IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

State of Ohio,	)	
	)	**Case No. CR99-2160 A&B**
Plaintiff,	)	
	)	**Judge Gary Cook**
v.	)	
	)	**DEFENDANTS' REPLY TO**
	)	**STATE'S OPPOSITION TO**
Karl Willis & Wayne Braddy,	)	**DEFENDANTS' MOTION**
	)	**FOR NEW TRIAL**
Defendants.	)	

INTRODUCTION

Karl Willis and Wayne Braddy have been incarcerated for over two decades for a crime they did not commit. At the time of trial, the evidence against them was thin. But now, that "evidence" is nearly non-existent. Yet in a disappointing but hardly surprising response, the State plunges on, seeking to prolong the wrongful imprisonment of two innocent men. The recent recantation of the State's only "eyewitness" creates a strong probability that if they were tried today, Willis and Braddy would be acquitted. This Court should grant them a new trial. In the alternative, this Court should convene an evidentiary hearing to consider the newly discovered evidence.

ARGUMENT

The Ohio Supreme Court's decision in *State v. Petro,* 148 Ohio St. 505, 76 N.E.2d 370 (1947) dictates the standard for granting a new trial based on newly discovered evidence. As explained in Willis's and Braddy's Motion for Leave and Motion for New Trial, Travis Slaughter's 2019 affidavit satisfies the *Petro* standard and entitles them to a new trial.

A. Slaughter's affidavit provides new evidence of Willis's and Braddy's innocence and does not merely contradict his prior testimony.

Slaughter's 2019 affidavit provides new information and context for the question of whether he witnessed Willis and Braddy murder Maurice Purifie; it does not, as the State argues, simply contradict his trial testimony. Instead, Slaughter's new testimony outlines his false confession, explains his reasons for lying at trial, and demonstrates his motivation to tell the truth now.

The State's attack on Slaughter's affidavit is premised almost entirely on the two-prong analysis articulated by the Sixth District in *City of Toledo v. Easterling,* 26 Ohio App.3d 59, 498 N.E.2d 198 (6th Dist. 1985), without providing the context of that decision. (State's Memorandum in Opposition at 23, hereinafter "Memo in Opp."). Under *Easterling*, in evaluating a new trial motion based on the recantation of a primary witness, a court must determine which of the conflicting testimonies is credible and true, and then determine whether the recanted testimony would have affected the outcome at trial. *Easterling* (paragraph 3 of syllabus).

First, the State fails to explain that in *Easterling,* the trial court conducted an evidentiary hearing to assess the credibility of the recanting witness. *See Easterling*, 26 Ohio App.3d at 62. ("The hearing on the motion for new trial adduced full and complete testimony upon which the trial court reached its conclusion."). Second, the State suggests that Slaughter's plea agreement could be revoked only if he "failed to testify truthfully." (Memo in Opp. at 23.) But the State made clear, through its prosecution decisions—and likely through conversations with Slaughter—that "truthful testimony" necessarily meant "testimony inculpating Willis and Braddy." And this arrangement is precisely why Slaughter's trial testimony is unworthy of credence: it is precisely *because* the State could revoke his plea deal that Slaughter's trial testimony should be viewed as unreliable and untrue.

Slaughter implicated himself in Maurice Purifie's death at trial for the same reason: claiming responsibility for his supposed "active role in the shooting" was part of his plea deal. (Memo in Opp. at 23.) Had Slaughter refused to implicate Willis, Braddy, and even himself at trial, he knew he would be re-indicted for aggravated murder, and, if convicted, face life in prison.[1] *Id.* The State acknowledges that Slaughter "expressed a wish to die rather than go to prison." (Memo in Opp. at 7.) Someone as desperate as Slaughter might well choose to avoid a life sentence in prison by any means necessary, including a false confession.[2] These circumstances strip Slaughter's trial testimony of any credibility and this Court should afford that testimony very little weight. For those reasons, this Court should grant Willis and Braddy a new trial.

While, as the State suggests, a new trial is "an extraordinary measure which should be used only when the evidence presented weighs heavily against the conviction," the new evidence certainly does so here. (Memo in Opp. at 21, citing *State v. Otten*, 33 Ohio App.3d 339, 340, 515 N.E.2d 1009 (1986)). No physical evidence ever connected Karl Willis, Wayne Braddy, or Travis Slaughter to Maurice Purifie's murder. And Travis Slaughter's trial testimony – coerced and given in exchange for a plea deal – is the only remaining evidence against Willis and Braddy. Now Slaughter, the State's only witness, has sworn under oath that he has no actual knowledge of Maurice Purifie's murder because he was not there. The State does not dispute that Slaughter's testimony was the only evidence that has ever implicated Willis or Braddy. Thus, his

1 The State made it clear that a witness's refusal to testify would not be tolerated when it sent Slaughter's then-girlfriend, Shondrea Rayford, to jail for 30 days.

2 *See* The Hon. Jed S. Rakoff, *Why Innocent People Plead Guilty*, The New York Review (Nov. 20, 2014), available at https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/ (arguing that many guilty pleas are the result of risk mitigation rather than actual guilt).

2019 affidavit necessarily "weighs heavily against the conviction" because without Slaughter's trial testimony, there is absolutely no evidence left implicating Willis or Braddy.

Contrary to the State's claim, Slaughter's failure to appear before this Court in 2017 does not render his sworn testimony in 2019 unreliable or unbelievable. He did not "simply fail[] to appear for the hearing." (Memo in Opp. at 24). Instead, Slaughter explains that when he was served by a private investigator in 2017, he did not believe the subpoena was legitimate. (Affidavit of Travis Slaughter, attached as Exhibit A to Defendants' Motion for Leave to File Motion for New Trial, at 28). Slaughter has nothing to gain from recanting his trial testimony against Karl Willis and Wayne Braddy. His own conviction is final, and his sentence has been completed. By coming forward, he faces the wrath of the Lucas County Prosecuting Attorney. Despite those risks, Slaughter indicates that he will subject himself to cross examination about his 2019 affidavit. (Slaughter Affidavit at 39). The State's allegation that "Slaughter clearly has a self-interest in portraying himself as an innocent man" is wholly unsubstantiated and disingenuous. (Memo in Opp. at 24).

The State insists that a Seventh Circuit child sexual abuse case is "comparable" to this one (Memo in Opp. At 25), but the State ignores several critical, distinguishing facts. *See Arnold v. Richardson,* 14 F.4th 780 (7th Cir. 2021). The *Arnold* court found that the victim had a motive to recant his testimony: he wanted to exonerate and free his father. No such motive exists for Slaughter in the present case. The Seventh Circuit also affirmed the denial of relief because the victim admitted his affidavit was the result of the defendant's ex-wife's initiative, rather than his own. *Id.* Here, the State draws a false equivalence by comparing an affidavit allegedly resulting from news media involvement to a recantation borne from a close family member's urging in a child abuse case. (Memo in Opp. at 25). Slaughter's affidavit explains in detail how he came to

recant in 2019, and journalist Brian Dugger's involvement in this case is merely one of many reasons that contributed to his decision to tell the truth.

An example of a recanting affidavit deemed not credible is found in *State v. Covender*, 9th Dist. No. 07CA009228, 2008-Ohio-1453. In that case, also involving a child who had been sexually assaulted by her stepfather, the victim "did not recant her trial testimony. *Covender*, ¶ 16. Instead, the victim provided testimony based on her "feelings and beliefs," but did not remember whether the abuse actually occurred. *Id.* The facts in this case do not resemble the facts in *Covender.* Unlike the victim in *Covender*, Slaughter remembers precisely what happened. His 2019 affidavit is based on his own, personal knowledge. Thus, the 2019 affidavit is sufficient to warrant a new trial.

B. Ohio Law Favors Granting Willis and Braddy a New Trial.

The State's arguments regarding *State v. Gillispie*, 2nd Dist. Montgomery No. 24456, 2012-Ohio-1656, and *State v. Alvarez*, 10th Dist. Franklin No. 98AP-1375, 1999 WL 1080099 (Dec. 2, 1999), are misplaced. Indeed, *Gillispie* and *Alvarez* are compelling examples of wrongful convictions that were overturned because of weak trial evidence. The case against Gillispie was weak because no physical evidence connected him to the crime and the jury deliberated for a long time. Id. at ¶ 36. Likewise, no physical evidence implicates Willis or Braddy (or Slaughter) and they too deserve a new trial to prove their innocence. Similarly, when Alvarez presented new evidence that the State's key witness had lied during trial, the Tenth District reversed for a new trial, holding that the trial evidence was so minimal that virtually nothing remained indicating Alvarez's involvement. *Id.* at *20. The paucity of evidence against Gillispie or Alvarez closely resembles the state of the evidence regarding Willis and Braddy. Nothing in the record before this Court suggests their guilt beyond a reasonable doubt. And

Slaughter's 2019 affidavit creates a strong probability that a jury would reach a different result if the case were tried today.

The State's arguments regarding the Christopher Ochoa case also miss the mark. Like Slaughter, Ochoa confessed to a crime that he did not commit. Ochoa changed his story several times. But ultimately, the court in that case recognized that new evidence called into question the verdict rendered by the jury. Justice is more important than finality, regardless of the State's arguments in the instant case.

Finally, the State objects to almost every exhibit offered by Willis and Braddy. Many of these, as the State suggests, were offered to establish that the proffered evidence could not have been discovered at the time of trial. Obviously, this Court's decision granting leave to file a new trial motion obviates the need for such evidence. Many others are public records, admissible under Evid.R. 803(8). The State also objects to exhibits referencing statements by the jury foreperson, citing Evid.R. 606(B). That rule, however, has recently been found to be be constitutionally suspect. *See generally Nian v. Warden, N. Cent. Corr. Inst.*, 994 F.3d 746 (6th Cir. 2021). And some exhibits, like Slaughter's affidavit, cannot possibly be proffered in admissible form until this Court convenes an evidentiary hearing.

In this case, both the facts and the law both support a new trial. While the evidence against Willis and Braddy at trial was never strong, today it cannot support a conviction. This Court should give a jury the opportunity to view the evidence as it exists today and render a just verdict.

C. If this Court does not order a new trial based on the pleadings, then this Court must hold an evidentiary hearing to assess Slaughter's credibility before ruling on the motion.

The State cites several cases in which the court declined to hold a hearing before denying a new trial motion based on a recantation. It fails to mention, however, that in those cases, the judge deciding the new trial motion was the same judge who presided over the original trial. and thus, had the opportunity to assess and compare for themselves the conflicting testimonies. *See State v. Bell,* 4th Dist. Scioto No. 1408 (Mar. 18, 1983) (recognizing that trial judge who presided over defendant's criminal trial was "exceptionally well qualified" to ascertain credibility of recanting witness's affidavit); *State v. Monk,* 5th Dist. Knox No. 03CA12, 2003–Ohio–6799, ¶ 20, quoting *United States v. Curry,* 497 F.2d 99, 101 (C.A.5, 1974) ("the acumen gained by the trial judge who presided during the entire course of [the] proceedings makes him well qualified to rule on the motion for a new trial on the basis of the affidavit and makes a time consuming hearing unnecessary."); *see also State v. Gray,* 8th Dist. No. 92646, 2010–Ohio–11, 30 (trial court did not abuse its discretion by discrediting an affidavit from a witness who recanted his testimony implicating defendant when "the same trial judge who presided over the trial has also presided over the lengthy procedural history that has ensued").

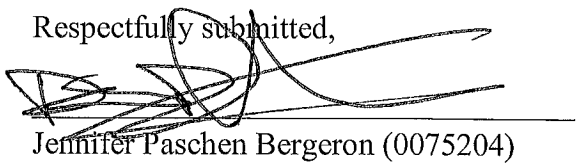
Though this case has a lengthy procedural history, this Court has never had the opportunity to assess Travis Slaughter's credibility through live testimony. One of the State's chief complaints about Slaughter's recantation is that the government's lawyers have not had the opportunity to cross-examine Slaughter regarding his most recent testimony; convening an evidentiary hearing will alleviate that concern. In sum, given the unique circumstances of this case where the convictions rest entirely on Slaughter's trial testimony and inconsistent stories about the murder, if there is any doubt as to the circumstances surrounding Slaughter's affidavit, then this court should hold a hearing. *See State v. Green*, 7th Dist. No. 05 MA 116, 2006 Ohio

3097 (holding that where a defendant presents evidence that, if believed, would establish his innocence, a trial court "must afford a movant an opportunity to present evidence at a hearing"). Where facts are in dispute, trial courts convene evidentiary hearings. If this Court is unwilling to grant a new trial based on the pleadings, then a hearing should be scheduled at the Court's earliest convenience.

CONCLUSION

Karl Willis and Wayne Braddy are entitled to a new trial under Ohio law. Willis and Braddy have satisfied the *Petro* elements, and the new evidence from Travis Slaughter unravels the State's entire case against them. For the reasons offered here and in Willis's and Braddy's Motion for New Trial, this Court should grant them a new trial. In the alternative, Willis and Braddy respectfully request a hearing so that this Court can make its own determination as to Slaughter's credibility.

Respectfully submitted,



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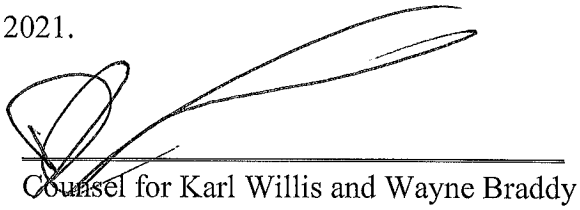
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Reply to State's Opposition for Motion for New Trial was served via email to Evy M. Jarrett, Assistant Prosecuting Attorney, at EJarrett@co.lucas.oh.us this 4th day of November 2021.



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