

**IN THE CIRCUIT COURT FOR GRUNDY COUNTY, TENNESSEE
AT ALTAMONT**

ADAM BRASEEL,)
)
 Petitioner,)
)
)
 v.)
)
 STATE OF TENNESSEE,)
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 Respondent.)
)
)

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Permy Siano/SM
CLERK

Case No. 4221
(POST-CONVICTION)
TRIAL COURT NO.: 4221

AMENDED PETITION FOR WRIT OF ERROR *CORAM NOBIS*

Petitioner Adam Braseel stands before this Court wrongfully convicted of murder and sentenced to life in prison for a crime he did not commit. Pursuant to Tennessee Code Annotated § 40-26-105, through counsel, he files this amended petition for writ of error *coram nobis*. For the reasons in this petition, and those to be presented in any subsequent pleading or hearing, this Court should grant the writ, set aside the judgment of conviction, and order a new trial.

SUMMARY

Mr. Braseel did not murder Malcolm Burrows. The evidence the State introduced at trial to argue that he did was weak. It primarily consisted of two meager pieces of evidence: (i) identification by two strangers who were shown photographs by police in a suggestive manner, and (ii) identification by those witnesses of the perpetrator's vehicle, which resembled a vehicle owned by Mr. Braseel's mother. There was no physical evidence connecting Mr. Braseel to the crime. On the contrary, the State's investigation determined that the physical evidence it found (a fingerprint on the passenger door of the decedent's vehicle) did not match anyone it could identify. To explain why Mr. Braseel murdered Mr. Burrows—a man he did not know—

the State claimed that the murder was a robbery gone bad. To justify this motive, it elicited testimony that no wallet was found on the body of Mr. Burrows.

We now know that none of this is true. Newly discovered evidence flatly destroys the government's case and makes clear that—had the new evidence been admitted at trial—the jury's verdict would have been different. There are five pieces of new evidence, none of which was known to Mr. Braseel or his counsel at the time of his trial, and which was only recently discovered.

First, the fingerprint found at the scene of the crime *did* match someone, an individual named Kermit Bryson, who had a family connection to Mr. Burrows. (Mr. Bryson was dating a woman raising a child Mr. Burrows considered to be a grandchild.)

Second, Mr. Bryson was not just a random citizen. He was a violent felon with a long criminal record who killed a police officer and, later, killed himself when the police were closing in on him.

Third, not only was Mr. Bryson the kind of man who would have killed Mr. Burrows in cold blood, but he matched the description given by the eyewitnesses. His photograph and that of Mr. Braseel are strikingly similar.

Fourth, not only was Mr. Bryson a violent killer who matched the description of the assailant given by the witnesses, and whose fingerprint placed him in the passenger seat of Mr. Burrow's car at the time Mr. Burrow was killed beside it, the vehicle he likely drove at the time *also* fit the description provided by the witnesses. Incredibly, the car owned by Mr. Bryson's girlfriend looks nearly identical to the car owned by Mr. Braseel's mother, which the State claimed Mr. Braseel drove to commit the crime. It even had front end damage.

Fifth, and finally, there was no robbery. Contrary to the testimony elicited by the State at

trial, the wallet of Mr. Burrows was *not* missing. It was in his back pocket at the time police arrived on the scene and discovered his body. Sergeant Mike Brown found it there, as he confirmed in a sworn affidavit. Neither the Sheriff nor any other deputy logged it into evidence, and the officers kept mention of the wallet out of any police report.

To summarize: The motive that allegedly led Mr. Braseel to murder Mr. Burrows was based on false (or, at least, mistaken) testimony. There is physical evidence placing a cop-killer at the scene of the crime. The appearance of this violent man matched exactly the description provided by the eyewitnesses. And this known-murderer, who was present at the scene, and who was connected to Mr. Burrows through his girlfriend, drove a car that looked exactly as the eyewitnesses described.

This case falls squarely within the small window of cases that the writ of error *coram nobis* was designed to address. The new evidence described in this petition (i) consists of facts that existed, but were not yet ascertained, at the time of the trial; (ii) are admissible; and (iii) are credible. The new evidence could not have been discovered earlier because the fingerprint report was only disclosed by the State a few short months ago, and counsel diligently discovered evidence of Mr. Bryson's appearance and his girlfriend's vehicle in the intervening weeks. Had this evidence been introduced at trial, the jury's verdict would have been different. Finally, Mr. Braseel is entitled to equitable tolling of the filing deadline because the grounds are "later arising" grounds and, if the statute of limitations were applied strictly, it would deprive him a reasonable opportunity to present these compelling claims.

PROCEDURAL BACKGROUND

1. Adam Braseel was convicted of first-degree murder, first-degree felony murder, especially aggravated robbery, attempted first degree murder, and aggravated assault in Grundy County, Case No. 4221. The Circuit Court for Grundy County, located in Altamont, Tennessee, sentenced Mr. Braseel to life imprisonment with the possibility of parole for his convictions for first degree murder, which was merged with his conviction for felony murder. Mr. Braseel was sentenced to fifteen (15) years imprisonment for his conviction for especially aggravated robbery of Malcolm Burroughs. In addition, Mr. Braseel was sentenced to fifteen years imprisonment for the attempted murder of Rebecca Hill, and three (3) years for his conviction for the aggravated assault of Rebecca Hill. Finally, Mr. Braseel was sentenced to eleven (11) months and twenty-nine (29) days for his conviction for the assault of Kirk Braden. These sentences were ordered to run concurrently with each other.

2. On direct appeal, the Tennessee Court of Criminal Appeals affirmed Mr. Braseel's convictions for first degree murder, especially aggravated robbery, and assault, but remanded the case so that the judgment of conviction appropriate reflected the merger of Count I (first degree murder) and Count II (first degree felony murder); the Court also remanded to merge Count IV (attempted murder of Rebecca Hill) and Count V (aggravated assault of Rebecca Hill). *See State v. Braseel*, No. M2009-00839-CCA-R3-CD, 2010 WL 3609247 (Tenn. Crim. App. Sept. 17, 2010), *perm. to appeal denied*, Feb. 17, 2011.

3. Mr. Braseel's Application for Permission to Appeal to the Tennessee Supreme Court was denied. *State v. Braseel*, No. M2009-0839-SC-R11-CD (Feb. 17, 2011) (per curium).

4. Mr. Braseel's Petition for Relief from Conviction and Sentence was filed on February 14, 2012. On review, the trial court granted Mr. Braseel relief and ordered a new jury

trial. The post-conviction trial court concluded that Mr. Braseel did not receive effective assistance of counsel at the jury trial due to trial counsel's failure to move to suppress the identification of Mr. Braseel by Rebecca Hill and Kirk Braden.

5. The State appealed from the post-conviction trial court's judgment. The Court of Criminal Appeals found that the evidence preponderated against the factual findings of the post-conviction court and reversed its judgment. *Braseel v. State*, No. M2016-00057-CCA-R3-PC (Tenn. Crim. App. Oct. 7, 2016). Mr. Braseel's application for permission to appeal was denied by the Tennessee Supreme Court on February 24, 2017.

6. After discovering new evidence deflating the State's theory that the murder of Mr. Burrows was a botched robbery, Mr. Braseel filed a Petition for a Writ of Error *Coram Nobis* on May 23, 2017. In the initial petition, Mr. Braseel argued that the newly discovered evidence would have resulted in a different outcome at trial. The State filed its Motion to Dismiss the Petition for Writ of Error *Coram Nobis* in June of 2017 on grounds that it was untimely and that Mr. Braseel was not entitled to equitable tolling of the statute of limitations. Mr. Braseel filed a Memorandum in Opposition to the State's Motion to Dismiss on August 1, 2018, and it remained pending when the State disclosed further new evidence to Mr. Braseel's counsel.

7. In addition, pursuant to an alternative theory, Mr. Braseel filed a Motion for Status Conference before this Court on February 22, 2018 on grounds that only two of the issues raised by his original post-conviction petition were decided. The State filed a Memorandum Regarding the Request for a Status Conference on May 16, 2018. In it, the State took the position that all matters in the original post-conviction petition were concluded.

8. To preserve his rights with respect to the original post-conviction petition, Mr. Braseel filed a Petition for Writ of Habeas Corpus with the U.S. District Court for the Eastern

District of Tennessee on May 23, 2017. There, the petition was stayed at the request of Mr. Braseel pending resolution of the (1) Motion for Status Conference and (2) Petition for a Writ of Error *Coram Nobis*.

9. In October 2018, as further described below, the State disclosed additional new and exculpatory evidence to defense counsel for Mr. Braseel, which prompted Mr. Braseel to ask this Court for a scheduling order for amending his Petition for a Writ of Error *Coram Nobis*. In a series of orders, this Court set deadlines in this matter, including a hearing to occur on June 26, 2019, and a deadline for the Amended Petition for A Writ of Error *Coram Nobis* to be filed by February 9, 2019.

FACTUAL BACKGROUND

Mr. Braseel was in Coalmont, Tennessee at the time the crimes occurred.

10. In January 2006, Adam Braseel was a young man starting out in life. Trial Tr. III at 296-99.¹ Mr. Braseel was raised in Grundy County but had moved to Manchester, Tennessee following high school graduation. *Id.* at 297. In the years since moving to Manchester, Mr. Braseel had returned to Grundy County only on occasion, visiting a total of five or six times to ride four wheelers and to visit with friends. *Id.* at 298.

11. On the morning of Friday, January 6, 2006, Mr. Braseel got off work and returned to Grundy County to visit a friend, Charles Partin, in Coalmont, Tennessee. Trial Tr. III at 300-01. Mr. Braseel spent a day and a half visiting with Partin, leaving around 9:15 or 9:30 in the evening on Saturday, January 7, 2006. *Id.* at 301; Trial Tr. II at 234; P.C. Tr. at 30. Danny Johnson and Robin Smith were with Mr. Braseel at Partin's home and confirmed that Mr. Braseel left the house between 9:00 and 9:15 p.m. P.C. Tr. at 36, 40.

¹ For reference, "Trial Tr." refers to the transcript of the original trial of Mr. Braseel. It consists of multiple volumes, which are referenced before the specific page number of each.

12. Mr. Braseel met up with friend Jake Baum and Baum's girlfriend, Kristen King, in the Coalmont church parking lot to talk and visit. Trial Tr. III at 302-03; Trial Tr. II at 278; P.C. Tr. at 43. After talking with the two for around five to fifteen minutes, Mr. Braseel drove to the home of friend, Josh Seagroves, arriving at 10:00 p.m. Trial Tr. III at 302-03; Trial Tr. II at 287-90.

13. When Mr. Braseel greeted Seagroves, he was his normal self—he was not upset and did not appear as if anything out of the ordinary had occurred prior to his arrival. Trial Tr. III at 304. Mr. Braseel then went four-wheeling with Seagroves and other friends and spent the night at Seagroves' home. Trial Tr. III at 302-03; Trial Tr. II at 287-90. James Brown and Darren Nunley confirmed that Mr. Braseel arrived at Seagroves house between 9:00 and 10:00 p.m. on the night of January 7. P.C. Tr. at 65, 72.² Mr. Braseel did not travel to Mellisa Rock Road or any other location in Tracy City that night. Trial Tr. III at 311.

The crimes which occurred on Mellisa Rock Road.

14. While Mr. Braseel was visiting with friends in Coalmont, a dark scene was unfolding on Mellisa Rock Road—a fifteen to twenty minute drive away. *See* Trial Tr. II at 182. According to Rebecca Hill, she was at home with her brother, Malcolm Burrows, and her son, Randy Kirk Braden, when a man came to the door and asked for help with car trouble. Trial Tr. I at 36. Hill agreed, when it was suggested by the prosecutor, that the man arrived at 9:00 or 9:15 on the night of January 7. *Id.*

15. Burrows, according to Ms. Hill, spoke with the man for about three or four minutes, agreed to help him, and left with the man in Hill's vehicle. *Id.* at 36, 48. Ms. Hill reported that the man returned to the house alone about twenty minutes later and informed her

² For reference, "P.C. Tr." refers to the transcript of the evidentiary hearing this Court held on the post-conviction petition for relief filed by Mr. Braseel.

that Burrows had sent him back for starter fluid. *Id.* at 37. When Hill reached under the sink to look for the starter fluid, the man began to hit her about the head and back with “a tire tool or something.” *Id.* at 41. The man was not wearing gloves, according to Hill. *Id.* at 53.

16. Randy Kirk Braden, the adult son of Hill, testified that he was asleep when he heard his mother screaming. *Id.* at 70-72. In Braden’s account, he rushed from the bedroom to find his mother being attacked. *Id.* at 72. The man, Braden said, was holding a “sharp object” standing over Hill. *Id.* Braden reported that he pulled the man off of Hill and the man threw a fire extinguisher from under the sink at Braden, hitting him in the right shoulder; the man then ran out of the side door of the house. *Id.* at 73-74. Braden reported that he provided some ice to his mother, and then ran outside to observe the man leave in a car with a sunroof and front-end damage. *Id.* Braden identified the man as having red hair and that he was wearing a ball cap.

17. Braden then ran to the home of Tommy Flurry where he called 9-1-1 at 9:52 p.m. *Id.* at 82. He then returned to the house and his mother let him back inside. *Id.* at 84. Braden testified that he then picked up a small baseball bat, which was broken in two, and placed it in a trash can. *Id.* When asked why he had moved the bat, Braden testified: “I couldn’t really tell you.” *Id.* at 85.

18. Jeffrey White, a neighbor, stopped by the Burrows house that night to ask Kirk Braden about what had taken place; he was fearful that a violent man was on foot in the neighborhood. Trial Tr. I at 109. According to Mr. White, Braden told him that the man ran up the road after the assault rather than leaving in a car; Mr. White remembered this account because it confirmed his fear that a dangerous individual was loose in the neighborhood. *Id.*

19. Sergeant Michael (“Mike”) Brown, a night patrol sergeant for the Grundy County Sheriff’s Department, responded to the call for emergency assistance. *Id.* at 91; *see* Exhibit 2,

Decl. of Michael Brown ¶ 3. When he arrived at the house, he spoke with Hill and Braden who reported that they had been assaulted prior to his arrival. Brown Decl. ¶ 4.

20. After the ambulance arrived, Sergeant Brown left the home and stopped by the vehicle that Mr. Burrows had reportedly taken. Brown Decl. ¶ 4. Sergeant Brown walked up a trail next to the car and discovered the body of Malcolm Burrows. Brown Decl. ¶ 4.

21. When Sergeant Brown discovered the body, Mr. Burrows was fully clothed. Brown Decl. ¶ 6. His hooded sweatshirt was pulled up above the waistline of his pants, and Sergeant Brown observed that Mr. Burrows' wallet was in his back pocket at that time. Brown Decl. ¶ 6. Sergeant Brown did not remove the wallet or otherwise move the body. Brown Decl. ¶ 6.

22. Sergeant Brown then called his partner Billy Scissom to return to the scene. Brown Decl. ¶ 7. When he arrived, Sergeant Brown showed him the scene. Brown Decl. ¶ 8. Sergeant Brown then reported the corpse and possible homicide to Dispatch. Brown Decl. ¶ 8.

23. Sheriff Brent Myers and Tennessee Bureau of Investigation Agent Larry Davis arrived at the scene sometime later, and Sergeant Brown left the two at the scene. Brown Decl. ¶ 9. The wallet then disappeared. It was never logged into evidence nor referenced in any report.

24. At trial, Agent Davis testified that there was no wallet on Malcolm Burrows' body. Trial Tr. II at 153. This testimony was false.

25. Agent Davis confirmed in his testimony that Sergeant Brown and his partner Lieutenant Scissom were at the scene when he arrived. *Id.* at 171. Although Agent Davis confirmed Sheriff Myers' presence at the scene during his preliminary hearing testimony, he omitted this fact from his testimony at trial. Prelim. Hr'g at 35; Trial Tr. II at 171. Sheriff Myers

testified that he was in Chattanooga when he was informed of the murder and did not visit the scene. Trial Tr. III at 263-64. That testimony was false.

26. On January 8, 2006, Chief Deputy Lonnie Cleek informed Agent Davis that Adam Braseel had been developed as a suspect in the crime. Trial Tr. II at 180. There was no evidence produced at trial regarding how Adam Braseel came to be a suspect in the crimes at issue, that he had any real prior relationship with the victims, or that he would have had any motive to kill Malcolm Burrows other than for the purposes of robbing him of his wallet, a wallet it turns out was not, in fact, stolen prior to Sergeant Brown discovering the body.

27. Only two characteristics tied Mr. Braseel to the crime: (1) he had red hair; and (2) he was driving a gold vehicle. Angela White, a neighbor to Malcolm Burrows, testified that on January 6,³ she observed an unfamiliar vehicle parked in front of her house facing Burrows' home. Trial Tr. at 100-01. She described the vehicle as a "gold, shiny, new model car." *Id.* at 101. She said that a photograph of Mr. Braseel's car "looked like the car." *Id.* at 102. She could not provide any information about the driver or whether there were passengers in the car. *Id.*

28. Jay Douglas provided a statement to police that on January 6, 2006, he arrived at Mr. Burrows' residence to find Burrows speaking with a white male, six feet tall, with dark hair over his ears. The man had a blonde woman with him, and the two were driving a tan or gold car. When Sheriff Myers wrote up his notes from Douglas' interview, he changed the description of the individuals in the car. Instead of writing what Douglas communicated—that the occupants of the car were a man with dark hair and a woman with blonde hair—Sheriff Myers wrote: "[Douglas] told me that the subject in the car was a white male between twenty five and thirty years old *with red hair.*" This was a false account of Jay Douglas' interview.

³ Ms. White testified at the post-conviction hearing that she saw the car on January 7, not January 6. P.C. Tr. at 61.

29. Other suspects were not developed in the case. The eyewitness identifications by Rebecca Hill and Kirk Braden were the sole evidence that tied Adam Braseel to the crimes.

30. Defense counsel at trial, Floyd Davis and Robert Peters, did not move to suppress the eye witness identifications of Rebecca Hill or Kirk Braden.

The Trial was marked by errors and an absence of credible testimony.

31. Adam Braseel was tried on November 7-9, 2007. At the trial, the following individuals testified: Rebecca Hill, Kirk Braden, Angela White, Jeffrey White, Chris McBee, Troy Brown, Andrew Martin West, Agent Larry Davis, Dr. Feng Li, Agent Elizabeth Reed, Agent Margaret Bash, Charles Partin, Jr., Lonnie Cleek, Sheriff Brent Myers, Kristen King, Joshua Seagroves, and Adam Clyde Braseel.

32. Sergeant Brown moved out of state following the murder of Malcolm Burrows. Prior to trial, however, Sergeant Brown discovered that the Braseel case was proceeding to trial. Brown Decl. ¶ 10. He contacted the District Attorney's office about testifying at the trial, but they responded that they did not need him to testify because they had it covered. Brown Decl. ¶ 10.

33. At the preliminary hearing, Agent Davis confirmed that he met Sergeant Brown, Sheriff Myers, and Lieutenant Billy Scissom at the crime scene. Prelim. Hr'g Tr. at 35. By trial, however, the testimony had changed; Agent Davis omitted reference to Sheriff Myers's presence at the crime scene. Trial Tr. II at 171. Sheriff Myers, however, specifically testified that he was in Chattanooga with his son who was in the hospital when the murder occurred and that he met Becky Hill at the emergency room when she arrived by helicopter. Trial Tr. III at 263-64. This was false.

34. According to Agent Davis, he did not find anything at the scene that would link anyone to the killing of Malcolm Burrows. *Id.* at 153. The TBI lab, likewise, found nothing in

their examination of Mr. Braseel's vehicle that would link him to the crimes. *Id.* at 169. In fact, Agent Davis testified that there was no physical evidence collected—at the two violent crime scenes, on Mr. Braseel's person, in his vehicle, or from any other source—which would connect Mr. Braseel to the crimes at issue. *Id.* at 179-80.

35. According to Agent Elizabeth Reed, who conducted the latent fingerprint analysis, there were no latent fingerprints which matched Mr. Braseel. Trial Tr. II at 216-17. There were identifiable latent fingerprints recovered, however, for which no match was found at the time. *Id.* at 216. Likewise, Agent Margaret Bash, of the TBI crime lab, testified that she found no blood on Mr. Braseel's baseball cap, his jacket, or gloves; she also found no blood on a tire tool or a stick from Mr. Braseel's vehicle. *Id.* at 220-21, 224. She also testified that there was no indication that these items had been cleaned. *Id.* at 227-28.

36. Even the time and date of Malcolm Burrows's death was not established at trial. According to the testimony of medical examiner Dr. Feng Li, Malcolm Burrows died of multiple blunt force trauma. Trial Tr. II at 201. In response to questioning about whether Burrows could have been in the woods for a week or two, Dr. Li testified that "it is very hard to say . . . how long or how far away this patient died." *Id.* at 203. The only evidence that established the timeline of Malcolm Burrows' death was the testimony of Becky Hill and Kirk Braden.

37. Neither the defense nor the prosecution called Jay Douglas to testify at trial regarding his identification of a man and woman driving a gold car on January 6, 2006. This testimony would have rebutted the implication from Ms. White's testimony, that it was Mr. Braseel who was at the Burrows residence on January 6. Further, defense counsel failed to cross-examine Sheriff Myers regarding why his report changed the detail regarding the occupants of the gold vehicle.

38. The corruption in Grundy County under Sheriff Myers has shaped the prosecution and post-conviction proceedings in Mr. Braseel's case. The current sheriff, Clint Shrum, stated: "When I took office on September 1, 2014 there was not even a single case file on the Braseel Case at the Sheriff's Office. The question is this; was there something the past administration did not want me to see?" *See* Exhibit 3, Email from Sheriff Clint Shrum.

Long after trial, new evidence was disclosed and discovered.

39. In 2014, investigative journalist David Sale began investigating this case. In February of 2015, Sergeant Mike Brown reached out to Mr. Sale on Facebook wanting to provide information about the case. *See* Exhibit 3.

40. Sergeant Brown had retired from the Grundy County Sheriff's Department and left the state. After more than a year of trying to make further contact with Sergeant Brown, Mr. Sale spoke with Sergeant Brown. *See* Exhibit 3.

41. After Sergeant Brown spoke with Mr. Sale, Sergeant Brown prepared and signed a sworn affidavit recounting what he saw at the crime scene. It is attached to this petition as Exhibit 2.

42. More new evidence followed. This time from the State. In the initial investigation, the Tennessee Bureau of Investigations Nashville Crime Laboratory (hereinafter "TBI Lab") examined latent fingerprints from the scene of the murder of Malcolm F. Burrows on January 7, 2006. *See* Exhibit 5, Official Latent Print Report. The TBI Lab issued its first latent fingerprint report on July 31, 2006. *See* Exhibit 5. Unbeknownst to Mr. Braseel or his counsel, the TBI Lab reexamined latent fingerprints and issued a second report on June 29, 2017. *See* Exhibit 5.

43. The State of Tennessee, through Assistant District Attorney General Steve Strain, provided defense counsel with the results of the second latent fingerprint report by letter dated

October 3, 2018, which was sent via U.S. Mail, over 15 months following issuance of this report. *See Exhibits 4-5, Letter of ADA Steve Strain and Official Latent Print Report.* The letter was received by defense counsel several days after it was sent. Despite the critical importance of its contents, the State did not email or telephone defense counsel about these matters. Nor has the State endeavored to explain why it waited more than fifteen (15) months to provide to defense counsel the latent print report, which links another individual to the crime scene.

44. The TBI Lab's second report identifies matched prints from Andrew West (one of the responding officers) and Kermit Bryson (now deceased). *See Exhibit 5.* Most notably, the report shows that Kermit Bryson's print matched the one found on the interior passenger door handle of the victim's car. *See Exhibit 5.*

45. According to the State's letter, Bryson had an extensive criminal history at the time of Malcolm Burrow's murder. He was convicted and incarcerated for Aggravated Burglary, Burglary, Theft, and Escape. Bryson was paroled in September 2003 and released from parole in May, 2005. *See Exhibit 4.* The letter also stated that Bryson is alleged to have killed a deputy sheriff in 2008 and that Bryson killed himself later that same day. *See Exhibit 4.*

46. With this information, Mr. Braseel's legal team was able to find numerous online news stories covering the manhunt for Bryson for murdering the deputy sheriff. These news stories shared pictures of Bryson, including pictures taken by the state agencies such as the one in Exhibit 6. Kermit Bryson bears an uncanny resemblance to Mr. Braseel in body type, hair color, skin color, and eye color. *See Exhibit 6.*

47. According to the State's letter, Bryson was not incarcerated at the time of Malcolm Burrows' murder on January 7, 2006. *See Exhibit 4.* Further, according to the State's letter, Bryson has at least one known connection to Malcolm Burrows: Bryson's girlfriend was

raising a child whom Malcolm Burrows considered to be his grandchild. *See* Exhibit 4. In addition, the State's letter indicated that, while Bryson did not own a motor vehicle, he was known to "get a ride with his girlfriend." The State did not disclose the name of Bryson's girlfriend despite admitting that the State recently interviewed her. *See* Exhibit 4.

48. In February 2019, Mr. Braseel's legal team was able to confirm that a woman named Tina Bretz was Bryson's girlfriend by finding matching residential addresses found in a public records database and viewing the public Facebook accounts of Tina Bretz and Christa Bryson, the daughter of Bryson and Ms. Bretz.

49. In February 2019, Mr. Braseel's legal team accessed public records from the Tennessee Department of Safety, Title & Registration Division that show that at the time of Malcolm Burrows murder, Ms. Bretz owned a beige 1998 Ford Escort. *See* Exhibit 7. A photo of a car matching the make, model, year, and color of Ms. Bretz's car was found via internet research by Mr. Braseel's legal team is attached as Exhibit 8.

50. The public records also listed the VIN number of Ms. Bretz's beige 1998 Ford Escort. In February 2019, Mr. Braseel's legal team ran a CarFax inquiry on Ms. Bretz's car based on that VIN number. In response, CarFax reported that in 2000, the front right end of the car was damaged in a collision. *See* Exhibit 9, CarFax Report. There is no indication the damage was fixed prior to the murder of Malcolm Burrows. *See id.*

THE WRIT OF ERROR CORAM NOBIS SHOULD ISSUE

51. The new evidence presented in this petition, and the contents of this petition, comply with the requirements and standards set forth in Tenn. Code Ann. § 40-26-105(b) and *Nunley v. State*, 552 S.W.3d 800 (Tenn. 2018).

52. That is, this petition (1) describes with particularity the nature and substance of

the newly discovered evidence; (2) demonstrates that the evidence qualifies as “newly discovered evidence,” in that the new evidence is (a) evidence of facts existing, but not yet ascertained, at the time of the original trial, (b) admissible, and (c) credible; (3) demonstrates why the newly discovered evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence; (4) demonstrates how the newly discovered evidence, had it been admitted at trial, may have resulted in a different judgment; and (5) is timely filed because petitioner is entitled to equitable tolling due to “later arising” grounds and the facts of the case, which demonstrate that strict application of the statute of limitations would effectively deny Mr. Braseel a reasonable opportunity to present his claims.

I. The Nature and Substance of the Newly Discovered Evidence.

53. The newly discovered evidence that serves as the basis for this petition consists of five evidentiary facts: (1) the fact that the latent fingerprint recovered from the crime scene was identified by the State as belonging to Kermit Eugene Bryson; (2) the fact that Mr. Bryson had a long and violent criminal history and violent disposition; (3) the fact that the physical appearance of Mr. Bryson matched the description of the perpetrator provided by witnesses and matched that of Mr. Braseel; (4) the fact that the vehicle owned by Mr. Bryson’s girlfriend, and which he drove in, matched the description of the vehicle that witnesses described the perpetrator as driving and matched that of the vehicle driven by Mr. Braseel; and (5) the fact that the real perpetrator left Mr. Burrows’ wallet behind after the murder, and that the first responding officer saw the wallet in Mr. Burrows’ rear pants pocket when he located the body.

54. With respect to the **first** fact, more specifically, the new evidence consists of a latent fingerprint recovered from the crime scene by the State’s investigators, which was developed on the passenger door handle (interior) of the Chrysler Fifth Avenue driven by the

decedent, and later identified by the State's fingerprint examiner as matching the right index (#2) finger of Kermit Eugene Bryson. This evidence is described in more detail in the TBI Official Latent Print Report of 6/29/17, which is attached as Exhibit 5 to this petition. Notably, the Chrysler Fifth Avenue where the fingerprint was found was the vehicle in which Mr. Burrows was driving with his presumed assailant in the front passenger seat shortly before his death. It was also the vehicle located a short distance from where his dead body was recovered.

55. With respect to the **second** fact, more specifically, the new evidence consists of public records and State investigative records indicating that Kermit Eugene Bryson had a long criminal history that included multiple acts of violence, which (if the fingerprint evidence were known) would have rendered him a prime suspect in the murder of Mr. Burrows and provided the defense with a clear alternative theory of identity. At the time of the murder, Mr. Burrows had convictions for Aggravated Burglary, Burglary, Theft, and Escape, and served time in prison. He was paroled in September 2003 and released from parole in May 2005. In June 2008, the State believes that Mr. Burrows killed a deputy sheriff, Anthony Tate, when Deputy Tate was attempting to serve an arrest warrant on him. Mr. Bryson killed himself later that day.

56. With respect to the **third** fact, more specifically, the new evidence consists of photographs of Mr. Bryson that demonstrate that he not only fits the eyewitness description of the perpetrator but also closely resembles Mr. Braseel. These photographs are attached as Exhibit 6 to this petition.

57. With respect to the **fourth** fact, more specifically, the new evidence consists of public records and a photograph of the make, model, and color of the vehicle owned by Tina Bretz, who petitioner's counsel identified through their investigation as the girlfriend of Mr. Bryson at the time of the murder. These records and photographs, as well as a photograph

introduced at trial of the vehicle driven by Mr. Braseel, demonstrate that the vehicle that Mr. Bryson was known to ride in matches the eyewitness description of the perpetrator's vehicle and matches the one driven by Mr. Braseel. Not only does the vehicle match the color and type, but the vehicle driven by Ms. Bretz (and apparently Mr. Bryson) also had front end damage consistent with the testimony of eyewitnesses. This is apparent from the CarFax report of the vehicle, which indicates that the vehicle suffered front end damage in 2000. These materials are attached as Exhibits 7, 8, and 9 to this petition.

58. With respect to the **fifth** fact, more specifically, the new evidence consists of the testimony of Sergeant Michael ("Mike") Brown, a night patrol sergeant for the Grundy County Sheriff's Department, who was the first responding officer to locate the body of Mr. Burrows. Sergeant Brown will testify, and his affidavit states, that he saw a wallet in the rear pants pocket of Mr. Burrows when he first observed the body. The affidavit of Sergeant Brown to this effect is attached as Exhibit 2 to this petition.

II. The Proffered Evidence Is "Newly Discovered Evidence."

59. Consistent with the Tennessee Supreme Court's decision in *Nunley*, 552 S.W.3d at 816, "the proffered evidence [is] (a) evidence of facts existing, but not yet ascertained, at the time of the original trial, (b) admissible, and (c) credible.

A. The Proffered Evidence Existed But Was Not Ascertained at the Time of Trial.

60. With respect to the **first** fact, regarding the presence of Mr. Bryson's fingerprints at the crime scene, the evidence existed at the time of trial—the fingerprints were present on the interior car door from the date the police scoured the crime scene—but it was unknown at the time of trial that they belonged to Mr. Bryson.

61. With respect to the **second** fact, regarding the criminal history of Mr. Bryson and

his violent tendencies, the evidence existed at the time of trial—he had multiple convictions prior to 2007—but it was unknown at the time of trial that Mr. Bryson was present at the crime scene.

62. With respect to the **third** fact, regarding the appearance of Mr. Bryson and how closely he resembles both the descriptions of the eyewitnesses and the appearance of Mr. Braseel, the evidence existed at the time of trial—there were photographs of him at that time, and he could have been brought into the courtroom for a live identification procedure before the jury—but it was unknown at the time of trial that Mr. Bryson was present at the crime scene.

63. With respect to the **fourth** fact, regarding the vehicle that Mr. Bryson had access to and its resemblance to both the descriptions of the eyewitnesses and the appearance of the vehicle driven by Mr. Braseel, the evidence existed at the time of trial—the records of the vehicle existed and the vehicle was in operation and able to be photographed to be shown to the jury—but it was unknown at the time of trial that Mr. Bryson was present at the crime scene.

64. With respect to the **fifth** fact, regarding the presence of Mr. Burrows' wallet on his body at the time police arrived, the evidence existed at the time of trial—it was known to Sergeant Brown (and, by extension, the prosecution team) from the moment police arrived and certainly prior to trial—but it was unknown by Mr. Braseel or his counsel because the State affirmatively represented the opposite through police reports and sworn testimony.

B. The Proffered Evidence Is Admissible.

65. With respect to the **first** fact, regarding the presence of Mr. Bryson's fingerprints at the crime scene, this evidence is admissible. The latent fingerprint collected from the vehicle at the crime scene could be introduced into evidence through the officers present at the scene. The comparison print of Mr. Bryson could be introduced into evidence through government records. The resulting fingerprint match could be introduced through the State's fingerprint

examiner, who could render an admissible opinion that the prints match. Moreover, given the posture of the case, and the State's ethical obligations, much of this evidence could be subject to a stipulation and entered into evidence by agreement.

66. With respect to the **second** fact, regarding the criminal history of Mr. Bryson and his violent tendencies, this evidence is admissible. The prior records of his convictions, including the judgments, could be introduced into evidence through the public records exception to the hearsay rule. Evidence of Mr. Bryson's violent tendencies, and his involvement in the murder of a police officer, could be introduced by eyewitnesses or through the records of the State (which could constitute admissions by party opponents). Nor would there be a bar to such evidence, as evidence suggesting Mr. Bryson was the person who killed Mr. Burrows would be admissible under *Holmes v. South Carolina*, 547 U.S. 319 (2006), and its progeny, which established a defendant's constitutional right to present a complete defense, including the right to introduce evidence suggesting an alternative perpetrator.

67. With respect to the **third** fact, regarding the appearance of Mr. Bryson and how closely he resembles both the descriptions of the eyewitnesses and the appearance of Mr. Braseel, this evidence is admissible. The photographs of Mr. Bryson, including his driver's license photograph and mug shots, could be introduced as public records or by people who knew what he looked like at the time. Nor would there be a bar to such evidence, as evidence suggesting Mr. Bryson was the person who killed Mr. Burrows would be admissible under *Holmes v. South Carolina*, 547 U.S. 319 (2006), and its progeny, which established a defendant's constitutional right to present a complete defense, including the right to introduce evidence suggesting an alternative perpetrator.

68. With respect to the **fourth** fact, regarding the vehicle that Mr. Bryson had access

to and its resemblance to both the descriptions of the eyewitnesses and the appearance of the vehicle driven by Mr. Braseel, this evidence is admissible. The public records demonstrating the car's ownership, make, model, and color could be introduced through the public records exception to the hearsay rule. The CarFax report indicating front end damage to the vehicle could be introduced through the business records exception to the hearsay rule. Evidence of the car's front end damage (including testimony and/or photographs) could also be introduced by witnesses who had first-hand knowledge of the car's condition at the time.

69. With respect to the **fifth** fact, regarding the presence of Mr. Burrows' wallet on his body at the time police arrived, the evidence is admissible. Sergeant Brown can testify as a competent eyewitness about what he saw and experienced when he arrived at the crime scene.

C. *The Proffered Evidence Is Credible.*

70. With respect to the **first** fact, regarding the presence of Mr. Bryson's fingerprints at the crime scene, this evidence is credible. There is no dispute that the latent fingerprint was collected from the victim's vehicle, and the evidence of the match with Mr. Bryson comes from the State's own crime lab.

71. With respect to the **second** fact, regarding the criminal history of Mr. Bryson and his violent tendencies, this evidence is credible. His convictions are a matter of public record, and the State itself believes that Mr. Bryson killed a sheriff deputy and, later that day, himself.

72. With respect to the **third** fact, regarding the appearance of Mr. Bryson and how closely he resembles both the descriptions of the eyewitnesses and the appearance of Mr. Braseel, this evidence is credible. There is no dispute about Mr. Bryson's appearance.

73. With respect to the **fourth** fact, regarding the vehicle that Mr. Bryson had access to and its resemblance to both the descriptions of the eyewitnesses and the appearance of the

vehicle driven by Mr. Braseel, this evidence is credible. The records and vehicle speak from themselves.

74. With respect to the **fifth** fact, regarding the presence of Mr. Burrows' wallet on his body at the time police arrived, the evidence is credible. Sergeant Brown has already sworn under oath that the information is true. He is an experienced law enforcement officer with no known adverse credibility determinations. And he has no known motive to lie.

III. The Proffered Evidence Could Not Have Been Discovered Earlier.

75. As required by *Nunley*, this petition demonstrates "why the newly discovered evidence 'could not have been discovered in a more timely manner with the exercise of reasonable diligence" 552 S.W.3d at 816.

76. With respect to the **first** fact, regarding the presence of Mr. Bryson's fingerprints at the crime scene, this evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence because it required access to the State's database of fingerprints. Neither Mr. Braseel nor his counsel could conduct fingerprint comparisons against the entire set of known prints, as the State was able to do here. Nor did Mr. Braseel and his counsel have access to the known fingerprints of Mr. Bryson. We similarly did not have any reason to know or suspect that Mr. Bryson was involved in the murder of Mr. Burrows.

77. These facts were first disclosed to counsel for Mr. Braseel in a letter from the State that was delivered in October 2018, more than fifteen (15) months after the fingerprints were matched to Mr. Bryson by the TBI. The State has not explained why it waited such a long period of time to disclose this incredibly exculpatory evidence to defense counsel.

78. With respect to the **second** fact, regarding the criminal history of Mr. Bryson and his violent tendencies, this evidence could not have been discovered in a more timely manner

with the exercise of reasonable diligence because Mr. Bryson only was identified as being connected to the murder of Mr. Burrows when the State disclosed the fingerprint report in October 2018. There was no reason that Mr. Braseel or his counsel would have known or suspected that he was connected to the murder of Mr. Burrows prior to that date. Nor was such knowledge reasonable; there are hundreds of individuals who have lived in Grundy County who have criminal records and violent tendencies. It would not be reasonable to expect defense counsel and the petitioner to independently assess whether each such individual may have had a connection to Mr. Burrows, or look like Mr. Braseel.

79. With respect to the third fact, regarding the appearance of Mr. Bryson and how closely he resembles both the descriptions of the eyewitnesses and the appearance of Mr. Braseel, this evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence for the same reasons as the second fact discussed in the paragraph above.

80. With respect to the fourth fact, regarding the vehicle that Mr. Bryson had access to and its resemblance to both the descriptions of the eyewitnesses and the appearance of the vehicle driven by Mr. Braseel, this evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence for the same reasons as the second and third facts discussed in the paragraphs above.

81. In addition, although the State knew the name of Mr. Bryson's girlfriend at the time it sent its October 2018 letter, it did not provide this name to defense counsel. Instead, defense counsel had to conduct its own investigation to determine the name of the girlfriend, locate any vehicles she owned or used, and gather information about these vehicles. Defense counsel conducted this investigation from the time it received the State's letter until the very day this petition was filed, working as expeditiously as possible.

82. With respect to the fifth fact, regarding the presence of Mr. Burrows' wallet on his body at the time police arrived, this evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence because the State affirmatively misled defense counsel about Sergeant Brown's involvement in the investigation and presented perjured testimony to the opposite—that the wallet was *not* present when the body of Mr. Burrows was discovered. In addition, it took extensive time for petitioner's investigators to determine that the State may have presented false testimony on this issue, and additional time to locate Sergeant Brown and convince him to provide the information he knew about the case.

83. In addition, trial counsel for Mr. Braseel, Floyd Davis and Robert Peters, conducted their own investigation of the facts prior to trial, acted reasonably when doing so, and had no pretrial knowledge of the newly discovered evidence.

84. All of the facts presented above about the petitioner's exercise of reasonable diligence, and that of his counsel, in uncovering and presenting these newly discovered facts are supported by the Affidavit of counsel Alex Little, which is attached as Exhibit 1 to this petition.

IV. The Proffered Evidence Would Have Resulted In A Different Judgment.

85. The newly discovered evidence destroys the thin filaments of the case the State presented against Mr. Braseel at trial. As noted above, the State's theory that Mr. Braseel was the murderer depended on (i) the identification of him by two strangers, and (ii) identification of the vehicle he was driving by the same witnesses. There was no physical evidence connecting Mr. Braseel to the crime, and the only motive offered was that Mr. Braseel killed Mr. Burrows in the course of a robbery gone bad.

86. The first three facts supported by the new evidence call into question whether the identification of Mr. Braseel by Ms. Hill and Mr. Braden was correct. Had the jury heard that the

fingerprints of Mr. Bryson were found in the passenger side of the vehicle Mr. Burrows was driving moments before his death, and had the jury seen the striking resemblance of Mr. Bryson to the descriptions provided by the eyewitnesses, they would not have found the necessary element of identification beyond reasonable doubt.

87. On this point, Mr. Bryson was a violent felon at the time of Mr. Burrows' murder. He had recently been released from prison, and he was linked to the victim through his girlfriend's child. In contrast, Mr. Braseel had no criminal history or similar relational link to the victim.

88. Even more notably, Mr. Bryson bore a striking resemblance to Mr. Braseel in weight, skin tone, hair color, and eye color. But for the suggestive photo array, the witnesses likely would not have identified Mr. Braseel as the perpetrator, and they even may have identified Mr. Bryson had his photograph been tested. Even if the witnesses continued to identify Mr. Braseel as the perpetrator at trial, the credibility of those identifications would have been destroyed in light of Mr. Bryson's link to the murder scene and victim's family.

89. Similarly, the **fourth** fact supported by the new evidence calls into question whether the identification of the vehicle linked to Mr. Braseel by the trial witnesses was correct. Had the jury heard that the fingerprints of Mr. Bryson were found in the passenger side of the vehicle Mr. Burrows was driving moments before his death, and had the jury seen the striking resemblance of his girlfriend's vehicle (which he regularly had access to) to the descriptions provided by the eyewitnesses of the vehicle driven by the perpetrator, they would not have found the necessary element of identification beyond reasonable doubt.

90. Moreover, the **fifth** fact supported by the new evidence directly and completely undermines the State's theory of motive—that this was a botched robbery. Sergeant Brown's

testimony establishes that Mr. Burrows' wallet remained on him after the murder. There is thus no evidence that he was robbed. Given the State's burden of proof, the lack of motive alone would have resulted in a different judgment.

91. Taken together, if all of this evidence had been known and introduced at trial, there is simply no question that the jury verdict would have been different. "The goal of the relief afforded under a writ of error *coram nobis* is a reliable determination of the petitioner's criminal liability for the offense with which he was charged based on *all of the evidence* that should have been made available to the fact-finder at the initial trial." *Payne v. State*, 493 S.W.3d 478, 485 (Tenn. 2016). Here, in the absence of the newly discovered evidence, the jury's determination that Mr. Braseel was criminally responsible is not reliable.

V. The Petition Is Timely Filed and Entitled to Equitable Tolling.

92. This petition is timely filed because it is filed within the time period for which the applicable statute of limitations has been equitably tolled.

93. The relevant statute of limitations is detailed in Tenn. Code Ann. § 27-7-103. Pursuant to that statute, a writ of error *coram nobis* must be filed within one year after the judgment becomes final. Here, the judgment became final on or about February 17, 2011, which is when Mr. Braseel's petition for appeal to the Tennessee Supreme Court was denied, or ninety days thereafter, when his time to file a writ of certiorari to the U.S. Supreme Court expired.

94. In either scenario, the filing of this petition comes more than a year later. This filing is nonetheless permissible and timely because Mr. Braseel is entitled to equitable tolling of the filing deadline. He is entitled to such relief for at least two reasons.

95. *First*, this is a claim of actual innocence that is based on evidence that Mr. Braseel or his counsel did not know—and could not know—until only weeks prior to the filing of the

petition. Strict application of the statute of limitations in such circumstances would violate Mr. Braseel's due process rights, as contemplated by *Dellinger v. State*, 279 S.W.3d 282 (Tenn. 2009).

96. *Second*, the grounds upon which this petition is based are "later arising" grounds, as contemplated by *Nunley*, 552 S.W.3d 829. That is, as demonstrated above, the newly discovered evidence was only recently uncovered and arose after the point in time when the applicable statute of limitations statute of limitations normally would have started to run. Based on the facts of the case, as detailed above, the strict application of the statute of limitations would effectively deny Mr. Braseel a reasonable opportunity to present his claims.

97. In addition, Mr. Braseel is entitled to equitable tolling because he presents patently meritorious grounds for relief.

PRAYER FOR RELIEF

98. For the foregoing claims enumerated herein, and for the reasons detailed in this Petition and its Exhibits, Adam Braseel prays this Honorable Court to:

- a) Order the State to file an Answer to this Petition;
- b) Allow Petitioner to further Amend the petition, if appropriate;
- c) After permitting a reasonable time for discovery, this Court hold an evidentiary hearing on all procedural and substantive matters as to which there are factual disputes;
- d) Grant Adam Braseel an unconditional writ of error *coram nobis*;
- e) Grant Adam Braseel a conditional writ of *coram nobis*; and
- f) Grant any other relief the Court deems necessary and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2019, a true and correct copy of the foregoing document has been served via ~~U.S. Mail~~, postage prepaid, upon the following:

fed ex

J. Michael Taylor, Esq.
Steve Strain, Esq.
District Attorney General
12th Judicial District
375 Church Street, Suite 300
Dayton, Tennessee 37321


