

In The Circuit Court of Pemiscot County
State of Missouri

James Andrew Merritt }
vs }
State of Missouri }

Case: FILED

24PE-CR MAR 12 2024

CIRCUIT COURT
PEMISCOT COUNTY, MO.

MOTION TO VACATE, SET ASIDE
OR CORRECT THE JUDGEMENT OR
SENTENCE

MOTION

- 1) Place of detention:
Eastern Reception, Diagnostic and Correctional Center
- 2) Name and Location of court which imposed sentence:
Circuit Court of Pemiscot County
610 Ward Ave.
Caucuthersville MO 63830
- 3) The Case Number and the offense or offenses
for which sentenced was imposed:
20NM-CR00348-02
2nd Degree Murder
Armed Criminal Action
Tampering with physical evidence
Trafficking for the purpose of sexual exploitation

4a) The date upon which sentence was imposed and the terms of the sentence:

03-13-2024

2nd Degree Murder to serve Life

Armed Criminal Actions to serve 20 yrs

Tampering with physical evidence to serve 4 yrs

Trafficking for the purpose of sexual exploitation to serve 5 yrs

All sentences to run Consecutive

4b) The date upon which you were delivered to the custody of the department of corrections to serve the sentence you wish to challenge:

03-15-2024

5) Check whether a finding of guilty was made:

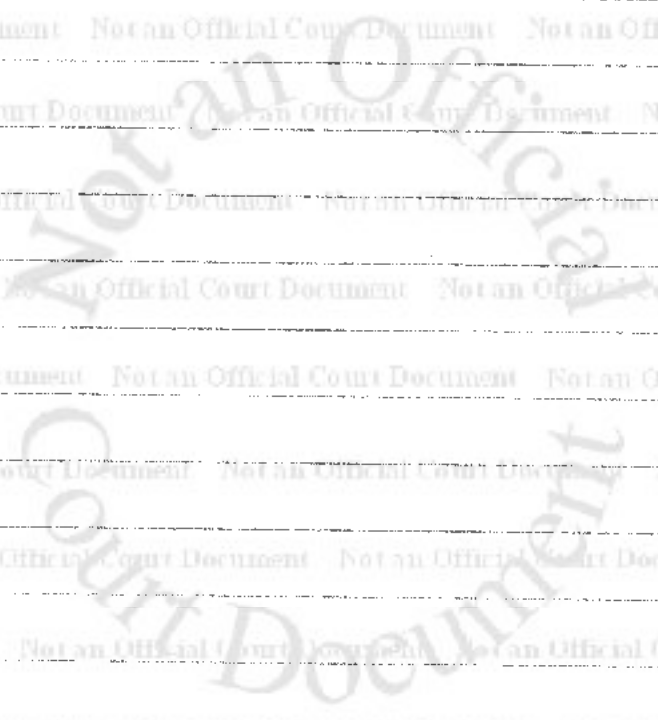
(A) after a plea of guilty: No

(B) after a plea of not guilty: Yes

(a) Did you appeal from the judgement of conviction:
No

→ if you answered 'yes' to (a), List:
Not Applicable N/A.

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8.) State concisely all claims known to you for vacating, setting aside or correcting your conviction and sentence:

(A) Prosecution Claims of error or prejudice

A - (1) Prosecution prejudiced Petitioner with out of court statements and claims made to the Press that were false; tampering Petitioner's jury pool; claims were made several years apart that victims cellphone was found at Petitioner's home when factually no phone was located, recovered, or offered in evidence.

A - (2) Prosecution team withheld and did not submit potential exculpatory evidence for dna testing to support States claim of guilt or to support States theory in trials closing arguments prejudicing petitioner with a Brady v Maryland violation

A - (3) Prosecution prejudiced Petitioner by failing to present or establish sufficient evidence to connect petitioner to the crime of murder: to a murder weapon to Petitioner.

A - (4) Prosecution failed to present sufficient evidence to establish a location a crime was committed in Missouri to justify jurisdiction to prosecute Petitioner

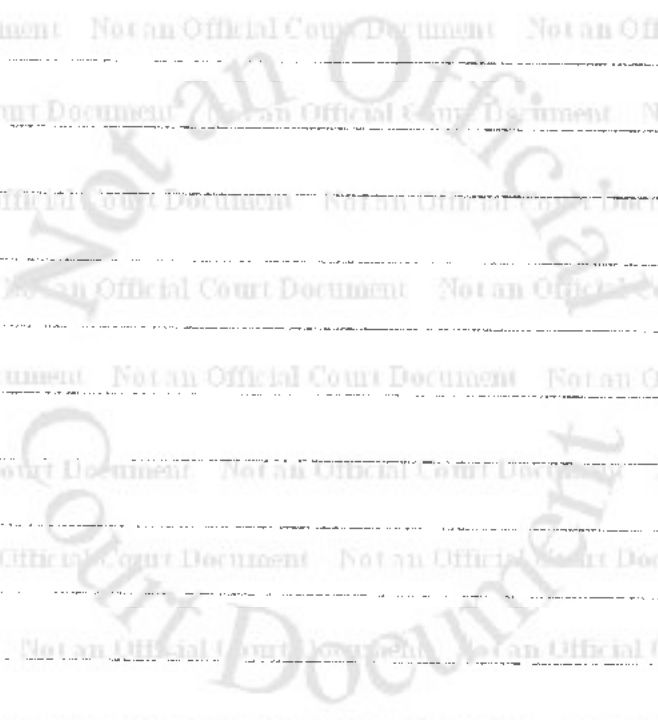
A ⑤ Prosecution knowingly presented false perjured testimony from States witness Megan Sellers to support false evidence and false inferences.

A ⑥ Prosecution prejudiced Petitioner by lying to the Court in the submission of there "Newly discovered" evidence of "CDR data" and "cellphone data" through "New Technology" not previously available to prosecution. was false and violated Petitioners Brady rights, Due Process, and allowing this late evidence over objection was an abuse of discretion or a miscarriage of justice.

A ⑦ Prosecution prejudiced Petitioner by submitting numerous lesser included offenses potentially confusing the jurors as to what Petitioner could have been actually guilty or not guilty of over complicating the deliberations of the trier of fact to guess as to what to consider rather than focusing on required elements and evidence creating a miscarriage of justice.

A ⑧ Prosecution prejudiced Petitioner by submitting improper Jury instruction with an inadmissible element not supported by the evidence or the Statute of Trafficking for the purpose of sexual exploitation.

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- A ⑨ Prosecution did not include or request jury instruction to support his claims of possible commission of a crime through law of parties to support his statement in closing arguments that "whomever killed the victim" since DNA evidence actually excluded Petitioner.
- A ⑩ Prosecution improperly argued in closing arguments of petitioner's consciousness of guilt was proved by the Petitioner's "lack of asking or concern of how the victim died was proof." These inflammatory statements in their wording suggest that the lack of a proof is evidence and thus did not present sufficient evidence to support this claim that petitioner had the requisite mental state to kill or have killed the victim.
- A ⑪ Petitioner challenges the Prosecutors comments and statements in closing arguments in the context of the whole record. Prosecutors improper closing arguments violated petitioner's due process rights by infecting the jurors with unfairness with inflammatory and outrageous statements not supported by evidence or offered in trial denying petitioner the right to a defense.

③ Ineffective Assistance of Counsel Claims (IAC)

- B ① Petitioner claims Counsel caused a conflict of interest with statements made out of court and off record violating Petitioner's right to a defense
- B ② Counsel Failed to deliver Petitioner a complete copy of Discovery or an opportunity to view the discovery contents requested by Petitioner numerous times resulting in Prosecution presenting evidence unknown to Petitioner violating Petitioner's right to a defense.
- B ③ Counsel Failed to conduct a reasonable investigation in Petitioner's case, failed to present persuasive defense evidence available, failed to rebut any of the false evidence and assumptions on which the state relied, and failed to present evidence corroborating Petitioner's statements made during his initial interview with police more specifically denying Petitioner a reasonable defense strategy.
- B ④ Counsel caused unreasonable delays violating petitioner's Fast and Speedy Trial Act rights and due process through inner office staffing issues causing multiple counsel reassignments and unnecessary extensions of Petitioner's trial date.

B ⑤ Counsel failed to present exculpatory evidence supporting Petitioner's innocence, other suspects, victims possible proof of life against Prosecution's theory; thus failing to exculpate Petitioner or inculpate another and had they done so Petitioner would not have been convicted.

B ⑥ Counsel failed to file for or call a Daubert hearing to qualify or disqualify or suppress states witnesses in regards to Prosecution's "New Discovered Electronic data evidence"

B ⑦ Counsel failed to acquire an expert to rebut states Electronic Data Evidence or to investigate the submitted evidence to offer a complete context of evidence offered.

B ⑧ Counsel failed to request DNA testing of suppressed evidence of victims fingerprints or call or question states Crime Scene Investigators as to why suppressed or context of non submission of testing of seized evidence.

B ⑨ Counsel failed to call DNA expert to offer testing results and exculpatory DNA evidence of exclusion and inclusion of others nor mentioning evidence to jury as a defence of innocence of the crime of Murder

B ⑩ Counsel Failed to Suppress or object to photos presented at trial that were not previously reviewed or discussed with Petitioner denying due process and his right to a defense to rebut with witnesses and present complete context.

B ⑪ Counsel abandoned Petitioner by Failing to work with Petitioner by calling witnesses, or experts Petitioner submitted; Several individuals whom could have testified for Petitioner's defense, rebut states evidence, support a defense of innocence. Had counsel done so would have resulted in that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt.

B ⑫ Counsel Failed to move to disqualify Megan Sellers as a witness based on perjured testimony and/or Failing to object to states witness during trial as Prosecution led witness before impeaching witness on cross-examination.

B ⑬ Counsel Failed to recall Trooper Stewart and call Barbara Merritt as both rebuttal witnesses to Megan Sellers perjured testimony.

B (14) Counsel Failed to have or move to have 2 jurors struck for cause before and after the judge made aware of 1 jurors possible connection or relation to the judge and 1 jurors connection to the County Court system or offices.

B (15) Counsel failed to present the jury with complete context of statements, and evidence during trial.

B (16) Counsel Failed to object to Prosecutions excessive requests for Jury instructions of:
1st degree murder with Armed Criminal action
2nd degree murder with Armed Criminal action
Voluntary Manslaughter with Armed Criminal action
Involuntary 1st manslaughter with Armed Criminal action
Involuntary 2nd manslaughter with Armed Criminal action
Tampering with physical Evidence
Trafficking for Purpose of Sexual Exploitation
potentially swamping the jury with instructions taking jurors focus off of evidence presented and turning deliberation into focus of speculation and guesswork rather than deciding on elements to be decided affecting the conviction to be made on emotion -

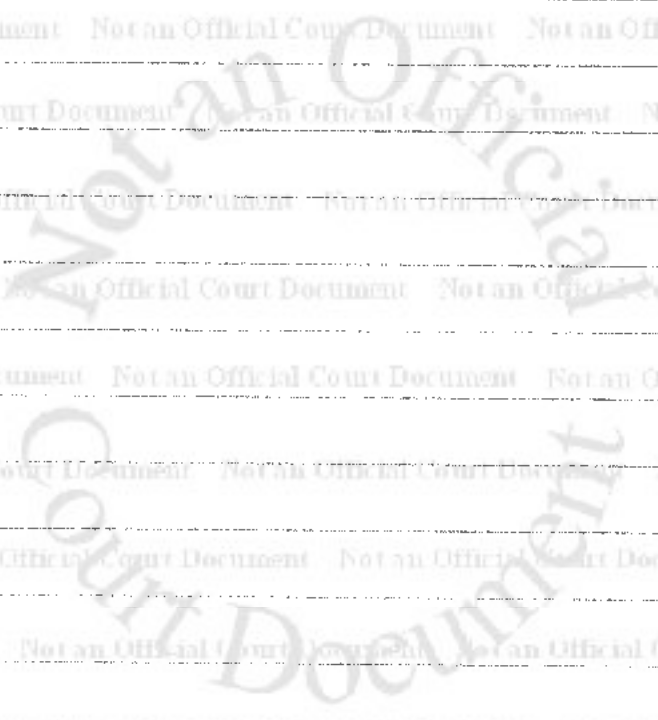
B (17) Counsel failed to object or request a mistrial or request curative instructions when the State declared during closing arguments statements and comments not supported by evidence or inferences from evidence during trial of Petitioner's guilt, murder weapon used, and others culpability with petitioner.

B (18) Petitioner claims in that if it were not for Counsel's errors; left the method of a reasonable jury in doubt about Petitioner being the true murderer. Counsel was deficient as to what was known and available to petitioner, Counsel deprived Petitioner of a reasonable defense through ignorance, inadvertance or more reasonably by choice.

C Trial Court Error Claims

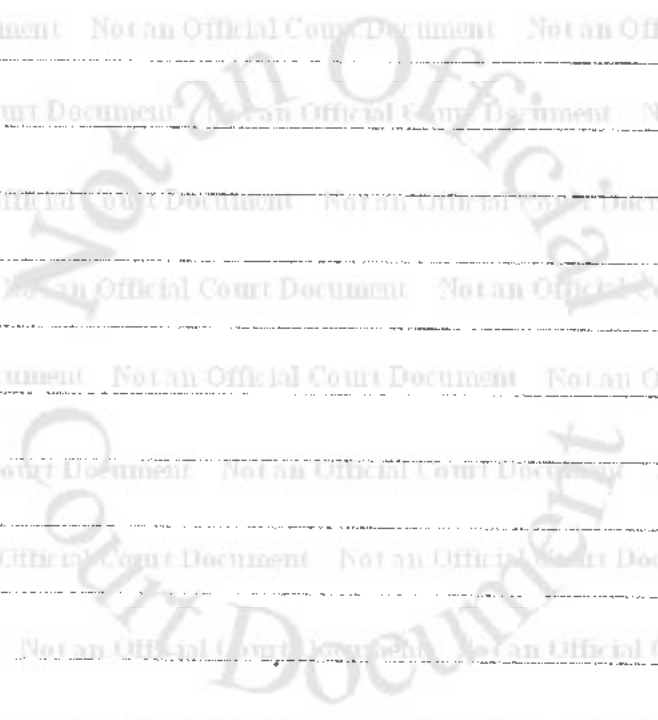
- C ① Trial Court erred by allowing a joinder of 2 cases 20NM-CR00346 and 20NM-CR00348 over objections.
- C ② Trial Court erred by failing to dismiss Trafficking For purpose of Sexual exploitation based on the statute and motions to dismiss from Defense Counsel.
- C ③ Trial Court erred by failing to dismiss charges based on lack of jurisdiction before and during trial. Judge took under advisement to later rule at trial.
- C ④ Trial Court erred by violating Petitioners fast and speedy trial act rights for unnecessary extensions.
- C ⑤ Trial court erred by not recusing after Petitioner filed motion for New judge after confirming with counsel and counsel confirmed with the trial court his right for a change of judge as the judge was Petitioners Lower court judge from the previous venue that had already been changed from.
- C ⑥ Trial Court erred by not granting Petitioners Motion for New Counsel or an evidentiary hearing to determine the validity of Petitioners motion.

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- C ⑦ Trial Court erred by denying Petitioners request and motion for Sumo note taking per rule 27.01
- C ⑧ Trial Court prejudiced Petitioner by allowing Prosecution to enter late evidence over objections and motions to exclude/suppress with supporting caselaw or requiring a Daubert hearing or requiring Prosecution to have an expert to allow in evidence of electronic data and Cell Data Records - CDR
- C ⑨ Trial Court erred by denying Defense Counsel's Motion in Limine to exclude CDR and Electronic data.
- C ⑩ Trial Court erred by Failing to strike 2 jurors for cause or without when by the judges omission 1 juror may have been indirectly or directly connected to the judge and 1 juror may have been connected to the county by employment.
- C ⑪ Trial Court erred by allowing excessive amounts of Lesser included offense to be submitted and allowed from Prosecution to the effect to weigh down the jurors ability to determine a decision based on evidence rather than speculation as to what offense fit there emotions.

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- C (12) Trial Court erred in failing to declare a mistrial or acquit Petitioner at the close of States evidence, ~~as~~ State failed to present sufficient evidence to support a conviction for Offenses charged as States argument only raised suspicion or mere probability that also applied to other persons of interest in the same case.
- C (13) Trial Court erred in failing to declare a mistrial or give curative instructions when State declared in closing prejudicial and inflammatory claims and arguments not supported by the evidence presented in trial.
- C (14) Trial Court erred in improperly answering jury question during deliberation when the jury requested the timeline prosecution used in there demonstration and did not clarify that the timeline Prosecution used was not evidence or at minimum was Prosecution's theory and prejudiced Petitioner by allowing Jury to believe the Prosecution's timeline was fact instead of theory. The Courts answer was to the affect "you must remember the facts to the best of your ability" was prejudicial not probative

C (15) Trial Court erred by not granting Petitioner a Mistrial or Acquittal at the end of closing Arguments for insufficient evidence.

C (16) Trial Court erred by not granting Petitioner a Mistrial or Acquittal when Jury returned a verdict of guilty for insufficient evidence.

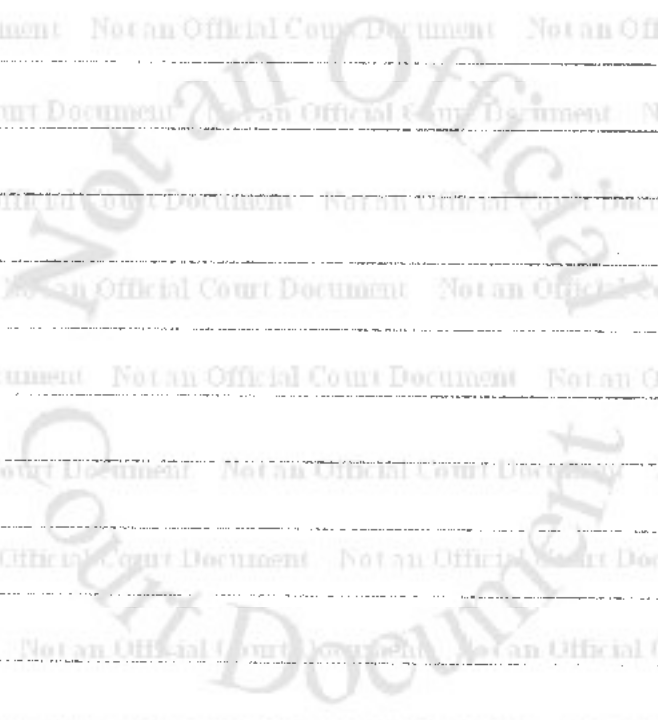
C (17) Trial Court erred by requesting a Pre Sentence Report to influence Formal sentencing when Petitioner exercised his right to jury sentencing.

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① New Evidence - Gateway to Innocence - Innocence Claims

D. ① Petitioner claims to establish this Cause and Prejudice this claim presented could have been discovered through the exercise of due diligence and by Prosecution and Defense Counsel Failing to discover could be Attorney's ignorance or inadvertence, rather than a deliberate tactical decision, Not using evidence prejudiced Petitioner as evidence would have supported a competent defense of innocence or established Petitioner's Innocence of the charges; thus creating a reasonable probability that, but for counsel's errors, the result of the trial would have been different. Petitioner showed no unwillingness to work with counsel and can prove quite the opposite that counsel refused to develop a defense based on available evidence to Counsel.

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9) State concisely and in the same order the Facts supporting each of the Claims set out in ⑧, and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove such facts:

A) Prosecution Claims of error or prejudice

A - ① KFVS 12 article 2020

Standard Democrat Articles 2024

KFVS 12 Broadcasts

Fact Prosecution statements that Victims phone was found in Petitioners home among other false statements

A - ② Victims Fingernails not submitted for DNA Testing

- DNA results excluded Petitioner

- Evidence list of Petitioners home including hammer was not submitted for testing to support Prosecution theory

- Evidence list from 303 7 boston st. Merchants MO 63801 to include hammers seized.

- Pathologist + Marisa Feeley who gave Fingernails to

- Officer Daniel Glover who did not submit for testing

- DNA tester Suzanne Kid who created report with 7 profiles that excluded Petitioner

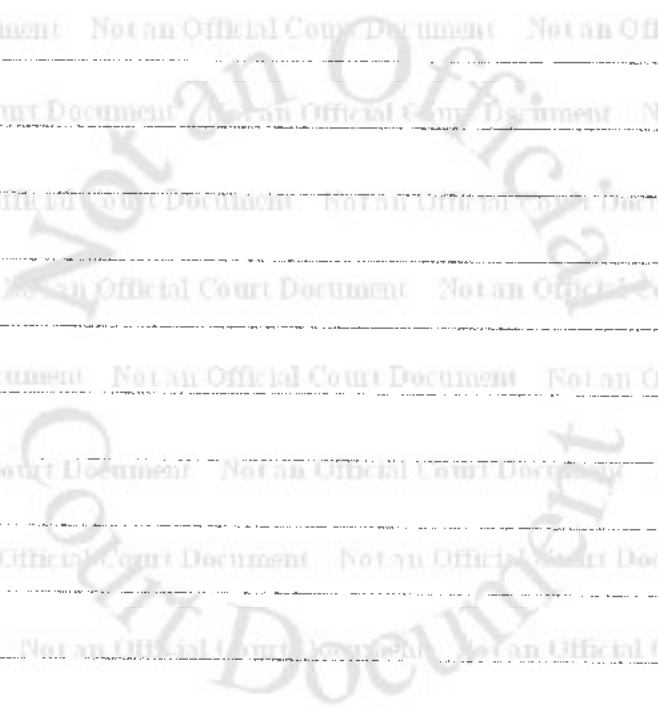
- Officer Chris Hamlin who seized hammers as evidence

A- ③ Directly Connected to A2. - No weapon identified
- The Trial record + No Supporting ETOD on record.

A- ④ The victim was found in Illinois.
No Crime scene indicated in Missouri
No proof or sufficient evidence to support a murder in Missouri happened.
- Officer Chris Hamlin
- Officer Steven Melcher
- Missouri statute for Jurisdiction
- The CDR data presented only supported that cell towers were connected to Petitioners phone not by itself proof of Petitioner exact location and can only infer technology connection not the crime of Murder.

A- ⑤ Megan Sellers was interviewed by police 4x and deposed each time giving inconsistent, wrong, irrelevant answers that on her last interview was implicated by Curtis Laiter as being allegedly accessory to murder as Curtis Laiter was in custody sentenced to 15 yrs for guns and drugs. Laiter was Sellers current girlfriend and was looking for leniency. Prosecution knowingly allowed perjured testimony. Defense impeached Sellers.
- Curtis Laiter
- Megan Sellers
- Trial Transcripts
- Sellers previous interviews
- Officer Chris Hamlin

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A- ⑥ Technology used by prosecution has been available since before 2020 in Missouri. Evidence of any electronic data was requested through motions multiple times before first trial setting. Prosecution lied to the judge at an Oct 2023 Pre trial hearing to justify admitting late evidence specifically to justify its admissibility through adopt witness to prejudice Petitioner by getting the court to not require an expert as 4 years had almost elapsed from acquiring the cellphone.

- Prosecutor Andrew Lawson
- Trial Court Record of October Proceeding
- Pro Se motions For Discovery
- Motions to suppress or exclude
- Motion in Limine.
- Officer Matt Foster to verify technology availability

A - ⑦ Trial court record

- Submitted offenses

A- ⑧ Improper element on Jury instruction For Trafficking for purpose of sexual exploitation

- Statute For offense
- Motions to dismiss
- Trial Records and arguments.

A- (9) Trial Transcript of Prosecution and Defense Closing -
Specifically Prosecution claim supported the innocence of Petitioner
- Trial Transcript.

A- (10) Trial Transcript of statements made by Prosecution
- Jury instructions of charges
- Statute of offenses and there elements

A- (11) the record as a whole against the Prosecutions claims

(B) Ineffective Assistance of Counsel Claims -

B- (1) During a Counsel meeting Kayla McKenzie stated that Defense expense of \$6,000.00 for 1 expert was all that would be spent in Petitioners case and that Defense was not going down any rabbit holes to investigate as they had invested enough time in Petitioners case. Petitioner showed eagerness to assist or contribute in his own defense through calls, letters, having family call, family attempt to meet in person with counsel. Counsel refused to cooperate investigate or use assistance or information given from Petitioner. Refused to acquire expert independent reviews of pathology notes, Electronic expert even after telling Petitioner they were approved for funding such.
- Roy Leasure
- Kayla McKenzie

B-② Trial record shows multiple formal and informal request for discovery. Defense not one time allowed Petitioner an opportunity to see requested video or photos. Petitioner told counsel that if shown a video in discovery Petitioner would accept Prosecutions offer only if the video proved the narrative given Petitioner in an attempt to access discovery at least 1 time before trial and counsel on the date Petitioner asked that there server online was having connection issues and would make it happen. It did not happen. Prosecution Presented Pictures not known to Petitioner at trial. Defense investigator admitted after trial he had not seen photos before trial.

The defense investigator is the handler of discovery.

- Roy Leasure
- Motion For New Counsel
- Kayla McKenzie
- trial record.
- Justin Arntson
- Recording of conversation

B-③ Factor in B2 with Multiple Counsel changes and Defense refused to deliver discovery Petitioner did not know what was being used against him and was blindsided at trial with no opportunity to defend and submission to request witnesses that were negated. Request for questions to be submitted refused.

- Defense Counsel
- Record as a whole

B-④ Change of counsel and multiple reassignments.
unnecessary delays and continuances on record
Trial extensions and resettings - unjustified with
defense counsel strategy of not presenting a defense
against Petitioner's request.
- record as a whole

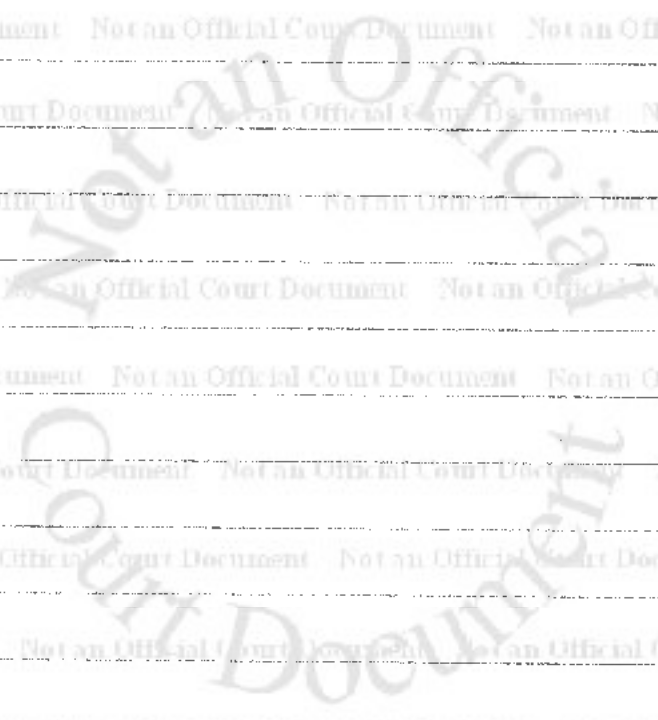
B-⑤ Exculpatory DNA results + inculpatory DNA of others (profiles)
- Venmo transaction records of Jan 2020 - Mar 2020
of Victim and leads not followed Bomic Alwerdt, Shina Koller,
Kyle Peters.
- Mike Rigg
- Billie Gladwell
- DNA analyst Suzanne Kidd

B-⑥ record of Oct 2023 Pretrial hearing where defense
advised the court they would call for a Daubert hearing
- Trial record showing defense did not request one after
Petitioner repeatedly requested they do so
- Motions to exclude, suppress evidence

B-⑦ trial record as a whole of counsels ineffective assistance
and Pro Se motions. Petitioner located expert as Counsel failed to
require one and they refused.
- Kaylan McKenzie

B-⑧ Trial Record
- Suzanne Kidd - Steven Melcher
- Daniel Glover

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B9 - DNA analyst Suzanne Kid

- Kayla McKenzie
- trial record.

B-10 trial record

- recorded conversation
- Roy Leasure
- Kayla McKenzie
- Barbara Merritt

B-11 Witness list subpoena request motion

- Trial record
- Kayla McKenzie

B-12 Megan Sellers previous recorded interviews

- Curtis Laiters Statement
- Supporting information given to counsel by Petitioner to assist in Sellers deposition
- Kayla McKenzie
- Justin Arntsen

B-13 Barbara Merritt

- Trooper Shane Stewart
- Officer Chris Hamlin

B-14 Trial Transcript of Judges acknowledgement.

- Kayla McKenzie
- Juror #
- Juror #

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B - ⑮ Record as a whole

- Petitioners recorded interview
- Supporting evidence not presented Facebook messages
- Thomas McQuade

B - ⑯ The record as a whole

- The submitted offenses and instructions
- Trial Transcripts

B - ⑰ The record as a whole

The trial transcript

B - ⑱ The record as a whole

- All submitted claims of Ineffective assistance of Counsel
- Trial Transcript

C - Trial Court error Claims

C - ① - Trial record

- Pre trial argument

C - ② - Pre trial motions

- Argument hearing
- Statute

C - ③ - Pretrial motions

- Argument hearing
- Statute

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C- (4) - Case Record

- Pro Se Motions

C- (5) - Record as a whole

- Pro Se Motions

C- (6) - Record as a whole

- Pro Se Motion

C- (7) - Court Record

- Pro Se Motions

C- (8) - October 2023 hearing record

- Defense Motions

- Pro Se Motions

- Motion Limine

C- (9) - Pre-trial Motions

C- (10) - Trial transcript

- Trial record

- Juror #

- Juror #

C- (11) - Record as a whole

- Trial Transcript

- Submitted Jury instructions

C- (12) The Record as a whole
Motions by defense

C- (13) The Record as a whole
Trial Transcripts
Supporting caselaw

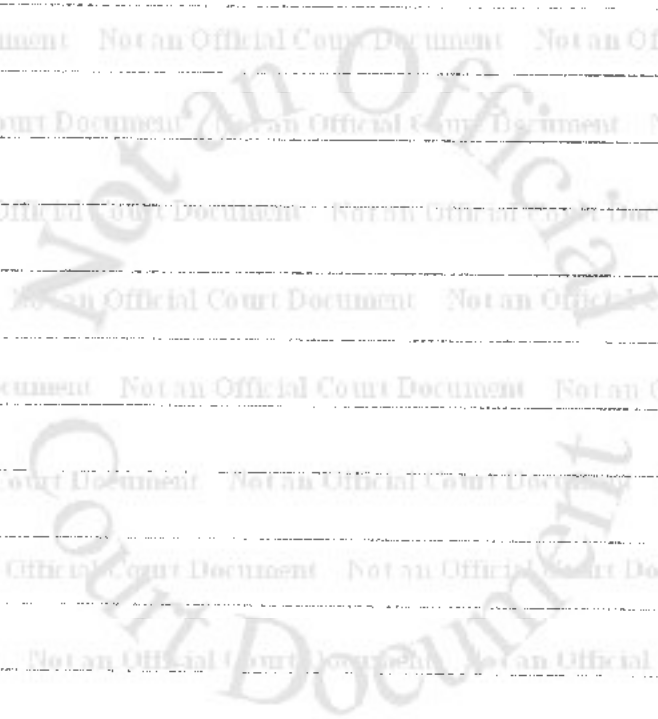
C- (14) The Trial record
- Courts submitted evidence
- Trial transcript
- Courts submitted answers

C- (15) The record as a whole

C- (16) The record as a whole

C- (17) The record as a whole

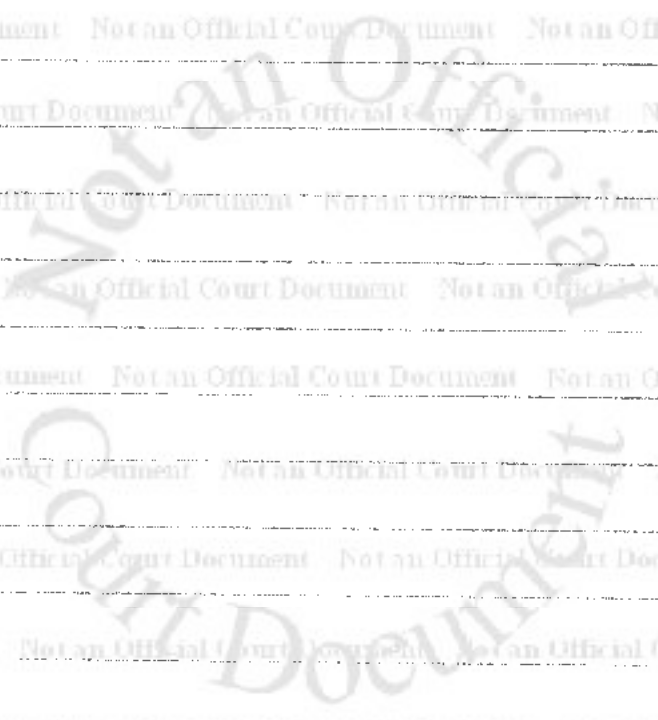
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⑤ New Evidence - Gateway to Innocence Innocence Claim

- DD) Corroborating evidence to Petitioner Police interview
- In evidence available to Prosecution and defense
 - Facebook messaging confirming sale of 2 mattresses private sale with photos
 - Thomas Mcquade confirms ownership of burnt mattress after Prosecution theory of January 25 2020 disproves Prosecution of victim murdered on.
 - Billy Gladwell - Victim proof of life in February 2020 I'd potential suspect with police
 - Mike Rigg - Victim proof of life in Feb-March 2020
 - Codie Mcue - I'd potential suspects Lead ignored
 - Suzanne Kid - IL State DNA expert that excluded petitioner found 7 DNA profiles, 1 positive victim match 6 DNA profiles identified to unknown individuals
 - Venmo money Account of Victim with activity of Bernie Alvarez - Jan 25 2020 - Lead not followed
 - Shianna Maltez } Week before Victim Found
 - Kyle Peter } 3 different accounts receiving money
 - Unknown } From victims account
- Police interviewed Maltez and no mention of receiving money - No Police Follow up / Case Lead Officer Steven Melcher stated Leads deemed not important
- Robin + Billy Nix - prior owners of 608 Marshall to testify of burn barrel contents and barrels timeline of use.

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10) Prior to this motion have you filed with respect to this conviction:

(A) Any motion to vacate judgment under Missouri Supreme Court Rules 24.035, 27.26 or 28.15?

NO

(B) Any petitions in state or federal courts for habeas corpus?

NO

(C) Any petitions in the United States Supreme Court for certiorari? NO

(D) any other petitions, motions or applications in this or any other court? NO

11) If you answered 'yes' to any part of (C), list with respect to each petition, motion or application: N/A - Not Applicable

12) Has any Claim set forth in (8) been previously presented to this or any other court, State or Federal, in any petition, motion or application that you have filed? Yes in pre-trial proceedings

13) If you answered 'yes' to (12), identify the claims that have been previously presented:

A. Prosecution claims

#6 - pre trial - motions to suppress and motions in limine

#2 - Pre-trial - Pro-se motions for disclosure numerous motions shown through the record.

B. Ineffective Assistance of Counsel claims

#1 - pretrial motion for New Counsel

#2 - pre trial numerous motions requesting discovery

#4 - Pre trial motions for fast and speedy trial

#5 - Pre trial motion for New Counsel

#11 - Pre trial motions for subpoenas and motion for New Counsel

#17 - Pretrial motions to Dismiss for lack of Jurisdiction

#18 - Pretrial motions for New Counsel

C. Trial Court claims

#1 Pre-trial hearing objections to states request

#2 Pre-trial motions and argument hearing

#3 Pretrial motions and trial

#4 Pre trial motions

#5 Pre trial motion

#6 Pre trial motion

#7 Pre trial motion

#8 Pre trial motion and motion in limine and hearing

#9 Pre trial hearing

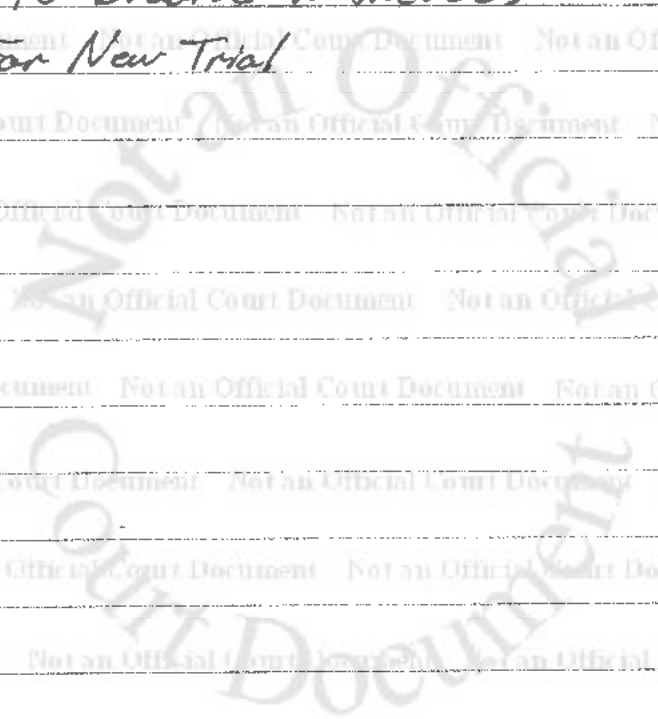
#13 Motion in trial

D. New Evidence Claim

#1 - Motion For New Counsel

Motion to Endorse Witnesses

Motion For New Trial



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14) If you have filed prior proceedings in any state or federal court involving this same proceeding sentence but did not raise therein one or more of the claims you now list in (8), state which were not raised in the earlier proceedings and why they were not raised in those proceedings: NA - Not Applicable

15) Were you represented by an attorney at any time during the course of:

(A) your preliminary hearing? Yes

(B) your arraignment and plea? Yes

(C) your trial? Yes

(D) your sentencing? Yes

(E) your appeal, if any, from the judgement of conviction or the imposition of sentence? NO

(F) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

16) If you answered 'yes' to one or more parts of (15), list:

(A) the name and address of each attorney who represented you:

- i. - John Grobmyer - Missouri State Public Defenders Area 34
- ii. - Timothy Houck - 48 East State Hwy 162
- iii. - Kayla McKenzie - Portageville MO 63873
- iiii. - Justin Arntsen

(B) The proceedings at which each such attorney represented you:

- i. - Assigned, removed, re-entered - appeared at no proceedings
- ii. - Entered, Preliminary, arraignment, removed
- iii. - Entered, Preliminary, arraignment, pre-trial, trial, Sentencing
- iiii. - Entered, trial, sentencing

17) Are you now under Sentence From any other court that you have not challenged? NO

18) If you are seeking leave to proceed in Forma pauperis, have you completed the sworn affidavit setting forth the required information? Yes

Signature of Movant

James Andrew Merritt

James Andrew Merritt

I, James Andrew Merritt, Movant in this case, state that I have subscribed to the foregoing petition; that I know the contents thereof; that the above information is, to the best of my knowledge, true and correct; that I have listed every claim known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that I understand that I waive any claim for relief known to me that I have not listed in this motion.

