

**IN THE CIRCUIT COURT OF LIVINGSTON COUNTY
STATE OF MISSOURI**

SANDRA L. HEMME,)	
)	
Petitioner,)	
)	
v.)	Case No. 23LV-CC00008
)	
CHRIS McBEE,)	
)	
Respondent.)	

Memorandum, Order, and Judgment

Petitioner Sandra Hemme (“Ms. Hemme”) is in the custody of Chris McBee, Warden of the Chillicothe Correctional Center, 3151 Litton Road, Chillicothe, Missouri, 64601, pursuant to a conviction of capital murder in the November 12, 1980, homicide of Patricia Jeschke in St. Joseph, Missouri. Ms. Hemme and Warden McBee are within the territorial jurisdiction of this Court.¹ Ms. Hemme, by counsel, petitions this Court for a Writ of Habeas Corpus pursuant to the Missouri Constitution, Art. 1 § 12, § 532.430 R.S.Mo. and Missouri Rule 91, asserting her innocence and challenging the constitutionality of her convictions. At the evidentiary hearing in January 2024 (“evidentiary hearing”), Sandra Hemme provided this Court with both live testimony and documentary evidence showing that the State did not disclose substantial evidence supporting her defense, that her statements were unreliable and the person who committed this crime was former St. Joseph police officer Michael Holman; the evidence

¹ *State ex. Hawley v. Midkiff*, 543 S.W.3d 604 (Mo. 2018).

also showed that her trial attorney did not present evidence that would have substantiated Ms. Hemme’s defense, in violation of both the U.S. and Missouri Constitutions. The Court has reviewed all the testimony and exhibits submitted into evidence. The Court has also reviewed post-hearing briefing submitted by Ms. Hemme on March 19, 2024, responsive post-hearing briefing submitted by Respondent on March 30, 2024, and reply briefing submitted by Ms. Hemme on April 6, 2024.

Based on its careful consideration of the record, this Court finds that exculpatory evidence was not disclosed to Ms. Hemme that was material to the outcome of her case and that she can show cause-and-prejudice for not having discovered her *Brady v. Maryland* claim earlier. Ms. Hemme has thus established a gateway claim of innocence that overcomes any alleged procedural default related to the ineffective assistance of counsel she received at her trial. Ms. Hemme has also established evidence supporting a freestanding claim of actual innocence. Ms. Hemme is entitled to the writ of habeas corpus.

I. FINDINGS OF FACT

A. Murder Investigation and the Trial Evidence

1. On Wednesday November 12, 1980, Patricia Jeschke worked her regular secretarial job shift at the St. Joseph Public Library from 8 a.m. until 5 p.m.² She was

² Sometime between 11:30 a.m. and 12:00 pm, Ms. Jeschke went to Melmed’s Pharmacy to pick up a prescription. She was observed with a white male in his late 20s. Resp. Ex. F (Jeschke Police Reports) at 13.000583 (Nov. 13, 1980 Statement of Pat Osborn). Shortly thereafter, Ms. Jeschke was seen by a neighbor stopping off at her home alone, carrying a sack of groceries. Resp. Ex. F (Jeschke Police Reports) at 13.000946 (Nov. 19, 1980

dressed in a white and gray three-piece pants suit.³ A co-worker saw her at the office at 4:55 p.m.; she told that co-worker that she had plans to attend a class at St. Francis Xavier Church at 7 p.m. that evening.⁴ At approximately 5:00 p.m., Ms. Jeschke was seen by an acquaintance driving alone in her small, two-seated white sports car through downtown St. Joseph.⁵

2. The next day, after Ms. Jeschke did not arrive at work, her employer called her mother, who went to Ms. Jeschke's home at 1502 Riverside Road, Apt. 1 to investigate.⁶ Her mother, Helen McGlothlin, discovered her daughter's body lying in a pool of blood on the bedroom floor.⁷ A pillow had been placed over Ms. Jeschke's face, and her hands were bound with telephone cords behind her back.⁸ There were no signs of forced entry to Jeschke's home.⁹

3. The Saint Joseph Police Department ("SJPD") recovered two black hairs from Ms. Jeschke's bedsheet.¹⁰ Two lengths of cut TV antenna wire were found on the

Re-interview of Dale and Gale Collings). She was observed by coworkers to be at the library at 1 p.m. and again at 3:15 p.m, before being seen leaving the library at 5 p.m. at the end of the workday Pet. Ex. 45 (Trial Transcript, hereinafter "TT") at 11.

³ Pet. Ex. 45 (TT) at 13.

⁴ *Id.* at 12.

⁵ *Id.* at 14-16.

⁶ *Id.* at 17-18.

⁷ *Id.* at 19.

⁸ *Id.* at 31-32.

⁹ *Id.* at 36.

¹⁰ *Id.* at 157. *See also* Pet. Ex. 25 (Mar. 3 and 12, 1980 FBI hair and fiber reports).

floor nearby Ms. Jeschke's body.¹¹ The wires were flat and plastic, and suitable for fingerprinting.¹²

4. Newspaper photographer Ival Lawhon was allowed inside Ms. Jeschke's apartment to document the crime scene.¹³ Ms. Jeschke's murder attracted substantial media attention¹⁴ and was covered by newspapers across Missouri.¹⁵ On November 14, the murder was the top story in both of St. Joseph's daily newspapers, the St. Joseph Gazette and the St. Joseph News-Press.¹⁶ A photograph of Ms. Jeschke's bedroom, where her body was found, was published on the Friday morning edition of the Gazette.¹⁷ Ms. Jeschke's floral print bedspread and pillow were visible in the image, as was a blood stain on the floor; the caption of the photo read: "Detective Tom Randall checks evidence in bedroom where body of Patricia Jeschke was discovered."¹⁸ The exterior of Ms. Jeschke's home was pictured on the front page as well, and her address was listed.¹⁹

5. The two news articles published on November 14 about Ms. Jeschke's murder contained many details about the facts of the murder, including: that she was found nude, with a pillow over her head; that her hands were bound behind her back with

¹¹ *Id.* at 28 and Pet. Ex. 14 (*State v. Hemme* Trial Exhibits 3, 5, 7, 39, Crime Scene Photos) at AGO_003383, 003385, 003398.

¹² January 2024 Habeas Hearing Transcript (hereinafter "HHT") at 664.

¹³ HHT at 328; *see* Pet. Ex. 28 (Photos from archive of Ival Lawhon).

¹⁴ HHT at 628.

¹⁵ Pet. Ex. 52 ("Public asked to help in murder probe"). *See* "St. Joseph woman found dead" for coverage in the *Kansas City Times*.

¹⁶ Pet. Exs. 22 ("Woman murdered here"), and 23 ("No suspects in murder").

¹⁷ Pet. Ex. 22 ("Woman murdered here").

¹⁸ *Id.*

¹⁹ *Id.*

a telephone cord; that a ligature was tied around her throat; and that there were three wounds to her head, caused by both blunt and sharp objects. Additionally, the exact location of her apartment and photographs of her apartment's location on the street were featured, as well as pictures of Ms. Jeschke and details about her plans on the night she went missing.²⁰ In the weeks following the murder, details published in the initial stories about Ms. Jeschke's murder were repeated in subsequent news coverage. The case was also covered by TV news programs.²¹ As time passed without an arrest, articles about the lack of progress in the investigation were published.²²

6. Numerous witnesses saw what St. Joseph Police Department Officer Michael Holman would later admit was his pickup truck near the victim's home at the time she was killed.²³ One witness observed that the truck was "white and very clean. It had a roll bar and set up pretty high.... The grill had a lot of black in it."²⁴ A different neighbor saw a white pickup truck parked next to the victim's home as late as 7:30 p.m..²⁵

²⁰ See Pet. Exs. 22 ("Woman murdered here"), and 23 ("No suspects in murder").

²¹ TV coverage of the case was discussed in print publications. See e.g.: Susan L. Hahn, "Insko says there is no evidence linking anyone else to murder", ST. JOSEPH NEWS-PRESS (Mar. 7, 1981), Resp. Ex. D (Hemme Prosecution File), at AGO_002250.

²² See, e.g., Pet. Exs 55 ("Murder probe still stymied") and 56 ("After eight days, still no leads in murder probe").

²³ See Pet. Ex. 42 (Nov. 13, 1980 Lynn Patet Statement); Pet. Ex. 69 (Nov. 14, 1980 Hilda Blank Statement); Resp. Ex. F (Jeschke Police Reports) at 13.000551 (Nov. 13, 1980 Statement of Shawn Wells).

²⁴ Pet. Ex. 69 (Nov. 14, 1980 Hilda Blank Statement).

²⁵ Resp. Ex. F (Jeschke Police Reports) at 13.000551 (Nov. 13, 1980 Statement of Shawn Wells).

7. Detective Howard Judd testified at the evidentiary hearing that this truck lead was significant in the early investigation of Patricia Jeschke's murder.²⁶ A sketch of the truck was taken to every roll call and shown to every officer in the department in an effort to locate the truck and its owner.²⁷

8. Michael Holman would give a statement claiming that the reason he was right next to the victim's home at the time she was killed was because he was sleeping with a woman he named only as "Mary" at the Woodlawn Court Motel, and that he found the victim's credit card within a purse lying near the ditch on the western side of Riverside Road upon leaving the motel.²⁸ Notably, in her Nov. 13 statement, Woodlawn Court Motel owner Vicky Heberlee provided a list of guests who were staying at the motel the night of Ms. Jeschke's murder and Michael Holman was not one of them.²⁹ Further, none of the guests listed could have been Holman under an assumed name, as all were white; Holman was Black.³⁰ Additionally, the motel had designated parking spots where guests would park, instead of on the street.³¹

²⁶ HHT at 756. Several other witnesses gave descriptions of a truck seen parked on Riverside Road the evening of Ms. Jeschke's murder. A sketch was produced based on this interview by Det. Tim Schweder. Pet. Ex. 37 (Schweder sketch of truck). *See also* Pet. Ex. 8 (Index of Leads), Lead #74 (Schweder sketch).

²⁷ HHT at 757.

²⁸ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

²⁹ Pet. Ex. 12 (Nov. 13, 1980 Vicky Heberlee Statement).

³⁰ HHT at 644.

³¹ HHT at 284.

9. Ms. Jeschke's credit card was used on November 13, 1980, the day after she was killed.³² A Black man with a badge in his wallet attempted to pass the card off as his own to purchase a lens at a Kansas City camera store.³³ Police did not learn of the credit card's use until December 8.³⁴ On December 19, detectives determined the man who used her credit card was Michael Holman.³⁵

10. Det. Fueston interviewed Ms. Hemme at St. Joseph State Hospital for the first time on November 28, 1980.³⁶ Det. Fueston observed Ms. Hemme, who was involuntarily committed, to be "not totally cognizant of what was going on"³⁷ and that she "tended to wander when responding to questions."³⁸ He found it difficult to follow the information that she relayed during these interviews,³⁹ and found her ability to focus to be inconsistent.⁴⁰ He also observed that Ms. Hemme suffered from memory lapses.⁴¹ Nursing records reflect that Ms. Hemme had been injected with both antipsychotic medication and a powerful sedative shortly before she was questioned, and that she was

³² Pet Ex. 45 (TT) at 156.

³³ Resp. Ex. F (Jeschke Police Reports) at 13.001111 (Dec. 8, 1980 Interview with Linda Boeding).

³⁴ *Id.* at 13.001108 (Dec. 8, 1980 Interview with Terry Smith).

³⁵ *Id.* at 13.001114 (Dec. 19, 1980 Summary Report of Interview of Linda Boeding).

³⁶ Pet. Ex. 13 (Nov. 28, Fueston Hirter Summary of Hemme Interview) at 13.001012; *see also* HHT at 300.

³⁷ HHT at 295.

³⁸ *Id.* at 295.

³⁹ *Id.* at 296.

⁴⁰ *Id.* at 296.

⁴¹ Pet. Ex. 13 (Nov. 28, Fueston Hirter Summary of Hemme Interview) at 13.001012; *see also* HHT at 300.

experiencing painful muscle spasms due to an adverse reaction to the antipsychotic medication.⁴²

11. After Det. Fueston showed Ms. Hemme a single photograph of Patricia Jeschke, Ms. Hemme indicated that she may gotten high with her and caught a ride from her in a small brown car the day she had left the hospital, November 12.⁴³ The nurses' notes contain details not mentioned in Det. Fueston's police report, and state "she vaguely remembers getting a ride... [and] thinks a man may have been in the back seat of the small car with the woman who picked her up but 'I was pretty spacey + I don't really remember much of anything.'"⁴⁴ When asked where she went with Ms. Jeschke, Ms. Hemme said "she wasn't sure, maybe Dearborn."⁴⁵

12. On December 1, Det. Fueston again questioned Ms. Hemme while she was involuntarily committed at St. Joseph Hospital and in that statement, Ms. Hemme said that she got picked up by a man and a woman driving a "78 or 79 model, very light blue, two door" car.⁴⁶ The man's name was "Joe," and he was around 28 years old, white,

⁴² Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0013-14, *quoting* Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0635 (Progress Record); HHT at 164-68.

⁴³ Pet. Ex. 13 (Nov. 28, 1980 Fueston Hirter Summary of Hemme Interview) at 13.001013.

⁴⁴ Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0632-0633 (Progress Record Notes, Nov. 28, 1980). Ms. Jeschke's car was a 2-seater sports car and had no back seat. Pet. Ex. 45 (TT) at 15.

⁴⁵ Pet. Ex. 13 (Nov. 28, 1980 Fueston Hirter Summary of Hemme Interview) at 13.001013.

⁴⁶ Resp. Ex. D (Prosecuting File Hemme) at AGO_003143 (Sandra Hemme's written statement, Dec. 1, 1980).

5'8", 120-125 pounds, knock-kneed and double jointed, with a thick black mustache.⁴⁷

This description very closely resembles how Det. Fueston described Robert a.k.a. Bobby Cummings of St. Joseph, Missouri, who later would tell police he was the person who drove Ms. Hemme to Dearborn on November 12.⁴⁸ She said that "Joe" asked her to sit on his face at the Faucett exit, to which she agreed.⁴⁹ Ms. Hemme said that she was then dropped off at the Dearborn exit, whereupon she hitchhiked the rest of the way to Concordia, arriving around 8:30 or 9:00 p.m.⁵⁰ The only description she could give of the woman was that she was wearing all blue.⁵¹ Det. Fueston wrote that Ms. Hemme's statement was "not consistent with other witness statements and reports, i.e. times and locations."⁵²

13. On December 2, when Ms. Hemme was questioned a third time, she now described leaving the hospital at 1:00 p.m. on November 12 and getting picked up by a man and a woman in downtown St. Joseph.⁵³ She indicated that the woman in the car

⁴⁷ *Id.* at AGO_003143-003147 (Sandra Hemme's written statement, Dec. 1, 1980).

⁴⁸ Pet. Ex. 47 (Motion to Set Aside Plea Transcript) at 173: "He is probably 5 feet 8 or 9. He's afflicted with a disease similar to cerebral palsy. He has dark hair and a mustache... He is a white male."

⁴⁹ Resp. Ex. D (Prosecuting File Hemme) at AGO_003146 (Sandra Hemme's written statement, Dec. 1, 1980).

⁵⁰ *Id.* at AGO_003147 (Sandra Hemme's written statement, Dec. 1, 1980).

⁵¹ Pet Ex. 45 (TT) at 59. Ms. Jeschke was wearing a black, white, and grey three-piece suit when she left work on November 12. *Id.* at 13.

⁵² Resp. Ex. D (Prosecuting File Hemme) at AGO_003153 (Dec. 2, 1980 Summary Report of Sandra Hemme's 12/01/80 and 12/02/80 statements).

⁵³ St. Joseph State Hospital records reflect that Ms. Hemme left the hospital against medical advice at 1:05 p.m. on November 12. HHT at 151-152; Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0709.

was the same woman in the photograph that Det. Fueston showed her on November 28; she said this woman was wearing “a light blue suit.” In this statement, Ms. Hemme now gave the name Joe Wabski for the male driver.⁵⁴ According to the statement, the victim, who introduced herself as “Pat,” was a passenger in Wabski’s car.⁵⁵ The three then drove to Skaggs Pharmacy – a different pharmacy than the one that the victim had patronized the morning of November 12, hours before Ms. Hemme was discharged from the hospital – and then continued on their drive, at one point stopping so Ms. Jeschke could go inside a “two-story red brick house,” a detail that does not appear again in her statements or the record.⁵⁶ According to this statement, Ms. Hemme was then driven by Wabski to Ms. Jeschke’s home, where she waited in the car while Wabski and Ms. Jeschke went inside.⁵⁷ Wabski, with blood on his shirt, then returned to the car without Jeschke and told Ms. Hemme that he had “killed the fucking bitch.” According to the statement, Ms. Hemme was then driven to an overpass off of I-29, was asked to sit on Wabski’s face at his request, and then was dropped off at Dearborn.⁵⁸ Of this interview, Det. Fueston

⁵⁴ Joe Wabski, in addition to being the first major suspect in the Jeschke homicide, was also the first suspect in the murder of Eric Christgen in 1978 at a time when Wabski was also a patient in St. Joseph State Hospital; a warrant for his arrest was prepared before Mr. Wabski was ultimately cleared of suspicion in that murder. *See* HHT at 311-317 and 746. Wabski was “an Indian male in his 40’s, 6 feet plus, has graying hair and a gray beard – ruddy cheeks.” Pet. Ex. 47 (Motion to Set Aside Plea Transcript) at 173. He did not resemble the driver Ms. Hemme had originally described.

⁵⁵ Pet Ex. 45 (TT) at 70.

⁵⁶ *Id.* at 69.

⁵⁷ *Id.* at 68.

⁵⁸ *Id.* at 69.

reported that: "As before, Ms. Hemme's time reference and locations seemed inconsistent, so additional interviews will be conducted."⁵⁹

14. On December 3 at 10:40 a.m., the eighth day of Ms. Hemme's involuntary hold, investigators took Ms. Hemme from the hospital to the crime scene.⁶⁰ Ms. Hemme was gone from the hospital for nearly six hours⁶¹ with no medical personnel and without receiving her prescribed antipsychotic medications.⁶² Ms. Hemme was shown a photo lineup while sitting in a police vehicle, and she identified Joe Wabski.⁶³ According to Det. Fueston, Ms. Hemme was able to lead the investigators to Ms. Jeschke's home.⁶⁴ Ms. Hemme indicated "she knew about this incident because of 'ESP'."⁶⁵

15. Det. Fueston took her inside the then-empty apartment.⁶⁶ Det. Fueston testified at trial that Ms. Hemme described how Joe Wabski committed the murder.⁶⁷ Det. Fueston then showed Ms. Hemme four photographs, which included images of Ms.

⁵⁹ Resp. Ex. D (Prosecuting File Hemme) at AGO_003153 (Det. S. Fueston & Inv. H. Kemper, Summary Report re: Sandra Hemme's 12/01/80 and 12/02/80 statements, Dec. 2, 1980).

⁶⁰ Pet. Ex. 15 (Dec 3, 1980 Police Report of Fueston, Kemper, Hemme at Crime Scene).

⁶¹ Pet. Ex. 15 (Dec 3, 1980 Police Report of Fueston, Kemper, Hemme at Crime Scene) at 13.00138: "Sandra Hemme...got into our police car at approximately 10:40 A.M." and Resp. Ex. D (Prosecuting File Hemme) at AGO_003163 (Dec. 3, 1980 Summary Report of Sandra Hemme's 12/03/80 2:35pm statement): "...Ms. Hemme was transported back to the hospital and dropped off at 4:30 P.M."

⁶² HHT at 184.

⁶³ Pet Ex. 45 (TT) at 70.

⁶⁴ Pet Ex. 45 (TT) at 73.

⁶⁵ Pet. Ex. 15 (Dec. 3, 1980 Fueston Kemper Hemme at Crime Scene) at 13.001039.

⁶⁶ Pet Ex. 45 (TT) at 101.

⁶⁷ Pet Ex. 45 (TT) at 74.

Jeschke's nude body;⁶⁸ her hands bound behind her back with telephone wire;⁶⁹ the pantyhose around her throat;⁷⁰ the flower print design of her bedspread and pillow;⁷¹ and the two lengths of TV antenna wire found on the floor above her head and to her side.⁷² The State would introduce these photographs at Ms. Hemme's trial in 1985.⁷³

16. That same day, Ms. Hemme gave a written statement at 2:40 p.m. at the police station.⁷⁴ This statement contained a significantly different account of events from her previous statements.⁷⁵ Now, Ms. Jeschke was not a passenger in the car that picked Ms. Hemme up; instead, Wabski was alone in the car and drove Ms. Hemme to Ms. Jeschke's home.⁷⁶ There, Ms. Hemme witnessed Wabski sexually assault and stab Ms. Jeschke upon her bed, before dragging her body to the floor, binding her wrists, and strangling her with pantyhose.⁷⁷ Now, too, Ms. Hemme's statement included details

⁶⁸ Pet. Ex. 14 (*State v. Hemme* Trial Exhibits 3, 5, 7, 39, Crime Scene Photos) at AGO_003383 ("State's Exhibit Three").

⁶⁹ *Id.* at AGO_003387 ("State's Exhibit Seven").

⁷⁰ *Id.* at AGO_003385 ("State's Exhibit Five").

⁷¹ *Id.* at AGO_003383 ("State's Exhibit Three"); AGO_003385 ("State's Exhibit Five"); and AGO_003398 ("State's Exhibit Thirty-Nine").

⁷² *Id.* at AGO_003385 ("State's Exhibit Five") and AGO_003398 ("State's Exhibit Thirty-Nine") showing a length of wire above her head; and AGO_003383 ("State's Exhibit Three") showing a length of wire at her side.

⁷³ Pet Ex. 45 (TT) at 102: "Q: I'm going to show you what's been marked State's Exhibits Nos. 3, 5, 7, and 39... those are the four pictures you showed her? A: Yes..."

⁷⁴ Resp. Ex. D (Prosecuting File Hemme) at AGO_003163 (Dec. 3, 1980 Summary Report of Sandra Hemme's 12/03/80 2:35pm statement).

⁷⁵ *Id.* at AGO_003164-003168 (Dec. 3, 1980, Sandra Hemme's written statement). This statement was read into the record at Ms. Hemme's trial, Pet Ex. 45 (TT) at 80-85.

⁷⁶ Pet Ex. 45 (TT) at 80-82.

⁷⁷ Pet Ex. 45 (TT) at 82-83.

about the victim's home: she described a floral print pillow;⁷⁸ an 8"x10" graduation photo on the wall;⁷⁹ macrame on Ms. Jeschke's couch⁸⁰; and a mahogany television set that stood on legs.⁸¹ Ms. Hemme also described seeing a brown car parked in Ms. Jeschke's drive,⁸² and that she observed a large white cat walk into the house.⁸³ As in her previous statements, Ms. Hemme allegedly told Det. Fueston that she was driven to and dropped off at the Dearborn exit, with a stop at the Faucett exit where she sat on Wabski's face at his request.⁸⁴

17. On December 5, Ms. Hemme was questioned again and gave another statement in which she described for the first time cutting a TV antenna wire for Wabski

⁷⁸ Pet. Ex. 15 (Dec. 3, 1980 Fueston Kemper Hemme at Crime Scene) at 13.001040.

⁷⁹ *Id.* at 13.001041. While this detail is repeated at trial as evidence that Ms. Hemme had detailed knowledge of the victim's home, this Court finds is no evidence showing that there was in fact a graduation photo on the wall. No witness testified to seeing such a photograph, and no picture from the scene—pictures that captured many angles of the living room, kitchen, bedroom, and connecting hallways—showed such a picture. *See* Pet. Exs. 14 (*State v. Hemme* Trial Exhibits 3, 5, 7, 39); 22 ("Woman murdered here"); 23 ("No suspects in murder"); and 28 (Photos from archive of Ival Lawhon).

⁸⁰ *Id.* at 13.001041.

⁸¹ Pet. Ex. 15 (1980.12.03 Fueston Kemper Hemme at Crime Scene) at 13.001041. No television with mahogany legs can be seen in any of the crime scene photographs; instead, a small television set with no legs can be seen sitting atop of a desk in the living room. *See* Pet. Exs. 14 (*State v. Hemme* Trial Exhibits 3, 5, 7, 39); 22 ("Woman murdered here"); 23 ("No suspects in murder"); and 28 (Photos from archive of Ival Lawhon).

⁸² *Id.* at 13.001039. Ms. Jeschke did not have a brown car; her car was white. *See* HHT at 436, and Pet. Ex. 28 (Photos from archive of Ival Lawhon) at 12.000010 (Photo of victim's home from driveway).

⁸³ Pet. Ex. 15 (1980.12.03 Fueston Kemper Hemme at Crime Scene) at 13.001043. Ms. Jeschke did not have a cat; instead, she had a small Shih-tzu dog. Pet. Ex. 45 (TT) at 19.

⁸⁴ Pet. Ex. 45 (TT) at 84-85.

to use to bind Ms. Jeschke's hands.⁸⁵ She also described for the first time taking from Ms. Jeschke's home a jacket, a blue and white bandana, a Playgirl magazine, and a pair of red gloves, which she left at her parents' home in Concordia later that evening.⁸⁶ These items had been recovered from Ms. Hemme's possessions at her parents' home on December 1.⁸⁷

18. That same day, based on her statements, Ms. Hemme was arrested and charged with concealing an offense.⁸⁸ Based on Ms. Hemme's statements, Det. Fueston and other investigators travelled to Kansas on December 5 to arrest Joseph Wabski, who was charged with capital murder.⁸⁹ Det. Fueston searched Wabski's home for evidence including: "knife, credit cards, purse, and/or contents, a white hand towel."⁹⁰ No items linking Wabski to the murder were found.⁹¹

⁸⁵ *Id.* at 88. Ms. Hemme's Dec. 5 written statement was read into the record at her trial, *Id.* at 87-90.

⁸⁶ *Id.* at 89-90.

⁸⁷ Resp. Ex. F (Jeschke Police Reports) at 13.001053 (Dec. 6, 1980 Lt. T. Boyer & Det. M. Hirter Summary Report re: Interview of Mr. and Mrs. Hemme).

⁸⁸ Resp. Ex. D (Prosecuting File Hemme) at AGO_001551 (Dec. 5, 1980 Bond Setting for State v. Sandra Hemme) and AGO_001555 (Dec. 5, 1980 Sandra Hemme Felony Complaint).

⁸⁹ Pet. Ex. 57 ("Wabski murder charged is dismissed"). Det. Fueston testified that the credit cards and purse of the victim were listed there because Wabski's possession of those items would establish his involvement in the murder. Had those items been discovered in Wabski's possession, Det. Fueston testified that he probably would "handcuff him, read him his rights, and taken him to the station" simply because having Ms. Jeschke's credit cards and purse would have "satisfied all probable cause requirements for an arrest." HHT at 316.

⁹⁰ Pet. Ex. 16 (Dec. 5, 1980 Consent to Search Wabski's Room).

⁹¹ HHT at 316.

19. Investigators concluded that Wabski could not possibly have committed the murder: he was in a locked detox facility in Topeka, Kansas when Ms. Jeschke was killed.⁹² The capital murder charges against Wabski were dismissed on December 10, 1980.⁹³

20. On December 9, Ms. Hemme was questioned again during which time Det. Fueston told her Wabski had a confirmed alibi and could not have participated in the crime. Ms. Hemme reacted to news that Wabski had been cleared with disbelief,⁹⁴ accusing Det. Fueston of lying to her⁹⁵ and saying that she was going crazy.⁹⁶

21. After Ms. Hemme had been told Wabski could not have committed the murder, Wabski's name disappeared from her subsequent statements. In the December 9 statement, Ms. Hemme repeatedly told her interrogators that she did not remember the crime,⁹⁷ but now claimed that she alone had been picked up by Ms. Jeschke and taken to her home so Ms. Jeschke could "get cleaned up".⁹⁸ She expressed doubt about what happened, saying that "she really didn't know if she killed her or not."⁹⁹ Det. Fueston

⁹² Pet. Ex. 17 (Dec. 8, 1980 Report re: Wabski). *See also* HHT at 316-17.

⁹³ Pet. Ex. 57 ("Wabski Murder Charge is Dismissed").

⁹⁴ HHT at 318.

⁹⁵ Pet. Ex. 18 (Dec. 9, 1980 Police Report re: Sandra Hemme's 12/09/80 statement) at AGO_003346.

⁹⁶ HHT at 320.

⁹⁷ HHT at 321; *see also* Pet. Ex. 18 (Dec. 9, 1980 Police Report re: Sandra Hemme's 12/09/80 statement).

⁹⁸ Pet. Ex. 18 (Dec. 9, 1980 Police Report re: Sandra Hemme's 12/09/80 statement) at AGO_003346.

⁹⁹ HHT at 321.

testified that a written statement could not be taken due to her emotional state.¹⁰⁰ After ending the interview, Det. Fueston told a sheriff that Ms. Hemme had told him that she attempted suicide while held at the Buchanan County Jail.¹⁰¹ Det. Fueston then told his commanding officer he could no longer question Ms. Hemme because he had reached his limit, was no longer effective, and knew he was not “getting the truth.”¹⁰²

22. On December 10, Ms. Hemme was questioned again. After speaking with law enforcement for an undocumented amount of time, a court reporter was then brought in to take a statement.¹⁰³ The resulting statement was read into evidence at Ms. Hemme’s trial and reflected what would become the State’s ultimate theory of Ms. Hemme’s guilt: that she had killed Ms. Jeschke alone.¹⁰⁴

23. In this statement, Ms. Hemme claimed she was picked up by Ms. Jeschke, who was driving a small brown car.¹⁰⁵ When asked how she knew Ms. Jeschke, Ms. Hemme said: “The library. They say I know her at Platt’s, but I don’t remember her from Platt’s.”¹⁰⁶ She described cutting antenna wire from the living room TV to bind Ms. Jeschke’s hands, only to find that “it didn’t work” as ligature.¹⁰⁷ The statement included

¹⁰⁰ HHT at 321-2.

¹⁰¹ HHT at 323; *see also* Pet. Ex. 19 (Dec. 10, 1980 Narrative Captain Gil to Det. Fueston).

¹⁰² HHT at 323-24. Det. Fueston testified that “I had reached a point that I just could not pursue that particular lead anymore.” *Id.* at 324.

¹⁰³ Pet. Ex. 14 (*State v. Hemme* Trial Exhibits 3, 5, 7, 39 (Crime Scene Photos)).

¹⁰⁴ Pet Ex. 45 (TT) at 126.

¹⁰⁵ Pet. Ex. 24 (Dec. 10, 1980 Sandra Hemme Interview Transcript) at AGO_003199. Ms. Jeschke’s car was white. Pet. Ex. 45 (TT) at 16.

¹⁰⁶ *Id.* at AGO_003199.

¹⁰⁷ *Id.* at AGO_003203.

details about the layout of the apartment,¹⁰⁸ as well as the flowered pattern of her bed spread, and the size, color and design of her purse.¹⁰⁹ Ms. Hemme described stabbing Ms. Jeschke¹¹⁰ and using pantyhose to strangle her.¹¹¹ She also repeated that she took from Ms. Jeschke's apartment a Playgirl magazine,¹¹² a CPO jacket,¹¹³ a pair of gloves,¹¹⁴ and a bandana,¹¹⁵ and that she saw a white cat come into the apartment as Ms. Hemme was leaving.¹¹⁶

24. A Playgirl magazine Ms. Hemme claimed she took from Ms. Jeschke and a TV antenna cord she claimed to have handled during the murder were sent to the FBI for fingerprinting.¹¹⁷ Investigators tried to find a knife and purse Ms. Hemme claimed to have discarded, respectively, in Battlefield Park in Lexington, Missouri and in a ditch on 6th St. in Kansas City, Missouri following the killing. On December 10, Ms. Hemme drew diagrams at investigators' request to show where she had discarded the knife and purse. Investigators searched those locations and found neither a knife nor a purse.¹¹⁸

¹⁰⁸ Pet. Ex. 24 (Dec. 10, 1980 Sandra Hemme Interview Transcript) at AGO_003213.

¹⁰⁹ *Id.* at AGO_003206.

¹¹⁰ *Id.* at AGO_003202.

¹¹¹ *Id.* at AGO_003204.

¹¹² *Id.* at AGO_003206.

¹¹³ *Id.*

¹¹⁴ *Id.* at AGO_003205.

¹¹⁵ *Id.* at AGO_003207-08 FBI examination could not link the Playgirl magazine, CPO jacket, gloves, or bandana to Ms. Jeschke or her apartment.

¹¹⁶ *Id.* at AGO_003208. Ms. Jeschke had a dog, not a cat. Pet. Ex. 45 (TT) at 13.

¹¹⁷ Pet. Ex. 26 (Jan. 29, 1981 FBI Report Fingerprints); Pet. Ex. 27 Jan. 30, 1981 FBI Report Fingerprints); Pet. Ex. 66 (Apr. 8, 1981 Vernon Burris FBI Report).

¹¹⁸ Pet. Ex. 24 (Dec. 10, 1980 Sandra Hemme Interview Transcript) at AGO_003210 and Pet. Ex. 45 (TT) at 148-49.

Det. Boyer testified at trial that there was no ditch where Ms. Hemme alleged to have discarded the purse in a ditch, only sidewalks.¹¹⁹ Following this statement, Ms. Hemme was charged with the capital murder of Patricia Jeschke.¹²⁰

25. On January 23, 1981, Bobby Cummings of St. Joseph wrote a letter to Ms. Hemme in jail, stating: “Dear Sandy, do you remember me? I gave you the ride to the Dearborn exit on 12 Nov, 1980. Would it be possible to see you?”¹²¹ Mr. Cummings had dark hair, a mustache, and a physical disability similar to cerebral palsy,¹²² closely resembling the dark-haired, “knock-kneed and double jointed” man with a mustache that Ms. Hemme described to Det. Fueston in her December 1 statement.¹²³

26. Five days later, Dale Sullivan, Ms. Hemme’s defense attorney, called Det. Fueston.¹²⁴ Sullivan told Det. Fueston that Ms. Hemme told him she did not kill the victim, but was present when two men did: Bobby Cummings and someone named Charles P. White, Jr.¹²⁵ On February 2, Det. Fueston interviewed Cummings, who described giving Ms. Hemme a ride from St. Joseph to the Dearborn exit on the afternoon

¹¹⁹ HHT at 642; Pet. Ex. 45 (TT) at 148-49.

¹²⁰ Resp. Ex. D (Prosecuting File Hemme) at AGO_001592 (Submission Report to the Buchanan County Prosecuting Attorney's Office).

¹²¹ See Resp. Ex. F at 13.001002 (Jan. 30, 1981 Fueston report re: Cummings letter); see also Pet. Ex. 20 (Feb. 2, 1981 Fueston interview of Cummings) at 13.001006-13.001007.

¹²² Pet. Ex. 47 (Motion to Set Aside Plea Transcript) at 173.

¹²³ Resp. Ex. D (Prosecuting File Hemme) at AGO_003143 (Sandra Hemme’s written statement, Dec. 1, 1980).

¹²⁴ *Id.* at 172.

¹²⁵ *Id.* at 179.

of November 12.¹²⁶ He said he was driving his 1980 two-tone tan-colored Dodge Omni alone when he saw a girl he had never seen before hitchhiking by J.C. Penney’s Auto Center on Frederick Ave.¹²⁷ The girl—Ms. Hemme—was “obviously under the influence of something, and indicated it was speed.”¹²⁸ He told her his name and that he was going as far as Dearborn and would give her a ride that far.¹²⁹ He shared that he had a bad back and the only thing that helped was to have someone walk on his back.¹³⁰ He asked Ms. Hemme if she would walk on his back; he pulled off into a field by the Faucett overpass and she walked on his back.¹³¹ Then, they got back in his car and he dropped her at the Dearborn exit.¹³² Cummings, who per Det. Fueston’s report “suffers from a disease similar to cerebral palsy and is very uncoordinated, and has a speech impediment,”¹³³ denied playing any role in the murder and stated that he did not know the victim and did not know a man named Charles White.¹³⁴ He said he was willing to take a polygraph.¹³⁵

¹²⁶ See Pet. Ex. 20 (Feb. 2, 1981 Fueston interview of Cummings). This Court takes judicial notice that Bobby Cummings is deceased. *Robert A. Cummings: 1950-2020*, St. Joseph News-Press, Feb. 25, 2020, at B2.

¹²⁷ *Id.* at 13.001006.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 13.001007.

Ms. Hemme told Det. Fueston she was picked up in a brown car. Pet. Ex. 13 (Nov. 28, 1980 Fueston Hirter Summary of Hemme Interview) at 13.001013.

¹³³ Resp. Ex. F at 13.001002 (Jan. 30, 1981 Fueston report re: Cummings letter).

¹³⁴ Pet. Ex. 20 (Feb. 2, 1981 Fueston interview of Cummings) at 13.001004.

¹³⁵ *Id.*

27. Det. Fueston testified at Ms. Hemme's Motion to Set Aside Plea Hearing pursuant to Rule 27.26 that he had no reason to doubt that Cummings played no role in the murder and had no reason to doubt his account that he picked up Ms. Hemme alone, dropped her off alone miles away from St. Joseph, and never had contact with the victim.¹³⁶ Ms. Hemme's jury heard no evidence about Cummings' memory of November 12, nor how it undermined both her statements and any possibility she was involved in the murder.

28. In March of 1981, allegations that the SJPD covered up an FBI report connecting Michael Holman to the murder were reported in television and print media.¹³⁷ This new information was integrated into a statement attributed to Ms. Hemme, one that contradicted details of both her prior statements and known facts of the crime: on April 7, three days before she pled guilty, Ms. Hemme gave a statement at the Buchanan County Jail in which she once again claimed to have been picked up by a male driver who later killed Ms. Jeschke. This time, the driver was Holman. "Joe," who Ms. Hemme had mentioned previously and later claimed was Joseph Wabski, resurfaced in Ms. Hemme's latest statement; now, Joe was a twelve-year-old boy who accompanied Holman.¹³⁸ Ms. Hemme told police that after murdering the victim, Holman showed her photos of a

¹³⁶ Pet. Ex. 47 (27.26 Hearing Transcript) at 182.

¹³⁷ See Resp. Ex. D at AGO_002253 (Harold E. Mills, *Police Chief Assails 'Coverup' Implication in Jeschke Case*, ST. JOSEPH GAZETTE, Mar. 11, 1981). The subject of the alleged coverup was an FBI report indicating that two hairs found in Ms. Jeschke's bed may have come from Holman. See Pet. Ex. 25 (Mar. 4 and Mar. 12 FBI hair and fiber reports).

¹³⁸ Pet. Ex. 35 (Apr. 7, 1981 Written Statement of Sandra Hemme) at 13.001128-001131.

second victim in a trash bag and told her he had killed and buried the woman along a river bank.¹³⁹ When shown a photograph of Holman in a mugshot array, however, Ms. Hemme could not identify him.¹⁴⁰

B. Procedural History

29. On April 10, 1981, Ms. Hemme pled guilty to a Class A felony charge of capital murder and was sentenced to life imprisonment without parole.¹⁴¹ When Ms. Hemme was asked to describe what she had done, she made repeated vague and equivocal statements.¹⁴² Upon questioning from prosecutor Mike Insko, Ms. Hemme stated: “I think so [regarding whether Ms. Jeschke picked up Ms. Hemme hitchhiking]. I can’t say for sure whether that is how I got with Pat or not. It is pretty well messed up... I really didn’t know I had done it until like three days later, you know, when it came out in the paper and on the news.... I didn’t think I had honestly done it until I seen it in the paper, you know.”¹⁴³ The judge refused to accept the plea, and the prosecutor and Mr. Sullivan requested a short recess.¹⁴⁴ After the recess, Ms. Hemme gave a different and more detailed narrative, and the plea was accepted.¹⁴⁵

¹³⁹ *Id.*

¹⁴⁰ Pet. Ex. 47 (27.26 Hearing Transcript) at 135, 198, 206-7, 224-5.

¹⁴¹ Pet. Ex. 48 at 6.1172 (charge) and 6.1187 (sentence).

¹⁴² *Id.* at 6.1177-6.1178.

¹⁴³ *Id.* at 6.1180 (emphasis added); *see also* Pet. Ex. 6 (Dr. Judith Edersheim Report) at 16-26 (4.0016-26).

¹⁴⁴ *Id.* at 6.1181.

¹⁴⁵ Resp. Ex. D (Prosecuting File Hemme) at AGO_001928-1951 (Rule 27.26 Motion).

30. In 1982, Larry Harman¹⁴⁶ filed a motion to set aside Ms. Hemme’s guilty plea. In March of 1983, Harman litigated the hearing granted pursuant to this motion.¹⁴⁷ In that motion, Harman argued that Ms. Hemme’s attorney, Dale Sullivan, did not act in a “reasonable and competent manner” in failing to investigate her mental health before allowing her to plead guilty.¹⁴⁸ Harman argued that Ms. Hemme’s extensive history of psychiatric care “would have been a warning sign to any reasonable attorney or reasonably competent attorney that further investigation must be made into the mental stability or mental condition of a defendant...”¹⁴⁹

31. Although Buchanan County Circuit Judge Frank Connett denied the motion, the Court of Appeals reversed Ms. Hemme’s conviction on September 4, 1984, thereby remanding her case to allow her to withdraw her plea and ordering a new trial.¹⁵⁰

¹⁴⁶ Larry Harman later became a Circuit Judge in Clay County, Missouri. To avoid confusion about his role in this matter, the Court refers to Harman by his last name without using his former title. The Court intends no disrespect.

¹⁴⁷ See Pet. Ex. 47 (Motion to Set Aside Plea Transcript).

¹⁴⁸ *Id.* at 47 (Motion to Set Aside Plea Transcript) at 50.

¹⁴⁹ *Id.* at 45.

¹⁵⁰ *Hemme v. State*, 680 S.W.2d 734 (Mo. Ct. App. 1984). The Court found that: “All of the facts... [regarding] appellant’s long history of treatment for mental problems, her repeated attempts at suicide, her then current status as a patient receiving treatment at St. Joseph State Hospital on the date the offense was committed and on the date of her arrest, and her confused initial plea testimony, psychologically described as derealization, were uncontested and, if fully known by the trial court, should have and no doubt would have prompted an inquiry to ascertain appellant’s actual mental condition before acceptance of the plea. Added to this is the unequivocal testimony by appellant’s trial counsel that he did have doubt, not only as to appellant’s mental condition when the crime occurred but doubt also as to her competency to proceed. There is no latitude on this evidence for any other construction or interpretation.” *Id.* at 736.

32. Ms. Hemme was tried for capital murder in a one-day trial on June 4, 1985 before Judge Frank D. Connett in Buchanan County.¹⁵¹ Patrick Robb¹⁵², then a prosecutor in the Buchanan County Prosecuting Attorney’s office, was the lead prosecutor in Ms. Hemme’s trial. His case against Ms. Hemme centered around her statements. Robb testified at the evidentiary hearing that without Ms. Hemme's statements, no evidence connected her to the murder.¹⁵³ Most significant was her transcribed confession from December 10, which Robb characterized in closing arguments as “the truth.”¹⁵⁴

33. In arguing the case against Ms. Hemme, Robb emphasized details within Ms. Hemme’s confessions that “only a killer would know.” Robb explained that these details were “in a nutshell... the State’s case.”¹⁵⁵

34. After a one-day trial, Ms. Hemme was convicted and sentenced to life in prison without parole for fifty years.¹⁵⁶ The Missouri Court of Appeals then affirmed Ms. Hemme’s conviction on March 25, 1986.¹⁵⁷ The Missouri Supreme Court denied Ms. Hemme’s application for rehearing and/or transfer on April 24, 1986.¹⁵⁸

¹⁵¹ See Pet. Ex. 45 (Trial Transcript).

¹⁵² Patrick Robb currently serves as a Circuit Judge covering Buchanan and Andrew Counties, Missouri. To avoid confusion about his role in this matter, the Court refers to Robb by his last name without using his current title. The Court intends no disrespect.

¹⁵³ HHT at 610: “Q: Without her statements, there was zero evidence connecting her to the offense? A: Correct.”

¹⁵⁴ *Id.* at 81.

¹⁵⁵ *Id.* at 38.

¹⁵⁶ Resp. Ex. A (Judgment and Sentence).

¹⁵⁷ State v. Hemme, 709 S.W.2d 909 (Mo. App. WD 1986) (per curiam).

¹⁵⁸ *Id.*

35. On April 20, 1988, Ms. Hemme filed a *pro se* motion to vacate, correct or set aside her conviction and sentence pursuant to Missouri Rule 29.15.¹⁵⁹ Through counsel with the District Public Defender, Ms. Hemme filed an amended motion for Ms. Hemme on April 15, 1992, alleging that Mr. Duncan was ineffective for failing to request a change of venue, investigate potential defense witnesses, pursue defenses of insanity and diminished mental capacity, request a second mental examination, and failure to introduce Ms. Hemme’s medical records.¹⁶⁰ After a hearing where one witness, trial counsel Robert Duncan, was called, Ms. Hemme’s motion was denied on March 2, 1993.¹⁶¹

C. Instant Proceedings

36. Ms. Hemme filed a Petition for Writ of Habeas Corpus in this Court on February 21, 2023, challenging her 1985 conviction for capital murder and sentence of life without parole for fifty years. She raised five claims before this Court.

37. This Court on February 28, 2023, ordered Respondent to show cause why a Writ of Habeas Corpus should not be issued.

38. Respondent on June 15, 2023, filed a Response to Show Cause Order and Request for Further Proceedings, stating: “Respondent does not waive any procedural, legal, or factual arguments against Hemme’s claims. But, based on Respondent’s review

¹⁵⁹ Resp. Ex. I (Court File CR80-015) at 78-89.

¹⁶⁰ *Id.* at 58-65.

¹⁶¹ Resp. Ex. C (Findings of Fact). No appeal to the 29.15 denial is included in Resp. Ex. I, J or K, which contain Ms. Hemme's court records.

of the petition, Hemme has alleged facts that if true may entitle her to relief.”¹⁶²

Respondent asked the Court to enter a scheduling order for discovery and further proceedings. That order specified that: “Dispositive motions and motions for summary judgment must be filed by November 16, 2023.”¹⁶³

39. Respondent on November 16, 2023, filed a Supplemental Response to Show Cause Order and Motion to Deny Claims 1 and 3. Neither filing asserted procedural defenses to any of Ms. Hemme’s claims, and the Motion to Deny Claims 1 and 3 did not assert substantive defenses to Ms. Hemme’s claims 2, 4, and 5. Petitioner responded to the Supplemental Response and Motion to Dismiss on December 6, 2023. This Court heard arguments on that motion on January 12, 2024 and entered its order denying Respondent’s Motion to Dismiss Claim 1, alleging Ms. Hemme’s innocence, and granting Respondent’s Motion to Dismiss Claim 3, alleging that the prosecutor denied Ms. Hemme due process of law by presenting her false statements to the jury.

40. This matter proceeded to hearing on January 16, 2024, and concluded January 18, 2024, on Ms. Hemme’s Claims 1, 2, 4 and 5. This Court ordered the parties to submit post-hearing briefs and proposed findings of fact and conclusions of law.

D. Findings of Fact and Conclusions of Law Regarding Respondent’s Defense of Procedural Bar

¹⁶² Response to Show Cause Order and Request for Further Proceedings, p. 1.

¹⁶³ Scheduling Order, Notice of Evidentiary Hearing and Notice of Evidentiary Hearing Setting at 2.

41. Respondent’s post-hearing brief makes untimely assertions that Ms. Hemme’s Claim 2, alleging violations of *Brady v. Maryland*, and Claims 4 and 5, alleging ineffective assistance of trial counsel, are procedurally defaulted because they were or should have been raised in Ms. Hemme’s rule 29.15 motion. The State’s defense of procedural default does not deprive a habeas court of jurisdiction.¹⁶⁴ “[P]rocedural default is normally a ‘defense’ that the State is ‘obligated to raise’ and ‘preserve’ if it is not to ‘lose the right to assert the defense thereafter.’”¹⁶⁵ This Court finds that Respondent failed to raise any issue of procedural bar in a timely manner pursuant to this Court’s Scheduling Order, by agreeing to proceed to a hearing on the merits of Ms. Hemme’s claims and failing to raise such a defense in its November 16 motion. Therefore, this Court concludes that Respondent has waived any defense of procedural default with respect to Ms. Hemme’s Claims 1, 2, 4 and 5.

42. This Court further finds that Respondent’s claims of procedural default are without merit.

43. Ms. Hemme asserts two ways in which this Court can reach the merits of her claims. First, in Claim 1, Ms. Hemme asserts that the evidence of her innocence is clear and convincing, and therefore justifies habeas corpus relief, even if she had a fair trial, pursuant to *State ex rel. Amrine v. Roper*.¹⁶⁶ Second, also in Claim 1, Ms. Hemme

¹⁶⁴ *Lambrix v. Singletary*, 520 U.S. 518 (1997).

¹⁶⁵ *Trest v. Cain*, 522 U.S. 87, 89 (1997), quoting *Gray v. Netherland*, 518 U.S. 152, 165-66 (1996).

¹⁶⁶ *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003).

alleges she is the victim of a “manifest injustice” because she can “show that ‘a constitutional violation has probably resulted in the conviction of one who is actually innocent,’” i.e., that there is a “probability . . . that it is more likely than not that no reasonable juror would have convicted [her] in the light [of new evidence of innocence].”¹⁶⁷ She also asserts that pursuant to *Schlup v. Delo*, her innocence is a procedural gateway to claims that might otherwise be barred.¹⁶⁸ For purposes of any potential procedural barrier to Ms. Hemme’s claims, this Court finds that the evidence shows that Ms. Hemme’s statements to police are so unreliable and that the evidence pointing to Michael Holman as the perpetrator of the crime so objective and probative that no reasonable juror would find Ms. Hemme guilty, and this Court can thus reach the merits of Ms. Hemme’s claims because she is the victim of a manifest injustice. While a finding of actual innocence is a procedural gateway to all of Ms. Hemme’s claims for relief, because she can show cause-and-prejudice with respect to Claim 2, the Court relies on its finding of actual innocence primarily with respect to Claims 4 and 5 alleging ineffective assistance of trial counsel. This Court will discuss *infra* the substance of Ms. Hemme’s innocence claims in connection with its findings of fact and conclusions of law with respect to Claim 1.

44. A second path to establishing a manifest injustice asserted by Ms. Hemme is the cause-and-prejudice standard. “Cause is established where there is a factor at issue

¹⁶⁷ *Clay v. Dormire*, 37 S.W.3d at 217, quoting *Murray v. Carrier*, 477 U.S. 478, 496 (1986), and *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

¹⁶⁸ See February 21, 2023 Petition for Writ of Habeas Corpus, pp. 77-87.

external to the defense or beyond its responsibilities.”¹⁶⁹ Prejudice is established if Ms. Hemme can “establish[] the prejudice necessary to support [her] Brady claims.”¹⁷⁰ Ms. Hemme alleges that the State’s concealment of the information and evidence that is the subject of Claim 2, alleging a *Brady* violation, triggers the cause-and-prejudice standard for overcoming procedural default.¹⁷¹

45. There is substantial overlap between the cause-and-prejudice standard and the underlying *Brady* claim itself because the State’s failure to disclose material, exculpatory evidence may also establish cause to excuse a procedural default.¹⁷² To avoid repetition, the Court will examine the issue of non-disclosure of the *Brady* material discussed on the evidentiary hearing. The Court will address the merits of Ms. Hemme’s *Brady* claim below.

46. Based on the evidence and the law discussed in further detail below, this Court finds that the State failed to disclose evidence that establishes “cause” to permit Ms. Hemme to bring her *Brady* claim in habeas corpus proceedings. This Court concludes, pursuant to *State ex rel. Engle v. Dormire*, that Ms. Hemme can show cause and prejudice for not presenting her *Brady* claim in previous proceedings, and that there

¹⁶⁹ *State ex rel. Engle v. Dormire*, 304 S.W.3d 120, 125 (Mo. 2010), citing *Strickler v. Greene*, 527 U.S. 263, 283 n.24 (1999).

¹⁷⁰ *Engle*, 304 S.W.3d at 126.

¹⁷¹ See Petition for Writ of Habeas Corpus, pp. 87-90.

¹⁷² See, e.g., *Engle*, 304 S.W.3d at 129 (“Because [Engle] has shown that the nondisclosure of the Mammolito impeachment evidence was prejudicial for Brady purposes, he also has established the ‘cause and prejudice’ necessary to overcome the procedural bar to granting him habeas relief.”).

is no barrier to this Court's adjudicating her claim on the merits and granting habeas corpus relief.¹⁷³

E. Evidence Presented at Hearing

47. At the hearing, the parties entered volumes of records into evidence through joint stipulation, including files maintained by the Buchanan County Prosecuting Attorney's office, namely: Sandra Hemme's Prosecuting File (Resp. Ex. D) and Michael Holman's Prosecuting File (Resp. Ex. E).¹⁷⁴ Additionally, a collection of news archives providing contemporaneous coverage of events was admitted under the parties' second joint stipulation.¹⁷⁵ Also admitted by joint stipulation were records from the SJPD, including police reports related to: the Jeschke murder investigation (Resp. Ex. F); Holman's insurance fraud (Resp. Ex. G); and Holman's home burglaries (Resp. Ex. H). Further admitted under joint stipulation were transcripts and motions from Ms. Hemme's prior litigation (Pet. Ex. 45-49). Many of Petitioner's admitted exhibits consisted of Bates-stamped files excised from the State's larger productions (Resp. Ex. D-H).

48. Outside of their joint stipulations, the parties each entered additional exhibits into evidence at the hearing, nearly all without objection. Petitioner introduced

¹⁷³ *Engle*, 304 S.W.3d at 129.

¹⁷⁴ HHT at 53-54. This exhibit contains all of the files located by the custodian of records for the Buchanan County Prosecuting Attorney's office after diligent search (Stipulation 1, HHT at 53).

¹⁷⁵ HHT at 54-55

Ms. Hemme's 1980 St. Joseph State Hospital medical records.¹⁷⁶ Petitioner also introduced photographs taken of the crime scene in 1980 by media photographer Ival Lawhon (Pet. Ex. 28). Petitioner introduced Dr. Judith Edersheim's expert report (Pet. Ex. 6) and CV (Pet. Ex. 5), as well as Det. James Trainum's CV (Pet. Ex. 21). Respondent introduced additional reports maintained by the SJPD related to sexual assault investigations in 1981 (Resp. Ex. Q-U). Respondent also admitted into evidence additional court files maintained by the Buchanan County Circuit Court pertaining to Ms. Hemme's instant criminal and PCR cases (Resp. Ex. I-K).

49. The Court heard live testimony from eight witnesses presented by Ms. Hemme: expert witnesses Dr. Judith Edersheim and Det. Jim Trainum; original post-conviction counsel Larry Harman; and law enforcement officers who investigated this crime and/or helped investigate Officer Michael Holman's criminal activity, including Det. Steven Fueston, Det. Tim Schweder, Det. Dennis Gasper and Det. Howard Judd; and the victim's best friend, Nancy Barmann. Respondent called trial prosecutor Patrick Robb.

i. Evidence Supporting Brady Claim

¹⁷⁶ Pet. Ex. 7.

50. Ms. Hemme presented evidence in support of Claim 2, in which she alleges the State failed to disclose evidence that exculpated her and implicated Michael Holman¹⁷⁷ in the murder of Patricia Jeschke, in violation of *Brady v. Maryland*.¹⁷⁸

51. Discovery conducted in these proceedings produced additional evidence that was previously unknown to Ms. Hemme or her counsel. Based on the evidence adduced at the evidentiary hearing in this matter, Petitioner's Post-Hearing Brief alleges that the material suppressed in violation of *Brady v. Maryland* consists of reports regarding the identification of the victim's earrings found amongst jewelry recovered from Michael Holman's home; three FBI reports regarding forensic examination of crime scene evidence; and evidence of Holman's criminal conduct in the months before and after Patricia Jeschke's murder, discussed *infra*.

52. The FBI Crime Lab evidence and the evidence of Holman's other crimes was produced by Respondent during discovery. This demonstrates the very purpose of discovery: "to aid litigants in determining facts prior to trial, and to provide litigants with

¹⁷⁷ Michael Holman is deceased. See *Michael Holman: 1958-2015*, St. Joseph News-Press at A10, Apr. 3, 2015.

¹⁷⁸ In Ms. Hemme's Petition for Writ of Habeas Corpus, she alleged that additional evidence implicating Holman was suppressed, including records of Holman's December 19, 1980 interrogation and the December 22, 1980 investigation that disconfirmed his alibi. This information, unlike the earring reports, FBI reports, and records of Holman's criminal conduct discussed below, were contained in the prosecution file, Resp. Ex. D. The Court finds that there is insufficient evidence to conclude that information regarding the December 19, 1980 interrogation and the December 22, 1980 alibi investigation was suppressed.

access to proper information with which to develop their respective contentions and to present their respective sides on issues framed by the pleadings.”¹⁷⁹

53. During the evidentiary hearing, the fact that the State had suppressed exculpatory FBI reports came out during testimony of Respondent’s own witness, Robb. Testimony and documentary evidence to support Ms. Hemme’s claims was entered without objection. Thus, the issue was tried with implied consent, leading this Court to treat Ms. Hemme's petition as if it had been amended to conform with the newly elicited evidence under Mo. Sup. Ct. R. 55.33 (b).

54. Habeas petitions are governed by the Missouri Rules of Civil Procedure.¹⁸⁰ The Missouri Rules of Civil Procedure permit amendments to pleadings to conform to the evidence: “When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.”¹⁸¹ As the Supreme Court of Missouri noted in *Doyle v. Wilmesherrer* more

¹⁷⁹ *J.B.C. v. S.H.C.*, 719 S.W.2d 866, 869 (Mo.App. E.D. 1986). *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330 (Mo. banc 2013) illustrates this principle. In *Woodworth*, the Missouri Supreme Court considered the materiality of evidence that Mark Woodworth argued was *Brady* in his petition in combination with “substantial additional newly discovered evidence casting doubt” on the alibi of an alternate suspect, thus calling into question the sufficiency and impartiality of the police investigation that led to Woodworth’s prosecution. *Id.* at 336. The new evidence was uncovered “prior to the... evidentiary hearing and during the course of discovery.” Petitioner’s Brief, *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330 (Mo. banc 2013), 2012 WL 3662212 at 22-23. The Missouri Supreme Court considered *all* the evidence presented during the hearing and granted relief, vacating Woodworth’s conviction.

¹⁸⁰ Mo. Sup. Ct. R. 91.01: “Habeas Corpus—General—Who May Petition for—Form of Action.”

¹⁸¹ Mo. Sup. Ct. R. 55.33 (b): “Amendments to Conform to the Evidence.”

than six decades ago, “it has long been the rule that a petition will be treated as amended to conform to the evidence which was admitted without objection.”¹⁸²

55. Although Respondent alleged in his Post-Hearing Brief that Ms. Hemme had failed to include reference to some of the non-disclosed evidence in her petition, Resp. Br. at 7, Ms. Hemme in her Post-Hearing Reply Brief requested leave to amend her petition to conform to the evidence elicited at the hearing. Pet. Reply Br. at 10-11. This Court may grant such leave if doing so serves the merits of the case and the objecting party fails to demonstrate prejudice from admitting the evidence.¹⁸³ Consideration of the evidence elicited at the hearing is crucial to this Court's determination of Ms. Hemme's claims. Respondent cannot establish prejudice from the Court's consideration of this evidence, as it was aware that Ms. Hemme would present evidence of *Brady* violations at the hearing, and the additional evidence to support Ms. Hemme's *Brady* claims came from Respondent's own files and witness. For these reasons, this Court finds that Ms. Hemme's petition is amended to conform with the evidence, as outlined in her Post-Hearing Brief.

¹⁸² *Doyle v. Wilmesherrer*, 358 S.W.2d 837, 839 (Mo. 1962) (ruling that defendant's motion for a directed verdict arguing that plaintiff had failed to prove any acts of negligence alleged in his petition was properly denied because “the evidence [elicited at the trial] clearly establishes a submissible case.”). *See also, e.g.: Offenbacher v. Sodowsky*, 499 S.W.2d 421 (Mo. 1973); *Shelton v. Julian*, 610 S.W.2d 129, 131 (Mo. App. S.D. 1980) (ruling that “failure to amend the pleadings to cause them to conform to the evidence does not affect the result of the trial of the issue.”); *Brazell v. St. Louis Sw. Ry. Co.*, 632 S.W.2d 277 (Mo. App. E.D. 1982).

¹⁸³ Mo. Sup. Ct. R. 55.33 (b).

56. This Court, pursuant to Rule 55.33(b), deems Ms. Hemme's Brady claim to be amended to conform to the evidence presented at the hearing, and will base its findings of fact and conclusions of law on the evidence adduced at the hearing and discussed in Ms. Hemme's Post-Hearing Brief.¹⁸⁴

57. The following evidence was presented by Ms. Hemme to support her claim for habeas relief based on a violation of her rights under *Brady v. Maryland*:

a. January 29, 1981 FBI report re: palm print from TV antenna wire

58. Two lengths of cut TV antenna wire were found near Ms. Jeschke's body.¹⁸⁵ Ms. Hemme was shown pictures in which the cords were visible by Det. Fueston on December 3, 1980.¹⁸⁶ On December 5, Ms. Hemme mentioned the antenna cords in her statements for the first time, claiming to have handled them to aid Joe Wabski in committing the murder.¹⁸⁷ On December 10, Ms. Hemme again described handling the

¹⁸⁴ *D.G.K. v. H.H.*, 719 S.W.2d 510, 512 (Mo. App. 1986) (petition may be deemed to have been amended to conform to the proof).

¹⁸⁵ Pet. Ex. 45 (TT) at 28.

¹⁸⁶ HHT at 421-422.

¹⁸⁷ "I went to the TV which was in the corner thinking about getting the antenna wire... The piece of brown wire I got was about 4'-5' long... I cut the antenna wire with the steak knife and threw one piece into the hallway by the doorway and gave the other piece to Joe." Pet. Ex. 45 (TT) at 88. *See also* HHT at 421-422 and 621-622.

antenna cords while committing the murder alone.¹⁸⁸ At Ms. Hemme’s trial, the State cited her explanation about the antenna cord as crucial proof of her guilt.¹⁸⁹

59. At the evidentiary hearing, Robb testified that the TV antenna wire was especially significant to him as evidence that Ms. Hemme had personal and generative knowledge of the crime scene.¹⁹⁰ He recalled that the wires were flat and plastic, suitable for fingerprinting.¹⁹¹ He also lamented that the wires had been destroyed, because further forensic testing of the wires, such as DNA testing, could have been used to answer the question of who actually committed this murder.¹⁹²

¹⁸⁸ “Took [the antenna wire] off. Walked back in the bedroom, cut it and threw part of it towards the hallway and was going to tie her hands with it. It didn’t work.” Pet. Ex. 24 (Dec. 10, 1980 Sandra Hemme Interview Transcript) at AGO_003202-03.

¹⁸⁹ “December 5, 1980, the next statement taken from the defendant in this case... On this day, she talks about the antenna, a piece of antenna above Patricia Jeschke’s ear, a piece at her foot protruded out the hall. I know the second thing doesn’t make any sense to anybody just looking at it, can’t understand why it’s there, but Sandra Hemme knows. Sandra Hemme explains why that TV antenna—that piece above the head, why the piece is down there, because it was attempted to use it as ligature. Because of the flexibility of the TV antenna, she couldn’t use. It was discarded. But it didn’t make any sense in the police investigation or in looking at photographs at all in the case until she, the defendant, explained its significance.” Pet. Ex. 46 (Opening and Closing Statements of Trial) at 32.

¹⁹⁰ “And the antenna was another thing. She gave an explanation there was something odd at the scene... It was a flat antenna. And she had explained in her statement why it was laying there.... I felt that corroborated what we had at the scene... It explained something we didn’t understand.” HHT at 627-28.

¹⁹¹ HHT at 664.

¹⁹² “Evidently, the police department, someone in there gave a directive to destroy the evidence.... [T]he fact that this offense, if you look at it, it’s not only the tragedy of Patricia Jeschke being killed in 1980, but I think all these questions that we’re here today could have been resolved if that evidence would have been preserved because of the trace evidence... **I think just the cord and stuff may—perhaps if it was available today, you could have gotten DNA off of it and we could answer a lot of questions with that.**” (Emphasis added). HHT at 649-50.

60. On January 29, 1981, the SJPD received a report (Pet. Ex. 26) from the FBI informing the department that a partial palm print was found on the TV antenna wire. Both Ms. Hemme and Ms. Jeschke were eliminated as possible sources of the print.¹⁹³ An attempt to compare Holman’s palm prints to those found on the antenna cord was inconclusive and the FBI requested “clearly and completely recorded inked palm prints of Holman” to be conclusively compared to the prints found on the antenna cable.¹⁹⁴

61. Robb testified that he did not know about the January 29, 1981 FBI report.¹⁹⁵ Robb testified that he did not know that an unknown third person’s palm print, belonging to neither the accused nor the victim, had been found on the antenna cable, nor that the FBI had asked for better palm prints from Holman to determine whether he was the source.¹⁹⁶ Had he known, Robb testified that he would have changed how he approached the investigation of Michael Holman.¹⁹⁷ Robb’s testimony about his lack of knowledge of January 29, 1981 FBI Report was frank and clear, and this Court and both

¹⁹³ *Id.* at AGO_001298 (“One latent palm print of value was developed on one television antenna cable, Q5.”) and AGO_001299 (“The latent palm prints are not palm prints of Hemme...”).

¹⁹⁴ Pet. Ex. 26 (Jan. 29, 1981 FBI Fingerprints Report) at AGO_001299.

¹⁹⁵ HHT at 664.

¹⁹⁶ HHT at 664-65.

¹⁹⁷ “Q: So you don’t recall the FBI asking St. Joe for a better latent print from Michael Holman because the ones they sent were of no value? A: Don’t recall any of that. Q: If that had been on your radar screen, you would have sent Michael Holman’s latent prints to the FBI lab, wouldn’t you? A: Absolutely. Q: You would have disclosed that evidence to Mr. Duncan? A: Right. I think we would have pursued that. I would have thought we would have pursued that as more of an investigation of Michael Holman. Because Michael Holman had a connection to the case and I think he was a person of interest. HHT at 665.

parties acknowledge his well-known and well-earned reputation for integrity. This Court accepts his testimony as credible that he had not received the January 29 FBI report prior to trying Ms. Hemme's case in 1985.

62. Robb's testimony that he never knew about the January 29, 1981 FBI report is further corroborated by the report's absence from his prosecution file, Resp. Ex. D. This Court therefore finds that the January 29, 1981 FBI report was not disclosed to Ms. Hemme before her trial.

b. January 30, 1981 latent print report re: Playgirl magazine

63. On December 5, 1980, Ms. Hemme gave a written statement claiming to have taken from Ms. Jeschke's home a CPO jacket, a blue and white bandana, a Playgirl magazine, and a pair of red gloves, which she left at her parents' home in Concordia later that evening.¹⁹⁸ This claim was repeated in her subsequent statements.¹⁹⁹

64. On January 30, 1981, the SJPD received a report (Pet. Ex. 27) from the FBI informing the department that 56 latent prints and twelve palm prints were found on the Playgirl magazine recovered from Ms. Hemme's parents' home, which Ms. Hemme had

¹⁹⁸ *Id.* at 89-90. These items had been discovered among Ms. Hemme's possessions at her parents' home on December 1. Resp. Ex. F (Jeschke Police Reports) at 13.001053 (Dec. 6, 1980 Lt. T. Boyer & Det. M. Hirter Summary Report re: Interview of Mr. and Mrs. Hemme).

¹⁹⁹ Pet. Ex. 24 (Dec. 10, 1980 Sandra Hemme Interview Transcript) at AGO_003205-08, AGO_003211.

allegedly taken from Ms. Jeschke.²⁰⁰ Of those, 59 latent prints and twelve palm prints matched to Sandra Hemme.²⁰¹ None matched Patricia Jeschke.²⁰²

65. On March 12, 1981, the FBI sent the SJPD another report, Pet. Ex. 25, informing the department that no hairs or fibers were found linking the jacket, gloves, and bandana to Ms. Jeschke or to the crime scene.²⁰³

66. During closing arguments at Ms. Hemme’s trial, Robb argued that no trace evidence linked Ms. Hemme to the murder because “she disposed of everything else we could use to trace,”²⁰⁴ specifically citing the Playgirl magazine and other items that could have been tested, had they not been thrown away.

67. At the evidentiary hearing, Robb testified that he would not have argued that Ms. Hemme had destroyed evidence had he known that the evidence had in fact been recovered and tested.²⁰⁵ This Court finds his testimony credible.

68. Robb’s testimony that he never knew about the January 30, 1981 FBI report is further corroborated by the report’s absence from his prosecution file, Resp. Ex. D.

²⁰⁰ Pet. Ex. 27 (Jan. 30, 1981 FBI Fingerprints Report).

²⁰¹ *Id.* at 13.000404.

²⁰² *Id.*

²⁰³ Pet. Ex. 25 (Mar. 3 and 12, 1980 FBI hair and fiber reports) at AGO_001290: “All Caucasian hairs previously recovered from Q31 through Q34 [Jacket; pair of gloves; bandana] were found to be microscopically dissimilar to the hairs contained in specimens K5 and K6 [head and public hair samples from victim].”

²⁰⁴ Pet. Ex. 46 (Opening and Closing Statements of Trial) at 76.

²⁰⁵ “Q: If you had had that information, you would not have argued that Sandy Hemme destroyed evidence? A: Yes, or the reason we didn’t have the evidence was because she disposed of it— Q: She threw it away? A: Right. Q: You wouldn’t have made that particular argument? A: Right.” HHT at 663.

Therefore, this Court finds that the January 30, 1981 FBI report was not disclosed to Ms. Hemme before her trial.

c. April 9, 1981 FBI report re: Vernon Burris hair comparison

69. After receiving a report from the FBI Hair and Fiber division informing the SJPd that hairs consistent with Michael Holman²⁰⁶ were found on Ms. Jeschke's bedsheets, the SJPd requested the FBI compare the bedsheets hairs²⁰⁷ to Officer Vernon Burris.²⁰⁸

70. On April 9, 1981, the FBI sent the SJPd a report, Pet. Ex. 66, informing the department that Vernon Burris had been excluded as a possible source of the bedsheets hairs.

71. At trial, Ms. Hemme's attorney argued that the hairs found on Ms. Jeschke's bedsheets originated from Michael Holman because they appeared to have originated from a Black man.²⁰⁹ Robb undermined that argument by telling the jury in

²⁰⁶ One of the hairs was found to "exhibit[] microscopic characteristics similar to the hairs contained in specimen K3"—hairs collected from Michael Holman. The other was determined to be of "Negroid origin," but was too small to be of value for comparison purposes. Pet. Ex. 26 (Mar. 3 and 12, 1980 FBI hair and fiber reports) at AGO_001296.

²⁰⁷ Respondent argued that the Vernon Burris hairs were not compared to the bedsheets hairs. However, SJPd and FBI reports documenting the evidence collected and the testing conducted make clear that Vernon Burris's hairs were compared to the two hairs found in Ms. Jeschke's sheets, which were the subject of stipulation at Ms. Hemme's trial. See Pet. Ex. 25 (Mar. 4 and 12, 1981 FBI Reports); Pet. Ex. 66 (Apr. 9, 1981 Vernon Burris FBI Report) at 13.001134-5; Resp. Ex. D (Prosecuting File Hemme) at AGO_001703 (Evidence list); Resp. Ex. F (Jeschke Police Reports) at 13.001213 (Mar. 30, 1981 letter from SJPd to FBI); Pet. Ex. 45 (TT) at 157 (hair stipulation).

²⁰⁸ Resp. Ex. F (Jeschke Police Reports) at 13.001213 (Mar. 30, 1981 letter from SJPd to FBI).

²⁰⁹ Pet. Ex. 46 (Opening and Closing Statements of Trial) at 69-70, 72.

closing that the hairs were not probative, because they may have come from the first responding officer, Vernon Burris, who had been inside the bedroom.²¹⁰

72. Robb recalled the argument he made and testified that the only person other than Michael Holman known to police who could be a possible source of the bedsheets hairs was Officer Burris who, like Holman, was Black.²¹¹ Robb testified that he was not aware of the April 9, 1981 hair comparison eliminating Officer. Burris as the source of the bedsheet hairs,²¹² and would not have made an argument to the jury about a fact that he knew not to be true.²¹³ This Court finds Robb's testimony to be credible.

73. Robb's testimony that he never knew about the April 9, 1981 FBI report is further corroborated by the report's absence from his prosecution file, Resp. Ex. D. Therefore, this Court finds that the April 9, 1981 FBI report was not disclosed to Ms. Hemme before her trial.

d. The SJPD's 1980 investigation of Michael Holman

74. Michael Holman, then a patrol officer with the SJPD, reported that his 1978 Ford pick-up had been stolen from the airport in Kansas City on July 14, 1980, and received an insurance payout of \$4,350.²¹⁴ Holman's truck was a white 1978 Ford F-150

²¹⁰ *Id.* at 73.

²¹¹ HHT at 658-9, 678.

²¹² HHT at 678-9.

²¹³ HHT at 658.

²¹⁴ HHT at 702; *see also* Resp. Ex. E (Prosecuting File Holman) at AGO_000794 (Jul. 13, 1981 Submitted, Pre-Sentence Investigation Report).

with 4-wheel drive, equipped with a brush guard, a roll bar, and a tonneau cover.²¹⁵ Later that same day, Holman reported that his home had been burglarized.²¹⁶

75. On December 18, 1980, the St. Joseph Police Department opened an investigation into Officer Michael Holman for insurance fraud related to the fraudulent reported theft of his truck.²¹⁷ Holman's then-partner, Dennis Gasper, witnessed Holman driving the truck he had reported stolen to pick up his paycheck at the SJPD, and was asked by his supervisor to write a statement.²¹⁸ Holman's truck was located and photographed in the parking lot of his apartment building, the Broadmoor Apartments at 3603 Gene Field Road.²¹⁹

76. Shortly after the murder, several eyewitnesses told investigators that they had seen a white pickup truck parked near Ms. Jeschke's home the night she was killed.²²⁰ The truck was described by one witness as "white and very clean. It had a roll bar and set up pretty high.... The grill had a lot of black in it."²²¹ Another witness told police he saw a completely white pickup truck in the lane directly next to Ms. Jeschke's

²¹⁵ HHT at 699-700.

²¹⁶ Resp. Ex. H (Police Reports—Holman Burglary) at AGO_001267 (Sept. 12, 1980 Reported list of stolen items).

²¹⁷ See Resp. Ex. G (Police Reports—Holman Ins Fraud).

²¹⁸ HHT at 701-03; Pet. Ex. 38 (Holman Insurance Fraud Report-Dennis Gasper statement).

²¹⁹ See Pet. Ex. 39 (Truck photos).

²²⁰ See, e.g.: Pet. Ex. 42 (Nov. 13, 1980 Lynn Patet Statement); Pet. Ex. 69 (Nov. 14, 1980 Hilda Blank Statement); Resp. Ex. F (Jeschke Police Reports) at 13.000551 (Nov. 13, 1980 Statement of Shawn Wells).

²²¹ Pet. Ex. 69 (Nov. 14, 1980 Hilda Blank Statement).

apartment complex at 6:30 p.m.; he observed the truck parked on the grass in front of Apartment #3 at 7:30 p.m.²²²

77. According to the testimony of Det. Howard Judd, the white truck lead was significant to the early investigation of Patricia Jeschke's murder.²²³ Det. Judd testified that it was well-known within the department that the white pickup truck seen parked near Ms. Jeschke's apartment the night she was killed was the same truck Holman reported stolen in July of that year.²²⁴ Det. Judd was an officer with the SJPD for over two decades. In 1980, he was a detective in the crimes against property division of the SJPD detective's bureau and participated in the investigation of Patricia Jeschke's murder. This Court finds his testimony credible.

78. Holman was arrested on suspicion of insurance fraud related to his truck on December 18, 1980. His apartment and storage locker were searched; evidence that he had staged the burglary of his home was discovered, as well as items stolen during a

²²² Resp. Ex. F (Jeschke Police Reports) at 13.000551 (Nov. 13, 1980 Statement of Shawn Wells).

²²³ HHT at 756. A sketch of the truck was taken to every roll call and shown to every officer in the department in an effort to locate the truck and its owner. HHT at 757. Of the 201 entries listed in the Jeschke investigation lead index, at least nine pertain to the suspicious vehicles seen parked near Ms. Jeschke's home the night of her death: #7: Lynn Patet; #16: Shawn Wells; #17: Debbie Stafford; #48: Hilda Blank; #52: Picture Drawn by Schweder; #74: Bud Coker; #91: Four Wheel Drive – Buller Boy; #97: Trooper Bodenhammer – State Highway Patrol; #156: Traffic Stop. *See* Pet. Ex. 8 (Index of Leads).

²²⁴ HHT at 763-4.

September 12, 1980 burglary of 1811 Gooding Ave.²²⁵ Ten different members of the SJPD²²⁶ took part in the insurance fraud investigation. Four officers and Holman's wife gave written statements.²²⁷ During an interrogation, Holman admitted to having falsely reported the theft "because I needed money."²²⁸

79. Ms. Jeschke's credit card was used on November 13, 1980, the day after she was killed.²²⁹ A Black man with a badge in his wallet attempted to pass the card off as his own to purchase a lens at a Kansas City camera store.²³⁰ Police did not learn of the credit card's use until December 8.²³¹

80. On December 19, 1980, Holman was identified by an eyewitness as the man who attempted to fraudulently use Ms. Jeschke's credit card.²³² That afternoon, Holman was questioned about Ms. Jeschke's murder.²³³ Holman denied murdering Ms.

²²⁵ Resp. Ex. E (Prosecuting File Holman) at AGO_000864-000871 (describing items discovered during searches of Holman's home between Dec. 18-22, 1980, including possessions of the Hinderks family).

²²⁶ See Pet. Ex. 50 (Holman A-D). Police officers mentioned in reports documenting the insurance fraud investigation include Capt. Pasley; Lt. Muehlenbacher; Lt. Cobb; Det. Fisher; Det. Clayton; Det. Moore; Ofc. Lorenz; Ofc. Gasper; Ofc. Wood; and Ofc. Beattie.

²²⁷ Resp. Ex. E (Prosecuting File Holman) at AGO_000587-000597 (Various police statements).

²²⁸ *Id.* at AGO_000585 (Dec. 18, 1980 Police statement of Michael Holman).

²²⁹ Pet Ex. 45 (TT) at 156.

²³⁰ Resp. Ex. F (Jeschke Police Reports) at 13.001111 (Dec. 8, 1980 Interview with Linda Boeding).

²³¹ *Id.* at 13.001108 (Dec. 8, 1980 Interview with Terry Smith).

²³² Resp. Ex. F (Jeschke Police Reports) at 13.001115 (Dec. 19, 1980 Clayton and Moore Report re: Statement of Linda Boeding).

²³³ A police report was written memorializing this interrogation; see Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

Jeschke, but offered a story he admitted was implausible to explain why he possessed Ms. Jeschke's credit card.²³⁴ He said that on the night of Ms. Jeschke's murder, he drove to the intersection of Riverside Road and Frederick Avenue and parked his white 4-wheel drive Ford pickup "between the barricades" at around 5:30 p.m.²³⁵ He claimed that he drove there to have sex with a woman he identified only as "Mary" at the Woodlawn Court Motel, the building adjacent to Patricia Jeschke's apartment.²³⁶ According to Holman, he left the motel alone at 6:30 p.m., whereupon he discovered in a ditch a brown purse containing Patricia Jeschke's credit card.²³⁷ He claimed to have taken the purse to the Broadmoor Apartments where he removed the credit card and discarded the purse and the rest of the contents in a dumpster.²³⁸ He altered the card and attempted to purchase a camera lens with it the following day.²³⁹ Holman refused to provide information about "Mary" to help detectives verify his story, or to corroborate his story by even drawing a diagram of the motel room he alleged to have spent the evening inside.²⁴⁰ The interview was cut short after Holman asked to speak with his uncle, fellow SJPD Officer Doyle Rucker; after speaking with Rucker, Holman requested an attorney.²⁴¹

²³⁴ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman) at 13.001120: "He stated that we were not going to believe his story about how he came to possess the card."

²³⁵ *Id.* at 13.001121. Det. Fueston testified that the cottages that made up the Woodlawn Court Motel had their own parking spaces, and that occupants would generally park next to their rooms, instead of on the street. See HHT at 284.

²³⁶ *Id.* at 13.001120.

²³⁷ *Id.* at 13.001121.

²³⁸ *Id.*

²³⁹ *Id.* at 13.001122.

²⁴⁰ *Id.*

²⁴¹ *Id.* at 13.001123; HHT at 773.

81. Det. Howard Judd testified that he was sitting outside the interview room as Holman was interrogated for Ms. Jeschke's murder.²⁴² Holman's waiver of rights form was signed by three witnesses: Capt. Pasley, Lt. Boyer, and Chief Robert Hayes.²⁴³ According to Det. Judd, Chief Hayes's participation in the interrogation was highly unusual; he could not recall any other instance in which Chief Hayes signed a waiver of rights form or personally participated in a suspect interview.²⁴⁴ Det. Judd worked under Chief Hayes for the entirety of Hayes's eleven-year tenure leading the department.

82. On December 19, 1980, Holman's apartment was searched a second time, this time for evidence of "Burglary + Homicide."²⁴⁵ The consent waiver form bears several case numbers, including 000N1339, the case number assigned to the Jeschke homicide investigation.²⁴⁶ Pursuant to this search, two jewelry boxes were found; Holman's wife told detectives that "they weren't hers and she had never seen them before in her life."²⁴⁷

83. Despite the discovery on December 19 of evidence linking Holman to the victim, her possessions, and the crime scene, the follow-up investigation into Holman's involvement in the Jeschke murder lasted only one morning. On December 22, 1980, Det. Fueston, at the direction of Chief Hayes, was tasked with following up on the

²⁴² HHT at 767.

²⁴³ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman) at 13.001119.

²⁴⁴ HHT at 769–70.

²⁴⁵ Pet. Ex. 50 (Holman A-D) at 13.000229 (Dec. 19, 1980 Consent to Search).

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 13.000270 (Dec. 19, 1980 Muehlenbacher and Fisher Summary Report re: Recovery Via Waiver of Search of Holman Home).

Holman lead.²⁴⁸ Before December 22, Det. Fueston had not been assigned to the Holman lead, nor had he taken part in the investigation of Holman for other crimes.²⁴⁹

84. On the morning of December 22, 1980, Det. Fueston went to the Sav-a-Mint gas station and Woodlawn Court Motel to investigate Holman's alibi: he spoke to Resident Manager Joe Heberlee, who did not recognize Holman's photograph in a photo array as someone who had stayed at the motel.²⁵⁰

85. That Holman had not been a guest of the motel is further corroborated by a November 14, 1980 statement taken from another manager of the motel, Vicky Heberlee, who gave investigators a list of guests who were staying there on November 12, 1980; Holman's name was not on the list.²⁵¹ Holman's explanation for having parked his truck on the street near Ms. Jeschke's home is also inconsistent with his having stayed at the motel, which had designated off-street parking spots where guests customarily parked.²⁵²

²⁴⁸ See Pet. Ex. 1 (Dec. 22, 1980 Fueston Police Report re: earring identification); Pet. Ex. 2 (Dec. 22, 1980 Earl McGlothlin Case Statement); Pet. Ex. 3 (Dec. 23, 1980 Evidence custody report); Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi).

²⁴⁹ See HHT at 278.

²⁵⁰ See Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi); HHT at 285. At this point, the SJPD also had a complete list of individuals who had rented rooms at the Woodlawn Court Motel on the night of Ms. Jeschke's murder; Holman's name was not on that list. Pet. Ex. 12 (Nov. 13, 1980 Vicky Heberlee Statement).

²⁵¹ Pet. Ex. 12 (Vicky Heberlee Statement); HHT 284. See also HHT at 644 (Robb's testimony that nobody on the motel's guest list could have been Michael Holman under an assumed name, because all of the listed individuals were white).

²⁵² HHT at 284.

Robb testified that “there was no indication, no evidence that [Holman] was at” the Woodlawn Court Motel the night of Ms. Jeschke’s murder.²⁵³

86. Later the morning of December 22, 1980, the parents of the victim, Helen and Earl McGlothlin, came to the police station at the request of Chief Hayes to view jewelry recovered from Michael Holman’s home that may have belonged to their daughter.²⁵⁴ Det. Fueston testified that it was extremely “unusual” for Chief Hayes to have participated in this interview.²⁵⁵ Det. Fueston could not recall a single instance before or after this date where Chief Hayes participated in an investigative interview.²⁵⁶ Det. Fueston was a member of the SJPD for twenty-two years, and testified with sincerity and candor. This Court finds Det. Fueston to be a truthful credible witness.

87. Holman’s possible involvement in the Jeschke murder emerged late in the SJPD’s investigation. His name appears last on the Jeschke investigation lead index at #201.²⁵⁷ Of the last six leads listed on the index, five pertain to evidence linking Holman to the murder.²⁵⁸

e. Earl McGlothlin’s identification of Patricia Jeschke’s earrings found amongst jewelry found hidden inside Holman’s home (Pet. Exs. 1-3)

²⁵³ HHT at 643.

²⁵⁴ Pet. Ex. 2 (Dec. 22, 1980 Earl McGlothlin Case Statement).

²⁵⁵ HHT at 276.

²⁵⁶ Id.

²⁵⁷ Pet. Ex. 8 (Index of Leads).

²⁵⁸ Pet. Ex. 8 (Index of Leads): #196: 720 Main – K.C.MO – Master Charge; #198: Linda Boeding; #199: Mr. Earl McGlothlin ID of Earrings; 200: Linda D. Boeding, Western Photograph, and #201: Michael Holman.

88. During the December 22, 1980 interview of Ms. Jeschke's parents, Earl McGlothlin recognized a pair of "two wishbone shaped pierced type earrings which have a small green stone in them."²⁵⁹ Mr. McGlothlin told Det. Fueston and Chief Hayes that he had purchased the earrings in Montana in 1962 or 1963 and had given them as a gift to his daughter in July or August of the same year.²⁶⁰ Mr. McGlothlin said he "ha[d] seen Pat wear the earrings since that time."²⁶¹ Det. Fueston bagged and sealed the earrings and had Mr. McGlothlin initial the seal.²⁶² Det. Fueston produced three documents documenting this identification: Pet. Ex. 1, a police report; Pet. Ex. 2, a written statement signed by Earl McGlothlin; and Pet. Ex. 3, an evidence custody report documenting the earrings entry into evidence under the Jeschke homicide investigation's case number, 000N1339.

89. In the police report, Pet. Ex. 1, Det. Fueston wrote that the earrings identified by Earl McGlothlin were found "by Lt. Muehlenbacher and Det. Fisher by waiver of search on 12-19-80 at 3603 Genefield Apt A13." That this address was Michael Holman's is not mentioned in either the police report or written statement prepared by Det. Fueston on December 22. Det. Fueston testified that when he wrote the reports, he did not know the earrings were recovered from Michael Holman, and that had he known, he would have included it in his report.²⁶³ Of the three documents produced

²⁵⁹ Pet. Ex. 1 (Dec. 22, 1980 Fueston Police Report re: earring identification).

²⁶⁰ *Id.* and Pet. Ex. 2 (Dec. 22, 1980 Earl McGlothlin Case Statement).

²⁶¹ *Id.*

²⁶² Pet. Ex. 3 (Dec. 23, 1980 Evidence Custody Report).

²⁶³ HHT at 277: "I would say if I was aware of it, it would be here."

regarding the earrings, only Pet. Ex. 3 makes clear that the earrings had been recovered from the home of Michael Holman. Det. Fueston testified about the process with which he produced written reports, and the efforts he took to ensure his reports were complete and detailed, so that others could rely upon them.²⁶⁴ The earrings were catalogued as evidence in the Patricia Jeschke murder for years. The earrings and all the remaining evidence from the homicide was collected by a prosecution investigator in 1984 in preparation for Ms. Hemme's trial.²⁶⁵

90. Harman testified at the evidentiary hearing. Harman practiced law for forty-five years as a public defender, private defense attorney, prosecuting attorney for Clay County, ad-hoc assistant attorney general, and judge on the circuit court bench.²⁶⁶ Collectively, he defended, prosecuted, or presided over thousands of criminal cases.²⁶⁷ He testified sincerely and was honest about what he could and could not remember about the case. His testimony was informed by his significant legal experience, and his memory is corroborated by record evidence. This Court finds his testimony to be credible.

91. Harman represented Ms. Hemme from 1981-1984. Harman testified that he recalled Ms. Hemme's case particularly well because he prevailed in his effort to vacate

²⁶⁴ HHT at 271.

²⁶⁵ Pet. Ex. 67 (Apr. 24, 1985 Fueston report re: Jeschke Evidence Voucher): "Attached list of items turned over to Marvin Dycus on Nov 28, 1984." Marvin Dycus was a prosecution investigator. HHT at 352.

²⁶⁶ HHT at 64-65.

²⁶⁷ HHT at 65.

her guilty plea.²⁶⁸ Harman was unequivocal that the earring reports were not in the prosecutor's open discovery file that he reviewed, and that he never saw the reports at any point during his time on the case.²⁶⁹ Had he received the reports, it would have had a major impact on his assessment of Ms. Hemme's case, and the strategy he pursued during the litigation of the hearing on her 27.26 motion to vacate her guilty plea.²⁷⁰ Specifically, Harman testified that had he known about the earring reports, he would have questioned Det. Fueston about Earl McGlothlin's identification to show that Ms. Hemme's guilty plea was contradicted by Holman's possession of the victim's intimate belongings.²⁷¹ Harman further testified that he could think of no conceivable reason why he would not have used the reports in some way during his time on Ms. Hemme's case, and that he would have "probably done some more to find out what else might have been out there."²⁷²

92. Harman's testimony is corroborated by record evidence. The earrings are not mentioned anywhere in the transcript of the 27.26 hearing he litigated in 1983,²⁷³ nor in any of the documents he filed during his time on the case. The earrings are also not mentioned at any point during Ms. Hemme's trial or in any documents filed by Robert

²⁶⁸ HHT at 114.

²⁶⁹ See HHT at 77.

²⁷⁰ HHT at 77.

²⁷¹ HHT at 85.

²⁷² HHT at 90-91.

²⁷³ See Pet. Ex. 47 (27.26 motion hearing transcript).

Duncan, who represented Ms. Hemme after Harman had to resign from her case.²⁷⁴

Helen McGlothlin and Det. Fueston were both witnesses to Earl McGlothlin's identification of the earrings, and both testified at Ms. Hemme's 1985 trial; neither were asked any questions about Ms. Jeschke's earrings.²⁷⁵ Harman testified that he could think of no reason why Duncan would not have used the earring evidence at Ms. Hemme's trial, being that they directly strengthened his theory of the case: that Ms. Hemme did not commit this murder, and that evidence pointed to Holman as the killer.²⁷⁶

93. Harman's testimony is further corroborated by a letter he wrote to Ms. Hemme's family to describe his assessment of the case shortly after he was approached to represent her.²⁷⁷ Harman testified that he wrote the letter to encourage Ms. Hemme's family to allow him to file a 27.26 motion to challenge her guilty plea.²⁷⁸ The letter describes his September 15, 1981 visit to Buchanan County Prosecuting Attorney Michael Insko's office, during which Harman reviewed the prosecution file for Ms. Hemme's case.²⁷⁹ The letter also includes a summary of the evidence implicating Michael Holman in the murder.²⁸⁰ Harman testified that he would have mentioned the

²⁷⁴ Harman testified that he had to resign from Ms. Hemme's case because he had been appointed to be the prosecuting attorney of Clay County. HHT at 89.

²⁷⁵ See generally Pet. Ex. 45 (TT) at 16-23 (Testimony of Helen McGlothlin), 54-123 (Testimony of Det. Fueston).

²⁷⁶ HHT at 108.

²⁷⁷ HHT at 79. See also Pet. Ex. 4 (Letter from Larry Harman to Hemme Family).

²⁷⁸ HHT at 81.

²⁷⁹ Pet. Ex. 4 (Letter from Larry Harman to Hemme Family) at 10.0744. See also HHT at 67.

²⁸⁰ Pet. Ex. 4 (Letter from Larry Harman to Hemme Family) at 10.0745.

earrings in the letter, because he wrote it to convince Ms. Hemme's parents that "there's somebody else that should be looked at or is out there."²⁸¹ The earring reports are not mentioned in that letter, because, as Harman testified, he did not know they existed.²⁸²

94. Patrick Robb testified that he was aware of the existence of Det. Fueston's report describing Earl McGlothlin's identification of his daughter's earrings, Pet. Ex. 1,²⁸³ and recalled that the identification had been "refuted in some way."²⁸⁴ Robb also testified that "when it came down to it, I don't think the father of Ms. Jeschke could identify the jewelry, the earrings."²⁸⁵ In fact, Mr. McGlothlin's identification of the earrings was unequivocal.²⁸⁶ Robb offered no testimony claiming to remember Mr. McGlothlin's written statement, Pet. Ex 2, or the evidence custody report, Pet. Ex. 3, which was the only document that made clear that the earrings Mr. McGlothlin recognized were found in Michael Holman's possession.²⁸⁷

95. Robb testified that had he seen Det. Fueston's police report about the earrings (Pet. Ex. 1), it should have been included in the prosecution file and disclosed to

²⁸¹ HHT at 85.

²⁸² HHT at 83.

²⁸³ HHT at 589.

²⁸⁴ *Id.* See *infra* p. 93-94 (Hinderks discussion).

²⁸⁵ HHT at 640-1.

²⁸⁶ Pet. Ex. 2 (Dec. 22, 1980 Earl McGlothlin Case Statement). Mr. McGlothlin recalled granular details including that he purchased the earrings in Montana on vacation and even the approximate year when he gave them to his daughter as a gift. *Id.* Mr. McGlothlin also stated that he had seen Ms. Jeschke wear the earrings on multiple occasions in the years since he gave them to her.

²⁸⁷ Det. Fueston's police report indicated that the earrings were found during a Dec. 19 consent search of 3603 Gene Field, A-13, but did not list Holman's name. Pet. Ex. 1 (Dec. 22, 1980 Fueston Police Report re: earring identification).

defense prior to trial.²⁸⁸ However, Robb could not recall actually disclosing the earrings report to trial counsel.²⁸⁹ Though he conceded that the earrings were significant enough to Ms. Hemme’s defense case that he would have had conversations with Mr. Duncan about them, he could not recall actually discussing the earrings with Mr. Duncan.²⁹⁰ He also testified that if the earring reports were not in his prosecution file, it would not have been disclosed to Ms. Hemme prior to trial through open-file discovery, which was the disclosure practice of his office during that time.²⁹¹ None of the earring reports are anywhere in the prosecution file, Resp Ex. D.²⁹² This Court believes Robb testified honestly about what should have happened with regards to disclosure. However, because he could not specifically recall disclosing the reports to or discussing them with Ms. Hemme’s attorney, his testimony is not evidence of disclosure. Based on Harman’s testimony, the absence of the earring reports in the prosecution file and the total lack of

²⁸⁸ HHT at 586-7.

²⁸⁹ HHT at 639-40.

²⁹⁰ *Id.*

²⁹¹ HHT at 641.

²⁹² Respondent argued that Resp. Ex. D, which contains all the files from Ms. Hemme’s case that could be located by the custodian of records for the Buchanan County Prosecuting Attorney’s Office following a diligent search, was merely a “working file” made in preparation for Ms. Hemme’s trial. They argued that a separate “discovery file” was maintained that would have contained the earring reports and the other evidence Ms. Hemme argues was withheld from her prior to trial. No evidence was offered to establish that a separate “discovery file” existed, or what records would be in that file had it existed. Even if Respondent’s argument is true, the absence of reports in Resp. Ex. D still supports the inference that those documents were not sent by the SJPD to the Buchanan County Prosecuting Attorney’s Office, and thus serves as evidence of nondisclosure.

record or testimonial evidence of disclosure, this Court finds that the earring reports were not disclosed to Ms. Hemme before her 1985 trial.

96. Based on the foregoing evidence, this Court finds that the State did not disclose the earring reports, Petitioner's Exhibits 1, 2, and 3, to Ms. Hemme before her trial.

f. Holman's continued criminal conduct

97. On June 8, 1981, Holman pled guilty for the insurance fraud case regarding the faked theft of his white pickup truck.²⁹³ The promise he received from the State is described on his petition to the enter a guilty plea: "The state prosecutor has agreed to dismiss all pending charges against me with the exception of the offense to which I am pleading guilty and otherwise not prosecute me for any other criminal matters now under investigation."²⁹⁴ Robb, who prosecuted both Holman in 1981 and Ms. Hemme's murder trial in 1985, testified that this plea deal foreclosed any possible prosecution of Holman for the murder of Patricia Jeschke.²⁹⁵

98. Holman's criminal conduct continued while he awaited sentencing. Records indicate that Holman committed at least two more home burglaries in the summer of 1981. The first took place on June 26, 1981, during which a purse with a cash

²⁹³ Resp. Ex. E (Prosecuting File Holman) at AGO_000790.

²⁹⁴ Pet. Ex. 58 (Holman Petition to Enter a Plea of Guilty) at AGO_000802. Notably, Holman's defense attorney for this guilty plea, Dan Radke, was the special prosecuting attorney appointed to defend Ms. Hemme's conviction in 1992. Resp. Ex. C at page 1.

²⁹⁵ HHT at 655: "Q: So essentially, that clears Michael Holman of any prosecution for any crime that occurs prior to the date of entering his plea? A: I think that arguably could do so. I don't recall that being a plea agreement, but I think that indicates it is."

card and checkbook belonging to the Woodhull family was stolen. Several days later, Holman used a check bearing Mark Woodhull's name to purchase a Walkman from a store managed by his brother-in-law, John Scott Smith.²⁹⁶ Later that summer, Smith caught Holman inside his home, hiding inside a basement closet. After a confrontation, Holman left, and Smith found credit card information that had been in a file cabinet drawer wedged in his couch.²⁹⁷

99. Holman was also arrested for a peeping tom incident on June 30, 1981. Det. Gasper testified he was assigned to stakeout the El Cid Apartments after victims of recent sexual assaults reported that prowlers were peering into their windows at night.²⁹⁸ Det. Gasper, working with Det. Judd, spotted a shirtless Black man peering into apartments at the El Cid and the adjacent Broadmoor Apartments on June 27, 1981, but were unable to apprehend him in the darkness. On June 30, Det. Gasper, working alone, spotted a Black man walking along the same path tread by the Black male subject observed a few days prior. He observed this man peeping "into a lighted window at Building C 1-16... looking into the windows for approx. 6 minutes."²⁹⁹ Det. Gasper was able to arrest this man, whom he recognized to be his former training partner, Michael Holman.³⁰⁰ Holman offered an implausible explanation for why he was there, and was

²⁹⁶ Pet. Ex. 51 (Woodhull Burglary File) at AGO_001142-45 (Smith's written statement).

²⁹⁷ *Id.* at AGO_001143.

²⁹⁸ HHT at 705.

²⁹⁹ Pet. Ex. 40 at 13.000002.

³⁰⁰ HHT at 710-13.

arrested for trespassing.³⁰¹ Det. Gasper's testimony about arresting Holman is corroborated by reports he authored in 1981,³⁰² and is credited by this Court.

100. Holman's 1980-1981 crime spree ended on August 12, 1981 when Holman was sentenced to two years in the custody of the Missouri Department of Corrections for insurance fraud.³⁰³

101. The prosecution file (Resp. Ex. D) contains no records related to the many crimes investigated by the SJPD committed by Michael Holman, and Respondent makes no claim that those reports were disclosed. Therefore, the Court finds that evidence of Holman's criminal conduct was not disclosed to Ms. Hemme prior to her trial.

ii. Evidence Supporting Actual Innocence

102. In addition to her claim that the State withheld exculpatory evidence, Ms. Hemme presented evidence in support of both a substantive and procedural claim of

³⁰¹ HHT at 737. Det. Gasper also testified that he did not believe Holman's implausible explanation for why he was there—as a favor for a friend who asked him to watch over his wife—because he knew about Holman's recent criminal behavior (including the insurance fraud related to Holman's truck, to which Det. Gasper was a witness). *Id.* at 734-35.

³⁰² Pet. Ex. 40 and 41. Det. Gasper's testified that he believed the suspects sought for the sexual assaults committed at the El Cid and Broadmoor Apartments was a Black man; this may be inaccurate, as reports entered into evidence show that the suspects were described as white men. Nevertheless, the substance of Det. Gasper's testimony regarding his memory of observing his former training partner peering into a woman's window for an extended period of time and arresting him for that conduct is corroborated by record evidence, and this Court credits that testimony.

³⁰³ Resp Ex. E (Prosecuting File Holman) at AGO_000790 (Jun. 6, 1981 Final Disposition).

actual innocence. The evidence she presented in support of her *Brady* claim, discussed *supra*, also supports her innocence claims by demonstrating Michael Holman’s multiple evidentiary connections to the murder of Patricia Jeschke.

103. Ms. Hemme further supported her actual innocence claim by presenting evidence showing that her statements contained many factual assertions that were untrue or unlikely. It was obvious even to her interrogating officers that Ms. Hemme’s statements were “inconsistent with other witness statements and reports, i.e. times and locations.”³⁰⁴ For example, police knew that the victim had gone to a pharmacy the day she died.³⁰⁵ However, Ms. Hemme provided the wrong location for the pharmacy and said she met the victim at a time that was impossible: she could not have gotten a ride with the victim when she left the hospital because the victim was still at work for another four

³⁰⁴ Respondent’s Exhibit F (Jeschke Police Reports) at 13.001016.

³⁰⁵ Pet. Ex. 45 (TT) at 67. The fact that police knew the victim had gone to a pharmacy, when considering that Ms. Hemme mentions going to a pharmacy with the victim in her statement but the wrong pharmacy and at an impossible time, means this fact is likely an example of narrative contamination. Contamination occurs when a subject of police questioning adopts facts suggested to them by police. Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0040-4.0045. That Ms. Jeschke visited a pharmacy on the day of her murder was also reported in the media. *See e.g.* Pet. Ex. 53 (“\$1000 Reward in Murder Case”).

hours.³⁰⁶ Ms. Hemme incorrectly described Ms. Jeschke's car as light blue³⁰⁷ or brown³⁰⁸ and having front and back seats³⁰⁹; in fact, it was a white two-seated sports car.³¹⁰ She described the victim as wearing a different outfit than described by her colleagues who worked with her that day: coworkers testified she had been wearing a black, gray, and white suit, whereas Ms. Hemme said in her statements she was dressed all in blue.³¹¹ Ms. Hemme also told police several times that she saw a white cat inside Ms. Jeschke's home³¹²; but the victim owned a dog, not a cat.³¹³

104. Ms. Hemme presented evidence showing that police investigation disproved other "facts" in her statements. Police had Ms. Hemme draw a diagram of a park area where she claims to have disposed of a knife. Law enforcement searched that area thoroughly and did not find anything.³¹⁴ Ms. Hemme alleged in one of her statements that a Playgirl magazine found in her parents' home was something she had

³⁰⁶ Ms. Jeschke was attended to by a pharmacist at Melmed Pharmacy around 11:30 a.m., before Ms. Hemme was discharged from St. Joseph State Hospital. *See* Respondent's Exhibit F (Jeschke Police Reports) at 13.000944 (Nov. 18, 1980 Higdon Summary Report of Lundquist and Osborn Interview). This was more than ninety minutes before Ms. Hemme was released from the hospital. *See* Respondent's Exhibit F (Jeschke Police Reports) at 13.001034 (Dec. 1, 1980 Fueston and Kemper Report of Interview of 12/01/80 Dr. Jacks and Hemme). On December 2, Ms. Hemme offered that she had gone with Ms. Jeschke to Skaggs Pharmacy around 1 p.m. *See* Pet. Ex. 45 (TT) at 67. Ms. Jeschke's supervisor testified she saw Ms. Jeschke at work at that time. *See id.* at 11.

³⁰⁷ Pet. Ex 45 (TT) at 111.

³⁰⁸ *Id.* at 130.

³⁰⁹ *See, e.g. id.* at 66-67.

³¹⁰ *Id.* at 15.

³¹¹ *Id.* at 9, 13.

³¹² *Id.* at 114, 138.

³¹³ *Id.* at 19.

³¹⁴ HHT at 432-33.

taken from the victim’s home. But FBI analysis of the magazine showed that Ms. Jeschke was excluded as the source of all prints, and all prints came back to Ms. Hemme.³¹⁵ Conversely, none of the latent prints lifted from the crime scene—from objects Ms. Hemme claims to have handled in her various statements—came back to her, and she was excluded as the source.³¹⁶

105. Ms. Hemme’s description of Ms. Jeschke’s home also contained errors and omissions that demonstrate she had no genuine knowledge of the crime scene. Det. Fueston testified that when he took Ms. Hemme inside Ms. Jeschke’s empty apartment on December 3, she was able to describe with specificity how the apartment was decorated. For example, she described an 8”x10” graduation photo hanging on the wall and a television set with mahogany legs.³¹⁷ But those items are featured in photographs taken of the interior of Ms. Jeschke’s home when it was furnished, nor by testimony of people who had been inside her home when it was furnished.³¹⁸ Ms. Hemme also never mentioned that Ms. Jeschke’s home was filled with numerous plants in pots and boxes that covered her living room floor and sofa.³¹⁹

³¹⁵ HHT at 433, Pet. Ex. 27 (Jan. 30, 1981 FBI Report Fingerprints).

³¹⁶ HHT at 434-35, Pet. Exs 26 (Jan. 29, 1981 FBI Report Fingerprints) & 27 (Jan. 30, 1981 FBI Report Fingerprints).

³¹⁷ Pet. Ex. 45 (TT) at 76.

³¹⁸ No graduation photo can be seen on Ms. Jeschke’s walls. Pet. Ex. 28 (Photos from archive of Ival Lawhon) at 12.000024-28. There is a television set—but it is small, has no legs, and is sitting on Ms. Jeschke’s desk. Pet. Ex. 28 at 12.000039. *See also* Resp. Ex. E (Prosecuting File Holman) at AGO_003383-003414 (police photos of Ms. Jeschke’s home).

³¹⁹ HHT at 442-43 and Pet. Ex. 28 (Photos from archive of Ival Lawhon).

106. The Court finds that details of Ms. Hemme’s statements that could be corroborated by other sources show she had neither motive nor opportunity to commit this crime. Ms. Hemme told the police that she left the hospital at around 1:00 p.m.;³²⁰ hospital staff confirmed that she had been discharged at 1:05 p.m, which was four hours before Ms. Jeschke left work.³²¹ During her second interview, Ms. Hemme stated that she had been picked up by a driver while walking down Frederick Ave. shortly after leaving the hospital;³²² Bobby Cummings confirmed that he picked her up hitchhiking on the afternoon of November 12 on Frederick Ave.³²³ Ms. Hemme recalled that the driver who picked her up was “five foot eight inches tall and thin, about 120-125 pounds, sort of knock-kneed and ... double jointed in the elbows” with a “thick black mustache... like Groucho Marx.”³²⁴ Ms. Hemme repeatedly told the police that the driver asked her to sit on his face near the Faucett exit.³²⁵ Cummings told the police that he “had a bad back, and that the only thing that helped is to have someone walk on [his back]” and had asked Ms. Hemme to do so after pulling over “into a field by the Faucett overpass.”³²⁶ In almost all of her statements, Ms. Hemme recalled that the driver had dropped her off at

³²⁰ Pet. Ex. 45 (TT) at 60.

³²¹ Respondent’s Exhibit F (Jeschke Police Reports) at 13.001034 (Dec. 1, 1980 Fueston and Kemper Report of Interview of 12/01/80 Dr. Jacks and Hemme).

³²² Pet. Ex. 45 (TT) at 60.

³²³ Pet. Ex. 20 (Feb. 2, 1981 Interview of Bobby Cummings) at 13.001004.

³²⁴ Pet. Ex. 45 (TT) at 61.

³²⁵ Ms. Hemme repeated this detail to police on December 1, Pet. Ex. 45 (TT) at 62; December 2, *id.* at 69; December 3, *id.* at 84; and December 5, *id.* at 90.

³²⁶ Pet. Ex. 20 (Feb. 2, 1981 Interview of Bobby Cummings) at 13.001004.

the Dearborn exit;³²⁷ Cummings told police that he drove Ms. Hemme to the Dearborn exit and let her off there.³²⁸ Ms. Hemme said she arrived at her parents' home in Concordia, MO after several legs of hitchhiking at around 8:30 or 9 p.m.;³²⁹ her parents confirmed that Ms. Hemme arrived home within that timeframe.³³⁰

107. The Court finds Ms. Hemme could not have been picked up by Ms. Jeschke, who was still at work on the other side of town, at the time Ms. Hemme was picked up by Cummings.³³¹ Having been dropped off in Dearborn by Cummings, Ms. Hemme could not have returned to commit a murder in St. Joseph sometime after the victim was last seen alive at 5:00 p.m.,³³² and then hitchhiked to her parents in Concordia to arrive by 8 or 9 p.m.

108. The Court also considers Nancy Barmann's testimony in assessing the reliability of Ms. Hemme's statements. Ms. Barmann testified that she and Ms. Jeschke were as close as sisters and were life-long best friends, and that she knew intimately the

³²⁷ Ms. Hemme repeated this detail to police on November 28, Pet. Ex. 45 (TT) at 56; December 1, *id.* at 60 and 63; December 2, *id.* at 78; December 3, *id.* at 84; December 5th, *id.* at 120, December 9, *id.* at 98; and December 10, *id.* at 140.

³²⁸ Pet. Ex. 20 (Feb. 2, 1981 Interview of Bobby Cummings) at 13.001004-1007.

³²⁹ Pet. Ex. 45 (TT) at 63.

³³⁰ Pet. Ex. 13 (Nov. 28, 1980 Fueston Hirter Summary of Hemme Interview) at 13.001012-1014.

³³¹ Ms. Jeschke left work at around 4:55 p.m. Pet. Ex. 45 (TT) at 11. The Court takes judicial notice that where Cummings said he picked her up—nearby Kinney's Shoes, a store formerly located opposite the East Hills Mall—is 3 miles from the St. Joseph Public Library, Ms. Jeschke's place of work. FN: Pet. Ex. 20 (February 2, 1981 Interview of Bobby Cummings) at 13.001006. Pet. Ex. 31 (November 18, 1980 Margaret Faustlin Statement) (confirms that Pat Jeschke worked at St. Joseph's "main library").

³³² Pet. Ex. 45 (TT) at 20.

details of Ms. Jeschke's life.³³³ Ms. Barmann spoke on the phone with Ms. Jeschke nearly every day and saw her regularly, including in the fall of 1980.³³⁴ She knew Ms. Jeschke's friends and she never met or heard of Sandra Hemme, who was eleven years Ms. Jeschke's junior and lived a very different life:³³⁵ unlike Ms. Hemme, Ms. Jeschke had a stable life as a library employee, was opposed to drug use, and steered clear of people using drugs.³³⁶ Ms. Barmann also testified that Ms. Jeschke was smart, savvy and safety-conscious.³³⁷ When asked if Ms. Jeschke would pick up a hitchhiker, she was adamant that Ms. Jeschke would never do that.³³⁸ Similarly, Ms. Jeschke would never allow a stranger into her home to spend time while she took a shower.³³⁹ The Court finds Ms. Barmann's testimony to be credible. Her testimony further undermines the credibility of Ms. Hemme's statements that she did drugs with the victim and that the victim picked her up, alone, while hitchhiking and brought her to her home while she showered.³⁴⁰

109. This Court also finds that the details contained in Ms. Hemme's statements that were consistent with the known facts of the crime or crime scene were made public

³³³ HHT at 683-84.

³³⁴ *Id.* at 685-88.

³³⁵ *See id.* at 690-91.

³³⁶ *Id.* at 688.

³³⁷ *Id.*

³³⁸ *Id.* at 690-691

³³⁹ *Id.* at 691. When asked if this scenario sounds ridiculous to her, Ms. Barmann confirmed "Absolutely." *Id.*

³⁴⁰ Pet. Ex. 13 (Nov. 28, Fueston Hirter Summary of Hemme Interview) at 13.001012; Pet. Ex. 24 (Dec. 10, 1980 Sandra Hemme Interview Transcript) at AGO_003199.

by the media, were known to police when she was questioned, or both. During the murder investigation, the SJPD released to the public an enormous amount of what should have been confidential details.³⁴¹ Det. James Trainum, retired career homicide detective and law enforcement trainer on interrogation methods, testified at the evidentiary hearing that the amount of information made public in this case was shocking. News articles included details about the conditions of the victim's body, including that she was naked, lying on the bedroom floor, with her hands tied behind her back, and that she was lying in a pool of blood and had suffered multiple head wounds. Details about the victim's life and last hours she was seen alive were publicized: that she worked at the local library and had been heading to Catechism class the night of November 12; her address, images of her home, descriptions of the layout of her apartment complex, and images of Ms. Jeschke were all publicized, too.³⁴² Det. Fueston testified that the publication of specific details of a crime, as here, is "detrimental" to a

³⁴¹ See, e.g., Mary Helen Burrowes, *No suspects in murder*, ST. JOSEPH NEWS-PRESS (Nov. 14, 1980): "Jeschke's nude body was found by her mother...Police Chief James R. Hayes said the body was lying on the bedroom floor. The victim's hands were tied behind her back with a telephone cord and something was tied around her neck...there were three head wounds, accounting for a considerable amount of blood on the bedroom floor. A hammer and a knife were found in that room, but have not been connected to the death, according to Capt. Lloyd W. Pasley. When police arrived at the homicide scene, the body was lying face-up with a pillow over the victim's face. Pasley said there were two sharp wounds to the head and one that appeared to have been caused by a blunt instrument. The apartment had not been ransacked."

³⁴² HHT at 414-16, see also Pet. Exs. 22 ("Woman murdered here") and 23 ("No suspects in murder").

police investigation, and can make statements containing those details less probative.³⁴³

These details, released publicly to the media the day after the murder and then available for weeks and reproduced in other formats before Ms. Hemme was interrogated, end up being the details contained in her statements that prosecutors would argue to the jury only the killer could know.

110. This Court also concludes that the record supports an inference that the police unintentionally provided information about the crime to Ms. Hemme that she incorporated into her statements. When Det. Fueston brought Ms. Hemme to the victim's house on December 3, he showed her four photographs of Ms. Jeschke's body. Those photographs depicted: the victim's bedspread, with an apparent floral pattern; the floral pattern of the pillowcase covering a pillow over the victim's face; the position of her body vis-à-vis her bed; that she was strangled with a pantyhose nylon; that her hands were bound at the wrists behind her back; and that there was a cord near her body.³⁴⁴ Only after being shown those photographs did Ms. Hemme provide the following details in her statements: that Ms. Jeschke's hands were tied behind her back³⁴⁵; that pantyhose

³⁴³ HHT at 291. Ms. Hemme stated during her plea that she read news coverage of the murder: "It is pretty well messed up... I really didn't know I had done it until like three days later, you know, when it came out in the paper and on the news.... I didn't think I had honestly done it until I seen it in the paper, you know." Pet. Ex. 48 (Guilty Plea Transcript) at 6.1180

³⁴⁴ HHT at 306-309; *see also* Pet. Ex. 28 (Photos from archive of Ival Lawhon) at 12.000001-12.000049.

³⁴⁵ This detail is visible in Pet. Ex. 14 (*State v. Hemme* Trial Exhibits 3, 5, 7, 39, Crime Scene Photos) at AGO_003387 (formerly "State's Exhibit 7"). *See* HHT at 308 for a description of photograph.

was tied around her neck and knotted on the right side³⁴⁶; and that a pillow was placed over her face.³⁴⁷ These details, argued to be things that “only the killer would know,”³⁴⁸ were shown directly to Ms. Hemme and only became featured in her statements *after* showing her these photographs.³⁴⁹

111. Similarly, Det. Fueston testified at Ms. Hemme’s trial that she directed him to Ms. Jeschke’s home without direction.³⁵⁰ However, Det. Fueston also testified that he asked her if she recognized anything when at the intersection next to the apartment complex on Riverside Road. As multiple witnesses testified at the hearing and documented in contemporary police reports, this apartment complex was in a “rural, farmland area with not much there,” so the apartment complex would be the only thing to “select” if asking someone at the intersection where to go next.³⁵¹ Det. Judd testified that

³⁴⁶ *Id.* at AGO_003385 (formerly "State's Exhibit 5"). *See* HHT at 306-308 for a description of the photograph.

³⁴⁷ *Id.* at AGO_003383 (formerly "State's Exhibit 3"). *See* HHT at 305-06 for a description of the photograph.

³⁴⁸ *See* Pet. Ex. 46 (Opening and Closing Statements at Trial) at 22, 34, 38, 80, and 81 for the prosecutor's examples of details that allegedly “only the killer” would know).

³⁴⁹ Detective Fueston testified he showed Ms. Hemme these photographs after she had described these identifying details. *See* HHT at 355. Yet, Det. Fueston also testified that he has no independent memory of taking Ms. Hemme to Ms. Jeschke’s home at all, and there is no indication in either his reports or his trial testimony that he showed Ms. Hemme these photographs only after she provided these details about the crime scene. In fact, Ms. Hemme’s statements prior to December 3 indicate she never entered Ms. Jeschke’s home and contain no information about the crime scene.

³⁵⁰ Pet. Ex. 45 (TT) at 101.

³⁵¹ HHT 698-99; *see also* Resp. Ex. F (Jeschke Police Reports) at 13.000520-24 (Nov. 13, 1980 Interview of Larry Graham), wherein an acquaintance of the victim reported that Jeschke's home was "way out and secluded", before reiterating that "he thought Pat's place was vulnerable because it was dark and secluded." *Id.* at 13.000522.

police are capable of inadvertently leading a suspect to a scene while believing the suspect independently directed them, as he saw firsthand in the Melvin Reynolds investigation.³⁵² This Court credits that testimony.

112. This Court considers both the factual improbabilities of Ms. Hemme's statements and Ms. Hemme's mental and physical condition at the time she gave these statements in assessing their reliability. This Court heard testimony from Dr. Judith Edersheim.³⁵³ Dr. Edersheim is a board-certified forensic psychiatrist and general psychiatrist; she has performed a wide variety of forensic evaluations in both civil and criminal settings, and she is an expert in factors that increase the risk of false confession.³⁵⁴ Dr. Edersheim reviewed all available psychiatric records as well as police records from the Jeschke murder investigation and her interrogations.³⁵⁵ This Court credits Dr. Edersheim's testimony as record-based, credible, and based on expertise both in forensic psychiatry and the established risk factors to false confession.

113. Ms. Hemme's records reflect a history of mental illness beginning in early childhood. Ms. Hemme began hearing voices at age twelve shortly after a sudden death in the family and subsequent related sexual abuse.³⁵⁶ She experienced delusional thinking, depression, and substance abuse, and she spent the majority of her days between

³⁵² HHT at 750-51.

³⁵³ Pet. Ex. 5 (Dr. Judith Edersheim CV).

³⁵⁴ HHT at 125, 133.

³⁵⁵ Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0003-4.0004.

³⁵⁶ *Id.* at 4.0004-4.0005, 4.0008.

the ages of 12 through 19 in psychiatric institutions.³⁵⁷ Her psychiatric records show that her thoughts were described as disorganized and “clinicians frequently commented on her tendency to be ‘out of touch with reality’ which included auditory hallucinations (hearing voices) and symptoms of derealization.”³⁵⁸

114. As a child, Ms. Hemme was treated with Electroconvulsive Therapy (ECT), a procedure designed to treat severe mental illness by introducing an electrical current into the brain and inducing a grand mal seizure.³⁵⁹ Ms. Hemme’s juvenile psychiatric records reflect that this treatment had deleterious effects on her memory and cognitive function; when performed without anesthesia as was the practice in the 1980’s, this treatment is very painful and can be traumatizing.³⁶⁰ Dr. Edersheim testified that research shows this procedure damages the prefrontal cortex, which helps regulate memory, reasoning, and other executive functions.³⁶¹

115. This Court received evidence about Ms. Hemme’s psychiatric condition and physical whereabouts before she was initially questioned. On November 7, 1980, Ms. Hemme sought admission to St. Joseph State Hospital, seeking help for her use of amphetamines. On November 12, the day Ms. Jeschke was last seen alive, Ms. Hemme was discharged against medical advice at around 1:00 p.m.; her discharge paperwork

³⁵⁷ *Id.* at 4.0005-4.0006; HHT at 137-38.

³⁵⁸ *Id.* at 4.0010.

³⁵⁹ HHT at 139-40.

³⁶⁰ HHT at 140-42. “The ECT we talked about is very traumatic and it’s frightening and she was a child.” HHT at 145.

³⁶¹ *Id.*

cited a nurse's note taken that day that she appeared “obviously very high (amphetamine user).”³⁶² At around 8:30-9:30 p.m., Ms. Hemme arrived at her parents’ home in Concordia, Missouri, after hitchhiking over one hundred miles across the state.³⁶³ She was admitted voluntarily to the hospital on November 14 and spent ten “volatile” days, characterized by erratic behavior and drug use, before once again being discharged against medical advice on November 24.³⁶⁴

116. On November 25, police responded to the home of nurse Ellie McBane after receiving an emergency call that a former patient of hers was in her home with a knife and refusing to leave.³⁶⁵ Ms. Hemme was found hiding in McBane’s closet with a knife; police took her to the hospital where she was subjected to an involuntary 96-hour police hold.³⁶⁶ An involuntary hold meant Ms. Hemme had no freedom: “movements are restricted. You cannot leave. You are supposed to be visible almost all the time.”³⁶⁷ The admitting physician noted that, upon admission, “she was not communicative, she was silent, that she had her head in her hand” and that he had to “force her” to talk.³⁶⁸

³⁶² Resp. Ex. F (Jeschke Police Reports) at 13.001034 (Dec. 1, 1980 Fueston and Kemper Report of Interview of 12/01/80 Dr. Jacks and Hemme); Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0717 and 6.0709; *see also* HHT at 152.

³⁶³ Pet. Ex. 13 (Nov. 28, 1980 Fueston Hirter Summary of Hemme Interview) at 13.001012-1014. The Court takes judicial notice that Concordia is over a hundred miles and about a two- hour drive away from St. Joseph, MO.

³⁶⁴ HHT at 153-54.

³⁶⁵ Pet. Ex. 45 (Trial Transcript) at 6.0076.

³⁶⁶ *See* Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0026.

³⁶⁷ HHT at 157. On an involuntary hold, Dr. Edersheim testified, Ms. Hemme would have been visually checked by nurses every five to fifteen minutes. *Id.* at 158.

³⁶⁸ *Id.* at 159.

117. Prior to being questioned for the first time on November 28, 1980, Ms. Hemme had been in seclusion and physically restrained.³⁶⁹ She had been forcibly administered antipsychotic medications via injection for more than 48 hours while involuntarily held at the hospital.³⁷⁰ Those medications, designed to control Ms. Hemme's thinking and overcome her will, are known as a "chemical restraint."³⁷¹ Dr. Edersheim testified that antipsychotic medications like Haloperidol are, by design, given to "reorder thinking."³⁷²

118. Ms. Hemme had an uncommon, serious allergic reaction to that medication: nurses found her "lying on bed, eyes rolled back in head, muscles rigid with slurred speech...back hurt."³⁷³ Nurses reported that Ms. Hemme's eyes appeared to be rolling back in her head; Ms. Hemme contemporaneously told nurses it felt like someone was pulling her head back and pulling on her back.³⁷⁴ Dr. Edersheim testified that the severe muscle cramping that results from a dystonic reaction is "very painful" and especially dangerous where, as here, it occurs in the eyes, face, and throat.³⁷⁵ Nurses explicitly noted in Ms. Hemme's psychiatric records that she was having a dystonic reaction and administered Cogentin to try and abate her painful symptoms, but those efforts were

³⁶⁹ HHT at 159-160.

³⁷⁰ *Id.* at 160-161.

³⁷¹ HHT at 160-61.

³⁷² *Id.* at 161.

³⁷³ Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0013-14, *quoting* Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0635 (Progress Record); HHT at 165.

³⁷⁴ Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0013-14, *quoting* Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0635 (Progress Record).

³⁷⁵ HHT at 163-64.

unsuccessful.³⁷⁶ Det. Fueston testified that while he was not trained to recognize the signs of a dystonic reaction and was not aware Ms. Hemme was in pain, that it would have been “very important” for him to know if she was in pain because “obviously if someone is in physical pain during an interrogation, if I did not seek help for them, anything they may or may not tell me could be influenced by levels of pain.”³⁷⁷

119. Shortly before Ms. Hemme was questioned on November 28, she had been forcibly administered an antipsychotic, Haldol, and had been confined to leather wrist restraints.³⁷⁸ Ms. Hemme was also administered chloral hydrate, a sedative hypnotic medication that suppresses the central nervous system and was used for the rapid induction of sleep, a “rapid knockout”³⁷⁹. Dr. Edersheim testified that this medication is not used anymore because its sedative properties are so powerful, it is unsafe.³⁸⁰ Treating nurses present during the November 28 questioning observed Ms. Hemme was shaking and that she said she felt “spacey.”³⁸¹ Det. Fueston documented that Ms. Hemme

³⁷⁶ *Id.* at 164-65.

³⁷⁷ HHT at 376. Dr. Edersheim testified that symptoms of a dystonic reaction can be hard to recognize for a lay person and do not readily translate to a lay person that the person is in pain. HHT at 212-213.

³⁷⁸ *Id.* at 168, 170. Aside from the painful, allergic reaction Ms. Hemme experienced to Haldol, Dr. Edersheim testified that typical, expected adverse side effects to antipsychotics include distraction, sedation, tremors, difficulty with memory, and mood disruption. *Id.* at 166.

³⁷⁹ *Id.* at 167.

³⁸⁰ *Id.* at 166-67.

³⁸¹ *Id.* at 171-172, *reading from* Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0014, *quoting* Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0633 (Progress Record).

appeared confused, unaware of what was happening, and that she was experiencing memory lapses.³⁸²

120. On November 29, medical staff at the hospital changed Ms. Hemme’s antipsychotic medication to be administered via standing order, meaning she began receiving a different antipsychotic medication, Navane, every six hours, intramuscularly.³⁸³ Common side effects of Navane in early treatment include dizziness, drowsiness, sedation, and memory disruption, among others. That standing order—antipsychotic administration every six hours—continued until Ms. Hemme was ultimately discharged from the hospital on December 5 and the records reflect that she continued to experience dystonic reactions, both because that term is written in her records,³⁸⁴ and because the side effects are described.

121. When Ms. Hemme was then questioned again by police on December 1, nurses noted that she was complaining of neck drawing and that her speech was slurred.³⁸⁵ On December 2, while being questioned for several hours, nurses note that Ms. Hemme’s head was “falling back” and “drawn at intervals” and sometimes “forced forwards.”³⁸⁶ Dr. Edersheim testified that if a patient were to experience a dystonic

³⁸² Pet. Ex. 13 (Nov. 28, 1980 Fueston Hirter Summary of Hemme Interview) at 13.001012-1014; HHT 295-96.

³⁸³ HHT at 173.

³⁸⁴ Petitioner's Ex. 7 (St. Joseph Hospital Records 1980) at 6.0632 (Progress Record observing “dystonic reaction”); *see also Id.* at 6.0631, 6.0635 (descriptions of dystonic reaction by nurses, e.g. “patient c/o neck-drawing” and “lying in bed-eyes rolled back-muscular rigidity.”); *see also* HHT at 176.

³⁸⁵ *Id.* at 179.

³⁸⁶ *Id.* at 180.

reaction today, it is treated like a medical emergency and the medication is immediately terminated.³⁸⁷

122. The evidence also reflects that Ms. Hemme continued to use both illegal drugs and substances while hospitalized, and that she was experiencing withdrawal symptoms, all in the time frame when she was questioned by police.³⁸⁸ Dr. Edersheim testified that withdrawal from drugs enhances confusion and negatively impacts concentration, decision making and attention; it also encourages the prioritization of short-term relief, such as ending distress associated with police-led questioning.³⁸⁹

123. On December 3, police took Ms. Hemme from the state hospital to the victim's home. No staff from the state hospital accompanied Ms. Hemme and there is no indication that she received her standing injection of Navane while in police custody at the crime scene. There is also no indication that Ms. Hemme received her medication upon return to the state hospital before she was again questioned by police. Dr. Edersheim testified that this departure without medical supervision was highly unusual: Ms. Hemme was in a documented state of psychiatric distress and was receiving intensive medical intervention to try and manage her condition, and yet was released from the

³⁸⁷ *Id.* at 177.

³⁸⁸ *Id.* at 177-78. Ms. Hemme used PCP while hospitalized; PCP is a hallucinogen that causes confusion and mood changes, while inhalants also cause confusion, slurred speech, poor concentration, and paranoia. *Id.*

³⁸⁹ Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0041, 4.0052.

hospital without medical or psychiatric care, and without access to prescribed medication.³⁹⁰

124. Then, on December 5, Ms. Hemme was discharged from the hospital and sent to the Buchanan County jail. She was discharged with no treatment plan; despite having been treated intensively for ten days with significant psychiatric intervention, her discharging physician concluded that she was not suffering any mental illness.³⁹¹ Dr. Edersheim testified that this conclusion was shocking and at odds with the record documenting someone in clear psychiatric crisis.³⁹² Dr. Edersheim also testified that this sudden cessation was dangerous and could have resulted in rebound psychosis even more severe than original presenting symptoms, in addition to anxiety, mood disturbance, and physical pain.³⁹³

125. While the records about Ms. Hemme's mental and physical condition on December 9 and 10 are scant, Det. Fueston's notes taken when he attempted to question her on December 9 capture further evidence of psychiatric distress.³⁹⁴ Det. Fueston recorded that she was visibly upset and that she "didn't give a fuck about herself" and that she was "clenching and unclenching her fist and moving about in her chair."³⁹⁵ He also noted that she spoke in equivocal, dissociated language: she stated that she "didn't

³⁹⁰ HHT at 183.

³⁹¹ *Id.* at 184.

³⁹² *Id.* at 184-86.

³⁹³ *Id.* at 186.

³⁹⁴ *See also* Pet. Ex. 19 (Dec. 10, 1980 Narrative Captain Gil to Det. Fueston).

³⁹⁵ Pet. Ex. 18 (Dec. 9, 1980 Police Report re: Sandra Hemme's 12/09/80 statement) at AGO_003346; *see* HHT at 187.

really know if she killed her or not but sometimes gets these feelings and knows they are coming.”³⁹⁶

126. The Court finds Dr. Edersheim reached her expert conclusions based on her analysis of historic psychiatric records, which showed that Ms. Hemme was highly vulnerable to make false statements: she was interrogated as an adolescent whose thoughts were being chemically controlled; who was in acute pain; who was sleep-deprived and in active withdrawal from drug use; who did not trust her own memory; and whose psychiatric condition positioned her both to seek and try to hold attention by any means necessary.³⁹⁷

127. After a longitudinal review³⁹⁸ of Ms. Hemme’s historic and contemporary psychiatric records, Dr. Edersheim ascribed three diagnoses: post-traumatic stress disorder (“PTSD”), with dissociative symptoms; borderline personality disorder; and substance use disorder.³⁹⁹ In regards to PTSD, Dr. Edersheim explained that a history of traumatic life events, which Ms. Hemme’s psychiatric records reflect she had experienced, is associated with increased levels of suggestibility, compliance with police interrogators and ultimate false confessions because trauma significantly reduces the

³⁹⁶ *Id.* at AGO 003347.

³⁹⁷ Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0045; *see generally* HHT at 196-211. *See also* HHT at 146: “And she was always seeking the attention of adults. And they would remark that she would making outlandish statements and acting with bravado and aggression in order to sustain their attention.”

³⁹⁸ Dr. Edersheim testified that, as a forensic psychiatrist, it is “fairly common to have to reconstruct a mental state from the past,” and she relies, as she did here, on historic psychiatric records contemporaneous to the event in question. HHT at 136.

³⁹⁹ HHT at 188.

ability to withstand interrogative pressure.⁴⁰⁰ Ms. Hemme’s psychiatric condition likely caused her to “prioritize short-term goals such as ending acute distress rather than weighing long-term consequences.”⁴⁰¹

128. This Court finds that when considering the factually inconsistent content of Ms. Hemme’s statements in combination with her malleable mental state when questioned, that the evidence in totality supports a conclusion that her statements connecting herself to this murder were unreliable and, in many instances, untrue. The Court received evidence showing that false confessions arise from a “combination of identified situational factors present in the context of the interrogation, combined with dispositional factors or psychological vulnerabilities that render certain individuals particularly vulnerable to making false statements.”⁴⁰² Ms. Hemme, who had a “thin grasp on reality” and would experience “derealization and depersonalization” in response to stressors, was disposed to give false statements against her interest.⁴⁰³ People with borderline personality like Ms. Hemme who have “poor self-concept”⁴⁰⁴ and already distrust the “reliability of their own memories and have hallucinations are more likely to believe interrogators when they are presented with crimes, they ‘must have’ committed but don’t recall” and then start to fill in information⁴⁰⁵ Indeed, those conclusions are

⁴⁰⁰Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0048; HHT at 203.

⁴⁰¹ *Id.* at 4.0052.

⁴⁰² Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0002.

⁴⁰³ HHT at 191-92.

⁴⁰⁴ Pet. Ex. 6 at 4.0063, *citing* Pet. Ex. 7 at 6.0601-6.0729; *see also id.* at p. 58.

⁴⁰⁵ *Id.* at 4.0050.

consistent with Harman’s memory of interviewing Ms. Hemme starting in 1981: that she was confused; that she was malleable; and that she would say—and repeat—just about anything proposed to her.⁴⁰⁶

129. This Court finds that Ms. Hemme’s psychiatric condition was fertile ground for her to also internalize, or come to believe, the apparently false narratives she told. Her frequent auditory hallucinations, historic and contemporaneous drug abuse, and history of depersonalization and derealization, individually and collectively, meant she was likely to distrust her own memory.⁴⁰⁷ Her mood disorder, post-traumatic stress disorder and history of depression made her believe she was capable of causing harm; treaters noted her poor self-esteem, likeliness to believe false narratives, and attention-seeking behavior throughout her records.⁴⁰⁸ Her presenting symptoms of both depersonalization and derealization meant she quite literally did not grasp her connection to reality, which was compounded by the abrupt cessation of her anti-psychotic medication.⁴⁰⁹

130. This Court finds that the evidence as a whole establishes that Ms. Hemme’s statements inculcating herself are inconsistent, contradicted by physical evidence and accounts of reliable, independent witnesses, and that Ms. Hemme’s impaired psychiatric

⁴⁰⁶ Pet. Br. at 75, *citing* HHT 69-70.

⁴⁰⁷ HHT at 205.

⁴⁰⁸ *See* HHT at 200-211.

⁴⁰⁹ “But folks who experience that understand, in better and more compensated periods, that the world is real, that they are real, and it sows fundamental distrust with their own experience, your sensory experience, and how you are in the world. So other people’s accounts and other people’s memories and other people’s suggestions become more valid and more tenable.” HHT at 207.

condition when questioned substantially undermine the reliability of those statements as evidence of guilt. In addition, the external sources of contamination, including extensive media coverage of the case and police suggestion, substantially undermine the prosecutor's argument that Ms. Hemme's statements contain details that only the killer could know. This Court further finds that no evidence whatsoever outside of Ms. Hemme's unreliable statements connects her to the crime.

131. In contrast, this Court finds that the evidence directly ties Holman to this crime and murder scene. Holman altered and attempted to use Ms. Jeschke's credit card the day after her murder, and his excuse for how he came to possess the credit card is disproven by the suppressed earring evidence showing he stole and hid away a personal object of the victim, despite his claim that he found the victim's credit card and kept nothing else. His truck was parked in the street by her home when she was killed, and his explanation for his presence at the scene of the crime could not be proven. A microscopic examination of a hair found on Ms. Jeschke's bed near her body was consistent with Holman's and inconsistent with any other Black person who had access to the scene of the crime. This Court concludes that based on all the evidence, there is a reasonable probability that no reasonable juror would find Ms. Hemme guilty beyond a reasonable doubt.

iii. Evidence supporting ineffective assistance of counsel claims

132. Ms. Hemme presented evidence related to two different claims of ineffective assistance of counsel.

133. First, Ms. Hemme argued her trial counsel was ineffective for failing to provide the jury with any information about her condition while she was questioned. The records show that trial counsel presented no psychologist, psychiatrist, nor treating physician to explain how Ms. Hemme’s psychiatric condition and concurrent treatment compromised her. Trial counsel did not elicit from interrogating officers any of the documented details of physical distress and mental confusion while she was repeatedly interrogated, information that was necessary for the jury to appreciate her malleability and thus how likely her statements were, indeed, false.⁴¹⁰

134. The record shows trial counsel was aware of these records and her psychiatric vulnerability: he moved for a jury instruction on mental disease or defect, despite not having introduced any (abundantly available) evidence to support such an instruction.⁴¹¹ Before the start of trial, the judge asked counsel if he was aware that Ms. Hemme had been repeatedly hospitalized in psychiatric crisis, and trial counsel responded that he knew Ms. Hemme had “significant mental problems,” but would not enter any evidence regarding her mental health because she had been examined at the hospital immediately prior to her 1985 trial (five years after her interrogations) and doctors had determined that she was competent to stand trial.⁴¹² This Court notes that competency to

⁴¹⁰ See, e.g., HHT at 171-172, *reading from* Pet. Ex. 6 (Dr. Judith Edersheim Report) at 4.0014, *quoting* Pet. Ex. 7 (St. Joseph Hospital Records 1980) at 6.0633 (Progress Record) (nurses observing *while* Hemme is being questioned that she is shaking and disoriented).

⁴¹¹ Pet. Ex. 45 (TT) at 158.

⁴¹² *Id.* at 4.

stand trial and Ms. Hemme's psychiatric and physical condition when interrogated in 1980 are two separate legal and factual inquiries. This Court notes, too, that the Missouri Court of Appeals found counsel who represented her at her 1981 guilty plea ineffective for failing to raise competency because of her longstanding psychiatric history.⁴¹³ This Court concludes that if counsel believed that psychiatric testimony was only relevant if Ms. Hemme's defense was not guilty by reason of mental disease or defect, counsel was unreasonably mistaken.⁴¹⁴ At the time of Ms. Hemme's trial, it was well-established that courts had wide discretion to consider expert psychiatric testimony on the ability of a witness to observe, remember, and communicate accurately.⁴¹⁵ Trial counsel's failure to know that such evidence is admissible would be a breach of his duty to know the law.⁴¹⁶

135. Second, while this Court concludes that the *Brady* evidence Ms. Hemme raises was in fact suppressed, as discussed *infra* in the Conclusions of Law, if counsel had access to this exculpatory evidence and did not introduce it to the jury, that would constitute prejudicially deficient performance in violation of *Strickland v. Washington*.

⁴¹³ *Hemme*, 680 S.W.2d, at 736-37.

⁴¹⁴ *See State v. Boyd*, 143 S.W.3d 36 (Mo. App. 2004) (finding that the defendant's autism was admissible to show it was unlikely that he could perform some of the skills that the State's informants claimed).

⁴¹⁵ *See State v. Oswald*, 306 S.W.2d 559, 563 (Mo. 1957) and *State v. Johnson*, 714 S.W.2d 752 (Mo. App. W.D. 1986). The only controversy at the time of Ms. Hemme's trial was whether a trial court could compel a witness, not a party, to submit to a psychiatric evaluation of competence to testify. *See State v. Robinson*, 835 S.W.2d 303, 305 (Mo. banc 1992) (noting that the Eastern District Court of Appeals ruled in *State v. Clark*, 711 S.W.2d 885, 888 (Mo. App. E.D.1986) that trial courts had no power to do so, while the Western District Court of Appeals found in *Johnson*, 714 S.W.2d at 758, n. 6, that trial courts had the authority to do so on a showing of compelling need).

⁴¹⁶ *Kimmelman v. Morrison*, 477 U.S. 365 (1986).

II. CONCLUSIONS OF LAW

A. Brady

Ms. Hemme alleges that the State failed to disclose exculpatory evidence, including:

Earring evidence: December 22, 1980, documents re: identification of Patricia Jeschke's earrings among jewelry found in Michael Holman's apartment (Pet. Exs. 1, 2, and 3).

FBI reports:

1981.01.29 FBI fingerprint report re: latent palm print of value on antenna wire—excluding Ms. Jeschke and Ms. Hemme as source, and requesting better prints of Michael Holman for comparison (Pet. Ex 26).

1981.01.30 FBI fingerprint report re: Playgirl magazine allegedly taken by Ms. Hemme from Ms. Jeschke's home—excluding Ms. Jeschke as source of prints (Pet. Ex. 27).

1981.04.24 FBI laboratory report excluding Vernon Burris as the source of the hairs found in Ms. Jeschke's bedsheet (Pet. Ex. 66).

Holman crime evidence: Documents regarding the investigation and prosecution of Michael Holman for other crimes, including three home burglaries (Pet. Exs. 50 and 51, and Resp. Ex. E), a stalking offense (Pet. Exs. 40 and 41); and other crimes of dishonesty (Pet. Exs. 38, 39, 50, Resp. Exs. E and H).

Ms. Hemme contends that the nondisclosure prejudiced her because it deprived her of evidence to support her alternative perpetrator defense and augment her argument that all probative evidence directly linked Holman to the murder, and it underscored the inadequacy of the police investigation. This Court agrees.

A petitioner seeking habeas relief under *Brady* must establish: (1) that the evidence at issue is favorable to the accused, either because it is exculpatory or impeaching; (2) that the evidence was suppressed by the State, either willfully or

inadvertently; and (3) that prejudice must have ensued.⁴¹⁷ Ms. Hemme has satisfied all three of these components and thus is entitled to relief.⁴¹⁸

i. The Evidence Was Not Disclosed

The record establishes conclusively that Ms. Hemme did not receive the earring evidence, three FBI reports, and records of Holman's 1980-1981 criminal behavior. The testimony of Ms. Hemme's sole surviving counsel, Harman, as well as records from the court file, prosecution file, and trial transcripts demonstrate that Ms. Hemme went to trial without access to evidence crucial to her defense. The testimony of the prosecutor who tried Ms. Hemme's case, Patrick Robb, largely supports the conclusion that evidence was withheld from Ms. Hemme and her attorneys prior to trial. While Robb recalled *one* of the reports Ms. Hemme claims was withheld from her in violation of *Brady*, he could not recall whether that report was actually disclosed, nor could he recall whether he discussed the evidence described therein with Ms. Hemme's counsel. This Court concludes that the prosecution failed in its duty to disclose exculpatory evidence to Ms. Hemme's defense prior to trial.

⁴¹⁷ *State ex rel. Engel v. Dormire*, 304 S.W.3d 120 (Mo. banc 2010).

⁴¹⁸ As a preliminary matter, this Court has already found that Ms. Hemme's *Brady* claims are not defaulted by her failure to raise them in her Rule 29.15 motion filed on April 20, 1988 following her 1985 conviction. Resp. Ex. I (Court File CR80-015) at 78-89. (Note that Resp. Ex. I is not Bates-stamped; page numbers refer to page of the PDF.). For the Court's ruling that Ms. Hemme's *Brady* claims are not defaulted, and the actual innocence and cause-and-prejudice habeas gateways that permit their consideration, *see* discussion *supra* at pp. 24-27. This Court has also ruled that Ms. Hemme's petition is deemed amended to conform to the evidence elicited at the hearing. *See* discussion *supra* at pp. 29-32.

Brady also applies to evidence that is “known only to police investigators and not the prosecutor” because “the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government’s behalf... including the police.”⁴¹⁹ Nondisclosure need not be willful; “under *Brady* it is irrelevant whether the failure to produce exculpatory evidence occurred willfully or inadvertently; if the evidence potentially is exculpatory, it must be produced.”⁴²⁰

The contents of the prosecution file, Resp. Ex. D, is evidence of nondisclosure. None of the evidence that Ms. Hemme argues was withheld from her in violation of *Brady* is in the prosecution file. The testimonies of Robb and Harman establish that documents that were not part of the prosecution file would not have been disclosed to defense.

Robb testified that at the time of Ms. Hemme’s prosecution, he relied on the police department to provide him all relevant reports,⁴²¹ which would be furnished to defense attorneys through an open-file process: “an attorney could come by the office, ask the secretarial staff to copy the file, and they would copy the file and give it to them.”⁴²² Harman’s testimony and the letter he wrote Ms. Hemme’s family described that very process.⁴²³ Because defense attorneys received police reports from the Prosecuting Attorney’s Office and not directly from the St. Joseph Police Department, only

⁴¹⁹ *Stickler v. Greene*, 527, U.S. 263, 280-81 (1999).

⁴²⁰ *State ex. rel. Woodworth v. Denney*, 396 S.W.3d at 340, quoting *Engle*, 304 S.W.3d at

⁴²¹ HHT at 639.

⁴²² HHT at 574.

⁴²³ Pet. Ex. 4 (Sept. 16, 1981 Letter from Larry Harman to Hemme family), at 10.0744.

documents that actually made it to the prosecution file from the SJPD would have been disclosed in discovery. Robb acknowledged that the absence of a document from the prosecution file would support the inference that it had not been received from the police department, and thus not disclosed to the defense.⁴²⁴

Respondent argues that Resp. Ex. D is not the entire prosecution file but is instead a “working file” created by Robb in preparation for trial, and not the “discovery file” which would have contained more materials, including all the documents that are central to Ms. Hemme’s *Brady* claim. Resp. Br. at 18. This argument relies on speculation and is unpersuasive. This “discovery file” was not found by the Buchanan County Prosecuting Attorney’s Office’s custodian of records after a diligent search; only the file produced in Resp. Ex. D was recovered.⁴²⁵ Respondent has failed to produce actual evidence that a separate “discovery file” actually existed or that it contained the information Ms. Hemme argues was withheld from her. Even if Respondent’s argument was true, the absence of documents from the “working file” would nonetheless be probative of nondisclosure. There is little reason to believe that Robb, an experienced trial attorney, would have chosen to prepare for a murder trial without having all the reports describing the evidence against Michael Holman, the prime alternate suspect who Robb knew would be central to Ms. Hemme’s defense, in his case file. Nor would Robb

⁴²⁴ HHT at 658.

⁴²⁵ HHT at 53 (Stipulation 1).

prepare to make arguments about physical evidence without having the FBI reports analyzing that evidence.

Respondent argues that Robb's recollection that Det. Fueston's Dec. 22, 1980 report (Pet. Ex. 1) existed is proof of disclosure. This Court disagrees. Robb recalled the Dec. 22 police report and testified that it *would* have been included in his file⁴²⁶ and *should* have been disclosed to Ms. Hemme's attorneys.⁴²⁷ Testimony about what procedures *should* have been followed is not proof of disclosure.⁴²⁸ Robb could not offer more to support the conclusion that the earring evidence was disclosed to Ms. Hemme prior to trial. He could not specifically recall whether the report actually was in his prosecution file, nor did he have any memory of disclosing it to Ms. Hemme's counsel.⁴²⁹ He also had no recollection of discussing the earring evidence with trial counsel.⁴³⁰

Further, Robb misremembered the earring evidence by testifying "when it came down to it, I don't think the father of Ms. Jeschke could identify the jewelry, the

⁴²⁶ HHT at 586.

⁴²⁷ HHT at 640-1. Robb's testimony about what should have happened is not sufficient to establish disclosure. *See Merriweather v. State*, 294 S.W.3d 52 (Mo. 2009) (ruling that a prosecution investigator's testimony about what efforts he would usually take to obtain criminal histories of State witnesses was not proof that he had done so in the instant case without documentary evidence.)

⁴²⁸ *See id.* (ruling that a prosecution investigator's testimony about what efforts he would usually take to obtain criminal histories of State witnesses was not proof that he had done so in the instant case without documentary evidence.)

⁴²⁹ HHT at 587, 640-1.

⁴³⁰ *Id.*

earrings.”⁴³¹ In fact, Mr. McGlothlin’s identification of the earrings was unequivocal.⁴³² Robb offered no testimony about Earl McGlothlin’s written statement, Pet. Ex. 2, or the Dec. 23, 1980 evidence custody report, Pet. Ex. 3—evidence which would have had to be disclosed to Ms. Hemme in its entirety for disclosure to be meaningful.⁴³³

Harman’s testimony is further evidence of nondisclosure.⁴³⁴ Harman represented Ms. Hemme from 1981-1984, and directly preceded Ms. Hemme’s trial counsel Robert Duncan on the case.⁴³⁵ Harman testified that he never knew about the earring reports, and that, had he known about them, he certainly would have used them in his litigation of

⁴³¹ HHT at 640-1.

⁴³² Pet. Ex. 2 (Dec. 22, 1980 Earl McGlothlin Case Statement). Mr. McGlothlin recalled granular details about the earrings, such as when and where he purchased them, and when he gifted them to his daughter. He also wrote that he had seen his daughter wearing the earrings several times in the years since she received them.

⁴³³ Pet. Ex. 1 (Dec. 22, 1980 Fueston police report) described Mr. McGlothlin’s identification of his daughter’s earrings and stated when and where the earrings were found. It did not, however, include that the earrings were found in Michael Holman’s possession. *See* HHT at 277 (Det. Fueston’s testimony regarding the omission of Holman’s name from the Dec. 22 police report).

⁴³⁴ The Court takes judicial notice that Harman is the only defense attorney who represented Ms. Hemme prior to her trial in 1985 who is alive to testify about his memory of what was disclosed by defense. Dale Sullivan, who represented Ms. Hemme in 1980, and Robert Duncan, who represented Ms. Hemme in 1985, are both deceased. *Obituary: Dale Philip Sullivan, April 5, 2020*, KANSAS CITY STAR, June 9, 2021. P A9; HHT at 107, 116. Respondent’s argument that Harman’s testimony is not probative because Robb redisclosed discovery to Robert Duncan prior to trial lacks merit; the records Respondent cites suggest that the discovery sent to Duncan mirrored what had already been provided to Harman, and that they had been redisclosed out of an abundance of caution. Resp. Ex. D-2 (Prosecuting File Hemme) at AGO_002383 (“All Reports in the case have previously been disclosed to defendant’s prior counsel. However, to make sure present defense counsel has all discovery, I have enclosed all reports in the State’s file.”)

⁴³⁵ HHT at 89.

Ms. Hemme’s 27.26 motion.⁴³⁶ The Court finds that the record corroborates Harman’s testimony: the earrings are not mentioned in the 1981 letter he wrote to Ms. Hemme’s family, describing his review of the prosecution file and the evidence that linked Michael Holman to the murder;⁴³⁷ and the earrings are not mentioned in any of the pleadings filed or transcripts taken during Ms. Hemme’s prosecution.⁴³⁸

The evidence establishes that the three FBI reports, Pet. Ex. 25 (Mar. 1981 FBI Reports), 26 (Jan. 29, 1981 FBI Report Fingerprints), and 66 (Apr. 9, 1981 Vernon Burris FBI Report), were not produced to Ms. Hemme prior to trial. Robb’s testimony establishes that he had never received them—and thus could not have disclosed them to Ms. Hemme prior to trial. Robb made clear that he did not know that the TV antenna cable⁴³⁹ or Playgirl magazine were tested for fingerprints,⁴⁴⁰ nor did he know that Vernon Burris had been excluded as the source of hairs found on Ms. Jeschke’s bed.⁴⁴¹ Robb was sure he did not know because he had made arguments during the 1985 trial that directly contradicted the FBI’s conclusions, and he further argued that the absence of

⁴³⁶ HHT at 85 (“You’d be crazy not to ask cross-examination questions if you had that, of the officer that took the statements.”)

⁴³⁷ Pet. Ex. 4 (Letter from Larry Harman to Hemme Family).

⁴³⁸ See generally Resp. Exs. J and K (Court Files CR80-035); Pet. Ex. 47 (Motion to Set Aside Plea Transcript); Pet. Ex. 45 (TT).

⁴³⁹ HHT at 665.

⁴⁴⁰ HHT at 662. Robb recalled that Ms. Hemme had claimed to have taken items from Ms. Jeschke’s apartment, and that he had argued that she had discarded them before they could be tested. Robb’s closing argument specifically cites the Playgirl magazine as an item that could have been tested, had Ms. Hemme not thrown it away. Pet. Ex. 46 (Opening and Closing Statements of Trial) at 76.

⁴⁴¹ HHT at 661.

trace evidence implicating Ms. Hemme was because “she disposed of it.”⁴⁴² He testified: “I wouldn't argue something that I believe was incorrect factually.”⁴⁴³ Robb's memory of the antenna cable was clear: he recalled the specific physical characteristics of the cable,⁴⁴⁴ and explained its significance in his argument that Ms. Hemme's confessions were factually correct and contained information only the killer could know.⁴⁴⁵ Had he known that a palm print originating from neither Ms. Hemme nor the victim was found on the cable, Robb testified that it would have changed how he viewed the case.⁴⁴⁶ The record corroborates Robb's testimony.⁴⁴⁷

⁴⁴² Pet. Ex. 46 (Opening and Closing Statements of Trial) at 76.

⁴⁴³ *Id.* at 76 (arguing no trace evidence linked Ms. Hemme to the murder because “She is positive, ‘I disposed of a CPO jacket that was stolen, Playgirl magazine, and bandana.’”); *id.* at 73 (arguing that Vernon Burris may have been the source of the “Negroid” hairs found in Ms. Jeschke that defense argued belonged to Michael Holman); HHT at 659.

⁴⁴⁴ HHT at 664 (recalling the specific physical characteristics of the cable).

⁴⁴⁵ HHT at 628.

⁴⁴⁶ “I think we would have pursued that. I would have thought we would have pursued that as more of an investigation of Michael Holman. Because Michael Holman had a connection to the case, and I think he was a person of interest.” HHT at 665.

⁴⁴⁷ The FBI reports are not in the prosecution file, Resp. Ex. D, as discussed *supra*. The State's witness list, Resp. Ex. D-2, prepared by Robb prior to Ms. Hemme's trial, included an FBI official who produced a report (Pet. Ex. 25) that was disclosed to Ms. Hemme's counsel; the FBI officials who produced the Jan. 29, 1981 (Ben Moore) and Apr. 9, 1981 (Bob Neill) reports were not. *See* Resp. Ex. F (Jeschke Police Reports) at 13.001201 (Dec. 22, 1980 Letter from SJPD to FBI re: fingerprint analysis) and Resp. Ex. F (Jeschke Police Reports) at 13.001213 (Letter to FBI Scientific Analysis Section). (It is possible that Bob Neill and Robert Neal are the same person, and his name was misspelled. However, letters addressed to both Bob Neill and Robert Neal can both be found in SJPD records and are addressed differently. Letters to Neill are directed to the FBI Scientific Analysis Section. *Id.* Letters to Neal are directed to the Hair and Fiber Division. *Id.* at 13.001203. Even if they are the same person, the use of the spelling associated with the Holman inclusion, and not the Burris exclusion, suggests disclosure of the former, and not the latter.)

It is not disputed that records of Holman’s 1980-1981 criminal conduct were not provided to Ms. Hemme prior to trial. Instead, Respondent argued that the State had no duty to disclose it. Resp. Br. at 45. This Court disagrees: evidence of third-party guilt, including evidence that another person had motive and opportunity to commit the crime for which defendant is accused, is admissible if the third-party’s conduct connects them to the crime.⁴⁴⁸ Nondisclosure of evidence that another person had motive or opportunity to commit the crime for which defendant is accused is a violation of that defendant’s rights under *Brady v. Maryland*.⁴⁴⁹

The evidence establishes that the earring reports, FBI reports, and records of Holman’s criminal conduct were not disclosed to Ms. Hemme.⁴⁵⁰

⁴⁴⁸See e.g., *State v. Umfrees*, 433 S.W.2d 284, 287 (Mo. banc 1968); *State v. Rousan*, 961 S.W.2d 831, 848 (Mo. banc 1998); *State v. Nash*, 339 S.W.3d 500, 513 (Mo., 2011); *State v. Woodworth*, 941 S.W.2d 679, 684 (Mo. App. W.D. 1997) (“[E]vidence that another person had motive and opportunity to commit the crime... was admissible as substantive evidence because there was direct evidence linking that individual to the crime...”).

⁴⁴⁹See *id.* and *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330, 343-44 (Mo. banc. 2013); see also *Miller v. Angliker*, 848 F.2d 1312, 1322 (2d Cir. 1988).

⁴⁵⁰Compare these facts with those of *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330 (Mo. banc. 2013). In ruling for the petitioner and finding that exculpatory evidence had not been disclosed to petitioner’s counsel prior to trial, the Missouri Supreme Court found that the “lack of record evidence of production” more persuasive than the testimony of the trial judge and prosecutors, who testified that the evidence had been turned over—but could provide no records that the disclosure occurred. Like in *Woodworth*, there is no record evidence of production. However, unlike in *Woodworth*, no witness could testify that any of the documents central to the *Brady* claim actually made it to Ms. Hemme’s counsel.

ii. The Suppressed Evidence is Exculpatory and Material

Ms. Hemme has established that the earring reports, FBI reports, and evidence of Holman's criminal conduct are favorable, and thus triggered the State's duty of disclosure.

Favorable evidence is either "exculpatory or impeaching."⁴⁵¹ Evidence implicating an alternate suspect in a crime is plainly favorable to the accused.⁴⁵² Suppression of evidence that enables an accused to "[a]t a minimum... underscore[] the possibility that [another person] was [the victim's] killer through cross-examination of the police on their failure to direct any investigation" against that alternate suspect and call into question "the thoroughness and even the good faith of the investigation" can also be the basis for *Brady* relief.⁴⁵³

To determine "whether...evidence meets the test for *Brady* prejudice, this Court must assess whether the evidence at issue is material to [Hemme's] case."⁴⁵⁴ A criminal defendant is prejudiced by suppression of favorable evidence when, "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."⁴⁵⁵ In considering the materiality of evidence, a

⁴⁵¹ *Merriweather*, 294 S.W.3d at 52, quoting *Stickler*, 527 U.S. at 281-82.

⁴⁵² See e.g., *State ex rel. Griffin v. Denney*, 347 S.W.3d 73 (Mo. 2011); *Duley v. State*, 304 S.W.3d 158 (Mo. Ct. App. 2009); *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330 (Mo. banc. 2013); *State ex rel. Koster v. McElwain*, 340 S.W.3d 221 (Mo. App. W.D. 2011).

⁴⁵³ *Koster*, 340 S.W.3d at 250, quoting *Kyles v. Whitley*, 514 U.S. 419, 420 (1995) (internal citations omitted).

⁴⁵⁴ *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 128 (Mo. banc 2010).

⁴⁵⁵ *United States v. Bagley*, 473 U.S. 667, 682 (1985).

court “should consider the effect of all the suppressed evidence along with the totality of other evidence uncovered following trial.”⁴⁵⁶ In assessing whether the undisclosed evidence is material under the *Brady* standard, this Court must consider how a competent defense lawyer would have used the evidence in defense of her client.⁴⁵⁷ This includes “additional evidence to which a skillful counsel would be led to by careful investigation.”⁴⁵⁸ Suppression of evidence is clearly prejudicial when it matches or exceeds the circumstantial evidence upon which the accused was convicted.⁴⁵⁹

The evidence suppressed was plainly favorable to Ms. Hemme, and the nondisclosure prejudiced her defense. Robb acknowledged that *no* evidence linked Ms. Hemme to the victim or the murder other than her statements.⁴⁶⁰ In contrast, Holman admitted being near Patricia Jeschke’s home the night she was killed; possessed items belonging to Ms. Jeschke after her death; was linked by hair evidence to the crime scene; and committed home invasions and other crimes of deceit with shared characteristics to the instant crime. The jury that convicted Ms. Hemme heard only a small portion of the evidence that undermined the State’s case against her, and *no* evidence that the SJPD chose to end their investigation into Holman before it was complete, including the failure to respond to the FBI’s request for clearer palm prints of Holman’s. The nondisclosure of

⁴⁵⁶ *Woodworth*, 396 S.W.3d at 345.

⁴⁵⁷ *See, e.g., Kyles*, 514 U.S. at 442-51.

⁴⁵⁸ *State v. Thompson*, 610 S.W.3d 629, 633 (Mo. 1981).

⁴⁵⁹ *Koster*, 340 S.W.3d at 250.

⁴⁶⁰ HHT at 610 (“Q: Without the statements, there was zero evidence connecting her with the offence? A: Correct.”).

that evidence resulted in a trial that was fundamentally unfair, resulting in a verdict unworthy of confidence.

Although the materiality of *Brady* evidence “turns on the cumulative effect of all such evidence suppressed by the government,”⁴⁶¹ it is necessary to “evaluate the tendency and force of the undisclosed evidence item by item; there is no other way.”⁴⁶²

The earring reports, even standing alone, are material to Ms. Hemme’s defense, and their suppression entitles Ms. Hemme to *Brady* relief. If the earring reports had been disclosed, Ms. Hemme’s counsel could have argued that Holman was directly linked to the victim by an intimate, physical object he had hidden away in his home. This would have contradicted Holman’s already implausible explanation offered to the police on December 19, 1980—that he had found the victim’s purse by chance and took from it only a credit card, discarding the purse and the rest of its contents in a dumpster at his home.⁴⁶³ This would have been powerful evidence to support the chief theory Ms. Hemme argued at trial: that physical evidence directly tied Holman to the murder.

Ms. Hemme’s counsel could have used the earring reports to attack “the thoroughness and even the good faith of the investigation” and argue that it revealed “a remarkably uncritical attitude on the part of the police” towards the possibility that Holman committed the murder.⁴⁶⁴ Ms. Hemme could have raised questions about Chief

⁴⁶¹ *Kyles*, 514 U.S. at 421.

⁴⁶² *Id.* at 436, n. 10.

⁴⁶³ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

⁴⁶⁴ *Kyles*, 514 U.S. at 445.

Hayes's unusual participation in the identification of evidence that linked one of his own officers to the murder.⁴⁶⁵ She could have argued that the SJPD failed to follow-up on McGlothlin's identification: Holman was *never* asked to explain his possession of the earrings, and the earrings were never forensically examined, as many items of evidence the SJPD hoped would link Ms. Hemme to the murder, had been.⁴⁶⁶

That a pair of earrings, similarly described, was shown to and identified by Kim Hinderks, another victim of Michael Holman's crime spree, does not undermine the materiality of the earring reports. The record does not establish that the earrings shown to Hinderks were the same as those shown to Earl McGlothlin;⁴⁶⁷ the fact that the McGlothlin-identified earrings remained catalogued as evidence of Ms. Jeschke's murder for years⁴⁶⁸ after the Hinderks burglary was adjudicated⁴⁶⁹ suggests that they were not.

⁴⁶⁵ HHT at 363 (testimony of Det. Fueston). Chief Hayes was a controversial figure. Robb testified that he viewed Hayes as untrustworthy. *See* HHT at 605-6.

⁴⁶⁶ *See e.g.* Pet. Ex. 27 (FBI Report Fingerprints).

⁴⁶⁷ On December 23, 1980, Ms. Hinderks viewed a pair of earrings that were similarly—but not identically—described. Her written statement (Resp. Ex. H-1 (December 23, 1980 Kim Hinderks statement) makes no mention of the item number assigned to the McGlothlin-identified earrings (H-31), nor the way those earrings were bagged, sealed, and initialed, as described in Det. Fueston's police report, Pet. Ex. 1 (December 22, 1980 Fueston police report).

⁴⁶⁸ Pet. Ex. 67 (April 24, 1985 Fueston Report re: Evidence Voucher) at AGO_002209. *See also* HHT at 501-2.

⁴⁶⁹ Holman's 1981 guilty plea in his insurance fraud case resolved all of his pending criminal matters, including the Hinderks burglary. Pet. Ex. 58 (Petition to Enter a Plea of Guilty). *See also* Resp. Ex. E (Prosecuting File Holman).

Even if there was a genuine question of which victim of Holman’s the earrings belonged to, it should have been left to the jury to resolve.⁴⁷⁰

The suppressed January 29, 1981 palm print report is also, on its own, enough to establish a finding of materiality. In *State ex. Rel. Schmitt v. Green*, the Western District of the Missouri Court of Appeals ruled that the petitioner was prejudiced by the suppression of a single report that showed a latent print found at a crime scene came from neither the petitioner nor the person he was accused of shooting.⁴⁷¹ In finding the nondisclosure of that report prejudicial, the Court found that the case against the petitioner was “very weak and circumstantial”, marred by “questionable” forensic practices, lacking “fingerprints or DNA evidence link[ing] [petitioner] to the crime”, and supported by an unreliable eyewitness identification.⁴⁷² In contrast, the fingerprint report “would have given [the petitioner] ‘unassailable forensic evidence’ to attack the State’s case and to support his claim of innocence”⁴⁷³ that was “far more persuasive than simply arguing the negative inference that because [the petitioner’s] prints were not found at the scene, he could not have committed the crime.”⁴⁷⁴ In ruling for the petitioner, the Court

⁴⁷⁰ *Amrine*, 102 S.W.3d at 550 (Wolff, J., concurring) (“if there is a credibility determination to be made, it will be made by a jury.”)

⁴⁷¹ *State ex. rel. Schmitt v. Green*, 601 S.W.3d 278, 294 (Mo. Ct. App. W.D. 2020).

⁴⁷² *Id.* at 293.

⁴⁷³ *Id.* at 293, quoting *State v. Jonathan Houston Irons*, St. Charles County, CR197-271FX.

⁴⁷⁴ *Green*, 601 S.W.3d at 292.

noted how powerful that single report would have been to attack the quality of the police investigation.⁴⁷⁵

The suppressed January 29, 1981 palm print report is material because Ms. Hemme’s counsel could have used it to argue that “unassailable forensic evidence... proved an as yet unidentified person”⁴⁷⁶ had handled a TV antenna cable found directly next to the victim’s body. Robb’s closing arguments and his hearing testimony made clear how significant the TV antenna cable was to the case against Ms. Hemme.⁴⁷⁷ At the hearing, he lamented that the cable had been destroyed, because forensic examination of that evidence could have answered lingering questions about who actually committed the murder.⁴⁷⁸ In fact, the cable *had* been tested, and a palm print was found on it. While Ms. Hemme and the victim could be compared and they were both excluded as the source of that print, Michael Holman could not, and additional prints were requested.⁴⁷⁹ That the SJPD failed to provide the FBI the better-inked palm prints needed to complete their

⁴⁷⁵ *Id.* at 293-94.

⁴⁷⁶ *Id.* at 292-94.

⁴⁷⁷ “And the antenna was another thing. She gave an explanation there was something odd at the scene... It was a flat antenna. And she had explained in her statement why it was laying there.... I felt that corroborated what we had at the scene... It explained something we didn’t understand.” HHT at 627-28.

⁴⁷⁸ “Evidently, the police department, someone in there gave a directive to destroy the evidence.... [T]he fact that this offense, if you look at it, it’s not only the tragedy of Patricia Jeschke being killed in 1980, but I think all these questions that we’re here today could have been resolved if that evidence would have been preserved because of the trace evidence... I think just the cord and stuff may—perhaps if it was available today, you could have gotten DNA off of it and we could answer a lot of questions with that.” HHT at 649-50.

⁴⁷⁹ Pet. Ex. 26 (Jan. 29, 1981 FBI Report Fingerprints) at AGO_001299.

comparison to Holman could have been used to “emphasize the State’s failure to conduct a thorough investigation.”⁴⁸⁰

Though suppression of the January 29, 1981 FBI report and suppression of the earring evidence are enough on their own to entitle Ms. Hemme to habeas relief, even more favorable evidence was suppressed that was material to Ms. Hemme’s defense. *Brady* requires a cumulative evaluation, in the context of all the relevant evidence discovered post-conviction.⁴⁸¹ Collectively, the FBI reports strengthen the defense arguments at trial that Ms. Hemme’s statements were unreliable, no physical evidence connected her to the crime,⁴⁸² and that the evidence points to Michael Holman as the perpetrator.⁴⁸³ Further, the FBI reports directly rebut the State’s explanations for the weaknesses of their case. Robb argued that trace evidence could not link Ms. Hemme because she had thrown away anything that could have been tested,⁴⁸⁴ and suggested that Ofc. Burris, and not Holman, could have been the source of hairs⁴⁸⁵ that were central to Ms. Hemme’s defense.⁴⁸⁶ The FBI reports demonstrate that these arguments were

⁴⁸⁰ *Green*, 601 S.W.3d at 293-94.

⁴⁸¹ *Kyles*, 514 U.S. at 441.

⁴⁸² “There is no other evidence whatsoever. There is no witness. There is no physical evidence. There is no trace evidence. There is no fingerprint. There is no item at all connected to the defendant with that house. There is no item at all connected to the defendant with that woman.” Pet. Ex. 46 (Opening and Closing Statements of Trial) at 68.

⁴⁸³ “One of the biggest holes in the evidence in this case is Michael Holman. We do have trace evidence on him.” *Id.* at 69; “[I]f Michael Holman or somebody else killed Pat Jeschke, then she didn’t.” *Id.* at 71. Also see *id.* at 70-72.

⁴⁸⁴ Pet. Ex. 46 (Opening and Closing Statements of Trial) at 54.

⁴⁸⁵ *Id.* at 73.

⁴⁸⁶ *Id.* at 54, 69, 70, and 72.

untrue.⁴⁸⁷ Because the undisclosed evidence would have considerably strengthened the defense case, and significantly weakened the prosecution theory, there is more than a reasonable probability that disclosure of the evidence would have affected the outcome of the trial.

Records of Holman's criminal conduct in the months before and after Ms. Jeschke's murder would also have been powerful evidence to support Ms. Hemme's trial defense. Records of his insurance fraud case make clear that Holman's truck was the one seen near Ms. Jeschke's home the night she was killed.⁴⁸⁸ His burglary and voyeurism cases demonstrate that he had both the motive to steal from and stalk the victim. His possession and attempted use of the victim's credit card are also consistent with the *modus operandi*⁴⁸⁹ he employed in the two home burglaries he committed in 1981.⁴⁹⁰

All of the suppressed information would have been powerful information to attack the integrity of the SJPD's investigation. In *Kyles v. Whitley*, the Supreme Court found the suppression of evidence calling into question the objectivity of a government informant prejudicial because it "revealed a remarkably uncritical attitude on the part of

⁴⁸⁷ Pet. Ex. 25 (Mar. 4 and 12, 1980 FBI Reports), Pet. Ex. 27 (Mar. 30, 1981 FBI Report Fingerprints).

⁴⁸⁸ Compare Pet. Ex. 39 (Truck photos) and the truck described in Pet. Ex. 69 (Nov. 14, 1980 Hilda Blank Statement).

⁴⁸⁹ Detectives Trainum and Judd, both former property crime detectives who have investigated hundreds of burglaries, testified that burglaries and murders are often linked. HHT at 449-50 and 742-43.

⁴⁹⁰ Pet. Ex. 51 (Woodhull Burglary File) at AGO_001143-44 (John Scott Smith's written statement) (describing Holman's use of a check stolen from the Woodhull home to purchase a Walkman, and the interruption of Holman's attempt to steal credit card information from Smith's home).

the police”⁴⁹¹ that would have enabled the defendant to “attack the reliability of the investigation in failing to even consider [the informant’s] possible guilt.”⁴⁹²

The Court finds that the suppressed evidence would have empowered Ms. Hemme to argue that the SJPD had, at best, been negligent in choosing to end the investigation into Holman despite mounting evidence against him—or, at worst, had done so deliberately to avoid scandal and criticism. Either would have sewn doubt in the minds of the jury.

The Court finds that the evidence linking Holman to the murder, discussed *supra* was significant. Det. Fueston testified that just a small portion of the evidence linking Holman to the murder—his possession of Ms. Jeschke’s purse and credit card—would have been enough to arrest and charge an alternate suspect.⁴⁹³ In fact, Holman was linked to the murder by much more. He admitted,⁴⁹⁴ and eyewitnesses corroborated,⁴⁹⁵ that he was near the victim’s home the night she was killed. The alibi he provided—and refused to provide details to support⁴⁹⁶—was proven false.⁴⁹⁷ Additional physical

⁴⁹¹ *Kyles*, 514 U.S. at 444.

⁴⁹² *Id.* at 445.

⁴⁹³ HHT at 316.

⁴⁹⁴ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

⁴⁹⁵ See Pet. Ex. 42 (Nov. 14, 1980 Hilda Blank Statement), Resp. Ex. F (Jeschke Police Reports) at 13.000551 (Nov. 13, 1980 Statement of Shawn Wells), and Pet. Ex. 39 (Truck Photos).

⁴⁹⁶ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman) at 13.001122: “When we asked Mike to provide more information about “Mary” so we could verify his story he said he could not. We asked him to draw us a diagram of the interior of the motel cabin, but he refused.”

⁴⁹⁷ See Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi); HHT at 285; and Pet. Ex. 12 (Nov. 13, 1980 Vicky Heberlee Statement).

evidence was discovered to link him to the crime. Yet, the SJPD ended their efforts to investigate Holman for the murder without discovering any evidence that cleared him of suspicion.⁴⁹⁸ Instead of being charged with murder, Holman was offered a plea deal to resolve an insurance fraud case that ensured he could not be prosecuted.⁴⁹⁹ When he was re-interviewed in 1985, he was asked to sign a waiver of rights, and was not confronted with any of the evidence uncovered in the years since his last interrogation.⁵⁰⁰

The suppressed evidence demonstrates “a remarkably uncritical attitude by police”⁵⁰¹ towards the possibility that Holman was a killer. Holman’s explanation for why he was near Ms. Jeschke’s home and possessed her credit card was, by his own admission, implausible: he told his interviewers “we were not going to believe his story...”⁵⁰² In fact, investigators had ample reason to disbelieve Holman’s stories, because he had repeatedly demonstrated that he was a brazen liar.⁵⁰³ Still, Holman was

⁴⁹⁸ HHT at 326. *See also* HHT at 679 (Robb’s testimony that he did not believe Holman was cleared of the Patricia Jeschke murder when Ms. Hemme was tried).

⁴⁹⁹ *See* Pet. Ex. 58 (Holman Petition to Enter a Plea of Guilty).

⁵⁰⁰ HHT at 282-83 and 451.

⁵⁰¹ *Kyles*, 514 U.S., at 444.

⁵⁰² Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman) at 13.001120.

⁵⁰³ Holman lied by falsely reporting the theft of his car and the burglary of his home—on the same day. Resp. Exs. G (Police Reports--Holman Ins Fraud) and H (Police Reports--Holman Burglary). The day before his Dec. 19 interrogation, Holman began to concoct a story about why he committed insurance fraud before abruptly admitting his dishonesty. Pet. Ex. 50 (Holman A-D) at 13.000214. When he was caught hiding in a closet during an attempted burglary of his brother-in-law’s home in 1981, he explained that “he wanted to make a business transaction at [the] house.” Pet. Ex. 51 (Woodhull Burglary File) at AGO_001144. That same year, when he was caught peeping into the window of a recent sexual assault victim late at night, he explained to Det. Gasper “he was doing a friend a favor by watching the friend’s wife.” Pet. Ex. 40 (Jun. 3, 1981 Gasper Police Report) at 13.00003.

not thoroughly pursued as a suspect following his Dec. 19 statement.⁵⁰⁴ None of Holman's colleagues, friends, neighbors, or family were approached by police to discuss his behavior around the day Ms. Jeschke was killed.

Taken together, the nondisclosure of the earring evidence, FBI reports, and Holman crime evidence deprived Ms. Hemme of powerful proof that someone else committed the murder, evidence that tied Holman directly to the crime scene at the time the crime was committed and to the victim herself, and thus created reason to doubt Ms. Hemme's statements. Nondisclosure also deprived Ms. Hemme of the ability to argue that the SJPD failed in their duty to thoroughly investigate whether a fellow officer committed the crime and, instead, focused narrowly on the statements of a psychiatric patient. The suppression renders the verdict unworthy of confidence, and Ms. Hemme's conviction should be vacated.

B. Actual Innocence

Missouri law recognizes that incarceration of an innocent person is a manifest injustice; innocence alone justifies habeas corpus relief.⁵⁰⁵ A freestanding claim of actual innocence, if shown by clear and convincing evidence, provides grounds for habeas relief without the need to prove any constitutional violation at trial, as is required under the

⁵⁰⁴ Compare the SJPD's investigation of Holman for the Jeschke murder to their investigation of Holman for insurance fraud conducted the day prior. Ten different officers participated in the fraud investigation on December 18, 1980. Four officers and Holman's wife were interviewed and gave written statements for that investigation. Resp. Ex. G (Police Reports—Holman Ins Fraud).

⁵⁰⁵ *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003).

“cause and prejudice” standard.⁵⁰⁶

While *State ex rel. Amrine v. Roper*⁵⁰⁷ was a death penalty case, nothing in the decision limits the remedy to *death* sentences.⁵⁰⁸ *Amrine* did not depend on Missouri’s death penalty statute for its result; its holding was based on the finding of a manifest injustice, the historical standard for habeas corpus relief in Missouri. “Amrine’s petition for habeas relief turns on the application of the *manifest injustice* standard to his claim of actual innocence.”⁵⁰⁹ Missouri courts have awarded actual innocence relief under *Amrine* before⁵¹⁰ and after⁵¹¹ *Lincoln v. Cassady*, the case relied upon by Respondent, Resp. Br. at 47, was decided.⁵¹² The Missouri Supreme Court has never held that *Amrine* does not apply in non-capital cases.⁵¹³

⁵⁰⁶ “It is incumbent upon the courts of this state to provide judicial recourse to an individual who, after the time for appeals has passed, is able to produce sufficient evidence of innocence to undermine the habeas court’s confidence in the underlying judgment that resulted in defendant’s conviction and sentence...” *Id.* at 547.

⁵⁰⁷ *Amrine*, 102 S.W.3d at 543.

⁵⁰⁸ Indeed, *Amrine* itself relied upon opinions in non-capital cases. *See, e.g., Ex parte Elizondo*, 947 S.W.2d 202, 204 (Tex. Crim. App. 1996) (“We think it clear ... that the incarceration of an innocent person is as much a violation of the Due Process Clause as is the execution of such a person.”); *Miller v. Comm’r of Correction*, 700 A.2d 1108 (Conn. 1997) (granting actual innocence relief to non-capital prisoner); *People v. Washington*, 665 N.E.2d 1330 (Ill. 1996) (granting actual innocence relief to non-capital prisoner).

⁵⁰⁹ *Amrine*, 102 S.W.3d at 546 (emphasis added).

⁵¹⁰ *E.g., Kezer v. Dormire*, Cause No. 08AC-CC00293 (Mo. Cir. Ct., Cole Cnty. 2009).

⁵¹¹ *See State ex. rel. Robinson v. Cassady*, SC95892 (2018); *see also State ex. rel. Nash v. Payne*, SC97903 (2020); *see also Kidd v. Korneman*, No. 18DK-C00017 (Mo. Cir. Ct. Daviess County, Aug. 14, 2019).

⁵¹² *In re McKim v. Cassady*, 457 S.W.3d 831, 846 (Mo. App. W.D. 2015), *citing House v. Bell*, 547 U.S. 518, 538 (2006).

⁵¹³ Though Respondent cites *Lincoln* in its Post-Hearing Brief, that opinion makes clear that it does not stand for what Respondent uses it to argue about *Amrine*’s applicability to non-capital cases: “It remains an open and unanswered question whether either the

A reasonable probability of actual innocence can substitute for “cause and prejudice,” providing a “gateway” that entitles a habeas petitioner to review on the merits of the petitioner's otherwise defaulted constitutional claim.⁵¹⁴ Further, the State’s suppression of exculpatory evidence in violation of *Brady v. Maryland* can satisfy the “cause and prejudice” gateway to habeas corpus relief.⁵¹⁵ The Missouri Supreme Court has explained that “[j]ustice requires that this Court consider *all available evidence* uncovered following [the petitioner’s] trial that may impact his entitlement to habeas relief.⁵¹⁶

A habeas petitioner seeking to demonstrate actual innocence may use *any* new evidence to support her claim, not just that evidence which her trial counsel could not have discovered through due diligence.⁵¹⁷ In *McQuiggan v. Perkins*, the U.S. Supreme

continued incarceration or execution of a person who clearly and convincingly establishes his actual innocence after a constitutionally adequate trial violates due process, warranting habeas relief pursuant to a freestanding claim of actual innocence.” *Lincoln v. Cassady*, 517 S.W.3d 11, 22 (Mo. App. W.D. 2015)

⁵¹⁴ *Amrine*, 102 S.W.3d at 546; *see also* *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. banc 2000) (citing *Schlup v. Delo*, 513 U.S. 298, 327-28 (1995)); *Murray v. Carrier*, 477 U.S. 478, 496 (1986)).

⁵¹⁵ *Engel*, 304 S.W.3d at 129: “Because [Engel] has shown that the nondisclosure of the Mammolito impeachment evidence was prejudicial for Brady purposes, he also has established the “cause and prejudice” necessary to overcome the procedural bar to granting him habeas relief.”

⁵¹⁶ *Id.*, at 126 (emphasis added).

⁵¹⁷ *In re McKim v. Cassady*, 457 S.W.3d at 846, *citing* *House v. Bell*, 547 U.S. 518, 538 (2006). The Eighth Circuit Court of Appeals has been alone in excluding evidence that a trial counsel could have discovered from consideration in their application of *Schlup*; every other court in the country, including Missouri courts, rejected the Eighth Circuit’s approach. *See, e.g.,* *Gomez v. Jaimet*, 350 F.3d 673, 679-80 (7th Cir. 2003); *Griffin v. Johnson*, 350 F.3d 956, 962-63 (9th Cir. 2003); *Houck v. Stickman*, 625 F.3d 88, 94 (3d Cir. 2010); *Lopez v. Trani*, 628 F.3d 1228, 1230-31 (10th Cir. 2010); *In re McKim v.*

Court overrode the Eighth Circuit’s “due diligence” rule in the federal court system by expressly “reject[ing] the [] argument that habeas petitioners who assert convincing actual-innocence claims must prove diligence to cross a [] court’s threshold....”⁵¹⁸ As the Court of Appeals has recognized, the Missouri Supreme Court has also “signaled a willingness to treat any evidence that was unknown or unavailable to a defendant at the time of trial as ‘new evidence,’ without regard to whether the evidence could have been discovered or developed with reasonable diligence at the time of trial.”⁵¹⁹ Moreover, imposing such a requirement is inconsistent with the very purpose behind actual innocence relief, and it is inconsistent with *Schlup* itself, in which the actual innocence gateway was satisfied by the same evidence that established the defendant's claim of ineffective assistance of counsel.⁵²⁰ A gateway assessment thus requires a “holistic judgment about ‘all the evidence’ and its likely effect on reasonable jurors applying the reasonable-doubt standard.”⁵²¹

This Court finds that the totality of the evidence supports a finding of actual

Cassady, 457 S.W.3d 831, 846 (Mo. App. W.D. 2015) (“No United States Supreme Court decision has limited the concept of ‘new evidence’ in the context of actual innocence habeas claims to evidence that could not have been discovered with reasonable diligence at the time of trial.”).

⁵¹⁸ *McQuiggan v. Perkins*, 133 S. Ct. 1924, 1935 (2013).

⁵¹⁹ *In re McKim*, 457 S.W.3d at 831 (citing *Engel*, 304 S.W.3d at 126).

⁵²⁰ *Schlup v. Delo*, 912 F. Supp. 448 (E.D. Mo. 1995); *Schlup v. Bowersox*, No. 4:92CV433 JCH, 1996 U.S. Dist. LEXIS 8887 (E.D. Mo. May 2, 1996) (habeas relief granted based on finding that constitutional violation led to conviction of Schlup even though he was probably innocent).

⁵²¹ *House v. Bell*, 547 U.S. 518, 539 (2006).

innocence.⁵²² No witnesses linked Ms. Hemme to the crime, to the victim, or the area in which the murder occurred. She had neither motive to harm Ms. Jeschke nor any connection to her. No items positively identified as belonging to Ms. Jeschke were ever found in Ms. Hemme’s possession. No forensic evidence collected by the State connected Ms. Hemme to the murder or the crime scene; in fact, everything that was forensically tested excluded her. The claim that she knew things “only the killer could know” breaks down because virtually every detail of the crime was reported in the press, known to police who questioned her, or both. The only evidence linking Ms. Hemme to the crime was that of her own inconsistent, disproven statements, statements that were taken while she was in psychiatric crisis and physical pain. A new, longitudinal analysis of Ms. Hemme’s psychiatric condition and the factors that make a person more likely to falsely confess—all of which Ms. Hemme had—is powerful proof the jury never heard.⁵²³

In contrast, Michael Holman’s links to the murder are substantial and objective. The jury was aware of just two facts regarding Holman: that he possessed the victim’s credit card and attempted to use it to purchase camera equipment the day that Ms. Jeschke’s body was discovered, and that hairs found at the crime scene displayed characteristics consistent with his own. Ms. Hemme has uncovered exculpatory evidence that was improperly withheld by the prosecution in violation of her constitutional right to a fair trial,

⁵²² *In re McKim* at 842-43.

⁵²³ HHT at 52.

satisfying the “cause and prejudice” standard:⁵²⁴ that the State withheld FBI reports that substantially weakened their case against her,⁵²⁵ and withheld evidence that further implicated Holman, including his possession of the victim’s earrings.⁵²⁶ The State also withheld evidence of his extensive criminal behavior, which included repeated home burglaries, crimes of dishonesty, and stalking offenses.⁵²⁷ Additional evidence also established that Holman was near Ms. Jeschke’s home the night she was killed;⁵²⁸ and that his explanation for why he was in the area on the evening of the murder was untrue, all of which the jury did not hear.⁵²⁹ This Court also finds the record shows the SJPD failed to seriously investigate Holman as a suspect.⁵³⁰ Ms. Hemme has met her *Schlup* gateway

⁵²⁴ See *State ex rel. Koster v. McElwain*, 340 S.W.3d 221, 248, 251 (Mo. Ct. App. 2011) (citing *Engel*, 304 S.W.3d at 126).

⁵²⁵ Pet. Ex. 26 (Jan. 29, 1981 FBI Report Fingerprints); Pet. Ex. 27 (Jan. 30, 1981 FBI Report Fingerprints); Pet. Ex. 66 (Apr. 8, 1981 Vernon Burris FBI Report).

⁵²⁶ Ex. 1 (Dec. 22, 1980 Fueston Police Report re: earring identification); Pet. Ex. 2 (Dec. 22, 1980 Earl McGlothlin Case Statement); Pet. Ex. 3 (Dec. 23, 1980 Evidence custody report); Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi).

⁵²⁷ These documents include records of prosecutions of Michael Holman for three home burglaries (Pet. Exs. 50 and 51, and Resp. Ex. E), a stalking offense (Pet. Exs. 40 and 41); and other crimes of dishonesty (Pet. Exs. 38, 39, 50, Resp. Exs. E and H).

⁵²⁸ See Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman); Pet. Ex. 42 (Nov. 13, 1980 Lynn Patet Statement), Pet. Ex. 69 (Nov. 14, 1980 Hilda Blank Statement), Resp. Ex. F (Jeschke Police Reports) at 13.000551 (Nov. 13, 1980 Statement of Shawn Wells); and Pet. Ex. 39 (Truck photos).

⁵²⁹ See Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi) and Pet. Ex. 12 (Nov. 13, 1980 Vicky Heberlee Statement).

⁵³⁰ See Resp. Ex. F (Jeschke Police Reports) (containing records that the SJPD conducted only a two-day investigation into Holman for the Jeschke murder that ended despite the discovery of substantial evidence to link him to the murder) and HHT at 326 and 679 (Det. Fueston and Robb's testimony that Holman had not been cleared of suspicion).

burden.⁵³¹

In addition to *Schlup*'s procedural gateway, Ms. Hemme has produced sufficient evidence to establish "a clear and convincing showing of actual innocence that *undermines confidence in the correctness of the judgment.*"⁵³² Like in *Amrine*, it would be difficult to imagine that the State could prove Ms. Hemme's guilt beyond a reasonable doubt based on the weight of the evidence now available that ties Holman to this victim and crime scene, and excludes Ms. Hemme. This Court finds the evidence establishing Ms. Hemme's innocence to be clear and convincing.

C. Ineffective Assistance of Counsel

Ms. Hemme alleges that trial counsel was ineffective for failing to present available exculpatory evidence. Ms. Hemme's showing of actual innocence enables this Court to reach the merits of Ms. Hemme's claim.⁵³³ Under *Strickland v. Washington*, a petitioner has the burden of showing by a preponderance of the evidence that the counsel's conduct was deficient and that, but for that deficient conduct, there is a

⁵³¹ See *House v. Bell*, at 547 U.S. at 542 (finding that evidence that undermines the state's theory of guilt and strengthen the inference that the victim was murdered by someone else can comprise gateway evidence of innocence). "The *Carrier* standard reflects the proposition, firmly established in our legal system, that the line between innocence and guilt is drawn with reference to a reasonable doubt. *Schlup*, 513 U.S. at 328, citing *In re Winship*, 397 U.S. 358 (1970).

⁵³² *Amrine*, 102 S.W.3d at 543 (emphasis added).

⁵³³ *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 546 (Mo. banc 2003) (ruling that a showing of actual innocence by a preponderance of the evidence can substitute for "cause and prejudice," providing a "gateway" that entitles a habeas petition to review on the merits of the petitioner's otherwise defaulted constitutional claim.).

reasonable probability that the result of the proceeding would have been different.⁵³⁴

Deficient performance is when trial counsel “fail[s] to exercise the customary skill and diligence of a reasonably competent attorney under similar circumstances” and that is not the “result of reasonable professional judgment.”⁵³⁵ Even where there is a claim that a decision was a matter of trial strategy, that claim bars relief only if the strategy pursued was reasonable.⁵³⁶ In determining whether a defendant was prejudiced by counsel’s deficient performance, “the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.”⁵³⁷ Indeed, Missouri’s Supreme Court has held that the “failure to pursue a single important item of evidence may demonstrate ineffective assistance and prejudice sufficient to warrant a new trial.”⁵³⁸

i. Ms. Hemme’s trial counsel was ineffective in his failure to use evidence that exculpated her and linked Holman to the murder

Respondent’s primary argument against Ms. Hemme’s *Strickland* claim is that these same claims were raised and decided against her in her Rule 29.15 motion. Resp.

⁵³⁴ *Strickland v. Washington*, 466 U.S. 668, 696 (1984); *Butler v. State*, 108 S.W.3d 18, 25 (Mo. App. 2003).

⁵³⁵ *Strickland*, 466 U.S. at 687, 691.

⁵³⁶ *Wilkes v. State*, 82 S.W.3d 925, 930 (Mo. 2002); *see also Covington v. State*, 569 S.W.3d 469, 475 (Mo. Ct. App. E.D. 2018); *Anderson v. State*, 196 S.W.3d 28, 40 (Mo. banc 2006); *State v. Hamilton*, 871 S.W.2d 31, 34 (Mo. Ct. App W.D. 1993).

⁵³⁷ *Strickland*, 466 U.S. at 695.

⁵³⁸ *State v. Wells*, 804 S.W.2d 746, 748 (Mo. 1991) (citing *Hayes v. State*, 711 S.W.2d 876 (Mo. banc 1986)). In *Wells*, the single piece of significant evidence ignored by defense counsel was a letter written by a witness to the defendant that she knew he was innocent, and that someone else was responsible for the murder. *Wells*, 804 S.W.2d at 747-48.

Br. at 64. This Court disagrees. Contrary to Respondent’s arguments, Ms. Hemme has not previously raised a claim that her lawyer was ineffective for failing to introduce evidence that Holman admitted to being near the victim’s home the night she was killed; nor that his alibi had been proven false; nor that he possessed the victim’s earrings. Nor did she previously raise a claim alleging ineffectiveness for failing to introduce evidence concerning Holman’s criminal activity. Ms. Hemme also did not previously raise a claim that her lawyer was ineffective either for failing to introduce an FBI report showing that the State’s argument attempting to minimize Holman’s connection to the crime scene was untrue or for failing to introduce an FBI report showing a palm print foreign to the victim and Ms. Hemme was recovered TV antenna cable. Rather, Ms. Hemme’s ineffective assistance claim raised in proceedings pursuant to Missouri Rule 29.15 was that her counsel failed to “investigate and locate material witnesses,” including Michael Holman.⁵³⁹

Counsel’s failure to use this evidence is not part of the claim raised in proceedings pursuant to Missouri Rule 29.15. Nor was Holman’s presence needed or helpful to introducing that evidence.⁵⁴⁰ Counsel’s failures to introduce these FBI reports, similarly,

⁵³⁹ See Resp. Ex. C (Findings of Fact) at 9.

⁵⁴⁰ Respondent argues that the evidence before the Court indicates trial counsel “thoroughly investigated Holman.” Resp. Br. at 71, *citing*, Resp. Ex. C (Findings of Fact) at 10. This Court disagrees with that conclusion. Trial counsel apparently testified at the 29.15 hearing that he could not locate Holman as a trial witness. But if trial counsel had actually done this investigation, he would have learned that Holman was easy to find: he was incarcerated at the time of Ms. Hemme’s trial. Pet. Ex. 9 (May 2, 1985 Reinterview of Holman).

was also not part of this claim; no FBI agent or law enforcement is listed as any of the people Ms. Hemme alleged ineffectiveness for Mr. Duncan's failure to "investigate and locate."⁵⁴¹ Nor was counsel's failure to introduce evidence of Holman's similar criminal activity previously raised.⁵⁴² Because Ms. Hemme has not previously litigated these ineffective assistance of counsel claims, this Court finds that she is not barred from doing so now.⁵⁴³

The failure of Ms. Hemme's trial counsel to use evidence supporting the conclusion that Holman committed the murder was both deficient and prejudicial to Ms. Hemme. Her actual innocence allows this Court to reach the merits of this claim notwithstanding any procedural default.⁵⁴⁴

Duncan's failure to use Holman's December 19th statement admitting to being present near the crime scene the night the murder took place⁵⁴⁵ was unreasonable. So, too, was his failure to use evidence that Holman's explanation for his presence near Ms. Jeschke's home was proven false.⁵⁴⁶ If the information contained within the earring

⁵⁴¹ See Resp. Ex. C (Findings of Fact) at 10.

⁵⁴² See *id.* at 9-11.

⁵⁴³ *State ex rel. Dorsey v. Wagstaff*, 2024 WL 1194417 at *6, citing *Dorsey v. State*, 448 S.W.3d 276, 300 (Mo. 2014), where the exact same ineffective assistance of counsel claim (that counsel had a conflict of interest from being paid a flat fee) was raised; see also *State ex rel. Woodworth v. Denney*, 396 S.W.3d at 341 (wherein defendant was not required to call defense counsel to establish suppression).

⁵⁴⁴ *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 546 (Mo. banc 2003) (Ruling that a showing of actual innocence by a preponderance of the evidence can substitute for "cause and prejudice," providing a "gateway" that entitles a habeas petition to review on the merits of the petitioner's otherwise defaulted constitutional claim.).

⁵⁴⁵ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

⁵⁴⁶ Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi)

evidence, FBI reports, and evidence of Holman’s other criminal activity was available to trial counsel prior to trial, his failure to investigate, to present that information to the jury, to use the information to challenge the reliability of the State’s evidence, or to object to the prosecutor’s statements made during closing arguments were, individually and collectively, objectively unreasonable decisions in light of Ms. Hemme’s defense.

The failure to use the best evidence linking Holman to the murder to defend Ms. Hemme is the result of “inattention, not reasoned strategic judgment,”⁵⁴⁷ and this “failure to pursue [this]... evidence may demonstrate [counsel’s] ineffective assistance and prejudice sufficient to warrant a new trial.”⁵⁴⁸ Even where there is a claim that a decision was a matter of trial strategy, that claim bars relief only if the strategy pursued was reasonable.⁵⁴⁹ If counsel was provided this favorable information, he had a duty to “take the steps necessary to produce the evidence at trial.”⁵⁵⁰

At minimum, if trial counsel was aware of the additional evidence implicating Holman, he could have elicited testimony during cross-examination of witnesses who had personal knowledge of Holman and had investigated his conduct, such as Lt. Boyer (who interrogated Holman when he admitted being next to Ms. Jeschke’s home the night she was

⁵⁴⁷ *Wiggins v. Smith*, 539 U.S. 510, 526 (2003).

⁵⁴⁸ *Wells*, 804 S.W.2d at 748. Det. Fueston and Helen McGlothlin both testified at Ms. Hemme’s trial, and both were witnesses to the identification of Ms. Jeschke’s earrings. Mr. Duncan could have attempted to elicit testimony about that identification during cross-examination of those witnesses but made no attempt to do so.

⁵⁴⁹ *Wilkes v. State*, 82 S.W.3d 925, 930 (Mo. 2002); *see also Covington v. State*, 569 S.W.3d 469, 475 (Mo. Ct. App. E.D. 2018); *Anderson v. State*, 196 S.W.3d 28, 40 (Mo. banc 2006); *State v. Hamilton*, 871 S.W.2d 31, 34 (Mo. Ct. App W.D. 1993).

⁵⁵⁰ *Perkins-Bey v. State*, 735 S.W.2d 170, 171 (Mo. 1987).

killed),⁵⁵¹ Det. Fueston (who investigated and disconfirmed Holman’s alibi)⁵⁵², or Lt. Muehlenbacher (who discovered evidence that Holman was committing burglaries).⁵⁵³ Failure to take any steps to elicit this evidence falls below professional standards.

Whether or not Mr. Duncan knew about all the evidence linking Holman to the Jeschke murder, his failure to investigate Holman fell below the standard of reasonably competent counsel. The record makes clear that trial counsel did not locate or interview Holman and incorrectly believed Holman was living out of state.⁵⁵⁴ In fact, Holman at the time of Ms. Hemme’s trial was both in-state and easily findable: newspaper coverage of Ms. Hemme’s trial indicated he was then incarcerated at Missouri State Penitentiary in Jefferson City, Missouri.⁵⁵⁵ A record of Holman’s conviction was stored in the same courthouse where Ms. Hemme was on trial; a simple phone call to the Missouri Division of Adult Institutions would have told counsel to which prison Holman had been assigned. Holman was a “witness with material knowledge” and defense counsel was obliged to use every effort to secure his testimony.⁵⁵⁶

Had they in fact been disclosed, trial counsel could have used the FBI reports to

⁵⁵¹ See Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

⁵⁵² See Pet. Ex. 10 (Dec. 22, 1980 Fueston Report re: investigation of Holman alibi)

⁵⁵³ See Pet. Ex. 50 (Holman A-D) at 13.000229 (Dec. 19, 1980 Consent to Search).

⁵⁵⁴ Resp. Ex. D (Prosecuting File Hemme) at AGO_001593 (Defendant's Response to State's Request for Discovery). In his response to the State’s request for discovery, Mr. Duncan listed as a potential witness Michael Holman, indicating: “who is believed to presently be in Lincoln, Nebraska.”

⁵⁵⁵ Pet. Ex. 68 (“Ex-Officer Had Mysterious Role in Hemme Case”).

⁵⁵⁶ *Wilkes*, 82 S.W.3d at 930.

support his argument that no evidence linked Ms. Hemme to the murder,⁵⁵⁷ and to rebut factually untrue and prejudicial arguments that the State used to minimize the weaknesses of their case.⁵⁵⁸ The failure to use the FBI reports to show “unassailable forensic evidence”—including her exclusion from the palm print found on the cut TV antenna cable found next to the victim’s body—“to attack the State’s case and to support his claim of innocence”⁵⁵⁹ and to correct the State’s inculcating, untrue arguments about Ms. Hemme allegedly destroying evidence, was deficient performance that prejudiced Ms. Hemme in light of the weak case against her—tied only to her statements—which this very evidence undermines.

Respondent argues that Ms. Hemme has not shown trial counsel’s performance to be deficient because she “did not present testimony from her trial counsel or herself,” and therefore cannot overcome the presumption that counsel acted reasonably. Resp. Br. at 66-67. The law, however, does not require testimony from counsel or the defendant;⁵⁶⁰ rather, the law requires that the presumption of reasonableness be rebutted, which can be done, among other ways, through exhibits introduced in post-conviction proceedings, or through reference to the record developed at trial, including arguments made (or not made) by

⁵⁵⁷ Pet. Ex. 46 (Opening and Closing Statements of Trial) at 68.

⁵⁵⁸ See e.g. Pet. Ex. 46 (Opening and Closing Statements of Trial) at 69, 70, 72, 73 (Robb’s arguments re: the lack of trace evidence linking Ms. Hemme to the crime scene, and his suggestion that the hair linked to Holman could have come from Ofc. Vernon Burris,

⁵⁵⁹ *Green*, 601 S.W.3d at 293 (internal citations omitted).

⁵⁶⁰ Contrary to Respondent’s arguments, neither *Strickland* nor progeny require testimony from counsel to rebut reasonableness. See *Strickland*, 466 U.S. at 689.

counsel.⁵⁶¹ There is no conceivable strategic justification for not investigating and presenting evidence that would have increased the persuasiveness of the defense that trial counsel actually argued to the jury.⁵⁶²

Ms. Hemme presented the earring reports and FBI reports. Further, she presented the testimony of Harman, who testified that there was “no conceivable reason” not to use the earring evidence in Ms. Hemme’s defense, because this evidence “would have made a difference” in the eyes of the jury, when trial counsel’s clear defense was to connect Michael Holman to this murder.⁵⁶³ The exculpatory value of the evidence in question is clear and counsel’s failure to present that evidence is unreasonable in the context of the

⁵⁶¹ *Trimble v. State*, 693 S.W.2d 267, 271-72 (Mo. App. W.D. 1985) (without hearing from counsel but considering witness testimony that could have been heard had counsel presented that witness, the court concluded that counsel’s actions were not reasonable under prevailing professional norms, and that there was “no tactical reason not to present the evidence to the jury.” *Id.* at 272-73. *See also United States v. Cronin*, 466 U.S. 648, 660-62 (1984). The cases Respondent cites in support of their argument do not establish that ineffective assistance of counsel cannot be established without the testimony of trial counsel or the defendant, and concern cases where, unlike here, trial counsel was “alive and available” and was not called, or cases where counsel *was not called* and the reviewing found, based on the trial record alone, that counsel’s performance was deficient; *see* Resp. Br. at 67, *citing Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986) (finding that trial counsel, who did not testify at the post-conviction hearing, rendered ineffective assistance based on the trial record); *see also Morris v. Kimmelman*, 579 F.Supp. 796, 799 (D. N.J. 1984); or circumstances where the claim was denied after still living counsel did not testify but *no* additional testimony or documentary evidence was presented to prove deficient performance. *See* Resp. Br. at 67, *citing Cole v. State*, 23 S.W.3d 927, 931-32 (Mo. App. 2007) (appellant presented no evidence, testamentary or otherwise, to rebut presumption of effectiveness). None of those cases apply here.

⁵⁶² *See* Pet. Ex. 46 (Opening and Closing Statements of Trial) at 69-72, arguing that the physical evidence implicated Michael Holman.

⁵⁶³ HHT at 90-91; 73-74.

record alone.⁵⁶⁴

Further, the fact that trial counsel presented some evidence showing Holman's connection to the crime scene does not mean that Ms. Hemme was not prejudiced by his failure to present additional inculpatory evidence that cumulatively tied Holman to this crime. The fact that Holman had the victim's earrings in his possession not only ties him to an intimate object belonging to Ms. Jeschke, one expected to be found in a woman's bedroom or on her body, but it also negates his implausible excuse for *why* he had and was using the victim's credit card: that he found the victim's purse by chance and took from it only a credit card, discarding the purse and the rest of its contents in a dumpster at his home.⁵⁶⁵ The fact that Holman had this intimate evidence belonging to the victim not only ties him directly to her, but it makes the credit card evidence more inculpatory, too: there is no innocent explanation, nor even excuse Holman offered, that puts Holman (otherwise a stranger to the victim) in possession of these two items.⁵⁶⁶ And when that evidence is considered together with what else defense counsel could have argued to the jury but did not—all without ever having to call Holman—prejudice is even clearer.

Similarly, the FBI reports directly support Ms. Hemme's defense: that *someone else* committed the murder.⁵⁶⁷ This evidence also shows that law enforcement did not fully investigate Holman: Robb testified expressing surprise that Holman's fingerprints were

⁵⁶⁴ See *Trimble*, 693 S.W.2d at 271-72.

⁵⁶⁵ Pet. Ex. 43 (Dec. 19, 1980 Interrogation of Michael Holman).

⁵⁶⁶ Holman's statements about the purse and his fake alibi are admissible as a declaration against penal interest. See *State v. Carroll*, 629 S.W.2d 483 (Mo. App. W.D. 1981).

⁵⁶⁷ See, e.g., Pet. Ex. 46 (Opening and Closing Statements of Trial) at 74-77.

never sent to the FBI for comparison, saying that he “would have thought we would have pursued that as more of an investigation of Michael Holman. Because Michael Holman had a connection to the case and I think he was a person of interest.”⁵⁶⁸ For there to be evidence showing the police ignored investigative leads into Holman that was not presented to the jury is deficient performance by trial counsel.⁵⁶⁹ Similarly, evidence of Holman’s criminal activity—breaking into other people’s homes without producing signs of forced entry; trespassing and stalking—combined with the fact that he *placed himself* next to the crime scene at the time she was killed, would have been admissible to show both motive and *modus operandi*.

ii. Failure to introduce evidence concerning Ms. Hemme’s psychiatric and physical condition when interrogated was ineffective and prejudiced Ms. Hemme

Second, this Court finds Ms. Hemme’s trial attorney ineffective for failing to introduce readily available evidence of Ms. Hemme’s condition at the time she was questioned, evidence that would have raised doubts in the minds of the jurors as to the reliability of her statements. In the face of such jarring evidence of psychiatric distress, confusion, and physical pain, for counsel to do *nothing* to enlighten the jury about the circumstances in which these statements were developed was insufficient. Defense counsel could have called a nurse or doctor to talk about the medications Ms. Hemme was being

⁵⁶⁸ HHT at 665.

⁵⁶⁹ *Kyles v. Whitley*, 514 U.S. 419, 420 (1995) (evidence that undermines “the thoroughness and even the good faith of the investigation” is favorable).

prescribed, what they are designed to do (e.g. “reorder thoughts” and restrain behavior)⁵⁷⁰, their relevant common side effects (rapid induction of sleep, confusion, memory loss, among others)⁵⁷¹ and unintended, painful side effects readily observed in Ms. Hemme (dystonic reaction).⁵⁷² While literature regarding false confessions was certainly underdeveloped compared to present day, investigating and explaining to a jury a defendant’s mental or physical state during an interrogation was certainly well within the standard of care in 1985, let alone eliciting basic, observable facts about a defendant’s demeanor.⁵⁷³ Further, Missouri law would have allowed counsel to present the testimony of mental health experts on the impact of Ms. Hemme’s psychiatric impairments and medication on her suggestibility, and on her ability to observe, remember, and accurately relay the events that police asked her to describe in her statements.⁵⁷⁴

This failure prejudiced Ms. Hemme. Given that her statements were the only evidence connecting her to this crime, counsel’s failure to present evidence that would have allowed the jury to conclude that she was unable to understand or unable to reliably

⁵⁷⁰ HHT at 160-61.

⁵⁷¹ HHT at 167-68.

⁵⁷² *Id.* at 164. Expert testimony has long been admitted to educate juries about the impact of certain medications and drugs on the body. See *Kenley v. Armontrout*, 937 F.2d 1298 (8th Cir. 1991); see also *State v. Kane*, 586 S.W.2d 812 (Mo. App. 1979).

⁵⁷³ See *Alsbach v. Bader*, 700 S.W.2d 823, 829 (Mo. 1985) (challenging impact of hypnosis on subject’s memory and reliability of statements made); *State v. Bashe*, 657 S.W.2d 321 (1983) (reversing conviction because evidence explaining impact of alcoholism on defendant’s behavior, including statements made, violated defendant’s due process rights); see also *State v. Platt*, 496 S.W.2d 878, 884 (Mo. App. WD 1973) (expert testimony admissible to show that LSD “produces an effect on the central nervous system which causes a person to have hallucinations).

⁵⁷⁴ See *State v. Rauch*, 118 S.W.3d 263 (Mo. App. 2003).

communicate with her interrogators deprived her of a central pillar of her defense. Trial counsel called Ms. Hemme “nuttier than a fruitcake” in passing in closing argument,⁵⁷⁵ but had developed no factual record to show how her psychiatric condition and reactions to the many medications she had been administered impacted her ability to reliably recall and relay information. Failing to establish essential contextual information about Ms. Hemme’s interrogations—that she could not hold her head up straight; that she was subjected to “chemical restraints” designed to overcome her will; that she was administered a “rapid knockout” medication shortly before being questioned, and that she was in significant pain—prejudiced Ms. Hemme.⁵⁷⁶

Eliciting testimony from Ms. Hemme’s treating doctors would have allowed counsel to develop favorable testimony from Det. Fueston, as well. Det. Fueston testified at the hearing that while he did not know what a dystonic reaction was and Ms. Hemme did not appear to him to be in pain, it would have been “very important” for him to know if she was in pain because “obviously if someone is in physical pain during an interrogation, if I did not seek help for them, anything they may or may not tell me could be influenced by levels of pain.”⁵⁷⁷ That testimony, combined with all the contextual information defense counsel failed to present, would have given the jury reason to doubt her statements.

⁵⁷⁵ *Id.* at 69, 71. The fact that counsel made this comment further shows it was not “strategy” to shield the jury from any information about Ms. Hemme’s psychiatric condition; rather, counsel failed to effectively use the available evidence showing Ms. Hemme’s vulnerability, which would have been a basis for reasonable doubt.

⁵⁷⁶ HHT at 167.

⁵⁷⁷ HHT at 376.

This claim has never been litigated before.⁵⁷⁸ Ms. Hemme's challenge in her 29.15 motion was limited to a claim of ineffectiveness for trial counsel's failure to pursue a defense of mental disease or defect and diminished capacity.⁵⁷⁹ There is no evidence in the decision denying Ms. Hemme's 29.15 Motion to Vacate that defense counsel investigated Ms. Hemme's mental status at the time she was interrogated, and no efforts were made to present that evidence to the jury.⁵⁸⁰

This Court finds that trial counsel performed deficiently in failing to present readily available evidence establishing Ms. Hemme's impaired psychiatric condition, heavy medication, and physical and mental side-effects that she suffered during her interrogations, and that Ms. Hemme was prejudiced by trial counsel's inaction.

⁵⁷⁸ See Resp. Ex. C (Findings of Fact).

⁵⁷⁹ See *id.* at 12-16.

⁵⁸⁰ *Ake v. Oklahoma*, 470 U.S. 68 (1985) (competency evaluation was not adequate to meet the defense's need for evaluation into mitigating circumstances).

JUDGMENT

Based on the foregoing, this Court finds that Ms. Hemme is entitled to the Writ of Habeas Corpus and it is GRANTED. It is therefore ordered that the Writ of Habeas Corpus will issue directing Respondent and the State of Missouri to discharge Ms. Hemme unless she is brought to trial within 30 days of this order.

Dated this 14th day of June, 2024.

COURT SEAL OF



LIVINGSTON COUNTY

A handwritten signature in black ink, reading "Ryan W. Horsman". The signature is written over a horizontal line.

Ryan W. Horsman, Judge

FILED

06/14/2024

JANE GANN
CLERK, CIRCUIT COURT
LIVINGSTON COUNTY