

Johnson across town at the time of the murder; and (5) the lead trial prosecutor has expressed concerns about the case and supports a new trial.

2. The Due Process Clause of the Fourteenth Amendment requires fundamental fairness in criminal proceedings. Prosecutors play a critical role in upholding that protection. They have a duty to “seek justice,” and they must speak up when “a miscarriage of justice may result from their remaining silent.” *Young v. United States*, 315 U.S. 257, 258 (1942). Because of the importance of these obligations, the United States Supreme Court has recognized that courts must give “*great weight*” to the judgment of a government authority that requests that a conviction be set aside. *Id.* (emphasis added).

3. Under the unique circumstances of this case, due process requires a new trial. The District Attorney fulfilled his duty to seek justice. He learned of a potentially wrongful conviction, conducted a thorough review of the case, and determined that the conviction is unjust. He then sought to remedy the injustice by calling for a new trial. This Court must give “great weight” to the District Attorney’s determination, recognize that Mr. Johnson’s conviction is fundamentally unfair, and grant a new trial.

4. For the reasons set forth in this petition, Mr. Johnson is entitled to relief from his conviction and death sentence pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, the Eighth and Fourteenth Amendments to the

United States Constitution, and the corresponding provisions of the Alabama Constitution.

BACKGROUND

5. This case involves the murder of Deputy Sheriff William G. Hardy in a hotel parking lot in Birmingham, Alabama, on July 19, 1995. The Jefferson County District Attorney's Office prosecuted two men, Petitioner Johnson and Ardragus Ford, at separate trials involving much of the same evidence. The State tried both Mr. Ford and Mr. Johnson twice because at each of the initial trials, the jury was unable to agree on a guilt-phase verdict.¹ The same lead prosecutor litigated all four trials. The State presented no physical or eyewitness evidence connecting either man to the crime. Both men maintained their innocence, and numerous alibi witnesses placed them across town at the time of the murder. Mr. Ford was acquitted; Mr. Johnson was convicted and sentenced to death.²

6. Over the course of five formal proceedings—a grand jury hearing and four trials—the State presented no fewer than five different and conflicting theories

¹ See *Johnson v. State*, 823 So. 2d 1, 27 n.5 (Ala. Crim. App. 2001) (explaining Mr. Johnson's first trial); C1. 885 (explaining Mr. Ford's first trial).

² See *Johnson*, 823 So. 2d at 9; C1. 885 (explaining Mr. Ford's acquittal).

of who killed Deputy Hardy.³ The conflicting theories are depicted in the chart below:

DATE	PROCEEDING	STATE'S THEORY AS TO WHO SHOT DEPUTY HARDY
January 1996	Grand Jury Proceeding	Ardragus Ford & Omar Berry
November 1997	Ardragus Ford's 1st Trial	Ardragus Ford
December 1997	Toforest Johnson's 1st Trial	Toforest Johnson
August 1998	Toforest Johnson's 2nd Trial	Toforest Johnson & Quintez Wilson
June 1999	Ardragus Ford's 2nd Trial	Ardragus Ford

7. Much of the State's inability to settle on a theory stemmed from the inconsistent statements provided to the police by a fifteen-year-old girl named Yolanda Chambers. Although Ms. Chambers initially denied knowing anything about the murder, she ultimately gave nine different accounts of the crime and

³ See C3. 493 (State's theory in grand jury proceeding); C1. Supp-1 1625 (State's theory at Mr. Ford's first trial); C1. Supp-1 782 (State's theory at Mr. Johnson's first trial); T.R. 903-04, 942 (State's theory at Mr. Johnson's second trial); C1. 510, 512, 524 (State's theory at Mr. Ford's second trial).

admitted to telling “hundreds of lies,”⁴ such that even the State disavowed her credibility. C3. 243. However, Ms. Chambers implicated Mr. Johnson in several of her early statements, and those statements led to Mr. Johnson’s arrest. C3. 491-92.

8. The State’s case against Mr. Johnson ultimately hinged on the testimony of a woman named Violet Ellison. Ms. Ellison testified that, in the summer of 1995, her sixteen-year-old daughter Katrina had a friend who was incarcerated at the Jefferson County Jail. T.R. 668-69. Katrina occasionally made three-way calls for her friend and other people incarcerated at the jail. T.R. 620-24, 668-70. Ms. Ellison claimed that, on August 3, 1995, Katrina made a three-way call for a person in the jail, put the phone down, and left the room. T.R. 670-71. According to Ms. Ellison, she then picked up the phone and heard a man identify himself as “Toforest” and confess to killing Deputy Hardy. T.R. 682-83.

9. In the words of the lead prosecutor, “I don’t think the State’s case was very strong, because it depended on the testimony of Violet Ellison in my opinion.” R-2 25.⁵ Indeed, Ms. Ellison had never met Toforest Johnson, and she

⁴ See C1. 313-497 (overview of Ms. Chambers’s accounts); C1. 503 (State acknowledging that Ms. Chambers told “hundreds of lies”); *see also* C1. 483 (Ms. Chambers admitting that she told 102 lies in her initial statements to police on July 24 and 26, 1995); C1. 486-97 (Ms. Chambers admitting that she told many more lies to police after her initial statements).

⁵ “R-2” refers to the Reporter’s Transcript of the Rule 32 hearing held on June 24, 2014.

had never heard his voice. Moreover, after the trial, Mr. Johnson discovered that Ms. Ellison was paid \$5,000 for her testimony. *See* C. 1171-72. It is undisputed that this information was never disclosed to the defense and was not presented to the jury at trial. After Mr. Johnson's conviction and sentence were affirmed on direct appeal, Mr. Johnson sought post-conviction relief.⁶

10. In 2019, the Jefferson County District Attorney's Office conducted an independent, extensive evaluation of the integrity of Mr. Johnson's conviction. The evaluation, which District Attorney Danny Carr led, involved (1) reviewing Mr. Johnson's case file and trial transcripts; (2) considering evidence that was first revealed after Mr. Johnson's trial, including the subsequent trial of Mr. Johnson's co-defendant as well as the reward payment to Violet Ellison; (3) interviewing an alibi witness who did not testify at trial and who placed Mr. Johnson across town at the time of the murder; (4) discussing the evidence with the lead trial prosecutor and the attorney for Mr. Johnson's co-defendant; and (5) consulting with the victim's family members.⁷ The evaluation lasted approximately nine months and concluded in June 2020.

⁶ A description of the post-conviction proceedings is attached as Exhibit A.

⁷ *See* Beth Shelburne, *District Attorney Urges New Trial for Man on Alabama's Death Row*, WBRC (June 12, 2020), available at <https://www.wbrc.com/2020/06/12/district-attorney-urges-new-trial-man-alabamas-death-row/> (last visited Dec. 6, 2020) ("Carr's office spent almost nine months reviewing the case files, interviewing witnesses, and consulting with the family of Deputy Hardy.").

11. On June 12, 2020, the District Attorney announced the results of his investigation by filing a brief outlining his concerns with Mr. Johnson's conviction and requesting a new trial. C3. Supp-3 10-11.⁸ The District Attorney wrote that his office's "duty to seek justice requires intervention in this case" based on five factors, reprinted here:

1. There were several trials of different individuals relative to this case. Pursuant to these trials the state presented as many as five different theories relative to who shot Deputy Hardy.
2. The case originally was based on a young lady [Yolanda Chambers] who admitted repeatedly lying to the police and prosecutors, as well [as] under oath.
3. There are a number of alibi witnesses who did not testify at trial [who] claim to have seen Mr. Johnson in another area of town at the time of the murder.
4. The main witness who testified to hearing the defendant admit killing Deputy Hardy over a telephone conversation was subsequently paid \$5,000 which was never mentioned during trial.
5. The District Attorney, prior to the filing of this brief, met with the Original Lead Prosecutor in this case. He expressed concerns about this case and supports this request as well.

C3. Supp-3 10-11. Prior to June 12, 2020, the District Attorney had not taken a public position on Mr. Johnson's case.

12. Mr. Johnson now brings this timely second Rule 32 petition.

⁸ The District Attorney's brief is attached as Exhibit B.

GROUND FOR RELIEF

I. IN LIGHT OF THE UNIQUE AND EXTRAORDINARY CIRCUMSTANCES OF THIS CASE, THE FOURTEENTH AMENDMENT REQUIRES AN ORDER VACATING MR. JOHNSON'S CONVICTION.

13. Due process of law requires fairness, integrity, and honor in the operation of the criminal justice system and its treatment of individuals. *See* U.S. Const. amend. XIV; Const. of Ala., Art. I, § 6; *Ex Parte Frazier*, 562 So. 2d 560, 565 (Ala. 1990) (explaining that due process “in its most basic sense encompasses the observation of that degree of fundamental fairness that is essential to our concept of justice”); *Chambers v. Mississippi*, 410 U.S. 284, 302-03 (1973) (holding that criminal proceedings must be fundamentally fair). Fundamental fairness is particularly important in capital cases, which require heightened reliability. *Beck v. Alabama*, 447 U.S. 625, 638 (1980).

14. Prosecutors play a “special role” in upholding fundamental fairness. *Banks v. Dretke*, 540 U.S. 668, 696 (2004). Their mission is to “seek justice, not merely to convict.” *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 803 (1987); *see also Adams v. State*, 280 Ala. 678, 680 (1967) (explaining that the primary duty of the Office of the District Attorney is to see that justice is done). The public’s trust in the criminal justice system depends on the fulfillment of this principle. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (discussing society’s interest in having a prosecutor who seeks justice).

15. Consistent with their mission to seek justice, prosecutors have many specific obligations that are designed to ensure fundamental fairness. They must ensure that their arguments are supported by a good faith basis. *Berger v. United States*, 295 U.S. 78, 84-89 (1935). They must disclose material evidence that is favorable to the defense. *Brady*, 373 U.S. at 87. And they must correct false or misleading testimony. *Napue v. Illinois*, 360 U.S. 264, 269-70 (1959).

16. Perhaps most importantly, prosecutors must seek to remedy unjust convictions that come to their attention. *See Imbler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976) (binding prosecutors “by the ethics of [their] office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction”); ABA R. Prof. C. 3.8(g), (h); *see also* Ala. R. Prof. C. 3.8 cmt (explaining that a prosecutor’s responsibility as a “minister of justice” carries with it “specific obligations to see that the defendant is accorded procedural justice”). As the United States Supreme Court explained in 1942, government authorities must “be quick to confess error when, in their opinion, a miscarriage of justice may result from their remaining silent.” *Young v. United States*, 315 U.S. 257, 258 (1942). Given the importance of this responsibility, courts give “great weight” to the judgment of a government authority that requests that a conviction be set aside. *Id.*

17. Here, the District Attorney fulfilled his duty to seek justice by thoroughly evaluating Mr. Johnson's case and calling for a new trial after determining that his office could no longer stand by the conviction. This is exactly what a prosecutor is supposed to do when "a miscarriage of justice may result from [his] remaining silent." *Young*, 315 U.S. at 258. This Court must give "great weight" to the District Attorney's judgment, *id.*, and it must recognize that Mr. Johnson's conviction cannot stand.

18. The depth of the District Attorney's review underscores the need for relief. This is not a situation in which a new prosecutor conducted a cursory examination of an old trial transcript and took a different view of the evidence. Instead, the District Attorney reviewed Mr. Johnson's file and trial transcript; considered facts that were not revealed until after Mr. Johnson's trial; interviewed an alibi witness who did not testify at the trial; and consulted with the original lead trial prosecutor and numerous other people who were involved in or affected by the case. The review took nine months, and the District Attorney himself was directly involved in all aspects of it.

19. There should be no question that the District Attorney's conclusion that Mr. Johnson is entitled to a new trial is justified. In his brief, the District Attorney identified five specific matters of concern. C3. Supp-3 10-11. Each of

the five undermines the integrity of Mr. Johnson's conviction and casts serious doubt on Mr. Johnson's guilt.

20. **First**, the District Attorney found that the State presented "as many as five different theories relative to who shot Deputy Hardy." C3. Supp-3 10. The ballistics and witness testimony in this case indicate there was one shooter. TR. 389, 886-87. Yet the State never settled on a theory of who shot the victim. The jury that convicted Mr. Johnson never learned that the State argued mutually exclusive and inconsistent theories. For example, the prosecutor at Mr. Johnson's trial called Yolanda Chambers a "liar" and urged the jurors not to credit her testimony that Ardragus Ford shot Deputy Hardy. These jurors did not know, and could not have known, that the very same prosecutor then called Ms. Chambers as the State's star witness in Mr. Ford's second trial, just ten months after Mr. Johnson was convicted. As noted above, this prosecutor has now joined the District Attorney in his request to vacate Mr. Johnson's conviction.

21. **Second**, the District Attorney found that Mr. Johnson's case "originally was based on a young lady [Yolanda Chambers] who admitted repeatedly lying to the police and prosecutors, as well [as] under oath." C3. Supp-3 11. When Ms. Chambers spoke to the police and prosecutors, she gave *nine* different stories about what happened on July 19, 1995, implicating a total of *seven* different men. It is undisputed that she told *hundreds of lies* about who was

involved and what she knew. Ms. Chambers's story was the key reason Mr. Johnson was implicated in Deputy Hardy's murder.

22. **Third**, the District Attorney interviewed an alibi witness who did not testify at trial and who saw Mr. Johnson in another area of town at the time of the murder. C3. Supp-3 11. At Mr. Johnson's trial, the lead prosecutor asked the jury to disregard the alibi testimony that Mr. Johnson presented as unreliable. T.R. 936-41. Now, the District Attorney is seeking a new trial based, in part, on an alibi witness.

23. **Fourth**, the District Attorney found that Violet Ellison "was subsequently paid \$5,000 which was never mentioned during trial." C3. Supp-3 11. During the recent *Brady* proceedings, the parties disagreed about whether Mr. Johnson established that the State suppressed evidence that Ms. Ellison was motivated by the reward, and this Court found that Mr. Johnson had not met his burden of establishing suppression. But there is no dispute that the State paid Ms. Ellison \$5,000 without informing the defense, and the jury never learned of the payment.

24. **Fifth**, the District Attorney met with the lead prosecutor, who also has expressed concerns about the case and supports a new trial for Mr. Johnson. The lead prosecutor did not just prosecute Mr. Johnson; he was the lead prosecutor at *four* trials for this matter. He spent nearly five years of his career prosecuting

multiple individuals for the death of Deputy Hardy. He testified under oath in 2014 that he “[didn’t] think the State’s case was very strong, because it depended on the testimony of Violet Ellison.” R-2 25. Like the District Attorney, the trial prosecutor has an obligation to “seek justice” and correct past wrongs. He has sought to fulfill that obligation here, and he supports the District Attorney’s request for a new trial.

25. The District Attorney’s five concerns underscore the unreliability of Mr. Johnson’s conviction. As the Innocence Project stated in its amicus brief, “[i]f ever a case bore the hallmarks of a wrongful conviction, Toforest Johnson’s is it.” C3. Supp-1 109. The Court must recognize that Mr. Johnson’s conviction is fundamentally unfair and grant a new trial, as the District Attorney requests.

26. Mr. Johnson is entitled to relief on Claim I under Rule 32.1(a) because his conviction violates the Fourteenth Amendment to the United States Constitution and the corresponding provisions of the Alabama Constitution. *See* Ala. R. Crim. P. 32.1(a).

II. IN LIGHT OF THE UNIQUE AND EXTRAORDINARY CIRCUMSTANCES OF THIS CASE, THE EIGHTH AMENDMENT REQUIRES AN ORDER VACATING MR. JOHNSON’S CONVICTION AND SENTENCE.

27. The Eighth Amendment provides further grounds for vacating Mr. Johnson’s conviction and sentence. Because “death is a different kind of punishment from any other,” the Eighth Amendment requires heightened reliability

with respect to both phases of a capital case—guilt and penalty. *Beck v. Alabama*, 447 U.S. 625, 637 (1980); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Accordingly, circumstances that “enhance the risk of an unwarranted conviction . . . cannot be tolerated in a case in which the defendant’s life is at stake.” *Beck*, 447 U.S. at 637; *see also id.* at 643 (holding that precluding a capital jury from considering lesser included offenses created an intolerable “level of uncertainty and unreliability”). The circumstances of Mr. Johnson’s case unquestionably present an elevated risk of error. It would be difficult to imagine a stronger sign that a capital conviction is not sufficiently reliable under the Eighth Amendment than a brief in which the District Attorney and the trial prosecutor provide a list of problems with the case and request an order granting post-conviction relief.

28. The Eighth Amendment also requires an order vacating Mr. Johnson’s death sentence. Mr. Johnson’s conviction does not carry the type of heightened reliability necessary for a sentence of death to be imposed. “Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson*, 428 U.S. at 305; *see, e.g., Ex parte Monk*, 557 So. 2d 832, 836 (Ala. 1989) (holding that capital cases

“are sufficiently different by their very nature” to warrant additional protections). Here, the District Attorney’s brief establishes why this case does not carry sufficient reliability for a death sentence. The District Attorney has found not one, but five reasons to doubt the integrity of Mr. Johnson’s conviction. Because Mr. Johnson’s conviction is unreliable, the Eighth Amendment requires that his death sentence be vacated.

29. When applying the Eighth Amendment, courts look to the evolving standards of decency that mark the progress of a maturing society. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Under the nation’s contemporary standards of decency, no one should be executed in circumstances like these, where there are such significant doubts about the integrity of the conviction that both the District Attorney and the lead prosecutor support a new trial. Indeed, as far as counsel is aware, no court has ever permitted an execution when both the District Attorney and the lead trial prosecutor agree that the sentence should be vacated due to concerns about the integrity of the conviction.

30. Mr. Johnson is entitled to relief on Claim II under Rule 32.1(a) because his conviction violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the Alabama Constitution. *See* Ala. R. Crim. P. 32.1(a).

III. THE DISTRICT ATTORNEY'S REQUEST FOR A NEW TRIAL CONSTITUTES NEWLY-DISCOVERED EVIDENCE THAT REQUIRES AN ORDER VACATING MR. JOHNSON'S CONVICTION.

31. Mr. Johnson is also entitled to relief under Rule 32.1(e), which governs claims based on newly discovered material facts. The District Attorney's position constitutes a newly-discovered material fact, which was unknown to Mr. Johnson until the District Attorney filed his brief requesting a new trial on June 12, 2020. The District Attorney's position is not cumulative or impeachment evidence, and Mr. Johnson would not have been convicted or sentenced to death had the District Attorney publicly stated at Mr. Johnson's 1998 trial that the evidence did not warrant a conviction. *See Ala. Crim. P. 32.1(e)(1)-(5)*. Mr. Johnson incorporates by reference all of the facts, points, and authorities alleged and cited in Claims I and II.

IV. THIS PETITION IS TIMELY.

32. This petition is timely. Good cause exists as to why these claims were not raised at an earlier time. Specifically, the District Attorney had not yet conducted his evaluation of Mr. Johnson's conviction and sentence. Failure of this Court to entertain the petition would result in a miscarriage of justice because Mr. Johnson would remain incarcerated and face execution despite the extraordinary circumstances present here, including the current prosecuting authority's position that it no longer stands by the conviction and is requesting a new trial.

33. This petition is submitted pursuant to Alabama law, the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and the corresponding provisions of the Alabama Constitution. It is based on the facts and allegations stated herein, as well as the complete record of the trial, appellate, and post-conviction proceedings to date in this case. In addition, each claim in this petition hereby incorporates the information and arguments stated in the other claims within this petition.

PRAYER FOR RELIEF

Wherefore, for the foregoing reasons and other such reasons as may be made upon amendment of this petition and an evidentiary hearing, Petitioner Toforest Johnson respectfully asks this Court to grant him the following relief:

- (a) conduct an evidentiary hearing at which proof may be offered concerning the allegations in this petition;
- (b) issue an order relieving Mr. Johnson of his unconstitutional conviction and sentence; and
- (c) grant Mr. Johnson any such additional relief as is just, equitable, and proper under federal and state law.

Respectfully submitted,



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ATTORNEY'S VERIFICATION

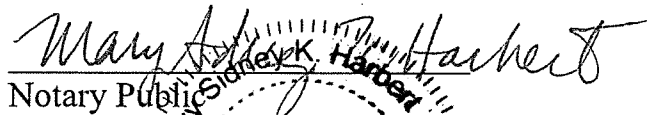
I swear under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on December 9, 2020.



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Attorney for the Petitioner

SWORN and SUBSCRIBED before me this the 9th day of December, 2020.



Mary Sidney K. Harbert

Notary Public

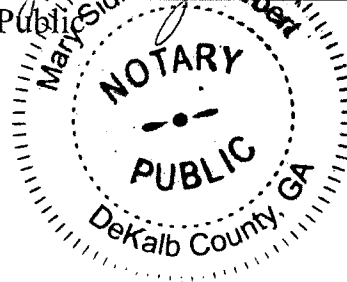


Exhibit A

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

_____)	
TOFOREST JOHNSON,)	
Petitioner,)	
)	No. _____
)	
STATE OF ALABAMA,)	Trial Case No. CC-96-386
Respondent.)	
_____)	

**PROCEDURAL HISTORY AS REQUIRED BY
RULE 32 OF THE RULES OF CRIMINAL PROCEDURE**

Mr. Johnson is currently incarcerated at Holman Correctional Facility in Atmore, Alabama. His prison number is Z-651. His conviction and death sentence were entered by the Circuit Court of Jefferson County, Alabama. The date of judgment of conviction was August 21, 1998. CR. 10. The date of judgment of sentence was October 30, 1998. CR. 11. Mr. Johnson entered a plea of not guilty and, after an initial mistrial when the jury could not reach a verdict as to his guilt, he was convicted and sentenced to death following a second jury trial. CR. 9, R. 1192. Mr. Johnson did not testify during any of the proceedings.

On direct appeal, the Alabama Court of Criminal Appeals affirmed Mr. Johnson's conviction and sentence. *Johnson v. State*, 823 So. 2d 1, 57 (Ala. Crim. App. 2001). The Alabama Supreme Court and the United States Supreme Court denied petitions for certiorari. *Ex parte Johnson*, 823 So. 2d 57, 57 (2001); *Johnson v. Alabama*, 535 U.S. 1085, 1085 (2002). Mr. Johnson then filed, on

April 30, 2003, a Rule 32 petition, C. 108-317, which he subsequently amended. C. 1120-1402. That petition was summarily dismissed. C. 12-89. The Alabama Court of Criminal Appeals affirmed in part and remanded the case for an evidentiary hearing on several claims. *Johnson v. State*, CR-05-1805, 2007 WL 2812234, at *7-8, 14-16 (Ala. Crim. App. Sept. 28, 2007).

In 2008, this Court held an evidentiary hearing on the remanded claims and denied relief. *Johnson v. State*, CR-05-1805, 2007 WL 2812234, at *16 (Ala. Crim. App. June 14, 2013). The Court of Criminal Appeals affirmed the denial for all but two of the claims, which it remanded for further proceedings. *Id.* at *45. This Court then held a second evidentiary hearing in 2014 and again denied relief. *Id.* The Court of Criminal Appeals affirmed and denied rehearing. *Id.* at *60. The Supreme Court of Alabama denied certiorari.

In 2017, Mr. Johnson sought certiorari in the United States Supreme Court with respect to his *Brady* claim. The Supreme Court granted certiorari, vacated this Court's decision on the *Brady* claim, and remanded the case for further proceedings. *Johnson v. Alabama*, 137 S. Ct. 2292, 2292 (2017). The Court of Criminal Appeals then further remanded the case to this Court for an evidentiary hearing. *Johnson v. State*, CR-05-1805, 2018 WL 1980778, at *2 (Ala. Crim. App. Apr. 27, 2018).

Upon receiving the case on remand, this Court conducted discovery, held an evidentiary hearing, and denied relief under *Brady*. R3. 1-219; C3. Supp-1 44-55. Mr. Johnson's appeal from this Court's denial on third return to remand is now pending in the Court of Criminal Appeals.

In addition to the state court petitions detailed above, on December 5, 2016, Mr. Johnson filed a federal habeas corpus petition in the United States District Court for the Northern District of Alabama. Initially, the District Court stayed the federal proceedings pending the completion of Mr. Johnson's state court proceedings. On April 28, 2020, the District Court, with the consent of the parties, administratively closed the federal case, noting that the case could be re-opened, if necessary, following state court proceedings.

ATTORNEY INFORMATION

Mr. Johnson has been represented by the following attorneys:

- (a) Pretrial and at trial and sentencing: J. Louis Wilkinson (deceased); Darryl Bender, Bender and Agboola LLC, 711 N. 18th St., Birmingham, AL 35203; Erskine Mathis, 2107 5th Ave. N., Birmingham, AL 35203.
- (b) Appeal: Joe Morgan, Jr., 600 Robert Jemison Rd., Ste. B, Birmingham, AL 35209; J. William Cole, Luker, Cole, & Associates LLC, 2205 Morris Ave., Birmingham, AL 35203.
- (c) Certiorari to the United States Supreme Court: Ty Alper, Univ. of California, Berkeley School of Law, Berkeley, CA 94720.
- (d) State post-conviction and federal post-conviction (current counsel): Ty Alper, Univ. of California, Berkeley School of Law, Berkeley, CA 94720; Kathryn Miller, Cardozo Law School, 55 5th Ave., New York, NY 10003; Katherine Moss and Patrick Mulvaney, Southern Center for Human Rights, 60 Walton St. NW, Atlanta, GA 30303.

Exhibit B



ELECTRONICALLY FILED
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CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT
JEFFERSON COUNTY, ALABAMA
CRIMINAL DIVISION

STATE OF ALABAMA,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. CC1996-386.60
)	
TOFOREST O. JOHNSON,)	
)	
Defendant.)	

JEFFERSON COUNTY DISTRICT ATTORNEY'S AMICUS CURIAE BRIEF IN
SUPPORT OF PETITIONER

The Office of the Jefferson County District Attorney, by District Attorney Danny Carr, respectfully submits this amicus brief in support of Toforest Johnson's Rule 32 petition and request that a new trial be granted. For the reason contained within this brief, it is the position of the District Attorney's Office ("the District Attorney") that Mr. Johnson's Rule 32 petition should be granted, and that a court of competent jurisdiction grant said request. The District Attorney takes no position regarding Mr. Johnson's guilt or innocence.

The District Attorney seeks to intervene as *amicus curiae* because of its duty to the Court and the people of Jefferson County. A prosecutor's duty is not merely to secure convictions, but to seek justice. *Stickler v. Greene*, 527 U.S. 263, 281 (1999). After reviewing the circumstances of Mr. Johnson's conviction and his subsequent Brady claim, the District Attorney has determined that its duty to seek justice requires intervention in this case based on a couple of factors.

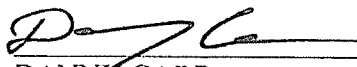
1. There were several trials of different individuals relative to this case. Pursuant to these trials the state presented as many as five different theories relative to who shot Deputy Hardy.

2. The case originally was based on a young lady who admitted repeatedly lying to the police and prosecutors, as well under oath.
3. There are a number of alibi witnesses who did not testify at trial whom claim to have seen Mr. Johnson in another area of town at the time of the murder.
4. The main witness who testified to hearing the defendant admit killing Deputy Hardy over a telephone conversation was subsequently paid \$5,000 which was never mentioned during trial.
5. The District Attorney prior to the filing of this brief, met with the Original Lead Prosecutor in this case. He expressed concerns about this case and supports this request as well.

Conclusion

It is the District Attorney's position that in the interest of justice, Mr. Johnson who has spent more than two decades on Death Row, be granted a new trial.

Respectfully submitted on this the 12th day of June 2020.



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CERTIFICATE OF SERVICE

I do hereby certify that on May 29, 2020, the forgoing document was filed electronically with the Clerk using the Alafire system and served via email on the following counsel:

Jon Hayden, Esq.

jhayden@ago.state.al.us

Ty Alper, Esq.


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CERTIFICATE OF SERVICE

I hereby certify that copies of this petition have been served by first-class mail on the following:

Jon B. Hayden, Esq.
Assistant Attorney General
Capital Litigation Division
501 Washington Avenue
Montgomery, AL 36130
jon.hayden@alabamaag.gov

This 9th day of December, 2020.



Katherine Moss