



**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

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DATE	COMM	ACTION
1/23/20	SM	Report Submitted
1/27/20	JU	Favorable
2/18/20	ACJ	Recommend: Favorable
	AP	

February 18, 2020

The Honorable Bill Galvano  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 28** – Senator Gibson  
**HB 6507** – Representative Daniels  
Relief of Clifford Williams by the State of Florida

**SPECIAL MASTER'S FINAL REPORT**

THIS IS AN UNCONTESTED CLAIM FOR \$2,150,000 FROM THE GENERAL REVENUE FUND FOR THE PURCHASE OF AN ANNUITY, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE CLIFFORD WILLIAMS FOR 42 YEARS AND 11 MONTHS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

**General Overview**

On May 2, 1976, Clifford Williams (the claimant) and his nephew, Hubert Nathan Myers (Nathan Myers), were arrested and charged with first-degree murder of Jeanette Williams and attempted murder of Nina Marshall. Mr. Williams and Mr. Myers were convicted, eventually both were sentenced to life in prison, and remained incarcerated for 42 years and 11 months.

In seeking post-conviction relief, Mr. Myers sent a letter to the Office of the State Attorney of the Fourth Judicial Circuit in 2017. After the Conviction Integrity Review (CIR) Division was established within the Office of the State Attorney in January

of 2018, the CIR Division began a review and investigation based upon the request of Mr. Myers.<sup>1</sup>

The CIR Division's review and investigation resulted in a report concluding Mr. Myers and Mr. Williams were serving life sentences based upon testimony from one person, and "in the face of overwhelming contradictory forensic evidence and alibi testimony,"<sup>2</sup> which had not been presented to the jury.

The CIR Division found Mr. Myers and Mr. Williams demonstrated claims of actual innocence substantiated by credible evidence<sup>3</sup> and an audit board<sup>4</sup> reviewed the report as part of the CIR Division process. The audit board was unanimous in finding there was not sufficient evidence of guilt to support the convictions; a lack of faith in the convictions; "no definitive proof of innocence, such as DNA evidence"; and there was "sufficient credible evidence to support a finding that the defendants are, in fact, 'probably' innocent of the charges."<sup>5</sup> The State Attorney of the Fourth Judicial Circuit agreed with the findings.<sup>6</sup>

On March 28, 2019, the convictions and sentences of Mr. Myers and Mr. Williams were vacated.<sup>7</sup>

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<sup>1</sup> See Special Master Hearing, Testimony of Shelley Thibodeau (Director of CIR Division), 53:10–55:30 (Oct. 30, 2019) (discussing the CIR process—generally and specifically regarding this case—and that she and an investigator lead the reviews and investigations).

<sup>2</sup> State Attorney's Office of the Fourth Judicial Circuit of Florida, Conviction Integrity Review Division Investigation (CIR Report), 42 (Mar. 2019); see [https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR\\_Investigative\\_Report\\_FINAL\\_3.28.19\\_R.pdf](https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf) (last visited Jan. 16, 2020). The report was authored by Ms. Shelley Thibodeau, Assistant State Attorney and Director of the CIR Division. Special Master Hearing, Testimony from Shelley Thibodeau, 33:30–36:15 (Oct. 30, 2019) (discussing the general contents of the CIR Division report).

<sup>3</sup> CIR Report at 44.

<sup>4</sup> The independent audit board serves in a fact-finding capacity as a "backstop" to the CIR Division director's investigation and help prevent the potential for confirmation bias. The board reviews all of the information provided and audits the director's investigation. The board can make suggestions and ask questions regarding consideration or review of information. Special Master Hearing at 46:00–47:10. The independent audit board for this matter was comprised of two former prosecutors, a retired special agent from the Federal Bureau of Investigation, a former public defender, and a community member at large. *Id.* at 47:10–47:40.

<sup>5</sup> CIR Report at 43.

<sup>6</sup> Claimant's Exhibit 2, Video of State Attorney's Press Conference at 8:49–9:16 (Mar. 28, 2019).

<sup>7</sup> Order Vacating Defendant's Judgment and Sentences, State of Fla. v. Williams, No. 1976-CF-000912 (Fla. 4<sup>th</sup> Circ. Ct.) (Mar. 28, 2019). The director of the CIR Division said the judge presiding over the hearing noted during the hearing she had read the CIR report, did some of her own research, and read prior post-conviction motions. Special Master Hearing at 37:00–38:44 (discussing interaction of the claimant's attorneys and the State Attorney's Office with the judge presiding over the hearing and what was provided for consideration).

Subsequently, Mr. Myers filed a petition for compensation under the Victims of Wrongful Incarceration Compensation Act.<sup>8</sup> On September 10, 2019, the court in which he sought relief determined he is eligible to receive compensation and demonstrated actual innocence by clear and convincing evidence as required by statute.<sup>9</sup>

Mr. Williams, however, has two unrelated prior felonies<sup>10</sup> precluding him from receiving compensation through the statutory procedure and seeks relief through a claim bill. Despite the prior felonies, attorneys for Mr. Williams filed a petition due to the 90-day jurisdictional window of the statute.<sup>11</sup> Mr. Williams also filed a motion to have portions of the Victims of Wrongful Incarceration Compensation Act found unconstitutional and that matter is ongoing.<sup>12</sup>

### **The Shooting as Alleged by the Surviving Witness and Law Enforcement Interaction as Described in the General Offense Report**

On May 2, 1976, at approximately 1:30 a.m., Jeanette Williams and Nina Marshall were shot while in their bed.<sup>13</sup> Ms. Williams died instantly<sup>14</sup> from the bullet that entered the back of her head while Ms. Marshall survived the wounds she sustained.<sup>15</sup>

Ms. Marshall recalled falling asleep while watching television, waking at the sound of someone unlocking the door, falling

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<sup>8</sup> Chapter 961, Fla. Stat.

<sup>9</sup> Order Granting Petition of Wrongful Incarceration and Eligibility for Compensation Pursuant to the “Victims of Wrongful Incarceration Act” of Florida, State of Fla. v. Hubert Nathan Myers, No. 76-CF-000912 (Fla. 4<sup>th</sup> Cir. Ct.) (Sept. 10, 2019).

<sup>10</sup> In 1960, Mr. Williams was found guilty of attempted arson and sentenced to two years in county jail. In 1965, Mr. Williams was found guilty of robbery and sentenced to eight years in prison.

<sup>11</sup> Special Master Hearing at 48:00–48:36.

<sup>12</sup> Motion to Declare Portions of Chapter 961, Florida Statutes, “Victims of Wrongful Incarceration Compensation Act” Unconstitutional, State of Fla. v. Williams, No.76-912 (Fla. 4<sup>th</sup> Cir. Ct.) (June 10, 2019); see *also* Senate Rule 4.81(6) (regarding when claim bills shall be held in abeyance but stating “[t]his section does not apply to a bill which relates to a claim of wrongful incarceration”).

<sup>13</sup> See Jacksonville Police Department, General Offense Report, at 2 and 7 (July 8, 1976).

<sup>14</sup> State of Fla. v. Williams and Myers, No. 76-912 (Fla. 4<sup>th</sup> Cir. Ct.) (Second Trial Testimony of Dr. Sam E. Stephenson) 336 (Sept. 1976).

<sup>15</sup> Dr. Stephenson, the Chief of Surgery at University Hospital who oversaw Ms. Marshall’s surgery stated she had two, possibly three, gunshot wounds. There was a “through and through” wound. One bullet “entered just below the left cavity on the left side and blew out the anterior part of the neck about the level of the thyroid.” The second wound (the “through and through” entered on the left side of her neck, across her voice box, and exited through the right side of her neck. The third wound was on her left forearm and was the only bullet in her body when she presented at the hospital. He also noted Ms. Marshall had only “mild shock,” which would have had “practically” no effect on an individual. Second Trial Testimony of Dr. Sam E. Stephenson at 326–328.

back asleep, and sometime later waking for the second time with a burning sensation in her neck from a bullet wound.<sup>16</sup> She heard popping sounds and said the sounds were coming from in front of the television, where two men were standing.<sup>17</sup> She said she saw sparks as they fired guns, wrapped in something, from the foot of the bed.<sup>18</sup> She claimed she saw who they were when she rolled onto the floor, then sat up while leaning on the bed, and she then fell back to the floor.<sup>19</sup>

Ms. Marshall gave inconsistent statements with regard to what occurred after she was shot. In her written statement from the morning of May 4, 1976, Ms. Marshall stated, after she was shot, she laid across Ms. Williams and acted as though she were dead.<sup>20</sup> Other inconsistent statements from Ms. Marshall were she fell out of the bed with both knees on the ground and then an account that she fell out of the bed with one leg still on the bed.<sup>21</sup> Ms. Marshall also gave conflicting testimony as to whether Ms. Williams said anything during the shooting.<sup>22</sup>

After the shooting, Ms. Marshall said she was stepped over (but could not recall if she was stepped over by one or both shooters after she fell to the floor).<sup>23</sup> She also claimed this was the moment she identified the shooters (while she was laying on the ground) because she saw them looking into the room from the doorway on their way out. She later exited the apartment, attempted to get help at a neighboring apartment but no one opened the door; she then walked toward the road where she said she saw Clifford Williams and Nathan Meyers walking toward the party; and a passerby stopped and gave her a ride to the hospital.<sup>24</sup> Multiple times, the driver asked

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<sup>16</sup> First Trial Testimony from Nina Marshall, 23 (July 1976); Deposition, Nina Marshall, 50–51 (July 8, 1976).

<sup>17</sup> Second Trial Testimony from Nina Marshall at 176; Deposition, Nina Marshall at 52–53.

<sup>18</sup> See Deposition, Detective Richard Bowen, 41 (June 15, 1976). Detective Bowen stated no weapon(s) or items used to muffle a gun were found. *Id.* at 42–43.

<sup>19</sup> First Trial Testimony of Nina Marshall at 122 (stating she saw sparks coming from two directions); Deposition, Nina Marshall at 55–58.

<sup>20</sup> Written Statement from Nina Marshall (May 5, 1976). See Deposition, Henry Curtis, 5 (January 2, 1997) (stating Ms. Marshall told him she had laid across Ms. Williams and played dead).

<sup>21</sup> First Trial Testimony from Nina Marshall at 65–69.

<sup>22</sup> First Trial Testimony from Nina Marshall at 63 (stating Ms. Williams called out for her).

<sup>23</sup> Deposition, Nina Marshall at 106; see Deposition, Nina Marshall at 58–59; see also Nina Marshall, Written Statement (May 5, 1986). Ms. Marshall also stated she saw them walking outside and did not pay any attention as to whether they had pillows or blankets. First Trial Testimony from Nina Marshall at 90.

<sup>24</sup> Second Trial Testimony from Nina Marshall at 180; Deposition, Nina Marshall, at 65–66. Ms. Marshall was logged into the emergency room at 2:07 a.m. on May 2, 1976. General Offense Report at 12. Harold Torrence was the individual who gave Ms. Marshall a ride to the hospital and confirms there was a vehicle in front of him–

Ms. Marshall who shot her but she did not answer the question. While in the hospital, Ms. Marshall wrote separate notes to an officer—one with “Clifford Williams” and the other with “Nathan”<sup>25</sup> and claimed both men had entered the apartment and shot her and Ms. Williams.<sup>26</sup>

Around 2:40 a.m., officers noted approximately 35–50 people gathered in a crowd at the scene.<sup>27</sup> While speaking with people from the crowd, an officer was approached by Nathan Myers, who identified himself as a resident of the apartment and asked what happened.<sup>28</sup> In response to inquiries from the officer, Mr. Myers stated he had not been at the apartment since the morning and provided information about where he had been—including his presence at the party down the street.<sup>29</sup> Mr. Williams also spoke with the officer and stated he had been at the party, as well.

As the officer’s investigation continued, the officer determined Ms. Rachel Jones hosted the party down the street and Ms. Jones, as well as others, confirmed the attendance of Mr. Myers and Mr. Williams at the party, before and during the time when shots rang out.<sup>30</sup> See footnotes 90 and 91 for alibi witness accounts.

### **Alleged Motives and Statements**

Although the CIR investigation was not able to substantiate any of the following alleged motives and statements, the following information is provided as a matter of completeness with regard to contents of records and information furnished.

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which matches Ms. Marshall’s account; however, he did not see any men walking down the street and Ms. Williams did not stop for a significant period of time (as she stated she did when seeing Mr. Williams and Mr. Myers) once she started toward his vehicle. Second Trial Testimony from Harold Torrence at 310, 315, 318, and 322; Deposition, Harold Torrence 4 (July 6, 1976). Mr. Torrence said he asked Ms. Marshall five times who shot her and she did not answer but told him to stop talking and get her to the hospital. Deposition, Harold Torrence at 5–6, 9; see Second Trial Testimony from Harold Torrence at 318.

<sup>25</sup> General Offense Report at 6. A third note requested for someone to check on Jeanette Williams. See Hospital Notes and Deposition, Officer Kenneth Monroe (July 7, 1976).

<sup>26</sup> Second Trial Testimony from Nina Marshall at 167; General Offense Report at 15–16. Mr. Myers, Ms. Marshall, and Ms. Williams were roommates and Mr. Williams kept personal items at the apartment, stayed there sometimes, and helped pay rent on occasion and both men had keys to the apartment. Additionally, after Mr. Myers identified himself as someone who lived at the apartment, he was asked to identify Ms. Williams at the crime scene.

<sup>27</sup> General Offense Report at 4.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.*; Deposition, Detective Richard Bowen at 26.

<sup>30</sup> General Offense Report at 4.

Records and information provided during the claim bill process show Ms. Marshall made various statements with regard to whether Mr. Williams or Mr. Myers may have had motive to hurt her and Ms. Williams. For example, the police report includes an alleged issue over a drug deal involving Mr. Williams, Mr. Meyers, Ms. Williams, Ms. Marshall, and others. The police report also includes reference to the possibility Mr. Williams demanded \$100 of rent money be returned to him during an alleged physical altercation with Ms. Williams a week before the shooting.<sup>31</sup>

Additionally, in her deposition, Ms. Marshall initially responded in the negative with regard to whether she could think of any reason Mr. Myers would have wanted to shoot her or Ms. Williams. When asked again, “No reason whatsoever?” Ms. Marshall replied, “Nothing but that we had heard them talking about some murders and things. I really don’t know why.”<sup>32</sup> Ms. Marshall alleged the conversation occurred about a month, or a month-and-a-half, before the shooting. She stated she overheard “they had killed a guy and took him off and buried him in the woods.”<sup>33</sup> She then indicated it was actually not a conversation with both men that was overheard but an alleged conversation she had with Mr. Myers and she was not sure whether Mr. Williams had heard their conversation.<sup>34</sup> She also stated “they” were smoking marijuana at the time of the conversation and Mr. Myers had supposedly bragged about being high.<sup>35</sup>

With regard to the alleged statement from Mr. Williams, in 1976, a man named Christopher Snype provided a written statement describing statements made to him by an individual named Tony Gordon. Mr. Snype stated Mr. Gordon told him he was around the crime scene when people found out only one person had died and Mr. Williams allegedly walked “over close to him, hit a car with his fist and [said], ‘[Expletive], one of the [expletive] ain’t dead!’”<sup>36</sup> Mr. Gordon did not want to be involved and did not cooperate with the CIR investigation.<sup>37</sup>

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<sup>31</sup> Deposition, Nina Marshall at 73–74;127. General Offense Report at 13–14; Deposition, Detective J.R. Bradley at 46 – 47.

<sup>32</sup> Deposition, Nina Marshall at 111.

<sup>33</sup> *Id.* at 116.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Christopher Snype, Statement July 13, 1976.

<sup>37</sup> *Infra* 11–12.

The undersigned inquired of counsel and the director of the CIR Division regarding these alleged potential motives and statements, as well as whether anything in the investigation suggested the men had knowledge the shooting would occur. Significantly, the CIR director was unable to substantiate any of the alleged potential motives.<sup>38</sup> The director located and interviewed the brother of the individual Ms. Marshall alleged Mr. Williams and Mr. Myers may have killed and buried. Through the interview with the brother of the deceased, the director was informed that the brother heard someone else (not Mr. Williams or Mr. Myers) may be responsible for his brother's death.<sup>39</sup>

The director also noted concern with changes and variations from Ms. Marshall regarding motives. She also attempted to find, but was not able to develop, any information the men would have had knowledge the shooting was going to happen. Additionally, in response to the alleged comment of Mr. Williams, she did not know the context or what to make of the alleged comment. She noted no one else made a statement similar to Mr. Snype's, and referred to other witnesses not understanding why Mr. Myers and Mr. Williams were being arrested because they had been at the party.<sup>40</sup>

With regard to the relationship of Mr. Myers and Mr. Williams with Ms. Marshall and Ms. Williams, the CIR director noted they had dinner together the Friday before the evening of the party during which the shooting occurred.<sup>41</sup>

#### **Arrest of Mr. Williams and Mr. Myers**

Officers at the scene were informed of the names written down by Ms. Marshall.<sup>42</sup> At approximately 3:00 a.m. and 3:10 a.m., respectively, Mr. Williams and Mr. Myers were arrested

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<sup>38</sup> Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019); see also E-mail correspondence from Shelley Thibodeau (Dec. 18, 2019).

<sup>39</sup> *Id.*

<sup>40</sup> Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

<sup>41</sup> E-mail correspondence from Shelley Thibodeau (Dec. 18, 2019).

<sup>42</sup> Second Trial Testimony from Nina Williams at 188. Additionally, in July of 1976, Ms. Marshall provided she had smoked marijuana the night of the shooting. Second Trial Testimony from Nina Marshall at 170; First Trial Testimony from Nina Marshall at 16; Deposition, Nina Williams at 106. Deposition, Detective J.R. Bradley at 45. Ms. Marshall stated she used methadone as she had been to the methadone clinic the morning before the shooting. Second Trial Testimony from Nina Marshall, 165; Deposition, Nina Marshall at 16 and 70. First Trial Testimony from Nina Marshall at 6 (July 20, 1976).

for murder and attempted murder.<sup>43</sup> The police report notes Mr. Williams shouted to people nearby to get a list of all of the people who were at the party and to contact his attorney.<sup>44</sup>

After being arrested, Mr. Meyers told law enforcement he did not have anything to worry about because he did not shoot the victims and he had been at the party.<sup>45</sup> Mr. Williams and Mr. Myers have consistently proclaimed their innocence.<sup>46</sup>

### **The Convictions and Sentences of Mr. Myers and Mr. Williams**

Prior to trial, Mr. Myers was offered 2–5 years<sup>47</sup> in exchange for a guilty plea. Mr. Myers, who was 18-years old at the time, maintained his innocence and did not take the offer.<sup>48</sup>

Mr. Williams and Mr. Myers were tried in July of 1976 (two months after the shooting) and then, after a mistrial was declared, they were tried again in September of 1976, and each faced the death penalty if convicted.

Both men were convicted with Mr. Myers being sentenced to life in prison and Mr. Williams being sentenced to death contrary to the jury's recommendation. Mr. Williams's death sentence was overturned and he was subsequently sentenced to life after spending four years on death row.

### **Physical Evidence and Information Contradicting Testimony of the Surviving Victim**

The Conviction Integrity Review (CIR) Division's investigation and report focused on information not presented to the jury (or not available at the time), including the physical evidence, individuals stating another man had confessed to shooting

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<sup>43</sup> General Offense Report at 5–6.

<sup>44</sup> General Offense Report at 5; Deposition, Detective Richard Bowen at 35–36. See *also* Deposition, Officer Robert Horne, 48 (July 14, 1976).

<sup>45</sup> Deposition, J.R. Bradley at 33–35.

<sup>46</sup> Williams and Mr. Meyers also independently told officers they had not fired a weapon in the last 24 hours; with Mr. Williams further stating he had not fired a weapon since New Year's. Deposition, Detective J.R. Bradley at 34. The police report contains a statement that the physical evidence matches Ms. Williams's account of shooters in the room while also noting the holes and damage to the window. A part of the report reads, "it appears as though the suspects in this case intended to make it look as though the victims had been shot by someone from the bedroom window." General Offense Report at 16.

<sup>47</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 1:35:10–1:36:00 Mr. Myers recalled the offer being two years while the State provided the offer was five years. CIR Report at 1, n. 4.

<sup>48</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 32:30–33:20 (discussing prior attempts at post-conviction relief).



Ms. Williams and Ms. Marshall, and alibi witnesses. This section provides an overview of the CIR Division report (including the findings of crime scene reconstruction professionals<sup>49</sup>) and information provided during the claim bill process.<sup>50</sup>

#### *Sound Experiment*

Crime scene reconstruction professionals from Knox and Associates, LLC (Knox) conducted a sound experiment to determine what could be heard at the party if a gun was fired inside of the bedroom versus through the window (from the outside).<sup>51</sup> The shots fired inside of the room “were barely perceptible and were not measurably louder than the ambient noise level” during testing.<sup>52</sup> Individuals from the State Attorney’s Office who were at the location of the recording device, which was in the location of the party, reported the shots as being “only faintly perceptible.”<sup>53</sup>

Contrary to the shots fired inside of the bedroom, shots fired from outside the bedroom window produced “clearly perceptible” audio recordings at the location of the party.<sup>54</sup> The experiment supported statements by witnesses that the shooting had occurred from outside of the bedroom window and contradicted the statements of the lone testifying witness.<sup>55</sup>

#### *Window Screen and Frame*

Knox demonstrated, from near contact, three inches, six inches, and 12 inches from the muzzle to the screen, it was possible to fire six shots through the screen and form just a single tear<sup>56</sup> as was present in the screen from the crime scene.

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<sup>49</sup> See CIR Report. In 2018, the CIR Division hired Knox and Associates, LLC to reconstruct, analyze, and report findings with regard to the crime scene.

<sup>50</sup> See *generally* Special Master Hearing, Testimony of Shelly Thibodeau at 1:02:45–1:28:56 (describing the CIR’s investigation and comparison to Ms. Marshall’s report).

<sup>51</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 2:04:00–2:05:44 (describing the sound experiment in detail and the inability to hear, at the location of the party, shots fired from inside the bedroom).

<sup>52</sup> Knox and Associates, LLC Report (Knox) 16–17 (Nov. 27, 2018).

<sup>53</sup> *Id.* at 17.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 21.

<sup>56</sup> *Id.* at 17.

The curtains, screen, and window of the north bedroom window all had holes in them.<sup>57</sup> The lower right portion of the window frame “revealed an apparent bullet hole” and had “carbonaceous material” on it.<sup>58</sup>

Additionally, by deposition in 1976, the lead detective stated, “the physical evidence at the window itself indicated that a projectile of some sort had gone inside of the bedroom from the outside.”<sup>59</sup> Another detective made the same observation, stating the “screen was pushed from the outside to the inside” and recalled glass fragments being on the bed, which he believed to be from the window.<sup>60</sup> All of this information supported the shots being fired from outside of the window.

#### *Wound Path*

The reconstruction included analysis of the wound paths. Knox found the wound to the back of Ms. Williams’s head was “most consistent” with having been fired from outside of the window.<sup>61</sup> The report states, “other gunshot wounds were non-specific as to location from which they were fired, though all of the gunshot wounds could have been inflicted from outside the bedroom window.”<sup>62</sup>

The director testified she spent significant time on the issue of wound dynamics and wound path to determine if it would have been possible for the women to have received their injuries from shots being fired at the foot of the bed as Ms. Marshall described. She summarized all of the injuries of Ms. Williams, who was laying on her right side with her back to the window (and was closest to the window), who had wounds to her backside. She had four injuries—three to the back of her left arm and the fatal injury to the back of her head while Ms. Marshall was struck twice. The director highlighted that none of the injuries were to the front side of either woman.<sup>63</sup>

Using a computer program, the CIR investigation created visual representations of the wound paths with the use of

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<sup>57</sup> General Offense Report at 4.

<sup>58</sup> FDLE, Tallahassee Regional Crime Laboratory Report (July 5, 1976); see Special Master Hearing, Testimony of Shelley Thibodeau at 1:11:00–1:11:45.

<sup>59</sup> Deposition, Detective Richard Bowen at 46.

<sup>60</sup> Deposition, Detective J.R. Bradley at 11–12.

<sup>61</sup> Knox at 18.

<sup>62</sup> *Id.* at 18.

<sup>63</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 1:12:15–1:13:30.

dowels going into entry and exit wounds. The extended dowel moved with the body in the recreation. The finding was of all wounds being demonstrably possible with shots fired from the window, but they could not find a plausible pathway for all wounds when recreating shots being fired from the foot of the bed and television.<sup>64</sup>

The CIR director also testified with regard to the current medical examiner's findings—and particularly, with regard to an irregular wound of significance. The most important wound for the director was the irregular entrance wound because the medical examiner, without knowing information about this case, described the irregularity would be created by the projectile having struck something prior to entering the victim. Striking something would cause the projectile to tumble, which would then result in the unique entrance wound as the projectile entered the skin.<sup>65</sup> The CIR director found this information significant because, if the shooting had occurred from the foot of the bed—there would not have been an intervening object for the bullet to hit and cause the bullet to tumble and create the irregular entrance wound. However, the information provided by the medical examiner made sense to the director if the bullet was shot through the window and struck the glass, screen, or window frame causing it to tumble and then enter the skin of the victim.<sup>66</sup> The rest of the entrance wounds on Ms. Williams were circular but for the one irregular wound. This information corroborated the shooting having occurred from outside of the window.<sup>67</sup>

#### *Blood Evidence*

The report includes the observation that Ms. Marshall was bleeding profusely from her wounds and left bloody footprints when she left the apartment. The Knox report notes, and pictures from the crime scene show, an absence of bloody footprints from any other individual despite Ms. Marshall stating two people had shot from inside of the bedroom and she was stepped over after she laid on the ground bleeding.<sup>68</sup>

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<sup>64</sup> *Id.* at 1:23:10–1:24:12.

<sup>65</sup> *Id.* at 1:15:00–1:15:56.

<sup>66</sup> *Id.* at 1:15:56 – 1:16:38.

<sup>67</sup> *Id.* at 1:16:38–1:17:14.

<sup>68</sup> See Knox at 19. The CIR director testified the blood evidence was “a smaller piece of the puzzle” but did identify inconsistencies with Ms. Marshall's statements and the blood evidence. She noted the undisturbed pool of blood where Ms. Marshall laid, injured, in the middle of the floor and a lack of footprints from indoor perpetrators as described by Ms. Marshall. Special Master Hearing at 2:20:40–2:22:40.

### *Flashes and Sounds of Gunshots*

The Knox report found Ms. Marshall's testimony of having seen flashes coming from two guns was inconsistent with her statement that the guns were wrapped in pillows or blankets. The report also notes there were no pillows or blankets with singed or gunshot residue fibers found.<sup>69</sup>

### *Room Arrangement*

A review of evidence demonstrates the shooters would have needed to enter the room, then walk at about a 90-degree angle to get to the foot of the bed to attain the position Ms. Marshall described.<sup>70</sup> The pictures show an apparently undisturbed box fan balanced on the arms of a small wooden rocking chair, an undisturbed laundry basket filled with stacked laundry,<sup>71</sup> and undisturbed, neatly arranged shoes partially tucked under the dressers.<sup>72</sup>

The Knox report notes, "[t]he likelihood of a shooter(s) entering the residence and taking a position at the furthestmost position within the scene (foot of the bed and back of the bedroom) is in conflict with the ease of which a shooter could take a position outside and effectively hit targets on the bed." The report also notes shooting from outside would have no risk of survivor identification, defensive movements, and would allow for an unimpeded escape.<sup>73</sup>

### *Summary of Knox Report Conclusion*

The Knox report provides the following in support of the likelihood the shooting occurred from outside of the bedroom window: 1) broken glass on the floor and on top of the bed by the window; 2) the tear in the window screen; 3) a bullet on the floor below the window; 4) the identified bullet hole in the window frame.<sup>74</sup> The report also noted the wound to Ms. Williams's head in conjunction with the position of her body was consistent with having been shot from the window. The

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<sup>69</sup> Knox at 20.

<sup>70</sup> See Special Master Hearing, Testimony of Ms. Thibodeau at 1:02:44–1:06:37 (summarizing the testimony of Ms. Marshall; referencing the police had documented shattered glass on the bed from the window next to the bed, damage to the aluminum screen with prongs facing inward, damage to the window frame they thought was from a bullet, etc.; and noting the physical evidence was not presented to the jury).

<sup>71</sup> The basket of clothes remained how Ms. Williams remembered it prior to the shooting. Deposition, Nina Williams at 92–93; see *also* Special Master Hearing, Testimony of Shelly Thibodeau at 1:08:00–1:09:03.

<sup>72</sup> CIR Report, exhibits P and Q at 62–63.

<sup>73</sup> Knox at 21.

<sup>74</sup> *Id.* at 22.

sound experiment demonstrated it would have been unlikely for individuals at a party to have heard gunshots if they were fired from inside the bedroom; and the physical evidence was consistent with shots having been fired from outside of the bedroom window.

#### *Gunshot Residue Testing*

The hands of Mr. Williams and Mr. Myers were tested for gunshot residue at approximately 5:15 a.m. on May 2, 1976.<sup>75</sup> Results of the tests were negative for gunshot residue.<sup>76</sup>

#### *Polygraph*

Mr. Myers and Mr. Williams agreed to take polygraph exams. Mr. Myers was asked three questions during the polygraph—all of which asked whether he shot either of the women. He responded in the negative and there was no deception indicated in his exam results.<sup>77</sup> With regard to Mr. Williams, the polygraph examiner noted he was having difficulty understanding the instructions and was incorrectly answering questions and, therefore, was “not a suitable subject for a polygraph examination” because of his “advanced age.”<sup>78</sup>

#### *Evidence of One Shooter*

Analysis of the evidence (including recovered bullets and statements) supports the crime being committed with the use of one gun by a single individual.

Five .38 caliber bullets were recovered (three from the scene and two from the body of Ms. Williams) as well as a damaged .38 caliber bullet from Ms. Marshall.<sup>79</sup> An additional .32 caliber bullet was removed from Ms. Williams and noted to be from a healed wound as it was covered in scar tissue.<sup>80</sup> The crime

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<sup>75</sup> General Offense Report at 7. Mr. Williams and Mr. Myers were arrested around 3:00 a.m. while present in the crowd at the scene. *Id.* at 5.

<sup>76</sup> Department of the Treasury Bureau of Alcohol, Tobacco, and Firearms, Report of Laboratory Examination (May 18, 1976) (“The amount of antimony found in the hand swabs was insufficient to indicate the presence of gunshot residue; therefore, no testing for barium was conducted. From these findings, no conclusion can be drawn as to whether the subject(s) did or did not handle or fire a weapon.”); see General Offense Report at 7.

<sup>77</sup> Office of the Sheriff, Jacksonville, FL, Intradepartmental Correspondence Re: Hubert [Nathan] Myers Polygraph Examination 2–3 (July 20, 2018).

<sup>78</sup> Office of the Sheriff, Jacksonville, FL, Intradepartmental Correspondence Re: Clifford Williams Polygraph Examination 2 (November 7, 2018).

<sup>79</sup> CIR Report at 28.

<sup>80</sup> See FDLE, Tallahassee Regional Crime Laboratory Report (“FLDE, Crime Lab Report”) (July 5, 1976); Lipkovic, M.D., Peter, Report: Office of the Medical Examiner, 3 (May 2, 1976); General Offense Report at 7. The three .38 caliber bullets removed from Ms. Williams were from her head, left upper arm, and left lower arm. *Id.*

laboratory report indicates five of the bullets were able to be microscopically compared and were all fired from the same weapon. A damaged bullet and a fragment were determined to have “some evidence of a relationship” to the others, but the relationship was “too limited in amount and character” for conclusive results.<sup>81</sup>

Henry Curtis, an individual who knew Mr. Williams, Mr. Myers, Ms. Williams, and Ms. Marshall, was deposed in 1997, and provided information indicating Ms. Marshall told him conflicting stories. Mr. Curtis said Ms. Marshall once told him Mr. Williams and Mr. Myers were the shooters and she laid on the bed and acted as if she were dead once she had been shot.<sup>82</sup> However, she also told him she did not know who shot her because she was asleep when it happened.<sup>83</sup> Mr. Curtis also stated he was positive Ms. Marshall used heroin during the trial, including while she was at his house.<sup>84</sup>

Mr. Torrence, who gave Ms. Marshall a ride to the hospital, returned to the scene later and stated about three or four people said the shots came from outside of the window and there was a man who saw it but would not say anything.<sup>85</sup>

A July 13, 1976, statement from Christopher Snype states a friend of his, named Tony Gordon, told him he looked out the window after hearing the first shot and saw a black male, dressed in black, standing outside of the bedroom window shooting several more times.<sup>86</sup> Testimony from the director and the witness chart from the CIR investigation note Mr. Gordon claimed he did not see or witness anything; however, he also failed a polygraph in 1976 when answering in the negative as to whether he had knowledge of the shooting.<sup>87</sup> The notes also indicate Mr. Gordon remembered the event but did not want to be involved; he did not cooperate during the CIR investigation.<sup>88</sup>

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<sup>81</sup> FDLE, Crime Lab Report at 2; see Special Master Hearing, Testimony of Shelley Thibodeau at 1:14:30–1:14:55 regarding the analyst finding the bullets were fired from the same weapon).

<sup>82</sup> Deposition, Henry Curtis at 5.

<sup>83</sup> *Id.* at 7 and 15.

<sup>84</sup> See Deposition, Henry Curtis at 1 and 14.

<sup>85</sup> Deposition, Harold Torrence at 11.

<sup>86</sup> Christopher Snype, Statement (July 13, 1976).

<sup>87</sup> Special Master Hearing, Testimony from Shelley Thibodeau at 2:09:48–2:10:43; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

<sup>88</sup> Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

The CIR director testified evidence only shows one gun being fired and (but for Ms. Marshall's account) no evidence of more than one shooter.<sup>89</sup>

### **Alibi Witnesses**

Mr. Williams and Mr. Myers informed officers they were at a party in an apartment building nearby. The presence of both men at the party, before and during the time when shots rang out, was confirmed by the host,<sup>90</sup> as well as a number of other individuals.<sup>91</sup>

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<sup>89</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 2:15:16–2:15:35.

<sup>90</sup> Rachel Jones, the host of the party, confirmed both men and Mr. Williams's wife, Barbara Williams, were all at the party. Ms. Jones recalled she was intoxicated that evening. She first recalled being in a bedroom with Mr. Myers when someone asked them to turn the music down because they thought they heard gunshots. Later, she stated she was on the porch when three shots were fired and both Mr. Williams and Mr. Myers were in her apartment. General Offense Report at 8.

<sup>91</sup> Virginia Wilkerson also attended the party and told police she saw Mr. Williams and Mr. Myers arrive approximately fifteen minutes after she did (about 20 minutes after 1:00 a.m.). She stated she heard about the gunshots after they had arrived; Mr. Williams was in the kitchen, and subsequently asked Mr. Williams what time it was and went to her apartment to check on her children. She also said she saw Mr. Williams and Mr. Myers walking with everyone else toward the scene. See Deposition, Virginia Wilkerson, 9, 11, 17, and 23 (July 16, 1976); General Offense Report at 9. Frances Brown, the other host of the party, confirmed seeing Mr. Williams and Mr. Myers arrive at the party with Barbara Williams and Rico Rivers. Ms. Brown told police she did not drink and remembered making plates of food for Mr. Williams and Mr. Myers after they got to the party. She recalled hearing five shots sometime after they had arrived. General Offense Report at 9–10. Debra White lived near the party and went back and forth from her apartment to the party throughout the night. She recalled hearing shots and saw Mr. Williams walking out of the party toward the road with a plate of food in his hand. General Offense Report at 11. Ella Ruth Maddox recalled Mr. Williams and Mr. Myers being at the party before she left to take a friend home. Upon returning to the party, the police were at the scene of the shooting. General Offense Report at 11. Joann Fleming, roommate of Debra White and Ella Ruth Maddox, was at her apartment with Ms. White when she heard five shots, looked outside to see Mr. Williams walk out of the party to the road and then return to the party; she also confirmed seeing Mr. Myers coming from the porch where the party was after the shots were fired. Deposition, Joann Fleming, 6–7 (July 16, 1976). About five to fifteen minutes later, she walked with Mr. Williams to the scene (where two police cars were present) and he asked her to go find out what was going on. *Id.* at 7–8; General Offense Report at 10. Vanessa Snypes confirmed the presence of Mr. Williams, Mr. Myers, Barbara Williams, and another man arriving at the party together. She recalled being intoxicated and did not hear any shots. General Offense Report at 11. Nellie Mae Anderson saw Mr. Williams, Mr. Myers, Barbara Williams, and Rico Rivers arrive at the party and was eating with Mr. Williams and Mr. Myers when she heard five shots. Once someone announced police being at the scene, she walked to the scene with others from the party. General Offense Report at 11; Deposition, Nellie Mae Anderson, 10–11 (July 16, 1976). Rosa Lee Royster, a friend of the deceased, stated the victim owed Mr. Williams \$100, and said she saw Mr. Williams and Mr. Myers arrive at the party. She later heard four shots fired and said she saw Mr. Williams walk toward the street with a plate of food and walk back to the party commenting that it was an intoxicated person shooting into the air. General Offense Report at 12. Pauline Dawson was at the party, recalled Mr. Williams being there and giving her seat at the table to Barbara Williams because she was pregnant at the time. In her deposition, she stated she saw Mr. Williams arrive and thought he was still in the kitchen when the shots rang out. Deposition, Pauline Dawson, 5–8 (July 16, 1976). She said Mr. Williams walked along with others from the party down to the scene. *Id.* at 10. Barbara Williams recalled arriving at the party with Mr. Williams and Mr. Myers and Mr. Williams eating while seated on the arm of a sofa when the shots rang out; she also recalled Mr. Myers being seated by a stereo. Deposition, Barbara Williams, 34–35 (July 16, 1976). She also stated, from the time they arrived until the shots were fired, Mr.

Information gathered in interviews conducted by the CIR director were consistent with testimony from 1976 with regard to Mr. Myers and Mr. Williams being at the party at the time shots were fired.<sup>92</sup>

The CIR report highlighted three of the alibi witnesses.<sup>93</sup> First, Joann Fleming, whose apartment was next door to the party, who still clearly recalls seeing Mr. Myers when the shots rang out. Second, Vincent Williams, who is noted in the report as being related to Mr. Williams and Mr. Myers, but whose parents did not like him spending time with his cousin because of his lifestyle. He did not know anyone else at the party, but was able to accurately describe the apartment layout, made statements consistent with other witnesses, and remembered seeing Mr. Williams and Mr. Myers when people heard the shots being fired. The third alibi witness was Geraldine Prey. Although not present at the time of the shooting, she provided information that “everyone” knew Mr. Williams and Mr. Myers were not the shooters because they were at the party. She also noted Ms. Williams was well-liked and did not think other women from the area would provide an alibi for Mr. Williams or Mr. Myers if it were not true because of their like of Ms. Williams. She also noted Mr. Myers told her the prosecution wanted him to testify against his uncle but he could not do that because he and his uncle (Mr. Williams) were at the party together. See footnotes 90 and 91 for additional statements from alibi witnesses.

Sometime after hearing the shots, a group of people attending the party (including Mr. Williams and Mr. Myers) gathered outside of the apartment building where the shooting had taken place.

### **Reported Confessions by Nathaniel Lawson**

The Conviction Integrity Review (CIR) Division’s director testified to interviewing four individuals to whom a man named Nathaniel Lawson allegedly confessed. The director attempted to link the four individuals together and found, but for them growing up in the same area, she could not tie them

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Williams never left the party. *Id.* at 40. Mrs. Williams left the party with Rosetta Simon, Raymond Rico Rivers, and Nathaniel Lawson. *Id.*

<sup>92</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 2:05:50–2:06:54.

<sup>93</sup> CIR Report at 17–19.



together in any other way and found them credible.<sup>94</sup> The four individuals are Tony Brown, Leatrice Carter, Frank Williams, and James Stepps.

*Alleged Confession to Tony Brown*

By sworn affidavit, Mr. Tony Brown stated Nathaniel Lawson (who was incarcerated with him) told him he had shot Ms. Marshall and Ms. Williams. He said Mr. Lawson stated he was paid, by Albert Young, to shoot the women because Ms. Williams had not paid Mr. Young for heroin Ms. Marshall stole from him. He said he was never caught, and Mr. Williams and Mr. Myers were serving time for the shooting. Mr. Brown said Mr. Lawson told him he had looked through the bedroom window to see where Ms. Williams was, he shot from outside the window, and then ran to the back of the apartments and jumped over a fence to get into a vehicle driven by Rico Rivers.<sup>95</sup>

Mr. Brown had known Mr. Myers only as “Nate” while incarcerated, but once he learned “Nate” was Hubert Nathan Myers—he shared this information and Mr. Myers requested he write it down.<sup>96</sup>

*Alleged Confession to Leatrice Carter*

Leatrice Carter told the CIR director that Mr. Lawson confessed to her in the early 1990s at the tavern she and her husband owned. Mr. Lawson allegedly told her Mr. Williams did not commit the crime and admitted that he was the one who committed the crime. Ms. Carter also told the director Mr. Lawson said the only people who were mad were “Dot and Frank” (Clifford Williams’s siblings and Nathan Myers’s mother and uncle).<sup>97</sup>

*Alleged Confession to Frank Williams*

The third person to whom Mr. Lawson allegedly confessed is Franks Williams (brother of Clifford Williams and uncle to Nathan Myers). Mr. F. Williams, who had dated Diane Lawson (sister of Nathaniel Lawson) stated he actually confronted Mr. Lawson when he heard he may have been involved and told

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<sup>94</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 3:13:50–3:15:55. Mr. Lawson died in 1994. *Id.*

<sup>95</sup> Sworn Affidavit, Tony Brown, 1–2 (October 21, 2014); see CIR Report at 20.

<sup>96</sup> *Id.*

<sup>97</sup> CIR Report at 21.

the director Mr. Lawson said he was “staying out of it” and did not want to speak about it.<sup>98</sup>

Years after the first interaction, Mr. F. Williams told the director that he saw Ms. Lawson and she said her brother was “sick and might want to clear his conscience,” so Mr. F. Williams had a meeting arranged with Mr. Lawson. Mr. F. Williams said Mr. Lawson requested the meeting be in public, gave details of the interaction, and said Mr. Lawson ultimately confessed to shooting the women because one of the women was stealing from him and he had to send a message. Mr. Lawson also allegedly admitted to giving money to Dot (sister of Clifford and Frank Williams and mother of Nathan) for Mr. Myers and Mr. Williams. Mr. F. Williams said his sister confirmed she had received money from Mr. Lawson for the incarcerated men.<sup>99</sup>

*Alleged Confession to James Stepps*

James Stepps was the fourth individual to tell the CIR director Mr. Lawson confessed to him and the director found Mr. Stepps to be “most credible.”<sup>100</sup> Mr. Stepps was friends with Mr. Lawson through his death and said, not long before he died, Mr. Lawson indicated he had killed Ms. Williams and wanted to send money to Mr. Williams.<sup>101</sup> Mr. Lawson allegedly wondered aloud and stated, “What can I do? I can’t turn myself in.”<sup>102</sup> Mr. Stepps did not ask questions, believed Mr. Lawson, and—because he believed his friend was telling him this in confidence—he would not have come forward if Mr. Lawson were alive.<sup>103</sup>

The CIR director was able to place Nathaniel Lawson at the scene when reviewing the materials a second time because, in reviewing the deposition of Barbara Williams (Mr. Williams’s wife), she referenced leaving with a group of individuals including Nathaniel Lawson.<sup>104</sup>

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<sup>98</sup> *Id.* at 22.

<sup>99</sup> *Id.*

<sup>100</sup> Special Master Hearing, Testimony of Shelly Thibodeau at 3:29:00–3:29:00.

<sup>101</sup> CIR Report at 23.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 1:54:30–1:56:05. The others in the group leaving with Ms. Barbara Williams were a woman named “Cookie” and a man named Rico Rivers. This is the same group, with the addition of Mr. Myers and Mr. Williams, the CIR director found, via witness interviews and prior testimony, had arrived to the party together. *Id.* at 1:59:40–1:59:55.

**A Court Determined Mr. Myers is Eligible for Compensation and Demonstrated Clear and Convincing Evidence of Actual Innocence**

After the CIR Division's investigation and the vacation of convictions and sentences of Mr. Myers and Mr. Williams, Mr. Myers sought statutory relief. He filed a petition for compensation under the Victims of Wrongful Incarceration Compensation Act,<sup>105</sup> and on September 10, 2019, the court in which he sought relief determined he is eligible to receive compensation and demonstrated actual innocence by clear and convincing evidence as required by statute.<sup>106</sup>

The findings of the CIR Division's investigation and report pertain to Mr. Williams, as well; however, Mr. Williams seeks relief through a claim bill because he has two prior felonies. State law currently precludes Mr. Williams from eligibility for compensation through the statutory process.

The undersigned sought clarification as to the scope of the investigation and report of the CIR Division. The director confirmed the scope of the finding of substantial evidence of actual innocence was applicable with regard to any involvement in the crime in the murder and attempted murder. The CIR director noted an inability to uncover any evidence to support the conviction of Mr. Williams<sup>107</sup> and was not able to find any evidence Mr. Williams is anything other than innocent.<sup>108</sup> Significantly, the director noted there was no evidence to suggest either Mr. Williams or Mr. Myers had been involved in any capacity;<sup>109</sup> and a member of the audit board, a former prosecutor, indicated he is "as confident as [he] can get" with regard to Mr. Williams's innocence.<sup>110</sup>

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<sup>105</sup> Chapter 961, Fla. Stat.

<sup>106</sup> Order Granting Petition of Wrongful Incarceration and Eligibility for Compensation Pursuant to the "Victims of Wrongful Incarceration Act" of Florida, State of Fla. v. Hubert Nathan Myers, No. 76-CF-000912 (Fla. 4<sup>th</sup> Circ. Ct.) (Sept. 10, 2019). The order provides, "[t]he Petitioner has met the burden of establishing by clear and convincing evidence that the Petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the [P]etitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense." *Id.*

<sup>107</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 2:31:58–2:32:49.

<sup>108</sup> *Id.* at 3:17:21–3:19:34.

<sup>109</sup> Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

<sup>110</sup> Special Master Hearing, Testimony of Raymond Reid at (3:40:50–3:47:27 and 3:50:58–3:51:16) (describing evidence he found significant in demonstrating Mr. Williams and Mr. Myers were wrongfully convicted and believing there are supported claims of actual innocence in this matter).

Lastly, counsel for the respondent (the State Attorney's Office of the Fourth Judicial Circuit) indicated, although his client expressed no position on the claim bill, he would agree "there is, in fact, substantial credible evidence of Mr. Williams's innocence" and "given that experienced lawyers and judges have gone before [him] and come to that same conclusion [he thinks] it would be disingenuous to suggest that is not the case."<sup>111</sup>

### CONCLUSIONS OF LAW:

Generally, the standard of proof used in the claim bill process is preponderance of the evidence. The report for the one wrongful incarceration claim bill that passed since chapter 961 was created discussed the clear and convincing standard from the Victims of Wrongful Incarceration Act (Chapter 961), but ultimately applied the preponderance standard.<sup>112</sup>

#### **Standard of Proof Used in Wrongful Incarceration Compensation Claims**

Chapter 961 requires the petitioner provide evidence of "actual innocence" and a court to find the petitioner has provided clear and convincing evidence "the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense."<sup>113</sup>

For reference, the standard of clear and convincing evidence is defined as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain" and "is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials."<sup>114</sup> Jury instructions provide clear and convincing evidence "is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue."<sup>115</sup>

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<sup>111</sup> Special Master Hearing, Britt Thomas, counsel for the respondent at 4:19:00–4:20:19.

<sup>112</sup> Senate Special Master Report Re: CS/SB 2 (2012) (Nov. 1, 2011) (recommending relief regarding Mr. William Dillon's wrongful incarceration claim); see also Ch. 2012–229, Laws of Fla.

<sup>113</sup> Section 961.03(3), Fla. Stat.

<sup>114</sup> Bryan A. Garner, *Black's Law Dictionary* (2006).

<sup>115</sup> *E.g.*, In re Standard Jury Instruction in Criminal Cases—Report 2012–07, 122 So.3d 302 (Mem) (Fla. 2013); Standard Jury Instructions—Civil Cases (No. 98–3), 720 So.2d 1077 (Mem) (Fla. 2008).

### **Statutory Compensation**

Compensation for an eligible individual who meets the standard includes \$50,000 for each year of wrongful incarceration; a waiver of tuition and fees for up to 120 hours of instruction at a career center, Florida College System institution, or any state university; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; and the amount of attorney's fees and expenses incurred by the wrongfully incarcerated person. Per statute, the total amount awarded may not exceed \$2 million.<sup>116</sup>

### **Credibility of Ms. Marshall's Testimony**

Although only able to read prior depositional and trial testimony and handwritten documents from Ms. Marshall, serious concerns exist regarding the credibility of her statements when compared to substantiated physical evidence and consistent statements of other witnesses.

#### *Physical Evidence Demonstrates the Shooting Did Not Occur as Ms. Marshall Described*

Of great significance, undercutting Ms. Marshall's credibility is the physical evidence does not support her account. Additionally, information and details provided by Ms. Marshall varied. Some of the variations previously described include: stating she laid over Ms. Williams then indicating that did not happen; the different ways she described falling off of the bed; how many times she fell off of the bed; and at what point she claimed she saw the alleged shooters.

#### *The CIR Director was Unable to Develop Information Supporting other Statements Made by Ms. Marshall*

The director of the CIR Division stated there were attempts to verify some general statements made by Ms. Marshall during the investigation. These statements included attempts to substantiate Ms. Marshall's claims of having been married twice, having children, and the name of her father and where he lived.<sup>117</sup>

The director was unable to substantiate Ms. Marshall being married to the individuals she named or that she had children. Ms. Marshall claimed she had married a man named Eddie

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<sup>116</sup> Section 961.06(1), Fla. Stat.

<sup>117</sup> See Special Master Hearing, Testimony of Shelley Thibodeau at 2:57:05–2:59:20 (describing these attempts and a finding that Ms. Marshall used approximately 30 aliases over time).

Lee Dyals. The CIR Division director noted although Mr. Dyals is deceased she was able to contact the widow of Mr. Dyals and she had never heard of Nina Marshall.<sup>118</sup> The director interviewed the other man Ms. Marshall claimed to have married, Mr. Felton Marshall, and he admitted knowing Ms. Marshall and using drugs with her but denied ever being married to Ms. Marshall.<sup>119</sup> The director was unable to develop information regarding Ms. Marshall having children and noted none of the women in the neighborhood had ever met children of Ms. Marshall.<sup>120</sup>

**Conclusion Based upon Findings of Fact and Substantiated and Credible Evidence**

The physical evidence demonstrates the shooting did not occur as Ms. Marshall described. Although, the physical evidence does not go to the identity of who committed the shooting, it greatly undercuts the credibility of Ms. Marshall. The undersigned does not find Ms. Marshall's testimony credible.

The testimony of Ms. Marshall was the only tie of Mr. Williams and Mr. Myers to the commission of the crime. From the materials submitted during the special master hearing process, the undersigned does not find evidence to substantiate Mr. Williams committing the shooting of Ms. Williams and Ms. Marshall. To the contrary, the statements of alibi witnesses made to the police in 1976, in depositions in 1976, and in interviews during the CIR investigation corroborate Mr. Williams and Mr. Myers being at a party while shots were heard.

The materials presented did not include any substantiated evidence with regard to Mr. Williams being otherwise involved. While Ms. Marshall alleged various motives—the evidence provided did not substantiate any of them. While the undersigned had questions with regard to the statement Mr. Williams allegedly made (according to Mr. Snype whose written statement provides he was told about the alleged statement by Mr. Gordon), the truthfulness, significance, and context of the statement is unknown. There were no other

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<sup>118</sup> See Deposition, Nina Marshal, 4–5; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

<sup>119</sup> Special Master Hearing, Testimony of Shelley Thibodeau at 2:57:05–2:59:20; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

<sup>120</sup> Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

similar statements to compare this piece of information. This unsubstantiated piece of evidence is not enough to undercut the numerous, consistent statements of alibi witnesses, or the four individuals who stated another man had confessed to the crime.

Therefore, given the evidence provided during the claim bill process, which included:

- the CIR Division's report, testimony from the director and a member of the independent audit board, and the press conference of the State Attorney supporting a finding of substantial evidence of actual innocence;
- a showing of physical evidence contradicting testimony of the only surviving victim through the report of an independent crime scene recreationist;
- the eye witness's inconsistent statements and statements contradicting physical evidence;
- individuals stating another person, Mr. Nathaniel Lawson, confessed to the shooting;
- alibi witnesses stating Mr. Williams was at a party with them at the time the shots rang out;
- the finding of a court that Mr. Myers successfully demonstrated clear and convincing evidence of actual innocence for the same crime using the same CIR Division report and findings in seeking statutory relief; and
- other information addressed in this report, the CIR Division's report, and provided before, during, and after the special master hearing,

the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence.

Although the amount of \$2,150,000 in the bill exceeds the cap available in the statutory process, the undersigned finds the amount is reasonable as it is close to the calculation of years served multiplied by the statutory amount of \$50,000 per year of wrongful incarceration.<sup>121</sup>

Lastly, although the claim bill includes coverage for 120 hours of instruction, counsel for Mr. Williams indicated he would not be able to utilize compensation related to the 120 hours of

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<sup>121</sup> Mr. Williams served 42 years and 11 months. The amount of 42.92 years multiplied by \$50,000 equals \$2,145,833.33.

educational instruction given his advanced age and health and is not seeking the educational compensation.<sup>122</sup>

ATTORNEY FEES:

The bill does not allocate any funds for attorney or lobbying fees. Additionally, the claimant's counsel, Mr. George E. Schulz, Jr. of Holland and Knight, provided a closing statement indicating, "representation of Mr. Williams is on a pro bono basis and that there are no fees, expenses or costs associated with the claim."

RECOMMENDATIONS:

Per Mr. Williams's counsel representing he is not seeking the educational component of compensation provided in the bill, the undersigned recommends deleting lines 83–92 of SB 28.

Based upon the information and evidence provided before, during, and after the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence and the amount sought is reasonable.

Respectfully submitted,

Christie M. Letarte  
Senate Special Master

cc: Secretary of the Senate

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<sup>122</sup> Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).