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CASE NUMBER: WY-2026-CV-000616
PII COMPLIANT

IN THE TWENTY NINTH JUDICIAL DISTRICT
DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

DONNELL DOBBS	)	
Movant,	)	
	)	Case No: 2026-CV-000616
vs.	)	
	)	
STATE OF KANSAS	)	
Respondent.	)	

MEMORANDUM OF FACT AND LAW IN SUPPORT OF MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER K.S.A. § 60-1507

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Witness[1]	**Relevance**
Donnell Dobbs	Defendant. Has information concerning case and his alibi.
Davilyn Dobbs	Mother of defendant. Has information concerning alibi, interactions with police, interactions with Roger Golubski, and prior counsel.
Bryan Block	KCKPD detective. Has information about KCKPD investigation, eyewitness identification, Roger Golubski's involvement, alternate suspect, and conflict of interest with prior habeas counsel.
Darren Koberlein	KCKPD detective. Has information about KCKPD investigation, eyewitness identification, Roger Golubski's involvement, and alternate suspect.
Ebony Ford (affidavit)	Has information about alibi, prior counsel, and all matters addressed in her affidavit.
Marvin Dudley (affidavit)	Has information about alibi, prior counsel, and all matters addressed in his affidavit.
Theopolis Ellis (affidavit)	Has information about alibi, prior counsel, and all matters addressed in his affidavit.
Deon Dobbs (affidavit)	Defendant's brother. Has information about alibi, prior counsel, and all matters addressed in his affidavit.
T'onne Ford (affidavit)	Has information about alibi, prior counsel, and all matters addressed in her affidavit.
Jawan Robinson (affidavit)	Has information about alibi, prior counsel, and all matters addressed in his affidavit.

[1] Dobbs reserves the right to supplement this witness list as the discovery process makes other witnesses known in accordance with the Kansas Rules of Civil Procedure.

Connor Davis (affidavit)	Has information about eyewitness identification and recantation, and all matters addressed in his affidavit.
Mark Dupree	Has information about Wyandotte County District Attorney's Office prior investigation into this case.
Michael Highland	Has information about his representation of Dobbs at trial and ineffective assistance of counsel claim.
Carl Cornwell	Has information about his representation of Dobbs in habeas litigation and ineffective assistance of counsel claim.

I. INTRODUCTION

Donnell Dobbs[2] is innocent, sentenced to spend decades in prison for a crime he did not commit. Dobbs was targeted by police after disgraced former Kansas City, Kansas Police Department ("KCKPD") Captain Roger Golubski attempted to use his power to coerce sexual favors from Dobbs' mother; when she rejected his demands, Golubski vowed to lock up her sons in retaliation. Strong evidence implicates an alternate suspect as the perpetrator of the shooting for which Dobbs has spent the last seventeen years incarcerated. The single eyewitness in this case provided flawed and unreliable testimony at trial and has since admitted that his testimony was false. The Wyandotte County District Attorney's own Community Integrity Unit ("CIU") concluded in 2021 that there was clear evidence of Dobbs' innocence. Yet, five years later, Dobbs remains in prison.

In addition to Dobbs' actual innocence, his wrongful conviction persists due to repeated violations of his statutory and constitutional rights, including his right to exculpatory evidence under *Brady v. Maryland* and his right to effective assistance of counsel. The circumstances presented in this petition are exceptional and extraordinary. The Court must grant Dobbs an evidentiary hearing, set aside his conviction, and allow a trial free from constitutional error to proceed.

In support of his motion, Dobbs states as follows.

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[2] Petitioner Donnell Dobbs and his acquitted co-defendant Casey Ellis will be referred to by their last names. Individuals who share their last names, as well as other individuals who share last names (*e.g.*, Ebony and T'onne Ford), will be referred to by their first names.

II. STATEMENT OF FACTS

A. THE CRIME: Mario Mitchell and Muryel Josenberger are Shot at a Barbershop by an Assailant Whose Description Dramatically Departs from Dobbs' Appearance

On Friday, October 3, 2008, Mario Mitchell and Muryel Josenberger went for haircuts at T.J.'s Barbershop in Kansas City, Kansas, with their friend, Antonio Clark, and Clark's younger brother, Markus Hayes. (Ex. 1 (Anthony Jackson Witness Statement ("Jackson Stmt.")) at 1, 3-4). The four arrived in Clark's distinctive red Pontiac Grand Prix, which had gray spots where paint was missing. (Ex. 2 (Damon Campbell Witness Statement ("Campbell Stmt.")) at 3).

Beginning at 4:10 PM, owner T.J. Jackson cut Mitchell's hair while barber Damon Campbell cut Josenberger's. (Ex. 1 (Jackson Stmt.) at 2; Ex. 2 (Campbell Stmt.) at 4). During the appointment, a man named Leland Dixon[3] drove by for "not even" two minutes and asked Clark, who was smoking outside, if Jackson was there. (Ex. 3 (Antonio Clark Victim Statement ("Clark Stmt.")) at 5). Clark thought Dixon was acting strange. (*Id.* at 6). Clark had never seen Dixon at the barbershop before, where his group had gone their entire lives. (*Id.*)

About ten minutes after Dixon drove by, just before 4:25 PM, a man with a rifle entered the barbershop through the front entrance. (*Id.* at 8; Ex. 4 (KCKPD Officer Carter Addendum Report ("Carter Rpt.") at 1; Ex. 2 (Campbell Stmt.) at 5). The shooter was wearing a hat and a bandana over his face. (Ex. 2 (Campbell Stmt.) at 5). Hayes saw the

[3] In records, Dixon's last name is also sometimes spelled "Dickson."

shooter get out of a car and put on this disguise. (Ex. 5 10/4/2008 Markus Hayes Witness Statement ("1st Hayes Stmt.")) at 3). He was "fairly average" in size and "thin" to "medium" build, about 5'10" and 190 pounds. (*Id.* at 8; Ex. 1 (Jackson Stmt.) at 7; Ex. 5 (1st Hayes Stmt.) at 3). Hayes distinctly remembered the assailant had braids. (Ex. 5 (1st Hayes Stmt.) at 3). Hayes told his brother afterwards that he recognized the shooter as a man named Keith Wright.[4] (*See* Ex. 6 (Shanell Johnson Witness Statement ("Johnson Stmt.")) at 5).

By contrast, Dobbs was a former college football lineman who weighed at least 260 pounds in October 2008. (Ex. 7 (Pick-Up Order for Donnell Dobbs ("Dobbs Pick-Up Order")). Dobbs had, and has always had, close-cropped short hair; he has never had braids. (Ex. 7 (Dobbs Pick-Up Order)).

The shooter targeted Mitchell and Josenberger, who both quickly fled through a side door into an alley. (Ex. 2 (Campbell Stmt.) at 9; Ex. 5 (1st Hayes Stmt.) at 4-5). The assailant pursued, killing Josenberger and shooting Mitchell twelve times. (Ex. 8 (1/13/2009 Preliminary Hearing Transcript in *State v. Dobbs*, No. 2008-CR-1619 ("Prelim. Hr'g Tr.")) at 32). The shooter escaped with another Black man in a neutral-colored, "newer" Chevy Monte Carlo, no older than 2005.[5] (Ex. 11 (KCKPD Officer Seal Addendum Report) at 1; Ex. 12 (Jorge Montiel Witness Statement) at 4; Ex. 13 (10/3/2008

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[4] Wright is also referred to often by his street names, "Butlo," "Bolo," and other similar variations.

[5] By contrast, the police would later try and claim the getaway vehicle was Dobbs' brother's significantly older car, which was a dilapidated 1999 Monte Carlo with a missing front grill. (*See* Ex. 9 (Car Search Warrant for Deon Dobbs' 1999 Monte Carlo ("Car Search Warrant")); Ex. 10 (KCKPD Tow Report for 1999 Monte Carlo ("Tow Rpt.")); *see also infra* Photos of Deon's Monte Carlo in section II.F.2).

KCKPD Press Release); Ex. 14 (Sara Shepherd, *Man dies in shooting at KCK barbershop*, Kansas City Star, Oct. 4, 2008)).

Despite sustaining multiple gunshot wounds, Mitchell remained conscious and alert as police and first responders arrived at the scene. (Ex. 4 (Carter Rpt.) at 1). The responding officer, Glen Carter, asked Mitchell to identify the shooter; Mitchell told him that there were two shooters, but Mitchell did not know either of them. (*Id.)*. Mitchell was taken to the hospital and survived his wounds. Police did not document speaking with Mitchell again for nearly two weeks. (Ex. 15 (Mario Mitchell Victim Statement ("Mitchell Stmt."))).

Captain Golubski and Detectives Bryan Block and Darren Koberlein soon arrived at the barbershop and took charge of the case. (Ex. 4 (Carter Rpt.) at 1; Ex. 16 (KCKPD Officer Cynn Addendum Report)). Block and Koberlein became the lead homicide detectives, with Golubski closely supervising them as their unit captain. (Ex. 17 (Wright Cancel Pick-Up Order); Ex. 18 (KCKPD Homicide Listings 2008)).

B. THE INVESTIGATION: KCKPD's Barbershop Shooting Investigation Remains Unresolved for Almost Two Weeks, Despite Clear Leads Implicating Keith Wright as the Shooter

Dobbs appears nowhere in investigation records between the shooting on October 3 and October 15. Instead, KCKPD's initial investigation developed significant evidence pointing to Keith Wright as the assailant. Among other things, the police received multiple tips that Wright was the barbershop shooter and learned that Josenberger's family tried to retaliate against Wright only hours after Josenberger's murder. (Ex. 19 (Keith Wright Crime Stoppers Tip); Ex. 20 (10/3/2008 Offense Report (No. 2008100428))). The police also had access to significant circumstantial evidence against Wright, including police records documenting: (i) Wright's hair and body type matched witness descriptions of the assailant; (ii) Wright's known criminal associate cased the barbershop minutes before the shooting; and (iii) Wright's home address is just one block from the barbershop.

1. Wright Matched Witness Descriptions of the Barbershop Shooter

Law enforcement records show Wright was a near exact match to witness descriptions at 5'9" and 190 pounds. (Ex. 17 (Wright Cancel Pick-Up Order)). Wright was also contemporaneously documented as having distinctive braids and a medium build, fitting the witness descriptions. (Ex. 21 (10/5/2008 K. Wright Arrest Report (No. 2008100428); (Ex. 2 (Campbell Stmt.) at 8; Ex. 1 (Jackson Stmt.) at 7; Ex. 5 (1st Hayes Stmt.) at 3)).

2. Wright's Known Criminal Associate, Leland Dixon, Cased the Barbershop Minutes Before the Shooting

It was also known to law enforcement in 2008 that Leland Dixon, who drove by the barbershop minutes before the shooting, and Keith Wright were close criminal associates. They had previously been involved in two prior homicides, numerous shootings, and other criminal activity together. (*See, e.g.*, Ex. 22 ((Excerpts of Court Records in *State v. Mays*, No. 2004-CR-000851 ("*State v. Mays* Records")) at 2; Ex. 24 (No. 2004-CR-000851 Docket) (*State v. Mays* Docket)). And police investigated Dixon and Wright as part of the same criminal network.

In addition, law enforcement previously used both Wright and Dixon as key State's witnesses in the case against a man named Keith Mays. (Ex. 22 (*State v. Mays* Records) at 2, 4). Golubski and Block were involved in investigating Mays and marshaling witness testimony against him. (*Id.* at 4; Ex. 23 (Excerpts of L. Dixon's Wyandotte County Jail Records) at 1-2). And Robbin Lee Wasson, the prosecutor on the Mays case, was the same prosecutor who prosecuted the barbershop shooting. (Ex. 24 (*State v. Mays* Docket) at 2; Ex. 22 (*State v. Mays* Records) at 3).

In 2012, Dixon was incarcerated for a separate murder, but Wright and Dixon remain frequently mentioned together on social media.[6]

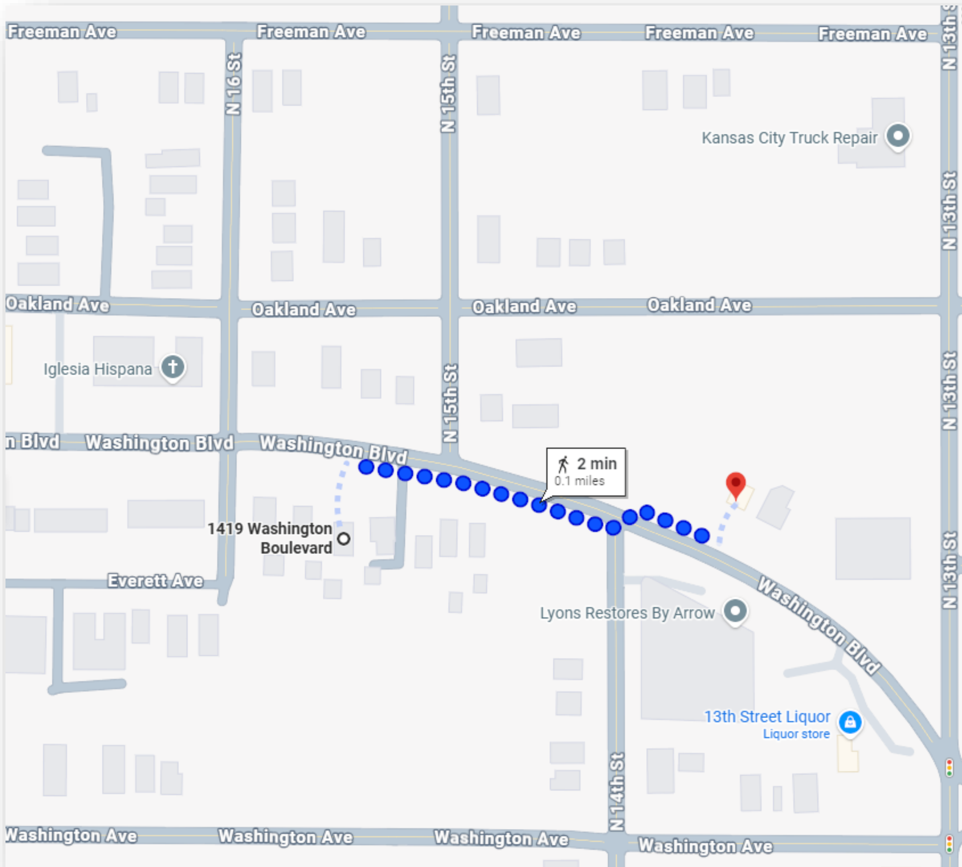
In addition to Antonio Clark identifying Dixon as driving by the barbershop, Dixon himself admitted to being at the barbershop that day, (Ex. 27 (Leland Dixon Witness Statement) at 1-2), even though he was not a normal barbershop customer. (Ex. 3 (Clark Stmt.) at 6). However, police did not seriously pursue Dixon; they never considered whether his presence at the crime scene, minutes before the shooting, could have been him casing the barbershop on behalf of another individual, such as his longstanding partner-in-crime, Keith Wright.

3. Wright Could View the Barbershop from His Home and had Knowledge and Opportunity to Commit the Crime

Wright lived only a block away from the barbershop at 1419 Washington Boulevard, which was known to law enforcement. (Ex. 28 (10/6/2008 K. Wright Arrest Report (No. 2008100428)).

[6] For example, in 2013, Montrel Wright posted a picture of Keith Wright in federal prison with the caption, "Free mybro." He tagged Keith Butlo Wright and Leland Dixon. (Ex. 25 ("Free My Bro" Social Media Post)). In 2017, Lucci Rucker, who appears to be an associate of the Wrights, posted on Facebook to "free" several people doing time, including "Leland" and "Bolow." (Ex. 26 ("Free Da Squad" Social Media Post)). Keith Wright's brother, Debroski, responded: "Free Da Squad." (*Id.*).

Map Depicting the One-Block Distance between Wright's Home and TJ's Barbershop



The barbershop parking lot can be clearly seen from the driveway of Wright's then home, which would make it easy for Wright to see who was at the barbershop and to confront whoever was there.

4. Josenberger's Relatives Attempted to Retaliate Against Wright Hours After the Barbershop Shooting, Leading to a Second Shooting at Juniper Gardens

Wright's involvement in the barbershop shooting quickly became common knowledge in the community. (Ex. 29 (Affidavit of Ebony Ford ("E. Ford Aff.")) at ¶ 21 ("After Mario [Mitchell] and Muryel Josenberger were shot at T.J.'s Barbershop, the streets immediately blamed Butlo [*i.e.*, Wright] for the crime."). The day of the shooting, Josenberger's mother was told directly by Antonio Clark that Wright killed her son, and she relayed that information to police. (Ex. 6 (Johnson Stmt.) at 5).

Other Josenberger family members also heard Wright killed their relative, and the family sought retaliation for Josenberger's death. Only a few hours after the barbershop shooting, Josenberger's relatives—Keith, Kenneth, and Jason Youngblood—found Wright at the Juniper Gardens housing complex at 2nd and Edgerton, which Wright was known to frequent. (Ex. 17 (Wright Cancel Pick-Up Order)). The Youngbloods and Wright engaged in a shootout, with Wright wounding Kenneth Youngblood. (Ex. 20 (10/3/2008 Offense Report (No. 2008100428))).

5. Police Picked Up Wright as a Listed Suspect for Both Shootings but Inexplicably Only Charged Him for the Juniper Gardens Shooting

Golubski, Block, Koberlein, and Carter all became involved in both KCKPD's investigation into the Juniper Gardens shooting *and* the barbershop shooting. (Ex. 30 (Information Cover in *State v. Wright*, No. 08-CR-1577 ("*State v. Wright* Information")) at 2; Ex. 17 (Wright Cancel Pick-Up Order); Ex. 28 (10/6/2008 K. Wright Arrest Report (No. 2008100428)). By information and belief, KCKPD took statements from the

Youngbloods, who stated that the Juniper Gardens shooting stemmed from Wright murdering Josenberger.

The next day detectives put out a pick-up order for Wright. (Ex. 17 (Wright Cancel Pick-Up Order)). The pick-up order listed Wright as the suspect for *both* the barbershop and Juniper Gardens shootings. (*Id.*). The document listed Block and Koberlein as the detectives on the case, and Golubski as their approving supervisor. (*Id.*).

Two days later, on October 6, Wright turned himself in at police headquarters and was taken "to speak with Det. Block." (Ex. 28 (10/6/2008 K. Wright Arrest Report (No. 2008100428))). He was booked later that day for aggravated battery for injuring Kenneth Youngblood during the Juniper Gardens shooting. (Ex. 31 (Excerpts of Keith Wright's Wyandotte County Jail Records ("Wright's WyCo Jail Records")) at 3). Wright was formally charged with aggravated battery on October 8 but was *never* arrested or charged for the barbershop shooting. (Ex. 30 (*State v. Wright* Information) at 1). Wright bonded out of jail on October 9, and the pick-up order for his arrest was cancelled on October 10. (Ex. 31 (Wright's WyCo Jail Records) at 4; Ex. 17 (Wright Cancel Pick-Up Order)).

Deputy District Attorney Ed Brancart eventually dismissed charges against Wright connected to the Juniper Gardens shooting. (Ex. 32 (*State v. Wright* Order of Dismissal)). Brancart listed the reason for the dismissal as "unavailability of witnesses." (*Id.*). As a result, Wright ultimately faced no legal consequences for either shooting.

After Block interviewed Wright on October 6, there are no records of *any* police investigation occurring in the barbershop case until the police interviewed Mitchell on October 15.

6. Police Received a Tip that Wright was the Shooter and had Motive to Commit Murder

On October 8, the same day Keith Wright was formally charged with the Juniper Gardens shooting, KCKPD received a tip that Wright was behind the barbershop shooting. (Ex. 19 (Keith Wright Crime Stoppers Tip)). The tip was delivered to Captain Golubski. (*Id.*). The caller identified Wright as the shooter and indicated the incident may have occurred after one of the victims "started dating [Wright's] baby's mother." (*Id.*). There is no record of Golubski or any members of KCKPD following up on this tip.

Public records show Wright assaulted Kiana Hilton, the mother of his child, three days before the barbershop shooting. (Ex. 31 (Wright's WyCo Jail Records) at 7). He held Hilton down and cut her hair off, which occurred in front of her sister, Kira Bolder; Bolder has a child with Mario Mitchell, the surviving victim and eyewitness. (*Id.*). Wright was arrested and jailed until the next day for assaulting Hilton and was released two days before the barbershop shooting. (*Id.* at 5).

7. Wright has an Extensive Criminal History of Violence

In the years prior to the barbershop and Juniper Gardens shootings, Wright was well known to KCKPD and had an extensive record of committing violent crimes, including in connection with matters relating to women he was romantically involved with. For example, Wright opened fire in November 2003 on a car carrying his ex-girlfriend and her new boyfriend. When Wright was convicted in federal court in 2009, the soon-to-be KCKPD chief celebrated Wright's conviction, writing "Keith Wright has been a thorn in our side for years." (Ex. 33 (8/7/2009 Email re Keith & Debrowski Wright Convictions) at

1).

Prior to the barbershop shooting, Wright was booked for crimes such as auto theft, resisting and obstructing, sale and possession of cocaine, criminal possession of a firearm, disorderly conduct, and escape.[7] (Ex. 31 (Wright's WyCo Jail Records) at 1-2, 8-9, 13-14). In 2004, he was wanted for aggravated battery. (*Id.* at 10, 12). In total, Wright was jailed 20 times from 2003 to 2009.

C. THE IDENTIFICATION: Nearly Two Weeks after the Shooting, Mitchell Provides a Flawed and Unreliable Statement Identifying Dobbs as the Assailant

On October 15, nearly two weeks after the barbershop shooting, police spoke with Mario Mitchell for the first documented time since the incident occurred. (Ex. 15 (Mitchell Stmt.); Ex. 34 (Trial Transcript in *State v. Dobbs*, No. 08-CR-1619 ("Dobbs Trial Tr.") at 621)). To this point, there is not a single mention of Dobbs anywhere in KCKPD's investigation or files.

Block and Koberlein went to visit Mitchell at the hospital, where they began by conducting off-the-record questioning of Mitchell, a breach of KCKPD's policies.[8] (Ex. 34 (Dobbs Trial Tr.) at 631). It is unknown what was said during this portion of the interview, except that police apparently showed two six-pack photo lineups to Mitchell, one including Dobbs and one including Casey Ellis, Dobbs' childhood friend. (Ex. 36 (Barbershop

[7] Wright ran from the police after being handcuffed, only to later be found in the area around the barbershop and his home, still in the cuffs.

[8] Block testified that this method of conducting an off-the-record interview *before* recording a statement was standard procedure at KCKPD. (*Id.* at 632). However, the practice was in contravention to KCKPD's contemporaneous policy for conducting identifications, which clearly stated that "the conversation with the witness should be transcribed or tape-recorded." (Ex. 35 (2008 KCKPD Standard Operating Procedure) at 51).

Shooting Photo Array of Dobbs; Ex. 37 (Barbershop Shooting Photo Array of Ellis)). It is not clear from the record why police already had photo arrays of Dobbs and Ellis prepared when they were not identified as suspects until that same interview. However, the exact same photo lineups had been used before in at least one prior KCKPD investigation and were reused in this case. (Ex. 38 (Morris Investigation Photo Array of Ellis)).

Police then conducted a brief recorded interview at the hospital. In the recording, Mitchell confirmed what he allegedly told the officers during the unrecorded portion of the interview—the assailant "look like to me Donnell Dobbs." (Ex. 15 (Mitchell Stmt.) at 3). He stated that he recognized Dobbs after he was shot and laying in the alley, and Dobbs stepped "right in front of" him. (*Id.* at 4). When asked if the gunman stood over him in the alley and shot again, Mitchell said, "[n]ah, he was about to, but" he must have thought Mitchell was dead. (*Id.* at 5). Mitchell was also questioned about the identity of the getaway driver and said, "I think it was Casey." (*Id.* at 4).

At trial, Detective Block admitted that Mitchell was medicated during the interview. (Ex. 34 (Dobbs Trial Tr.) at 630). Mitchell testified he was "drugged up" and "didn't even wanna talk to" the police that day. (Ex. 8 (Prelim. Hr'g Tr.) at 51-52). By information and belief, Mitchell was under the influence of a cocktail of powerful drugs, including, but not limited to, significant doses of morphine, oxycodone, and Benadryl. The audio recording of the interview reveals Mitchell's slow and slurred speech. (Ex. 39 (Mitchell Recorded Interview)).

Mitchell said he recognized Dobbs "[c]ause there been too many incidents before." (Ex. 15 (Mitchell Stmt.) at 3). Mitchell and Dobbs have known each other since at least high school, when Mitchell started a fist fight with Dobbs. (Ex. 40 (10/5/2001 KCK Public Schools Offense Report)).[9] Mitchell continued to pick fist fights with Dobbs and, eventually, Mitchell and his group escalated things, turning to gunfire, with sprayed bullets striking Dobbs' grandfather, Willie Welch, on one occasion while he and Dobbs were doing yardwork at the family home. (Ex. 41 (7/30/2005 Offense Report (No. 2005074373))). In 2005, Dobbs left town to attend college, and the incidents between the two subsided.

Given that Mitchell knew Dobbs very well, it is unclear from the record why police performed a photo lineup procedure at all; Mitchell did not need to see a photograph to identify Dobbs.[10]

No other witnesses at the barbershop, other than Mitchell, identified Dobbs. Dobbs had gotten his haircut at T.J.'s Barbershop many times and was well known to barbers Jackson and Campbell, who did not identify Dobbs as the shooter at trial. (Ex. 34 (Dobbs Trial Tr.) at 418, 447). In a photo array identification performed after Dobbs' arrest, Hayes also did not identify Dobbs as the shooter. (Ex. 42 (11/18/2008 Markus Hayes Witness Statement ("2nd Hayes Stmt.")) at 2).[11] But Hayes was not called to testify at trial. In all,

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[9] An assistant principal, Edward Crabtree, witnessed the incident and, because he observed that Mitchell was the aggressor, Dobbs received no consequences for defending himself. (*Id.*). Mitchell was expelled and sent to Wyandotte High School.

[10] There is similarly no explanation for the photo lineup procedure involving Ellis. Mitchell and Ellis were also well known to each other and attended Schlagle High School together.

[11] Undersigned counsel is not in possession of the photo array used with Hayes and has no actual knowledge of the individuals used in the array. However, counsel reasonably infers that Dobbs was included in the photo array given that Hayes was shown the photo array after Dobbs' arrest.

despite a group of people at the barbershop that day, only Mitchell claimed to be able to identify Dobbs.

D. Dobbs Had an Alibi

Following Mitchell's purported identification, KCKPD failed to conduct *any* further investigation into Dobbs (or Ellis). If they had done even a cursory investigation, they would have quickly uncovered that Dobbs had an alibi—he was at a funeral for a friend, Donald Porter, and then gathered with friends at his mother's house. (*See, e.g.*, Ex. 29 (E. Ford Aff.) at ¶ 3). Multiple witnesses could and would have confirmed to KCKPD that Dobbs was with them the day of the barbershop shooting and could not have committed the crime. These witnesses include:

- <u>Ebony Ford</u>: Ebony was with Dobbs the entire day and would have stated that it was "impossible that Donnie was at the barbershop that day." (Ex. 29 (E. Ford Aff.) at ¶ 3). She would have explained – the "entire day, we all rode in our cars together from one location to the next. Our group was with each other the whole day and there was no time that Donnie and Casey could have peeled off to be at the barbershop. . . . [I]t's just not possible." (*Id.* at ¶ 10).
- <u>Marvin Dudley</u>: Dudley, who is also Muryel Josenberger's cousin, would have stated that he "was with Donnie all day" and "know[s] Donnie did not commit the barbershop shooting." (Ex. 43 (Affidavit of Marvin Dudley) at ¶ 6). He was with Dobbs throughout that day at a funeral at a church, at the home where the deceased died, and later at Davilyn's home. (*Id.* at ¶¶ 4-5).

Dobbs "had no reason to kill" Dudley's cousin and "had no issues with Muryel." (*Id.* at ¶ 7). Dobbs and Casey "were the wrong guys." (*Id.* at ¶ 6).

- Theopolis Ellis: Theopolis was with Donnell "all day that day." (Ex. 44 (Affidavit of Theopolis Ellis) at ¶ 11). Theopolis would have testified that they spent the day at a funeral and later went to Davilyn's house. (*Id.* at ¶¶ 5, 7-8). They "did not drive past or even near T.J.'s Barbershop on the way" to Davilyn's. (*Id.* at ¶ 9). He "know[s] Donnell is innocent" and there is "no way" Dobbs was behind the shooting because he was with Dobbs throughout the day. (*Id.* at ¶¶ 4, 14).
- Davilyn Dobbs: Davilyn, Dobbs' mother, would have told KCKPD that Deon, her other son, drove his Monte Carlo that day to pick her up from work at the Wyandotte County courthouse promptly at 5 PM. They returned to her house to find Dobbs and his group of friends already gathered at the house. She would have told police it was not possible for Dobbs and Ellis to use the car to commit the barbershop shooting around 4:25 PM, return to Davilyn's house on 83rd Street, and have Deon pick her up no later than 5 PM.[12] If police had conducted any investigation into the alibi, Davilyn also would have explained that the State's theory of the case was also impossible because Deon forbade others, including Ellis and Dobbs, from driving his car. Finally, Dobbs injured his dominant hand at the funeral earlier that day

[12] Such a drive, without delay, stops, or traffic, takes at minimum 37 minutes. (Ex. 45 (Apple Maps Directions)).

to the point where he could not use it and was forced to seek treatment at a hospital, which would have made it nearly physically impossible for him to have committed the crime.

- Deon Dobbs: Deon, Dobbs' brother, who, was never interviewed by police, would have told KCKPD that he was with Dobbs "the entire day" except briefly when he went by himself to pick up Davilyn from work "in the same car Donnie supposedly used to commit the shooting." (Ex. 46 (Affidavit of Deon Dobbs ("Deon Dobbs Aff.")) at ¶ 2). He was with Donnell and the group of friends throughout the day at the funeral and the location where the deceased died. (*Id.* at ¶ 3). After paying their respects, Deon and Donnell drove back to Davilyn's home on 83rd, only briefly stopping to drop off their cousin Jawan Robinson. (*Id.* at ¶ 4). Deon dropped Donnell off at the house on 83rd and then turned around and picked up his mother at her job at the courthouse. (*Id.* at ¶ 5). When they got back, Donnell was still there and a big group had gathered to spend time together and celebrate the deceased's life. (*Id.*).

- T'onne Ford: T'onne was with Dobbs and others for much of the day and would have told detectives that she "did not understand how Donnie could have been accused of the crime he was convicted of, as our group of friends was together, with him, all day." (Ex. 47 (Affidavit of T'onne Ford ("T. Ford Aff.")) at ¶ 11). Later in the day, she remembers being with the group at Davilyn's home until the early evening: Donnie "was acting normally.

Everyone was chilling and playing a game. It was a nice day. Donnie, Deon, Casey, Ebony, and others were there with me." (*Id.* at ¶ 8).

- Jawan Robinson: Robinson would have explained that he was with Dobbs for much of the day of the shooting, including at a funeral, and would have reinforced key sections of Dobbs alibi. (*See* Ex. 89 (6/5/2017 Post-Conviction Relief Motion Hr'g Transcript in *Dobbs v. State*, No. 14CV917 ("June 2017 PCR Hr'g Tr.")) at 15-16).

E. THE ARREST: Golubski Ensures he is Present for Dobbs' Arrest and Further Harasses Davilyn in the Days After

Instead of conducting a competent investigation, just one day after Mitchell's identification at the hospital, dozens of police descended upon Davilyn's house and arrested Dobbs. (Ex. 49 (10/16/2008 Donnell Dobbs Arrest Report (No. 2008100367) ("Dobbs Arrest Report")). Golubski stood across the street, watching. Police also briefly detained Deon, but he was quickly released without any questioning.[13] (Ex. 46 (Deon Dobbs Aff.) at ¶ 9).

The next day, Golubski returned to the Dobbs house to tow Deon's car, claiming it was the car used to perpetrate the shooting. (Ex. 10 (Tow Rpt.); Ex. 9 (Car Search Warrant)). Golubski then proceeded to return to Davilyn's home in the days following the arrest, searching the cars on the property without a warrant or permission. Davilyn

[13] Notably, Deon was never questioned at any point before police handed the case over to the DA's Office, despite owning the car allegedly used to perpetrate the crime.

confronted Golubski during one of his visits, and he replied that he warned her he would get her sons.

F. THE CONTEXT: KCKPD Captain Roger Golubski Attempts to Coerce Sex from Dobbs' Mother Davilyn and Promises to Lock Up Her Sons

1. Golubski Threatens Davilyn and her Family When she Rejects his Sexual Coercion

In the years leading up to Dobbs' arrest in 2008, former KCKPD Captain Roger Golubski tried to coerce and extort sex from his mother, Davilyn Dobbs. Golubski had a well-documented pattern and practice of using his position to try to coerce sex from Black women in Kansas City, Kansas, including, for example, the mothers of Lamonte McIntyre and Cedric Warren, exonerated victims of wrongful conviction caused by KCKPD's misconduct. (*See infra* section II.J.1).

Davilyn worked for years at the Wyandotte county Sheriff's Office as a deputy at the jail. The Dobbs family home on 8th Street in Kansas City, Kansas was shot up in a drive by shooting, and her father was wounded. Golubski was one of the KCKPD officers who responded to the scene. (Ex. 50 (Government's Motion for an Order Permitting Admission of Evidence, *United States v. Golubski*) at 18-19).

Following that shooting incident at her home, Golubski pulled Davilyn over while she was driving and threatened to sexually assault her. (*Id.* at 19). He told Davilyn that he would lock up her sons unless she had sex with him. Golubski pulled Davilyn over again before Dobbs' arrest; this time Golubski was more aggressive, and Davilyn was forced to speed away from him in fear that he was about to forcibly sexually assault her. Davilyn attempted to report Golubski to KCKPD's internal affairs department. She called internal affairs, but was told it was her word against his, turning her away without creating a complaint or investigating the allegations further. (*Id.*).

Davilyn was interviewed by the FBI and set to testify as one of Golubski's victims at his federal trial for violence against women in December 2024. (Ex. 51 (Subpoena of Davilyn Dobbs in *United States v. Golubski*, No. 22-40055-TC); Ex. 52 (Gov't Mem. & Proffer in Support of Motion for Pretrial Detention, *United States v. Golubski*) at 18-19[14]). However, she was denied the opportunity to publicly testify to the abuse because Golubski committed suicide on the first day of trial. (Ex. 53 (12/2/2024 NPR Transcript, *Ex-Kansas police detective accused of sex crimes is found dead on day of trial*)).

2. Golubski's Campaign to Secure Wrongful Convictions Against Dobbs and his Brother

Golubski followed through on his threat to "lock up" Davilyn's sons in retaliation for rejecting his sexual extortion. As Golubski continued to harass and threaten Davilyn, he also began targeting Dobbs' older brother, Deon, repeatedly subjecting him to arbitrary stops when driving his distinctive 1999 Monte Carlo, which was missing its front grill and had a damaged hood. (Ex. 46 (Deon Dobbs Aff.) at ¶ 7; Ex. 10 (Tow Rpt.)).

[14] Davilyn is referred to as "OV6" in the United States' memorandum. Since the filing, she has publicly identified herself as OV6.

Photos of Deon Dobbs' 1999 Monte Carlo (Taken 2008)

A year before the barbershop shooting, Golubski also attempted to wrongfully implicate Dobbs in a separate case. He tried to coerce a witness, Rakeshia "Keke" Anderson, to provide false testimony implicating Dobbs in a shooting. (Ex. 54 (Affidavit of Rakeshia "Keke" Anderson ("Anderson Aff.")) at ¶ 4). After an accident involving a gun, Golubski interrogated Anderson at the hospital, bringing a picture of Dobbs with him and pressuring her to wrongfully identify him. (Ex. 54 (Anderson Aff.) at ¶¶ 3-4). She refused, even though Golubski would not take no for an answer.[15]

Without testimony from Anderson, or any evidence supporting the State's theory, the manufactured case against Dobbs collapsed and was dismissed at the preliminary hearing. Golubski was present at the hearing, even though he was absent from the State's witness list and possessed no official role in the investigation.

G. THE PRELIM: Mitchell Alters Key Details of his Account at the Preliminary Hearing and Contradicts Other Witness Accounts

Mitchell testified for the first time against Dobbs at the preliminary hearing on January 13, 2009, where he changed key details in his story. During the hearing, Mitchell contradicted his statement to police and claimed that he recognized Dobbs for the first time not after he was shot in the alley, but as soon as the shooter entered the barbershop, based on his build. (Ex. 8 (Prelim. Hr'g Tr.) at 19, 48). He said the shooter was wearing a bandana, but it covered only his lips, not his nose, and the shooter was not wearing a hat.

[15] Golubski's harassment of Anderson continued even after she refused to falsely identify Dobbs. Golubski later went on to sexually assault Anderson in his police car months later. (Ex. 54 (Anderson Aff.) at ¶ 6).

(*Id.* at 47-48).

Mitchell also recalled, after previously explicitly saying the shooter did not stand over him, that the assailant actually "was standing over" him in the alley but did not shoot him again because the gun was clicking and "might have jammed." (*Id.* at 27). Mitchell testified that a Monte Carlo then pulled up and, for the first time, stated that there were *three* people in the car before the shooter got in.[16] (*Id.* at 28, 54).

H. THE TRIAL: Dobbs is Convicted at Trial Based on Mitchell's Flimsy Identification and Without Key Evidence of his Innocence Presented

1. Mitchell's Story Again Shifts Significantly at Trial

Mitchell testified at trial against Dobbs and Ellis on June 24, 2009, and his testimony became the centerpiece of the State's case. Indeed, the State conceded that "all of this case comes back to identification," and that Mitchell was the "star witness." (Ex. 34 (Dobbs Trial Tr.) at 669, 676).

Mitchell's testimony, again, changed as to key details. He contradicted his preliminary hearing testimony, and this time told the jury that the shooter was indeed wearing a hat. (*Id.* at 519). When asked about the discrepancy, he claimed to remember the hat after hearing from others that the shooter had a hat on. (*Id.* at 553). Mitchell also stated that the bandana worn by the shooter was also covering the assailant's nose, even though Mitchell explicitly testified prior that it was only covering his lips. (*Id.* at 520).

[16] In Mitchell's statement to KCKPD on October 15, 2008, he stated that Dobbs got into a Monte Carlo driven by Ellis; he did not say anything about other individuals in the car. (Ex. 15 (Mitchell Stmt.) at 4-5).

In contrast to his formal police statement, Mitchell recounted the dramatic moment when the shooter stood over him and the gun "clicked" instead of firing a shot. (Ex. 34 (Dobbs Trial Tr.) at 529). He testified that he kept his eyes closed so that the shooter would think he was dead. (*Id.* at 531). Despite his eyes being closed, he testified that he still was able to identify Dobbs as the assailant standing over him when his bandana slipped off his face. (*Id.* at 530). Contrary to his testimony at the preliminary hearing that there were three people in the getaway car before Dobbs got in it, at trial, he testified that only Ellis, the driver, was in the getaway car. (*Id.* at 534).

<u>*Mario Mitchell's Changing Testimony*</u>

	Statement at Scene (Oct. 3)	Statement at Hospital (Oct. 15)	Preliminary Hearing	Trial
Identity of Shooter	Don't Know	"Look like to me Donnell Dobbs"	Dobbs	Dobbs
Number of Shooters	Two	One	One	One
Shooter Wearing Hat	N/A	N/A	No	Yes
Number of Individuals in Getaway Car	N/A	N/A	Four including shooter	Two including shooter
Timing of Recognizing Shooter	Never recognized shooters	After being shot in alley	As soon as shooter entered barbershop	After being shot in alley
Position of Shooter's Bandana	N/A	N/A	Not covering nose, only covering lips	Covering nose and lips
Shooter Stood Over Him	N/A	No (Q: Did he stand over you and shoot you? A: Nah)	Yes	Yes

Dobbs' trial attorney was unaware of proper courtroom procedure related to impeachment and refreshing the recollection of a witness and required coaching from the judge on witness cross examination during the trial. (Ex. 34 (Dobbs Trial Tr.) at 551, 562-63, 570, 575). The trial attorney failed to adequately impeach Mitchell with his prior inconsistent statements, including his statement at the scene that he did not recognize the shooter. (*Id.* at 545).[17]

2. There was No Physical Evidence Tying Dobbs to the Crime

The State conceded at trial that no physical evidence implicated Dobbs or Ellis. (Ex. 34 (Dobbs Trial Tr.) at 233). No DNA matched Dobbs or Ellis, including the DNA profile from a silver earring recovered at the crime scene excluding Dobbs.[18] (*Id.* at 233, 335, 370, 469, 635); (Ex. 55 (KBI DNA Results) at MIP008115-MIP008117). No fingerprints matched Dobbs or Ellis. (Ex. 34 (Dobbs Trial Tr.)). No gun was ever recovered or linked to Dobbs or Ellis. (*Id.* at 370, 469).

The State attempted to argue that the Monte Carlo owned by Dobbs' brother was the same vehicle used as the getaway car in the barbershop shooting. (*See, e.g.*, Ex. 34 (Dobbs Trial Tr.) at 368, 673). However, the prosecution did not reconcile how the vehicle described by witnesses could match his brother's dilapidated, distinctive 1999 model. (*See id.*). When KCKPD towed Deon's car, the tow report noted "front end damage grill hood," "broken left taillight," and "tint torn down back window," features not described by single

[17] Ellis' counsel also needed the judge to step in and provide coaching on impeachment procedure during his cross examination. (Ex. 34 (Dobbs Trial Tr.)) at 591).

[18] KCKPD reports indicate that Wright wore a silver earring or earrings less than a month before the barbershop shooting. (Ex. 56 (Wright Arrest Records)).

witness.[19] (Ex. 10 (Tow Rpt.)). KCKPD CSI, during its forensic analysis, also found no physical evidence tying the car to the crime. (Ex. 57 (CSI Report of Analysis & Technical Service); Ex. 58 (CSI Property Report)).

3. Dobbs' Court-Appointed Attorney Failed to Present Dobbs' Alibi, Evidence of an Alternate Suspect, or Mitchell's Criminal History

With the case against Dobbs so razor thin, the most notable thing about Dobbs' trial may well be the evidence that was *not* presented. As explained below, the jury at Dobbs' trial did not hear about several key pieces of evidence.

At trial, Dobbs was represented by court-appointed attorney, Michael Highland, who failed to present significant evidence. First, as mentioned above, Dobbs had an alibi for the crime. (*See supra* section II.D). Trial counsel did not present any affirmative defense at trial, including failing to present Dobbs' alibi to the jury. Again, those who were willing and able to testify to his alibi include: (1) Ebony Ford; (2) T'onne Ford; (3) Marvin Dudley, (4) Theopolis Ellis; (5) Davilyn Dobbs; (6) Deon Dobbs; and (7) Jawan Robinson. (*See infra* section II.D). None of these witnesses were called to testify, even though several of them, including Ebony Ford and Jawan Robinson, were physically present at the courthouse. (*See* Ex. 29 (E. Ford Aff.) at ¶¶ 12-13; Ex. 48 June 2017 PCR Hr'g Tr.) at 14).

Second, there was no mention of alternate suspect Keith Wright at trial. Neither Markus Hayes nor Antonio Clark were subpoenaed to testify, even though: (i) Hayes told

[19] For example, in his October 15, 1008, statement, Mitchell was specifically asked to describe the vehicle, and he did not mention *any* of the very distinctive defects present on Deon's car. (Ex. 15 (Mitchell Stmt.) at 4). Another witness also did not mention any of the car's distinctive features. (Ex. 12 (Montiel Stmt.) at 3-4).

the victim's mother that he saw the undisguised assailant and told police the individual was not Dobbs; and (ii) Clark spotted Wright's known associate Leland Dixon casing the scene. (Ex. 42 (2nd Hayes Stmt.) at 2; Ex. 3 (Clark Stmt.) at 5-6). Detective Block was never asked about the Crimestoppers tip that Wright was the assailant in the Juniper Gardens shooting, or any other investigation into Wright.[20]

Finally, there was no mention of Mitchell's own extensive, violent criminal history to the jury. Evidence of Mitchell's wrongful conduct was accessible before trial, including evidence of two murders Mitchell committed in 2005 and 2006.[21] The jury was not informed that the critical testimony in the case was provided by a murderer.

4. The Jury Acquits Ellis, Dobbs' Co-Defendant, whose Case also Turned on the Testimony of Mitchell

In closing, the State urged the jury to convict Dobbs and Ellis based on the eyewitness testimony of its star witness, Mario Mitchell.[22] (Ex. 34 (Dobbs Trial Tr.) at 669). However, the jury returned a split verdict. Based on the exact same evidence, the jury convicted Dobbs on all charges, while fully acquitting his co-defendant, Ellis. There is no

[20] While Block testified at trial, Golubski and Koberlein did not. Golubski, however, took an interest in Dobbs' trial as it progressed and was seen by witnesses during the course of proceedings. On at least one occasion, he came to the courtroom and told Dobbs' supporters that "[y]'all need to get some police in here." (Ex. 47 (T. Ford Aff.) at ¶ 13). Golubski was not on the trial witness list for the State or the defense. (Ex. 59 (Amended Information in *State v. Dobbs*, No. 2008-CR-1619) at 2).

[21] For instance, in 2005, Mitchell was charged and prosecuted over the course of several years for the murder of Keith Watson. (*See* Wyandotte County Dist. Ct. Case No. 2005-CR-001066). Law enforcement secured a witness in the case to whom Mario had confessed, but the case was dismissed by the Kansas Supreme Court on speedy trial grounds. (Ex. 60 (Robert A. Cronkleton, *Court dismisses murder charge*, Kansas City Star, Mar. 29, 2008)). And, upon information and belief, evidence supported KCKPD's belief that Mitchell was also responsible for the murder of Corey Butler, who was murdered at a car wash in 2006. (*See* Ex. 61 (Corey Butler Homicide Offense Report)). But, despite numerous witnesses to the murder, Mitchell was never charged.

[22] The defense attorneys, by contrast, both began their closing argument by *apologizing to the jury* for their performance during trial. (Ex. 34 (Dobbs Trial Tr.) at 678-79, 696).

explanation in the record as to why the jury chose to credit Mitchell's identification of Dobbs but not his identification of Ellis.

I. THE RECANTATION: Mitchell Recants his Identification of Dobbs Years Later in Private

Mitchell's purported identification of Dobbs, which was always manufactured and unreliable, has now completely unraveled. In 2021, Mitchell admitted to Connor Davis, at the Willow Lake Apartments in North Kansas City – "I don't know who shot me … I never saw who shot me." (Ex. 62 (Connor Davis Decl.) at ¶¶ 2, 5). Mitchell, who gave Davis an alias, stated that he wished he knew who shot him because if he did, "they wouldn't be here." (*Id.* at ¶¶ 3, 5). When Davis learned that Mitchell was talking about the barbershop shooting and the case against Donnell Dobbs, he confronted Mitchell who "changed his tone … immediately" and "seemed to … realize[] he had told [Davis] too much." (*Id.* at ¶¶ 6, 8). After this interaction, Davis felt compelled to help Dobbs; even today he is terrified that Mitchell will harm him.

J. THE REVELATIONS: Golubski, Block, and Nearly Every State Actor Involved in Dobbs' Conviction are at the Center of Police Misconduct and Professional Misconduct Scandals

Since Dobbs' trial, nearly every state actor involved in the case against him has been implicated in perpetuating wrongful convictions, taking part in criminal activity, and/or committing serious professional misconduct. These state actors include: (i) Roger Golubski, the supervising officer; (ii) Bryan Block and Darren Koberlein, the lead detectives; and (iii) Ed Brancart, the prosecutor of the Juniper Gardens shooting.

1. Golubski is Discovered to have Repeatedly Manufactured Cases Against Innocent Individuals and is Criminally Charged with the Serial Abuse of Black Women

Golubski's name has become synonymous with police corruption and the abuse of Black women in Wyandotte County. Golubski's abuse of Davilyn Dobbs and retaliation against her son align with his decades-long documented and corroborated pattern and practice of sexually assaulting women and misusing his badge to terrorize the community and manipulate police investigations to protect powerful drug kingpins and maintain his own power.

First and foremost, his modus operandi in Dobbs' case mirrors the facts that came to light during the October 2017 exoneration of Lamonte McIntyre[23] and McIntyre's subsequent civil suit. In that case, Golubski used his position to sexually assault McIntyre's mother, Rosie, in his office at the police station. (Ex. 63 (12/5/2014 Affidavit of Rose Lee McIntyre in *McIntyre v. Unified Gov't of Wyandotte Cnty.*) at ¶¶ 45-65). Rosie McIntyre felt unable to refuse Golubski, who threatened to arrest her and her loved ones if she did not comply. (*Id.*)

Rosie sought to avoid and escape Golubski. (*Id.* at ¶ 65; Ex 64 (Second Amended Complaint in *McIntyre v. Unified Gov't of Wyandotte Cnty.*, No. 2:18-cv-02545 ("*McIntyre* 2d Am. Compl.") at ¶ 3). Golubski later framed her son, Lamonte, for murder in 1994. (Ex. 64 (*McIntyre* 2d Am. Comp.) at ¶ 4.) Specifically, Golubski and another detective pressured Niko Quinn to make a false identification of McIntyre, pointing at McIntyre's

[23] The evidentiary hearing that led to McIntyre's exoneration occurred on the same day that Dobbs received the denial of his prior post-conviction relief petition from the trial court.

picture for her during a photo lineup. (Ex. 65 (6/30/2014 Affidavit of Niko Quinn in *McIntyre v. Unified Gov't of Wyandotte Cnty.*) at ¶ 18; Ex. 64 (*McIntyre* 2d Am. Compl.) at ¶ 67). Golubski coerced Quinn to name McIntyre despite his knowledge that an eyewitness could identify the actual culprit. (Ex. 66 (3/27/1996 Affidavit of Stacy Quinn in *McIntyre v. Unified Gov't of Wyandotte Cnty.*); Ex. 64 (*McIntyre* 2d Am. Compl.) at ¶ 10). Golubski was aided in his effort to frame McIntyre by now disbarred prosecutor, Terra Morehead, who further pressured Quinn to testify at trial by threatening to take away her children.[24]

McIntyre was exonerated in 2017. McIntyre's case centered on evidence that Golubski framed McIntyre for two reasons. First, Golubski wanted to divert police attention from the true culprit, an enforcer, Neil Edgar (aka "Monster"), for local drug kingpin Cecil Brooks, who was closely associated with Golubski and eventually become his indicted co-defendant.[25] Second, Golubski wanted to retaliate against McIntyre because his mother rebuffed Golubski's sexual coercion.

The exonerations of Cedric Warren and Domonique Moore further document Golubski's pattern of misconduct. In that case, Golubski supervised the custody of a mentally ill individual for almost 20 hours to coerce him to falsely identify Warren and Moore. (Ex. 69 (Complaint in *Warren v. Unified Gov't of Wyandotte Cnty.*, No. 2:25-cv-

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[24] Efforts to exonerate McIntyre also revealed Morehead had an undisclosed affair with Judge Dexter Burdette, who oversaw both the McIntyre and Dobbs cases, ahead of McIntyre's trial. (Ex. 67 (Roxana Hegeman, *Wrongful conviction no surprise to Kansas black community*, Associated Press, Oct. 23, 2017)).

[25] Golubski and Brooks later indicted as co-defendants in a federal case, charged with kidnapping and sexual assault of Black women in Kansas City, Kansas. (Ex. 68 (Government's Motion for Order Permitting Rule 404 Evidence in *United States v. Brooks, Golubski, et al.*, No 5:22-cr-40086 ("*Brooks* Motion for Order Permitting Rule 404 Evidence")).

02625 ("*Warren* Compl.")) at ¶¶ 6-9). Golubski targeted Warren and inserted his name into Block and Koberlein's homicide investigation, without evidentiary basis, because Kathy Warren, Cedric Warren's mother, had rejected Golubski's advances and demands of sex. (*Id.* at ¶¶ 65-68). Warren and Moore were arrested only months after Dobbs and were exonerated in December 2024; their convictions were overturned due to the State's failure to disclose critical *Brady* evidence regarding the sole eyewitnesses' mental illness that undermined his credibility and exculpatory statements that he did not know who the shooters were. (*Id.* at ¶¶ 14-20).

Evidence of Golubski's pattern and practice of coercion and criminality extends beyond the McIntyre, Warren, and Moore cases.[26] Golubski has been the target of multiple federal inquiries into police misconduct, going as far back as 1983. (Ex. 73 (March 1983 Wiretap Request re KCKPD Corruption Investigation)). In 1998, Golubski employed similar tactics while investigating a set of homicides that occurred at Kansas City, Kansas convenience stores in December 1997. During that investigation, Golubski coerced a woman to falsely identify the primary suspect as the killer by holding her in custody and refusing to let her leave until she made a false identification. (Ex. 64 (*McIntyre* 2d Am. Compl.) at ¶ 128). Golubski elicited this false testimony and actively suppressed another witness statement in which the witness told Golubski that she knew the two true culprits,

[26] The list of credible allegations of similar misconduct by Golubski goes on; there are too many to include in the instant motion. Others, for instance, include an allegation that Golubski coerced false testimony from a key eyewitness to convict Charles Jones. Golubski purportedly exploited a witness in Jones' case and had a sexually coercive relationship with her for years. (*See* Ex. 71 (6/30/2022 Petitioner's Seventh Status Report in *Jones v. Pryor*, No. 5:12-cv-03055) at ¶ 5(a)). Golubski also allegedly framed Deshannon Daniels for a murder for which Daniels had an alibi and propositioned Daniels' mother and sisters after Daniels was charged. (Ex. 72 (*KCK man says former detective named in lawsuit also propositioned his sisters*, FOX 4, Oct. 12, 2018)).

neither of whom were the man he arrested. (Ex. 74 (John T. Dauner, *Capital murder charges dropped in KCK deaths*, Kansas City Star, May 22, 1998)). When the case fell apart, Golubski went on to physically and mentally coerce a teenager into giving a false confession by grabbing him by the throat and telling him he could not leave police custody until he confessed. (Ex. 64 (*McIntyre* 2d Am. Compl.) at ¶ 129; Ex. 75 (John T. Dauner, *Defendant says confession was coerced*, Kansas City Star, Dec. 9, 1999)).

Golubski also coerced a false statement from a witness in connection with the December 1997 murder of Gregory Miller, a relative of his ex-wife, Ethel Spencer. (Ex. 76 (Motion for *Van Cleave* Remand in *McKinney v. State*, No. 2019-CV-000647 ("McKinney VC") at 10-13). In that case, Golubski visited the home of a witness, Carter Betts, and coerced him into implicating his nephews, Celester McKinney, Dwayne McKinney, and Brian Betts, in the murder. (*Id.*). Golubski threatened Carter Betts—implicate his nephews or his family would "suffer." (*Id.* at 12). Carter Betts' testimony was the lynchpin of the State's case at trial, such that one of his nephews was acquitted at trial when Carter Betts broke down and cried on the stand, admitting his inculpatory statement was false. (*Id.* at 15).

In 2022, Golubski was indicted in two separate criminal cases on federal charges. The first case centered on his sexual abuse of Black women in Kansas City, Kansas, including Dobbs' mother, Davilyn. *See United States v. Golubski*, No. 22-cr-40055 (D. Kan).[27] The second focused on his criminality as a protector of drug kingpin Brooks. *United*

[27] In total, the FBI's sprawling investigation into Golubski identified approximately 100 women he committed crimes against.

States v. Brooks, No. 22-cr-40086 (D. Kan). It was alleged in both the criminal and civil rights suits that Golubski engaged in additional illicit conduct with drug dealers and sex traffickers for decades. (Ex. 68 (*Brooks* Motion for Order Permitting Rule 404 Evidence); Ex. 77 (Complaint in *Houcks v. Golubski, et al.*, No. 2:23-cv-02489)). Golubski committed suicide the morning his first federal trial was slated to begin.

2. Block and Koberlein are Implicated in 2024 for Hiding Exculpatory Evidence in the Wrongful Conviction Cases of Cedric Warren and Domonique Moore

The two primary detectives in Dobbs' case, Block and Koberlein, are at the center of other Wyandotte County wrongful convictions. The Warren and Moore wrongful convictions and exonerations in 2024 established that Block and Koberlein hid material exculpatory evidence during their investigation. (Ex. 69 (*Warren* Compl.) at ¶¶ 15-18). Like in the Dobbs' case, Block and Koberlein acted as the key detectives in the Warren and Moore case, with Golubski supervising every step of the investigation.

As previously mentioned, *see supra* section II.J.1, in the Warren and Moore case, law enforcement unconstitutionally failed to disclose that the sole eyewitness, marshalled by the State to identify Warren and Moore, had severe mental illness. (Ex. 70 (*Cedric Warren v. State of Kansas*, Case No. 2019-CV-000766, *Order Granting Movant's Motion in Part and Vacating Convictions* (29th Judicial District, December 13, 2024)). Police had actual knowledge of the eyewitness's severe mental illness because, among other reasons, records reveal Block delivered the eyewitness to an in-patient psychiatric hospital after he identified Warren and Moore. (Ex. 69 (*Warren* Compl.) at ¶¶ 125-27). At Golubski's direction, a photo of Warren was included in the photo array used to implicate him in the crime. (*Id.* at ¶¶ 107-09). That investigation occurred in February 2009, less than six months after the Dobbs investigation. (*See* Ex. 69 (*Warren* Compl.) at ¶¶ 36-133).

3. Block Loses his Badge and Faces Civil and Criminal Proceedings for Shooting a Nightclub Bouncer in 2011

Block found himself the target of a separate criminal inquiry two years after Dobbs' conviction. Block pled guilty to shooting a nightclub bouncer with his service weapon while off duty. (Ex. 78 (6/29/2012 Alford Plea & Judgment in *Missouri v. Block*, No. 1116-CR02043)). The incident cost Block his job as a KCKPD detective.

Block was also sued in a civil case by the shooting victim, where he was represented by Carl Cornwell, Dobbs' post-conviction attorney. The lawsuit lasted from March 2015 through August 2017, when the case was dismissed due to an out-of-court settlement. (Ex. 79 (Docket Sheet in *Babbs v. Block*, 4:15-cv-00194 (W.D. Mo.))). Cornwell's representation of Block occurred *at the same time* he represented Dobbs in habeas proceedings, including during Dobbs' evidentiary hearing in May and June of 2017.

4. Brancart is Found in 2020 to have Hid Exculpatory Evidence and Elicited False Testimony in the Wrongful Conviction of Pete Coones

Ed Brancart, the prosecutor who dismissed the felony charge against Keith Wright for the Juniper Gardens shooting, was implicated in another wrongful conviction. Brancart led the prosecution of Olin "Pete" Coones, who spent 12 years in prison before his exoneration and release in 2020. (Ex. 80 (Jonathan Shorman, *Prosecutor faulted in KCK wrongful conviction no longer working for Kansas AG*, Kansas City Star, Jan. 27, 2023)). Judge Bill Klapper of the Twenty-Ninth Judicial District found Brancart presented "patently untrue" testimony against Coones, suppressed exculpatory evidence, and threatened an informant who may have had mental health issues with jail time if he did not testify. (*Id.*). Brancart's conduct at Coones' 2009 trial is contemporaneous with Dobbs' case. (Ex. 81 (Jason Alatidd, *Kansas judge says prosecutor's misconduct helped convict an innocent man. What will the next AG do*?, Topeka Capital-Journal, Nov. 1, 2022).

K. THE REINVESTIGATION: Dobbs' Case is Reinvestigated Years Later by the Wyandotte County District Attorney's Community Integrity Unit, which Concluded Dobbs is Innocent

After the exoneration of McIntyre, Wyandotte County District Attorney Mark Dupree founded the jurisdiction's Community Integrity Unit ("CIU") in 2018.[28] Dupree staffed the office with an attorney and two investigators. (Ex. 82 (Luke Nozicka, *DA unit believed prisoner was innocent of KCK murder, thought Golubski tainted case*, Kansas City Star, Sept. 25, 2022)). The CIU investigated Dobbs' wrongful conviction case. (*Id.* at 2).

At the conclusion of the investigation in 2021, the CIU concluded Dobbs was innocent. (*Id.* at 1). An investigator at the office informed Dobbs and his family that the CIU determined he was innocent and would be forwarding the case to the leadership of the Wyandotte County District Attorney's Office for further action. (*Id.* at 2). The CIU

[28] Dupree renamed the Conviction Integrity Unit the "Community Integrity Unit" in 2020. *See* https://www.wycokck.org/Government/Courts/District-Attorney/Community-Integrity-Unit.

presented its findings of Dobbs' innocence to District Attorney Dupree and his chief deputy prosecutor, Damon Mitchell,[29] in April 2021.[30] (*Id.*).

As of this filing, more than five years have passed, but no further action on this case has been taken by the District Attorney's Office. Dupree and Damon Mitchell agreed to meet with undersigned counsel for Dobbs in January 2025, during which counsel presented factual findings related to Dobbs' innocence and requested the office turn over *Brady* evidence, including, specifically, evidence regarding alternate suspect, Keith Wright. Dupree declined to provide the *Brady* material. (Ex. 83 (2/13/2025 Email Exchange between Mark Dupree and MIP)).

III. PROCEDURAL HISTORY

A. Arrest and Trial, 2008-2009 (Case No. 2008-CR-1619)

Dobbs was arrested on October 16, 2008, for the barbershop shooting that occurred nearly two weeks earlier, on October 3. (Ex. 49 (Dobbs Arrest Report)). Dobbs was tried together with a co-defendant, Casey Ellis in June 2009. (Ex. 34 (Dobbs Trial Tr.) at 1). The State was represented by Assistant District Attorney Robbin Lee Wasson. Dobbs was represented by court-appointed attorney Michael Highland, and Ellis was represented by court-appointed attorney Frank Martin. (*Id.*). Judge Dexter Burdette presided over the proceedings. (*Id.*).

[29] Damon Mitchell, the chief deputy prosecutor in Wyandotte County, and Mario Mitchell, the sole eyewitness against Dobbs, are two distinct individuals. It is not clear as of this filing whether the two share a familial relation.

[30] Damon Mitchell is now a judge in the Twenty-Ninth Judicial District.

The State produced ten witnesses at trial, but no physical evidence. Instead, the State's case relied on a single witness, Mitchell, who purportedly identified Dobbs and Ellis as the shooter and getaway driver. Defense counsel for Dobbs and Ellis did not present opening statements or any testimony or evidence in their case-in-chief. On the same evidence, the jury returned a mixed verdict—Dobbs was convicted on all counts, but Ellis was acquitted of all charges. (*Id*. at 723).

Dobbs was sentenced in August 2009 to: (i) 25 years to life for first-degree murder; (ii) 12 years and 11 months for attempted first-degree murder; and (iii) eight months for possession of a firearm. (Ex. 84 (8/21/2009 Motion for New Trial & Sentencing Transcript, No. 2008-CR-1619) at 18-19). The convictions of attempted first-degree murder and possession of a firearm were sentenced to run concurrently with each other but consecutive to the conviction of first-degree murder.

B. Direct Appeal, 2011-2013

Dobbs' appellate counsel, public defender Matthew Edge, filed a brief in 2011 raising two issues: (1) the trial court erred by granting the State a continuance for DNA results that were irrelevant; and (2) the trial court's use of outdated jury instructions on eyewitness identification was clearly erroneous because it improperly emphasized the degree of certainty the witness put on his identification. (Ex. 85 (Brief of Appellant) at ii). Dobbs' direct appeal was denied by the Kansas Supreme Court in September 2013. *State v. Dobbs*, 297 Kan. 1225, 308 P.3d 1258 (2013).

C. First Post-Conviction Relief Petition, 2014-2017 (Case No. 2014-CV-000917)

Dobbs filed a *pro se* K.S.A. § 60-1507 motion in October 2014 before retaining private attorney Carl Cornwell to represent him in post-conviction proceedings. (Ex. 86 (60-1507 Motion)). Dobbs raised a colorable claim of actual innocence in his motion and was granted a two-day evidentiary hearing on May 19 and June 5, 2017. The hearing testimony focused on the claim of ineffective assistance of trial counsel, particularly Highland's failure to investigate and call alibi witnesses. (Ex. 89 (2017 PCR Hr'g Tr.) at 35-38; Ex. 87 (10/13/2017 Transcript of Judge's Ruling, No. 14CV917 ("Judge's Tr.")) at 9). Judge Burdette denied the motion on October 13, 2017, finding Highland's performance was not deficient under *Strickland*. (Ex. 87 (Judge's Tr.) at 18).

D. First Post-Conviction Relief Petition Appeal, 2017-2018

Dobbs, while still represented by Cornwell, filed a brief appealing the denial on October 24, 2017, and raised three issues relating to Highland's ineffective assistance of counsel:

1. The trial court erred in denying the motion alleging ineffective assistance of counsel for failing to investigate and call alibi witnesses;
2. Dobbs was deprived of effective assistance of counsel when Highland advised him not to testify, without doing a proper investigation; and
3. Dobbs was deprived of effective assistance of counsel as a result of cumulative errors from Highland during the representation.

(Ex. 88 (Amended Brief of Appellant in *Dobbs v. State*) at 3).

The Kansas Court of Appeals affirmed the denial of post-conviction relief in a per curiam opinion. *Dobbs v. State*, No. 118,590, 2018 WL 6427270 (Kan. Ct. App. Dec. 7, 2018).

IV. DOBBS' MOTION SURMOUNTS THE PROCEDURAL LIMITATIONS OF K.S.A. § 60-1507

In order for a petitioner's second or successive motion under K.S.A. § 60-1507 to be granted an evidentiary hearing on the merits, a movant must satisfy two procedural requirements.[31]

First, post-conviction motions under K.S.A. § 60-1507 must (i) be filed within one year of the finalization of a conviction *or* (ii) raise an issue of manifest injustice. *See* K.S.A. § 60-1507(f)(1)–(2); *see also Skaggs v. State*, 59 Kan. App. 2d 121, 131, 479 P.3d 499 (2020). Manifest injustice exists when a "prisoner makes a colorable claim of actual innocence," which "requires the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence." K.S.A. § 60-1507(f)(2)(A); *see Schlup v. Delo*, 513 U.S. 298, 327 (1995).

Second, the movant must present exceptional circumstances to justify reaching the merits of the motion, factoring in whether justice would be served by doing so. *Littlejohn*

[31] Although not required under the Kansas statute, Dobbs also satisfies the cause and prejudice gateway to overcome procedural default. *See, e.g.*, *Murray v. Carrier*, 477 U.S. 478, 495–96 (1986) ("[F]or the most part, 'victims of a fundamental miscarriage of justice will meet the cause-and-prejudice standard.'" (citation omitted)). To overcome procedural default based on "cause and prejudice" a petitioner must show that there was both external "cause" that prevented him asserting the claim earlier and "prejudice" resulting from the constitutional violation. *Id.* at 485–87. The "cause" of a procedural default "must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." *Id.* at 488. To establish the requisite "prejudice" to overcome procedural default, petitioner must establish not just errors in at his trial, but that they "worked to his actual substantial disadvantage, infecting his entire trial with errors of constitutional dimensions." *United States v. Frady*, 456 U.S. 152, 170 (1982). For the reasons stated below, Dobbs satisfies the cause and prejudice standard.

v. State, 310 Kan. 439, 447 P.3d 375 (2019). "Exceptional circumstances are unusual events or intervening changes in the law that prevented the defendant from raising the issue in a preceding 60-1507 motion." *Beauclair v. State*, 308 Kan. 284, 304, 419 P.3d 1180 (Kan. 2018) (citation modified).

Dobbs' colorable claim of actual innocence based on new evidence *and* the ineffectiveness of his prior habeas counsel separately and independently satisfy these two requirements.

A. Dobbs' Motion Overcomes Procedural Limitations for a K.S.A. § 60-1507 Petition Because it Presents a Colorable Claim of Actual Innocence Based on New Evidence

Under K.S.A. § 60-1507, the requirements of both manifest injustice and exceptional circumstances are satisfied if the movant makes a colorable claim of actual innocence based on new evidence. *See Skaggs*, 59 Kan. App. 2d at 145–46. The term actual innocence requires the movant to show "it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence." K.S.A. § 60-1507(f)(2)(A). In deciding whether an evidentiary hearing must be held, a court must accept non-conclusory factual allegations set out in the motion as true. *Skaggs*, 59 Kan. App. 2d at 130–31.

Dobbs satisfies his burden. Dobbs makes new and specific factual allegations, supported by records and witness statements, that he is undoubtedly innocent. (*See supra* section II.A-K). Not only does Dobbs produce new factual information about his alibi on the day in question, but he also presents new evidence regarding the flawed eyewitness testimony, police misconduct, and alternate suspect that demonstrate his actual innocence.

Compare the voluminous evidence of Dobbs' innocence in this petition with the shallow evidence previously presented:

Issue	Evidence Presented in Prior 1507 Motion	Evidence Presented in Present 1507 Motion
Alternate Suspect	• No credible alternate suspect presented.	• Extensive evidence and factual allegations indicating alternate suspect committed shooting, including never disclosed *Brady* material.
Police Misconduct	• No evidence presented of police misconduct.	• Extensive evidence of misconduct by Roger Golubski and other KCKPD officers, including attempted sexual abuse of petitioner's mother and systematic framing of other Black men.
Unreliable Eyewitness Testimony	• Generalized allegations that trial counsel failed to adequately cross key identifying witness.	• Over 30 pages of detailed expert analysis finding risk of eyewitness misidentification in this case to be "very high."[32]
Alibi	• Alibi testimony from Davilyn Dobbs, Deon Dobbs, Marvin Dudley, and Jawan Robinson.	• Additional alibi testimony from new witnesses including Ebony Ford, Theopolis Ellis, T'onne Ford, and others. • More detailed and developed alibi testimony from Davilyn Dobbs, Deon Dobbs, and Marvin Dudley.

[32] A further discussion of the eyewitness identification expert report can be found below. (*See infra* section V.C.4).

Issue	Evidence Presented in Prior 1507 Motion	Evidence Presented in Present 1507 Motion
State's Finding of Innocence	• No evidence State has found or conceded Dobbs' innocence.	• Reliable evidence the State conducted investigation in its Community Integrity Unit and found Dobbs to be innocent in 2021.

In addition, key information was not publicly known or discoverable at the time of Dobbs' prior evidentiary hearing, including the extensive evidence of misconduct by Roger Golubski and the KCKPD detectives that investigated the case. Taking the allegations in this petition as true, the Court must find Dobbs asserts a colorable claim of actual innocence based on new evidence and reach the merits of his claims at an evidentiary hearing.

B. Dobbs' Prior Habeas Counsel Was Statutorily Ineffective Due to a Concurrent Material Conflict of Interest, Surmounting K.S.A. § 60-1507's Procedural Barriers

Dobbs' prior post-conviction counsel was wholly ineffective. Among other things, and as discussed in more detail below: (1) prior post-conviction counsel had a material concurrent conflict of interest when he simultaneously represented Dobbs and the lead detective responsible for his wrongful conviction; and (2) failed to reasonably investigate the case. (*See infra* section II.D).

The *Skaggs* court recognized that ineffectiveness of prior habeas counsel satisfies K.S.A. § 60-1507's procedural hurdles for manifest injustice and exceptional circumstances. *See Skaggs*, 59 Kan. App. 2d at 146. The Court should hold that the obvious and unjustifiable conflict of interest of Dobbs' prior habeas counsel warrants a new evidentiary hearing on the merits.

V. CLAIMS FOR RELIEF UNDER K.S.A. § 60-1507

A. <u>CLAIM 1:</u> Dobbs Is Innocent and the Incarceration of an Innocent Person Violates the Eighth and Fourteenth Amendments of the United States Constitution and the Kansas Bill of Rights

Kansas should recognize a freestanding claim of actual innocence. Supreme Court cases have informed the trend toward recognizing free-standing claims of actual innocence and implicitly prescribed the standards that states have used. In *Herrera v. Collins*, the Court first noted the "elemental appeal" of the propositions that the Eighth and Fourteenth Amendments prohibit the execution or imprisonment of anyone who is innocent of the crime for which he was convicted. 506 U.S. 390, 398 (1993). The *Herrera* majority assumed for the sake of argument that a truly persuasive demonstration of actual innocence in a capital case would render an execution unconstitutional and warrant federal habeas relief in the absence of a state avenue for processing the claim. *Id.* at 417.

Three years later, the *Schlup* Court examined a procedural claim of actual innocence as a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. *Schlup*, 513 U.S. at 315. A petitioner who proves innocence by a preponderance of the evidence has established a "gateway" claim of actual innocence and must also demonstrate that a constitutional violation occurred at trial, while a petitioner who proves innocence by clear and convincing evidence has met the burden to establish a "freestanding" claim of actual innocence and does not need to demonstrate that a constitutional violation has occurred in order to obtain relief.

Many peer states already recognize freestanding claims of innocence. For instance, the Missouri Supreme Court has provided a "freestanding" claim of actual innocence in order "to account for those rare situations … 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. banc 2003). To make a "freestanding claim of actual innocence, a petitioner must "make a clear and convincing showing of actual innocence that undermines confidence in the correctness of the judgment.*"* *Id.* at 548.

Dobbs has produced persuasive and detailed evidence of his innocence in this petition. This petition produces information regarding: (i) the defective eyewitness identification that led to his conviction; (ii) the corrupt police practices that led to Dobbs becoming a suspect; (iii) the true culprit's identity; (iv) Dobbs' alibi on the day of the shooting; and (v) the State's own investigation concluding Dobbs is innocent. Kansas should recognize that this evidence alone is sufficient to grant Dobbs' petition, separately and independently of the constitutional violations that occurred.

B. <u>CLAIM 2:</u> The State Failed to Disclose Material Exculpatory and Impeaching Evidence in Violation of *Brady v. Maryland* and Dobbs' Right to Due Process and a Fair Trial under the United States and Kansas Constitutions

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court held that the disclosure of evidence favorable to the accused is law enforcement's constitutional duty under the Due Process Clause. Specifically, due process rights are violated when (i) undisclosed evidence possessed by the state (ii) is material to guilt or punishment. *Id*. at 87. Failure to disclose material evidence can, by itself, provide grounds for a new trial "irrespective of the good faith or bad faith of the prosecution." *Id*. The prevailing rule in Kansas mirrors federal law. *State v. Kelly*, 216 Kan. 31, 36, 531 P.3d 60 (1975).

The duty to disclose favorable evidence to the accused "encompasses impeachment evidence as well as exculpatory evidence." *See Strickler v. Greene*, 527 U.S. 263, 280–82 (1999); *see also Kelly*, 216 Kan. at 36–37 (recognizing *Brady* obligations encompass both exculpatory and impeachment evidence).

"Material" evidence is evidence which creates a reasonable probability that, had it been disclosed, the outcome of the proceeding would have been different. *See United States v. Bagley,* 473 U.S. 667, 678–84 (1985). As explained in *Kyles v. Whitley*, 514 U.S. 419 (1995), the materiality inquiry is not a sufficiency of evidence test and the defendant does not need to show that the evidence, barring any evidence undermined by the withheld information, is inadequate to support a conviction; rather, the defendant need only show that the withheld information can reasonably be taken to put the case in a different light. *Id.* at 435.

1. The State has Never Disclosed Evidence that an Alternate Suspect, Keith Wright, not Dobbs, Committed the Crime

Police, from the day of the shooting, collected considerable evidence inculpating Keith Wright as the barbershop shooter. (*See supra* section II.B). Much of this evidence has never been disclosed to Dobbs, in violation of his constitutional rights.

A *Brady* violation occurs when the State fails to disclose evidence possessed or known by the prosecutor *or* the police. *State v. Francis*, 282 Kan. 120, 150, 145 P.3d 48 (2006) (citing *Kyles*, 514 U.S. at 438); *see also State v. Warrior*, 294 Kan. 484, 506, 277

P.3d 1111 (2012) (upholding that "a *Brady* violation can occur when the prosecutor withholds material evidence that is not known to the prosecutor but is known to law enforcement"); *State v. Newson*, 65 Kan. App. 2d 310, 311–12, 564 P.3d 1 (2025) (quoting the language from *Warrior* as a general principle under *Brady*). Evidence of an alternate suspect is *Brady* evidence. *See, e.g.*, *Bowen v. Maynard*, 799 F.2d 593, 612 (10th Cir. 1986) (finding suppressed evidence of an alternate suspect could have been used to create reasonable doubt and "could have been used to uncover other leads and defense theories and to discredit the police investigation of the murders").

It is undisputed that the criminal investigation into Wright for the Juniper Gardens shooting that same day directly linked Wright to the barbershop shooting. (Ex. 17 (Wright Cancel Pick-Up Order)). Prosecutors and police officers knew or should have known the Juniper Gardens shooting file was exculpatory and material evidence in Dobbs' case.

Detectives Golubski, Block, Koberlein, and Officer Carter were all involved in *both* the investigation of the Juniper Gardens shooting as well as the barbershop shooting. (Ex. 30 (*State v. Wright* Information) at 2; Ex. 17 (Wright Cancel Pick-Up Order); Ex. 28 (10/6/2008 K. Wright Arrest Report (No. 2008100428)). Police arrested Wright as a suspect in both shootings, and their investigation revealed that the Juniper Gardens shooting began as an act of retaliation for Muryel Josenberger's death in the barbershop shooting. (Ex. 17 (Wright Cancel Pick-Up Order)). By information and belief, KCKPD took statements from the Youngbloods, who told KCKPD that the Juniper Gardens shooting stemmed from Wright murdering Josenberger. It is clear that law enforcement knew of the connection and relevance of the two cases, and "we impute the knowledge and possession of information by law enforcement to the prosecutor" because *Brady* "is designed to discourage mere carelessness." *State v. Hirsh*, 310 Kan. 321, 335, 446 P.3d 472 (2019). As explained in *Hirsh*, this rule is necessary because it incentivizes "prosecutors to be certain that they are routinely made aware of all material on a case that has been uncovered by investigators and that anything tending to exonerate the accused is shared promptly with defense counsel." *Id.*

Unfortunately, the State's failure to turn over exculpatory *Brady* evidence ahead of trial was well within their modus operandi at the time. As detailed in section II.J.2, all the principal KCKPD officers involved in this investigation have been faulted in other wrongful conviction cases for suppressing exculpatory evidence. Golubski frequently suppressed and fabricated evidence for his own personal and illicit ends. Block and Koberlein failed to disclose evidence in the case of Cedric Warren, who was recently exonerated after the *Brady* evidence in his case came to light. (*See supra* II.J.2). Finally, it is significant that prosecutor Ed Brancart, who oversaw the Juniper Gardens shooting case, and, in part, held custody of key *Brady* material in Dobbs' case, has himself been caught previously suppressing evidence in Pete Coones' case. (*See supra* II.J.4).

In sum, the State—regardless of whether the prosecutor knew or should have known of this information—is deemed to have possessed this information, which it was required to disclose to Dobbs. With possession of the Wright investigative materials established, we turn to materiality.

It is well-established that the failure to disclose evidence of an alternate suspect is material. *See, e.g.*, *Bowen*, 799 F.2d at 612 (granting habeas relief because withheld evidence of an alternate suspect created "reasonable doubt" and "in the hands of the defense, it could have been used to uncover other leads and defense theories and to discredit the police investigation of the murders"); *see also Smith v. Secretary of N.M. Dep't of Corr.*, 50 F.3d 801, 830 (10th Cir. 1995) (finding the failure to disclose a police report of an alternate suspect "dramatically altered and limited the effectiveness of [defendant]'s defense at trial"). The material significance of such evidence should be obvious, as evidence of an alternate suspect would "carry significant weight with the jury in and of itself" and would also help "discredit the caliber of the investigation or the decision to charge the defendant." *Smith*, 50 F.3d at 830.

Here, the materiality of the suppressed alternate suspect is heightened because the State's case rested entirely on the testimony of a single eyewitness. *See Smith v. Cain*, 565 U.S. 73, 76 (2012) (finding impeachment, contradictory evidence material when eyewitness "was the *only* evidence linking [defendant] to the crime"). As in *Cain*, the case against Dobbs rested on such tenuous grounds that any undisclosed favorable evidence is necessarily material. If the Juniper Gardens investigation was disclosed to Dobbs, competent counsel could have shown the jury that the police investigation led them to a strong alternate suspect whose actions at the barbershop led to a second shooting with the victim's family members later that day.

The failure to turn over the file regarding the Juniper Gardens shooting before trial constitutes a flagrant violation of *Brady* and warrants an overturning of Dobbs' conviction.

2. The State Failed to Disclose Information Related to the Misconduct and Bad Acts of Officer Golubski and Other KCKPD Officers

In addition to the alternate suspect evidence, the State also had a litany of *Brady/Giglio* impeachment material related to its officers that was not disclosed ahead of trial. For instance, Golubski had misconduct violations as far back as 1978 that were never disclosed to defense counsel. In a prior civil action by the family of exoneree Pete Coones, the court found:

> Golubski committed an integrity violation early in 1978, causing him to be added to the KCKPD's *Brady/Giglio* list, which disclosed his misconduct to prosecutors. The KCKPD received complaints about Golubski's misconduct as early as the 1980s, but they refused to investigate or follow-up on them. In all, Golubski received 11 administrative complaints and "other contacts" complaints between 1993 and 2011. These included complaints that he bent a subject's arm and slapped her face, swore at a juvenile suspect and tried to coerce him into making incriminating statements, arrested a suspect without probable cause, and made racial and sexual comments towards a witness. Golubski also had a pattern of fabricating and suppressing evidence.[33]

"*Brady* unquestionably require[s] the prosecution disclose an officer's misconduct and other impeachment evidence." *McIntyre v. Unified Gov't of Wyandotte Cnty.*, No. 18-2545-KHV, 2022 WL 2072721, at *5 (D. Kan. June 9, 2022) (collecting cases); *see also Ballinger v. Kerby*, 3 F.3d 1371, 1376 (10th Cir. 1993) (finding *Brady* violation based on suppression of impeachment evidence)*; United States v. Hayes*, 376 F. Supp. 2d 736, 740–42 (E.D. Mich. 2005) (requiring the government turn over "all information in the

[33] *Coones v. Unified Gov't of Wyandotte Cnty.*, No. 22-CV-2447-JAR, 2024 WL 4345819, at *12 (D. Kan. Sept. 30, 2024).

possession of the government relating to allegations of police misconduct and/or criminal activity on the part of [the] Officer"). None of this information was ever disclosed to Dobbs' counsel. Golubski is a central figure in this case, given his general pattern and practice of misconduct and specific allegations in this case, such that his credibility is extremely relevant in evaluating guilt or innocence. The extensive evidence of Golubski's misconduct could have been used to impeach the police investigation done by KCKPD and Golubski in this case.

C. <u>CLAIM 3:</u> Trial Counsel Failed to Provide Effective Assistance of Counsel Causing Prejudice to Dobbs and Violating his Rights under the Sixth Amendment to the United States Constitution and § 10 of the Kansas Bill of Rights

The Sixth Amendment to the United States Constitution guarantees the right to effective assistance of counsel, and denial of the right can lead to reversal of a jury verdict. The controlling framework for evaluating ineffective-assistance claims is set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To establish a claim of ineffective assistance of counsel, a petitioner must show that: (1) "counsel's representation fell below an objective standard of reasonableness" in light of all the circumstances and (2) petitioner was prejudiced because there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 687–88, 694; *see also State v. Adams,* 297 Kan. 665, 304 P.3d 311 (2013). A reasonable probability is one sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694. It is lower than the preponderance of the evidence (*i.e.*, "more likely than not") standard. *Id.*

1. Even without Access to Key *Brady* Evidence, Trial Counsel Unreasonably Failed to Investigate and Provide the Jury with Key Evidence of an Alternate Suspect

Although, as described above, the State should have provided trial counsel with additional crucial evidence of Keith Wright's guilt, counsel still had sufficient evidence in his possession to necessitate further investigation into Wright before trial. Trial counsel's failure to do so renders his performance constitutionally deficient.

Defense counsel has a professional obligation to perform an independent investigation into the case against his client.[34] *See, e.g.*, *Fisher v. Gibson*, 282 F.3d 1283, 1291 (10th Cir. 2002) ("In order to make the adversarial process meaningful, counsel has a duty to investigate all reasonable lines of defense."). Where the petitioner claims that trial counsel was ineffective for failing to investigate and present exculpatory evidence, the court must "focus on whether the investigation supporting counsel's decision not to introduce [defense evidence] *was itself reasonable*." *Wiggins v. Smith,* 539 U.S. 510, 523 (2003). Choices made by counsel after a less than complete investigation can be reasonable, but only to the extent that the decision to limit or forego certain investigation is reasonable under the circumstances. *Strickland*, 466 U.S. at 690–91; *see also State v. Sanford*, 24 Kan. App. 2d 518, 523, 948 P.2d 1135 (1997) (Counsel made only perfunctory attempts to contact alibi witnesses, and "decision not to investigate further, either personally or through a hired investigator, was not reasonable under the circumstances.") Where facts known to

[34] "Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities." ABA Standards for Criminal Justice 4-4.1 (a) (3d ed. 1993).

counsel suggest further investigation would be fruitful, the failure to investigate results from "inattention, not reasoned strategic judgment." *Wiggins*, 539 U.S. at 526.

Here, trial counsel made *no* attempt to investigate an alternate suspect. Trial counsel failed to take such investigative measures even though he had, among other discovery: (i) an anonymous tip inculpating Wright; (ii) a statement from the victim's mother pointing to Wright; and (iii) a document (the "Cancel Pick-Up Order") indicating Wright was arrested as a suspect for the barbershop *and* Juniper Gardens shooting. Even with that information at his disposal, Dobbs' trial counsel neglected to do any investigation into Wright, or any other pertinent line of inquiry. (Ex. 89 (5/19/2017 Post-Conviction Relief Motion Hr'g Transcript in *Dobbs v. State*, No. 14CV917 ("May 2017 PCR Hr'g Tr.")) at 35-38).

Of course, any evidence of an alternate suspect is particularly important for defense counsel to investigate. *See, e.g.*, *Fontenot v. Allbaugh*, 402 F. Supp. 3d 1110, 1203 (E.D. Okla. 2019) (finding defense counsel's failure to investigate and present evidence of alternate suspect constituted ineffective assistance of counsel), *aff'd sub nom. Fontenot v. Crow*, 4 F.4th 982 (10th Cir. 2021). That failure is further heightened when, as here, "the totality of the evidence not presented to a jury paints a picture of alternate suspects having motive to harm" and the State's case against Dobbs is particularly weak. *Id.*

Wright, or any other alternate suspect, is never mentioned at Dobbs' trial. The record is devoid of evidence of any investigation conducted by trial counsel into an alternate suspect, and thus, trial counsel's decision cannot be given the benefit of any "strategic" or other justification. *See, e.g.*, *Mullins v. State*, 30 Kan. App. 2d 711, 716, 46

P.3d 1222 (2002) ("[D]efense counsel cannot make a strategic decision against pursuing a line of investigation when he or she has not yet obtained facts upon which that decision could be made."); *see also Wilkins v. State*, 286 Kan. 971, 982, 190 P.3d 957 (2008) ("Mere invocation of the word 'strategy' does not insulate the performance of a criminal defendant's lawyer[.]").

It is clear that trial counsel's decision not to investigate Wright resulted from inattentiveness, rather than any strategic consideration. Had trial counsel done a reasonable investigation, he would have been able to present a credible alternate suspect to the jury. Trial counsel's failure to investigate and present evidence of the alternate suspect undermines confidence in the verdict, and the Court should find his performance was ineffective.[35]

2. Trial Counsel Unreasonably Failed to Investigate and Present Testimony of Law Enforcement Misconduct and Bias against the Dobbs Family

Trial counsel's unjustified investigative failures apply with equal force to information surrounding known KCKPD misconduct.

Even a preliminary investigation into KCKPD and its interactions with the Dobbs family would have yielded important information regarding law enforcement misconduct

[35] The clear materiality of trial counsel's failure is established by juror research, which shows that "a defense strategy that argues not only that the defendant is innocent, but also that some other individual(s) could have committed the crime, is more likely to result in acquittal." Elizabeth R. Tenney, Hayley M.D. Cleary & Barbara A. Spellman, "This Other Dude Did It!" A Test of the Alternative Explanation Defense, 21 Jury Expert 37 (2009). Specifically, Tenney, Cleary, and Spellman found that "providing testimony from at least one alternative suspect successfully reduced estimates of the defendant's guilt." *Id.* at 37-38. Even though participants in their study still believed that the defendant seemed guiltier than any one of the alternate suspects, "adding one TODDI ["This Other Dude Did It"] story decreased the number of participants who rendered guilty verdicts from 73% to 35%, and ratings of the likelihood that the defendant committed the crime decreased as well." *Id.* at 38.

and animus towards the family. Although it was years later before Davilyn publicly came forward regarding Golubski's attempted sexual abuse and coercion, trial counsel could have uncovered relevant and material evidence. For example, interviews with his client and his family at the time of trial would have revealed that: (i) Golubski attempted to falsely implicate Dobbs a year prior (*see* Ex. 54 (Anderson Aff.) at ¶¶ 3-4), (ii) Golubski harassed and targeted Deon, Dobbs' brother (Ex. 46 (Deon Dobbs Aff. at ¶ 11); and (iii) Golubski, without a warrant, trespassed on Davilyn's property shortly after Dobbs was arrested. Trial counsel could have also uncovered nearly a dozen instances of documented misconduct against Golubski, the supervising officer on Dobbs' case. (*See supra* II.J.1). Again, trial counsel's failure is without any justification and objectively unreasonable. *See Wiggins*, 539 U.S. at 523. There is simply no reasonable rationale for trial counsel's failure to speak with his client and client's family about the case, officers, and circumstances involved. Trial counsel's failures fell below any objective standard and prevented key material information from being introduced at trial.

3. Trial Counsel Unreasonably Failed to Investigate Dobbs' Alibi and Call Alibi Witnesses at Trial

Trial counsel's decision to not present Dobbs' alibi at trial was unreasonable. Of course, an alibi is a key part of many defense cases and, here, it could have been Dobbs' only and/or strongest defense. "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690–91. The failure to investigate or to subpoena alibi witnesses can render counsel ineffective. *See, e.g.*, *Sanford*, 24 Kan. App. 2d at 523 (finding failure to investigate alibi defense unreasonable); *see also Khan v. United States*, 928 F.3d 1264, 1278 (11th Cir. 2019) (explaining that deficient performance may be established where "defense counsel utterly failed to investigate potential witnesses or secure their testimony" (collecting cases)).

Here, trial counsel's decision not to call alibi witness was clearly ineffective, particularly because he has no recollection of even *attempting* to contact any alibi witnesses in the case. (Ex. 89 (May 2017 PCR Hr'g Tr.) at 43). Had trial counsel conducted a reasonable and timely investigation, he would have uncovered a litany of individuals that would have testified under oath that Dobbs could not have committed the crime because he was miles away at a gathering with several people at the time of the crime. (*See supra* section II.D). Undersigned counsel's investigation has revealed that all these alibi witnesses were either physically present at Dobbs' trial or willing to provide testimony at the time, if asked. (*Id.*) Trial counsel's decision, without any investigation, to not present any alibi evidence during the defense's case-in-chief left the jury without explanation of Dobbs' whereabouts during the time of the barbershop shooting. As in *Sanford*, Dobbs claimed that he was with several people during the crime and trial counsel's failure to investigate the alibi was unreasonable. *Sanford*, 24 Kan. App. 2d at 523. This failure requires overturning the conviction.

4. Trial Counsel Unreasonably Failed to Call an Expert in Eyewitness Identification to Counter the State's Highly Unreliable Eyewitness Testimony

Trial counsel was also ineffective for not consulting with an eyewitness identification expert in advance of Dobbs' trial. To be sure, consultation with an expert is not required in every trial, but it can still render counsel ineffective under certain circumstances. *State v. Albright*, 88 P.3d 1257, 2004 WL 1041350, at *6–7 (Kan. Ct. App. 2004). Those circumstances include when identification procedures are particularly questionable such that "counsel could not render effective assistance without input from an expert." *United States v. Nolan*, 956 F.3d 71, 81–82 (2d Cir. 2020). In that scenario, counsel has "a duty at least to consult an expert and consider whether to call her to the stand." *Id.*

Here, as admitted by the State in closing, Mitchell's identification was the cornerstone of the case against Dobbs. (Ex. 34 (Dobbs Trial Tr.) at 669, 676). Without *any* physical evidence tying Dobbs to the crime, the State's case hinged entirely on the accuracy and reliability of Mitchell's identification and testimony. When misidentification is a key element of the defense, the failure to call an expert may be ineffective, particularly because "cross-examination and argument alone may be insufficient to convey the factors affecting eyewitness identification to the jury" and there is an "advantage" in using expert testimony to assist the jury. *Commonwealth v. Robinson*, 278 A.3d 336, 347 (Pa. Super. Ct. 2022).

An objective expert's review and analysis of Mitchell's testimony would have revealed that risk of identification error in the case was "very high." (Ex. 90 (Expert Report of Nancy Steblay, PhD ("Steblay Rpt.") at 37). Undersigned counsel's retained expert further notes "serious concerns exist in this case," including, but not limited to, highly flawed police practices and "a key witness whose memory reports changed dramatically over time." *Id.*

More specifically, an expert in eyewitness identification could have offered at trial the following key opinions:

1. The conditions of this incident provided a very limited foundation for the witness to form a memory of the perpetrator.
2. Initial descriptions were limited and inconsistent between the witnesses. The descriptions did not match Dobbs in significant ways.
3. The 12-day delay between the crime and the identification allowed for post-event contamination of memory.
4. The key witness (Mitchell) was inconsistent in his versions of the event over time. These inconsistencies highlight memory vulnerability and the potential for dangerous error, and they undermine the reliability of his memory reports in the days after the crime.
5. Mitchell's delayed narrative of the crime event and his identifications of Dobbs and Ellis may not be based on original memory from the crime scene.
6. Mitchell's claims of past familiarity with the perpetrator developed after he had initially claimed no recognition of the shooter. Prior familiarity is not a guarantee of memory accuracy for a specific event.
7. The record fails to show evidence-based suspicion to justify placing Dobbs in a lineup.
8. The record is incomplete regarding the police interviews and lineup procedure.
9. The lineup procedure involved practices that encourage suspect identifications and place innocent suspects at risk. Most problematically, the

photo lineups were administered by two detectives who were not blind to the identity of the suspect and failed to follow best practices.

10. Post-identification feedback (and information) posed significant risks for memory distortion and false confidence.

(Ex. 90 (Steblay Rpt.) at 37-38).

Even without eyewitness identification expert testimony, the jury's doubts about Mitchell's identification are proven by the split verdict in this case—the jury rejected Mitchell's identification of Ellis, Dobbs' codefendant. With the jury already having doubts about the accuracy and reliability of Mitchell's testimony, clear, unambiguous testimony from a scientific expert would have further damaged Mitchell's credibility and identification, leading to a reasonable probability that the jury would have acquitted Dobbs too. Trial counsel's failure to call or even consult with an eyewitness expert, given the significance of that testimony in this case, rendered his performance ineffective.

5. Trial Counsel Unreasonably Failed to Investigate and Present Impeachment Evidence of Mario Mitchell's Criminal History

Trial counsel also had a duty to investigate the State's sole eyewitness for relevant impeachment material, but trial counsel conducted no such investigation. As already discussed, failing to investigate can constitute ineffective assistance of counsel. (*See supra* V.C.1). And the failure to impeach a key witness to the State's case can also prejudice the defendant and constitute ineffective assistance of counsel. *State v. Brooks*, 297 Kan. 945, 951–54, 305 P.3d 634 (2013).

An investigation into Mitchell would have yielded a deep criminal history, including his involvement in two separate murders in 2005 and 2006. By information and belief, subpoenas to law enforcement would also have revealed Mitchell's history as a police informant. That information would have provided trial counsel with impeachment, or other avenues for investigation to establish impeachment evidence, of the State's central witness. Trial counsel's failure was unjustified and unreasonable.

6. Trial Counsel's Performance was Deficient and Prejudicial in Other Ways Throughout the Representation

In addition to all the aforementioned ways in which trial counsel rendered deficient, unreasonable representation, trial counsel also provided ineffective representation for the following reasons:

- *Failure to move to suppress an unreliable and suggestive identification*: Trial counsel had a duty to move to suppress Mitchell's suspicious identification, which would have set into motion a more complete inquiry into the questionable circumstances of Mitchell purportedly identifying Dobbs. That motion would have revealed on the record, for instance, that officers inexplicably already had in their possession a lineup including Dobbs when he had previously been wholly unconnected to the shooting. To be sure, failure to object to an identification can be deemed trial strategy, but the failure to object to particularly egregious identifications is not entitled to that deference. *See, e.g.*, *Thomas v. Varner*, 428 F.3d 491, 500 (3d Cir. 2005) (failure to seek suppression of suggestive identification was not a reasonable trial strategy); *Rodriguez v. Young*, 906 F.2d 1153, 1160 (7th Cir. 1990) (trial attorney's proffered reasons for failure to suppress impermissibly suggestive identification were insufficient to merit a reasonable trial strategy). Here, as discussed at length above, Mitchell's identification was clearly problematic. There can be no trial strategy supporting trial counsel's failure to make this meritorious motion, which renders him ineffective and undermines confidence in the outcome of trial.

- *Failed to adequately cross examine witnesses*: The record reveals that trial counsel did not know how to impeach a witness during trial. (*See supra* section II.H.1). Impeachment of witnesses is a fundamental courtroom procedure that reasonable defense counsel is required to perform to effectively represent clients. In this case, the court was forced to coach trial counsel through his cross examination and impeachment of Mitchell, whose testimony determined the outcome of the entire case. It is reasonably probable that the failure to effectively cross examine and impeach Mitchell regarding his many inconsistencies changed the outcome of the trial, and Dobbs' conviction should be overturned. *See, e.g.*, *Cargle v. Mullin*, 317 F.3d 1196, 1214–17 (10th Cir. 2003) (finding counsel ineffective, in part, because "counsel abandoned an important avenue of impeachment as to the State's star witness").
- *Failed to communicate with his client*: The record shows that trial counsel visited in person with Dobbs ahead of trial only one time for a total of 32 minutes. (Ex. 89 (May 2017 PCR Hr'g Tr.) at 16-17). As noted above, had

trial counsel communicated with his client he could have, among other things, learned about Dobbs' alibi and Golubski's animus and improper actions towards his family. (*See supra* II.D & II.F.) The lack of consultation and communication with his client, in the context of a murder case with a possible life sentence, is unreasonable and rendered trial counsel ineffective.

7. Trial Counsel Rendered Ineffective Assistance of Counsel by the Cumulative Effect of his Errors and Omissions

While trial counsel denied Dobbs his right to counsel for each of the previously mentioned ways, ineffective assistance of counsel is a totality of the evidence determination. *Strickland*, 466 U.S. at 695 ("[A] court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury."). As such, a claim of ineffective assistance of counsel can turn on the cumulative effect of all of counsel's actions. *Ewing v. Williams*, 596 F.2d 391, 396 (9th Cir. 1979); *see also Stouffer v. Reynolds,* 168 F.3d 1155, 1163–64 (10th Cir. 1999) (although "[t]aken alone, no one instance establishes deficient representation[,] . . . cumulatively, each failure underscores a fundamental lack of formulation and direction in presenting a coherent defense"); *Williams v. Washington*, 59 F.3d 673, 682 (7th Cir. 1995) (explaining that a defendant can establish prejudice based on the cumulative effect of counsel's acts or omissions); *Harris ex rel. Ramseyer v. Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995) (finding that "prejudice may result from the cumulative impact of multiple deficiencies") (citation omitted). "The test for cumulative error is whether the totality of [the] circumstances substantially prejudiced the defendant and denied the defendant a fair trial." *State v. Marks*, 297 Kan. 131, 150–51, 298

P.3d 1102 (2013) (citation modified).

In *Harris*, the court found counsel's "performance was deficient in eleven ways, eight of them undisputed," and concluded "that they cumulatively prejudiced [defendant]'s defense." 64 F.3d at 1439. The same should hold true here. Trial counsel's errors are numerous. (*See supra* section V.C.1-6). Viewed collectively,[36] in light of the very weak evidence presented against Dobbs, there can be little doubt that counsel's performance prejudiced Dobbs—had the jury known about Dobbs' alibi, the alternate suspect, Golubski and KCKPD's misconduct, the eyewitness identification science, had Mitchell been impeached, or any of counsel's other failures been rectified, the result of the proceeding undoubtedly would have been different. *Strickland*, 466 U.S. at 687–88, 694. Counsel's performance deprived Dobbs of his due process right to counsel.

D. <u>CLAIM 4:</u> Dobbs' Prior Habeas Counsel Failed to Provide Effective Assistance of Counsel Causing Prejudice to Dobbs and Violating his Statutory Rights under K.S.A. § 22-4506

Under K.S.A. § 22-4506, habeas petitioners have a statutory right to the effective assistance of habeas counsel. *See Robertson v. State*, 288 Kan. 217, 228, 201 P.3d 691 (2009). This statutory right extends to petitioners regardless of whether their counsel is appointed or retained. *See McIntyre v. State*, 54 Kan. App. 2d 632, 638, 403 P.3d 1231 (2017).

Habeas counsel's performance is deficient when counsel fails to represent a client's

[36] To the extent there is an argument that the Tenth Circuit has declined to apply cumulative error analysis to ineffective assistance of counsel claims, such instances are inapposite to this case. *See, e.g.*, *Jones v. Stotts*, 59 F.3d 143, 147 (10th Cir. 1995). In *Jones*, the court declined to find cumulative error because "none of the issues raised by [defendant] could be considered error." *Id.* at 147. As that is not true here, that holding is irrelevant and counsel's errors should be considered cumulatively.

interest "on the claims that were properly before the trial court," including when counsel fails "to ascertain the nature of [a client's] claim or to argue a basis for [a] claim." *Alford v. State*, 42 Kan. App. 2d 392, 398–99, 212 P.3d 250 (2009). The standard for establishing legal prejudice under K.S.A. § 22-4506 is identical to the standard found in constitutional ineffective assistance of counsel cases. *See Robertson*, 288 Kan. at 232.

1. Prior Habeas Counsel had a Material Conflict of Interest when he Concurrently Represented the Lead Detective Responsible for Dobbs' Wrongful Conviction

Carl Cornwell, Dobbs' prior habeas counsel, had a material concurrent conflict of interest that rendered him ineffective. Cornwell represented Dobbs as his habeas attorney between 2015 and 2018. Cornwell represented Dobbs at his evidentiary hearing, which took place in May and June 2017. Concurrently, Cornwell represented former KCKPD Detective Bryan Block, the lead detective in Dobbs' case, from March 2015 through August 2017. Cornwell was Block's defense attorney in the civil suit that resulted from Block unlawfully shooting a nightclub bouncer. Simultaneously representing Dobbs and the lead KCKPD detective in his wrongful conviction is a clear, material conflict of interest.

The United States Supreme Court has established that ineffective assistance claims premised on an attorney's actual conflict of interest are evaluated under a standard distinct from ordinary ineffective assistance of counsel claims. *See Cuyler v. Sullivan*, 446 U.S. 335 (1980). Unlike the general two-prong test requiring proof of both deficient performance and prejudice, a defendant who demonstrates that counsel actively represented conflicting interests and that the conflict adversely affected counsel's performance is entitled to a presumption of prejudice. *Id.* at 348–50. This presumption arises because joint representation of conflicting interests is inherently "suspect" and compromises counsel's ability to act as an effective advocate. *See Holloway v. Arkansas*, 435 U.S. 475, 489–90 (1978). The conflict "tends to prevent the attorney from doing" what the Sixth Amendment guarantees—full and loyal representation of the defendant. *Id.* Kansas courts have adopted this federal framework. *See, e.g.*, *State v. Jenkins*, 257 Kan. 1074, 1088, 898 P.2d 1121 (1995) (finding that once an actual conflict of interest is established, prejudice is presumed and the second prong of the ineffective assistance of counsel analysis is not required). Accordingly, Dobbs need only prove that (1) his counsel actively had an actual conflict of interest and (2) the conflict adversely affected counsel's performance.

The simultaneous representation of both Dobbs and Block, the lead investigator in his case, was a clear actual conflict of interest. *See, e.g.*, *In re Petition of Hoang*, 245 Kan. 560, 566–67, 781 P.2d 731 (1989) (affirming that an active conflict of interest occurred when an attorney's inquiry and cross-examination of a state-witness was limited because his public defender's office had previously represented the witness). Here, the conflict is even more certain as, unlike in *Hoang*, Cornwell *himself* represented both Dobbs and Block, and Cornwell represented both *simultaneously*.[37]

[37] Furthermore, neither Cornwell nor the district court engaged in any of the safeguards identified in *State v. Diggs*, 272 Kan. 349, 358, 34 P.3d 63 (2001). The district court failed to: (1) initiate an inquiry; (2) consider the facts at a special hearing; (3) and appoint independent counsel. *Id.* at 358-59. None of those steps were taken and Dobbs did not even know that Cornwell ever represented Block, much less that the representation was simultaneous and ongoing at the time of his evidentiary hearing.

With that, we turn to whether the conflict adversely affected counsel's performance. Prior habeas counsel did not examine Block's reckless and suspicious investigation into Dobbs or compel Block's testimony at the 2017 hearing. In fact, it is not apparent that Cornwell investigated *any* aspect of KCKPD's defective investigation or sought testimony from any KCKPD officer involved in Dobbs' case.

Given the poor and reckless investigation in this case and allegations of KCKPD misconduct, Block's credibility was directly at issue in this case, which required prior habeas counsel, Cornwell, to question and probe his then-current client. Cornwell's failure to question or investigate Block is without justification and leads to the strong presumption that Cornwell's allegiance to Block caused him to forego critical avenues of investigation and led to his failure to call key witnesses at Dobbs' hearing. The Court must find Cornwell ineffective and order a new evidentiary hearing on the merits of Dobbs' 1507 motion to remedy the violation of Dobbs' constitutional rights.

2. Even without Access to Key *Brady* Evidence, Prior Habeas Counsel Unreasonably Failed to Investigate and Provide the Court with Key Evidence of an Alternate Suspect

Prior habeas counsel, at the 2017 evidentiary hearing, attempted to fault trial counsel for failing to investigate alternate suspects based on the discovery provided by the State. Habeas counsel noted that trial counsel conducted no investigation into Keith Wright or other alternate suspects. However, it is insufficient for counsel to simply fault a prior attorney for his failure to investigate. Instead, counsel must conduct his own investigation to establish the element of prejudice. In failing to pursue any meaningful investigation, Cornwell turned himself into a hypocrite.

Prior habeas counsel did no better than trial counsel, providing no facts or basis for the court to find the requisite elements of the ineffective assistance of counsel claim satisfied.[38] Cornwell engaged in the exact conduct he claimed rendered trial counsel ineffective. But, in the end, Dobbs received ineffective assistance of counsel *again*, as Cornwell failed to conduct any reasonable investigation or to present evidence regarding the viable alternate suspect. Habeas counsel's performance in this regard was wholly unreasonable and deficient.

3. Prior Habeas Counsel Unreasonably Failed to Investigate and Present Testimony of Law Enforcement Misconduct and Bias against the Dobbs Family

Similar to trial counsel, *see supra* section V.C.2, prior habeas counsel could have investigated and presented significant evidence of law enforcement misconduct and bias against the Dobbs family. In some ways, prior habeas counsel's failures are even more severe as by the time of the evidentiary hearing in the Spring of 2017, evidence of law enforcement misconduct had been revealed. Thus, it was even more egregious, given the additional allegations and evidence that had come to light, that prior habeas counsel took no action to investigate law enforcement misconduct and bias against the Dobbs family. It was ineffective to not present this information, and Dobbs should be granted a new evidentiary hearing.

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[38] Prior habeas counsel produced one witness, Randall Shields, in an apparent attempt to have him identify an alternate suspect. Shields, however, refused to inculpate anyone when he took the stand at the hearing.

4. Prior Habeas Counsel Unreasonably Failed to Call an Expert in Eyewitness Identification to Counter the State's Highly Unreliable Eyewitness Testimony

Again, just like trial counsel, *see supra* section V.C.4, prior habeas counsel was ineffective for not consulting with and/or calling an eyewitness identification expert on behalf of his client. The lack of expert testimony attacking the State's crucial, but flawed, identification undermines confidence in Dobbs' conviction.

E. CLAIM 5: Mitchell's Identification Violated Dobbs' Right to Due Process under the United States and Kansas Constitutions because it was Impermissibly Suggestive and Unreliable

The Due Process Clause of the Fourteenth Amendment protects individuals from unreliable identification procedures resulting from impermissibly suggestive identification procedures. *Manson v. Brathwaite*, 432 U.S. 98, 113 (1977). This is a two-step inquiry. "First, the court determines whether the procedure used for making the identification was impermissibly suggestive." *State v. Corbett*, 281 Kan. 294, 304, 130 P.3d 1179 (2006). Second, the court determines whether an impermissibly suggestive procedure led to "a very substantial likelihood of irreparable misidentification." *Manson*, 432 U.S. at 116 (citation omitted); *Neil v. Biggers*, 409 U.S. 188, 198 (1972); *see also State v. Edwards*, 264 Kan. 177, 188, 955 P.3d 1276 (1998).[39] Thus, even if an eyewitness identification is impermissibly suggestive, it must also be impermissibly unreliable under the totality of the circumstances. *See Manson*, 432 U.S. at 106, 114–16; *Corbett*, 281 Kan. at 304–05.

[39] Even if the defendant "failed to object to the admission of the out-of-court identification at trial," the issue can still be considered "to serve the ends of justice or to prevent a denial of a fundamental right." *State v. Hunt*, 275 Kan. 811, 813, 69 P.3d 571 (2003).

In Kansas, an assessment of the totality of the circumstances surrounding the identification is conducted based on the factors identified in *State v. Hunt*, 275 Kan. 811, 817–18, 69 P.3d 571 (2003), and confirmed by the Kansas Supreme Court in *State v. Trammell*, 278 Kan. 265, 270–71, 92 P.3d 1101 (2004). *See Corbett*, 281 Kan. at 304-05. Those factors are:

1. The witness' opportunity to view the criminal at the time of the crime;
2. The witness' degree of attention;
3. The accuracy of the witness' prior description;
4. The level of certainty demonstrated by the witness at the confrontation;
5. The length of time between the crime and the confrontation;
6. The witness' capacity to observe the event, including his or her mental and physical acuity;
7. The spontaneity and consistency of the witness' identification and the susceptibility to suggestion; and
8. The nature of the event being observed and the likelihood that the witness would perceive, remember, and relate it correctly.

Corbett, 281 Kan. at 305 (citing *Hunt*, 275 Kan. at 817–18 and *Trammell*, 278 Kan. at 270–71).

1. Mitchell's Eyewitness Identification was Impermissibly Suggestive

Mitchell's identification from the six-pack lineup, almost two weeks after the incident, when Mitchell did not provide a description or otherwise identify Dobbs, was undoubtedly impermissibly suggestive.

The Kansas courts have provided guidelines to assess whether a photographic lineup procedure is unduly suggestive. We look at whether "the officers conducting the proceeding give the witness information that highlights one of the individuals before the selection is made or make suggestions about who the witness should select." *Corbett*, 281 Kan. at 305; *see also State v. Thompson*, No. 97,845, 2008 WL 2423610, at *2 (Kan. Ct. App. June 13, 2008); *cf. Trammell*, 278 Kan. at 269. A photographic lineup is also "'impermissibly suggestive if the photographs do not depict individuals who generally fit within the witness' description or if there is a gross disparity between the defendant's photograph and the remaining photographs.'" *Corbett*, 281 Kan. at 305 (quoting *Trammell*, 278 Kan. at 273).

Here, the lineup administered to Mitchell fails at both steps, for multiple reasons.

First, there is a strong likelihood that the officers who administered the lineup highlighted Dobbs before administering the lineup. Detectives Block and Koberlein conducted off-the-record, unrecorded questioning of Mitchell. (Ex. 34 (Dobbs Trial Tr.) at 631). Thus, at the outset, it is admittedly impossible to know exactly what was said to Mitchell before the lineup. However, all the surrounding evidence suggests the officers urged or otherwise encouraged Mitchell to identify Dobbs.

Neither Detective Block nor Koberlein were blind lineup administrators; rather, both detectives were working on the case and knew relevant case details. It is well-known that non-blind lineup administration "is a powerful suspect-bias factor" that increases the likelihood "that the suspect will be chosen, whether that suspect is guilty or innocent." (Ex. 90 (Steblay Rpt.) at 5).

Additionally, Detectives Block and Koberlein brought two six-pack photo lineups with them to their interview with Mitchell, one including Dobbs and one including Ellis, even though, at that point, neither Mitchell nor any other witness had ever provided a description that matched Dobbs or Ellis. *See Jones v. Uttecht*, No. 3:22-CV-5371-TL-DWC, 2022 WL 20403477, at *7 (W.D. Wash. Nov. 9, 2022) (finding the identification "impermissibly suggestive," when, among other things, "[t]he identifications were made after [the witness] made inconsistent statements about his ability to identify [the suspect]"), *report and recommendation adopted by* 2023 WL 4704708 (W.D. Wash. July 24, 2003). There is absolutely no documented evidence to suggest why Dobbs would have been included in a lineup at this point and these two six-packs shown to Mitchell.[40] And, Mitchell and Dobbs had a documented history with each other dating back years, such that there is no doubt that Mitchell knew well both Dobbs' name and what he looked like. As Mitchell knew Dobbs, but had not previously identified him, there is no permissible explanation for his inclusion in the six-pack shown to Mitchell.

As Dr. Steblay explained – "How did Dets. Block and Koberlein explain to Mr. Mitchell—who had reported no recognition of the culprits prior to this interview—why they were showing him lineups at all, why these men were suspects, and why the lineups included men that Mr. Mitchell knew from prior encounters?" (Ex. 90 (Steblay Rpt.) at 29). There must be a strong inference that Detectives Block and Koberlein provided improperly suggestive guidance to Mitchell, encouraging him to select Dobbs from the lineup.[41] That assertion is further supported by the fact that these same detectives had used at least one of

[40] Mitchell was interviewed prior at the hospital, but there is no documentation of that encounter. (Ex. 34 (Dobbs Trial Tr.) at 546).

[41] Further confirming the nefarious and suggestive circumstances of this identification is the fact that we know another eyewitness, Markus Hayes, was also shown lineups, but we do not know the composition of the lineups or what Hayes said to officers when viewing the lineups. (Ex. 42 (2nd Hayes Stmt.) at 2).

the exact same six-pack lineups before, in another unrelated investigation. *See* (Ex. 38 (Morris Investigation Photo Array of Ellis)). Simply put, the only explanation for Mitchell's identification is that the detectives highlighted and urged Mitchell to identify Dobbs from the lineup.

Second, as Mitchell did not provide a suspect description before the lineup was administered, it is ipso facto that the photographs included in the lineup did not – and could not – fit a description that was never provided by the purported eyewitness. Mitchell was shot multiple times during the incident and, when questioned by officers first on the scene, said that he did not know the assailants. (Ex. 4 (Carter Rpt.) at 1). When Mitchell's memory was most fresh, he did not provide any description of the assailants or claim to know or otherwise recognize them, despite his prior interactions with and knowledge of Dobbs. (Ex. 90 (Steblay Rpt.) at 14). Police reports reflect that Mitchell stated, "[h]e did not know who the black males were or why they shot up the barbershop." (Ex. 4 (Carter Rpt.) at 1). And twelve days later, Mitchell said the culprit was "kinda medium build" but "kinda big build, stocky build" like he had been lifting weights. He was 5'9" to 5'10" with brown skin. (Ex. 15 (Mitchell Stmt.) at 3).

Other witnesses said that the assailant was "fairly average" in size, "thin" to "medium" build, about 5'10 and approximately 190-195 pounds. *See* (Ex. 2 (Campbell Stmt.) at 8; Ex. 1 (Jackson Stmt.) at 7; Ex. 5 (1st Hayes Stmt.) at 3). And one witness said that he saw the assailant enter the barbershop and he had braids. (Ex. 5 (1st Hayes Stmt.) at 3). But Dobbs, a former college football lineman, weighed at least 260 pounds in October 2008 and always had close-cropped, short hair. (Ex. 7 (Dobbs Pick-Up Order)).

There is not a single witness description that matched Dobbs, and, thus, there was no justifiable reason to include Dobbs in the lineup. Best practices reveal that it is imperative that police obtain "evidence-based suspicion" before conducting an identification—*i.e.*, concrete evidence, more than just an officer's "hunch" that justifies conducting a lineup with a purported suspect. (Ex. 90 (Steblay Rpt.) at 29). Dobbs' inclusion in the lineup, without *any* evidence to support his inclusion, requires concluding that he did not fit the witness' description. The lineup in this case was impermissibly suggestive.

2. The Totality of the Circumstances Confirm the Identification Led to a Substantial Likelihood of Irreparable Misidentification

A totality of the circumstances, and each one of the *Hunt* factors, confirms that there is a substantial likelihood—in fact a certainty—of irreparable misidentification. We examine each in turn:

- <u>Mitchell's opportunity to view the criminal at the time of the crime</u>. Mitchell had almost no opportunity to view the criminal at the time of the crime. The crime was sudden and brief, with the armed assailant storming into the barbershop and quickly firing off rounds as witnesses, including Mitchell, ran to the door to try and flee. This factor weighs in favor of irreparable misidentification.

- <u>Mitchell's degree of attention</u>. Mitchell's degree of attention to the assailant was limited. The incident was chaotic and, as well-documented by research, the descriptions from the witnesses, including Mitchell, focused on the bandana and weapon, rather than a physical description of the assailant. (Ex. 90 (Steblay Rpt.) at 15-18). This factor weighs in favor of irreparable misidentification.

- <u>The accuracy of Mitchell's prior description</u>. Mitchell did not provide *any* initial description of the witness, reporting only that he did not know who the assailants were. (Ex. 4 (Carter Rpt.) at 1). To be sure, a "vague initial description of the shooter" would cut against finding the identification reliable. *Sexton v. Beaudreaux*, 585 U.S. 961, 967 (2018) (citing *Manson*, 432 U.S. at 115).[42] But, here, Mitchell's initial description was not vague, there was no suspect description *at all*. Then, twelve days later, Mitchell finally offers a vague description, describing the assailant as "kinda medium build" but stocky like he had been lifting weights. (Ex. 15 (Mitchell Stmt.) at 3). That is a far cry from the 260-pound Dobbs, who Mitchell also knew very well. This factor weighs strongly in favor of irreparable misidentification.
- <u>The level of certainty demonstrated by Michell at the confrontation</u>. Mitchell's language at the time of the photo lineup confrontation was unsure and uncertain, and Mitchell refused when given the opportunity to confidently identify Dobbs. Instead, he reluctantly and hesitantly stated the shooter "look like to me Donnell Dobbs." (*Id.*). This equivocating language is far from an assured and clear identification. This factor weighs in favor of irreparable misidentification.

[42] In *Sexton*, the Court concluded that finding the identification was not reliable because, among other things, the witness "had a good opportunity to view the shooter," "was paying attention during the crime," was "sure" about his identification, and there was "little pressure" to make the identification. 585 U.S. at 967. Of course, as described, here, *none* of those factors exist here to support or rehabilitate Mitchell's identification.

- <u>Mitchell's capacity to observe the event, including his mental and physical acuity</u>. Mitchell was shot multiple times and fell to the ground in extreme pain, uncertain if he would live. As a result, Mitchell's capacity to observe the event was highly diminished. So, this factor also weighs in favor of irreparable misidentification.
- <u>The spontaneity and consistency of the witness' identification and the susceptibility to suggestion</u>. This factor is the strongest evidence of irreparable misidentification. Mitchell's identification was neither spontaneous nor consistent. As discussed above, Mitchell did not initially provide any identification. Instead, Mitchell's identification did not occur until twelve days later, after unrecorded interactions and suggestions from the police, even though he had known Dobbs for years. The twelve-day gap between the crime and his identification is ripe for post-event memory contamination. (Ex. 90 (Steblay Rpt.) at 21-23); *see also United States v. Kane*, No. 16-403-01, -02, 2017 WL 11461840, at *1 n.1 (E.D. Pa. Dec. 22, 2017) (explaining that "three weeks elapsed between the crime and the identifications" calls into question the reliability of the identification). Outside, post-event pressures and influences is one reasonable explanation for Mitchell's later identification. (Ex. 90 (Steblay Rpt.) at 21-23). But, even after finally making an identification, Mitchell's story continued to change, providing inconsistent versions of the event. (*Id.* at 23-24). For example, Mitchell reported at the scene that he did not know the assailants, but later claimed he recognized the shooter by his build and face and immediately knew it was Dobbs. (*Id.* at 23; Ex. 15 (Mitchell Stmt.) at 3). Mitchell also changed details about his opportunity to view the assailant—first claiming the

mask only covered the victim's lips and that he was not wearing a hat, (Ex. 8 (Prelim. Hr'g Tr.) at 47-48), but, at trial, testifying that the mask covered all but the assailant's eyes, but fell down, and that he was wearing a hat. (Ex. 34 (Dobbs Trial Tr.) at 519-20, 553). Mitchell's constantly evolving and changing details strongly suggest that his identification is unreliable and not based on his memory from the incident. (Ex. 90 (Steblay Rpt.) at 24-26). Most alarming is that Mitchell initially stated he did not know the assailant, even though he had known Dobbs for years and later identified him purportedly based on that prior knowledge. This change, among the many inconsistencies in Mitchell's statements, further confirms that his identification is not reliable, but rather is the product of impermissible suggestibility and irreparable misidentification.

- The nature of the event being observed and the likelihood that Mitchell would perceive, remember, and relate it correctly. This incident was a chaotic, short-lived incident in which Mitchell was shot twelve times. Although Mitchell would likely want to remember the assailant that shot him, the frightening nature of the event and severe injuries Mitchell suffered make it unlikely that he would have the wherewithal to remember and relate it correctly. (*See* Ex. 90 (Steblay Rpt.) at 15-18).

In conclusion, the *Hunt* factors, when examined both individually and collectively, confirm that the totality of the circumstances is clear—there is a substantial likelihood that Mitchell made a misidentification such that Dobbs' due process rights were violated.

F. <u>CLAIM 6:</u> The Investigation into the Barbershop Shooting Was So Intentionally or Recklessly Deficient that it Violated Dobbs' Right to Due Process Under the United States and Kansas Constitutions

"To establish a substantive due process cause of action for failure to investigate, plaintiff must show that the state actor 'intentionally or recklessly failed to investigate, thereby shocking the conscience.'" *Murphy v. City of Tulsa*, No. 15-CV-528-GKF-FHM, 2018 WL 4088071, at *11 (N.D. Okla. Aug. 27, 2018) (quoting *Amrine v. Brooks*, 522 F.3d 823, 834 (8th Cir. 2008)), *aff'd*, 950 F.3d 641 (10th Cir. 2019); *see also Moore v. Guthrie*, 438 F.3d 1036, 1040 (10th Cir. 2006) ("The 'ultimate' standard for determining whether there has been a substantive due process violation is 'whether the challenged government action shocks the conscience of federal judges.'") (quoting *Ruiz v. McDonnell*, 299 F.3d 1173, 1183 (10th Cir. 2002)); *Johnson v. State*, 289 Kan. 642, 652, 215 P.3d 575 (2009) (When establishing a due process violation, "the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.") (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)). The Eighth Circuit has explained the following circumstances shock the conscience:

> (1) evidence that the state actor attempted to coerce or threaten the defendant, (2) evidence that investigators purposefully ignored evidence suggesting the defendant's innocence, (3)

> evidence of systematic pressure to implicate the defendant in the face of contrary evidence.

Winslow v. Smith, 696 F.3d 716, 732 (8th Cir. 2012) (quoting *Akins v. Epperly*, 588 F.3d 1178, 1184 (8th Cir. 2009)).

KCKPD's investigation into Dobbs shocks the conscience. The evidence in this case overwhelmingly supports finding that KCKPD, led by Roger Golubski, specifically and intentionally targeted Dobbs based on the animus and bias he had towards the Dobbs family.

As detailed above, Golubski had a history with Dobbs' brother and mother. (*See supra* II.F). When Davilyn rejected Golubski's sexual demands, he threatened to retaliate against her sons, which is exactly what he did in this case. The evidence conclusively establishes that Mitchell, who knew Dobbs well, never identified Dobbs (or provided any other substantive description of the assailant) until nearly *two weeks* after the murder. (*Compare* Ex. 4 (Carter Rpt.) *with* Ex. 15 (Mitchell Stmt.) at 3). Then, while heavily medicated, Mitchell identified Dobbs from a six-pack photo array that Detectives Block and Koberlein conveniently brought with them to the hospital, even though up until that point there had been absolutely no evidence suggesting Dobbs had anything to do with this crime. (Ex. 15 (Mitchell Stmt.) at 3-4).

Here, the record reveals that KCKPD ignored its own investigative evidence that the Juniper Gardens shooting was in retaliation and connection to the barbershop shooting. (*See supra* II.B.4-5). The decision to inexplicably ignore that other obvious investigative avenue, which would exculpate Dobbs, shocks the conscience. The logical inference from

KCKPD conduct is that those other avenues were intentionally ignored because of a calculated effort to frame Dobbs. *See Murphy*, 2018 WL 4088071, at *11 (finding sufficient evidence that the confession was coerced and law enforcement did not pursue other investigatory avenues). That inference is further supported by Golubski's well-documented pattern and practice of framing the sons of Black women that rejected his sexual demands and threats, and enlisting the help of other KCKPD officers, including Block and Koberlein, to settle his personal vendettas. (*See supra* II.J.1-2).

To be sure, the conduct of KCKPD and disgraced former Captain Golubski can often be said to shock the conscience. Here, the purposeful disregard of evidence to frame Dobbs for murder is manifestly unjust. KCKPD identified Wright as a key suspect but, nonetheless, steered the investigation towards Dobbs and suppressed exculpatory evidence. The Court should hold that the police investigation violated due process and vacate Dobbs' conviction.

G. <u>CLAIM 7:</u> The Prosecutor Presented what she Knew or Should have Known was False and Perjurious Testimony, in Violation of *Napue v. Illinois* and Dobbs' Right to Due Process and a Fair Trial under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and § 10 of the Kansas Bill of Rights

As established by the United States Supreme Court in *Napue v. Illinois*, a conviction obtained through the use of false testimony violates due process when the prosecution knew, or should have known, that the testimony was false. 360 U.S. 264, 269 (1959). Due process rights are violated even when the false testimony concerns only the credibility of a witness, because the integrity of the trial depends on truthful evidence. *Id.* at 269–70. To establish a *Napue* violation, a defendant must show: (1) the testimony was false; (2) the prosecution knew or should have known of its falsity; and (3) the false testimony was material, meaning there is a reasonable likelihood that it affected the judgment of the jury. *See id.* at 271; *United States v. Crockett*, 435 F.3d 1305, 1317 (10th Cir. 2006).

Under Kansas law governing due process violations by the prosecution, "law enforcement's knowledge of evidence is imputed to the State." *Warrior,* 294 Kan. at 506 (citing *Francis,* 282 Kan. at 150). This rule flows from the fact that "*Napue* applies whenever a prosecution knew *or should have known* that the testimony was false." *Jackson v. Brown*, 513 F.3d 1057, 1075 (9th Cir. 2008) (emphasis added) (citation modified) (quoting *Hayes v. Brown*, 399 F.3d 972, 984 (9th Cir. 2005) (en banc)). The court in *Jackson* explained:

> If the prosecutor has a duty to investigate and disclose favorable evidence known only to the police, he "should know" when a witness testifies falsely about such evidence. Accordingly, we agree with the California Supreme Court's conclusion that "the prosecution should have known of the false and misleading nature of the informants' testimony," and therefore "the prosecution was under a constitutional obligation to correct that testimony."

513 F.3d at 1075 (citation omitted). Stated more succinctly, "*Napue* and *Giglio* make perfectly clear that the constitutional prohibition on the 'knowing' use of perjured testimony applies when *any of the State's representatives* would know the testimony was false." *Id.* (emphasis added). When the State has used perjured testimony, a "new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury." *Bey v. State*, 1 Kan. App. 2d 429, 433–34, 566 P.2d 38, 42 (1977) (internal quotation marks and citation omitted).

The State committed a *Napue* violation when it put on the false identification provided by Mitchell. The prosecution should have known the testimony was false both because: (1) KCKPD knew Mitchell's identification was false and (2) Mitchell's testimony continued to change, as to important details, each time he provided a statement or testified.

First, KCKPD officers involved in Dobbs' case, including Golubski, Block, and Koberlein, knew that Mitchell's testimony was false. After Mitchell initially told police he did not know who shot him, police played a key role in enabling or coercing Mitchell to falsely identify Dobbs. Dobbs' name was inserted into the investigation in retaliation for his mother refusing Golubski's sexual demands. Block brought a photo lineup of Dobbs for Mitchell to identify before Dobbs was linked by *anyone* to the shooting. The State knew or should have known his trial testimony was false and the product of KCKPD misconduct.

Second, the prosecution knew or should have known that Mitchell's trial testimony was false given that it materially differed from his earlier statements and testimony. For example, unlike at the preliminary hearing, at trial, Mitchell for the first time said that the shooter was wearing a hat, which he said he only remembered after hearing what others said. (Ex. 34 (Dobbs Trial Tr.) at 519, 553). At trial, Mitchell also said there were two individuals in the car, when he previously said there were four, and for the first time said that the shooter's bandana covered his lips and nose. (*See supra* section II.H.1). The changes in Mitchell's trial testimony are far too numerous and material to be ignored.

The prosecution knew or should have known the statements were false. The failure to do so violated Dobbs' due process rights and he must be granted a new trial.

H. <u>CLAIM 8:</u> The Prosecutor's Charging of Both Dobbs and Wright under the Theory that Both Committed the Barbershop Shooting Violated Dobbs' Right to Due Process Under the Fourteenth Amendment of the United States Constitution and § 10 of the Kansas Bill of Rights

Prosecutors cannot pursue two people for the same crime that only one person committed. "[T]he use of theories that are factually contradictory to secure convictions against two or more defendants in prosecutions for the same offenses arising out of the same event violates the principles of due process." *Bankhead v. State*, 182 S.W.3d 253, 258 (Mo. Ct. App. 2006); *see also Smith v. Groose*, 205 F.3d 1045, 1051–52 (8th Cir. 2000) (holding that the use of "inherently factually contradictory theories" violated due process); *State v. Thach*, 305 Kan. 72, 87, 378 P.3d 522 (2016) (citing *Smith v. Groose* approvingly).

In this case, Dobbs' due process rights were violated when prosecutors charged Dobbs for the barbershop shooting, but also charged Wright for the Juniper Gardens shooting under the theory that it started as a retaliatory shooting for Wright committing the barbershop shooting. These two inapposite theories, which were known to be impossible by Wyandotte County assistant district attorneys Wasson and Brancart, violated Dobbs' due process rights, and the Court must consequently vacate Dobbs' conviction.[43]

[43] To the extent the State seeks to argue that Wright and Dobbs were the two assailants at the barbershop shooting that argument fails because: (1) both of them were supposedly the shooter and it is undisputed there was only one shooter in the barbershop shooting and (2) there is *no* allegation by anyone that Dobbs and Wright knew each other or committed this crime together.

I. <u>CLAIM 9:</u> Cumulative Error Deprived Dobbs of a Fair Trial in Violation of His Fifth, Sixth, and Fourteenth Amendment Rights under the United States Constitution and the Kansas Constitution and Bill of Rights

Cumulative trial errors, considered collectively, may be so great as to require reversal of a defendant's conviction. *See State v. Brinklow*, 288 Kan. 39, 54, 200 P.3d 1225 (2009). The test is "whether the totality of the circumstances substantially prejudiced the defendant and denied the defendant a fair trial." *Id.* (citation modified) (quoting *State v. Nguyen*, 285 Kan. 418, 436, 172 P.3d 1165 (2007)).

In Dobbs' case, cumulative error was so great it deprived him of a fair trial in violation of federal and state constitutional law.

VI. CONCLUSION

Donnell Dobbs hereby requests that this Court set his case for an evidentiary hearing, order discovery, and further, vacate his conviction and sentence.

Respectfully submitted,

<u>/s/ Evan Glasner</u>
Evan Glasner, KS Bar #30657
MIDWEST INNOCENCE PROJECT
300 East 39th Street
Kansas City, MO 64111
Telephone: 816-221-2166
eglasner@themip.org

<u>/s/ Lindsay Runnels</u>
Lindsay Runnels, KS Bar #29067
MORGAN PILATE, LLC
926 Cherry Street
Kansas City, MO 64106
Telephone: 816-471-6694
Facsimile: 816-472-3216
lrunnels@morganpilate.com

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was served via the Court's E-Filing system on the office of Mark Dupree, District Attorney at 710 N. 7th Street; Suite 10, Kansas City, KS 66101 on July 28, 2026.

/s/ Evan Glasner
Evan Glasner, #30657