

Clemency Petition
for
Tony Von Carruthers



Governor Bill Lee
State Capitol Building
600 Martin Luther King Jr. Bld.
1st Floor
Nashville, Tennessee 37243

20 April, 2026

Dear Governor:

We urge you to grant clemency to Tony Von Carruthers. In so doing, we submit the following petition setting out the arguments we believe most compellingly call out for your exercise of grace.

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Attached to the petition are letters from three of Mr. Carruthers's former counsel also asking you to grant clemency. They are set forth as follows:

Attachment 1: Letter from William Massey

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Attachment 4: Electronic copy of this petition with the supporting exhibits included. We hope that having electronic access to the exhibits is helpful in your review of the petition.

I. Introduction

Counsel for Tony Von Carruthers urge Governor Bill Lee to exercise his executive powers to grant Mr. Carruthers some form of clemency. The main issues we seek to call to Governor Lee's attention are:

There is still unmatched and untested forensic evidence, that may establish, if examined, that Mr. Carruthers is innocent of the murders. The State did not present any forensic evidence or firsthand eyewitness testimony of Mr. Carruthers's guilt, or even his purported role in the killings. There is an unknown male DNA profile on a blanket buried with the victims, and six unidentified fingerprints from the kidnapping scene. Some critical items were never subjected to any forensic analysis at all.

The State secured an indictment from the grand jury that was solely based on false testimony from a confidential informant who then recanted his testimony. The State relied on this same witness's testimony to obtain Mr. Carruthers's conviction and death sentence. Since 1996, the State withheld information and lied on the record claiming that this confidential informant was not an informant. It was not until 2024, 28 years after Mr. Carruthers's trial, that the State provided counsel proof that this witness was a confidential informant. There is no physical evidence linking Mr. Carruthers to the crime. Before the ultimate punishment is carried out, the Governor should direct this requested testing to be completed.

The State was willing to settle Mr. Carruthers's case for a life sentence and, in 2006 allowed his co-defendant to plead best-interest for a sentence of 27 years; the co-defendant was in fact released from prison in 2015. That is, while Mr. Carruthers is facing execution, his co-defendant, who from the State's proof was at least equally culpable, has been a free man for more than a decade.

The state argued vigorously for the death penalty because the victims were buried alive. That aggravating factor has since been debunked—two competent medical examiners testified in post-conviction that there is no reason to think the victims were buried alive. The State's medical examiner, who testified to that fact at trial, later recanted his testimony.

If Mr. Carruthers is executed on May 21, 2026, he will be the first person in more than a century to be executed after being forced to represent himself at trial.

Mr. Carruthers is severely mentally ill and was not competent to stand for trial, much less competent to represent himself at trial, though the trial court forced him to do so.

Mr. Carruthers's has schizoaffective disorder, bipolar type, and brain damage. His severe symptoms of mental illness, including pervasive delusions and paranoia, not only compromised his relationships with counsel, ultimately resulting in the court denying him

counsel, but continue to impair his understanding of his legal situation and his impending execution.

Counsel for Mr. Carruthers welcome the opportunity to share more about Mr. Carruthers and the very serious injustices that undermine the reliability and fairness of his convictions and death sentence.

II. Mr. Carruthers's trial and resulting death sentence are based on highly questionable evidence from fundamentally unreliable witnesses; they are the product of an unfair proceeding at which Mr. Carruthers was forced, against his will, to proceed pro se, with the result that a likely innocent man faces imminent execution.

Mr. Carruthers was wrongfully convicted of three murders that occurred in February of 1994. The murders were of Mr. Carruthers's friend, Marcellos Anderson; Mr. Anderson's friend, Frederick Tucker; and Mr. Anderson's mother (who was also Mr. Carruthers's daughter's great aunt) Delois Anderson. The bodies of all three victims were found buried beneath a grave. [State v. Carruthers, 35 S.W.3d 516, 524-30 \(Tenn. 2000\)](#). Although forensic evidence was collected, **none of it linked Mr. Carruthers to the crimes.** *Id.* (established by omission). No testimony was presented regarding fingerprints or ballistics (indeed no testimony placed a pistol, such as that used to kill the victims, in Mr. Carruthers's hand). [Id. at 524-30](#). His DNA was not at the crime scene, but two blood stains on a piece of cloth buried with Marcellos Anderson contained DNA that did not match any of the victims, or those charged

with the crimes (Messrs. Montgomery, or Mr. Carruthers.)¹ **The identity of the person whose DNA and blood was left on that cloth is unknown to this day.** [Carruthers v. State, 2007 WL 4355481](#), at *33 (Tenn. Crim. App. Dec. 12, 2007).² Further, testing in 2022 revealed unidentified palm prints were lifted from critical areas of the crime scene that do not match the victims—or Messrs. Montgomery or Mr. Carruthers. **The identity of the person whose prints were left at**

¹ Mr. Carruthers has attempted to learn the identity of the person whose DNA is on the victims’ bindings. In 2011, Mr. Carruthers filed a pro se Motion to Reopen his Post-Conviction proceedings, specifically requesting relief under the Post-Conviction DNA Analysis Act of 2001. Ex. 1, 2011 Petition. That petition was denied in 2012. Ex. 2 Order. Mr. Carruthers filed a second pro se petition for DNA evidence in 2016 (Ex. 3, 2016 Petition) that was denied that same year. Ex. 4, August 30, 2016 Order. Mr. Carruthers, through counsel continues to try to obtain this testing. Ex. 5, April 9, 2026 Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. Rule 12.4(E); *see also, id.*, Ex. 6, Attach. 6, Affidavit of Alan Keel. Additional litigation is planned challenging the Tennessee DNA statute which requires, *inter alia*, that the petitioner be able to show that the results of the testing would have resulted in his not being charged or convicted before being entitled to the testing. [Tenn. Code. Ann. § 40-30-303, et. seq.](#) The United States Supreme Court has held that people convicted of crimes in state court “have a liberty interest in demonstrating [their] innocence with new evidence under state law.” [Gutierrez v. Saenz, 606 U.S. 305, 314 \(2025\)](#); *see also, Skinner v. Switzer, 562 U.S. 521 (2011)*.

² As of the writing of this petition, litigation is pending in the Tennessee Supreme Court requesting testing of the DNA of existing collected items that have never been subjected to DNA testing: 1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson; 2) the bindings of Marcellos Anderson and 3) the bindings of Delois Anderson, which include knotted pantyhose around her hand and the red socks knotted around her neck. New advances in DNA testing and analysis create a likelihood that testing will provide investigative leads to answers far beyond the unanswered question of whose blood was on the blanket. Ex. 5, April 9, 2026 Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. Rule 12.4(E); *see also, id.*, Ex. 6, Attach. 6, Affidavit of Alan Keel.

the crime scene is unknown to this day.³

A. As punishment for unusual behavior caused by his severe mental illness and brain damage, Mr. Carruthers was forced to represent himself; the last known case where a man denied counsel at trial was executed occurred in 1923.⁴

Mr. Carruthers complained about his lawyers, and, due to the paranoia and delusions wrought by his severe mental illness, he struggled to have meaningful or productive relationships with any of his

³ This is not Mr. Carruthers's fault: Mr. Carruthers has assiduously attempted to learn the identity of the person who left the unknown prints in Ms. Anderson's home. In 2021, Mr. Carruthers, pro se, filed a motion for fingerprint analysis. Ex. 7, Pro Se Motion. In December 2025, the State responded to that motion, attaching to that response a report of a fingerprint examination performed in January 2022 that shows that "[t]here are six latent partial palm impressions of value remaining unidentified." Ex. 8, December 23, 2025 Response in Opposition at Attach 3; *see also*, Ex. 9, January 2, 2026 Reply to State's Response. The trial court's denial of Mr. Carruthers's motion (Ex. 10, January 16, 2026 Order Dismissing Fingerprint Petition) was affirmed by the Tennessee Court of Criminal Appeals. [Carruthers v. State, No. W2026-00226-CCA-R3-PD, 2026 WL 1031140 \(Tenn. Crim. App. Apr. 16, 2026\)](#). Additionally, Mr. Carruthers anticipates filing an action in federal court challenging the constitutionality of Tennessee's fingerprint analysis act because, like the DNA statute discussed above at n. 1 above, the fingerprint statute requires, *inter alia*, that the petitioner be able to show that the results of the testing would have resulted in his not being charged or convicted before being entitled to the testing.

⁴ In 1923, the Virginia Supreme Court upheld the death sentence of Sam Riddick. [Riddick v. Commonwealth, 115 S.E.523 \(Va. 1923\)](#). Mr. Riddick did not have counsel at trial, but the court found this acceptable—under 1920s understandings of the law—as he had been incarcerated for “many months” pretrial, and he had friends who “might have secured counsel and ordered subpoenas for witnesses in his behalf.” *Id.* at 727. Thus, Mr. Riddick's right to counsel was not “denied.” *Id.* As far as counsel is aware, Mr. Riddick is the last man to be executed who did not have counsel at trial—outside of those defendants who affirmatively exercised their right to self-representation, usually with disastrous results. *E.g.* [State v. Jones, 568 S.W.3d 101, 110 \(Tenn. 2019\)](#); [Commonwealth v. Williams, 196 A.3d 1021, 1025 \(Pa. 2018\)](#); [People v. Lawley, 38 P.3d 461, 470 \(Ca. 2002\)](#).

prior attorneys. Instead, his interactions with counsel were intemperate, offensive, and provocative—if not entirely irrational. A seriously mentally ill individual might be competent to stand trial, but at the same time be incompetent to defend themselves. See [*Indiana v. Edwards*, 554 U.S. 164 \(2008\)](#). Here, Mr. Carruthers was plainly neither competent to stand trial nor competent to defend himself. Before being forced to represent himself, Mr. Carruthers was represented by no fewer than eight attorneys at trial.⁵ [*Carruthers*, 35 S.W.3d at 534](#). These attorneys experienced “outrageous personal attacks” and “offensive and unfounded allegations.” [*Id.* at 551](#). A striking example of counsel’s clear frustration in the face of Mr. Carruthers’s behaviors and attitudes is reflected by the remarks of Mr. Harry Sayle, “elbow counsel” and the last attorney the trial court permitted to leave the case shortly before trial – without replacement:

He has expressed the feeling that I am not working for him and that I have not done anything for him, I’m not going to do anything for him. He suspects – he’s made it clear that he suspect[s] that I’m working with the state in some capacity. And frankly none of the advice I give him is followed, and I don’t think there is any intention of following it. And frankly it’s just - the abuse get[s] extremely personal. Personal vilification over the last couple of meetings, and I see no basis

⁵ Larry Nance (appointed May 1994-withdrawn December 1994); Craig Morton (appointed August 1994-withdrawn July 1995); Coleman Garrett (appointed December 1994-withdrawn July 1995); William Massey (appointed July 1995-withdrawn January 1996); Harry Sayle (appointed July 1995-withdrawn February 1996). The trial court also appointed at different times two attorneys, James Turner and Glenn Wright, to assist in the investigation of the case, but both were subsequently allowed to withdraw as well.

for being able to continue.⁶

Although courts have construed Mr. Carruthers's behavior as volitional, a closer examination reveals that his actions are in fact consistent with and a product of profound mental illness.

Mr. Carruthers's past and current attorneys have been incorporated into his paranoid delusions.⁷ Mr. Carruthers has asserted that several lawyers are part of a "Fraud upon the Courts" who have engaged in "intrinsic fraud."⁸

Mr. Carruthers's post-conviction counsel James Thomas encapsulates the experience of representing Mr. Carruthers well:

Mr. Carruthers's understanding of the proceedings was not consistent with reality, and his use of magical symbols and numerology was profoundly abnormal. His expectation of immediate release with enormous monetary damages was not merely fanciful, but delusional. His paranoia and belief in a vast conspiracy—which ultimately [co-counsel] and I were accused of participating in—was similarly delusional.⁹

During the 22 months between when Mr. Carruthers was first appointed counsel, and when he was ordered to represent himself as

⁶ Ex. 11, Social History at p. 78.

⁷ Undersigned counsel is no exception. "[H]e refers to counsel as 'intrinsic fraudsters' who say they are representing him but are conniving in his defeat. 'Lying by omission.'" Ex. 12, February 11, 2026 Agharkar Report at 5.

⁸ Though Mr. Carruthers, at times, says "extrinsic" fraud, he has specified that all fraud relating to his case should be designated "intrinsic" with the "in" underlined. His explanation for why "in" is important was incomprehensible, though it is notable that in his writings, Mr. Carruthers never capitalizes an "i."

⁹ Ex. 13, December 30, 2019 Affidavit of James Thomas at paragraph 7.

punishment for his complaints, his three sets of attorneys and investigators had interviewed six potential witnesses out of a list of at least 125; most of his attorneys and investigators interviewed no witnesses at all; a mitigation specialist was only sought by his final attorney—who requested that assistance on the same day he filed a motion to withdraw; and no attorney ever retained a forensic pathologist, an essential task, even though, as will be seen below in the subsection related to the “buried alive” argument, competent pathologists would have established that the victims were not buried alive. [Carruthers, 2007 WL 4355481, at *16, 26-30.](#)

Thus, when Mr. Carruthers complained about his attorneys, his factual predicates were not unreasonable, but his theories about why his attorneys had not diligently investigated or prepared were unhinged from reality and, to a person of common sensibilities, offensive: Mr. Carruthers claimed that one set of lawyers were intentionally failing to represent him due to their homosexual desire to have carnal relations with him; while, his final lead counsel’s failure to work as expediently as Mr. Carruthers believed necessary was the product of cocaine addiction and blatant racism. [Id. at * 18, 28.](#) His mental illness thus obscured the very real problem that trial counsel was failing in their fundamental duty to investigate the case.

In response to Mr. Carruthers’s intemperate complaints, the trial court allowed two sets of lawyers to withdraw, and, when Mr. Carruthers

complained about his final set, the court sanctioned him by denying him the right to counsel entirely. [Carruthers, 35 S.W.3d at 550](#).

One of those lawyers, William Massey, who had just been allowed to withdraw, recognized that Mr. Carruthers was incapable of self-representation and sought to retract his withdrawal and to represent Mr. Carruthers at trial; the trial judge refused to permit this. Mr. Massey later testified:

I'm watching a man trying to defend himself in a death case and I think what I recall saying to Judge Dailey when I asked to approach him, I said, Judge, "a compromised Bill Massey is better than Tony Carruthers representing himself. He wants me back aboard, I'll come." And they wouldn't – and they wouldn't let me back aboard.¹⁰

After the removal of Mr. Massey and Mr. Sayles, Tony Carruthers repeatedly begged to have counsel appointed—whether Mr. Massey or other qualified counsel—stressing that he was not competent to handle a trial without an attorney. His requests were denied on January 11, February 20, March 4, and April 15, 1996. [Carruthers, 35 S.W.3d at 543-46](#). As will be shown, below in Section III, he was wholly incapable of self-representation, not only because he was unlearned in the law, but because he was, in fact, not competent—crippled by serious mental illness.

¹⁰ Ex. 14, Post Conviction Testimony excerpt of William Massey, R.56-7; PageID#11197; *see also* Attach. 1: Massey Clemency Letter.

B. Fraud on the court: Mr. Carruthers was convicted based on the testimony of unreliable liars.

Lacking forensic proof that Mr. Carruthers was involved in the murder, the State trumped up testimony from various local criminal defendants to make its circumstantial case against him. The State first used informant Alfredo Shaw to secure an indictment, and then used the testimonies of various cooperating, criminal informants, Jimmy Maze, Terrell Adair, and Charles Ray Smith, to secure convictions at trial. The stories presented by the witnesses were not consistent. Pretrial, Shaw told a story of a murder for hire, while Maze, Adair and Smith told a very different story about a violent effort to take over the drug trade in their neighborhood—a trade that, before the murders, had been run by Marcellos Anderson and his partner, Andre Johnson. [Carruthers, 35 S.W.3d at 24-30](#). The new story the prosecution presented at trial did not directly implicate Mr. Carruthers in the crime. None of the witnesses could say Mr. Carruthers had killed anyone; instead, they claimed that he and Montgomery had made unusual threats and had alluded to unusual plans, all of which suggested an intent to kidnap and kill Marcellos Anderson. [Id.](#) Additional proof placed Montgomery with the victims in the hours before their death, while less conclusive evidence indicated Carruthers was with Montgomery and the two victims earlier in the night, and with Montgomery the next morning, when a car that may have been used in the crime was cleaned. [Id.](#)

Prior to trial, the District Attorney, recognizing that the State's dearth of concrete evidence would risk dismissal at preliminary hearing,¹¹ convened a special grand jury and secured an indictment against Tony Carruthers based on the testimony of Alfredo Shaw, a convicted felon and career informant.^{12,13} Mr. Shaw told the grand jury a story he initially told investigators about a murder for hire (payment to be \$100,000 and a kilogram of cocaine) directed by twins named Jerry and Terry Durham.^{14,}

¹⁵

Shaw claimed he spoke with the Durham twins and Mr. Carruthers twice during September, 1993, who sought to enlist his help in the killing, though Shaw ultimately declined to become involved.¹⁶ He claimed Mr. Carruthers, a man he had met five years earlier in jail, who he knew just well enough that his "name sounded familiar," pressured Shaw to join in this murder scheme.¹⁷ Shaw further claimed that following the homicides he happened to run into Mr. Carruthers in the jail law library (despite having been deemed an "incompatible" with Mr. Carruthers by the Sheriff's Department, which would have required their separation in the jail for their protection), and of all the people on the planet Earth, Mr.

¹¹ Ex. 15, March 1994 Memo from Wright to Brown.

¹² Ex. 16, Transcript of Alfredo Shaw Grand Jury Testimony.

¹³ Ex. 17, Transcript of Shaw's Statement to Media admitting he was a paid informant and liar.

¹⁴ *Id.*

¹⁵ Ex. 18, Transcript of Deposition of Alfredo Shaw, p. 31.

¹⁶ Ex. 16, Transcript of Alfredo Shaw Grand Jury Testimony p. 2.

¹⁷ *Id.* at 2-3.

Carruthers chose to confess to Shaw—and no one else.¹⁸ Indeed, at trial, Shaw admitted that the last time he had seen Mr. Carruthers, face-to-face prior to the alleged confession, was in jail in 1988, when the two men had an “altercation.”¹⁹

The very first element of Shaw’s story was factually impossible—he claimed that he had spoken with Tony Carruthers over the phone along with the Durham twins, twice, in or sometime before September of 1993—but, Tony Carruthers was still in prison in September of 1993, and was not released until November 15, 1993. [*Carruthers*, 35 S.W.3d at 524](#). In 1993, it was impossible for two incarcerated people held in different locations in the jail to each call an outside number (then, as now, prison phones only called out and did not receive calls) and for the two prisoners with speak to each other while talking to the third party. (While such three-way calling is possible, today, with a contraband cell phone, those did not exist in 1993). Thus, the prosecution either knew this story was false, or chose to remain deliberately ignorant of its truth, as the prosecutors and police failed to make any effort to obtain phone records of any calls between the prison and the Durham twins, or to seek prosecution of the two men who—*allegedly*—had paid \$100,000 and a kilogram of cocaine for the murder of three citizens. (*Established by*

¹⁸ *Id.* at pp. 2-4.

¹⁹ Ex. 19, Excerpt Trial Tr., Alfredo Shaw Testimony, pp. 2214-16, 2279.

omission from the record).^{20,21}

Mr. Shaw, moreover, recanted prior to trial, and made a statement to the local news admitting that he had been given police files related to the murders, and (he claimed) paid either \$2,000 or \$3,000 to implicate Tony Carruthers.^{22, 23, 24} In response to his recantation, Assistant

²⁰ By 1994 it was common practice around the country for the police and prosecution to obtain jail phone records for use in criminal prosecutions. *E.g.* [U.S. v. Johnson](#), [120 F.3d 1107, 1108-10 \(10th Cir. 1997\)](#) (phone records used to verify calls from jail in July, 1994); [Consalvo v. State](#); [697 So.2d 805, 810, fn. 2 \(Fla. 1996\)](#) (jail phone records used to confirm defendant called witness on Oct. 3, 1991); [Carter v. O'Sullivan](#), [924 F. Supp. 903, 910 \(C.D. Ill. 1996\)](#) (noting that in Illinois, by 1994, the prison system “keeps track of numbers called and monitors and records phone calls”); [Nadeau v. State](#), [683 So.2d 504, 505 \(Fla.App.4th 1995\)](#) (23 phone calls between Oct. and Dec. 1993 verified with jail records); [U.S. v. Jackson](#), [1997 WL 198056 \(D. Kansas, Mar. 17, 1997\)](#) (jail phone records used to verify call between defendant and witness in 1993 prosecution). Such investigation, moreover, should have been conducted before relying on easily verifiable information from a jailhouse informant in a capital case. That the State did not introduce such records indicates either that the records did not support the State’s case—and were unlawfully withheld from the defense, or—more likely—that the State did not seek to verify Shaw’s claims because the State knew how improbable his story was.

²¹ Obviously, had the prosecution obtained phone records that established that Shaw had lied, these would have been produced as *Brady* materials, or at the latest, when Shaw took the stand and committed perjury in violation of [Napue v. Illinois](#), [360 U.S. 264 \(1959\)](#). Conversely, if phone records confirmed his story, there is no doubt they would have been produced in discovery and introduced at trial.

²² Ex. 20, “State Bribed me to lie,” *Tri-State Defender*, March 2-6, 1996.

²³ Ex. 17, Transcript of Channel 13 Interview with Alfredo Shaw and DA Jerry Harris.

²⁴ While undersigned counsel submit that the evidence establishes that Alfredo Shaw lied to the Grand Jury and at trial, whether he was paid with cash for this lie, received a benefit on one or more of his then-current charges, or simply was a cheap snitch who would say whatever he thought the government wanted to hear to get probation is unknown. Mr. Carruthers, however, is certain, that he was paid, and that his untruthful testimony was a “fraud upon the court” perpetuated with the assistance of the State.

District Attorney Jerry Harris asserted that Mr. Shaw was a person “who lies” who Harris would not put before a jury.^{25, 26, 27}

Instead of placing the “person who lies,” Alfredo Shaw, and his false story of a murder for hire before the jury, the prosecution elected to call Charles Ray Smith, “a convicted felon,” Jimmy Lee Maze “another convicted felon,” and Terrell Adair, a third “convicted felon” who collectively testified to a diabolical plot by Carruthers and Montgomery to take over the drug trade in their neighborhood from Marcellos Anderson and his partner, Andre Johnson. [*State v. Carruthers*, 1999 WL 1530153, at *19-23 \(Tenn. Crim. App. Dec. 21, 1999\)](#). The State also called Andre Johnson, himself. [*Id.* at *22](#).

The new story put forward by the State completely omitted any mention of the Durham twins, or any murder-for-hire theory. [*Id.*](#) (established by omission). Indeed, where the Durham twins had been the criminal masterminds in Shaw’s story, the new version painted Tony Carruthers as the mastermind. [*Id.*](#) Charles Ray Smith, a man who was assigned to cemetery duty, ascribed to Tony Carruthers the nefarious idea that a grave would be an excellent location to hide a body. [*Id.* at *19](#). Maze and Adair similarly told stories about statements allegedly made by

²⁵ Ex. 21, Video of Channel 13 Interview of Shaw; Ex. 17, Transcript of Channel 13 with Alfredo Shaw and DA Jerry Harris.

²⁶ Ex. 17, Transcript of Channel 13 with Alfredo Shaw and DA Jerry Harris.

²⁷ A paralegal at the Federal Public Defenders made a transcription of the News Channel 13 Interview with Shaw.

Mr. Carruthers that could be viewed as either incriminating or incredibly bizarre tying him to a plot to kidnap and kill Marcellos Anderson. *Id. at *19-23*. While, Andre Johnson testified about threats he had received from co-defendant Montgomery, he also testified about the trust and friendship between Carruthers and Marcellos Anderson. *Id. at*22*.

There were only two commonalities between Alfredo Shaw, and the three new snitches, Maze, Smith and Adair: All four were criminals, and traded their testimony for sentencing relief from the prosecution.^{28, 29, 30, 31}

C. The jury never heard that Houston-based drug dealers and their local associates—including Johnson—had reason to kill Anderson.

At trial, Mr. Carruthers attempted to present the testimony of Michael Shae Holmes, the drug partner of victim Marcellos Anderson and Andre Johnson, to show that Anderson and Johnson were in debt to Houston-based cocaine dealers, a circumstance that may have been related to three earlier shootings of Johnson, Terrell Adair, and Anderson.^{32, 33}

²⁸ Ex. 22, Jimmy Maze Declaration.

²⁹ Ex. 23, Deal for Charles Smith.

³⁰ Ex. 24, Charles Smith Judgment.

³¹ Counsel is unaware of why Terrell Adair was not prosecuted federally, along with Andre Johnson. However, he admitted under oath, at Carruthers's trial, that he was involved with Anderson and Johnson in their multi-kilogram cocaine operation. (Ex. 25, Excerpt Trial Tr. Terrell Adair Testimony, pp. 1404, 1434-35, 1519-20).

³² Ex. 26, Excerpt Trial Tr., Michael Shae Holmes, pp. 2394-98.

³³ Mr. Carruthers also attempted to introduce this proof through Terrell Adair, but, again, the Court found that proof that other men may have had motive to kill Anderson was irrelevant. (Ex. 25, Excerpt Adair Testimony, pp. 1436-49, 1455-86).

It was Mr. Holmes's belief that the murders of Anderson, his mother, and Tucker, were committed by or for drug dealers from Houston, Texas, who he identified as "Colombians."³⁴ According to Holmes, after the murders, Johnson paid off his debt to the Houston gang.³⁵ In a hearing outside the presence of the jury, Mr. Carruthers presented testimony from Holmes that Johnson had initially refused to pay the debt and that, following his failure to pay, the Houston dealers came around "looking for Johnson" and driving around with a man called "Ronnie Ervin."³⁶ ³⁷

Outside the presence of the jury, Michael Holmes also revealed that Andre Johnson had Michael Holmes kidnap Charles Smith (the man who claimed that, while on cemetery duty through the prison work program, Mr. Carruthers told him that a grave would be a good place to hide a body).³⁸ Holmes testified that shortly before Anderson's murder, Johnson and Anderson were "feuding."³⁹ ⁴⁰

³⁴ Ex. 27, 1996 Statement of Michael Holmes, pp. 1-6.

³⁵ *Id.* at pp. 5-6.

³⁶ Ex. 27, Excerpt Trial Tr., Michael Shae Holmes at pp. 2404-06.

³⁷ Though the transcript reflects that Mr. Holmes called the man "Ronnie Ervin," it is likely he was referring to Ronnie "Eyeball" Irving who, through subsequent investigation was identified by Mr. Carruthers's co-defendant James Montgomery as Montgomery's "kidnap man" who kidnapped Ms. Anderson at Mr. Montgomery's behest. Ex. 28, January 20, 2010 Investigative Memorandum of Interview with James Montgomery. Before being murdered in 2002, Mr. Irving had multiple felony convictions for violent crimes. Ex. 29, Record of Eyeball Irving Murder; Ex. 30, Irving Criminal Record.

³⁸ *Id.* at 2406-10.

³⁹ *Id.* at 2410.

⁴⁰ Which is to say that Johnson not only may have caused Anderson to have an unpayable debt to the Columbians, he also may have been the sort of person to kill

Unfortunately, the jury heard none of this exculpatory evidence. Tony Carruthers, without an attorney, was unable to articulate an adequate basis for the admission of any of Holmes’s testimony, and the trial court held it all to be irrelevant.⁴¹ The court stated, “I’m not going to allow you to suggest to the jury that these Columbian drug lords were coming up to collect their debt and kill these three people.”⁴² Similarly, the trial court refused to permit Holmes, a drug-business partner of Anderson and Johnson, to testify that Anderson and Johnson were in debt to the drug dealers from Houston.⁴³ The court similarly ruled that Mr. Carruthers could not question Terrell Adair about the debt Anderson and Johnson owed to those dealers.⁴⁴

These rulings prevented Mr. Carruthers from mounting a meaningful defense showing that Anderson owed hundreds of thousands of dollars to the Houston gang; that this enormous debt had already led to multiple shootings; and that Johnson was feuding with his violent business partner, Anderson—a man so violent, he had his other business associate, Charles Ray Smith, kidnapped. With all of those avenues of defense shut down by the rulings of the trial court and without counsel to advise him, Mr. Carruthers called Alfredo Shaw to the witness stand,

off his partner to clear the debt.

⁴¹ *Id.* at 2414-15.

⁴² *Id.* at 2415.

⁴³ *Id.* at 2418-19.

⁴⁴ Ex. 25, Excerpt Trial Tr. Terrell Adair Testimony, pp. 1481-83.

so that he could “prove” that Shaw lied.⁴⁵ As will be discussed, below, this ill-advised decision did not work out, as Mr. Carruthers had Shaw read Shaw’s most damning statements directly into the record—and also failed to establish that those statements were untrue. Moreover, the prosecutor took full advantage of Mr. Carruthers’s ill-advised decision, eliciting on cross that Shaw’s initial statement to authorities on March 27, 1994, his grand jury testimony, his deposition testimony, and his trial testimony were the truth, and that he had not been threatened or promised anything by the State for his testimony; and arguing in rebuttal closing that “Mr. Carruthers told us what happened out there that night through Alfredo Shaw. He told us what happened.”⁴⁶

The jury heard not only from multiple State witnesses that Mr. Carruthers had claimed to be a criminal mastermind with a violent plan, but they then heard from his own witness that he had confessed to the murders. They were forbidden from learning about the drug dealers from Houston, the drug debt, the other kidnapping ordered by Johnson, or the potential nexus of all those events with no fewer than three other shootings.

As a result of the court’s rulings preventing Mr. Carruthers from presenting evidence to rebut the State’s case (dubious as it was given its

⁴⁵ Ex. 19, Excerpt Trial Tr. Alfredo Shaw Testimony.

⁴⁶ Ex. 19, Alfredo Shaw Trial Testimony, p. 2257-73; Ex. 31, State Closing Argument p, 2622.

reliance on contradictory testimony from snitches and its lack of any actual forensic or direct evidence of Mr. Carruthers's involvement in the murders), the jury convicted Mr. Carruthers of the murders and (for reasons that will be discussed below) voted to impose death.

D. Holmes's information—deemed “irrelevant” by the trial judge—tracks the proof the United States Government used to convict Houston-based, Colombian drug dealers and their associates in federal court.

Mr. Holmes's proffered testimony was subsequently corroborated by the federal government's case in [*United State v. Curtis McDonald, et. al, Case 2:94-cr-20256*](#), filed November 21, 1994, in the United States District Court for the Western District of Tennessee.⁴⁷ As is shown by the Affidavit of DEA Agent Harry Sommers,⁴⁸ prior to January 1995, Colombian drug dealers working out of Houston, Texas, began running a large-scale drug operation in Memphis. At the trial of several of the members of that drug conspiracy in front of District Court Judge Julia Gibbons, Andre Johnson (who at Mr. Carruthers's trial Holmes identified as Marcellos Andersons's drug-dealing partner) admitted several highly relevant facts:

⁴⁷ Though the indictment issued in 1994, the testimony that corroborated Mr. Holmes did not occur until October 1996—after the trial of this case in April 1996.

⁴⁸ Ex. 32, July 18, 1995 Affidavit of DEA Agent, Harry Sommers

- (1) That he, Johnson, knew Michael Shea Holmes and that Holmes sold drugs “with” Johnson.⁴⁹
- (2) That from 1991 until his arrest in 1994, Johnson made his money selling drugs – “and robbing drugs, too.”⁵⁰
- (3) That when he was approached about committing murder-for-hire, he said he would accept a \$100,000 fee for the killing. He further testified that he did not intend to do the killing but would sub-contact the killing for \$25,000 and keep the remainder of the fee for himself.⁵¹
- (4) That being involved in murder was “no problem” for him.⁵²

Through its proof (ratified by the jury verdict against MacDonald et al) the United States government proved facts that support the viability of the defense Mr. Carruthers was not permitted to present at trial.

E. For years the State has fought to conceal the truth about its trumped-up case: Alfredo Shaw was a paid informant before, during, and after the time he allegedly obtained Tony Carruthers’s putative “confession.”

Mr. Carruthers has maintained, for over 30 years, that the State’s case against him is a sham stemming from the prosecution’s use of the false testimony of a paid informant, Alfredo Bernard Shaw, to secure the

⁴⁹ Ex. 33, Vol. XI, October 9, 1996 Transcript of Andre Johnson Testimony at p. 2366.

⁵⁰ *Id.* at p. 2399.

⁵¹ *Id.* at p. 2400.

⁵² *Id.*

indictment against him. But even assuming Shaw’s sketchy version of what happened has some connection to the truth, it would not have been admissible evidence before the Grand Jury. Because the indictment, in large part, rested on Mr. Carruthers’s alleged confession to Shaw, after Mr. Carruthers had already retained counsel, Shaw’s status as a government agent would mean he obtained incriminating statements from Mr. Carruthers in violation of his Sixth Amendment right to counsel. See [*Maine v. Moulton*, 474 U.S. 159, 176 \(1985\)](#) (“the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused’s right to have counsel present in a confrontation between the accused and a state agent”) and [*Massiah v. U.S.*, 377 U.S. 201 \(1964\)](#). Moreover, evidence that Shaw was a government agent should have been disclosed to defense counsel pursuant to [*Giglio v. United States*, 405 U.S. 150 \(1972\)](#). Indeed, in moving to reveal evidence that Alfredo Shaw was a government agent, Mr. Carruthers’s post-conviction counsel explicitly relied on *Massiah* and *Giglio*.⁵³

The extent to which the Shelby County District Attorney attempted to conceal the facts of Mr. Shaw’s status as a government agent is strongly indicative that the office had some concern that a *Moulton/Massiah* violation may have occurred. For more than two decades, that office steadfastly denied—contrary to fact—that Mr. Shaw

⁵³ Ex. 34, PCR Counsel Requests for Information on Alfredo Shaw.

was a paid informant for “anybody” at “any time.”

At trial, Mr. Carruthers attempted to question Shaw as to whether he was a “confidential informant for the Sheriff’s Department,” but the judge sustained the prosecution’s objection to relevance—and did not require Shaw to answer the question.⁵⁴ On cross, prosecutor Carter elicited testimony that the State had not been “threatened or promised ... any reward” for his testimony.⁵⁵

During post-conviction proceedings, counsel for Mr. Carruthers repeatedly sought confirmation from the Shelby County District Attorney that Shaw was a paid informant.⁵⁶ By letter and by pleadings filed before the Honorable Judge Kurtz, the prosecutors denied that Shaw had been a paid informant.⁵⁷ Judge Kurtz, on December 3, 2002, specifically ordered the State to divulge whether Shaw “was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with the petitioner in the Shelby County Jail.”⁵⁸ On January 7, 2003, in their final denial, the assigned prosecutor claimed, “I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. To the best of their knowledge,

⁵⁴ Ex. 19, Excerpt Trial Tr. Alfredo Shaw Testimony, p. 2254.

⁵⁵ Ex. 19, Excerpt of Trial Testimony of Alfredo Shaw, p. 2272

⁵⁶ Ex. 34, PCR Counsel Requests for Information on Alfredo Shaw.

⁵⁷ Ex. 35, Three Denials by DA that Shaw an Informant.

⁵⁸ Ex. 36, Kurtz Order to Compel.

Alfredo Shaw was never a paid informant during the time frame stated in your letter of December 16, 2002.”⁵⁹

Subsequent investigation has revealed that the representations of the Shelby County District Attorney’s Office were false—if not blatantly dishonest—and at least misleading as to the thoroughness of the inquiry. That is, when then-ADA Campbell wrote the statement, above, that he asked the trial prosecutors whether they were aware of a situation where Shaw acted as an informant, the response should have been that Mr. Robert (Bobby) Carter did know of such. In 1997, Mr. Carter prosecuted Bernard Kimmons based on information provided by Shaw.⁶⁰ Clearly Carter knew—or would have known had he done any review of files—that Shaw acted as an informant. Whether Carter failed to conduct the required search prior to responding to Campbell’s inquiry or lied to Campbell or whether Campbell misrepresented the information provided to him is immaterial.⁶¹ What matters is that in the end, Mr. Carruthers’s counsel asked for information that the Shelby County District Attorney’s Office possessed and were told that information did not exist.

⁵⁹ Ex. 35, Three Denials by DA, p. 3) (emphasis added).

⁶⁰ Ex. 37, Alfredo Shaw 302 (showing Alfredo Shaw was the CI who set Kimmons up); Ex. 38, Kimmons’s Shelby County Justice System Portal Criminal Court Case Information Sheet (showing Robert Carter as prosecutor).

⁶¹ See, [*Robinson v. Mills*, 592 F.3d 730, 738 \(6th Cir. 2010\)](#) (citing *Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995)) (holding duty of the prosecution to disclose known, favorable evidence is “inescapable.”).

In December of 2017, after the conclusion of all tiers of review but for certiorari to the United States Supreme Court, the Shelby County Sheriff's Department finally disclosed limited and redacted records regarding Mr. Shaw's payment history from, and only from, the Shelby County Sheriff's Department.⁶² It was not until 2024—long after all Mr. Carruthers's appeals had been exhausted—that the Memphis Police Department admitted that Mr. Shaw had been a paid informant for that agency since 1986.⁶³ What Mr. Shaw may have received from the District Attorney, the FBI, the DEA, or other agencies, has never been revealed to counsel or Mr. Carruthers, despite multiple requests for those records.⁶⁴

The records provided by the Sheriff reflect that Alfredo Shaw made purchases of crack cocaine on September 23 and 25, 1991, and a purchase of marijuana on October 29, 1992, while receiving an undefined/illegible payment of \$100.00 on October 28, 1992.⁶⁵ Thus, at least three years prior to Mr. Carruthers's "confession," Shaw was already working for the State. The records provided by the Memphis Police Department show similar work for that agency.⁶⁶

⁶² Ex. 39, Fessenden Letter with Attached Payment History.

⁶³ Ex. 40, MPD Snitch Jacket on Shaw.

⁶⁴ Ex. 41, Compilation of Requests for Records.

⁶⁵ Ex. 39, Fessenden Letter with Attached Payment History, p. 3

⁶⁶ See n.40 above.

Prior to trial, Shaw worked for the Memphis Police Department as a “cooperating individual” making drug buys. Records not turned over to Mr. Carruthers’s counsel until 2024 reflect that the Police Department paid Shaw over \$9,000 in 1991 to buy drugs.⁶⁷ Thereafter, following the alleged “confession,” but prior to the April 1996 trial, Shaw made another \$100 purchase of marijuana for the Sheriff on November 30, 1995. And, after helping secure Mr. Carruthers’ conviction and death sentence, Shaw made numerous additional drug buys and received informant payments or reimbursement for “informant expense” on December 16, 1996, and January 29, February 24, March 19, April 28, May 2 and May 7, 1997 totaling \$436.00.⁶⁸ Mr. Shaw, in his pretrial recantation (which he recanted at trial), claimed that he received either \$1,000 or \$3,000 for his grand jury testimony against Mr. Carruthers.^{69, 70}

The Memphis Police Department and the Shelby County Sheriff’s Departments disclosures reveal that the prosecution’s representations during post-conviction, and following Judge Kurtz’s order, were factually untrue. For many years, pre- and post-dating Mr. Carruthers’s trial, Alfredo Shaw was a paid informant for, at the very least, the Memphis Police Department and the Shelby County Sheriff.

⁶⁷ Ex. 40, MPD Snitch Jacket on Shaw.

⁶⁸ *Id.*

⁶⁹ Ex. 20, TriState Defender “State bribed me to lie.”

⁷⁰ Ex. 21, Video of Channel 13 Interview of Shaw.

Moreover, at the time the State was denying that Alfredo Shaw was a paid informant, the State was defending the conviction of Earley Story in the Court of Criminal Appeals, which had been obtained based on Shaw's work as a "cooperating individual." [State v. Story, 2002 WL 31257803 at *1 \(Tenn. Crim. App. Sept. 13, 2002\)](#). The trial testimony reveals that Shaw allegedly, purchased \$500 of marijuana from Sheriff's Deputy (and defendant) Earley Story on January 9, 1997, \$500 more on January 15, 1997, and \$850 more on January 22, 1997. [Id. at *1-2](#). The payment records provided by the Sheriff reflect that on January 9, 1997, the Sheriff withdrew \$500 for Alfredo Shaw to purchase marijuana; albeit where the money came from for the second two buys is less than clear.⁷¹ The three alleged purchases of marijuana from Story are bookended by payments to Shaw on December 16, 1995, and January 29, 1997.⁷² Mr. Story was able to present an alibi for the first two purchases, and the jury acquitted him, but he failed to establish an alibi for the third and was convicted. [Id. at *2-3](#). To this day, Mr. Story asserts that he was framed and never sold marijuana to anyone. *See e.g.*, [Case No. W2019-01406-CCA-R3-ECN](#) (appeal pending in Tennessee Court of Criminal Appeals).

Thus, it is clear that the State knew that Shaw was an informant, when it represented to Judge Kurtz that he was not. The State's repeated

⁷¹ Ex. 39, Fessenden Letter with Attached Payment History, p. 3.

⁷² *Id.*

protestations suggest that their attorneys recognized the significance of Shaw's work as an informant. By submitting factually misleading pleadings, in the face of an explicit court order, the Shelby County District Attorney's Office perpetrated a fraud upon the court.

F. The State was willing to accept a plea to life in prison, which Mr. Carruthers could have already served had he accepted it; his co-defendant, James Montgomery has been free for a decade.

Mr. Carruthers informed the trial judge that William Massey had secured him a plea offer of twenty-five years,⁷³ which he rejected because (1) he maintained his innocence, and (2) he believed that it was “a violation of the victims’ family rights” to extend such an offer without consulting with the victims’ families.⁷⁴ Assistant District Attorney Harris clarified that Mr. Carruthers had not been offered twenty-five years; instead, he stated on the record, his office had agreed that if Mr. Carruthers was willing to plead to life, he would seek the victims’ family’s approval.⁷⁵ As the murders occurred prior to July 1, 1995, Mr. Carruthers would have been eligible for release after serving twenty-five (25) years in prison, which is to say, in 2019. [Tenn. Code. Ann. § 40-35-501\(h\)\(1\) and \(i\)](#).⁷⁶

⁷³ Since at least 2003, Mr. Carruthers has been convinced that he has an open offer to plead to time-served, which the State is trying to coerce him to accept.

⁷⁴ Ex. 42, Transcript of Feb. 21, 1996 Hrg., pp. 9-10.

⁷⁵ *Id.* at p. 16.

⁷⁶ Thus, rather than 25 years being a misstatement by Mr. Carruthers, it was the minimum term of a life sentence

James Montgomery, Mr. Carruthers' co-defendant, was permitted to plead best-interest to Murder in the Second Degree, with a term of 27 years at 35% (after winning a retrial due to the prejudicial impact of being tried with Mr. Carruthers).⁷⁷ In December of 2015, James Montgomery was released from prison—a free man.^{78, 79, 80}

G. The aggravating factor of heinous, atrocious and cruel was based on false testimony; the victims were not buried alive; the prosecutions' essential argument for death was factually false; the continued repetition of this horrifying myth rendered it especially prejudicial.

At sentencing, the prosecution called two witnesses. The first was a member of the clerk's office who testified regarding the criminal records of the defendants, which included a single conviction of aggravated assault against Mr. Carruthers.⁸¹ [State v. Carruthers, 1999 WL 1530153, at *26 \(Tenn.Crim.App. Dec. 21, 1999\)](#). Then, the State

⁷⁷ Ex. 43, *State v. Montgomery* Tr. of Alford Plea, p. 23.

⁷⁸ Ex. 44, "Memphis man convicted of triple murder goes from death row to freedom," News Channel 3, Sept. 26, 2016.

⁷⁹ It is interesting to note that the debunked and repudiated theory that the three victims were buried alive was (a) not advanced during the 2000 Alford Plea, but (b) continued to be featured in the 2016 story about Montgomery's release—and in the State's 2026 pleadings in Mr. Carruthers's case. Ex. 8, 2025.12.23 State's Response in Opposition to Fingerprint Petition. Clearly, this false story resonates most powerfully with the public at large such that the State continues to perpetuate it, despite it being demonstrably false.

⁸⁰ See, Attach. 2, Thomas & Ramsey Clemency Letter.

⁸¹ Co-defendant Montgomery had a much more significant record, involving two convictions for robbery with a deadly weapon and one conviction for assault with intent to commit robbery with a deadly weapon. [Carruthers, 1999 WL 1530153, at *26](#).

presented their star sentencing witness, Dr. O.C. Smith, the medical examiner, who testified at length and in vivid detail about the pain suffered by the three victims who were “buried alive.” [*State v. Carruthers*, 35 S.W.3d at 530.](#)

Dr. Smith’s testimony became the focus of the State’s final closing argument at sentencing.⁸² This powerful argument vividly and painfully told a story of prolonged suffering of three victims buried in a dark pit, Ms. Anderson listening to her son die, her son listening to her die, Frederick Tucker dying with them both, all three victims slowly suffocating, all three victims having injuries that would not have been fatal, but for the crushing weight of the dirt and each other above them.⁸³ The prosecution’s final closing argument relied on this emotionally wrenching horror story, while focusing almost exclusively on the single aggravating factor of heinous, atrocious and cruel.⁸⁴ The last words of the able prosecutor were as follows:

We've come to you with awesome, horrible, unforgettable, almost unmentionable facts, haunting facts, haunting facts. The death penalty should be reserved for these two people who would put into action such a heinous, atrocious, and cruel plan, who would so callously take away human life, who would without regard for any of the social sensibilities take away what was so unnecessary, the life of Delois Anderson. So callous, so unnecessary, so horrible, so

⁸² Ex. 45, Excerpt Trial Tr., State’s Closing Argument at Penalty Phase.

⁸³ *Id.*

⁸⁴ *Id.*

heinous and so atrocious and so cruel. Thank you.⁸⁵

By imposing death, the jury agreed with the State and found that all three murders had been “heinous, atrocious and cruel.” [Carruthers, 1999 WL 1530153, at *1](#). All but one appellate court that ruled on Mr. Carruthers’s case found it important to recite: “the three victims were buried alive.” [Carruthers v. Mays, 889 F.3d 273, 277 \(6th Cir. 2018\)](#); [Carruthers v. State, 2013 WL 3968787, at *1 \(Tenn. Crim. App. Aug. 1, 2013\)](#); [State v. Carruthers, 35 S.W.3d 516, 528 \(Tenn. 2000\)](#); [Carruthers, 1999 WL 1530153, at *24](#).

While reviewing the proportionality of Mr. Carruthers’s death sentence, the Tennessee Supreme Court emphasized that “the three victims were kidnapped, bound, shot and buried alive, in a pit beneath another person’s grave.” The court repeated the phrase “buried alive” three times in its analysis. [Carruthers, 35 S.W.3d at 570](#). The Court of Criminal Appeals, in weighing aggravating factors and finding that the death sentence was legally appropriate similarly stressed that the victims were “buried alive.” [Carruthers, 1999 WL 1530153, at *60](#).

However, in 2007, the Court of Criminal Appeals recognized that the commonly accepted “fact” that the victims were buried alive was highly dubious; the court appointed expert pathologist, Cleland Blake, had long before concluded that both Mr. Tucker and Mr. Anderson were

⁸⁵ *Id.* at pp. 2784-85.

dead prior to burial, and Ms. Anderson was either dead or unconscious when she was placed in the grave. *Carruthers*, 2007 WL 4355481, at *23-24. The Court of Criminal Appeals observed that Dr. Blake’s conclusion, could have been presented at trial, but Mr. Carruthers, struggling to represent himself, failed to call him. *Id.* at*44.⁸⁶ Regardless, in post-conviction, Dr. Blake’s conclusion was ratified by a third expert, Dr. George Nichols who testified that, in his opinion there was no evidence “that any person was alive in the site in which their bodies were discovered.” He further testified that there was “no proof of the best evidence of conscious activity of any victim while alive in the grave site.” Specifically, **he found no evidence of inhalation of dirt, mud, dust, or earth in the upper airways, mouth, or lungs of any of the victims, which would have indicated that the victims had breathed after being placed in the grave.** On redirect examination, he reiterated that he found no evidence to show that “any of these three people were alive and breathing in that space. None.” *Id.* at *24 (**emphasis** by counsel).

Finally, Dr. O.C. Smith submitted an affidavit which was filed with the Federal District Court, disavowing his conclusion that the victims were buried alive.⁸⁷ He concluded his declaration as follows:

⁸⁶ That is, the mentally ill defendant who was sanctioned with the loss of counsel, was then faulted for failing to understand that Dr. Blake’s testimony could save his life. In light of the fact that Mr. Carruthers defense focused entirely on the fact that he was innocent (and that Alfredo Shaw lied to the Grand Jury), it is not surprising that he failed to understand why Dr. Blake might matter. Given his incompetence to defend himself, it was inevitable he would fail to see the relevancy.

⁸⁷ Ex. 46, Affidavit of OC Smith.

I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable medical certainty, the victims were in fact alive at the time they were buried beneath the coffin....

I have addressed this issue with Bobby Carter of the Shelby County Attorney General's Office in regard to a retrial of James Montgomery and believe this lead [sic] to a plea agreement.⁸⁸

This evidence demonstrates that the vivid and horrifying story told by the prosecution was false. The prosecution's key argument to persuade jurors to vote for the death penalty was untrue. Three expert witnesses have shared their opinions: two who said the story was explicitly false, one who could no longer support it.

Sadly, due to restrictions placed on federal habeas corpus review, the Federal District Court held that it could not consider Dr. Smith's affidavit and examined the victims' cause of death only under a false testimony theory (and then only under the strictures of highly deferential federal habeas review).⁸⁹ Moreover, the district court found that, if it could consider Dr. Smith's recantation, it would not establish that he was lying at the time he testified, or, even if he were lying, that the prosecution knew he was lying.⁹⁰ Of course, whether it was a lie, or an innocent mistake, the erroneous testimony was immensely prejudicial—regardless of the circumstances, jurors believed the testimony, as did

⁸⁸ Ex. 46, Affidavit of OC Smith at p. 2, ¶¶ 3,4.

⁸⁹ Ex. 47, Order Denying Habeas Relief, pp. 150-51.

⁹⁰ *Id.* at 152-53.

every court that weighed the propriety of imposing a sentence of death.

The key question, which has never been properly weighed and considered, is whether the jury would likely have sentenced Tony Carruthers to death for his ambiguous role in the crime had they not been led to believe that the victims were alive at the time they were buried and suffered horrifying physical and emotional pain as a result. No court has ever addressed that issue.⁹¹ In light of Montgomery's subsequent plea to a mere 27 years, and Dr. O.C. Smith's testimony that his changed opinion on cause of death led to the Montgomery plea, it is impossible to overstate the importance of this false narrative to the State's case for Mr. Carruthers's death sentence.⁹²

H. Mr. Carruthers's conviction and death sentence were the direct result of the trial court's decision to force his self-representation, given Mr. Carruthers's complete lack of legal knowledge or understanding (as well as mental health challenges addressed in a separate section below).

Tony Carruthers was not engaging in hyperbole when he insisted that he was not competent to represent himself. The record reflects that his "legal" decisions at trial ensured his own conviction (as the Tennessee

⁹¹ The Court of Criminal Appeals, in 2007, examined the issue from a prosecutorial misconduct perspective, and considered what the impact would have been of contrary testimony from Dr. Blake to counter Dr. Smith's testimony, and concluded that any error would have been harmless. [Carruthers, 2007 WL 4355481, at *56](#). The court did not consider the impact of Dr. Smith's complete recantation of his prior testimony.

⁹² See, Attach. 2, Thomas & Ramsey Clemency Letter

Supreme Court concluded with respect to his jointly tried co-defendant). Twice his behavior at trial was so problematic that the jurors felt the need to pass notes to the court: the jurors asked if the Court could have Mr. Carruthers speak up so they could hear him, instruct him not to ask repetitive questions, and, much more troublingly, they requested that he stop “scratching or pulling around his groin” while standing in front of the jury.⁹³ In regard to the groin manipulation, the jurors noted that they found “this very offensive and distracting.”⁹⁴ But these mannerisms—actually indicative of Mr. Carruthers’s mental illness—were outweighed in significance by incredibly misguided matters of substance.⁹⁵

Mr. Carruthers believed that to prove his innocence he needed to prove that the story the jury had not heard—that is, the story about the killing being a murder for hire—was false. In an effort to show that the prosecution had secured the indictment with an untrue story, Mr. Carruthers believed he had to call Alfredo Shaw to the stand. Shortly before trial, Alfredo Shaw had recanted his testimony to the Grand Jury, and told the local media that he had been paid \$3,000 by the prosecution for his false testimony.⁹⁶ However, when called to the stand, Mr. Shaw

⁹³ Ex 48, Excerpts from Trial Tr. re: Juror Notes.

⁹⁴ *Id.*

⁹⁵ Undersigned counsel wants to be clear: counsel respects Mr. Carruthers’ dignity and understands the stress caused by having to represent himself at trial. The fact that, while on trial for his life, Mr. Carruthers had an unfortunate nervous tic (one that might be associated with his mental health issues) should not be used to denigrate him.

⁹⁶ Ex. 20, TriState Defender “State bribed me to lie.”

made it clear he would not only recant his recantation and testify that Mr. Carruthers had admitted to the murder, but he would also claim that Mr. Carruthers—via deputies in the jail that he controlled—had threatened Shaw and his family to coerce his original recantation.⁹⁷

Given these circumstances, any reasonably competent attorney would not have called Shaw as a witness. However, Mr. Carruthers was unable to see what was clearly about to occur—and did not have the skill or talent to cross-examine Shaw effectively. Instead, he reviewed, line-by-line, Mr. Shaw’s initial damning statement to the police, wherein he claimed that he and Mr. Carruthers had been offered \$100,000 and a kilogram of cocaine to murder Marcellos Anderson, and that Mr. Carruthers subsequently confessed to the three killings, in detail.⁹⁸ He then did a similar line-by-line examination of Mr. Shaw’s nearly factually similar testimony the Shelby County Grand Jury.⁹⁹ He then established that Mr. Shaw had given a sworn deposition, where he told the same story as before.¹⁰⁰ After introducing three consistent statements regarding his own guilt, Mr. Carruthers sought to show that Mr. Shaw had then repudiated those statements and miserably failed. Instead, Mr. Shaw preceded to testify about how his life was on the line, and how Mr. Carruthers and his people had threatened the lives of Shaw and Shaw’s

⁹⁷ Ex. 19, Excerpt of Trial Tr., Alfredo Shaw Testimony, pp. 2129-36.

⁹⁸ Ex. 19, Excerpt of Trial Tr., Alfredo Shaw Testimony, pp. 2166-2201.

⁹⁹ *Id.* at 2208-2217.

¹⁰⁰ *Id.* at 2218.

family.¹⁰¹

It was in the midst of this inept direct-examination that the jury passed their note wondering why Mr. Carruthers kept asking the same questions, over and over.¹⁰² The questions the jury kept hearing repeatedly were Mr. Carruthers's requests that Alfredo Shaw again tell his story of Carruthers's guilt.

Possibly worse yet, Mr. Carruthers did not know to object when the prosecution, on cross-examination, asked a wholly improper and unduly prejudicial series of questions to explore Shaw's alleged fear of Mr. Carruthers:

Q. Okay. Now, let me talk to you a little bit about the things that you – when you say things started happening, one of the things was Jonathan Montgomery was found dead in the jail; is that right?

A. Correct.

Q. How did that make you feel?

A. How would that make anyone feel, you know what I mean, that's involved in the case? I knew it was something –

Q. I mean, don't tell me what you think or something about the circumstances of that, but just tell me how it made you feel?

A. How it made me feel, that, you know, he was a great asset to this case, and I knew I was a great asset to this case,

¹⁰¹ *Id.* at 2219-24.

¹⁰² *Id.* at 2241.

and that made me feel that, you know, something would eventually happen to me on down the line.

Q. All right. Did it make you scared?

A. Right.¹⁰³

Both the Sheriff's homicide investigator and the Medical Examiner had determined before trial that the death of co-defendant, Jonathan Montgomery (the younger brother of James Montgomery), was a suicide, a conclusion the prosecutor himself reported to the trial court.¹⁰⁴

However, the clear implication of the prosecutor's questions, contrary to fact, was that Jonathan Montgomery had been murdered in jail for having implicated his brother and Mr. Carruthers, and that Shaw risked being next. But, Mr. Carruthers, a non-lawyer, failed to raise any objection pursuant to Tennessee Rules of Evidence [401](#), [402](#), or [403](#). Had such an objection been made, the trial court would have been required to stop the questions and strike the irrelevant and prejudicial line of answers. Moreover, a competent attorney would have also requested a mistrial, due to this flagrant and highly prejudicial misstatement of fact, and, failing that, an admonishment to the jury to ignore the improper testimony. Plainly, the prosecutor "intentionally misstate[d] the evidence [and] misled the jury as to the inferences it may draw." [State v. Sexton, 368 S.W.3d 371, 419 \(Tenn. 2012\)](#). This blow was not merely a hard one,

¹⁰³ Ex. 19, Excerpt Trial Tr., Alfredo Shaw Testimony, pp. 2266-67.

¹⁰⁴ Ex. 49, Tr. Hrg. Aug 31, 1995, Jonathan Montgomery abated by death.

but a devastating and foul one that the prosecution was constitutionally forbidden from striking. [Berger v. United States, 295 U.S. 78, 88 \(1935\)](#). But, again, having been forced to represent himself, Mr. Carruthers lacked the knowledge and skill to lodge these obvious objections.¹⁰⁵

Even when Mr. Carruthers' stumbled on a point of merit, he was unable to highlight it for the jury, For example, he managed to get Alfredo Shaw to admit that, prior to either the alleged murder-for-hire phone calls of September 1993 or the jail house confession of March, 1994, the last time he had seen or spoken to Mr. Carruthers was in 1988, when they had an "altercation" in jail.¹⁰⁶ A reasonably competent lawyer, at this point, would have been able to exploit this absurdity to show the jury how highly unlikely it was that Mr. Carruthers would, the next time he saw the man with whom he had engaged in this "altercation," confide in him that he had committed murder. Instead, Mr. Carruthers moved on to ask Shaw about threats Shaw had—allegedly—received,¹⁰⁷ The conclusion of Mr. Carruthers's examination of Alfredo Shaw was a disastrous end to his questioning, one that may well have handed to the prosecution not only a guilty verdict, but a death sentence, as it ended on the note that Mr. Carruthers was a powerful and dangerous individual at the jail, an unsupported

¹⁰⁵ Reflecting most poorly on Mr. Carruthers' subsequent appellate counsel, this obvious error was not raised as "plain error" on appeal. Thus, while manifestly unfair, no court has ever addressed the prejudicial impact of the prosecution's intentionally misleading questioning.

¹⁰⁶ Ex. 19, Excerpt Trial Tr., Alfredo Shaw Testimony, pp. 2214-16, 2279.

¹⁰⁷ *Id.* at 2279-85.

insinuation later underscored by the unobjected to, prejudicial misstatement of fact elicited by the prosecutor regarding Jonathan Montgomery's death:

Carruthers: All right. Are you aware that the jail keeps records of every time you move and every time you go to the law library?

Shaw: I understand that. But it's also -- I'm also aware that Tony Carruthers can get things arranged if he want to get things arranged, and you got that arranged, Mr. Carruthers.

Carruthers: Are you aware that Tony Carruthers is not allowed to go anywhere in the jail except escorted by an officer?

Shaw: Well, now you can't, now. But back then you wasn't. You was free to do whatever you wanted to do until you—until people start fearing you.

Carruthers: No other questions, Mr. Shaw. Thank you.¹⁰⁸ ¹⁰⁹

No court has ever addressed the constitutional adequacy of Mr. Carruthers's (self-)representation. On appeal, the Tennessee Supreme Court dismissed Mr. Carruthers's claim that he was denied his

¹⁰⁸ *Id.* at 2284-85.

¹⁰⁹ No proof has ever been presented in any tribunal about the power Shaw claimed Tony Carruthers had over the Shelby County Sheriff's Deputies. The record is devoid of any indication that any deputies were ever charged for conveying Mr. Carruthers's alleged threats to Shaw. Clearly, if the District Attorney believed Shaw's claim was serious, they had the full-weight and power of the government behind them to investigate it. Instead, no investigation was undertaken.

Sixth Amendment right to counsel, holding that he had forfeited or waived that right:

To the extent that Carruthers is alleging that his pro se representation was ineffective, we agree with the Court of Criminal Appeals' conclusion that when a defendant forfeits or waives the right to counsel, regardless of whether the waiver is explicit or implicit, he or she also forfeits or waives the right to effective assistance of counsel.

[Carruthers, 35 S.W.3d at 551.](#)

The circumstances leading to the trial court's decision to force Mr. Carruthers to represent himself should not be construed as a waiver of his Sixth Amendment right to counsel. To the contrary, he desperately wanted counsel. But, as a consequence of the Tennessee Supreme Court's ruling, no court has ever examined Mr. Carruthers's self-representation under the standard of [Strickland v. Washington, 466 U.S. 668, 697 \(1984\)](#). Yet, under that standard, Mr. Carruthers was clearly denied the guiding hand of counsel guaranteed by the Constitution. His decision to put Alfredo Shaw on the witness stand, and to examine him in the manner he did, would have been considered well below any reasonable professional standard and deficient under *Strickland*. His failure to call Dr. Cleland Blake to rebut the false claim that the three victims were buried alive was equally deficient. Likewise, Mr. Carruthers's behavior that prompted notes from the jury was similarly deficient—no lawyer seeking to maintain credibility would ever engage in bodily manipulation before a jury. Moreover, it is abundantly clear that Mr. Carruthers's

deficient performance caused him prejudice—as it did for his co-defendant, who received a new trial as a result. But for Shaw, or but for the State’s false buried-alive myth, there is a reasonable probability that Tony Carruthers would not have been convicted and would not have received the death penalty.

III. There are serious questions regarding whether Mr. Carruthers is competent to be executed, an inquiry that is currently pending in the courts, but relevant to the consideration of this petition.

Mr. Carruthers suffers from schizoaffective disorder, a serious mental illness that has dramatically impaired his functioning for years and that so distorts his understanding of the purpose of his death sentence as to render him incompetent to be executed under both federal and state law.

In *Ford v. Wainwright*, the Supreme Court of the United States first recognized that the Eighth Amendment prohibits states from executing those who are mentally incompetent. [477 U.S. 399, 409–10 \(1986\)](#). See also [Van Tran v. State, 6 S.W.3d 257, 265 \(Tenn. 1999\)](#) (Tennessee Supreme Court holding in light of *Ford* and the common-law bar against executing a mentally incompetent prisoner that courts have an “affirmative constitutional duty to ensure that no incompetent prisoner is executed”). In [Panetti v. Quarterman, 551 U.S. 930 \(2007\)](#), the Supreme Court explained that “today, no less than before, we may seriously question the retributive value of executing a person who has no

comprehension of why he has been singled out and stripped of his fundamental right to life.” [551 U.S. at 957](#) (citing *Ford*, 477 U.S. at 409–10).

The Supreme Court explained that an “awareness of crime and punishment” is not merely a “prisoner’s awareness of the State’s rationale for an execution,” but also “a rational understanding of it.” [Panetti, 551 U.S. at 959](#). “*Panetti* teaches that the test for competence to be executed requires a prisoner to have a rational understanding of his conviction, his impending execution, and the relationship between the two.” [State v. Irick, 320 S.W.3d 284, 295 \(Tenn. 2010\)](#) (cleaned up). “A prisoner’s awareness of the State’s rationale for an execution is not the same as a rational understanding of it.” [Panetti, 551 U.S. at 959](#). Ultimately, “gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose.” [Id. at 960](#). The reason for a defendant’s lack of rational understanding is irrelevant, as *Panetti* was concerned not with the diagnosis of any specific mental illness or medical conditions, but with “a consequence—to wit, the prisoner’s inability to rationally understand his punishment.” [Madison v. Alabama, 586 U.S. 265, 278 \(2019\)](#). Mr. Carruthers meets this standard. He is currently litigating the issue in state court.¹¹⁰

¹¹⁰ See, Ex. 50, Ford Petition with Supporting Declarations; Ex. 51, Trial Court Order

A. Mr. Carruthers’s mental illness and brain damage preclude him from having a rational understanding of his convictions, execution, or the world around him.

Mr. Carruthers’s understanding of the world and this case is grossly distorted by pervasive and dominating delusions that interact synergistically and prevent him from appreciating that his execution is intended to seek retribution for his capital crime. In fact, he believes that he will not be executed.¹¹¹

Mr. Carruthers’s current impaired mental state results from Schizoaffective Disorder, Bipolar Type, a severe mental illness that was first diagnosed in 2011, and from brain damage, both of which persist today.¹¹² These disorders have led to Mr. Carruthers’s long-term delusional thinking that prevents a rational understanding of his imminent execution.¹¹³ These delusions are so pervasive and controlling that even though he is aware that he was convicted at trial and has an upcoming execution date, he cannot rationally understand the connection between his convictions and pending execution.¹¹⁴

(finding that Mr. Carruthers “satisfied the *Van Tran* required threshold showing that his competency to be executed is genuinely in issue” and granting a hearing); *see also*, Ex. 52, Trial Court Order Denying Relief; Ex. 53, Appellant’s Opening Brief.

¹¹¹ Ex. 54, 03/05/2026 Agharkar Report

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

Mr. Carruthers believes that he is scheduled to be executed because a corrupt cabal of judges, prosecutors, and defense attorneys have engaged in a sprawling conspiracy to secure his conviction and sentence.¹¹⁵ He adamantly believes he is entitled to a massive financial settlement because of these malefactors' various unlawful deeds, which include the extensive, on-going monitoring of Mr. Carruthers's communications with his court appointed counsel.¹¹⁶ Mr. Carruthers believes that these conspirators, including his current counsel—seek to extort him into accepting a non-existent plea deal, but Mr. Carruthers plans to refuse the plea offer because to do so would extinguish his various claims to massive damages.¹¹⁷

Because Mr. Carruthers's pervasive delusions and their effect on his competency have been fully set out in the materials attached to this petition,¹¹⁸ we will not rehash them here. However, if the courts fail to find Mr. Carruthers incompetent to be executed, we respectfully submit that you should fully consider the impact of his mental illness on his ability to prepare to meet his Maker.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See, n. 110, above.

B. Clemency is necessary to avoid executing a man who is too mentally ill to understand that his execution is imminent.

If the courts fail to act, clemency must be granted to avoid executing a severely mentally ill and incompetent man. It is extremely rare for a condemned person who wants to live to adamantly deny that they are mentally ill and to refuse a competency evaluation. Mr. Carruthers's adamant objection to saving his life in this way reflects the severity of his mental illness. Mr. Carruthers remains unmedicated and continues to refuse all mental health treatment or assessment. His mental illness will not improve. Schizoaffective disorder, bipolar type "is a severe and persistent debilitating mental illness with an extremely poor prognosis if untreated" as Mr. Carruthers's has been.¹¹⁹ If anything, his symptoms will only worsen. Because of these facts, it is almost certain that Mr. Carruthers's delusions will not abate before May 21, 2026, and he will, without your intervention, be executed unawares. *See*, [Ford, 477 U.S. at 407](#) (discussing the religious underpinnings of the exemption for incompetents as based on the lack of charity required to "dispatch an offender 'into another world, when he is not of a capacity to fit himself for it.'"); *see also*, [Panetti, 551 U.S. at 959](#) (finding the retributive purpose of capital punishment thwarted where an individual's mental state "is so distorted by mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those

¹¹⁹ Ex. 54, Dr. Agharkar March 5, 2026 Report at 5.

concepts shared by the community as a whole.”).¹²⁰

IV. Conclusion

Tony Von Carruthers does not deserve to die. He did not choose to have a serious mental illness. He never wanted, because of his mental illness, to be forced to defend himself at a trial for his life. But, against his will, and contrary to justice, he was forced to defend himself. And, he failed to do a reasonable job, instead taking missteps that fatally prejudiced him in the eyes of the jury.

Mr. Carruthers failed, primarily, because he was not competent to defend himself. Due to mental illness he acted in a manner and made choices that assured conviction and the death penalty. He failed because the court prevented the jury from hearing any of the proof that someone other than Mr. Carruthers had reason to kill the victims.

He failed because the jury believed unconscionable falsehoods: Alfredo Shaw lied, multiple times, about a confession that never happened—lies the prosecution capitalized on; the medical examiner testified to a horrific myth about three victims being buried alive—and that myth became the prosecutions’ most compelling argument for death.

You have the power to right these wrongs. Please spare Mr. Carruthers’s life.

¹²⁰ See, Attach. 3, Passino Clemency Letter.

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