

**IN THE MISSOURI COURT OF APPEALS,
WESTERN DISTRICT**

**STATE OF MISSOURI, *ex rel.* RYAN
FERGUSON,**

Petitioner,

v.

**DAVE DORMIRE, Superintendent,
Jefferson City Correctional Center,**

Respondent.

Case No. WD 76058

**PETITIONER’S REPLY TO ATTORNEY GENERAL’S SUGGESTIONS IN
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

On February 11, 2013, this Court issued an order permitting the Attorney General (“Respondent”) to file Suggestions in Opposition to the granting of the relief sought by Ryan Ferguson (“Petitioner”) in his Petition for Writ of Habeas Corpus. This Court specifically asked Respondent to address: (1) how the Court is to review the Hon. Daniel R. Green’s prior ruling, (2) how the Court should treat evidence regarding Mr. Boyd, and (3) (a) how the allegations of perjury at the trial *in general* and (b) how Judge Green’s finding *in particular* that Mr. Trump lied during Petitioner’s trial impact Petitioner’s claim to a gateway of innocence.

Respondent has interpreted this Court’s order as an invitation to advocate for a complete overhaul of Missouri habeas corpus jurisprudence. Rather than being concerned about a conviction that is based solely on perjured testimony, Respondent characterizes Petitioner’s efforts to prove his innocence and the unfairness of his trial as

“a waste of judicial resources.” (Sug. Op., p.3). What possible expenditure of judicial resources could be more justifiable than rectifying a wrongful conviction? The goal of the judicial system is not to conserve resources but to ensure that innocent people are not incarcerated, no matter what the cost. Besides, the cost of incarcerating an innocent man is incalculable in terms of human suffering and damage to the judicial system.¹

Respondent chooses to “slay the messenger” by blaming Petitioner’s attorneys for the recantations. Respondent claims that “Mr. Erickson had absolutely no fear of perjury charges” because prior to the appellate oral argument in August of 2010, Charles Erickson (“Erickson”) was represented by Petitioner’s counsel who promised Erickson she would obtain his freedom in exchange for his recantation. (Sug. Op., pp. 2-3). To support this false contention, Respondent has misconstrued the timeline of Petitioner’s counsel’s representation of Erickson. Petitioner’s counsel began representing Erickson in March 2010 *after* Erickson gave his videotaped recantation on November 22, 2009 and *after* Petitioner had filed his Motion to Remand with this Court on February 5, 2010 with the November 22, 2009 videotape attached. (Pet. Exh. 34j2).

As this Court is well-aware, Petitioner’s counsel had absolutely no contact with

¹ “When guilty men escape, the law has merely failed. When an innocent man is condemned, it creates the very evil it was to cure, and destroys the security it was made to preserve.” Sir Samuel Romilly, *Observations on the Criminal Law as It Relates to Capital Punishments, and on the Mode in Which It Is Administered*, in THE SPEECHES OF SIR SAMUEL ROMILLY IN THE HOUSE OF COMMONS 166 (1820)).

Erickson prior to his November 22, 2009 videotaped recantation. When Erickson gave his videotaped statement he read his own handwritten statement prepared on November 20, 2009 in his prison cell. (Pet. Exh. 34j2, p. 6). It would have been impossible for Petitioner's counsel to have warned Erickson "of the risk of perjury" (Sug. Op., p. 3) when she had never met him and had no idea he was preparing a written recantation of his trial testimony.

Respondent's disingenuous argument is completely refuted by Respondent's own interview of Erickson's mother, Marianne Erickson, on March 6, 2012:

Q. Does he think this is going to help him out?

A. No, he does not.

Q. He's never told you that? That he thinks this is going to help him. If he helps Ryan, this will help him.

A. No, I think, that he expects that if -- if Ryan is given a new trial that he'll be involved in that trial to give testimony and then he has many question marks about -- you know, what will happen in his own case and he has had no -- he has no idea how much longer he may spend in prison. What he told me that November was, **I'm prepared to spend the rest of my life in prison** because I -- I told a lie. A very bad lie and this man is in prison, you know, for 40 years because of what I said. And I'm a man -- I've become a man in prison and I -- I'm going to --

Q. Well, since November of 2009 has he made any statements to you that he believes he will benefit from changing his story?

A. No.

Q. Has he been told, to your knowledge, by anyone that if he changes his story or based on this helping Ryan Ferguson out that he will benefit?

A. No. (Pet. Exh. 140, pp. 61-62)²

In Respondent's interview, Marianne Erickson sheds more light on Erickson's recantation

² Petitioner submits Respondent's transcribed interview of Marianne Erickson, dated March 6, 2012, as Petitioner's Exhibit 140, and files a copy of that exhibit along with this Reply.

and the reasons he pled guilty in 2004:

Q. Did he tell you why he was doing it?

A. Yes, he did.

Q. What'd he tell you?

A. Said he wanted to set the record straight. **That he was prepared to spend his life in prison.** That he -- he just made some assumptions from the evidence that he had at the time of his arrest. And, you know, had to claim -- he was -- he was afraid because at the time in 2005 -- 2004 the death penalty still existed for 17 year olds and he -- he lied he said because the prosecutors had told him that Ryan was going to turn state's evidence on him. And so he lied about what Ryan did because he thought he would save his own self from the death penalty by saying that Ryan had done everything. (Pet. Exh. 140, p. 53).³

Tellingly, Respondent did not move to admit this interview transcript into evidence. Respondent also misrepresents that Petitioner's counsel, in a *48 Hours* broadcast, claimed she would obtain Erickson's release after Petitioner had been freed. (Sug. Op., p. 3). What Petitioner's counsel actually stated, when asked if she would fight for Erickson after she was finished fighting for Petitioner, was as follows: "I will, yeah. Because one case cannot survive without the other. And when one goes down, the other one's going to go down." Judge Crane agreed at the habeas hearing that Erickson and

³ Marianne Erickson also confirmed that there were "big problems" with Erickson's story at the time of his arrest. (Pet. Exh. 140, p. 49). She further confirmed that Erickson told her prior to 2009 that he had blacked out on the night of the murder. (Pet. Exh. 140, pp. 59-60). And she stated that testing in 2001 revealed that Erickson had memory deficiencies. (Pet. Exh., p. 19). Finally, Marianne Erickson stated that it is "certainly not" the case that any of Erickson's prison "altercations" were related to his guilty plea or testimony in this case. (Pet. Exh. 140, p. 64).

Petitioner were either both guilty or both innocent. (HH Crane 616-18). In the *48 Hours* interview Petitioner's counsel never once stated that she would obtain Erickson's release.

During Erickson's representation, Petitioner's counsel provided him with statements of Megan Arthur ("Arthur"), Kim Bennett ("Bennett"), Dallas Mallory ("Mallory"), Richard Walker ("Walker"), and Jerry Trump ("Trump"), which refuted the police reports given to Erickson prior to his plea in November, 2004. Erickson was unaware of the existence of these witness statements. After studying these witness statements Erickson concluded that his decision to enter a guilty plea was based upon false information. (Pet. Exh. 34a).⁴

Respondent ignores the fact that Petitioner's counsel ceased to represent Erickson in April of 2011, a full year before Erickson's testimony at the habeas hearing. Facts do not cease to exist simply because they are ignored. Attorney John O'Connor ("O'Connor") volunteered to represent Erickson pro bono, as had Petitioner's counsel. On August 29, 2011, O'Connor disclosed, to both sides, Erickson's most comprehensive affidavit detailing his false trial testimony. (Pet. Exh. 34a). O'Connor continued to

⁴ Petitioner's counsel obtained a written waiver from Erickson before assuming his representation. Counsel prepared three affidavits (dated October 21, 2010, November 23, 2010, and February 9, 2010) for Erickson pursuant to his directions. (Pet. Exh. 34b-d). Erickson modified his affidavits as he reviewed more documents. None of these affidavits were as explicit about his false trial testimony as his last affidavit prepared when he was represented by O'Connor.

represent Erickson at the habeas deposition and hearing where Erickson admitted perjury under oath and in open court. Erickson had the option of taking the Fifth Amendment to protect himself from perjury charges, but chose not to do so, presumably after consultation with O'Connor. Erickson testified that he knew his plea deal might be revoked because he had committed perjury at Petitioner's trial. (HH Erickson 335-36).

Erickson's habeas recantation details the same blank memory about the crime he described to the police upon his arrest on March 10, 2004. In a seemingly endless effort to frustrate justice, Respondent argues that it was only "much later" after Erickson's initial sworn admission of perjury on November 9, 2009, that he would "parrot" what Petitioner wanted him to say about his memory loss. (Sug. Op., p. 4). This representation to the Court is false. Erickson's descriptions of intoxication, drug use and a blank memory of the crime are preserved in his 2004 interrogation tapes and interviews. Detectives Short and Nichols provided him with all of the key details of the crime and he memorized the police reports for his testimony at Petitioner's trial. (*See* Petition, pp. 39-40, 45-46, and 49-51).

Respondent likewise never addresses the admissions from its own brief, filed on direct appeal, that Erickson may have had a blackout and simply could not remember the events of November 1, 2001. Respondent's brief stated, "Indeed, there was substantial evidence of Erickson's intoxication at the time of the murder, and the jury might have reasonably believed that Erickson had experienced what is commonly known as an alcohol-induced 'blackout,' and that Erickson simply does not recall his actions." (Pet. Exh. 120, p. 62). Respondent's claim that Petitioner's counsel suggested the "memory

stuff” to Erickson years later is flatly contradicted by his 2004 interviews with the police. Petitioner's counsel was hundreds of miles away during Erickson’s interrogation and had no awareness of him, his memory problems, or the Heitholt murder.

The fact that Erickson’s story evolved from having no memory of the critical details of the crime to providing all of those details at Petitioner’s trial should have been a red flag that Erickson’s trial testimony was a complete fabrication, just as he confirmed in the 2012 habeas hearing. From his arrest in 2004 Erickson’s story evolved from knowing nothing about the murder, except what he read in newspaper stories, to recovering memories which exactly mirrored the police reports he was provided. Erickson was able to parrot those details in his 2005 testimony. Nonetheless, Erickson’s trial testimony was filled with errors and inconsistencies. Respondent conceded, in its appellate brief on the direct appeal, that Erickson was repeatedly impeached at trial, citing seventeen examples. (Pet. Exh. 119, pp. 53-55).

Respondent argues that this Court has already ruled on Petitioner’s claim that the prosecutor knew or should have known that he used perjured testimony at trial in Petitioner’s Rule 29.15 appeal. (Sug. Op., pp. 4-5). This Court found that Petitioner alleged in “conclusory fashion” that the State used Erickson’s testimony knowing it was perjured and upon that basis denied relief. *State v. Ferguson*, 325 S.W.3d 400, 407 (Mo. App. W.D. 2010). Of course, that ruling was handed down before Trump testified at the habeas hearing that he lied when he identified Petitioner at trial, and that the newspaper story was a fabrication engineered by the prosecuting attorney. It would have been impossible to raise the Trump recantation before it had occurred.

I. HOW THIS COURT IS TO REVIEW JUDGE GREEN'S RULING

Rather than address the specific question posed by this Court, Respondent asks this Court to adopt and follow the federal rules governing habeas petitions to impose an additional burden on Petitioner to show "cause" for further review, and claims Petitioner should have filed an application for writ of certiorari with this Court (albeit without any citation to supporting controlling authority).⁵ (Sug. Op., p. 11).

Respondent contends that this Court "should not accept this petition because there are no new claims." (Sug. Op., pp. 5-7). Respondent further argues that this Court's review is limited to determining whether the habeas court exceeded the bounds of its jurisdiction by way of a petition for writ of certiorari. (Sug. Op., p. 8). Respondent seems unaware of current Missouri law regarding the standard of review on writ of certiorari, which requires the higher court "to review whether the habeas court exceeded its authority or abused its discretion, and *not* whether it exceeded its 'jurisdiction.'" *State ex rel. Koster v. Green*, 388 S.W.3d 603, 606 n.6 (Mo. App. W.D. 2012) (emphasis added).

The standard of review on writ of certiorari is irrelevant, however, because Respondent's argument incorrectly applies Missouri law. "The proper procedure following the denial of a petition for a writ of habeas corpus is to file a new petition in the appellate court." *Weir v. State*, 301 S.W.3d 136, 139 (Mo.App.W.D. 2010), citing

⁵ Respondent's efforts in its Suggestions in Opposition to promote a complete overhaul of Missouri's habeas law can more properly be classified as a "waste of judicial resources."

Blackmon v. Mo. Bd. of Prob. & Parole, 97 S.W.3d 458 (Mo. banc 2003); *see also Bromwell v. Nixon*, 361 S.W.3d 393, 396 (Mo. banc. 2012) (“The dismissal of a petition for a writ of habeas corpus can only be pursued by petitioning a superior court for such a writ, not by appeal.” (emphasis added)).

Respondent’s claim that a petitioner must present an appellate court with “new claims” or “at least new reliable evidence to support a claim that has already been addressed” before a higher court may accept a habeas petition also directly conflicts with Missouri Supreme Court Rules. (Sug. Op., p. 10). Rule 91.02 states that “the petition in the first instance shall be to a circuit or associate circuit judge for the county in which the person is held in custody if at the time of the petition such judge is in the county, unless good cause is shown for filing the petition in a higher court.” By rule, any “new claims” have to be filed in a petition with the circuit court, unless there was good cause to file such a petition with a higher court.

Respondent relies on inapplicable federal habeas law in an effort to prevent this Court’s review of Petitioner’s petition. Respondent notes that federal statutes and rules proscribe successive petitions if the successive petition does not allege new or different grounds for relief. (Sug. Op., pp. 11-12). Respondent’s argument fails because Missouri habeas jurisprudence differs significantly from federal law.⁶ In Missouri there is no

⁶ Respondent concedes that “federal procedural rules and statutes are not binding on how Missouri processes successive habeas petitions” yet seeks to have this Court follow federal law where it conflicts with Missouri habeas jurisprudence. (Sug. Op., pp. 11-12).

procedural bar to successive habeas corpus petitions. *State ex rel. Nixon v. Jaynes*, 63 S.W.3d 210, 217 (Mo. banc 2001). Moreover, while the federal scheme allows for appeal from the denial of a habeas petition (28 U.S.C. §2253(a)), in Missouri a petitioner must file an original application for habeas relief with a higher court once the lower court has denied his petition. *Weir*, 301 S.W.3d at 139.

That Respondent's position is completely contrary to Missouri law is clearly illustrated by other cases where habeas relief was granted by a higher court despite the circuit court rejecting the claim *after* an evidentiary hearing. *For e.g.*, *State ex rel. Engel v. Dormire*, 304 S.W.3d 120 (Mo. banc 2010); *State ex rel. Griffin v. Denney*, 347 S.W.3d 73 (Mo. banc 2011). Under Respondent's proposal that relief would have been denied, because the petitioners would not have been able to file an original application for habeas relief with the higher court. This clearly is not the law.

In regard to the circuit court's findings, Respondent wrongly asserts that Petitioner has conceded that those findings and conclusions are to be given the weight and deference that would be given to a court-tried case by a reviewing court. (Sug. Op., p. 14). To the contrary, Petitioner has stated in his Petition that this is an original action, and only to the extent that this Court believes it is constrained by Judge Green's findings and conclusions are they likely afforded the weight and deference which would be given to a court-tried case by a reviewing court. (Petition, p. 103). However, because this is an original action, this Court is in no way limited by the lower court's ruling.

State ex rel. Amrine v. Roper is directly on point. In *Amrine* two of the witnesses who testified against the defendant at trial recanted their trial testimony at a Rule 29.15

hearing. 102 S.W.3d 541, 544 (Mo. banc 2003). The motion court denied relief and the Missouri Supreme Court affirmed. *Id.* After the third witness against the defendant recanted in an affidavit, a hearing was held in federal district court on the defendant's habeas petition claiming actual innocence. *Id.* at 545. The district court denied relief on the basis that the third recantation was unreliable and because the other recantations were not "new evidence." *Id.* The petitioner subsequently filed an original petition for writ of habeas corpus with the Missouri Supreme Court. The Supreme Court granted relief despite previous court findings that the recantations were not credible, holding that confidence in the conviction and sentence was seriously undermined. The Supreme Court did not require another evidentiary hearing on the credibility of the three recanting witnesses despite the findings and denial of relief by another court.

As in *Amrine*, this Court is not bound by Judge Green's findings in this original action. It would be difficult for this Court to give deference to most of those findings, because they are largely unsupported by the evidence and erroneously declare and apply Missouri law. (*See* Petition, 102-52).

II. THE RECONTATIONS OF TRUMP AND ERICKSON, SEPARATELY OR TOGETHER, CONSTITUTE "NEW RELIABLE EVIDENCE" AND ESTABLISH THE REQUISITE "PROBABLE INNOCENCE" FOR A GATEWAY OF INNOCENCE CLAIM

In regard to this Court's request for briefing on the effect the allegations of perjury have on Petitioner's gateway of innocence claim, Petitioner states as follows:

A. Jerry Trump

Jerry Trump's recantation of his in-trial identification of Petitioner is credible and

supported by the evidence. (Petition. pp. 21-29, 137-43, 145-47). A few points of clarification are necessary due to Respondent's perplexing arguments regarding Trump.

i. Trump's recantation is new evidence

Trump's recantation is "newly discovered" under any standard. The fact that Petitioner has always known that Trump lied at his trial (because Petitioner was not at the scene) does not alter the fact that Trump did not admit at trial that his testimony identifying Petitioner was false. Respondent's position, which would bar a petitioner from presenting any subsequently discovered evidence tending to prove a fact he attempted to prove at trial (Sug. Op., pp. 15, 23), would demolish Missouri habeas law. Indeed, one's innocence is always litigated at trial. Similarly, Respondent's assertion that Trump's recantation is not new because Judge Green determined it was credible due to, in part, his assessment of Trump's trial testimony (Sug. Op., p. 15), does not alter the fact that Trump's recantation did not exist until years after the trial.⁷

ii. Trump's recantation is reliable

Respondent does not dispute that Judge Green found Trump's habeas hearing recantation of his in-court identification of Petitioner to be credible. And Respondent

⁷ Judge Green determined, in fact, that Trump's recantation was new, unlike Erickson's recantation. (Pet. Exh. 116, p. 31). Judge Green determined that Petitioner's claim failed because Trump's recantation did not sufficiently undermine his confidence in the verdict, rather than because it was not new. At no point in his entire 40-page Findings does Judge Green find that Trump's recantation was not new.

does not dispute the most salient indicator that Trump's recantation is reliable: he has subjected himself to incarceration for perjury by his habeas testimony. (Petition, p. 26) (HH Trump 234).

Instead, Respondent makes the wholly unsubstantiated claim that Petitioner's investigator somehow coerced Trump's recantation. (Sug. Op., pp. 24-27, 38-40) (*See* Petition 145-47). The fact that Trump's strongest admission of perjury occurred during the habeas hearing in response to questions posed by Judge Green, not in an affidavit allegedly coerced by Petitioner's agents, eviscerates Respondent's argument. (Petition, pp. 20-29, 137-143).

iii. Trump's trial testimony was material to Petitioner's conviction

Respondent states that "Mr. Trump did not testify at the circuit court hearing that he had eliminated Mr. Erickson or Petitioner as the two young white [sic] males he saw near the victim's car." (Sug. Op., p. 27 n. 12). This is untrue. At the circuit court hearing, Trump clearly stated under oath that he lied when he testified at trial that he saw Petitioner by Heitholt's car. (HH Trump 233, 262-63).

Respondent notes the binding effect of prior admissions but does not acknowledge its own. (Sug. Op., pp. 17-18 n.9). Respondent has made a number of admissions in prior pleadings about Erickson's testimony that he had a blank memory of the early hours of November 1, 2001, and that a reasonable jury could believe he suffered an alcohol-induced blackout. (Petition, pp. 32-33, 49-50). These admissions establish the substantial materiality of Trump's testimony: he offered eyewitness identification that was unimpeached and stood in sharp contrast to the severely impeached testimony of

Erickson.⁸ (*Contra* Sug. Op., p. 21 (stating that Trump’s testimony was immaterial because Erickson’s trial testimony was credible)). The materiality of Trump’s trial testimony was made completely clear to the jury by Prosecutor Crane who stated at the end of his closing argument, “Jerry Trump, in front of you all, in court, said, ‘I saw those photos, and they were the ones.’ And in court, he pointed them out.” Prosecutor Crane never told the jury that Trump corroborated Erickson’s testimony, rather he presented Trump as an unbiased, independent witness who placed Erickson and Ferguson at the crime scene. Certainly a conviction could have been obtained on Trump’s testimony alone. (TT 2122). “[T]he eye-witness testimony of a single witness, if believed by the jury beyond a reasonable doubt, is sufficient to support a conviction, since the credibility and weight to be given the testimony are matters for the jury.” *State v. Robertson*, 667 S.W.2d 18, 20 (Mo. App. E.D. 1984).

Respondent, in an effort to bolster Erickson’s trial testimony, makes the profoundly uninformed assertion that “the compelling fact remains that individuals do not

⁸ Respondent ignores the State’s admissions and instead focuses on a comment made by Petitioner’s counsel at oral argument in 2010. Respondent concludes that Petitioner’s counsel believes that Trump’s trial testimony “was not material and merely cumulative.” (Sug. Op., pp. 16-18). Petitioner’s counsel was merely responding to a court question. The court asked ““Well there was an eyewitness wasn’t there?” And counsel responded “Actually there was not.” (Resp. Exh. 1, p. 5). Petitioner’s counsel wanted the Court to know that Trump had not witnessed the crime occurring.

plead guilty and accept a 25-year sentence for a crime they do not commit.” (Sug. Op., p. 20). This claim is clearly refuted by case statistics across the country where individuals have falsely confessed, and pled guilty, to crimes they did not commit. *See generally* Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051 (2010) (providing compelling statistics on false confessions and false guilty pleas).⁹ The Missouri Supreme Court has acknowledged that:

It has been reported that there are at least 125 cases of proven false confessions, in which a person has confessed to a crime, only to have another proved guilty. According to this study, at least fourteen persons within this group not only confessed, but pleaded guilty to crimes they were later shown not to have committed.

Weeks v. State, 140 S.W.3d 39, 46 n.6 (Mo. banc 2004) (citations omitted).¹⁰ Respondent’s assertion reveals that the Attorney General of Missouri, the chief law

⁹ *See also* University of Virginia School of Law, *False Confessions*, www.law.virginia.edu/html/librarysite/garrett_falseconfess.htm; Death Penalty Information Center, *Five Innocent People Exonerated in Nebraska*, <http://www.deathpenaltyinfo.org/five-innocent-people-exonerated-nebraska-defendants-were-threatened-death-penalty> (all five alleged co-conspirators in *State v. White*, 274 Neb. 419, 421 (2007), including the four that pled guilty and testified, exonerated and “100 percent innocent”).

¹⁰ Additionally, Respondent cites Buckley’s statement that “[g]uilty people always try to minimize their culpability,” (Sug. Op., p. 20), but conveniently leaves out Buckley’s more pertinent testimony, such as “[police should] be very wary of the voluntary confession. . . . It’s not typically what guilty people do.” (Petition, pp. 42-45; HH 82).

enforcement officer in the state, is unaware that persons have falsely confessed and pled guilty to crimes they did not commit. This is a truly disturbing revelation in the year 2013.

Respondent cannot refute the evidence establishing the significance of Trump's testimony, the recantation of which instantly undermines any confidence one could have in Petitioner's conviction. Namely, (1) Trump's testimony accounted for 50% of the evidence in this case which convicted Petitioner, (2) the physical evidence excluded Petitioner and Erickson as the perpetrators, and (3) the only testimony other than Trump's linking Petitioner to the crime was Erickson's severely impeached and now recanted trial testimony. (Petition, p. 106).

Clearly Trump's identification of Petitioner was the glue that held Petitioner's conviction together through all the different appeals. When Judge Asel denied the Petitioner's 29.15 motion she specifically found credible Trump's trial testimony stating that "upon seeing their photographs he recognized Movant and Erickson as the persons in the parking lot that night." *Ferguson v. State*, 07BA-CV05888, p. 28 (June 12, 2009).¹¹ Judge Asel found that Trump's trial identification of Petitioner was unimpeached.

¹¹ For this Court's convenience, Petitioner submits the relevant portion of Judge Asel's order dated June 12, 2009, as Petitioner's Exhibit 141, and files a copy of that exhibit along with this Reply.

B. Charles Erickson

Erickson's recantation of his trial testimony is fully corroborated by all the available evidence. (Petition, pp. 9-17, 30-53, 121-137). Respondent makes the nonsensical argument that Erickson's trial testimony on cross-examination cannot establish habeas relief because it is not "new." (Sug. Op., p. 40). Obviously, Erickson's trial testimony is not new, but his recantation is.

Petitioner is unaware how the fact that Erickson "wanted to plead guilty" possibly "refutes" his recantation. (Sug. Op., pp. 29-30). It has never been disputed that Erickson wanted to plead guilty. He wanted to plead guilty for no fewer than six reasons, which are set out in the Petition. (Petition, pp. 46-48, 132; HH Erickson 381-82).

Respondent focuses solely on Erickson's fear of receiving the death penalty and ignores the rest.¹² Respondent's contention that Prosecutor Crane was not considering the death penalty is refuted by Prosecutor Crane's own statements to the media. Prior to the trial, Prosecutor Crane explained in a television statement and Columbia Tribune news article that he was considering the death penalty and would be discussing whether to seek it with the victim's family. The televised news report stated, "Crane said he had made no decision about seeking the death penalty." (Pet. Exh. 112). Erickson's fear of being charged with the death penalty was confirmed by his mother in her March 6, 2012

¹² Petitioner inadvertently stated that he was charged with felony murder in the second degree in his Petition. (Petition, p. 5). In actuality, Petitioner was charged with murder in the first degree, and was convicted of murder in the second degree.

interview with the Respondent. (Pet. Exh. 140, p. 53). The issue is not whether Erickson could have been charged with the death penalty, but whether Erickson thought the death penalty was being considered by the prosecutor because of the prosecutor's statements to the media, which cannot be disputed.

Respondent claims it is a "myth" that Erickson was fed information by the police (Sug. Op., p. 43) despite the fact that this Court can view the Erickson interrogation tapes and confirm this happened. (Pet. Exh. 21, 21 (a)) (Petition, pp. 72-76, 125-29). Respondent's citation to Erickson's trial testimony (over a year after he was fed information by the police) about what he told two friends who were never called at trial to corroborate these statements does not alter this conclusion. (Petition, pp. 73-75). Respondent's reliance on what Erickson allegedly told Hawes over a year after he was arrested does not address the issue of whether he was provided with the key details of the crime by the police upon his arrest. (Petition, pp. 73-74). Erickson's recantation is fully supported by all the evidence. (Petition, pp. 9-17, 30-53, 125-37).

Respondent does not dispute that the DVD (R58) reviewed by Judge Green in making a credibility assessment of Erickson did *not* contain the entire trial, was not an official court record, was not created for the purpose of judicial review, contained gaps in testimony, was missing portions of the trial, had poor audio quality, and had various technical issues.¹³ (Petition, pp. 121-24). Instead, Respondent argues that Petitioner

¹³ Respondent implies that Petitioner's only complaint about the video is the fact that it does not show bench conferences. (Sug. Op., p. 32 n.14). This is clearly untrue.

should have objected to the video being submitted into evidence. The flaw in Respondent's argument is that exhibit 58 was not admitted into evidence as the *entire* trial video; in fact, portions of Erickson's testimony were missing altogether. (Pet. Exh. 125 ¶ 8-10, 15-16). When Respondent moved Exhibit 58 into evidence at the habeas hearing no representation was made that it was the *entire* Ferguson trial video, rather Mr. Hawke stated "R58, R58 is the copy videotape -- well, not videotape, but this copy of the -- of the CBS footage of the Ryan Ferguson trial."¹⁴ Nothing about this representation would have led Petitioner to anticipate that Judge Green would use this incomplete television footage as the exclusive basis for determining Erickson's credibility at trial. Certainly the case law would not have alerted Petitioner to Judge Green's intentions because there is no case in which a reviewing court has watched unofficial television footage of trial testimony to determine witness credibility. Certainly Petitioner's counsel would have objected if a representation had been made that Judge Green was going to rely upon these incomplete videos to assess Erickson's credibility.

C. Procedural Innocence Claims

Under Missouri law, innocence serves a procedural role in habeas corpus jurisprudence. Even if Petitioner's claims are procedurally barred this Court may decide if his new evidence shows "that it is more likely than not that no reasonable juror would have convicted him." *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. 2000) (following the

¹⁴ However, other videos presented in the hearing were used by Respondent merely as conduits for presenting Erickson's prior statements. (*E.g.*, HH Erickson 356, 379-8).

lead of *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). Because “habeas corpus is, at its core, an equitable remedy,” *id.* at 319 “the ultimate equity on the prisoner’s side [is] a sufficient showing of actual innocence.” *Withrow v. Williams*, 507 U.S. 680, 700 (1993) (O’Connor, J., concurring in part and dissenting in part). Thus, if a prisoner proves he is probably innocent, “a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.” *Id.* at 316.

A predicate to the actual innocence gateway is the presentation of “new reliable evidence” of actual innocence. Once such evidence is established, “the habeas court must consider all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial.” *House v. Bell*, 547 U.S. 518, 537-38 (2006). The actual innocence determination is a “probabalistic” one “about what reasonable, properly instructed jurors would do.” *House*, 547 U.S. at 538. Proper instruction, of course, includes the requirement that the defendant be guilty beyond a reasonable doubt. Thus, a petitioner must show “that more likely than not any reasonable juror would have reasonable doubt.” *Id.* at 538. It is not necessary to determine with certainty that the petitioner is guilty or innocent. *Id.*

This Court has held, “The sole evidence tying Ferguson to the crime was the testimony of Erickson and the identification from Trump.” *State v. Ferguson*, 325 S.W.3d 400, 419 (Mo.App.W.D. 2010). Judge Green has determined that Trump’s recantation is credible and true as to his falsely identifying Petitioner at his trial. Because

the two recantations, either in isolation or combination, constitute new and reliable evidence of innocence, a review of all the evidence must be performed, a review never conducted by Judge Green.

It cannot be overstated : **the physical evidence excluded Petitioner and Erickson as the perpetrators, and Petitioner's conviction rests solely on two witnesses who have fully recanted their trial testimony in open court under the penalties of perjury.**¹⁵ Petitioner has established a freestanding actual innocence claim as well as the actual innocence gateway. (Petition, pp. 62-64, 97-99).

D. The gateway of innocence allows this Court to consider Petitioner's jury selection claim

On March 29, 2011, this Court denied Petitioner relief on the jury issue, stating, "This denial is without prejudice to Ferguson reasserting this issue in this Court subsequent to the Circuit Court's disposition of the Petition pending there, or from seeking other appropriate relief." *State v. Ferguson*, WD 73705.¹⁶ The only two published cases that address the precise jury issue raised by Petitioner have been granted relief. *State ex rel. Koster v. McCarver*, 376 S.W.3d 46 (Mo.App.E.D. 2012); *Preston v. State*, 325 S.W.3d 420 (Mo.App.E.D. 2010). (See also Petition, pp. 91-102). Unlike

¹⁵ The cases cited by Respondent (Sug. Op., p. 24), where the witnesses failed to testify in court and under oath as to their recantations, have no applicability here. (Petition, pp. 108-13)

¹⁶ Petitioner submits this Court's order dated March 29, 2011, as Petitioner's Exhibit 142, and files a copy of that exhibit along with this Reply.

those two cases Petitioner has presented clear and convincing evidence of his actual innocence. Because Petitioner has established by a preponderance of the evidence that no reasonable jury would convict him in light of this new evidence, *supra*, Petitioner has established the “gateway” of innocence that entitles him to review of his otherwise arguably procedurally barred constitutional jury claim. *State ex rel. Woodworth v. Denney*, __ S.W.3d __, 2010 WL 3118435, *5 n.5 (Mo. banc Jan. 8, 2013).

Respondent argues that this claim has already been litigated and that Rule 91.22 prevents this Court from considering the issue. (Sup. Op., pp. 53-54).¹⁷ Judge Callahan previously ruled that Petitioner had not at that time alleged any new evidence of actual innocence and denied relief. (Pet. Exh. 118, pp. 2-3). Now, Petitioner has established a gateway of actual innocence based on the recantations. This distinguishes Judge Callahan’s ruling. The instant petition has not been filed with any higher court, so no higher court has considered the jury issue in light of Petitioner’s actual innocence. As detailed, *supra*, Missouri has recognized that the “actual innocence gateway” allows

¹⁷ Despite the clear holding of *State ex rel. Nixon v. Jaynes*, *supra*, Respondent contends by way of footnote that Rule 91.22 precludes this Court from granting relief on a “second habeas petition.” Once again, Respondent fails to address the ample case law which holds there is no procedural bar to successive petitions in Missouri, and that Petitioner’s sole vehicle for challenging the dismissal of a petition for writ of habeas corpus is to refile the petition with a higher court.

previously barred issues to be considered. *Clay*, 37 S.W.3d at 217, adopting *Schlup*, 513 U.S. at 327. The gateway permits this Court to review this claim.

This Court and the Supreme Court summarily dismissed the prior petition (which did not include the gateway innocence claim), without expressly adopting the reasoning set forth in Judge Callahan's ruling. And Judge Callahan's ruling directly conflicts with subsequent appellate court authority which holds that the Lincoln County jury selection was unconstitutional. The merits of Respondent's arguments have been rejected by *Preston* and *McCarver*.

Not only would the failure to grant the writ on the jury issue as to one who is actually innocent constitute a manifest injustice, but denial of relief would deny Petitioner due process and equal protection of the law. Had Petitioner raised the jury selection issue in the Eastern District, based on case precedent he would have been granted relief.

The *McCarver* court held that the defendant had established cause and prejudice to have the jury selection claim reviewed. 376 S.W.3d 46. The appellate court granted relief, holding that the jury selection procedure deprived the defendant of due process of law and a jury drawn from a fair cross-section of the population in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 10 and 18(a) of the Missouri Constitution. *Id.* at 49, 54.

Equal protection of the law should not be denied to Petitioner on the identical issue. The decision on this constitutional issue should not be determined by the location of Petitioner's prison. See *State ex rel. James v. Stamps*, 562 S.W.2d 354, 355 (Mo. banc

1978) (holding that equal protection mandates that felons confined in St. Louis medium security institution be afforded the same rights and benefits which accrue to a similarly situated defendant serving a sentence on the same charge in the Missouri Department of Corrections with respect to good conduct credit).

III. EVIDENCE REGARDING MICHAEL BOYD IS NOT BARRED

House v. Bell directs that this Court review the Boyd claim. 547 U.S. at 537-38, 552-53 (considering testimony that another person committed the crime); *Amrine*, 102 S.W.3d at 548 (“[T]he evidence supporting the conviction must be assessed in light of all of the evidence now available.”). Petitioner has presented physical evidence, and other evidence, that directly connects Boyd to the crime. (Petition, pp. 54-62). This Court may consider the Boyd evidence “without regard to whether it would necessarily be admitted . . . at trial.” *House*, 547 U.S. at 537-38. Finally, Boyd's claim has not been abandoned with this Court because this is an original petition.

IV. BRADY VIOLATIONS

Respondent asks this Court to review the *Brady* violations in isolation, attempting to justify the State's suppression of each item of critical evidence in a vacuum. Respondent makes the fallacious argument that all of the *Brady* violations had no evidentiary value. (Petition, pp. 86-90). To accept Respondent's argument, one must ignore the obvious value of evidence that would have: 1) established perjury by a key State witness (Petition, pp. 80-81), 2) permitted Petitioner to set forth a timeline destroying the State's theory of the case (Petition, pp. 81-85), and 3) provided an alibi for Petitioner (Petition, pp. 85-86). When reviewing a habeas petition premised on an

alleged *Brady* violation, the Court considers *all available evidence* uncovered following the trial. *Griffin*, 347 S.W.3d at 77.

Conclusion

WHEREFORE, Petitioner, Ryan Ferguson, requests that for all the foregoing reasons and the reasons advanced in his Petition, this Court issue a writ of habeas corpus discharging Petitioner from his unconstitutional convictions and sentences with prejudice, or grant any and all other relief deemed appropriate.

Respectfully submitted,

s/ Kathleen T. Zellner
Kathleen T. Zellner
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent through the eFiling system, this 22nd day of March, 2013, to:

Stephen D. Hawke
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s/ Samuel Henderson
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AUDIO TRANSCRIPTION

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE EX REL. RYAN FERGUSON,)

) Petitioner,)

v.) Case No. 11AC-CC00068

) DAVE DORMIRE, Warden,)
) Jefferson City Correctional)
) Center.)

) Respondent.)

IN RE: MARIANNE ERICKSON

INTERVIEW LOCATION: Ford, Parshall & Baker, LLC
3210 Bluff Creek Drive
Columbia, Missouri 65201

TRANSCRIBED FROM AUDIO RECORDING
MARCH 6, 2012

Due to the quality of the recorded media,
portions were unable to be transcribed. The
transcriptionist may also include misinterpreted
words. The transcriber was not present at the time
of the recording; therefore, this transcript should
not be considered verbatim.

1 PROCEEDING
2 MR. MARTIN: And I have the recorder going.
3 MR. BELLAMY: Okay. For the record, I'll just put
4 down that I have down right at 5 p.m.
5 Today's date, which I don't believe I indicated
6 on the previous recording, which I should, but it is
7 March the 6th, 2012. It's 5 p.m. We're in the Law
8 Offices of Hamp Ford; Hamp Ford is present.
9 My name is Page Bellamy. I'm an attorney or
10 assistant attorney general. Also present is Stephen
11 Hawke, an assistant attorney general and Greg Martin
12 and investigator who is principally recording this
13 interview.
14 EXAMINATION BY MR. BELLAMY:
15 Q. And your name, if you would state, for the
16 record, please.
17 A. Marianne Erickson.
18 Q. And you are in fact, the mother of Charles T.
19 Erickson; is that right?
20 A. I am.
21 Q. And currently Charles T. Erickson is in custody
22 in the Department of Corrections having been
23 convicted in the murder of Kent Heitholt; is that
24 right?
25 A. That's right.

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1 Q. Okay. I'm going to ask you a few questions.
2 We're going to try to go into a little bit of
3 background of your son, Charles Erickson. We have
4 interviewed your husband prior to --
5 A. Uh-huh.
6 Q. -- this interview. And hopefully that will allow
7 us to speed things up a little bit --
8 A. Uh-huh.
9 Q. -- having received some information already.
10 A. Uh-huh.
11 Q. We have agreed --
12 MR. FORD: Try to say yes or no.
13 MS. ERICKSON: Oh.
14 MR. FORD: It -- people -- we all do that.
15 MS. ERICKSON: Yes.
16 MR. FORD: So, you know, but it's helpful when they
17 read this later on or -- or listen to it.
18 MR. BELLAMY: We anticipate that from this recording
19 we will generate a copy of this to be provided to you
20 and your attorney Mr. -- Mr. Ford. We will also be
21 responsible for providing a copy of this to the
22 attorney's in this case for the other side, so to
23 speak, and that is the attorneys for Ryan Ferguson;
24 you understand that?
25 MS. ERICKSON: I do.



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1 MR. BELLAMY: Okay. And, I think, I've in
2 discussions with your attorney, but I wanted to make
3 clear, because we're doing an interview today, which
4 I'll call an informal interview without a court
5 reporter, et cetera, that does not mean that either
6 the State or the attorneys for Ryan Ferguson would be
7 precluded from trying to seek a deposition or
8 something in the future or have you testify at a
9 hearing at a later date; you understand that?
10 MS. ERICKSON: I do.
11 MR. BELLAMY: I can't guarantee that that won't
12 happen by having this conversation.
13 MS. ERICKSON: I understand.
14 MR. BELLAMY: Okay? All right.
15 QUESTIONS BY MR. BELLAMY:
16 Q. Could you tell me where, and I won't ask a whole
17 lot of detail --
18 A. Uh-huh.
19 Q. -- but where are you currently employed?
20 A. Oh, at the University of Missouri --
21 Q. Okay.
22 A. -- in the research reactor.
23 Q. And what do you do for them?
24 A. I'm a microbiologist in their CGMP Program.
25 Q. And just briefly if you could tell me your

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1 educational background to do the job you do.
2 A. I have Masters Degree in microbiology from the
3 University of Illinois and I am a specialist in
4 microbiology through the ASCP and a registered
5 microbiologist through the NRM.
6 Q. And how long have you done that?
7 A. Well, I have been a registered microbiologist
8 since 1983. And I have worked in a variety of public
9 health and microbiology positions depending on where
10 we have lived.
11 Q. Okay. I understand, at one point in time, you
12 and your family lived in Illinois?
13 A. Yes, uh-huh.
14 Q. Subsequent to that you had a stint in Ohio?
15 A. Right. We were there for five years.
16 Q. In -- in Cincinnati?
17 A. Uh-huh.
18 Q. Okay. Subsequent to that you then moved to
19 Missouri to Columbia?
20 A. Right.
21 Q. And I understand that your son, Charles Erickson,
22 was born in 1984; is that right?
23 A. Correct.
24 Q. Does he have any siblings?
25 A. Yes.

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1 Q. And what are their names and ages if you can tell
2 me?
3 A. He has a sister, Carolyn Erickson, who is three
4 years younger. She was born in 1987, in September.
5 Q. Okay.
6 A. So she will be 25 this year.
7 Q. And does she reside in Columbia?
8 A. She re- -- no, she resides in New York City.
9 Q. Okay. Obviously, we are here today to ask some
10 questions about this case. We represent the State of
11 Missouri and frankly -- specifically, we represent
12 the Department of Corrections because when somebody
13 files an action like this --
14 A. Uh-huh.
15 Q. -- they are making the Department of Corrections
16 warden the Respondent or the Defendant in the case
17 and our job is to represent them; do you understand
18 that?
19 A. I do.
20 Q. Okay. And you understand that this case was
21 filed by attorneys for Ryan Ferguson?
22 A. I do.
23 Q. Okay. And so our case is going to be surrounding
24 a little bit about Charles Erickson's background and
25 obviously a little bit about the events that gave

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1 rise to us being here today.
2 A. I understand.
3 Q. All right. Could you tell me a little bit about
4 Charles as he grew up about his -- his health, how he
5 -- how his health was as he -- at a younger age? Any
6 major problems or issues, I guess, is what I'm asking
7 about.
8 A. No major problems or issues. Athlete, you know,
9 very -- up to ninth grade football. No
10 hospitalizations in terms of admissions into the
11 hospital. No broken bones. He had a high fever in
12 eighth grade; he -- it was a period of 48 to 72 hours
13 and was treated as directed by the physician at home
14 and recovered fine.
15 And, you know, we -- our families have
16 allergies. The most significant chronic disorder
17 that I would say he has is what they call a topic
18 allergy. And he was treated with allergy shots for
19 that, and, occasionally, antihistamines.
20 Q. He's never had any head injuries of any kind that
21 you're aware of?
22 A. What time span; before the 2001 Heitholt
23 incident?
24 Q. Before he went to prison, how's that.
25 A. Before he went to prison, nothing that broke the

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1 skin or caused a concussion. I remember one time
 2 when he was skateboarding and he hit a rut and he
 3 went up over. He didn't land on his head though so I
 4 can't think of any true injuries.
 5 Q. And, again, by that I'm asking if he had any
 6 serious head trauma that resulted in -- you said he
 7 had no hospitalizations at a young age --
 8 A. Uh-huh.
 9 Q. -- is that true even today?
 10 A. Yes.
 11 Q. Okay. And to your knowledge, no serious head
 12 injuries of any kind that warranted significant
 13 medical treatment?
 14 A. Before he went to prison?
 15 Q. Yes.
 16 A. Correct.
 17 Q. Okay. After he went to prison are you aware of
 18 any trauma that he's received to his head area or
 19 anything else since he's been in the Department of
 20 Corrections?
 21 A. Yes.
 22 Q. Can you describe what you understand that to be?
 23 A. He told me that in a fight with another offender
 24 the offender pushed his head into a concrete wall and
 25 he ended up with a large laceration that had to be

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1 closed with staples.
 2 Q. Is there anything about your contact with him
 3 since that incident that causes you to believe he's
 4 received any brain injury or anything that affects
 5 his speech or --
 6 A. No.
 7 Q. -- anything that affects his memory?
 8 A. No.
 9 Q. Okay. He seems to be the same Charles as before
 10 as far as your ability to have conversations with
 11 him.
 12 A. Certainly.
 13 Q. And he's not complained to you of any memory loss
 14 in that regard from that injury?
 15 A. No.
 16 Q. And with respect to his school days how would you
 17 describe as a student? And you don't have to take me
 18 through every single grade --
 19 A. Uh-huh.
 20 Q. -- but generally speaking in grade school then
 21 high school how was he?
 22 A. Initially in grade school in Illinois he was a
 23 top student and his test scores were through the
 24 roof. The administrator in the grade school where we
 25 -- he attended in Lincoln, Illinois, set up a special

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1 meeting with the state coordinator for gifted
 2 education and explained to us that they didn't have a
 3 program for him in that school. Pardon me.
 4 And made some suggestions about what
 5 extracurricular things we could do to enhance his
 6 education experience through grade school.
 7 We moved to Ohio and his transition in school
 8 from the second grade in Illinois to the third grade
 9 in Ohio was very rough. There were a lot -- he
 10 reported that there were a lot of bullies and they
 11 had done some things in second grade that he didn't
 12 do in second grade in Illinois and so he was behind
 13 in some areas. And that was a first experience for
 14 him, you know, to struggle.
 15 Through grade school, however, he recovered very
 16 well. And he was, again, identified as a gifted
 17 student and wasn't challenged very much in the public
 18 school there.
 19 He attended seventh grade there and was -- ran
 20 cross country and was good at it, and was in the
 21 choir, played viola. He was also a diver and a
 22 wrestler in grade school.
 23 And we moved to Columbia and once again his
 24 transition was rough. He -- you know, academically
 25 Cincinnati schools didn't have the good middle school

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1 program that they have in Columbia. So he wasn't as
 2 a responsible student as the students he was in class
 3 with in Columbia. And his grades -- you know, he was
 4 taking Latin and Algebra and things you really need
 5 to have good discipline for. And he lacked that.
 6 And so we enrolled him in an afterschool tutoring
 7 program called Focus on Learning here in Columbia,
 8 and -- to help him to improve his study skills and to
 9 be more successful in the eighth grade.
 10 Then -- however, and we also arranged for
 11 special tutoring by the Latin teacher. And there
 12 were -- it was my opinion, and I was a substitute
 13 teacher in his school as well as a parent of him as a
 14 student so I was in the school and the classrooms,
 15 you know, that there were many more negative
 16 influences there socially than he had ever
 17 experienced elsewhere. And I think he fell subject
 18 to those negative influences as a result of not
 19 fitting in with the honors group that he had formally
 20 been affiliated with in Ohio schools.
 21 Q. Like what? What are the negative influences
 22 you're referring to?
 23 A. Oh. Drug abuse -- well, he -- he was involved in
 24 a -- as a juvenile in a counterfeit situation where
 25 one boy made a \$20 bill on his copy machine at home

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1 and he brought it to school and he handed them out,
2 several. And Charlie took one and he gave it to some
3 other boy and the other boy went to the cafeteria,
4 used it. So they all got taken in to the juvenile
5 office. And it was a very serious charge.
6 Q. How -- how old would this -- would this -- he had
7 been at that time?
8 A. He -- let's see, '84 this was '99; he would have
9 been 14 going on 15.
10 Q. Was that the first incident you noticed some
11 problems at least with authorities -- that caused the
12 authorities to become involved.
13 A. Oh, yeah. Oh, yeah. Yeah, definitely.
14 Q. When did you note a substance abuse issue or
15 problem or if you did?
16 A. Ninth grade. It was right around the time that
17 he decided -- excuse me -- he decided to quit
18 football and it was obvious that -- to us because we
19 found evidence of marijuana use that he needed
20 intervention. We --
21 Q. What did you find?
22 A. Oh, gee, it was -- I think it was a pipe. It was
23 a pipe. We asked our minister for help in locating
24 someone who could address -- help us to address the
25 problem and he referred us to a local psychologist

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1 and after a series of appointments individually with
2 him and with the family he admitted -- you know, we
3 - we didn't have proof. It was always, it's not
4 mine, it's not mine. You know, we took him for
5 multiple drug tests and they were always negative.
6 The family doctor arranged those. And, you know,
7 real tough to prove and finally he admitted it on his
8 own after being in counseling for several sessions.
9 Q. What was the substance that he was --
10 A. Marijuana.
11 Q. Marijuana.
12 A. Marijuana, yeah.
13 Q. Anything else at that time?
14 A. No.
15 Q. Okay.
16 A. Not that I know of.
17 Q. Was this counselor that you went to see was that
18 Dr. Barbara Bauer?
19 A. Yes.
20 Q. In Columbia?
21 A. Right. And, I guess, more than a counselor; she
22 was a PhD psychologist and -- so we had a series of
23 contracts with Charlie as he prefers to be called.
24 And we thought that he was going to hold true to
25 those contracts and there were certain goals that he

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1 had in his personal life, like driving a car, that
2 were important for him to consider at that age. You
3 know, he was 15 and a half and -- you know, if he was
4 going to drive a car he had to have a B average and
5 he had to be, you know, clean and sober and try very
6 hard at school to be a good student. And as well be
7 a responsible citizen at home.
8 So, you know, we had believed up to the point
9 where he was arrested with a number of other students
10 at a party that he had remained clean and sober and
11 was not involved in the drug scene anymore at the
12 high school level.
13 Q. So you believed he was living up to the contract;
14 was he able to drive? Did he keep a B average?
15 A. He did not have a B average until after November
16 of 2001 at which point he did -- we did take him for
17 a drivers' license, we arranged for driving --
18 driving lessons and took him for a driving test and
19 he passed and he got a used car. This was in
20 December of 2001 so he was at that point 17 and a
21 half, which is late by some people's standards, but
22 it was late because we made it late because he was --
23 there was no reason why, in our minds, he couldn't
24 achieve a B average we thought.
25 Now, in November of 2001, because he was not

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1 being a successful a student as we expected that he
2 could be we took him to the University of Missouri
3 counseling assessment program and had him assessed
4 for potential deficits that might explain his lack of
5 academic success.
6 Q. Was that Dr. Greg Holiday?
7 A. Yes.
8 Q. And was it just an assessment and a report was
9 generated at that time?
10 A. Right.
11 Q. Was there any counseling or anything that
12 occurred from that point on where he would see
13 somebody regularly or you just had the assessment
14 done?
15 A. No, has the assessment done, saw the family
16 doctor to check on potential neurological problems.
17 There was no more counseling that was done. He --
18 actually buckled down because he was so anxious for
19 that car and began successfully getting a B average.
20 He also became real involved in the DECA. It's a --
21 it's a business commerce high school competition
22 group and went to national championships in Salt Lake
23 City the spring of 2002.
24 And, you know, was talking with the military
25 about potentially becoming a recruit after high

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1 school. Thinking he would possibly do that instead
2 of going to college right a way.
3 Q. Now, was there anything -- what did he do to go
4 to the national competition? What was -- in spring
5 of 2002 what -- did he have to do a presentation?
6 Was he -- did he have to give a speech?
7 A. It was a variety of different activities
8 organized by the DECA association of Rockbridge High
9 School where they answered prompts in public that
10 were related to their specific area of -- of
11 expertise in the DECA group. They had different --
12 his was in retail management and that was his area of
13 learned expertise as a junior -- as much as a junior
14 in high school can know.
15 And -- and so there were competitions were
16 judges looked at responses to questions that were
17 made by the participants and they --
18 Q. Were these written or were these oral --
19 A. Oral and written. Oral and written, but I think
20 the -- it was a three tiered system where there was a
21 district competition and if you did well in that you
22 went to the state competition and if you did well in
23 that you went to the national competition.
24 Q. How many were involved in that DECA group that
25 advanced to the nationals?

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1 A. Oh, I think, about 20.
2 Q. Okay. So did all three of them when their
3 districts and then all three of them one the state
4 and then all three of them go to -- got to go to
5 nationals or did -- was this a pairing down where
6 they started with a whole bunch of people --
7 A. Oh, well, that was just their high school.
8 Q. Okay.
9 A. So that this -- these DECA competition groups
10 were -- drew from all the high schools in the
11 district. And then -- then all the high schools in
12 the state would meet and there would be another
13 competition and you had to get in the top three, I
14 guess, to go on.
15 Q. Okay. And he finished in the top three --
16 A. In the state and then went to the national level
17 and so --
18 Q. How'd -- how'd he do at nationals?
19 A. He was in the top ten, but he didn't -- you know,
20 he didn't when nothing --
21 Q. So was this something you'd been a given topic
22 and have to present on or something you'd be
23 researching over a period of time or how does -- do
24 you know how this works?
25 A. They had a marketing class at Rockbridge High

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1 School he -- in fact, he took several levels of the
2 marketing class and part of the curriculum was to be
3 paired to speak in public and to know the principals
4 of good management in marketing of different types of
5 products; whether it was restaurant or manufacturing
6 or some other kind of service.
7 Q. So he had to have a pretty good business sense I
8 assume to advance to that competition?
9 A. Yeah, it was a great surprise to us.
10 Q. (Laughter.)
11 A. You know --
12 Q. But was this something he had to prepare for and
13 --
14 A. Yes.
15 Q. -- study and work on and then be able to remember
16 and relay all the -- all the things he had done?
17 A. Uh-huh, yeah.
18 Q. So at least, at that point in time -- up and to
19 that point in time, had noticed any problems with his
20 ability to remember or his memory of any kind?
21 A. In reading Dr. Holiday's groups assessment it was
22 clear to me that compared to other individuals they
23 had tested that his memory was deficient and --
24 Q. Had you ever noticed anything?
25 A. No, except the lack of able academic performance,

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1 which I had to attribute to poor preparation and lack
2 of recall. If prepared -- you know, the big question
3 is: If prepared?
4 Q. Well, has -- had he ever been diagnosed with any
5 mental diseases or defects of any kind that you're
6 aware of?
7 A. Before he went to prison, no.
8 Q. Okay. Since he went to prison has he been
9 diagnosed?
10 A. You know, I don't know. I've heard -- I've heard
11 that he might have been, but I don't, myself, know.
12 Q. But as far as his ability if he prepared he is
13 fine to do the work? If he took the time to prepare
14 he can do the work in school or could do the work in
15 school?
16 A. I would think so. I think so.
17 Q. Do you think substance abuse played any role?
18 A. I think it certainly may have.
19 Q. Did he ever receive any kind of medical
20 treatments of any kind up and 'til he went to prison
21 for any issues or problems associated with his
22 ability to think, speak clearly, remember?
23 A. In terms of speech therapy or --
24 Q. Anything. Did he ever go see -- I mean, I'm only
25 aware of him seeing the psychiatrist Dr. -- or

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| <p>1 psychologist Dr. Holiday -- 2 A. Oh. Oh, okay. 3 Q. I'm wondering did he go -- and Dr. Bauer did he 4 see anybody else about any other -- of these issues? 5 A. He was -- he was an inpatient -- not an 6 inpatient; he was an outpatient at Pathways two 7 times. 8 Q. Was that substance abuse -- 9 A. Yes. 10 Q. -- related. 11 A. Right. And -- and he attended many sessions and 12 had many negative drug test; never had a positive 13 drug test; graduated a couple of days before that 14 Halloween party in 2001 from Pathways. I had 15 referred him back myself to Pathways because of 16 suspicions regarding his likely substance abuse. 17 Actually, I referred him to the juvenile office. 18 They did an assessment then and then they referred 19 him to Pathways. 20 Q. When -- when you said he had some pressures put 21 on him or things that came to bear when you got to 22 Columbia that were negative influences do you 23 attribute that to certain people, certain friends? 24 A. Certainly. 25 Q. Was there anybody in particular in his social</p> | <p>1 A. Ryan had a car. He frequently drove Charlie to 2 school and home 'cause Charlie did not have a car. 3 He could have taken the bus, but Ryan was -- didn't 4 live far away and often made the ride available. 5 Q. Did they seem to be good friends? 6 A. Yeah, they did. They did seem to be good 7 friends. They -- they first met on the track team in 8 the eighth grade at West Junior High School and his - 9 - his mother and I drove the boys to different 10 practices and, you know, we had favorable impression 11 of the family. 12 Scott Turner was another young man that 13 frequently socialized with Charlie. He and Charlie 14 went to semi-formal dance together in the -- in their 15 sophomore year. And their invitation to that came 16 through Scott to Charlie. It was a women's 17 organization at the Mizzou campus and kind of 18 surprised us. They wore tuxes and, you know, it was 19 interesting and had a nice time. 20 David Iglehart is another one. There were a few 21 girls. He didn't have a steady girlfriend. Never -- 22 never had a steady girlfriend. He did go out with 23 some girls, but I can't think of any one girl in 24 particular to mention. 25 Q. Obviously, he's become associated with Ryan</p> |
| Page 22 | Page 24 |
| <p>1 group that you did not approve of? You prohibited 2 him from being around? 3 A. Uh-huh. 4 Q. And I guess I'm leading up to the high school 5 time. 6 A. Yeah. I would say not, but I would say that I 7 had many frequent conversations with the parents of 8 other boys. And, you know, we did this because -- 9 you know, we had no idea who was really the 10 troublemaker. 11 Q. Leading up to the events that occurred, resulted 12 in the death of Kent Heitholt -- 13 A. Uh-huh. 14 Q. -- that time period. 15 A. Uh-huh. 16 Q. Who were Ryan Ferguson -- I'm sorry -- who were 17 Chuck, Charles -- 18 A. Uh-huh. 19 Q. You said Charlie. He likes to go by Charlie -- 20 A. Uh-huh. 21 Q. Who was Charlie Erickson's closest associates, 22 people he hung around? 23 A. Well, Ryan Ferguson. 24 Q. Can you describe their relationship, as best you 25 understood it?</p> | <p>1 Ferguson after the fact but did you sense they had a 2 relationship that was mutual friendship at the time. 3 I mean, did they hang out even after the trips to 4 school and back? I mean, did they go out together to 5 movies, to whatever kids do? 6 A. They did, yes. And -- 7 Q. You know, you see some kids that are just 8 inseparable from that one friend were they -- 9 A. Right. 10 Q. -- like that in some sense -- 11 A. Sure. 12 Q. -- or was -- 13 A. Football games, you know, school activities. 14 Q. Did Ryan frequently come over to your house and 15 Charlie frequently go over to the Ferguson house, as 16 best you understand? 17 A. Yes. Not -- not real frequently, but, you know, 18 occasionally. 19 Q. And, of course, Ryan had the wheels. Would he 20 pick him at night when they went to places? 21 A. Sometimes, yes, uh-huh, movies. 22 Q. Did you -- and they were in the same grade; is 23 that right? 24 A. Right. 25 Q. Did you know then or did you at some point come</p> |

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| <p>1 to learn that they or Charles, himself, whichever the 2 case may be would be sneaking out of your house? 3 A. Yes, I did. That I -- yeah, I -- I had evidence 4 that Charlie had snuck out of the house. I -- I 5 think, it happened right around the time -- that fall 6 that there was one time that he snuck out of the 7 house and he positioned his pillows in such a way 8 that I would think that he was in his bed, but he was 9 not in his bed. 10 Q. When you say, the fall, I just want to make it 11 clear; is this the fall of 2001? 12 A. 2001, yes. 13 Q. Okay. 14 A. Yeah. And I grounded him for that or we grounded 15 him for that. And -- but it was -- he most likely 16 the night of that Halloween went out either his 17 window or his door following returning home from the 18 Halloween party and us saying good night and us going 19 to bed and him going down to his room because he 20 admitted to us that he then left and went and met 21 Ryan Ferguson who then drove downtown. 22 Q. And when did he relay that information to you 23 that that's what he had done that night? 24 (No response.) 25 Q. I mean, was it that night, he said, hey I went</p> | <p>1 Halloween party -- when did you first come to learn 2 he had snuck out that night and wasn't at home in his 3 bed and had left with Ryan? I'm not asking you to 4 associate it with the murder, I'm just saying -- 5 A. Yeah. 6 Q. -- when you learn that, hey, you snuck out with 7 Ryan, what the heck were you thinking? 8 A. I don't think we knew about that until after he 9 was arrested. 10 Q. You didn't know he had gone to the Halloween 11 party at -- 12 A. We knew he went to the Halloween party. He came 13 home -- 14 Q. Oh, the early one. 15 A. Right. The early one, right, he came home from 16 that on time as I recall 'cause we didn't -- you 17 know, we -- it was a school night and, you know, it 18 was -- it was somewhat of a reward that we let him go 19 out on a school night to Halloween party. And the 20 reward was for success -- successfully completing the 21 Pathways program of several months that had ended a 22 couple of days prior to that. And -- 23 Q. When he came home did you have any indication he 24 had been drinking? 25 A. No, I did not. And --</p> |
| Page 26 | Page 28 |
| <p>1 out -- 2 A. Oh, no. No. No. I have to say it was probably 3 -- we didn't really get to talk with him about the 4 case until -- 5 Q. When you say we, are you talking about your 6 husband? 7 A. My -- yeah, right. Until after Ryan's trial. So 8 we -- we were told not to talk about the case at all. 9 And we didn't. We were -- at least tried not to. 10 And so I -- I don't -- I don't think we really got in 11 to detail about what he thought actually happened 12 that night until after Ryan's trial. 13 Q. But he told you, at some point, that he had snuck 14 out and gotten in the car with Ryan and left? 15 A. Right. 16 Q. And when he told you that you think that was even 17 after Ryan's trial? Or was this not knowing what had 18 happened -- I mean, you may have known and not known 19 about the Heitholt -- 20 A. Well, I mean, we heard about it at the trial. 21 And we heard about it in the newspaper, but when he 22 told us -- when he told us his side of things it 23 wasn't really until after Ryan's trial. 24 Q. And I'll -- I'll get to that portion a little 25 bit, but I -- I'm just -- was there a time after this</p> | <p>1 Q. Did you encounter him, engage him at that time 2 that -- I mean, eye-to-eye; did you talk to him and 3 see him when he came home? 4 A. You know, I did. I did. He's a very good actor 5 -- you know, and I -- I think that he -- he was able 6 to convince me of sobriety when he was not sober. 7 Q. Well, on this occasion did you observe anything 8 about his conduct that indicated he was not sober? 9 A. No. 10 Q. Nothing about his eyes, his demeanor in any way? 11 A. Huh-uh. 12 Q. Okay. That's a no? 13 A. That's a no. 14 Q. Okay. 15 A. Oh, that's a, no. 16 Q. I'm sorry. I'm just trying to get it for -- for 17 the -- 18 A. Yes. 19 Q. -- for the tape. And that night he snuck out 20 because he's told you he snuck out that night and 21 hooked up with Ryan Ferguson? 22 A. Uh-huh. 23 Q. Is that a yes? 24 A. Oh. Eventually, he told us. 25 Q. Right.</p> |

7 (Pages 25 to 28)

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1 A. But he told the public and the police and
 2 everyone else before he told us.
 3 Q. He told some of his friends before he was even
 4 arrested?
 5 A. Right. Yes, he did.
 6 Q. And told them he -- he and Ryan had murdered Kent
 7 Heitholt?
 8 A. I don't know what he told them.
 9 Q. He's told you he told them that he killed Ryan --
 10 or killed Kent Heitholt; he and his -- he and Ryan?
 11 A. No, he didn't tell me that. He didn't tell me
 12 that he told them that he killed -- that he was sure.
 13 Q. But you had conversation -- I think, you've had
 14 conversations with him, if I'm not mistaken, where
 15 you're at least aware that before he was arrested he
 16 was going around telling other people about what had
 17 happened that Halloween night?
 18 A. What I'm aware and what he has told me is that he
 19 had conversations with people because he wasn't -- he
 20 was afraid it was true. He wasn't sure that it was
 21 true. And that he, in fact, -- he told me of a time
 22 when he was crying because he was so worried about
 23 possible guilt. Not knowing for sure. I mean, he's
 24 --
 25 Q. You've had phone conversations with him while his

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1 been incarcerated?
 2 A. Uh-huh.
 3 Q. And while he's been incarcerated have -- either
 4 in Boone County, you talked to him when he was in
 5 Boone County, too, right?
 6 A. Uh-huh.
 7 Q. Before he ever pled guilty?
 8 A. Uh-huh.
 9 Q. Is that a yes?
 10 A. Yeah, I talked to him.
 11 Q. And I'm only correcting -- I'm only correcting
 12 you because I'm trying to get you to say yes or no --
 13 A. Yes.
 14 Q. -- versus uh-huh because I tend to do that as
 15 well.
 16 A. Okay.
 17 Q. I'm not trying to correct you. But when I say is
 18 that a yes or is that a no I'm just trying to be
 19 definitive for the tape. Okay?
 20 A. Yes.
 21 MR. FORD: Marianne, slow down.
 22 MS. ERICKSON: Okay.
 23 MR. FORD: You're being very cooperative, but you're
 24 -- listen to his question. Answer that question and
 25 wait for the next one.

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1 MS. ERICKSON: Okay.
 2 MR. FORD: We're in no hurry.
 3 MS. ERICKSON: All right.
 4 MR. FORD: Okay.
 5 MS. ERICKSON: Thank you for that advice.
 6 MR. FORD: (Laughter.)
 7 QUESTIONS BY MR. BELLAMY:
 8 Q. When -- when you have spoken to him on the phone
 9 have you had conversations with him where you have
 10 told him, reminded him or he has talked to you about
 11 the fact that he told people about this long before
 12 the police were ever involved?
 13 A. What's the question?
 14 Q. You had conversations with him, as I understand
 15 it, about what had happened and he has relayed to you
 16 that he has told people about the murder? Or he and
 17 Ryan Ferguson being involved in the murder? Not you
 18 --
 19 A. Uh-huh.
 20 Q. -- I'm not saying he told you --
 21 A. Uh-huh.
 22 Q. -- but he has told other people --
 23 A. Uh-huh.
 24 Q. -- before he was ever arrested by the police?
 25 A. So the question is: Did he tell me that he had

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1 conversations with other people about this incident
 2 before he was arrested?
 3 Q. Yes.
 4 A. And the answer is, yes.
 5 Q. Okay.
 6 A. Yeah.
 7 Q. And he told you that not until after he was
 8 arrested?
 9 A. Correct.
 10 Q. Okay. And, yet, he told you -- did he tell you -
 11 - did he ever talk to you about Nick Gilpin?
 12 A. He has.
 13 Q. And he told you he told Nick Gilpin about --
 14 A. Yes.
 15 Q. -- what had happened?
 16 A. Yes.
 17 Q. And he told you he had talked to -- did he tell
 18 you he had actually had confrontations with Ryan
 19 Ferguson?
 20 A. Yes.
 21 Q. Okay.
 22 A. Yes.
 23 Q. And -- and this is prior to the arrest?
 24 A. Yes.
 25 Q. Okay. And maybe there were confrontations in

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1 jail. I don't know I'll ask about those later, but
 2 let's talk about the ones --
 3 A. Uh-huh.
 4 Q. -- that he's told you about prior to his arrest.
 5 A. Uh-huh.
 6 Q. What can you tell me about that? When he Ryan
 7 Ferguson and he have either had words or
 8 conversations about the murder of Kent Heitholt?
 9 A. What can I tell you about what he asked -- or
 10 what he told me regarding the conversations with Ryan
 11 Ferguson prior to the arrest?
 12 He told me that he attended a party where Ryan
 13 Ferguson was present; New Year's Eve party, I think.
 14 And they talked about -- Charlie said that he wanted
 15 -- wanted Ryan to consider the possibility that they
 16 had been involved in this crime. And Charlie told me
 17 that Ryan would not consider that and got very angry.
 18 And they argued. And they were overheard by
 19 others at the party arguing about the possibility
 20 that they had been involved in this crime. And
 21 Charlie left.
 22 Q. Well, you describe it as the possibility of being
 23 involved. The conversation that he told -- when he
 24 told the other people, did he tell them -- did he
 25 tell you he said about the possibility or did he tell

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1 you this is what -- I confronted Ryan and I tried to
 2 get him -- wanted him to turn -- wanted us to turn
 3 ourselves in; was that at any time part of the -- the
 4 conversation to you?
 5 A. What he said to me about this -- about the crime
 6 was that he -- he wasn't sure, but he felt strongly
 7 that they should turn themselves in and have it be
 8 investigated as to whether or not they might have
 9 done it because he didn't want to grow up and raise a
 10 family and then suddenly be found to be guilty of
 11 this murder. He wanted to take care of it. You
 12 know, he wanted to rule it out or find out the truth
 13 before he grew up and became a man.
 14 Q. When are you having -- when did you have this
 15 conversation?
 16 A. I wish I could pinpoint it.
 17 Q. Because after he's arrested --
 18 A. Uh-huh.
 19 Q. -- there's no need to have an investigation.
 20 He's told the police what happened.
 21 A. Well, I mean, it was much later. But I can't --
 22 I mean, it was some time after 2004 and --
 23 MR. FORD: I think she's trying to relate what he
 24 told her he said back then.
 25 MR. BELLAMY: Okay.

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1 MR. FORD: And about his motive back then as opposed
 2 to -- and I shouldn't give an objective if --
 3 MR. BELLAMY: No, and -- and -- and you may be --
 4 MR. FORD: But that's the way I'm understanding it.
 5 MR. BELLAMY: Okay. I don't want to mishear. So if
 6 I'm mishearing. Let me -- let me rephrase the
 7 question.
 8 MS. ERICKSON: Uh-huh.
 9 QUESTIONS BY MR. BELLAMY:
 10 Q. My understanding is there were conversations that
 11 Charles Erickson had with other people --
 12 A. Uh-huh.
 13 Q. -- and at some time he actually had conversations
 14 with Ryan Ferguson before he was arrested or Ryan
 15 Ferguson was arrested? And you then later talked to
 16 him about those conversations --
 17 A. Uh-huh.
 18 Q. -- and did he acknowledge that he had those kind
 19 of conversations with Ryan?
 20 A. He did.
 21 Q. Okay.
 22 A. He did.
 23 Q. Was there a time shortly before he was arrested
 24 where he had a confrontation with Ryan Ferguson?
 25 MR. FORD: As you understand.

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1 MR. BELLAMY: As you understand.
 2 MS. ERICKSON: I think it was the only one I was told
 3 about is that New Year's Eve party where they had an
 4 argument.
 5 QUESTIONS BY MR. BELLAMY:
 6 Q. Are you familiar with a person by the name of Ben
 7 Blunt?
 8 A. Yes.
 9 Q. Okay. How do you know Ben Blunt?
 10 A. Well, Ben Blunt is another person that would
 11 often associate with Ryan Ferguson and Scott Turner
 12 and Charlie and David Iglehart and -- and a few
 13 others. They -- Ryan and Ben frequently paired up
 14 and, you know, went places together and -- and I know
 15 that -- I don't know of any other -- I don't know of
 16 any other altercations or incidents, arguments, you
 17 know, Charlie has not told me of any with Ryan
 18 Ferguson or Ben Blunt after the New Year's Eve party.
 19 So if there was one, I'm not aware of it.
 20 Q. Are you aware of one where those people were
 21 present at the New Year's Eve party?
 22 A. Oh, no, I'm not.
 23 Q. Was there ever a time shortly before arrests
 24 where Ryan Ferguson came to your home?
 25 A. Yes.

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| <p>1 Q. Was there anyone with him? 2 A. Ben Blunt was with him. 3 Q. Okay. When was that as best you can recall? 4 A. Hum, oh, maybe a month or so in advance. 5 Q. He was arrested in March of 2004. 6 A. March the 10th, yeah. And so I think it was 7 perhaps in -- within a month of the arrest. 8 Q. And how do you understand Ryan Ferguson and Ben 9 Blunt came to be at your house? 10 A. They came to see Charlie. He wasn't there. I 11 believe he was at work. And they left. 12 Q. They didn't have a conversation with him, to your 13 knowledge, at your house? 14 A. No. I mean, not when I was there. They came -- 15 I think, my husband and I both were there when they 16 came. 17 Q. Okay. 18 A. Now, I do remember Charlie saying, not to let 19 them in the house again. But I -- I never understood 20 why -- 21 Q. How did he -- 22 A. -- that was. I figured they had a falling out 23 and that they were made at each other and -- 24 Q. How long had it been, to your knowledge, prior to 25 that incident when Ryan and -- Ferguson or Ben Blunt</p> | <p>1 see him and they went on their way. 2 Q. And Charlie came home and relayed to you, I don't 3 want them -- 4 A. Yes. 5 Q. -- at the house anymore? 6 A. Right. 7 Q. Was it that night he told you that? 8 A. I think so. 9 Q. Okay. And how did he relay that to you? What -- 10 what were his words, if you recall? 11 A. Don't let them in the house again. 12 Q. Did you -- I mean, this is somebody you had know 13 to be an associate or friend of his -- 14 A. Yeah. 15 Q. Did you know there to be any bad blood or 16 problems between them up and to that point of any 17 kind? 18 A. No. 19 Q. Did -- when -- when he came to tell you this -- 20 A. Uh-huh. 21 Q. -- did you ask why? 22 A. I'm sure I did. 23 Q. Okay. 24 A. I don't recall his response. I just don't recall 25 it.</p> |
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| <p>1 and Charlie Erickson were together? 2 A. I'm sorry. I lost my focus. Do you mind ask -- 3 asking that again? 4 Q. Yeah. How long before this incident, which 5 you've described as being approximately within a 6 month prior to their arrests, when before that had 7 these individuals had contact with each other, to 8 your knowledge? 9 A. So that would have been February 1st. So then 10 January 1st of the New Year's Eve party; so a month. 11 Q. Okay. And was there any issue or question that 12 happened at the New Year's Eve party, to your 13 understanding? 14 A. Just what I reported earlier that Charlie had 15 told me about the argument being overheard. 16 Q. And he told you that later after -- 17 A. Yes. Yeah. 18 Q. Okay. And with respect to this incident where 19 Ben Blunt and Ryan Ferguson they come together in a 20 car looking for Charlie Erickson in February of 2004? 21 A. Yes. 22 Q. And they come to your house and you talk to them; 23 what did you-all talk about? 24 A. They asked to see him and he wasn't there and we 25 said, you know, we'd tell him that they were there to</p> | <p>1 Q. Okay. Did he, at some point in time, tell you 2 that -- and this is subsequent to arrest, but did 3 Charles later tell you that he had been threatened by 4 Ryan Ferguson and/or Ben Blunt with bodily harm? 5 A. No. Did he ever tell me? Did Charlie ever tell 6 me? 7 Q. Yes. 8 A. No, Charlie never told me that. 9 Q. Well, did somebody tell you that? 10 A. After he was incarcerated. 11 Q. Yes. Who -- who -- who -- who told you after her 12 was incarcerated? 13 A. Well, it wasn't a threat. It was not a threat. 14 It was -- it was a -- it was a report. A report of 15 another offender who said that he thought he had 16 heard something at the Fulton Diagnostic Center 17 regarding a potential threat by Ryan Ferguson to 18 cause some harm of Charlie. 19 Q. Okay. Well, let -- let me ask you this; did you 20 ever relay to anyone that in fact Charles Erickson 21 had told you that when Ryan Ferguson and Ben Blunt 22 came to your home that he threatened to kill him or 23 threatened to harm him? 24 A. I -- you know, I don't remember being asked. I 25 don't remember thinking much about it. You know, and</p> |

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| <p>1 -- and, please, repeat the question 'cause I'm not 2 sure I heard it right. 3 Q. Okay. Did you ever have a conversation and tell 4 anyone that Ryan Ferguson and Ben Blunt had come to 5 your home and one or the other threatened Charles 6 Erickson with -- to kill him? 7 A. See I -- I don't know that I ever heard that or 8 knew that. 9 Q. Did you ever tell anyone that? 10 A. No, not that they threatened to kill him. I told 11 -- I think, I might have told someone that perhaps 12 Charlie's attorney that they had been at the house, 13 but -- let me think about this. 14 MR. BELLAMY: Do you want to take a break? Why don't 15 we go off the record. 16 MR. FORD: Let's take a break. I could use one. 17 MR. BELLAMY: This is a good time for a break. 18 MR. MARTIN: We'll go ahead and take a break. 19 MR. FORD: You guys are too strong for me. 20 (Audio Concluded: Marianne Erickson.I.WMA) 21 MR. MARTIN: And we're back on the record. 22 MR. BELLAMY: All right. Thank you. I show the time 23 now at 5:57. We've taken just a few minutes for 24 everybody to take a brief break and let me -- let me 25 ask you just a few questions along this line.</p> | <p>1 him saying that Ryan Ferguson threatened him. 2 Threatened him to kill him if he would go to the 3 police and that's what I recall him telling me. 4 And I do recall telling Charlie's attorney, I 5 think, and possibly Bill Haas from the investigator - 6 - the investigator for the prosecutor's office 7 because I wanted, I think, if I recall correctly that 8 I wanted the Boone County people to know about this 9 because they were incarcerated together at that jail. 10 Q. So you're talking, as I understand it, with 11 Charles when he's in custody? 12 A. Right. 13 Q. And he said -- and you asked him, if he had ever 14 been threatened -- 15 A. Right. 16 Q. -- and he said, Ryan had threatened him at one 17 point. 18 A. Yes. 19 Q. And did he associate Ben Blunt with that threat? 20 A. Not that I recall. 21 Q. But said that he threatened to kill him if he 22 ever went to the police? 23 A. Right. 24 Q. And so as I understand you're saying Charlie's 25 sitting in the same Boone County Jail --</p> |
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| <p>1 QUESTIONS BY MR. BELLAMY: 2 Q. You mentioned these two individuals Ryan Ferguson 3 -- or I mentioned them perhaps, Ryan Ferguson and Ben 4 Blunt and you knew of them to be associates of 5 Charles Erickson? 6 A. Right. 7 Q. How do you know and how did you know Ben Blunt? 8 A. Well, I didn't know his mother. I didn't know 9 him very well except that he often accompanied Ryan 10 Ferguson to pick Charlie up or I knew him as a 11 student at Rockbridge high School. I believe he was 12 an older student; a year older, I think. And I knew 13 him as a server at the Grand Cru Restaurant on 14 Providence Road. And, I think, I also knew him as a 15 server at the Steak and Shake on Stadium and Worley. 16 Q. What did you learn about the falling out between 17 Charles Erickson and Ben Blunt? 18 A. You know, I do not recall Ben Blunt's involvement 19 in the threat that Charlie called me about -- no, did 20 he -- he called -- he had to have called us from 21 Boone County Jail and we -- we did what we were not 22 supposed to do and we talked about the characters 23 involved the case. And at some point, I asked him 24 the question: Did anybody -- did anybody ever 25 threaten you and he said, yes. And I -- I remember</p> | <p>1 A. Right. 2 Q. -- that Ryan Ferguson's in. 3 A. Right. 4 Q. Neither of them have pled guilty? 5 A. I'm not sure of the timing of that conversation. 6 Q. Okay. But when Charles is telling you had he 7 ever been threatened he's talking about something 8 that happened before they were arrested? 9 A. Right. And, you know, as I think about it the 10 timing might have been after Charlie pled guilty and 11 he was waiting for -- he was kept in the jail prior 12 to Ryan's trial for another year. 13 Q. But he's not talking about something that 14 happened the day before? He's talking about 15 something that happened -- 16 A. Yes. 17 Q. -- before they were ever arrested? 18 A. Right. 19 Q. Did he tell you where that threat happened? 20 Where they were standing? 21 A. I don't recall. 22 Q. Did he tell you if he made it person or on the 23 phone? 24 A. He didn't. Or I mean, I don't recall that he 25 did.</p> |

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| <p>1 Q. Did you, at some point, associate that threat 2 with that day that Ryan and Ben Blunt came to your 3 house? 4 A. No, I don't think so. 5 Q. Did you ever tell anyone that Charles told you he 6 had been threatened by Ben Blunt and Ryan Ferguson 7 that day he came -- they came to your house? 8 A. I don't think so. I don't recall having done 9 that. 10 Q. Okay. What were the specific words that Charlie 11 used in describing the threat that Ryan Ferguson made 12 to him if he ever went to the police about the 13 Heitholt murder? 14 A. I don't recall the exact words. It was something 15 like he threatened to kill me if I went to the 16 police. 17 Q. But he didn't tell you anymore context that that? 18 A. No. I mean, we tried very hard not to discuss 19 things like this on the phone. We were not supposed 20 to be discussing things like this on the phone. I 21 had gotten the answer that I wanted and I was going 22 to act with that information and not discuss it 23 anymore. 24 Q. But when you say you were going to act, did you 25 ten call the authorities and seek protection for</p> | <p>1 would be a good attorney for Charles Erickson? 2 A. Yes. 3 Q. So no complaints about his job during the course 4 of the case? 5 A. No. 6 Q. Did you ever raise your hand and make any 7 objection to the fact that Charles Erickson was 8 pleading guilty and taking responsibility for the 9 murder of Kent Heitholt? Did you ever object to the 10 fact that Charles Erickson was going to plead guilty? 11 A. No. 12 Q. Okay. 13 A. I -- I believed he was telling the truth. 14 Q. And up until that point in time, at least, and 15 then we'll continue on; but up until the point he 16 pled guilty did you have any reason to believe that 17 Charles Erickson was not involved with Ryan Ferguson 18 in the murder Kent Heitholt? 19 A. I'm not sure how to answer that. Of course, I 20 didn't want to believe it. And I didn't believe he 21 was capable of that kind of violence. You know, he 22 had never hurt anybody that I ever heard about or 23 knew about. So -- 24 Q. Let me ask it this way. 25 A. Yeah, I think -- I think, I need a rephrasing of</p> |
| Page 46 | Page 48 |
| <p>1 Charles? 2 A. I did. I -- yeah, I called the prosecutor's -- I 3 think -- I think, I did call the prosecutor's 4 investigator and also his lawyer. 5 Q. Did you attend the trial? 6 A. Ryan's trial? 7 Q. Yes. 8 A. I did not. 9 Q. Okay. Did you attend Charles Erickson's plea of 10 guilty? 11 A. I did. 12 Q. And did you also attend his sentencing hearing 13 after Ryan's trial? 14 A. Yes. Yeah. 15 Q. And at the plea of guilty you were present when 16 Charles Erickson went up and pled guilty to the 17 murder of Kent Heitholt? 18 A. I was there, yes. 19 Q. Had you been in contact prior to that day with 20 Mark Kempton, the attorney for -- for Charles? 21 A. Yes. 22 Q. Did you feel comfortable with the advice and 23 counsel that Charles was from Mark Kempton? 24 A. Yes. 25 Q. Do you, to this day, believe that Mark Kempton</p> | <p>1 that question. 2 Q. Okay. Had Charles Erickson ever told you a 3 different version of events other than what he 4 advised the Court when he pled guilty or testified to 5 in Ryan Ferguson's trial? 6 A. No. 7 Q. He had never told you he was not involved in the 8 murder? 9 MR. FORD: At one point in time? 10 MR. BELLAMY: Up until when he pled guilty and/or -- 11 up until when he pled guilty. 12 MS. ERICKSON: Uh-huh. 13 MR. FORD: Do you understand the question? 14 MS. ERICKSON: What's troubling me is, my memory of 15 him saying how poor his memory was of that night. 16 And, you know, if you ask me a question: Do I have 17 doubts about what he remembered? I would have to 18 say, yes. But I had -- 19 QUESTIONS BY MR. BELLMAY: 20 Q. Well, when -- when did he -- you understand the 21 reason this Petition or one of the reasons this 22 Petition is filed -- 23 A. Uh-huh. 24 Q. -- as I can describe it is that Charles Erickson 25 is alleged to be making a different statement.</p> |

AUDIO TRANSCRIPTION

| | |
|---|---|
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| <p>1 A. Right.</p> <p>2 Q. Is that a new statement to you?</p> <p>3 A. Yes.</p> <p>4 Q. Completely different than anything he had ever</p> <p>5 said before about this incident?</p> <p>6 A. Exactly.</p> <p>7 Q. And when you talk about him saying he had</p> <p>8 difficulty remembering the events is that all since</p> <p>9 this new Petition has been filed?</p> <p>10 A. I remember the first day we came to your office</p> <p>11 and we met Mark Kempton and Jon and his two brothers</p> <p>12 were here and Ed Guinn was here and I remember Ed</p> <p>13 saying that there were some big problems with this</p> <p>14 story that he had heard from Charlie at the jail.</p> <p>15 And that he was pretty uncomfortable about the whole</p> <p>16 thing. And so -- and I believe -- I believe that he</p> <p>17 said that the problems were</p> <p>18 MR. FORD: Now, to let -- just a moment.</p> <p>19 MS. ERICKSON: Yeah.</p> <p>20 MR. FORD: What you're about to relay was that</p> <p>21 related to you by Mr. Guinn just in your presence and</p> <p>22 no one else?</p> <p>23 MS. ERICKSON: No.</p> <p>24 MR. FORD: Who else was there?</p> <p>25 MS. ERICKSON: I think we were all there.</p> | <p>1 Q. Okay. And up and 'til that point Charlie had</p> <p>2 never told you that he had not killed Kent Heitholt</p> <p>3 with Ryan Ferguson? He never denied it?</p> <p>4 A. Correct.</p> <p>5 Q. And, in fact, to the extent he ever informed you</p> <p>6 of what had happened he never said Ryan Ferguson was</p> <p>7 not involved up to that point? He never told you</p> <p>8 Ryan had nothing to do with it?</p> <p>9 A. No.</p> <p>10 Q. Okay. And we're going up and 'til November of</p> <p>11 2009. You understand what the date is I'm talking</p> <p>12 about?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And so from the date of the incident in</p> <p>15 2001 on that fateful Halloween night until November</p> <p>16 of 2009 Charles Erickson had never told you he had</p> <p>17 not killed Kent Heitholt with Ryan Ferguson?</p> <p>18 A. No, he never did.</p> <p>19 Q. So this November 2009, version of events was the</p> <p>20 first time, to your knowledge, he had ever said Ryan</p> <p>21 Ferguson was not involved -- or when I -- I don't</p> <p>22 want to describe it that way. He had never said he</p> <p>23 did it all?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And up until 2009, he had never told you</p> |
| Page 50 | Page 52 |
| <p>1 MR. FORD: Well, who was that?</p> <p>2 MS. ERICKSON: You and I and Jon and Fred and Bruce</p> <p>3 and --</p> <p>4 MR. FORD: Okay. Go ahead.</p> <p>5 MS. ERICKSON: Yeah.</p> <p>6 And he had been the attorney who first saw</p> <p>7 Charlie in the jail after he was arrested, and, yeah.</p> <p>8 QUESTIONS BY MR. BELLAMY:</p> <p>9 Q. Can I just ask the question this way --</p> <p>10 A. Sure.</p> <p>11 Q. And I'm not trying to cut you off in any way.</p> <p>12 A. Yeah.</p> <p>13 Q. And 'cause I'm trying to remember my question, to</p> <p>14 be honest with you.</p> <p>15 MR. FORD: (Laughter.)</p> <p>16 MS. ERICKSON: (Laughter.)</p> <p>17 QUESTIONS BY MR. BELLAMY:</p> <p>18 Q. But I believe, let me -- was this new version</p> <p>19 that you've heard since November of 2009 --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- if I may put a date on it?</p> <p>22 A. Right.</p> <p>23 Q. Is that different than everything Charlie had</p> <p>24 told you before?</p> <p>25 A. Yes.</p> | <p>1 he lied in Court at any time?</p> <p>2 A. No.</p> <p>3 Q. Whether when he pled guilty or when he testified</p> <p>4 he had always told you he told the truth?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Is that a yes?</p> <p>7 A. Yes. That's a yes.</p> <p>8 Q. How did you learn about this new version that was</p> <p>9 done in 2009?</p> <p>10 A. The day before Ryan's attorneys came to Potosi I</p> <p>11 visited him in ag seg in a one-ton-one glass between</p> <p>12 us conversation and he said that he had written a</p> <p>13 letter and that they were coming down the next day</p> <p>14 and that he was going to -- he had written a</p> <p>15 statement and he was going to take responsibility for</p> <p>16 the whole crime and that he would not accept my</p> <p>17 urging him to speak with a lawyer before he did that.</p> <p>18 Q. Did you specifically use Mark Kempton's name?</p> <p>19 A. Yes.</p> <p>20 Q. You said you need to talk to Mark before you do</p> <p>21 this?</p> <p>22 A. Yes. Yes. And then we got on the phone with</p> <p>23 Mark on our way home from Potosi and asked him to</p> <p>24 call Charlie in a legal call that night so that they</p> <p>25 could talk before the event. But the call never went</p> |

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1 through. I don't know whether it was Charlie not
 2 accepting it or not Mark not getting through the
 3 system or what the problem was, but he went ahead
 4 with his plan the next day and you've all seen that.
 5 Q. Can you describe your reaction to what you heard
 6 when he told you that?
 7 A. Yeah. I was devastated, and I -- angry, and in
 8 disbelief.
 9 Q. Did he tell you why he was doing it?
 10 A. Yes, he did.
 11 Q. What'd he tell you?
 12 A. Said he wanted to set the record straight. That
 13 he was prepared to spend his life in prison. That he
 14 -- he just made some assumptions from the evidence
 15 that he had at the time of his arrest. And, you
 16 know, had to claim -- he was -- he was afraid because
 17 at the time in 2005 -- 2004 the death penalty still
 18 existed for 17 year olds and he -- he lied he said
 19 because the prosecutors had told him that Ryan was
 20 going to turn state's evidence on him. And so he
 21 lied about what Ryan did because he thought he would
 22 save his own self from the death penalty by saying
 23 that Ryan had done everything.
 24 Q. He told you all this that day?
 25 A. You know, he told me much of that.

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1 Q. But you're not aware of anything the police to
 2 coerce him, are you?
 3 A. Am I aware?
 4 Q. Yes.
 5 A. If I'm aware it has to be because of something
 6 I've seen or heard. Is that right? So if I have
 7 heard something from Charlie; does that count as --
 8 MR. FORD: No, he's asking you about your personal
 9 knowledge about what you know from your own
 10 observations not what somebody's told you.
 11 MS. ERICKSON: Then I don't know anything about that.
 12 QUESTIONS BY MR. BELLAMY:
 13 Q. Up until when he pled guilty you're not aware of
 14 any coercion by any police officer?
 15 A. I'm not aware of any.
 16 Q. You're not aware of any coercion by his -- by the
 17 prosecutor?
 18 A. No.
 19 Q. Now, he was represented by very capable counsel
 20 and Mark --
 21 A. Uh-huh.
 22 Q. -- is that right?
 23 A. Uh-huh.
 24 Q. Is that a yes?
 25 A. Yes, it is.

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1 Q. And you're aware that before the police were even
 2 involved he had made statements? He's told you he
 3 made statements to other people --
 4 Q. Yes.
 5 Q. -- that he did it.
 6 A. Yes.
 7 Q. And he said that he and Ryan had done it?
 8 A. Yes.
 9 MR. BELLAMY: Do you have some questions Stephen
 10 MR. HAWKE: Yes.
 11 EXAMINATION BY MR. HAWKE:
 12 Q. You were asked there, what you knew about
 13 coercion. What have you heard about coercion? Has
 14 Charlie ever told you that he was coerced by the
 15 prosecutor to into somehow pleading guilty?
 16 A. No.
 17 Q. Okay. Has he told you that he was coerced or
 18 pressured or intimidated by the police into pleading
 19 guilty?
 20 A. I think he has said that he was definitely
 21 intimidated on the day of the arrest to the extent
 22 that he felt he had to -- what he has told me is that
 23 one the day of the arrest, and this later, he really
 24 didn't know the details and that he had blacked out
 25 that night because of his condition affected by drugs

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1 and alcohol and that the police expected more details
 2 than he could offer. And that he tried to put
 3 together the facts he knew in a way that made sense
 4 to him and -- and that was, you know, knowing that he
 5 didn't have all the facts. And he --
 6 Q. Now, that's -- if I may just ask you this
 7 question --
 8 A. Yes.
 9 Q. -- 'cause --
 10 A. Uh-huh.
 11 Q. He's only told you that since November of 2009.
 12 He never told you that before November or 2009; is
 13 that correct or incorrect?
 14 A. Correct.
 15 Q. So only since he's had the new lawyer has he
 16 relayed this different version of events to you; is
 17 that right?
 18 A. I -- yes.
 19 Q. And did you know that this new lawyer also
 20 represented Ryan Ferguson --
 21 A. I do.
 22 Q. -- in that same time?
 23 A. Uh-huh, I did.
 24 Q. Was that concerning to you?
 25 A. It was.

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1 Q. Have you read the Petition that Ryan Ferguson has
2 filed in this case?
3 A. No.
4 Q. Earlier during the interview you talked about
5 Charles' drug -- alcohol use --
6 A. Uh-huh.
7 Q. -- in that it concerned you that you referred him
8 to, I believe, Pathways --
9 A. Uh-huh.
10 Q. -- which is a local substance abuse counseling
11 program; is that accurate?
12 A. Right.
13 Q. And --
14 A. Court affiliated as well.
15 Q. Okay. Now, in your observation of Charles before
16 he went to that program did you ever observe him
17 drink to excess?
18 A. No.
19 Q. Did you ever see him under the influence of
20 alcohol?
21 A. I picked him up at the police station after a
22 party and there were several young people there, but
23 I cannot say that he was in -- he was apparently
24 intoxicated, didn't appear to be.
25 Q. Is that the one example --

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1 A. Uh-huh.
2 Q. -- that you have of observing him under --
3 possibly under --
4 A. After a party, yeah.
5 Q. -- possibly under the influence of alcohol?
6 A. Uh-huh.
7 Q. Did you talk to him about the party later? Like
8 who was there --
9 A. Oh, yes. Yeah.
10 Q. And did he have recall of who was there and who
11 held the party and --
12 A. Oh, sure.
13 Q. Did he have recall of the details of the party?
14 A. Yes.
15 Q. Okay. So you have not ever observed him -- well,
16 I mean -- let me -- let me rephrase that. Have you -
17 - has he ever told you during your raising of him
18 that, I don't recall something happening because I
19 drank to excess? Or I blacked out?
20 A. What time period?
21 Q. Well, let's go any -- at any point before the
22 arrest?
23 A. No.
24 Q. Okay. So he -- so you never observed -- or he
25 never told you that he had blacked out?

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1 A. Not prior to his arrest, no.
2 Q. Okay. And that -- and we're talking about
3 behaviors up and -- any -- any behaviors up until the
4 point of arrest?
5 A. Correct.
6 Q. Okay. And up and 'til November of 2009 he has not
7 told you that he did not remember the events of
8 Halloween 2001 because he had blacked out those
9 events?
10 A. I wish I could be sure of that date. I'm not
11 sure of that date. I'm not sure when the first time
12 is that he told me that he -- his memory was fuzzy or
13 that he lacked certain details.
14 Q. And I think your point's well taken because the
15 blackout theory doesn't seem to arise until February
16 of this year --
17 A. Uh-huh.
18 Q. -- 2011 (sic).
19 A. Uh-huh.
20 Q. So has -- do you recall when he first suggested
21 to you that he had blacked out on the night of
22 Halloween 2001?
23 A. I believe it was before 2009 that he told me that
24 he felt really, really bad by George's and that he
25 really wanted to go home and nobody would take him

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1 home, Ryan wouldn't take him home, the other people
2 wouldn't take him home, but he knew that he was
3 crashing. And so -- but I -- I'm sure that was well
4 before 2009 that he told me that.
5 Q. So he had enough memory, at that point, to
6 describe to you what you're describing as crashing?
7 A. Yeah.
8 Q. Is that --
9 A. That's my term is crashing, but, yeah.
10 Q. Since -- since November of 2009 when he
11 apparently gave a different version on video, you
12 understand that's the date I've been talking about;
13 are you familiar with --
14 A. Exactly. Oh, yes. Yeah.
15 Q. Okay. And have you watched that video?
16 A. Certainly.
17 Q. Okay. Has his version of events changed since
18 then?
19 A. It has. It has. And I will tell you how.
20 Q. So it never changed up until November 2009; is
21 that correct?
22 A. Right. Right.
23 Q. Okay. Then he tells you something in November of
24 2009?
25 A. Right.

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1 Q. What happened after?
 2 A. So one of the things he said in that -- in that
 3 videotaped interview was that he made some
 4 assumptions about what happened that night. And he
 5 later -- he later explained to me that the
 6 assumptions were based upon what he read in the
 7 police report and what he saw in the newspaper. And
 8 what the witnesses had said. And what he has said
 9 since then is that since the witnesses, particularly
 10 the janitor are now -- is not certain that they were
 11 there that it has shaken his confidence in whether
 12 they were there as well.
 13 So you have this --
 14 Q. Does he think this is going to help him get out?
 15 A. No, he does not.
 16 Q. He's never told you that? That he thinks this is
 17 going to help him. If he helps Ryan, this will help
 18 him.
 19 A. No, I think, that he expects that if -- if Ryan
 20 is given a new trial that he'll be involved in that
 21 trial to give testimony and then he has many question
 22 marks about -- you know, what will happen in his own
 23 case and he has had no -- he has no idea how much
 24 longer he may spend in prison. What he told me that
 25 November was, I'm prepared to spend the rest of my

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1 life in prison because I -- I told a lie. A very bad
 2 lie and this man is in prison, you know, for 40 years
 3 because of what I said. And I'm a man -- I've become
 4 a man in prison and I -- I'm going to --
 5 Q. Well, since November of 2009 has he made any
 6 statements to you that he believes he will benefit
 7 from changing his story?
 8 A. No.
 9 Q. Has he been told, to your knowledge, by anyone
 10 that if he changes his story or based on this helping
 11 Ryan Ferguson out that he will benefit?
 12 A. No.
 13 Q. Do you recall the morning of November 1st, 2001?
 14 A. Yes.
 15 Q. How do you?
 16 A. Well, the morning of I -- I can tell you what I
 17 learned about it since then, but I can't say that I
 18 remember the morning of November 1, 2001.
 19 Q. Did Charles go to school that day?
 20 A. He did.
 21 Q. Okay. Was he sober?
 22 A. Yes.
 23 Q. Was he in good shape that morning after the crime
 24 when he got up and went to school?
 25 A. I don't remember.

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1 Q. How do you know he was sober and in good shape?
 2 Or how do you know he was sober?
 3 A. I wouldn't have let him go to school if he were
 4 not.
 5 MR. HAWKE: Okay. Can we take one more, brief five
 6 minute break and then maybe we can --
 7 MS. ERICKSON: Sure.
 8 MR. HAWKE: -- do what we can to wrap this up.
 9 MS. ERICKSON: Okay.
 10 MR. HAWKE: Thank you.
 11 MR. MARTIN: Stop the recorder.
 12 (Audio Concluded: Marianne Erickson.2.WMA)
 13 MR. MARTIN: And we're back on the record.
 14 EXAMINATION BY MR. BELLAMY:
 15 Q. Okay. I've just got a little bit. A couple
 16 areas to go into; one of those is, as to his
 17 adjustment while in the penitentiary. He's had some
 18 fights and problems while there; is that right?
 19 A. That's right.
 20 Q. In fact, he's been convicted of at least two more
 21 assaults since he's been there?
 22 A. Yes.
 23 Q. Felonies?
 24 A. Yes.
 25 Q. Has that extended his time when he is expecting

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1 to get out?
 2 A. It depends, I think. From what he has told me it
 3 depends on how the armed criminal action portion of
 4 his sentence is contemplated and handled.
 5 Q. I'm talking about the fighting; has that extended
 6 the time by which --
 7 A. He has concurrent sentences, but whether it
 8 extends his time from the minimum, which was 12 and
 9 half years to the maximum depends on how the parole
 10 department evaluates the armed criminal action
 11 portion of his original sentence. And I'm no lawyer
 12 so that's about all I can tell you, that I know.
 13 Q. He's been in quite a few altercations in the
 14 penitentiary?
 15 A. Yes, he has and he's -- yeah.
 16 Q. And has he related to you that any of those are
 17 related to this case where he pled guilty and
 18 testified against Ryan Ferguson?
 19 A. No, certainly not.
 20 Q. He's never indicated that that's caused him
 21 problems in prison?
 22 A. There have been some people that mouthed off
 23 regarding this case. Mouthed off to him --
 24 Q. Can you tell me about those?
 25 A. I -- you know, I don't have any specific details

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1 of names or dates. I -- I do believe that he told me
 2 that no physical fights ever resulted from people
 3 commenting about this case. The physical fights,
 4 that he has been resulted from other actions on the
 5 part of others unrelated to the original case.
 6 Q. Has -- tell me about threats though he has
 7 received in prison because of this case? Have there
 8 been threats because of this case that he's received
 9 while in prison?
 10 A. One offender, Ivan Johnson, who was also at the
 11 Fulton Diagnostic Center, I believe, with Ryan
 12 Ferguson once called me on the phone to tell me about
 13 Charlie going to ag seg over a fight -- no, not over
 14 a fight. It was over planting razor blades in --
 15 either his cell or his shoes. And Ivan Johnson
 16 reported to me that he heard at Fulton, when he was
 17 there with Ryan Ferguson that a contract had been put
 18 out on Charlie's life by Ryan Ferguson.
 19 Q. Have you received that information from Ryan
 20 himself; do you know?
 21 A. No.
 22 Q. And what did he tell you that meant by -- well,
 23 what did contract mean to you? Or what did he tell
 24 you that meant if he relayed that to you on the
 25 phone?

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1 A. He -- he didn't interpret it. I think he thought
 2 I knew what that meant. And I was suspicious of him
 3 for Charlie had told him not to call me and he called
 4 me anyway. He had our phone number from when Charlie
 5 and he were in the same area in the Boone County Jail
 6 and so he disobeyed Charlie by calling me.
 7 He, I thought, perhaps wanted to psychologically
 8 connect Charlie's going to the hole as a result of
 9 someone else planting razor blades with his phone
 10 call to me like somehow he was in control of that
 11 incident that caused him to get -- you know, a year
 12 in the hole for razor blades. And -- and it might
 13 have been some, you know, effort on his part to
 14 intimidate me -- and this is all assumption. I don't
 15 know. But I -- I didn't -- I didn't necessarily
 16 believe that Ivan was telling the truth is what I'm
 17 getting to.
 18 Q. But you took it upon yourself to write a letter
 19 to Mark Kempton about it?
 20 A. I -- I believe I did.
 21 Q. And you asked --
 22 A. Right.
 23 Q. -- and you asked him to address this issue to
 24 protect your son?
 25 A. Yes.

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1 Q. And specifically you relayed to him what Ivan
 2 Johnson had told you?
 3 A. I'm sure you're right.
 4 Q. And did you tell him and/or -- let me ask it this
 5 way; did Ivan Johnson tell you that Ferguson had
 6 allegedly been looking for someone to kill Charles?
 7 A. That sounds correct.
 8 Q. You understand that all the phone calls at the
 9 Department of Corrections are recorded?
 10 A. Uh-huh, yes.
 11 Q. Has Charles talked to you about Kathleen Zellner?
 12 A. Yes.
 13 Q. She's no longer representing him; is that right?
 14 A. That's right.
 15 Q. But she got his new lawyer for him?
 16 A. She did. What Charlie told me was that Mr.
 17 O'Connor approached Kathleen Zellner and asked to
 18 defend Charlie -- or not necessarily defend, but to
 19 represent him in future legal proceedings.
 20 Q. And has he told you, that she's going to try to
 21 get him out of prison?
 22 A. Yes.
 23 Q. So Kathleen Zellner is going to try to get
 24 Charles out of prison, too?
 25 A. I don't know that.

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1 Q. Hasn't he told that?
 2 A. He -- he told me that. But I don't know that his
 3 understanding is correct.
 4 Q. Well, I'm asking what Charles had told you. And
 5 Charles told you --
 6 A. Yes.
 7 Q. -- that Kathleen Zellner, Ryan Ferguson's
 8 attorney, she's promised to also try to get him out?
 9 A. She did at one -- he told me that, at one time,
 10 she did promise -- or did -- not promise necessarily,
 11 indicated that she might be able to help him. That
 12 was when she was representing both of them.
 13 Q. Did he say, she's going to try to get me out with
 14 this memory stuff? Did he say that to you?
 15 A. He may have.
 16 Q. Did he tell you, he won't do anything in this
 17 case if it's going to get him more time?
 18 A. I don't remember him saying that.
 19 Q. Did he tell you, it's more about me getting out
 20 of prison?
 21 A. I don't know what the context was.
 22 Q. Do you recall responding, we should not be
 23 discussing this on the phone?
 24 A. I can recall saying that a lot.
 25 Q. Do you recall telling him, we'll talk about this

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1 at our next meeting?
 2 A. Sure, I do.
 3 Q. So when you meet with him and talk to him --
 4 A. Uh-huh.
 5 Q. -- he relays to you his plan that he's going to
 6 go through in providing this testimony for Ryan
 7 Ferguson?
 8 A. No.
 9 Q. You're saying he's never done that, told you what
 10 his plan or theory is about how he can get out?
 11 A. A theory, not a plan.
 12 Q. Okay.
 13 A. One theory.
 14 Q. The theory of how he can get out is by helping
 15 Ryan that'll help him get out; isn't that what he's
 16 told you?
 17 A. Based upon what he believes it's possible.
 18 Q. I'm just asking, what he's told you.
 19 A. Yes.
 20 Q. He told you, his theory is, if he can help Ryan
 21 get out it'll help him get out?
 22 A. Yes. Yes.
 23 Q. But if it's not going to work he's going to take
 24 the Fifth and not help?
 25 A. He has talked about considering whether to take

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1 the Fifth or not. But I don't recall in what
 2 situation he would do that.
 3 Let me explain, too, in phone conversations
 4 between at home and the correctional facility there
 5 often is very poor reception and -- and there is
 6 often a lot of noise in the background so I may not
 7 hear him well and he may not hear me well.
 8 Q. You know that's his theory?
 9 A. What's his theory?
 10 Q. You know that to be his theory that if he can
 11 help Ryan get out it'll help him get out?
 12 A. Let me think about this a minute.
 13 Q. Well, isn't that what he's told you, ma'am?
 14 A. I think he has told me that if Ryan is not able -
 15 - if -- if -- if there is a decision for Ryan to be
 16 able to leave the Department of Corrections that he
 17 believes that he would -- that there would be no
 18 evidence -- there would be lack of confidence in the
 19 evidence that -- under which he testified guilty and
 20 that he -- to be -- to be guilty of.
 21 In other words, that if -- if it's proven that
 22 he is not to be believed then it's possible that the
 23 facts in his own case may disintegrate and he wonders
 24 about the possibility of -- he has spoken to me about
 25 wondering about the possibility that he -- he might

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1 be able to, if his plea agreement is withdrawn, that
 2 if he could -- you now, if he could have another
 3 trial, if he could be convicted on the basis of the
 4 evidence, that we are certain about --
 5 Q. And he's told you --
 6 A. -- regardless of who his lawyer is.
 7 Q. But he's told you if he can get Ryan out that's
 8 the only way to put himself in that position?
 9 A. No, he didn't say that. I think, he said -- I
 10 mean, I don't think that he believes that he alone is
 11 responsible for the final decision in Ryan's case.
 12 You know, he understands that there -- there's a lot
 13 of -- there are a lot of other people involved in --
 14 MR. FORD: Well, now, you're giving your opinions
 15 about that.
 16 MS. ERICKSON: I am giving my opinion.
 17 MR. FORD: So -- so at this --
 18 MS. ERICKSON: Right.
 19 MR. FORD: Let's keep this to what you know or what
 20 you've heard.
 21 MS. ERICKSON: Okay. What do I know?
 22 QUESTIONS BY MR. BELLAMY:
 23 Q. But what he's told you is: If he can -- he's
 24 been told that he can use this memory stuff by
 25 Kathleen Zellner to help him get out?

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1 A. To help Ryan get out?
 2 Q. Both of them.
 3 A. What he's told me -- he's told me that -- that
 4 the University of Missouri assessment of him that
 5 showed that his memory was impaired and was below
 6 standards for a young person of his age and
 7 intelligence was that it was significant enough to
 8 cast doubt on his testimony.
 9 And -- and so if his testimony is not reliable
 10 then -- you know, it -- it was a problem in both of
 11 their cases because if he could not remember in the
 12 first place then his own guilty plea was not
 13 correct.
 14 Q. Was he promised that none of his statement that
 15 he gave would hurt him? We're not talking about the
 16 statement --
 17 A. No.
 18 Q. -- November 22 (sic) -- November --
 19 A. No.
 20 Q. -- of 2009.
 21 A. No, he was not promised that. I mean, he -- I
 22 don't know that. He did not tell me that he was
 23 promised that.
 24 Q. What was you told that he was promised by
 25 Kathleen Zellner, who is also representing Ryan

AUDIO TRANSCRIPTION

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1 Ferguson?
 2 A. That he -- that he realized -- well, no, what was
 3 he told? He was told that he needed a lawyer. And -
 4 - 'cause he was in deep trouble and, I believe, he
 5 told that he was told by Kathleen Zellner that he
 6 needed a lawyer. He needed representation. And I'm
 7 not sure if he told her about the rejection of the --
 8 MR. FORD: Now, no, no, just -- he asked what he told
 9 you that he had been told. That's the question. Not
 10 your interpretation of it.
 11 MS. ERICKSON: Oh, okay.
 12 MR. FORD: Do your best to answer that question.
 13 When this all came up what did he say that this
 14 Zellner lady had told him?
 15 MS. ERICKSON: She said that she could represent him.
 16 And did, in fact, take steps to arrange for that.
 17 QUESTIONS BY MR. BELLAMY:
 18 Q. What'd she do for him?
 19 A. You know, I'm not aware of anything that she has
 20 done. She -- wait there was -- I think, he told me.
 21 He did. He told me that she contacted the officials
 22 at Potosi in regards to the situation that resulted
 23 in his head injury and the continued presence of the
 24 other offender and him in the same prison.
 25 And -- and that she communicated his request for

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1 a transfer. And that transfer did occur in June of
 2 2010. I think it was June of 2010 just before his
 3 birthday. So -- now, I, also, -- we -- we, also, did
 4 communicate with the warden and several of our fellow
 5 church members communicated with the warden over the
 6 request for the transfer.
 7 So it's hard to say whose request for the warden
 8 for the transfer was successful. Was it Charlie's?
 9 What it mine? Was it Kathleen Zellner's? Was it the
 10 ladies from church? You know, then shortly after
 11 that the warden left Potosi and someone else came in.
 12 So that -- she did do that. I -- he told me that she
 13 did write a letter or made a phone call or both.
 14 Q. Did she obtain affidavits for the benefit of Ryan
 15 Ferguson while representing --
 16 A. Affidavits?
 17 Q. -- both of them? Have you read the affidavits
 18 that have been obtained --
 19 A. I have not.
 20 Q. -- that he signed?
 21 A. Do you know what -- whether Charles Erickson
 22 intends to testify?
 23 A. I -- doesn't that depend on whether he's selected
 24 to testify?
 25 Q. Just do you know if he plans on it?

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1 MR. FORD: You mean, has he told her that?
 2 MR. BELLAMY: Yeah. Has he told you he's planning or
 3 testifying?
 4 MS. ERICKSON: I think -- I don't think he's sure.
 5 He's told me that he is expecting to be interviewed
 6 and that's as far as he's told me that he knows for
 7 sure is going to happen. And I know Mr. O'Connor
 8 told him he was going to be interviewed soon by
 9 representatives of your office, but he doesn't know
 10 the date.
 11 MR. BELLAMY: Do you have any questions, Steve?
 12 MR. HAWKE: No.
 13 QUESTIONS BY MR. BELLAMY:
 14 Q. Do you have any information, and I'm going to try
 15 and ask this in a general sense --
 16 A. Uh-huh.
 17 Q. -- beyond just -- do you have any information
 18 that would -- that -- that I haven't discussed with
 19 you and you think it would be important for us to
 20 know in this case?
 21 Any threats Charles has received?
 22 A. No. No.
 23 Q. So is it your understanding that today, as you
 24 understand his version of events, it's different than
 25 it was November of 2009, when he gave this video

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1 statement saying what he said?
 2 A. Yes.
 3 Q. So is he now suggesting a different version of
 4 events or just a lack of -- let me just ask that. Is
 5 he suggesting a different thing happened on October
 6 31st, 2001?
 7 A. He's not suggesting -- he's not suggesting that
 8 he knows a different thing happened. He's suggesting
 9 that he doesn't really know what happened.
 10 QUESTIONS BY MR. HAWKE:
 11 Q. Just so I understand that answer what he is
 12 indicating to use that he and Ryan and could be
 13 involved in the events he just doesn't remember it
 14 today?
 15 A. Right.
 16 Q. So he is not saying that he was at home in bed at
 17 the time of the events or he and Ryan were at the
 18 Waffle House at the time of the events or anything
 19 like that; am I understanding that correctly?
 20 A. Uh-huh, yeah.
 21 Q. Okay.
 22 MR. BELLAMY: I don't believe I have any other
 23 questions. Stephen, do you?
 24 (No response.)
 25 MR. BELLAMY: Thank you very much for your time

AUDIO TRANSCRIPTION

| | |
|---|--|
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| <p>1 MR. FORD: Well, let me talk to her a second.</p> <p>2 MR. BELLAMY: Well, could we -- could we have just</p> <p>3 one moment if we could?</p> <p>4 MS. ERICKSON: Uh-huh.</p> <p>5 MR. BELLAMY: One more. Sorry to keep taking breaks,</p> <p>6 but it's helping --</p> <p>7 MS. ERICKSON: No, that's all right. Go ahead.</p> <p>8 MR. MARTIN: Let's go ahead and stop the recorder.</p> <p>9 (Audio Concluded: Marianne Erickson.3.WMA)</p> <p>10 MR. MARTIN: And we're back on the record.</p> <p>11 MR. BELLAMY: Okay. We've taken just another brief</p> <p>12 break. I want to just explore one area or two areas.</p> <p>13 QUESTIONS BY MR. BELLAMY:</p> <p>14 Q. Did Charles ever tell you about confrontations or</p> <p>15 encounters he's had with Ryan since being either in</p> <p>16 the Boone County Jail or in prison? I think probably</p> <p>17 in the Boone County Jail.</p> <p>18 A. No.</p> <p>19 Q. Never told you they saw each other at any time?</p> <p>20 A. In passing. And perhaps in the courthouse.</p> <p>21 Q. Ever indicate to you and facial gestures, words?</p> <p>22 A. No.</p> <p>23 Q. Threats?</p> <p>24 A. No.</p> <p>25 Q. Nothing?</p> | <p>1 A. I think so, yes.</p> <p>2 Q. Did you read his deposition that he gave?</p> <p>3 A. I think I did.</p> <p>4 Q. And at all those instances that we've talked</p> <p>5 about, the deposition and trial --</p> <p>6 A. Uh-huh.</p> <p>7 Q. He was represented by Mark Kempton; is that</p> <p>8 right?</p> <p>9 A. That's right.</p> <p>10 Q. And did you come to know Mark Kempton's</p> <p>11 reputation as an attorney throughout this process or</p> <p>12 were you aware of it when he was engaged as an</p> <p>13 attorney?</p> <p>14 A. I think we knew what Hamp knew and relayed to us</p> <p>15 And, you know, we had no additional information.</p> <p>16 Q. But what I assume was relayed to you that he was</p> <p>17 a very capable, confident, top notch --</p> <p>18 A. Yes.</p> <p>19 Q. -- attorney in all respects?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 MR. FORD: Poor golfer.</p> <p>23 MR. BELLAMY: (Laughter.)</p> <p>24 MS. ERICKSON: (Laughter.)</p> <p>25 MR. BELLAMY: I'm glad that's on the record and you</p> |
| Page 78 | Page 80 |
| <p>1 (No response.)</p> <p>2 Q. Nothing you recall?</p> <p>3 A. No.</p> <p>4 Q. As far as Charles Erickson over his life has he</p> <p>5 generally been a truthful person, in your opinion?</p> <p>6 A. No, not in adolescents.</p> <p>7 Q. Okay.</p> <p>8 A. He lied a lot.</p> <p>9 Q. About the marijuana use?</p> <p>10 A. Sure.</p> <p>11 Q. Sneaking out of the house?</p> <p>12 A. Right, by omission.</p> <p>13 Q. Not telling you what he really was doing?</p> <p>14 A. Right.</p> <p>15 Q. Okay.</p> <p>16 A. Right.</p> <p>17 Q. And you indicated you did not go to Ryan</p> <p>18 Ferguson's trial; is that right? Did I hear that?</p> <p>19 A. I did not, no.</p> <p>20 Q. Okay. Have you ever seen or read his testimony</p> <p>21 that he gave at trial?</p> <p>22 A. Charlie's?</p> <p>23 Q. Yes.</p> <p>24 A. Yes.</p> <p>25 Q. Read the entire transcript of the testimony?</p> | <p>1 said it instead of me, Hamp.</p> <p>2 MR. FORD: (Laughter.)</p> <p>3 QUESTIONS BY MR. BELLAMY:</p> <p>4 Q. But in any event, with respect to all of that</p> <p>5 Mark Kempton represented him all along the way and</p> <p>6 you have -- do you have any reason to believe that --</p> <p>7 or did you have any reason, at that time, to believe</p> <p>8 that Charles Erickson was not telling the truth and</p> <p>9 was taking full responsibility for what he and Ryan</p> <p>10 Ferguson did together?</p> <p>11 A. No.</p> <p>12 Q. No reservations?</p> <p>13 A. No reservations. Well, was it reservations or</p> <p>14 knowledge?</p> <p>15 Q. You had no reason to disbelieve what he was</p> <p>16 saying?</p> <p>17 A. I had my reasons as a mother to disbelieve what</p> <p>18 he was saying constantly.</p> <p>19 Q. You didn't want to believe it?</p> <p>20 A. Didn't want to believe it. I had people telling</p> <p>21 me not to believe it. No one who knew anything about</p> <p>22 the case, of course, just family, friends; they</p> <p>23 couldn't believe it either. And -- but I no reason</p> <p>24 to doubt that Mark did everything he could to extract</p> <p>25 the truth.</p> |

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1 Q. And that Charles Erickson told the truth when he
 2 pled guilty?
 3 A. Right. Yes.
 4 Q. And that he told the truth at Ryan's trial?
 5 A. Yes.
 6 Q. Have you had any contacts with the Ferguson
 7 family since Charles Erickson's testimony?
 8 A. No.
 9 Q. They've never called you? Contacted you, in any
 10 way?
 11 A. Through others, but not themselves. And --
 12 Q. What was the purpose of them contacting you; if
 13 you know?
 14 A. To present some evidence that they had collected
 15 through investigations after the -- Ryan's trial.
 16 Q. Did they actually make contact with you?
 17 A. I received some letters, some envelopes; one,
 18 with a tape.
 19 Q. And what was the tape?
 20 A. I didn't listen to it. It was -- I'm not sure
 21 what it was. I rejected them. At one point, told
 22 Mark Kempton to have them stop contacting us through
 23 third parties. And that those contacts stopped until
 24 a year ago, 18 months ago, when a lady from Oregon or
 25 out west who's daughter is a schizophrenic wrote us

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1 and urged us to consider the possibility that Charlie
 2 was a schizophrenic and that he -- you know, his
 3 behavior was classic in that he was experiencing
 4 symptoms of schizophrenia rather than what he thought
 5 was involvement in a crime.
 6 Q. And who was it that sent you the tape; is you
 7 know, from the Ferguson family?
 8 A. A woman in Columbia. I don't recall her name.
 9 Q. A representative of theirs --
 10 A. Yes.
 11 Q. -- or a family member?
 12 A. No, a representative friend.
 13 Q. And are you part of any blogs or any Internet
 14 groups whereby people comment or you comment on this
 15 case?
 16 A. You know, I -- I did participate in a Tribune
 17 blog anonymously. But that ended three or four years
 18 ago.
 19 Q. What was your screen name?
 20 A. Certain, I think, C-E-R-T-A-I-N.
 21 Q. And it would be below a story or is it a
 22 particular blog at the Columbia Tribune?
 23 A. It was a particular blog. It was -- but they
 24 ended that system --
 25 Q. Ah.

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1 A. -- at the Tribune.
 2 Q. And in looking at the blogs are you familiar with
 3 other screen names?
 4 A. Yes.
 5 Q. What's one of the names you're familiar with?
 6 A. Spoon-fed.
 7 Q. And do you know who that is?
 8 A. I do. It's Bill Ferguson.
 9 Q. Okay. And so his moniker, if I may use that
 10 term, is Spoon-fed and your moniker was Certain?
 11 A. Right. I think so. I think that was it.
 12 Q. And was the substance of your blogs at the time
 13 that you were, in fact, certain of the guilt --
 14 A. Yes.
 15 Q. -- of Ryan Ferguson and Charles Erickson?
 16 A. Yes. Then at that point, I --
 17 Q. But you --
 18 A. -- believed, you know, what Charlie had said.
 19 Q. Because he had told you, they did it?
 20 A. Yes.
 21 Q. And you knew your son?
 22 A. Uh-huh.
 23 Q. Is that a yes?
 24 A. Yes.
 25 Q. Have you ever had contact with the victim's

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1 family?
 2 A. No.
 3 Q. You know its part of our responsibility to notify
 4 them and be in touch with them --
 5 A. Uh-huh.
 6 Q. -- during the course of the case and --
 7 A. Uh-huh.
 8 Q. -- obviously, everybody wants this matter
 9 resolved to see justice done. But you've had no
 10 contact with them. They've never contacted you, I
 11 assume?
 12 A. Not me. A member of -- they have contacted
 13 Charlie, but they have not contacted me.
 14 Q. You've never spoken to them personally?
 15 A. No.
 16 Q. So I just wanted to go the whole -- and you've
 17 talked to -- you've almost talked to the Defendant --
 18 or Ryan Ferguson's family --
 19 A. Uh-huh.
 20 Q. -- and -- but you never talked to the victim's
 21 family?
 22 A. Correct.
 23 Q. They never sent you anything? Mailed to you?
 24 A. No.
 25 Q. Okay. And the last time you blogged or wrote

AUDIO TRANSCRIPTION

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|---|--|
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| <p>1 anything on the computer, of any kind, was a series 2 of blogs under the moniker of Certain -- 3 A. Uh-huh. 4 Q. -- and you -- would it be fair to say, were 5 responding to Spoon-fed? Or were you responding to 6 other people? 7 A. Yes. Yeah. It was pretty rare that I did 8 respond. But, I think, it was probably to Spoon-fed. 9 Q. And did you make it clear that -- 10 A. Or -- or to a rel- -- another relative; another 11 obvious relative of Ryan Ferguson. 12 Q. Was that another moniker you knew? 13 A. I can't think of it. 14 Q. Okay. But you associated it with a relative? 15 A. I think the person identified themselves as a 16 relative. 17 Q. And at no time did you ever make any writings of 18 any kind that suggested that you had information that 19 Ryan Ferguson was innocent of this crime? 20 A. No. 21 Q. In fact, the only writings you indicated, at any 22 time, based on information you received from Charles 23 Ferg- -- Charles Erickson was that Ryan Ferguson was 24 guilty? 25 A. I don't think I needed to state that on the blog.</p> | <p>1 we turn it over to them or Ryan Ferguson's attorney 2 if a service of process has to be, if anybody decides 3 to do that would you be the person who would accept 4 that on behalf of the -- of -- of both Ms. Erickson 5 and Jon Erickson? 6 MR. FORD: I'm sure that's correct. 7 MR. BELLAMY: Okay. 8 MR. FORD: In the absence of telling you otherwise 9 that's understood. 10 MR. BELLAMY: Thank you very much. 11 MR. FORD: And I'm sure Mr. Erickson would agree with 12 that. As a lawyer, I'd have to ask him to be 13 certain, but I'm sure he'll agree to it. 14 MR. BELLAMY: Ms. Erickson, I want to thank you very 15 much for your time. 16 MS. ERICKSON: Uh-huh. 17 MR. BELLAMY: And I appreciate you being here. Thank 18 you very much. 19 Mr. Ford, thank you for your hospitality? 20 MR. FORD: Yes, sir. 21 MR. BELLAMY: Thank you. 22 MR. MARTIN: This is the end of the recording. 23 (Audio Concluded: Marianne Erickson.4.WMA) 24 25</p> |
| Page 86 | Page 88 |
| <p>1 I think that the things that I responded to were 2 nasty comments made about Charlie. 3 Q. But would it be fair to say that the moniker or 4 name you used of Certain -- 5 A. Yes. 6 Q. -- was to indicate you were certain of Ryan 7 Ferguson's guilt? 8 A. Yes. 9 Q. Okay. 10 A. Yeah. 11 MR. BELLAMY: I don't think I have anything else. 12 MR. HAWKE: That's all I have. We'll shut off the 13 tape. 14 MR. BELLAMY: I have -- I have two things to put on 15 the record if we could. 16 We've had a number of breaks during the course 17 of this interview and meeting and I just wanted to 18 make it clear, if you would agree with me on the 19 record, we have not contacted you or talked to you 20 about this or interviewed outside of when the 21 recording devices were on; is that true? 22 MS. ERICKSON: That's true. 23 MR. BELLAMY: And I don't know if this will be the 24 case, but if I could; Hamp, if, in fact, processed 25 whether from us, and this will be on the record, when</p> | <p>1 CERTIFICATE OF TRANSCRIPTIONIST 2 3 I, DANIELLE Y. MOSER, within and for the State of 4 Missouri, do hereby certify that the audio 5 transcription in the foregoing audio was transcribed 6 to the best of my ability and therefore reduced to 7 typewriting under my direction; that I am neither 8 counsel for, related to, nor employed by any of the 9 parties to the action in which this audio was taken, 10 and further, that I am not a relative or employee of 11 any attorney or counsel employed by the parties 12 thereto, nor financially or otherwise interested in 13 the outcome of the action. 14 15 16 17 <u>DANIELLE Y. MOSER, Notary Public</u> 18 Commission # 10398805 19 Commission Expires January 8th, 2015 20 21 22 23 24 25</p> |

22 (Pages 85 to 88)

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IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

RYAN FERGUSON,)
Movant,)
)
)
vs.) CASE NO. 07BA-CV05888
)
)
STATE OF MISSOURI,)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Now on this 12th day of June, 2009, the court enters the following findings of fact and conclusions of law as required by Rule 29.15(j):

Movant was charged with murder in the first degree and robbery in the first degree in the Circuit Court of Boone County, Missouri, Case No. 04CR165368-01. The cause proceeded to trial with the Honorable Ellen Roper presiding.

The evidence at trial, in the light most favorable to the verdict, are as follows:¹
On October 31, 2001, Chuck Erickson, a seventeen-year-old high school junior, attended a party at his friend's house in Columbia, Missouri. The police broke up the party and as Erickson was leaving the party, he ran into Movant who was just driving up to the house. Movant, who was also a seventeen-year-old high school junior, told Erickson to get in his car, and the two drove off. They made plans to meet with Movant's sister at By George, a club in downtown Columbia, Missouri.

¹ This Court's summary of facts is largely based on the Court of Appeals summary of facts in its opinion of Movant's direct appeal. State v. Ferguson WD66271 (per curiam opinon) (order is located at State v. Ferguson, 229 S.W.2d 612 (Mo.App. W.D. 2007). (State's Exhibit 20)



State, 119 S.W.3d 607, 610 (Mo.App. S.D. 2003); Crooks v. State 131 S.W.3d 407, 410 (Mo.App. S.D. 2004). Here, Movant has failed to demonstrate that Varner could have been located or that counsel should have known about Varner or her potential testimony.

In any event, Movant was not prejudiced. Varner's testimony was that Trump could not identify the men in the parking lot **shortly** after the murder. Trump did not see Movant or Erickson's photographs as they were not suspects until 2004. The fact that he could not make an identification at the time of the murder (with no suspects) does not impeach his testimony that upon seeing their photographs he recognized Movant and Ferguson as the persons in the parking lot that night. Moreover, Varner's testimony does not provide a viable defense. Counsel's actions were reasonable and Movant was not prejudiced. This Claim is denied.

Claim 8(H) Movant claims that counsel was ineffective for failing to call Dr. Richard Leo to testify that Erickson's confession was "false" based on several factors. This Court finds that counsel's actions were reasonable. Trial counsel considered hiring a "false confession" expert but decided to focus on whether police had fed Erickson information (and they consulted an expert on that issue) and hired Dr. Loftus to focus on whether it was a false memory or dream. The persons they had consulted had stated that it was not a "false confession" and decided that it did not seem like a case to bring an expert in on.

Dr. Leo refused to consider any of the facts that Erickson told officers prior to his taped confession. Dr. Leo testified that he would not consider the fact that Erickson had told his friends about the murder and had confessed to it before he

from the record that a competent and effective appellate lawyer would have recognized it and asserted it. State v. Moss, 10 S.W.3d 508, 514 (Mo. banc 2000); State v. Edwards, 983 S.W.2d 520, 522 (Mo. banc 1999). The right to relief from ineffective assistance of appellate counsel follows the plain error rule in that no relief may be granted unless the error that was not raised on appeal was so substantial as to amount to a manifest injustice. Moss, supra, at 515. Movant fails to offer any ground on which appellate counsel was to raise this issue on appeal. And, in any event, as discussed above with trial counsel in Claim 8(J)(1), this claim is without merit. There is no reasonable probability that had counsel raised this issue on appeal the case would have been reversed for a new trial. This Claim is denied.

SUMMARY

It is the conclusion of this Court that movant has failed to show that his conviction or sentence violates the Constitution or laws of this State or of the United States.

WHEREFORE, it is the judgment of this Court that all of the Movant's claims are denied.

SO ORDERED this 12th day of June, 2009.



Jodie Capshaw Asel
Circuit Judge, Division IV



**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

In Re: RYAN FERGUSON ,)
 Petitioner,)
))
v.)
))
DAVE DORMIRE, Superintendent JCCC,)
))
 Respondent.)

WD73705

ORDER

Petitioner Ryan Ferguson filed his Petition for Writ of Habeas Corpus in this Court on March 25, 2011. According to the Petition, Ferguson has asserted the issue which he seeks to raise in this Court in a separate Petition for Writ of Habeas Corpus filed in the Circuit Court of Cole County on February 14, 2011. In the alternative, he is free to assert the issue raised in the Petition in the habeas corpus proceeding currently pending in the Circuit Court. In these circumstances, the Petition for Writ of Habeas Corpus filed in this Court is denied. See Supreme Court Rule 84.22(a). This denial is without prejudice to Ferguson reasserting this issue in this Court subsequent to the Circuit Court's disposition of the Petition pending there, or from seeking other appropriate relief.



Dated in Kansas City, Missouri, this 29th day of March 2011.



Alok Ahuja
Presiding Judge - Writ Division

Martin, J., concurs.

cc: Joseph Dandurand
Kathleen T. Zellner
Samuel Henderson