IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI	)	
	)	
Plaintiff,	)	
	)	
	)	CAUSE NO. 22941-03706a
	)	
	)	
LAMAR JOHNSON	)	
	)	
Defendant.	)	

ORDER

The Court has before it the State's Motion for New Trial for defendant based on the State's allegations of newly discovered evidence of innocence, perjury and false testimony, and prosecutorial misconduct.

Initially, the Court notes it is taking judicial notice of this casefile, as well as all other files in connection with this defendant. The Court also notes specifically that it has reviewed the following documents: the court file and everything contained in the hard copy of the file, the court file on PCR 3504, the Circuit Attorney's Motion for a New Trial and all attached exhibits, defense counsel's Motion for Written Order Explaining Appointment of Attorney General's Office, the Circuit Attorney's Motion to Join in Motion for Written Order Explaining Appointment of Attorney General's Office, the Motion for Leave on behalf of 43 Prosecutors to file an amicus brief in Support of the Circuit Attorney's Motion for New Trial, the Motion to Join in Circuit Attorney's brief of Court's Authority to Entertain the Motion for a New Trial, the Attorney General's Response to Court Order, the Circuit Attorney's Jurisdiction brief, and the Circuit Attorney's Motion to Strike.

BACKGROUND

On July 19, 2019, the Court received notice that the Circuit Attorney's office filed a Motion for New Trial with attached exhibits. The attached exhibits included a summary of the Circuit Attorney's Investigation, which was denominated as Exhibit 1. Upon filing, it should be noted that the Circuit Attorney also released a copy of its motion and exhibits to the national media. On the same day, Lindsay Runnels, on behalf of defendant, joined in the motion for new trial. At the request of the parties, the case was scheduled for an informal status conference on August 1, 2019.

After its initial review of the Circuit Attorney's motion and exhibits, the Court appointed the Attorney General to appear on behalf of the State of Missouri. The Court did not make any mention of relieving, disqualifying, or removing the Circuit Attorney from the case.

At the August 1, 2019 status conference, an informal discussion began in which the Court questioned the authority of the Court, based on the Missouri Court Rules as well as binding case law, to entertain the Circuit Attorney's Motion for New Trial, which was filed approximately twenty-four (24) years after the deadline in Rule 29.11 for filing such a motion. A discussion ensued in which the Circuit Attorney redirected the discussion and questioned the authority of the Court to have appointed the Attorney General to represent the State in the matter. The Court responded that after its initial review of the motion, it had concerns that the Circuit Attorney and Innocence Project may have violated Court Rules in this proceeding and that there may be a conflict of interest in the Circuit Attorney making allegations of prosecutorial misconduct against one of her own former employees.

The Court ordered all parties, including the Attorney General, who had entered his appearance, to submit briefs addressing the question of whether the Court has any authority to entertain the Motion for a New Trial. The Circuit Attorney and the Innocence Project also

requested the Court to make written findings as to the appointment of the Attorney General, and the Court agreed that it would issue findings, after it received written Motions and Memorandums of Law regarding same.

The Court acknowledges that all of the briefs, including the Amicus Brief, include arguments regarding the appointment of the Attorney General in this case. Therefore, the Court will address that issue first, though it notes other issues may be dispositive of this case, making its reasons for the appointment moot.

In detailing its reasons for the appointment of the Attorney General, the court points out, as an initial matter, that it has "not only the duty to dispense justice, but [also] the equally important duty to maintain the integrity of the judicial system. "State ex. rel. Horn v. Ray, 325 S.W.3d 500, 511 (Mo.App. E.D. 2010). In other words, the Court has the inherent power to do what is reasonably necessary for the administration of justice. Id.

CONDUCT THREATENING THE INTEGRITY OF THE LEGAL PROCESS

Local Rule 53.3 for the Twenty-Second Judicial Circuit provides:

> No attorney or client, their agents or representatives, shall contact any member of a jury which has heard evidence in any cause in this circuit; provided, however, the court in its discretion may grant permission to attorneys or clients to discuss a case with jurors immediately after the return of a verdict; provided further, the court may also allow contact with jurors if necessary for purposes of a timely after-trial motion filed under Missouri Supreme Court Rules.

Further, the "well-founded and long-established rule" governing impeachment of a verdict provides: "The affidavit or testimony of a juror is inadmissible and is not to be received in evidence for the purpose of impeaching the verdict of a jury. Alternate jurors are likewise precluded from testifying in a manner that impeaches a verdict." Storey v. State, 175 S.W.3d 116, 130 (Mo. Banc 2005) citing Wingate by Carlisle v. Lester E. Cox Med. Ctr., 853 S.W.2d 912, 916 (Mo. banc 1993). "The rule is perfectly settled, that jurors speak through their verdict, and they cannot be

allowed to violate the secrets of the jury room, and tell of any partiality or misconduct that transpired there, nor speak of the motives which induced or operated to produce the verdict." Woodworth v. State, 408 S.W.3d 143, 149 n.5 (Mo. App. W.D. 2010) (internal citations and quotation marks omitted). "Missouri law has long held that a juror may not impeach a unanimous, unambiguous verdict after it is rendered." State v. Carter, 955 S.W.2d 548, 557 (Mo. banc 1997) (internal citation omitted).

In the present case, and as evidenced by the exhibits attached to the Motion for New Trial by the Circuit Attorney and the Innocence project, who joined in the Motion, it appears that these longstanding prohibitions, which exist to protect the integrity of the legal process, may have been violated.

In Exhibit 1, which was attached to the Circuit Attorney's Motion for New Trial and entitled "The Investigation", there is a section at page 40, heading H that provides:

> In early 2017, counsel for Johnson interviewed and obtained affidavits from three of the jurors who served at Johnson's trial. Each remembered and recognized the weak nature of the state's case, which caused jurors to have "questions about Mr. Johnson's guilt." (2017 Haessig Affidavit, p. 1- 2) The jurors were presented with evidence known to the state at the time of trial and not disclosed to the jury, and concluded that their verdict would not have been the same. The three interviewed jurors agreed that the payments made to eyewitness Elking were of critical importance to the integrity of the State's case. A juror stated that if she had been presented with such information, given the state's already-weak case, they "would not have voted to convict[.]" (2017 Dennis Affidavit, p. 1) Additionally, jurors recalled Detective Nickerson's testimony that the drive from Johnson's alibi location and the crime scene was only 3-5 minutes. Given that Johnson's alibi was the only evidence presented to dispute his involvement in the shooting, it was a key piece of evidence discussed during deliberations. Id. The jurors were presented with newly discovered evidence that was not presented to them at trial. Most importantly, they were presented with the sworn confessions of Campbell and Howard. Again, the jurors agreed that such information would have played an important role in their deliberations and eventual decision of whether to convict Johnson. (2017 Haessig Affidavit, p. 2; 2017 Young Affidavit, p. 1; 2017 Dennis Affidavit, p. 1-2) The three interviewed jurors were presented with evidence that either seriously challenged the credibility of the State's case or altogether exculpated Johnson. Each juror was able to independently recall the important facts

of the case and acknowledged the effects that the undisclosed evidence would have had on their verdict.

The Court has never received a request, nor did it, in its discretion, allow any individual to contact **any** of the jurors for any purpose in this matter. Based on the above, the court is aware that not one, but at least three, and perhaps more than three, jurors were not only contacted, but presented with what someone had unilaterally and conclusively deemed to be "newly discovered evidence....and sworn confessions" and affidavits were sought and collected.

While the Circuit Attorney may not have known about these initial violations in 2017, as the Circuit Attorney states in Exhibit 1 that she began her investigation in 2018, it would appear that sometime during 2018, the Circuit Attorney was well aware of the violations and rather than alert the Court to prevent the further violation, the Circuit Attorney instead incorporated the fruits of the repeated violations into her Motion as Exhibit 1 and released the information to the national media, despite binding Rules and precedent stating such information is improper and inadmissible. This conduct has caused the Court to be concerned about the integrity of the legal process in this case.

In addition, the Court indicated that it appeared there may be a conflict on the part of the Circuit Attorney in that the assistant circuit attorney accused by the Circuit Attorney of prosecutorial misconduct, worked for this same Circuit Attorney office.

The Innocence Project's published best practices provide, "Cases involving substantial, non-conclusory allegations of prosecutorial misconduct involving prior or former members of the office should be referred to an independent authority for investigation and review. This referral should include both the allegations of misconduct as well as the claims of innocence and constitutional violations. (From Conviction Integrity Best Practices, Innocence Project, 2015.) Moreover, "The best Conviction Integrity Units have either been run by defense attorneys working

on a full-time basis or defense attorneys working on a part-time basis with substantial oversight authority for the operation of the unit. This might well be the single most important best practice to assure that the CIU runs well and is perceived as credible by the legal community and the public." (From Conviction Integrity Best Practices, Innocence Project, 2015.)

In the present case, Assistant Circuit Attorney Jeffrey Estes, is not an independent authority, nor does he exclusively work for the Conviction Integrity Unit. Instead, he is also a member of the general trial team staff and prosecutes many cases, several of which are presently pending before this Court. Thus, the Circuit Attorney seems to not be following established best practices in the creation of its Conviction Integrity Unit, which also causes this Court to be concerned about the resultant threats to the integrity of the legal process.

In the present case, the Circuit Attorney and the Innocence Project argue that payments coordinated by Victim Services and paid through the Board of Adjustments out of the Asset Forfeiture fund for Victim Relocation services constitute prosecutorial misconduct as the payments made to relocate the witness were not disclosed. It should be noted that the State was, at the time of defendant's trial and is now, statutorily required by § 595.209 to inform victims and witnesses on charged cases of the availability of victim compensation assistance and of financial assistance and emergency and crisis intervention services and information relative to applying for such assistance or services.

Without commenting on whether or not the failure to disclose this information would, in fact, be found to be a Brady violation, as those types of payments have been the subject of other federal habeas proceedings, (See Kennell v. Dormire, 873 F.3d 637 (8th Cir. 2017),[1] the Court

[1] This is a case in which the prosecution paid $2,000 to put a witness up in a hotel for about a week and then moved the witness and his mother into an apartment. The Court said nondisclosure did not undermine confidence in the verdict.

notes two things. First, the Court notes that nowhere in the record or attached exhibits is there any mention of any contact or interview with anyone associated with Victim Services throughout the history of the Investigation who could speak as to the practices and procedures for paying to relocate witnesses during a criminal trial. This missing information would suggest that the allegation of prosecutorial misconduct is non-conclusory. Second, nowhere in the record or attached exhibits is there any suggestion that the assistant prosecuting attorney who the Circuit Attorney has accused of prosecutorial misconduct, was present for, or knew of, any of the payments. The eyewitness in question states repeatedly and as recently as April, 2019 that he was directed to a woman from Victim Services who collected all the information from the eyewitness and his wife, and then checks were received for their moving, storage, and related expenses while the case was pending.

When asked when payments began, the witness testified:

> A. I think it started immediately. I can't remember today. And again -- now, you know my wife is down there with me, but she's -- was just not in the room when that went down. But when I came back out, I think we were led to another office with the woman and the woman was the protective -- or the witness protection program. And we had told -- told our story of like, you know, what we're -- you know, what we're trying to do. We're trying to relocate, we need a place to live. I don't want to live back there in the city that's so close to the murder. I don't know if these guys, you know, know who I am or anything like that. And yeah, it -- and she asked me a bunch of questions and I think that – [is interrupted by Innocence Project attorney]
> Q. I've handed you Exhibit Number 12.." (April 2019 Elking deposition, page 106, 11-27).

This questioning continued (by the Innocence Project attorney),

> Q. Do you remember who gave that to you?
> A. The lady that was in the -- that was -- that was part of the victim's witness thing.
> Q. Is this the woman that you've been communicating about --
> A. Uh-huh.
> Q. -- with moving and –
> A. Uh-huh.
> Q. -- where to –

A. Everything. Yeah, yeah. And everything, yeah. For any -- any type of financial need, we -- we just seen a woman. (April, 2019 Elking deposition, Page 111, lines 15-25).

The Court notes, as well, that the Conviction Integrity Unit, who was present by Jeffrey Estes at the most recent deposition, did not ask a single question during the deposition of the witness:

Q. Okay. Are you doing that because you would like to testify on Lamar's behalf?
A. Absolutely.
Q. Okay. I don't have any further questions for you and I don't believe the State has any for you." (April, 2019 Elking Deposition, Page 148, 19-22).

This lack of questioning by Jeffrey Estes on behalf of the Conviction Integrity Unit is particularly troubling because many questions about the alleged prosecutorial misconduct remain unanswered by the exhibits. While the question of whether the assistant circuit attorney knew of the payments is not central to whether a violation of Brady has occurred, it is central to whether an assistant circuit attorney committed prosecutorial misconduct in connection with the payments. This missing information would also suggest that the allegation of prosecutorial misconduct is non-conclusory and should be evaluated by an independent authority.

To sum up, the Motion and Exhibits include no evidence that either the assistant circuit attorney or the victim service's representative were contacted or interviewed during the investigation. As there remain questions that are unanswered as to what, if anything, the assistant circuit attorney knew about the payments during the course of the trial, the allegation of prosecutorial misconduct remains non-conclusory and according to the Innocence Project's best practices, should have been referred out for an independent investigation as stated above.

CONCLUSION ON THE APPOINTMENT OF THE ATTORNEY GENERAL

Thus, the Court has explained what it believes to be problematic conduct on the part of the Circuit Attorney and Innocence Project. The contacting, interviewing, and presenting evidence to

at least three jurors and eliciting their affidavits appears to be a violation of a court rule intending to protect the integrity of the legal process. Further, the inclusion of that information as an Exhibit attached to the Motion coupled with the apparent deviations from the best practices of conviction integrity units in not having an independent authority investigate and review the allegations of non-conclusory prosecutorial misconduct compounded the threats to the integrity of the legal process.

Therefore, the Court is concerned that the conduct described above is likely to cause injury to the integrity of the legal process. As a result, the Court believed the appointment of the Attorney General was necessary to protect the integrity of the legal process. Contrary to the concerns of amici, this was done in order to insure the defendant presently gets whatever process he is due from this court, without compromising the integrity of the legal system.

The Court declines to address concerns raised regarding disqualification of the circuit attorneys' office as the Court has not disqualified the circuit attorney. At this stage of the proceeding, the Court merely requested all parties, including the Attorney General, to brief the issue as to what, if any authority it has to act, at all, in this matter.

Additionally, as the Attorney General correctly indicates, the Court's order directing the Attorney General to appear and represent the State's interests was a valid exercise of the Court's inherent authority. This Court did not direct the Attorney General to relieve Circuit Attorney of her ability to appear and be heard. Nor did the Court relieve Circuit Attorney of her ongoing obligation to disclose evidence to defendant. Instead, the Court directed the Attorney General to appear and to be heard on the issue of whether the trial court has the authority to consider a motion for new trial filed by the prosecutor and not the defendant, where such motion was filed approximately 24 years out of time. In the context of such an unusual event, irrespective of the

aforementioned conflicts, the circuit court requested the input of the State's chief legal officer. See State v. Todd, 433 S.W.2d 550, 554 (Mo. Div. 2, 1968).

Lastly, the Court finds persuasive the additional factors, cases, and legislation set forth in the Attorney General's Response to Court Order that they have a right to be heard in this matter, with or without a court order.

THE COURT'S AUTHORITY TO ENTERTAIN THE MOTION FOR NEW TRIAL

The Circuit Attorney, attorneys from the Innocence Project, and the Attorney General appeared for a status conference on August 1, 2019, at which time the Court asked the interested parties to file briefs addressing this Court's authority to entertain the motion.

Defendant was charged as a prior and persistent offender with first degree murder and armed criminal action for crimes occurring in October of 1994. Following a jury trial, defendant was found guilty of both charges. Movant filed a motion for post-conviction relief pursuant to Rule 29.15, and this motion was denied by the motion court following a hearing. Movant appealed his convictions and the denial of post-conviction relief, and both the convictions and denial of relief were affirmed. State v. Johnson, 989 S.W.2d 238 (Mo. App. E.D. 1999).

The Circuit Attorney for the City of St. Louis has now filed a motion for new trial "pursuant to Missouri Rule 29.11." An initial issue is whether the Circuit Attorney has standing or is otherwise authorized to file a motion pursuant to Rule 29.11 seeking a new trial for a criminal defendant. The rule itself is silent as to which party or parties may file such a motion. The Circuit Attorney argues she is authorized to file a new trial motion pursuant to Rule 29.11 citing the decision of the Supreme Court in State ex rel. Norwood v. Drumm, 691 S.W.2d 238 (Mo. banc 1985). In that case the Supreme Court held that once a guilty verdict has been rendered, a prosecuting attorney may not enter a nolle prosequi (dismiss the charges) without the approval of

the trial court. The defendant in the case had been found guilty of murder second degree and receiving stolen property. The defendant filed a new trial motion, the prosecutor confessed the motion, the judge indicated he would deny the new trial motion, the prosecutor requested leave to dismiss the murder charge, and the judge denied leave. The Supreme Court said that once a verdict has been rendered in a criminal case, the prosecutor no longer has unfettered discretion to dismiss the charge. In a sentence near the end of the decision, the Court said the state or defendant may always file a new trial motion based on newly discovered evidence, may seek habeas corpus relief, or a petition for writ of error coram nobis. This last statement is dicta that is not binding, and it cites no authority in support of the statement. Even if this statement is authority for the State to file a new trial motion, the decision does not state that in filing such a motion the State is not bound by the time limits and other procedural requirements in Rule 29.11. The issue in that case arose while the case was pending in the trial court prior to sentencing.

Rule 29.11(b) provides, "A motion for a new trial or a motion authorized by Rule 27.07(c) **shall be filed within fifteen days after the return of the verdict.**" [emphasis added] The rule further provides that the time limit may be extended for an additional ten days on application of the defendant. The versions of Rule 29.11(b) that were in effect at the time of movant's trial and at all times up to the present time contain the same time limit for filing a new trial motion. The State concedes in its new trial motion that the motion was untimely filed under Rule 29.11(b), in paragraph 198. However, the State contends an exception to the time limit was "carved out" by the Missouri Court of Appeals in State v. Mooney, 670 S.W.2d 510 (Mo. App. E.D. 1984). In Mooney, the Court of Appeals held that where newly discovered evidence bearing on the defendant's guilt did not come to the defendant's attention until after the deadline for filing a new trial motion had expired and the defendant had been sentenced, an appellate court could remand

the case with directions that the trial court permit the filing of a motion for new trial based on newly discovered evidence. Similarly, in State v. Williams, 673 S.W.2d 847 (Mo. App. E.D. 1984), another case cited by the Circuit Attorney, the case was pending on appeal and the Court of Appeals remanded the case for consideration of newly discovered evidence. The Circuit Attorney recognizes that these two cases were pending on appeal when the issue was raised, but the Circuit Attorney suggests "these cases give at least implied authority for the State to move for a new trial in the trial court under the exceptional circumstances presented here." See paragraph 204 of the Circuit Attorney's motion.

The Circuit Attorney's argument is without merit, contrary to the provisions of Rule 29.11, and is contrary to decisions of the Court of Appeals. This Court is bound, as are all parties, by the rules of criminal procedure promulgated by the Supreme Court. Dorris v. State, 360 S.W.3d 260, 268 (Mo. banc 2012). This Court is also bound by the latest controlling decisions of the Supreme Court and Court of Appeals. Mo. Const. Art. 5 § 2; see also, Akins v. Director of Revenue, 303 S.W.3d 563, 567 fn. 4 (Mo. banc 2010) where the Supreme Court said there is a single court of appeals and trial courts are bound by decisions in all three districts.

The Court of Appeals said in State v. Williams, 504 S.W.3d 194, 197 (Mo. App. W.D. 2017), that Missouri statutes and rules do not provide a specific means for a defendant to present claims of newly discovered evidence after the time limit for a new trial motion pursuant to Rule 29.11, and that "[p]rocedurally, an untimely motion for new trial is a nullity." The Court further said an appellate court may conduct plain error review and in extraordinary circumstances may remand the case to a trial court. In State v. Peal, 393 S.W.3d 621, 633-634 (Mo.banc 2013), the Court also said there is no provision for such a motion in a trial court after the time limit in Rule 29.11(b) has passed, but that an appellate court may remand the case. See also, State v. Dunmore,

227 S.W.3d 524 (Mo. App. W.D. 2007) and State v. Parker, 208 S.W.3d 331, 334 (Mo. App. S.D. 2006).

The Circuit Attorney argues that this court is a court of general jurisdiction pursuant to the Supreme Court's decision in J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249, 253-254 (Mo.banc 2009) and that prior decisions holding that the time requirements of Rule 29.11 are a jurisdictional bar are no longer valid. The case cited by the Circuit Attorney in support of her argument that the time limit may be waived, was a case in which the State waived the defendant's non-compliance while the case was still pending in the trial court prior to sentencing. The case does not support the assertion that a party may waive its own non-compliance with a rule and that a trial court may entertain such a motion after final sentencing.

The Circuit Attorney's argument is refuted by the cases cited above regarding the authority of a trial court to entertain an untimely motion for new trial based on newly discovered evidence. As stated above, this Court and the parties are required to comply with the Supreme Court's rules of criminal procedure. While it may be true that the time limits are no longer jurisdictional, they are a limit on the Court's authority. See Williams v. State, 415 S.W.3d 764, 767 fn. 2 (Mo. App. W.D. 2013), stating that time limits in rules for post-conviction relief amount to restrictions on authority, not jurisdiction.

The Circuit Attorney argues that there is no time limit in Rule 29.11 for the filing of a new trial motion by the State. The fifteen-day time limit in Rule 29.11(b) applies to "A motion for a new trial **or** a motion authorized by Rule 27.07(c)." A motion authorized by Rule 27.07(c) is a motion for judgment of acquittal by a defendant after a guilty verdict, which Rule 27.07(c) requires to be filed within fifteen days. The Circuit Attorney contends the deadlines restrict only the remedies available to a defendant because Rule 29.11(b) mentions only the defendant in the

context of a request for an additional ten days and because of the reference to motions for judgment of acquittal. This argument is contrary to the plain language of the rule which provides a fifteen day time limit for all new trial motions, with the exception where the defendant seeks an extension prior to the expiration of the fifteen days, and such argument is inconsistent with the Circuit Attorney's own admission in the new trial motion that the motion is untimely.

The Circuit Attorney further contends this Court may entertain the motion pursuant to Rule 29.12, which provides for plain error review. Paragraph 205 of the Circuit Attorney's motion. The Court finds this contention is baseless. The Missouri Supreme Court said in State ex rel. Zahnd v. Van Amburg, 533 S.W.3d 227, 230 (Mo. banc 2017), that a trial court exhausts its jurisdiction when sentence is imposed, and any action taken after sentence is imposed is null and void.[2] The Supreme Court further stated that Rule 29.12(b) does not provide a basis for an independent post-conviction procedure based on allegations of plain error, but rather the rule provides a mechanism for a trial court to entertain such an allegation prior to pronouncement of sentence.

The Circuit Attorney references conviction integrity units in other jurisdictions that have obtained relief for wrongfully convicted defendants. The Circuit Attorney fails to point out that other states may have statutory authority for such action while the Missouri General Assembly has failed to pass such enabling legislation for circuit courts. See for e.g., Md Criminal Procedure Code Ann. §8.301-Petition for Writ of Actual Innocence; Va. Code Ann. §19.3 Issuance of Writ of Actual Innocence based on non-biological evidence; Ariz. Rule of Criminal Procedure 32.1(e)(h) providing a post-conviction remedy based on newly discovered evidence and a remedy

[2] This statement is subject to rules and statutes authorizing specific motions such as Rules 24.035 and 29.15, which contain time limits and procedural requirements that must be complied with, and motions for post-conviction DNA testing. The Circuit Attorney has cited to no specific rule or statute authorizing the State's new trial motion filed over two decades after the conviction became final in this case.

where the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact finder would find the defendant guilty beyond a reasonable doubt; D.C. Code Ann. §22-4135 providing for a motion for relief from judgment based on actual innocence may be made at any time; Minn. Stat. Ann. §590.01 providing exception to ordinary time for filing post-conviction petitions where newly discovered evidence establishes by clear and convincing standard that the petitioner is innocent of the offense for which petitioner convicted; Mont. Code Ann. §46-21-102 (similar exception); Utah Code Ann. §7813-9-402 describes petition for determination of factual innocence based on newly discovered evidence.)

The conclusion that this Court has no authority to entertain this new trial motion does not mean persons raising claims such as defendant's here are without a remedy. Habeas corpus relief may be available where a defendant claims the State failed to disclose exculpatory or impeaching evidence. See State ex rel. Griffin v. Denney, 347 S.W.3d 73 (Mo. banc 2011); or where a defendant asserts actual innocence and the trial was otherwise constitutionally inadequate, see State ex rel. Amrine v. Roper, 102 S.W.3d 541 (Mo.banc 2003).[3] In fact, defendant here has unsuccessfully sought habeas corpus relief raising many of the same claims he raises here, multiple times. Movant petitioned for habeas corpus relief in 2004 in the Thirty-third Judicial Circuit for Mississippi County, Johnson v. Dwyer, No. 04CV746835 in which he was apparently represented by the Midwest Innocence Project; in 2005 in the Missouri Supreme Court, State ex rel. Johnson v. Dwyer, No. SC86666; and in 2003 the United States District Court for the Eastern District of Missouri, Johnson v. Luebbers, No. 4:00CV408CAS/MLM, in which the District Court adopted

[3] It should be noted that habeas corpus relief is not available for a free-standing claim of actual innocence, absent constitutional violations at the trial. Lincoln v. Cassady, 517 S.W.3d 11, 20-22 (Mo.App.W.D. 2016).

the report and recommendation of Federal Magistrate Mary Ann L. Medler who rejected defendant's claims in an extended unpublished opinion.

THEREFORE, for the foregoing reasons, it is Ordered and Decreed that the Circuit Attorney's Motion to Strike the Attorney General's brief is Denied, and it is Ordered and Decreed that the motion is Dismissed based on this Court's lack of authority to entertain the motion.

SO ORDERED:

Elizabeth B. Hogan, Judge

Dated: 8/23/2019