



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

409 The Capitol

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DATE	COMM	ACTION
3/14/25	SM	Favorable
3/19/25	JU	Fav/CS
4/10/25	ACJ	Favorable
4/17/25	AP	Favorable

March 14, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 10** – Committee on Judiciary and Senator Pizzo
HB 6501 – Representative Gottlieb
Relief of Sidney Holmes by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1.772 MILLION, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE SIDNEY L. HOLMES FOR 34 YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

General Overview

On October 6, 1988, Sidney Lamar Holmes (the claimant) was arrested and charged with robbery with a firearm, in Broward County. In April 1989, the claimant was tried before a jury and convicted of the aforementioned charges. The claimant was sentenced to 400 years in prison. He remained incarcerated until his conviction was overturned, serving over 34 years.

Since his conviction, claimant has maintained and sought to establish his innocence. He sought the assistance of the Conviction Review Unit of the Seventeenth Judicial Circuit State Attorney's Office ("CRU"), to obtain post-conviction relief.

In November 2020, the claimant sent a letter requesting the CRU review his case, whereupon the CRU began reviewing his case and claim of factual innocence. After finding that claimant had asserted a plausible claim of innocence, the CRU asked the Innocence Project of Florida, Inc., ("IPF"), to assist claimant in his attempt for post-conviction relief. Upon conclusion of the joint investigation between the CRU and IPF, the CRU concluded that there was reasonable doubt as to claimant's guilt and that it is highly likely that he was misidentified and is factually innocent of the armed robbery.

The CRU then presented the case to an Independent Review Panel ("IRP"), to provide its own interpretation of the case. The IRP, which consists of six Broward County residents, reviewed all the documents relevant to claimant's case and unanimously concluded that the evidence gave rise to a reasonable doubt as to claimant's culpability. Five of the six members of the IRP voted that claimant is innocent and should be exonerated.

Upon the conclusion of its investigation, the CRU ultimately filed a Motion for Post-Conviction Relief and to Vacate the Judgments, Convictions, and Sentences in the claimant's case in which it concluded that the claimant is actually innocent and should be exonerated of all charges. The court ultimately agreed, and on March 13, 2023, entered an order vacating the convictions and sentences. The claimant was immediately released from incarceration.

Subsequently, this claim bill was filed to obtain compensation for his wrongful incarceration. Because of his prior convictions in 1984, claimant is precluded from receiving compensation through the Victims of Wrongful Incarceration Act.

Overview of the Crime

On the evening of June 19, 1988, two males accosted Vincent Wright and Anissia Johnson at a One Stop convenience store where Wright and Johnson had stopped to put air in a tire. While Wright was filling up the tire, two unidentified men came up behind him and demanded money. When Wright told the men that he did not have any money, one of the men confronted Johnson, pointed a gun at her and again demanded money. Johnson, who was sitting in the front passenger seat of Wright's car, responded that she also did

not have any money. While this was occurring, a third man, purportedly claimant, pulled up in a brown Oldsmobile with a hole in the trunk of the car where the lock would normally be. At the 1989 trial, Wright testified that the third man got out of the car and told his accomplices to take Wright's car and that he would meet up with them later.

After the perpetrators drove off with Wright's car, a friend of Wright's pulled into the One Stop convenience store, at which point Wright got in the car with him and chased after his car. Johnson stayed back at the scene and called police. When police arrived, Johnson told Deputy Kenneth Smith what happened, but never mentioned a third perpetrator or a brown car. Deputy Smith never spoke to Wright. Wright and his friend were unsuccessful in catching up to his car.

Eyewitness Identification and Arrest

Following the robbery at the convenience store, Vincent Wright spoke with his brother, Milton Wright, about the event. Milton claimed to have been robbed earlier the same day, under similar circumstances, in the same area as Vincent's robbery. Specifically, Milton recalled that the perpetrators in his event drove a brown Oldsmobile from the 1970s that, like in Vincent's robbery, had a hole in the trunk where the lock would normally be.¹

Milton then began looking out for cars that fit the description of the car allegedly used in both robberies. He found one and gave the license tag number to his brother, who passed it along to the police; however, police notified Vincent that it was the wrong car.² Two to three weeks after the robbery, Milton gave Vincent another license plate of a brown Oldsmobile that belonged to the claimant. However, there was no hole in the trunk of this particular car, which led Milton to believe that the hole had been fixed.³ This ultimately led to claimant becoming a suspect.

Vincent Wright spoke with police several times following the incident, but it was not until nine days after the robbery on June 28, 1988, that he first spoke with investigators about what happened at the convenience store. In a sworn

¹ Conviction Review Unit Final Memorandum, p. 7, (Feb. 20, 2023).

² *Id.* at 8; The police did not inform Wright as to why this car was the incorrect car.

³ *Id.*

statement a month later, Wright described the driver of the brown car only as a black man. Then, during a deposition in January, 1989, he recalled the driver as short, dark-skinned and having big lips. In a second deposition in March, 1989, Wright described the driver as about 5'6, 170 pounds, dark-skinned, muscle-bound, big lips, low haircut and a little overweight.⁴

On the day Wright first spoke with police regarding the robbery, Detective Robert Campbell showed Wright a book containing 250 photographs, of which Wright was unable to identify any suspects. A photograph of the claimant was not included in the book because he was not a suspect at that point in time.⁵ A few days later, and subsequent to Wright turning in claimant's license plate information, Wright was shown a lineup of six photographs that contained a photo of the claimant. Again, Wright did not make an identification.⁶

Following Wright's failure to identify claimant in the first photograph lineup containing claimant's photo, detectives met with claimant and asked if they could take an updated photo of him (the photograph used in the first lineup was from 1984), to which claimant fully cooperated, allowing the detectives to take the photo, but asserting his innocence.⁷

It was not until the third lineup of photographs that Wright made an identification of claimant.⁸ Wright met with the detectives on July 25, 1988, who showed him a second photograph lineup that contained the updated photo of claimant. The claimant was the only person included in both the first and second lineup.⁹

The claimant was arrested on October 6, 1988, and two weeks later identified by Wright during a live lineup of six people. As with the second photograph lineup Wright viewed, claimant was the only person to have appeared multiple times, this being the third time Wright had seen the claimant.

⁴ *Id.* at 5; It should be noted that the arrest report from 1988 lists the claimant as 6'0 and 183 pounds, which is inconsistent with the description given by Wright; *see also*, Special Master Hearing (Nov. 27, 2023), Testimony of Arielle Demby Berger at 1:14:20.

⁵ Conviction Review Unit Final Memorandum, p. 10, (Feb. 20, 2023).

⁶ *Id.*

⁷ *Id.* at 11.

⁸ *Id.*

⁹ *Id.*

Trial and Conviction

The state's case rested solely on Milton Wright's "identification" of claimant's vehicle, Vincent Wright's identification of claimant in the several lineups and the fact that claimant drove a brown Oldsmobile.¹⁰ Milton Wright, who had previously been deposed, did not testify at the trial.¹¹ On the first day of the trial, Vincent Wright identified claimant in the courtroom; this was the fourth time Wright had seen claimant and the third time he identified him as the driver of the brown Oldsmobile.¹² During his testimony, Wright told the story of how he received claimant's license tag number and also testified that the driver of the brown Oldsmobile was 5'6 and "heavyset."¹³ Anissia Johnson testified that she never identified any of the perpetrators.¹⁴ The state did not present any physical evidence that claimant's Oldsmobile ever had a hole in the trunk.¹⁵

The defense presented four alibi witnesses for claimant. Each alibi witness testified that claimant had been at his parents' house attending a Father's Day celebration all day on June 19, 1988. Further, three of the four witnesses testified that claimant's car had been parked beneath a tree in the front yard and did not move until claimant left the celebration that night.¹⁶ The fourth testifying witness, a friend of claimant's, testified that he drove claimant's car to pick up his girlfriend and was gone for about an hour, but that claimant stayed back at the house.¹⁷ Two additional witnesses gave depositions, but did not testify at claimant's trial.

A jury ultimately found the claimant guilty of armed robbery. At the sentencing hearing, the prosecutor asked the judge to sentence claimant to 825 years "to ensure that [claimant] won't be released from prison while he's breathing."¹⁸ The

¹⁰ Special Master Hearing (November 27, 2023), Testimony of Arielle Demby Berger at 58:00-58:25.

¹¹ Conviction Review Unit Final Memorandum, p. 7, (February 20, 2023).

¹² *Id.* at 11.

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 10.

¹⁵ Special Master Hearing (November 27, 2023), Testimony of Arielle Demby Berger at 1:09:50; police records from when claimant's car had been reported stolen that same year do not mention a hole in the trunk of claimant's car.

¹⁶ Conviction Review Unit Final Memorandum, p. 18, (February 20, 2023).

¹⁷ *Id.*

¹⁸ *Id.* at 22.

prosecutor also intimated that he offered claimant a chance to avoid prison time if he would have given the identities of the other two perpetrators, but as claimant maintained he did not know the identities, he did not accept the offer. The judge ultimately sentenced claimant to 400 years in Florida State Prison.¹⁹

Review by the Conviction Review Unit and the Innocence Project of Florida, Inc.

Since first becoming a suspect in 1988, claimant has maintained his innocence.²⁰ The claimant submitted an application to have his case reviewed by the Conviction Review Unit of the Seventeenth Judicial Circuit State Attorney's Office in November, 2020.²¹ When performing a preliminary review of claimant's case, the CRU determined he presented a plausible claim of innocence, and thus the CRU requested the IPF assist in claimant's claim for post-conviction relief.

Witness Interviews

Investigators conducted an interview with Vincent Wright on September 26, 2022, at the State Attorney's Office. Wright testified that the driver of the Oldsmobile never got out of the car and further, that he did not remember the car at all.²² He also testified that he didn't remember what the driver looked like and that the person he identified could have been either the driver or either of the two other perpetrators.²³

In June of 2022, the IPF re-interviewed Anissia Johnson who remained steadfast that because she was so focused on the gun one of the perpetrators was carrying, she was never able to identify any of the perpetrators.²⁴

Both Wright and Johnson stated they believed claimant should no longer be in prison. Johnson stated that she believed that even if claimant had committed the crime in 1988, "this happened so long ago that [she] feels like he

¹⁹ *Id.* at 23.

²⁰ *Id.* at 11.

²¹ *Id.* at 1.

²² *Id.* at 4, 7.

²³ *Id.* at 6, 11.

²⁴ *Id.* at 6.

served his time.”²⁵ Wright expressed similar sentiments, stating 30 years for this case “is a long time,” and that claimant should be released from prison.²⁶

The CRU conducted follow-up interviews with claimant’s alibis at trial who all maintained their stories from 1989.²⁷ All of claimant’s alibi witnesses remembered claimant being at the Father’s Day celebration all day and recall riding “dirt bikes or something like that.”²⁸

Although some of the details of the alibi reports were inconsistent with each other, which may lead to a lesser perception of honesty, research shows that “lying pairs can plan an alibi ahead of time, whereas truth-telling pairs will tend to instead rely on memory—which is prone to normal memory errors.”²⁹ So, even though the alibi witnesses’ stories may have contained some inconsistencies, the fact that they all recalled claimant being at the house the entire day, while not definitively proving his innocence, leads to additional support of his innocence claim.³⁰

Expert Witness Reports

Both the CRU and the IPF consulted separate eyewitness identification experts to review the events and procedures used in claimant’s case. Each expert identified a list of issues that “show an increase in the probability of unreliable identification made under the same circumstances.”³¹ IPF consulted Dr. Lora Levett, a tenured professor in the Department of Sociology and Criminology & Law at the University of Florida and past president of the American Psychology Law Society to review the documents from claimant’s case. Dr. Levett identified eleven issues that either contaminated the investigation or were outdated standards of procedure in law enforcement that would no longer be accepted today.

²⁵ *Id.* at 9.

²⁶ *Id.* at 10.

²⁷ The IPF investigators were able to re-interview five of the six alibi witnesses; claimant’s father has since passed away.

²⁸ Conviction Review Unit Final Memorandum, p. 10, (Feb. 20, 2023).

²⁹ *Id.* at 19.

³⁰ *Id.*

³¹ *Id.* at 11, 12.

Chief among the issues Dr. Levett identified concerned issues with the lineup identifications and the fact that claimant was the only person who was in both photo lineups presented to Wright.³² According to Dr. Levett, research shows that the first lineup is the only “uncontaminated chance to test the witness’s memory,” because “it is impossible to tell whether Wright identified [claimant] in the second photo lineup because Wright’s memory was tainted from seeing [claimant] in the first photo lineup.”³³ Wright did not identify claimant when he was first shown claimant’s photo in the first photo lineup that included claimant.³⁴ Wright did, however, identify claimant in the second photo lineup, of which claimant was the only person appearing in both sets.³⁵ According to Dr. Levett, “the importance of focusing on the first identification test cannot be emphasized strongly enough,” so “if one focuses on the first identification test in this case, the witness did not identify [claimant] as the perpetrator.”³⁶

The CRU consulted Dr. Laura Shambaugh, an expert in legal psychology and an eyewitness memory researcher who is a volunteer with the CRU. Dr. Shambaugh concurred with Dr. Levett’s analysis and identified nine issues with claimant’s case. Like Dr. Levett, Dr. Shambaugh took issue with claimant being the only person to be featured in the first and second photo lineup, finding that “when witnesses view multiple lineups containing the same individual, it is difficult to know whether any subsequent recognition is from the witnesses’ memory trace of the crime, or the product of a source monitoring error (from having seen the individual in a prior lineup).”³⁷ She also found several issues with the fairness of the lineups: 1) the photos in the lineup were all lighter than the photo of claimant that was used; 2) the instructions given to Wright before the photo lineup was administered were not recorded;³⁸ and 3) the lineup administrator was the same detective that investigated the case, which may have led

³² Conviction Review Unit Final Memorandum, 14, (February 20, 2023).

³³ *Id.*

³⁴ *Id.* at 10.

³⁵ *Id.* at 11.

³⁶ *Id.* at 14.

³⁷ *Id.* at 17.

³⁸ Studies show that instructing the witness that the suspect may or may not be present in the lineup is important because the witness “may be more likely to make an identification out of the default belief that the suspect is present. Conviction Review Unit Final Memorandum, p.18, (February 20, 2023).

Wright to pick up on inadvertent clues to identify the claimant.³⁹

Studies into schema also show that when questioned about specifics that occurred previously, people tend to resort to their usual activities and routines to provide an answer.⁴⁰ When first questioned by police, claimant stated that he could not have participated in the robbery because his car had been stolen at the time. However, it was not until later in the investigation that claimant realized the robbery had occurred on Father's Day. Once this was revealed, he realized he had been at the Father's Day celebration and changed his alibi accordingly.⁴¹ At first glance, this may seem to indicate that claimant was lying about his alibi, but according to research into mistaken alibis, this is completely normal; "when suspects lack a memory for their whereabouts for a specific time in the past...they tend to resort to a backup strategy: they assess their "schemas"—their beliefs about what they normally do during the critical time period."⁴² So because claimant was not questioned until much later after the robbery occurred, in addition to not being told until later in the legal process that the robbery occurred on Father's Day, claimant resorted back to what he thought he would normally be doing four months prior—that his car had been stolen around that time and thus he did not have his car to commit the robbery. Once he realized the robbery occurred on Father's Day, he was better able to recall what he was specifically doing on the date in question.⁴³

In August of 2022, an IPF investigator interviewed Dave Pfaff, a historian at the R.E. Olds Transportation Museum, who told IPF that the Oldsmobile Cutlass was the best-selling car in America between 1976 and 1983 and was a "standout seller of the 1980s."⁴⁴ When asked during a 2022 interview to recall the perpetrator's vehicle, witness Anissia Johnson claimed, "man, that car was everywhere back then."⁴⁵ With the

³⁹ Best practices recommend that identification procedures be administered by computer or by an officer without any case-specific knowledge. *Id.*

⁴⁰ *Id.* at 20.

⁴¹ Special Master Hearing (November 27, 2023), Testimony of Arielle Demby Berger at 1:16:20.

⁴² Conviction Review Unit Final Memorandum, p. 20, (February 20, 2023), citing, Leins, D.A., & Charman, S. D. (2016). Schema reliance and innocent alibi generation. *Legal and Criminological Psychology*, 21, 111-126.

⁴³ *Id.* at 19-20.

⁴⁴ *Id.* at 8.

⁴⁵ *Id.*

popularity of the perpetrator's car, the CRU concluded that the probability of a misidentification was high.

Beginning in February, 2023, the CRU also worked with the Independent Review Panel ("IRP") in Broward County, a body of six Broward County residents, to review and provide its own recommendation for claimant's case.⁴⁶ After reviewing all of the documents relevant to claimant's case, the IRP unanimously concluded that there was reasonable doubt as to claimant's culpability, with five of the six members believing that claimant was innocent and that he should be exonerated immediately.⁴⁷ The IRP ultimately recommended that claimant's judgment and sentence be vacated and the State Attorney's Office should enter a Nolle Prosequi.⁴⁸

Prior Convictions and Prison Disciplinary Record

The claimant has two prior convictions for felony offenses stemming from separate incidents that occurred on August 31, 1984. In these incidents, claimant was the driver for an acquaintance who committed two armed robberies. When the pair were caught, claimant immediately confessed to his wrongdoing. Claimant ultimately pled guilty and was sentenced to 5.5 years in prison.⁴⁹ Claimant was released from prison on March 17, 1987. The claimant has never been convicted of any other misdemeanors or felonies.⁵⁰

During his 34 years in the Florida State Prison system related to this incident, claimant only had seven minor, non-violent violations, with his most recent violation occurring over 13 years ago in 2009.⁵¹ Upon his release, CRU investigators asked claimant how he maintained such a clean disciplinary record while in prison, to which claimant replied, "I believe in God and knew I was getting out."⁵²

Claimant also took full advantage of educational and vocational programs while in prison. He has completed many

⁴⁶ *Id.* at 3; See also, Special Master Hearing (Nov. 27, 2023), Testimony of Arielle Demby Berger at 1:31:50.

⁴⁷ *Id.* at 3.

⁴⁸ *Id.*

⁴⁹ *Id.* at 21.

⁵⁰ Special Master Hearing (Nov. 27, 2023), Testimony of Sidney L. Holmes at 2:49:45-2:50:00.

⁵¹ Conviction Review Unit Final Memorandum, p. 23, (Feb. 20, 2023); see also, Special Master Hearing (Nov. 27, 2023), Testimony of Arielle Demby Berger at 1:27:30.

⁵² Special Master Hearing (Nov. 27, 2023), Testimony of Arielle Demby Berger at 1:29:00.

certifications, including certifications in theology and has become a paralegal.⁵³

Conclusion

In conclusion, the CRU determined that there is reasonable doubt that claimant committed this crime, that it is “highly likely” that claimant is innocent, and that Broward County would not put claimant on trial for this crime today.⁵⁴ Although the State Attorney’s Office usually stays neutral concerning legislative claims bills, there is “no doubt at all” as to claimant’s innocence, and thus, State Attorney Harold Pryor and the State Attorney’s Office “fully supports” claimant in filing this bill.⁵⁵ On March 13, 2023, the court granted the state’s Motion to Vacate Judgment and Sentence.

CONCLUSIONS OF LAW:

Wrongful Incarceration under Chapter 961

Chapter 961, of the Florida Statutes, governs the general process for compensating victims of wrongful incarceration. The chapter requires a person claiming to be a victim of wrongful incarceration to prove that he or she is actually innocent of the crime and meet other criteria, such as not having been previously convicted of a violent felony offense or more than one nonviolent felony offense. A person who is wrongfully incarcerated is entitled to receive \$50,000 for each year of wrongful incarceration, which is prorated as necessary.⁵⁶ Any such individual may also receive 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;⁵⁷ as well as reimbursement of fines, fees and court costs paid,⁵⁸ and reasonable attorney’s fees and expenses incurred.⁵⁹ The total amount awarded may not exceed \$2 million.⁶⁰

⁵³ *Id.* at 1:28:00.

⁵⁴ *Id.* at 1:32:50.

⁵⁵ *Id.* 1:35:45-1:36:25.

⁵⁶ Section 961.06(1)(a), F.S. The amount of \$50,000 per year of wrongful incarceration may be adjusted to account for inflation for those wrongfully incarcerated after December 31, 2008. *Id.*

⁵⁷ Section 961.06(1)(b), F.S.

⁵⁸ Section 961.06(1)(c), F.S.

⁵⁹ Section 961.06(1)(d), F.S.

⁶⁰ Section 961.06(1), F.S.

Having been previously convicted for the 1984 robberies, the claimant did not seek relief under chapter 961, of the Florida Statutes, because he had prior convictions for unrelated felonies.

Evidentiary Standard for Victims of Wrongful Incarceration

Generally, a claimant seeking tort damages under a claim bill must prove entitlement to relief by a preponderance of the evidence – that is, more likely than not. When a claimant seeks a claim bill for wrongful incarceration, he or she must demonstrate actual innocence, but the appropriate burden of proof is not well-established.

When the Legislature created chapter 961, of the Florida Statutes, in 2008, establishing a statutory proceeding to compensate victims of wrongful incarceration, it included a requirement that the claimant demonstrate “actual innocence” by clear and convincing evidence before an administrative law judge. In addition, a person seeking compensation as provided in the statutory framework, could not have had any other felony conviction, other than the conviction for which he or she was wrongfully incarcerated.

Since the law was created, three individuals have received relief through a claim bill for wrongful incarceration: William Dillon in 2011,⁶¹ Clifford Williams in 2020⁶² and Robert Earl Duboise in 2023.⁶³ In those cases, the Special Masters applied a “clear and convincing” standard. This standard is an intermediate burden of proof requiring that the evidence is “precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.”⁶⁴ This standard also requires “that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue.”⁶⁵

⁶¹ See Senate Bill 46 (2011).

⁶² See Senate Bill 28 (2020).

⁶³ See Senate Bill 62 (2023).

⁶⁴ Florida Standard Jury Instructions in Civil Cases, No. 405.4, *available at* <https://supremecourt.flcourts.gov/content/download/243071/file/entire-Document.pdf> (last visited February 13, 2025).

⁶⁵ *Slomowitz v. Walker*, 429 So.2d 797, 800, (4th DCA 1983).

The Legislature is not bound by a previous Legislature's application of the clear and convincing standard. However, the Legislature's previous application of that standard, coupled with the Legislature's requirement of that same standard for a person claiming to be a victim of wrongful incarceration under chapter 961, of the Florida Statutes, demonstrates that this standard is the appropriate standard for wrongful incarceration cases.

Because the Legislature has demonstrated an intent to hold persons claiming to be victims of wrongful incarceration to this higher evidentiary standard, I find that the clear and convincing standard shall apply.

Conclusions Based upon Findings of Fact and Clear and Convincing Evidence

The conviction of the claimant was based primarily on the eyewitness account and identification of Vincent Wright and the civilian investigation completed by Milton Wright, who was not even at the scene of the crime. There is no physical evidence tying the claimant to the crime. The state failed to show that claimant's car ever had a hole in the trunk, only that claimant owned a similar car to the one driven by the actual perpetrator. Without Milton Wright's identification of claimant's vehicle, the claimant never would have become a suspect. This is further emphasized by the ubiquity of the model of car driven by the alleged perpetrator and the claimant.

Additionally, Vincent Wright did not identify claimant in the first lineup he was shown that contained the claimant. However, he did identify claimant in subsequent lineups. With the expert testimony regarding eyewitness reliability and the problems with the practices and procedures surrounding the multiple lineups, it is highly likely that the claimant was misidentified and should not have stood trial in the first place. Further, even if he had been a suspect, the Seventeenth Judicial Circuit would choose not to charge claimant if the case were presented today.

Six alibi witnesses of the claimant all stated he was with them at the Father's Day celebration on June 19, 1988. In 2022, all five of the witnesses that were re-interviewed maintained their claims that claimant was with them all day and that he did not

leave the house. While they misremembered details of the day, for example, whether they were riding a go-kart or a dirt bike, or what color the go-kart may have been, they all remained steadfast in their overall statements. As provided by the expert witnesses, these small, misremembered details amongst the alibi witnesses are normal and tend to display a more truthful testimony.

During her testimony at the Special Master Hearing on November 27, 2023, Assistant State Attorney Arielle Demby Berger stated that the position of the Broward State Attorney's Office is that it "fully support[s] it (the claims bill). We're not staying neutral. This is what our office did by agreeing to vacate the conviction based on *actual innocence*."⁶⁶ (emphasis added).

Given the evidence provided during the claim bill process which includes the Motion for Post-Conviction Relief and to Vacate Judgments, Convictions, and Sentences, the Amended Order Vacating Judgments, Convictions, and Sentences, the testimony of the claimant, the expert reports and their findings of multiple issues showing an increase in the probability of unreliable identification and the unequivocal assertion by the CRU that the claimant is actually innocent, the undersigned finds that the claimant has demonstrated actual innocence by clear and convincing evidence.

The claimant was wrongfully incarcerated for 34 years, 5 months and 7 days. At the statutory amount of \$50,000 per year of wrongful incarceration, the sum of \$1,722,000 appears correct.

ATTORNEY FEES:

The instant claim bill does not allow for any funds awarded to claimant to be used toward attorney or lobbying fees related to this claim. Attorneys for IPF representing claimant have also submitted an affidavit stating that all representation is *pro bono* and that no fees awarded will go toward any attorney or lobbying fees.⁶⁷

⁶⁶ Special Master Hearing (November 27, 2023), Testimony of Arielle Demby Berger at 1:35:40-1:36:25.

⁶⁷ Miller, Seth, Aff., ¶ 5, (September 15, 2023).

RECOMMENDATIONS:

Based upon the evidence submitted prior to and during the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence. There is clear and convincing evidence that the claimant committed neither the act nor the offense that served as the basis for the conviction and that the petitioner did not aid, abet, or act as an accomplice, and the relief sought is reasonable. Based upon the foregoing, the undersigned recommends SB 10 be reported FAVORABLY.

Respectfully submitted,

Nathan L. Bond

Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute no longer includes provisions from the original bill that would have waived the standard requirement that the recipient of a claim bill execute a release of all liability as a condition of payment of the claim bill proceeds. The amendment also removes from the bill provisions that would allow this claimant to pursue new or additional responsible parties. With this amendment, the bill's provisions are consistent with past claim bills awarding damages for wrongful incarceration.