in light of the recantations of Stepp and Davis, no evidence in support of Dunn’s conviction at his first trial remains. *Id.* at 548. The recantations alone meet the clear and convincing standard and, as Judge Hickle’s opinion demonstrates, undermine the confidence of the outcome at the original trial. Ex. 14 [Texas County Order] at p. 19; *Amrine*, 102 S.W.3d at 544 (Mo. 2003) (“In light of the resulting lack of any remaining direct evidence of Amrine’s guilt from the first trial, Amrine has already met the clear and convincing evidence standard.”). However, Christopher Dunn is able to offer compelling evidence of his actual innocence in addition to the recantations. Dunn can also present the testimony of an expert witness that bolsters the recantations, the testimony of Eugene Wilson, an independent eyewitness already found credible by Judge Hickle, multiple alibi witnesses and supporting documentation to that alibi, and an alternate suspect. This evidence clearly shows, as Judge Hickle found, that no reasonable jury would convict Christopher Dunn today. Ex. 14 [Texas County Order] at p. 19. This finding would undermine any court’s confidence in Dunn’s conviction. Like Joseph Amrine, this overwhelming amount of evidence is the “rare circumstance in which no credible evidence remains from the first trial to support the conviction” and demands that this court set aside Christopher Dunn’s conviction. *Amrine*, 102 S.W.3d at 548 (Mo. 2003).

1. There Is No Evidence Supporting Christopher Dunn’s Conviction.

Removing DeMorris Stepp and Michael Davis’ eyewitness identifications of Christopher Dunn “instantly tilts the scales in the affirmative” that Dunn is actually innocent. *Amrine v. Roper*, 102 S.W.3d at 548. At Dunn’s trial, the ACA presented no physical evidence and no motive. *See*

Ex. 2 [Trial Tr.] at 193:8-195:7 (stating “that’s all the evidence in the case” after recounting the testimony of DeMorris Stepp and Michael Davis). Instead, the ACA relied solely on the now-recanted testimony of young teenagers, DeMorris Stepp and Michael Davis (who was not even a teen at the time of the shooting). *See* Ex. 9 [Davis Aff.] at ¶ 3; Ex. 15 [Stepp Aff.] at ¶ 1; Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 11:12-19; 17:6-9. Stepp and Davis have both affirmed, under penalty of perjury, that they falsely identified Christopher Dunn and it was too dark to see the shooter. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 11:12-19, 17:6-9; Ex. 9 [Davis Aff.] at ¶ 5; Ex. 15 [Stepp Aff.] at ¶ 1.

Stepp’s and Davis’ original eyewitness identifications were always questionable when considering all of the circumstance surrounding the identifications. DeMorris Stepp was only fourteen years old when the murder occurred; Michael Davis was even younger, not even a teenager, at the age of twelve. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 7:9-10; Ex. 9 [Davis Aff] at ¶ 3. Stepp and Davis both knew Dunn by sight, as they all lived in the same neighborhood. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 12:5-8; 14:9-18; Ex. 9 [Davis Aff.] at ¶ 6. Indeed, they both stated in their original police interviews that they had seen Dunn earlier on the day of the shooting around the neighborhood, making it easy to falsely identify what Dunn looked like and what clothes he was wearing. Ex. 7 [Stepp Recorded Statement] at p. 6-7; Ex. 8 [Davis Recorded Statement] at p. 7. Both Stepp and Davis were facing away from the shooter in near pitch-darkness when the shooter approached from behind another house. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 9:20-10:6, 75:2-10. Any opportunity they had to view the shooter would have been under incredibly high stress conditions for two young boys as they ran away and fell down. Ex. 2 [Trial Tr.] at p. 192:24-193:22, 194:11-21. DeMorris Stepp’s own taped statement to police shows evidence of these factors. Stepp told police that he did not see the direction that the gun was fired from. Ex. 7 [Stepp Recorded Statement] at p. 5. When identifying Christopher Dunn, Stepp stated, “I looked at his face, but you

know, you know how you see somebody and you don't see em', you know..." *Id.* at p. 6. Stepp has since testified that from the outset of the investigation, the police pressured him to identify Dunn as the suspect. Ex. 15 [Stepp Aff.] at ¶ 2; Ex. 1 [R. 91 Hr'g Tr. (Stepp)] at 14:9-14, 32:8-22. Stepp in turn advised the younger Michael Davis to name Christopher Dunn. Ex. 1 [R. 91 Hr'g Tr. (Stepp)] at 15:10-12. Stepp and Davis' recantations makes clear that the boys threw out Dunn's name due to childhood animosities and a desire to impress older boys in the neighborhood who did not like Dunn. Ex. 15 [Stepp Aff] at ¶ 1; Ex. 9 [Davis Aff] at ¶ 6-9; Ex. 1 [R. 91 Hr'g Tr. (Stepp)] at 12:5-8; 14:9-18.

DeMorris Stepp and Michael Davis' in-court identifications similarly do not hold up. Michael Davis stated that he told police before trial that he did not know whether Christopher Dunn was the shooter. Ex. 10 [2015 Davis Interview] at 8:10-26. Police appear to have pressured Davis into testifying by showing him graphic photos of Ricco Rogers' body and arranging a phone call with Ricco Rogers' mother where she begged for Davis' help. Ex. 9 [Davis Aff.] at ¶ 10. Davis felt "coerced" to testify "just as the police told me to -- that Christopher Dunn shot Ricco Rogers." *Id.* at ¶ 10.

DeMorris Stepp testified against Christopher Dunn in the hopes of going home after pleading guilty to a pending robbery charge. At the time of Christopher Dunn's trial, Stepp faced a maximum sentence of forty-two years in prison. Ex. 11 [Stepp Sentencing Hr'g Tr.] at 4:3-5. On the same day that he testified against Christopher Dunn, Stepp pled guilty to the robbery charges and ultimately received probation. *Id.* at 2:23-3:2, 14:2-4. In arguing in favor of probation, Stepp's public defender recognized the mitigating value of his testimony against Christopher Dunn, stating, "Mr. Stepp did testify in a murder case... and **his testimony was, in fact, instrumental**

in causing that particular person to be convicted of a murder case.” *Id.* at 9:5-8 (emphasis added).

While there was no evidence of an agreement between the ACA and Stepp regarding probation, this does not change the fact that DeMorris Stepp *perceived* that he would get some benefit, even probation, in exchange for his testimony. Stepp testified that what motivated him to falsely identify Christopher Dunn was Stepp’s “freedom” and the “guarantee” of probation. Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 33:11-16. Fifteen-year-old DeMorris Stepp believed that he could turn a potential forty-two year prison sentence into probation by testifying against Christopher Dunn. Ex. 15 [Stepp Aff.] at ¶ 1; Ex. 1 [R. 91 Hr’g Tr. (Stepp)] at 23:17-19. The recantations of Stepp and Davis alone are enough to show clear and convincing evidence of actual innocence requiring the vacation of Christopher Dunn’s conviction. *Amrine v. Roper*, 102 S.W.3d at 544 (“In light of the resulting lack of any remaining direct evidence of Amrine’s guilt from the first trial, Amrine has already met the clear and convincing evidence standard....”).

2. Additional Evidence Corroborates the Eyewitness Recantations and Supports Dunn’s Innocence.

There is also corroborating evidence that leaves the fact finder’s mind with an “abiding conviction” that the recantations are true. *Amrine*, 102 S.W.3d at 548. An independent eyewitness, Eugene Wilson, confirmed that it was so dark that “none of us could see the shooter.” Ex. 16 [Wilson Aff.] at p. 1. Wilson also testified that it was impossible to see the shooter because “you couldn’t see nothing at all.” Ex. 1 [R. 91 Hr’g Tr. (Wilson)] at 77:4-6. Wilson compared that night to “going camping” with “no moonlight out.” *Id.* at 77:4-6. Wilson also testified that a tree obscured the street light near the house. *Id.* at 75:2-10. Because Wilson was walking towards the house at the time of the shooting and Stepp and Davis were running away, Wilson was a much

better eyewitness to the shooting. Judge Hickle already found Eugene Wilson's testimony credible, holding that it bolstered the recantations of Stepp and Davis. Ex. 14 [Texas County Order] at pp. 10-12.

Stepp and Davis' recantations are further supported by the testimony of Wilson and Stewart, who explained that Davis and Stepp threw out Dunn's name due to being young children who perceived that older influential teenagers had animosities towards the older Dunn. Ex. 1 [R. 91 Hr'g Tr. (Stewart)] at 51:12-22; Ex. 1 [R. 91 Hr'g Tr. (Wilson)] at 80:7-21. These animosities explain their initial identifications, and the pressure they perceived from the police and Rogers' mother explains their willingness to testify at trial accordingly. Curtis Stewart's testimony shows that even before trial, Stepp told others that he did not actually see the Shooter. Ex. 1 [R. 91 Hr'g Tr. (Stewart)] at 49:11-51:22. Stepp's testimony that he perceived a benefit from testifying is corroborated by Stewart's memory. Stewart overheard Stepp state that he did not really know who killed Ricco Rogers but would testify against Dunn to get a deal. Ex. 15 [Stepp Aff.] at ¶ 1; Ex. 1 [R. 91 Hr'g Tr. (Stepp)] at 33:11-16; Ex. 1 [R. 91 Hr'g Tr. (Stewart)] at 49:11-51:22.

Eugene Wilson also identified another suspect who certainly had a motive to commit the shooting: the ex-boyfriend of Rogers' mother. Wilson testified that the (then-current) boyfriend of Rogers' mother abused her. Ex. 1 [R. 91 Hr'g Tr. (Wilson)] at 80:25-81:6. A few days before the shooting, in retaliation for the abuse, Rogers, Tolliver, Wilson, and a few others beat up the mother's boyfriend "real bad." *Id.* at p. 80:25-81:16. Michael Davis' memory was that Ricco Rogers shot the boyfriend the day before Rogers was killed. Ex. 10 [2015 Davis Interview] at 8:15-22. Further, Judge Hickle noted that "the victim's brother, Dwayne Rogers, had made statements that [Dunn] was not the man who had killed his brother and that he knew the identity of the actual shooter." Ex. 14 [Texas County Order] at p. 13. At least three of the people on Marvin Tolliver's

porch on May 18, 1990, including the victim, had severely beaten the victim's mother's abuser, and at least one person remembers the victim also shooting the abuser the day prior to the murder; this is certainly much stronger evidence of motive for someone other than Dunn, particularly in comparison to the complete lack of motive for Dunn. Judge Hickie has already found Wilson's testimony credible. *Id.* at pp. 10-13.

Stepp and Davis' recantations are also supported by the science of eyewitness misidentification. Dr. Nancy Franklin, a memory and identification expert, has concluded that the identifications of DeMorris Stepp and Michael Davis were highly unreliable, very likely arose through witness inference, and were very likely perpetuated through repeated exposure to post-event suggestive and coercive influences by police. Ex. 19 [Franklin Report] at p. 2. Dr. Franklin has consulted in over five hundred criminal cases and provided expert testimony regarding eyewitness memory in approximately 85 cases. Her investigation details the science behind eyewitness memory, including how the effects of lighting, distance, exposure time, event stress, weapons, post-event suggestion, witness age, and co-witness contamination can create mistaken identifications. *Id.* at pp. 4-23. Many of these factors appear in Dunn's case. *Id.* at p. 4. When applying these factors to Stepp and Davis' identifications, Dr. Franklin concluded that "none of the eyewitnesses had sufficient opportunity to view the shooter, let alone form an accurate, detailed, and stable memory of his face." *Id.* at p. 29.

Dr. Franklin pointed to several details that show how an inference against Dunn arose. *Id.* at pp. 31-35. These include, as discussed previously, Stepp and Davis' perceptions of Dunn, desire to "get rid of him," and their familiarity with Dunn. *Id.* at p. 31. Dr. Franklin also described how police failed to implement controls in the original identifications, namely that the police did not attempt to independently substantiate the eyewitness' familiarity with Dunn, and they did not use

blind (uninvolved) officers in the photo or live lineup. *Id.* at pp. 32-33. Dr. Franklin’s extensive and well-researched analysis corroborates what Stepp, Davis, and Wilson have all stated: it was far too dark to see the shooter on May 18, 1990, and Stepp and Davis’ initial identifications were the product of inference and pressure from others.

Dr. Franklin’s opinions on the fallibility of eyewitness testimony are not new to Missouri; in 2016, the Supreme Court of Missouri adopted a criminal jury instruction that identifies factors to consider in deciding the reliability and accuracy of eyewitness identification testimony. Ex. 20 [MAI-CR 4th 410.02 (2017 revision)]. The instruction tells jurors that eyewitness identification “must be evaluated with particular care.” *Id.* at p. 2. It instructs jurors to consider the witness’ eyesight, visibility at the time, distance between the witness and person, angle at which the witness viewed the person, the weather conditions, whether the witness was affected by stress “such as the “presence of a weapon,” and the length of time the witness had to observe the person in question. *Id.* at pp. 2-3. The Supreme Court of Missouri adopted the instruction to address concerns about the fallibility of eyewitness identifications raised by the Supreme Court of the United States. Ex. 20 [MAI-CR 4th 410.02 (2017 revision)] at p. 5-6, Notes on Use; *Perry v. New Hampshire*, 565 U.S. 228, 245 (2012). As Judge Hickle noted, it is likely that a reasonable, properly instructed jury would find Christopher Dunn not guilty, especially one properly instructed and educated on the issues with eyewitness identification present here. Ex. 14, [Texas County Order] at p. 19.

While the eyewitness recantations already “instantly tilt[] the scales in the affirmative” when weighed against the complete absence of evidence against Dunn, Dunn’s alibi evidence further corroborates the veracity of the recantations. *Amrine*, 102 S.W.3d at 548 (Mo. 2003). Since his arrest, Christopher Dunn has unfailingly asserted that he was at home with his family on the night of the murder and that others could attest to his whereabouts. Ex. 3 [R. 29.15 Hr’g Tr.

(Dunn)] at 4:1-11. Before his original trial, he provided his public defender with the names of all potential alibi witnesses that were at his mother's home on May 18, 1990. *Id.* at 4:5-11. Since 1993, Martha and Arnetta Dunn have maintained that before midnight on May 18, 1990, Christopher was at home and on the phone with Nicole Bailey until approximately 1 a.m. on May 19, 1990 while the family watched *Hunter*. Ex. 3 [R. 29.15 Hr'g Tr. (Martha Dunn)] at 11:7-12:13; Ex. 3 [R. 29.15 Hr'g Tr. (Arnetta Dunn)] at *Id.* at 16:23-18:3.

Martha and Arnetta Dunn's testimony is supported by the testimony of Nicole Bailey. Bailey's affidavit and testimony show that from May 18, 1990 at around 11 p.m. until May 19, 1990 around 1 a.m., Bailey and Dunn were talking on the phone. Ex. 5 [Bailey Aff.]; Ex. 1 [R. 91 Hr'g Tr. (Bailey)] at p. 59:6-61:16. Bailey's medical records and a TV guide from May 18, 1990 further support Bailey's memory that she called Dunn when *Hunter* came on at 11 p.m. and spoke to Dunn until a nurse checked her vitals at 1 a.m. Ex. 18 [R. 91 Exhibit 12, Bailey Medical Records]; Ex. 6 [Habeas Ex. 13, TV Guide]. Catherine Jackson's affidavit is also evidence that late at night on May 18, 1990, Christopher Dunn was in his mother's home, talking on the phone, and happy. Ex. 4 [Jackson Aff.]. While the alibi evidence is not required for Dunn to meet the clear and convincing standard in light of the recantations, the alibi evidence is supported by multiple witnesses, which can only leave the court's mind with an even-stronger abiding conviction that the recantations are true and further shows clear and convincing evidence of Dunn's innocence.

CONCLUSION

Absent the since-recanted testimony of DeMorris Stepp and Michael Davis, Christopher Dunn's conviction "presents the rare circumstance in which no credible evidence remains from the first trial to support the conviction." *Amrine* 102 S.W.3d at 548. A Texas County judge concluded,

after considering evidence at Dunn’s trial, post-conviction proceedings, and habeas proceedings, “[T]his Court does not believe that any jury would now convict Christopher Dunn under these facts.” Ex. 14 [Texas County Order] at p. 19 (emphasis added). Judge Hickle’s order shows that there is ample evidence that undermines a Missouri court’s confidence in the judgment, requiring vacation of the judgment. RSMo §547.031(3). Now authorized to consider the merits of Christopher Dunn’s procedurally-barred claim, this Court should grant the relief this utter lack of evidence requires. In light of the witnesses’ recantations, no evidence in support of Christopher Dunn’s conviction at his first trial remains. His case presents all of the hallmarks of a wrongful conviction: witnesses who have now recanted—whose faulty eyewitness testimony under poor lighting and recall conditions already called their testimony into question—coupled with perceived police and family pressure. Both witnesses of the now state that it was too dark to see any shooter on May 18, 1990. The recantations alone are enough to show clear and convincing evidence of actual innocence under *Amrine*. Yet there is still additional evidence of Christopher Dunn’s innocence. Eugene Wilson, a credible, independent eyewitness can corroborate the recantations and the motives of the young boys to falsely identify Dunn. Dr. Nancy Franklin can attest to the fallibility of eyewitness identification and the issues with Stepp and Davis’ original identifications. Finally, multiple alibi witnesses can attest that Christopher Dunn was at home and talking on the phone at the same time that Ricco Rogers was shot. This overwhelming amount of evidence is more than enough to undermine this court’s confidence in Dunn’s judgment and meet the clear and convincing standard that requires this court to set aside the conviction of Christopher Dunn.

WHEREFORE, Movant respectfully requests that, pursuant to RSMo §547.031, this court order a hearing and, after considering all of the evidence presented, vacate or set aside the judgment of Christopher Dunn in cause no. 901-1555.

Respectfully submitted,

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