REPORT OF THE INDEPENDENT PANEL TO EXAMINE THE CONVICTION AND SENTENCE OF MYON BURRELL

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I. Introduction

On November 22, 2002, an eleven-year old girl named Tyesha Edwards was shot to death while sitting with her sister Lakia in the dining room of her home at 3431 Chicago Avenue South in Minneapolis. The intended victim was Timothy Oliver, a 17-year-old who was standing in front of the house next door. A bullet passed through Oliver's pant leg, but he was unharmed.

Three days later two adults, Isaiah ("Ike") Tyson and Hans Williams, were arrested in connection with the killing. Myon Burrell, a 16-year-old at that time, was arrested the day after that. A criminal complaint was issued after Burrell's arrest that listed Tyson, Williams, and Burrell as co-defendants in the murder.

On December 19, Burrell, Tyson, and Williams were indicted by a Hennepin County Grand Jury for first degree murder of Tyesha Edwards and attempted first degree murder of Timothy Oliver. Burrell was charged as an adult. Williams pled guilty to second-degree murder for the benefit of a gang, and Tyson pled guilty to second-degree murder and attempted first-degree murder for the benefit of a gang. Burrell, who denied involvement in the shooting from the time of his arrest, proceeded to trial before a jury and was convicted of first-degree murder and other charges. He was sentenced to life in prison plus 12 months on the first-degree murder charge, plus a consecutive term of 186 months for the attempted murder of Timothy Oliver.

That conviction was overturned by the Minnesota Supreme Court in May of 2005, based on several errors in the trial. At re-trial, Burrell elected to forego a jury and have Hennepin County District Judge Charles A. Porter, Jr. serve as the trier of fact. In April of 2008, he was again convicted of murder in the first degree and attempted murder. He was sentenced to life in prison plus 60 months for the murder and a consecutive term of 186 months for the attempted murder of Timothy Oliver. The Minnesota Supreme Court overturned this sentence while affirming the conviction, and at his third and final sentencing Burrell received a life sentence (with parole eligibility after 30 years) plus twelve months for the murder of Tyesha

Edwards and a consecutive 186-month term for the attempted murder of Timothy Oliver.

Since Burrell's 2002 arrest, underlying allegations and evidence have shifted markedly. Isaiah ("Ike") Tyson, who testified in his own plea hearing that Burrell was the shooter, testified at the second trial (and has repeated since that time) that he was, in fact, the shooter and that Burrell was not present. Timothy Oliver, who identified Myon Burrell as the shooter at the first trial, died between the first and second trials. Some witnesses presented by the government at the trials later retracted their claims.

The legal landscape has also evolved in the intervening 18 years. Driven by a series of decisions in the United States Supreme Court and an expanding body of research documenting the neurological differences between juveniles and adults, the purposes and metrics of juvenile sentencing have changed dramatically.

In the spring of 2020, both activists in the community and Senator Amy Klobuchar called for an investigation into the conviction and sentence of Myon Burrell. Senator Klobuchar served as the County Attorney for Hennepin County at the time of the first trial.

In response to this call, Laura Nirider, Clinical Professor of Law and Co-Director of the Center on Wrongful Convictions at the Northwestern Pritzker School of Law, and Barry Scheck, Co-Founder of the Innocence Project and Professor of Law at the Benjamin N. Cardozo School of Law at Yeshiva University convened this panel of national legal experts, chaired by Mark Osler, the Robert and Marion Short Distinguished Professor of Law at the University of St. Thomas (MN). The purpose of the panel was to conduct an independent review, based on best practices of "conviction integrity units" of the conviction and sentence of Myon Burrell, an approach supported by the Great North Innocence Project, headquartered in Minneapolis, Minnesota. The work of this panel began in July, 2020. Biographies of the panel members are attached as Appendix 1 to this report.

II. Investigation and Reporting

In the course of its investigation, this panel reviewed the following materials:

- Police reports;
- Transcripts of witness interviews;

- Judgments/related documents regarding Burrell's convictions;
- Transcripts of both trials;
- Findings of fact in the second trial;
- Transcripts of both sentencing hearings;
- Tapes and transcripts of prison calls;
- Opinions of appellate courts;
- Maps and video of the site;
- Prison records of Myon Burrell;
- Press reports regarding the case; and
- Affidavits from Terry Lovell Arrington, Dameon Leake, Jillian Sully, Latosha Evans, Asha Ouma and Jonathan Turner.

In addition, members of the panel interviewed the following witnesses via videoconference or telephone:

- Hennepin County Attorney Mike Freeman;
- Robin McDowell, Associated Press;
- Burrell defense attorney Daniel Guerrero;
- Univ. of Minn. Law Professor Perry Moriearty;
- Civil Rights Activist Nekima Levy-Armstrong;
- Co-defendant Isaiah ("Ike") Tyson;
- Co-defendant Hans Williams;
- Witness Angela Buboltz Williams;
- Trial Judge Charles Porter;

- Jimmie Edwards, father of Tyesha Edwards;
- Former Minneapolis Mayor R.T. Rybak; and
- Myon Burrell.

After an initial investigation conducted as a whole, the panel divided into two sub-groups. One sub-group investigated and reports below on the integrity of the conviction. The second focused on the integrity of the sentence. This report includes the final conclusions of the panel on the integrity of the sentence and a preliminary report on the integrity of the conviction. The sub-group on the integrity of the conviction, as of the time of this report, is still awaiting receipt of documents and records from the Hennepin County Attorney's office.

III. Summary of the Report

A. Summary of Report on the Integrity of the Sentence

Burrell has now served 18 years of a life sentence plus 12 months and a consecutive term of 186 months. The panel considered the continuing integrity of Myon Burrell's sentence at this point in time, setting aside the question of guilt or innocence. We concluded that no fundamental goal of sentencing is served by Burrell's continued incarceration.

Our analysis begins with the views of the victim's family members, who suffered immense tragedy regardless of the perpetrator. Those views, expressed directly to the panel, through the court, and in the press reflect a range of sentiments that all flow from the loss of life at the center of this case.

Two things have changed dramatically since Tyesha Edwards's killing in 2002. One is Myon Burrell. The other is the way our nation looks at the sentencing of juvenile offenders such as the 16-year-old at issue in this case. The panel not only interviewed Burrell but closely examined his prison record, and found a pattern of responsibility and growth in adulthood. Meanwhile, the United States Supreme Court has established a new framework on juvenile sentencing that acknowledges neuro-scientific findings about brain development and moves away from especially harsh sentences for youthful offenders. Under this view, sentencers are urged to consider a juvenile's age and other mitigating factors when imposing sentences.

Our conclusion was rooted in consideration of the four traditional goals of sentencing: rehabilitation, punishment, deterrence, and incapacitation. Even

assuming Burrell's guilt, continued punishment furthers none of those goals. Burrell's prison record demonstrates that rehabilitation has already occurred. The need for punishment has also been served. Even as alleged by the State, Burrell was a 16-year-old acting under the influence and direction of two adults, a fact that the sentencing court could not take into account because of mandatory sentencing. The value of general deterrence is undercut by the bare fact that the harsh punishment for this attempt to kill Timothy Oliver did not even deter the murder of Timothy Oliver himself in similar circumstances just seven months after that harsh sentence was announced. Finally, incapacitation does not seem necessary. The danger posed by Burrell as described by the government is the threat of gang violence. However, despite the presence of gangs in prison, he has no history of gang-related violence while incarcerated.

Based on all of these circumstances, the panel believes that no purpose is served by Burrell's continuing incarceration, and no negative fact overwhelms the imperative of freedom.

B. Summary of the Preliminary Report on the Integrity of the Conviction

As of the date of this Report, the panel's review has yielded the following preliminary findings:

(1) This panel has serious concerns about the jailhouse informant testimony in Burrell's case. After consulting with leading expert Alexandra Natapoff of Harvard University, the panel believes that many of the risk factors associated with wrongful convictions in jailhouse informant cases that have been identified and studied since Burrell's trial in 2008 are operative here and highly problematic. Among other things: (a) the jailhouse informant testimony was provided by individuals nearly all of whom were aligned with the Family Mob gang, which opposed Burrell's gang; (b) some of the informants' stories changed dramatically over time but all matched each other by the time of trial; (c) there is some evidence that their stories were in fact orchestrated and coordinated by leaders of the Family Mob gang, who were reportedly selling information about Burrell's case to would-be informants; and (d) the informants' testimony was obtained through a series of extraordinarily generous plea deals of a type known to incentivize informants to provide

"helpful" testimony rather than true testimony. For instance, one Family Mob-aligned informant received a federal sentence reduction from 16 years to 3 years in prison in exchange for testimony implicating Burrell.

(2) This panel has serious concerns about the degree to which evidence supporting Burrell's innocence was overlooked or not fully investigated. Nearly every witness who testified that Burrell was guilty received sentence reductions or similar benefits in exchange for testimony helpful to the State. In contrast, however, the four known witnesses in this case who gave testimony tending to exonerate Burrell had no interest in the outcome one way or the other – and yet were apparently disregarded by prosecutors. One of those disinterested witnesses – the then-girlfriend of Hans Williams – the Panel finds particularly credible. Williams gave her firsthand account of the shooting immediately after it occurred, and Burrell's name was never mentioned. Instead, she consistently named Ike Tyson as the shooter. She called 911 and reported Tyson as the shooter; a recording of that call exists. Later, after Burrell was arrested, Hans Williams assured her that Burrell was not involved at all – an account that she passed on to the authorities on multiple occasions. She, along with the other three known disinterested witnesses in this case, appears to have been largely overlooked in the investigation and trials in this case.

(3) This panel has serious concerns about the identification testimony of Tim Oliver, the intended victim of the shooting, which was read into the record at the 2008 trial after Oliver's death. There is evidence that his identification of Burrell was directed by the leader of the Family Mob gang, to which Oliver belonged, who had a grudge against Burrell. Ike Tyson has admitted that he was the shooter, and the descriptions of the shooter's height, hairstyle, and clothing given by two disinterested eyewitnesses match Tyson, not Burrell. Oliver's opportunity to observe was poor. Indeed, he gave inconsistent statements about the location of the shooter, whom disinterested witnesses say was standing across the street and down the block, partially obscured by a wall. Oliver's friends, who were with him at the time of the shooting, have said he "hit the dirt" (i.e. lay down) when firing started, thereby placing himself in a position that prevented him from being able to see the shooter, and then ran after the shooting stopped. There is evidence that Oliver later

recanted his statement implicating Burrell before his death, saying he didn't actually see who fired the shots. Finally, the panel has also developed questions about whether benefits were offered to Oliver before he implicated Burrell; indeed, there is some evidence that Oliver may have avoided charges in an unrelated shooting by implicating Burrell in the Edwards case.

The panel believes that further on-the-ground investigation, including witness interviews, review of police and prosecution files and tape recordings may yield additional evidence of actual innocence or due process issues. Indeed, the panel's investigation has been constrained by lack of access to the complete police and prosecution files and lack of access to full information about the informants, including cooperation deals and information about their history of providing testimony in exchange for leniency in other cases. For this reason, we strongly recommend that the newly-created Conviction Review Unit (CRU) in the Minnesota Attorney General's office continue this re-investigation, with emphasis on the particular issues that we identify in this report.

We are grateful that Hennepin County Attorney Mike Freeman told us he supported our panel's efforts and respected our process. County Attorney Freeman appeared before the panel for a ninety-minute interview. He was candid, thoughtful, and cordial in answering our questions. County Attorney Freeman agreed in principle to provide the panel with access to the prosecution file and other items we requested when time and resources would allow it, and he encouraged the principal trial prosecutors in the first and second trial to talk with us. Unfortunately and understandably, the heavy challenges facing the Hennepin County office during the pandemic, the age of the case, the volume of material at issue, as well as the time, expense, and personnel required for production prevented Mr. Freeman from making the prosecution file available on an admittedly tight schedule. We have been informed and were pleased to learn that both County Attorney Freeman and Ramsey County Attorney John Choi have pledged to make their files available to the newly-forming statewide CRU if requested to do so concerning cases from their offices. All members of this panel are willing to co-operate fully with the CRU and all other stakeholders if the CRU chooses to review the Burrell case. We urge it to do so.

IV. Report on Integrity of the Sentence

This section addresses the continuing integrity and appropriateness of Burrell's sentence, leaving aside the question of his actual guilt or innocence. As such, it will focus on time periods before the death of Tyesha Edwards and after the

sentencing of Myon Burrell. The arrest and conviction are addressed independently in Section V.

A. Victims

There were two victims of the crime at issue, one intended and one unintended. Timothy Oliver was the victim of attempted murder. Tyesha Edwards was the victim of murder.

1. Timothy Oliver

At about 3:00 p.m. on November 22, 2002, Timothy Oliver was standing in front of a home belonging to his aunt at 3433 Chicago Avenue in Minneapolis. A man standing across the street fired about eight shots in his general direction. One of those shots went through his pants leg, but did not hit him. At the time, Timothy Oliver was 17 years old and associated with the Gangster Disciples, a street gang closely aligned with the Family Mob and hostile to gang members affiliated with the Bloods.[1]

In January, 2004, Timothy Oliver was killed by intentional gunfire while standing in the street about 13 blocks from the spot where he had been targeted in 2002.[2]

The panel tried but failed to find surviving relatives of Timothy Oliver.

2. Tyesha Edwards

At the time of her death, Tyesha Edwards was an 11-year old schoolgirl. At about 3:00 p.m. on November 22, 2002, she and her eight-year-old sister, Lakia, were doing homework at the dining room table of their home at 3431 Chicago Avenue. A single bullet killed Tyesha, fired from an assailant across the street whose intended victim appeared to be Timothy Oliver.

The Panel acknowledges the devastating impact Tyesha's murder had on her family and the community, the aftershocks of which continue to reverberate. Understandably, most of Tyesha's surviving family members chose not

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[1] Findings of Fact, Hon Charles A. Porter, April 9, 2008, pp. 2-10.

[2] *Bullets Find Teen Who Had Cheated Death*, Minneapolis Star-Tribune, Jan. 29, 2004.

to speak to the Panel after being offered the opportunity to do so. One family member, who is aware of the uncertainty surrounding the integrity of Burrell's conviction, described the decision whether to take a position for or against Burrell's release as "super touchy." The Panel appreciates the difficulty Tyesha's family faced in deciding whether to participate in this inquiry and respects those family members who chose not to offer their thoughts. Tyesha was a much-loved child. Her brother Jimmie said this about her at sentencing: "My little sister was a smart girl and she always, we always were together no matter what. And she was, she loved school and she wanted to be a teacher and it's just hard because I lost my little sister for nothing."

At sentencing after the first trial, victim impact statements were made by Tyesha's mother, Linda Winborn; her step-father, Leonard Winborn; her biological father, Jimmie Edwards; and her two siblings, Lakia and Jimmie.[3]

Tyesha's little sister, Lakia, was called by the government as a witness at both trials, despite the fact that she had no evidence to offer towards any element of the crime other than the indisputable fact that her sister was dead by gunshot.[4] That same evidence was brought forth through her mother. Lakia was only 8 years old at the time of the first trial, and 13 at the time of the second. There was no apparent reason—particularly in a bench trial—to re-traumatize a young girl when her testimony was unnecessary to prove any element of the crime.

The panel contacted Tyesha's biological father, Jimmie Edwards, and he related his current feelings about Burrell. "If you do the crime, you do the time," Mr. Edwards told us, "the guy is a thug, and his whole family is thugs... he should have had his ass in school. I hope and pray they will not release him."

At the sentencing hearing after the second trial, Mr. Edwards expressed similar sentiments. However, Tyesha's other family members primarily mourned the death of Tyesha rather than expressed anger at Mr. Burrell. Tyesha's mother read a poem about Tyesha titled "Home by 11,"[5] She also worried about her remaining

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[3] 2003 Sentencing Transcript, pp. 8-14.

[4] 2003 Trial Transcript, pp. 244-27; 2008 Trial Transcript, pp 56-57.

[5] Ms. Winborn had been given the poem, which began this way: "I can just see Tyesha in heaven/Purple dress, wearing rubies and pearls/Getting her hair beautifully braided/By one of the Birmingham Girls." *Id.* The "Birmingham Girls"

children, saying "Tyesha and Lakia were very close. When you saw one you would see the other. It hurts me to see her leaving for school without her sister, riding her bike alone, in her room alone without her big sister. And there is nothing I can do about it."[6]

Tyesha's step-father, Leonard Winborn, set a similar, mournful tone. "I watched her take her first step, I combed her hair, I made sure that she was safe every single day. Watched her grow up from a little baby to a young lady with respect because I love my children. The only thing that keeps a man and his family happy is to watch their kids grow up and contribute in life respectfully. My daughter will be missed by our family."[7]

Outside of court, Mr. Winborn has discussed the case publicly at least twice. After Timothy Oliver was killed, he told the Minneapolis Star Tribune "There's another family that's grieving. There's another family that's going through the same things we did." The same article noted that "As Tyesha's parents contemplate Oliver's death and remember the first day he was targeted, the day she died, they don't dwell on what ifs. Instead they choose to focus on bigger issues."[8] And earlier this year, responding to concerns that Burrell had been wrongfully convicted, Mr. Winborn told the Minnesota Spokesman-Recorder "They done hurt that man because it's been almost 20 years now. Whatever happens, I would never want to see somebody do some time for somebody else's wrongdoing."[9]

Like all survivors of a tragic death, the feelings of Tyesha's family are complicated and diverse. They encompass much more than anger and retribution, however, and should not be reduced to that too-simple narrative.

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refers to the four girls murdered in the bombing of the 16th Street Baptist Church there in 1963.

[6] 2003 Sentencing Transcript, pp. 8-14.

[7] *Id.*

[8] *Bullets Find Teen Who Had Cheated Death*, Minneapolis Star-Tribune, Jan. 29, 2004.

[9] *Stepfather of Slain Girl Fears Teen Prosecuted by Klobuchar Was Wrongfully Convicted*, Minnesota Spokesman-Recorder, January 29, 2020.

B. Relevant Facts Before Arrest

Myon Burrell was born on March 13, 1986.[10] Myon and four siblings were raised primarily by his mother, Marketta Burrell. Both Myon's older brother and his father were incarcerated during parts of his childhood. Until he was 13, the family lived primarily in Minneapolis. At age 12, Myon Burrell's sister was cut with a knife in the family home by someone who had broken in. When police arrived, however, Myon was mistakenly arrested and taken to a stationhouse in handcuffs. Following that incident, his mother became increasingly concerned with the safety of her children.

In an effort to remove her son from bad influences, Marketta Burrell moved with a 13-year-old Myon and two of his siblings to Bemidji, which is over 200 miles north of Minneapolis. While in Bemidji, Myon attended Bemidji High School and sometimes returned to Minneapolis. A Minneapolis police officer testified at Myon's first trial that his mother worried that he was affiliated with a gang—the Bloods—and was particularly concerned about some of his friends in Minneapolis.[11]

In 2001, when Myon Burrell was 15, his girlfriend Brandy gave birth to their son, Myon Jr. Myon, Brandy, and Myon Jr. initially lived with Ms. Burrell in Bemidji before moving into an apartment nearby.

In 2002, at age 16, Myon and Marketta Burrell returned to Minneapolis to spend Thanksgiving with Myon's maternal grandmother. It was this trip that brought him to Minneapolis at the time Tyesha was killed.

Marketta Burrell, who had uprooted herself and moved to a remote area to protect her children, died three weeks after Myon was arrested. After visiting Myon in jail, Ms. Burrell was returning to Bemidji when she died in a car wreck.

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[10] Some documents in the case refer to Burrell as having been 17 at the time of Tyesha Edwards's death. This panel has reviewed the birth certificate for Mr. Burrell, which established his date of birth as March 13, 1986, meaning that he was 16 at the time of Tyesha's death.

[11] 2003 Trial Transcript, pp. 762-763.

At sentencing, Myon's record showed no previous juvenile priors, no misdemeanor priors, and no adult felony priors. He was not listed in a gang database. At the time of his sentencing in 2003, Myon had a one-year-old son.

C. Relevant Facts After Sentencing

Myon Burrell has now been incarcerated for 18 years—he has spent more of his life in prison than he had in freedom before his arrest.

Burrell's prison record reveals no infractions in the past six years. Prior to that, his record includes only a handful of incidents: sneaking a tattoo motor into the prison in 2009, kissing a visitor (now his wife) that same year, entering an unauthorized area in 2013, and getting into a kitchen fight in 2014.

In his interview with the panel, Burrell emphasized two things that had driven him towards good behavior in prison: a religious conversion, and his duties as a parent.

While some of Burrell's family members were Muslim, he did not practice the faith as a child. While in prison, he came to that faith through his sense of powerlessness; Islam gave him a perspective on the world and his place in it. As he put it, while people will let you down, "the Creator provides guidance and purpose." Burrell's embrace of Islam is supported by prison records, which show orders for Islamic texts and materials. He currently serves as the Imam (or spiritual leader) at Stillwater prison. His goal, if he is released, is to enter a job-training program at his wife's mosque in North Minneapolis.

The second factor that Burrell emphasized in his interview was the transformative role of parenting. His son, born before he was imprisoned, is now 18 years old, and Burrell described to us an active involvement in his son's life. Burrell's wife, Lacretia Luckett, also has an 11-year-old daughter and an 18-year-old son that he considers his own children. As he put it, "when you have a child, you are no longer first in life."

Burrell's participation in programming in prison is notable, and consistent with the personal transformation he described. He received his G.E.D. in 2005. While incarcerated, he has pursued an interest in restorative justice after becoming a part of the Whole Heart Program (which he made items that were sold to raise money for people in need), even though it was not mandated as a part of his sentence. He also volunteered for the Straight Talk Program (in which incarcerated men talk to at-risk youth), the Youthful Offenders Program, and a variety of classes. Those

programs have given him a sense of self-worth and provided an opportunity to help others. As he put it, prison leads people to "feel worthless unless they keep the machine moving," and restorative justice programs provide a purpose deeper than the requirements of that machine.

The trauma of entering prison as a child is significant. It is clear that Mr. Burrell was able to develop resources and beliefs that have allowed him to transcend those difficulties.

Based on representations from Burrell's counsel, Burrell has a viable reentry plan that would position him to succeed upon release. Regarding housing, Burrell would live with his wife, Lacretiah Luckett, and their children, Jurtorrie and La'Niajha in the family's three-bedroom house in North Minneapolis. If necessary, Burrell could also reside with his father, Micheal Toussaint, in Coon Rapids, Minnesota. Both homes would provide Burrell with the support he would need as he reenters the community after a lengthy period of incarceration.

With respect to employment, Burrell has been offered job training and paid employment through Al Maa'uun, an Islamic faith community in North Minneapolis. Al Maa'unn partners with North@Work, an initiative launched by the Center for Economic Inclusion. If released, Burrell would be able to enter this work program immediately.

D. Relevant facts about the nation's evolution in juvenile sentencing

Since Myon Burrell was sentenced to life as a 16-year-old, a significant transformation has occurred in the way juveniles enmeshed in the criminal justice system are viewed. The United States passed through an era where some juveniles were called "super-predators" and assumed to be irredeemable sociopaths. However, the United States Supreme Court has led the way in a rejection of this view in a series of cases which include *Roper v. Simmons* (US 2005), *Graham v. Florida* (US 2010), *Miller v. Alabama* (US 2012), and *Montgomery v. Louisiana* (US 2016). There, the Court relied on experts in the field of brain development and found that children and very young adults are fundamentally different than older adults. Here is how Justice Kennedy put it in *Graham*:

> [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. *See* Brief for American Medical Association et al. as *Amici Curiae* 16–24; Brief for American

> Psychological Association et al. as *Amici Curiae* 22–27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults... It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

In all four of these cases, the Supreme Court emphasized three fundamental features of youth—lack of maturity, vulnerability to negative influences, and capacity for change—that make children "constitutionally different" from adults and therefore "less deserving of the most severe punishments."

In *Miller v. Alabama*, the third of these four cases, the Court also identified a set of social dynamics that matter in cases involving juvenile offenders: (1) the "immaturity, impetuosity, and failure to appreciate risks and consequences" that go with youth, (2) that young people cannot easily remove themselves from troubling situations at home, (3) that familial and peer pressure can have unusually strong impacts, (4) that youth have "incompetencies" in dealing with the criminal justice system, and (5) that there is a unique possibility of rehabilitation when offenders are young. These factors are especially relevant in Burrell's case: he was 16 years old when he was arrested, he was alleged to be in the company of two gang-involved adults, his first conviction was reversed because his requests for his mother's presence during interrogation were rejected, and there is evidence of dramatic change in his life.

The primary advocate bringing these cases (and succeeding in the Supreme Court) has been Bryan Stevenson, who has brought moral clarity to the idea that young people—even those who have committed terrible acts-- are redeemable.

E. The Sentence and Traditional Sentencing Goals

The project of criminal law and sentencing is traditionally premised on four goals: rehabilitation for those sentenced, punishment or retribution for the harm done by lawbreaking, deterrence of crime, and the incapacitation of those who are dangerous. It is the view of the panel that none of these goals are furthered by the present incarceration of Myon Burrell, regardless of his guilt or innocence.

Burrell's actions while incarcerated demonstrate that rehabilitation, such as it is (given his profession of innocence), has occurred. Six years without an infraction is significant, as is his personal and spiritual development. He is prepared to return

to society with an outlook that is far different than the one that worried his mother so much when he was a child.

Punishment is difficult to evaluate when setting aside the issue of guilt. But even if guilt is assumed, 18 years in prison for a crime committed as a 16-year-old is a heavy burden. The State's assertions at trial were that Burrell was literally driven to the scene of the crime by two adults, Isaiah Tyson and Hans Williams, and was encouraged to commit the shooting for the benefit of a gang. As the United States Supreme Court has recognized in the context of striking down the death penalty for juvenile offenders, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Roper v. Simmons* (U.S. 2005). Even in the prosecution's narrative, Burrell was described as a follower, not a leader. As with Burrell's age, that mitigating fact did not play a role in Burrell's sentencing (nor could it, given the mandatory nature of the life sentence).

Deterrence of other juveniles is a goal similarly mooted by Burrell's youth and the questions of innocence that swirl around the case. As recognized in *Roper*, juveniles simply don't make the kind of cost-benefit analysis that deterrence requires. The idea that Burrell's punishment for allegedly shooting at Timothy Oliver would deter others from similar acts is undercut by the bare fact that just one year later *someone else* shot Timothy Oliver dead as he stood in the street, only 13 blocks from the scene of the crime in 2002.

Finally, incapacitation—the need to keep dangerous people apart from those they may hurt—does not support the continued incarceration of Myon Burrell, guilty or not. His dangerousness, according to the State, was rooted in violence toward rival gang members. However, while incarcerated in facilities with members of other gangs for nearly two decades, there is no record of gang-related violence or attempted acts of violence by Burrell. If he was, in fact, dangerous in that way, one would think that it would have manifested itself in the 18 years he has been imprisoned with other gang members.

Conclusion as to Sentence Integrity

Having reviewed the totality of the case, it is the opinion of the panel that the sentence, at this point in time, lacks integrity and purpose. No fundamental goal of sentencing is served by his continuing incarceration, and no negative fact overwhelms the imperative of freedom.

V. Preliminary Report on the Integrity of the Conviction

This section addresses the integrity of Myon Burrell's 2008 conviction, and discusses preliminary findings based on this panel's investigation.

A. The Use of Jailhouse Informants

The general risk factors presented by cases that rely on multiple jailhouse informants

At his 2008 trial, no fewer than six jailhouse informants testified against Burrell in exchange for what they hoped would be reductions in their sentences or other benefits in their own cases. Indeed, several of these informants testified that they were providing testimony not only in Burrell's case, but also in many other cases, presumably concerning admissions they purportedly heard other inmates make too. To date, at least 197 wrongful convictions have been identified in which the original convictions rested all or in part on false jailhouse informant testimony.[12] Because of the frequency with which jailhouse informant testimony appears in wrongful conviction cases, this type of evidence has generated a whole field of study involving experts from multiple disciplines, principally law, psychology, and cognitive science. Perhaps the leading expert in this field is Professor Alexandra Natapoff of Harvard Law School. Professor Natapoff has submitted a report to this panel (the "Report") that outlines current understandings surrounding jailhouse informant testimony, including significant new knowledge and data collection that did not exist at the time of Burrell's 2008 trial. It is attached as Appendix Two.

Her report begins with an overarching observation that creates special concern about the reliability of a conviction, like this one, that is based primarily on the testimony of multiple jailhouse informants:

> In a typical criminal case, the existence of multiple sources for the same evidence tends to render that evidence more reliable, in part on the assumption that each piece of evidence has been independently generated. By contrast, criminal informants are well-known to proactively collaborate and collude in order to render their evidence

[12] Nat'l Registry of Exonerations, available online at https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Group&FilterValue1=JI.

> more plausible and thus more valuable to the government. Accordingly, the existence of multiple, apparently corroborating informants is a red flag that should trigger exacting scrutiny of incentives and opportunities for informant collusion.[13]

The Report then goes on to raise essentially two crucial points. First, it describes new, documented understandings about the risk factors that frequently attend to jailhouse informant testimony. It discusses at length the *risks* associated with informants who are offered incentives in exchange for their testimony, particularly when those informants claim to have information about multiple cases. Further, the report discusses the lengths to which informants who have pre-existing relationships may go to plan, orchestrate, and coordinate their stories before coming forward.

Second, the Report describes the biasing *effect* that jailhouse informant testimony can have on the way a case is investigated, adjudicated, and even reviewed post-conviction. It cites new studies that have shown how law enforcement decision-makers and judges rely on cognitive sorting mechanisms, heuristics, and tunnel vision that can make informant-based evidence look both more valuable and reliable than it really is. These evaluative failures, the Report notes, "flow from universal cognitive biases and dynamics that are shared by all human decision makers."[14]

Both points are crucial to an understanding of the way in which Burrell's case was investigated and decided.

1. Problematic Aspects of Informant Testimony in the 2008 Conviction

It is vital to develop a complete understanding in this case of how the six jailhouse informants were discovered, as well as what incentives were provided to each in exchange for his testimony. As the investigation currently stands, it appears that the common factor among this string of jailhouse informants may have been allegiance to Isaac Hodge and his gang, the Family Mob.

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[13] Report, attached hereto as Appendix 2, at 2.

[14] Report at 4.

As of 2002, Isaac Hodge had been a leader of the Family Mob gang for six years.[15] Timothy Oliver, the intended victim of the Edwards shooting, was a "rider" in the Family Mob, i.e., he was of lower rank than Hodge.[16] According to Hodge's trial testimony, Burrell's gang, the Bloods, in general, and Burrell in particular, had a history of confrontation with the Family Mob that predated the Edwards shooting.[17] Among other things, Hodge claimed that Burrell had shot at Hodge's Lexus during the summer of 2002.[18]

In September 2002, two months before Tyesha Edwards' death, Hodge had been arrested, incarcerated, and charged with federal weapons and drug trafficking violations that carried the possibility of life in prison.[19] On Friday, November 22, 2002, Tyesha Edwards' shooting was reported on the 5:30 p.m. television news, a report which Hodge saw.[20] Within hours of the news report, Hodge—an experienced informant who, by his own testimony, was seeking to "do business" with police—called detectives seeking to convey information that might help Hodge in his own case.[21] At trial, Hodge testified that during that phone call, Hodge told the police that he had called Oliver from the county jail and ordered Oliver to cooperate with police.[22] Hodge claimed that Oliver said Burrell had been the shooter[23]—a story that Oliver later repeated to police, after hours of interrogation, in a statement that Oliver would go on to recant.[24] Hodge's associate, Dameon Leake, later confirmed at trial

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[15] 4/13/2008 Trial Transcript (Isaac Hodge Trial Testimony) pp. 548-549.

[16] *Id.* at 570.

[17] *Id.* at 575.

[18] *Id.*

[19] *Id.* at 576, 592.

[20] *Id*. at 576-577, 583.

[21] *Id.* at 587-589. As the Report notes, "experienced informants have demonstrated highly entrepreneurial tactics…includ[ing] researching other inmates' cases" in the media and then "construct[ing] confessions that comport with information already known to law enforcement." Report at 3.

[22] 4/13/2008 Hodge Trial Testimony at 584-585.

[23] *Id.* at 577. At another point at trial, Hodge testified that he gave police Ike Tyson's name.

[24] 5/6/2020 Affidavit of Terry Arrington at 2 ("Arrington Aff.") ("Timmy told me that Myon Burrell had nothing to do with the shooting. He told me that he did

that Hodge had ordered Oliver to cooperate because Hodge had gotten into a jam.".[25] Neither the jailhouse telephone call from Hodge to Oliver nor the jailhouse telephone call from Hodge to the police, both of which should have been recorded, appear to have been recovered.[26]

Oliver's purported identification of Burrell—which, as explained below, is highly problematic—served as the primary basis for Burrell's first conviction.[27] By the time of Burrell's second trial, however, Oliver was deceased, and his testimony from the first trial was read into the record.[28] To supplement the State's case at the second trial, six jailhouse informants also gave testimony—five during the State's case-in-chief and one on rebuttal. The following table summarizes those inmates' relationships and testimony, as well as the panel's current understanding of the apparent benefits they received in exchange for their testimony.

Name	Relationships	Key Testimony	Apparent Benefit
Terry Arrington[29]	Allied with Family Mob; cousin of Delveccio Smith (legal name is	Arrington claimed to have overheard Burrell say that the bullet that struck	Arrington was in federal custody, facing a possible 16-year sentence. He testified that he "hoped" for a sentence reduction if he provided

not see Myon at the scene"); 6/17/2020 Affidavit of Jonathan Turner at 2 ("Timmy . . . only named Myon or "little Skits" as he called him, as the shooter after he was told to do so by Isaac Hodge" and "Timmy said that Myon was not the shooter and had nothing to do with the shooting. . . . Timmy told me that he saw Ike Tyson shoot at him, not Myon.").

[25] 3/17/2003 Leake Trial Testimony at 635.

[26] If the CRU agrees to review this case, we urge it to locate these recorded calls, along with other pieces of missing evidence in this case, including all underlying federal and state documentation relating to plea deals, sentencing allocutions, and incentives offered to jailhouse informants; the purported recorded jailhouse phone call between Myon Burrell and Esque Dickerson, if it exists; any recordings and notes taken by detectives during the course of Tim Oliver's lengthy interrogation, which by customary practice should have been recorded; and the video from Cup Foods's surveillance camera on the date and time of the Edwards shooting.

[27] 4/28/2003 Oliver Trial Testimony at 264-319.

[28] 3/10/2008 Oliver Trial Testimony at 131-181 and 3/13/2008 Oliver Trial Testimony at 502-510.

[29] Has since recanted his trial testimony. *See* Arrington Aff.

Name	Relationships	Key Testimony	Apparent Benefit
	Lavell Ross)[30]; sister Shea Arrington (aka Shea Leonard)[31] was dating Tim Oliver and was arrested with Tim Oliver and Deleon Walker as potential suspects in an unrelated coffee shop shooting on 11/25/02.[32]	Edwards was meant for Tim Oliver.[33]	testimony in this and two other cases. In a post-conviction affidavit, Arrington stated that his 16-year sentence was reduced to 3 years.[34]
DeLeon Walker	Allied with Family Mob; Isaac Hodge's brother; was arrested with Tim Oliver and Terry Arrington's sister Shea as potential suspects in an unrelated coffee shop shooting on 11/25/02.[35]	Walker testified concerning an unrelated shooting at a coffee shop on 11/25/02 in which Tim Oliver, Terry Arrington's sister Shea, and Walker were initial suspects. Walker testified that Burrell committed that coffee shop shooting too.[36]	Walker was in state custody, having violated his probation for an aggravated robbery offense by being charged with a second aggravated robbery. He testified that in exchange for his testimony, he was being offered sentences of 72 months on the original charge and 75 months on the new charge, to run concurrently. In other words, his expected sentence was cut in half.[37]

[30] 3/27/2008 Ross Trial Testimony at 1441-1442 ("Q. Do you know Terry Arrington? A. Yes. Q. How do you know Mr. Arrington? A. Related." . . . "Q. How are you related to Mr. Arrington? A. That's my cousin.").

[31] 11/7/2019 recorded Arrington interview with Robin McDowell and Sasha Aslanian.

[32] Minneapolis Police Report ("MPD Report") 11/25/2002 Supplements 46 and 75; 3/17/2008 Walker Trial Testimony at 797 ("Q. Who is Shea? A. It was Timmy's girl at the time.").

[33] 3/17/2008 Arrington Trial Testimony at 708-709.

[34] *See* Arrington Aff. at ¶ 5.

[35] 3/17/2008 Walker Trial Testimony at 792 and 817 (Q. Isaac Hodge is your brother? A. Yes."), MPD Report 11/25/2002 Supplement 46.

[36] 3/17/2008 Walker Trial Testimony at 797-807; *see also* MPD Report 3/20/2007 Supplement 96 – Walker statement to Sgt. Klund and MPD Report 11/25/2002 Supplement 46.

[37] *Id.* at 790-791.

Name	Relationships	Key Testimony	Apparent Benefit
Delveccio Smith (legal name is Lavell Ross)[38]	Allied with Family Mob; cousin of Terry Arrington.[39]	Smith claimed to have talked with Ike Tyson in 2005, who said that Burrell had been aiming for Tim Oliver when he shot Edwards.[40] He also claimed to have had a conversation with Hans in 2003 where Hans told him he was with Ike and Burrell when Tyesha was shot.[41]	Smith was in federal custody, facing a possible 20-year sentence. He testified that he "hoped" to get a sentence reduction in exchange for his testimony in this and two other cases.[42] Details of any reduction are unknown.
Dameon Leake[43]	Allied with Family Mob.[44] Tim Oliver was "[o]ne of my little homies."	Leake claimed to have talked to Burrell, who admitted to killing Edwards.[45]	Leake was in federal custody, facing a possible 105-month sentence. He testified that he had a federal cooperation deal in which he would receive a sentence reduction if he provided testimony in this and as many as thirteen other cases.[46] Details of any reduction are unknown.

[38] 3/27/2008 Ross Trial Testimony at 1428 ("Q. . . . state your name for the record. . . . A. Lavell Ross. . . . Q. Do you sometimes go by Delvecchio Smith? A. Yeah.").

[39] *Id.* at 1441-1442.

[40] *Id.* at 1430-31.

[41] *Id.* at 1433.

[42] *Id.* at 1434-1436.

[43] Has admitted "[t]he statements I made at Burrell's trial about him admitting to the shooting were false. He did not admit any involvement in the November 2002 shooting, and he never discussed that incident with me. . . . I made these false statements to get a reduced sentence." *See* 6/2/2020 Affidavit of Dameon Leake ("Leake Aff.") at ¶¶ 6, 7.

[44] 3/17/2008 Leake Trial Testimony at 620.

[45] *Id.* at 633.

[46] *Id.* at 620-621 and 638-639 (A. . . . it's about 14 incidents that I'm involved in.").

Name	Relationships	Key Testimony	Apparent Benefit
Kiron Williams	Member of Family Mob; federal co-defendant of Isaac Hodge.[47]	Williams claimed to have had a fight with Burrell on July 1, 2005, during which Burrell told him that the bullet had been intended for Tim Oliver.[48]	Williams was in federal custody, facing a 15-year sentence. He testified that he'd asked prosecutors for a letter to prove his cooperation in this case and as many as four others.[49] Details of any reduction are unknown.
Eldioju Reynolds *(rebuttal witness)*	Gangster Disciple from age 11 to age 29.[50]	Reynolds claimed to have overheard Tyson, who said that Burrell wanted to go with Tyson on the day of the shooting.[51]	Reynolds was in custody at the time of his testimony, serving the final year of a five-year sentence. He testified that he asked to be moved to a different prison in exchange for his testimony.[52] He appears to have served as an informant in multiple other cases.

The five informants who supported the State's case-in-chief were not strangers to each other. All five were either members of the Family Mob, which Isaac Hodge led and to which Tim Oliver belonged, or members of gangs that were aligned with the Family Mob. One informant, DeLeon Walker, was Isaac Hodge's brother.[53] Another, Kiron Williams, was facing charges alongside Isaac Hodge in a federal sting that targeted the Family Mob. Two other informants, Terry Arrington and Delveccio Smith, were cousins and co-defendants in their own federal case;[54] furthermore, Terry Arrington's sister Shea was Tim Oliver's girlfriend at the time of the Edwards shooting.[55] In this context, it is noteworthy that when Isaac Hodge

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[47] 3/17/2008 K. Williams Trial Testimony at 676

[48] *Id.* at 668-670.

[49] *Id.* at 672-675.

[50] 3/27/2008 Reynolds Trial Testimony at 1589-1591 Reynolds was age 37 at the time of the trial.

[51] *Id.* at 1598-1601.

[52] *Id.* at 1589.

[53] 3/17/2008 Walker Trial Testimony at 817.

[54] 3/27/2008 Ross Trial Testimony at 1441-1442.

[55] 3/17/2008 Walker Trial Testimony at 797. *See also* Ellen Tomson, *Fourteen Arrested in Twin Cities and Faribault on Guns and Drugs Charges*, Pioneer Press,

testified at Burrell's second trial, he described himself as entirely in command of those in his sphere: "I control the 'hood."[56]

These informants were also not strangers to the authorities. Several of them were serial informants who claimed to have information helpful to the authorities in many, many cases. Hodge, of course, had a longstanding relationship as a provider of information to the police.[57] Dameon Leake testified that in exchange for sentence reductions, the authorities were seeking his testimony in as many as fourteen cases;[58] in one of those cases, Terry Arrington also served as an informant.[59] Kiron Williams testified that he was providing information in three or four cases.[60] For his part, Delveccio Smith (a/k/a Lavell Ross) testified that he was informing in two other cases.[61]

In Burrell's case in particular, each case-in-chief informant claimed at trial that he had heard Burrell, or his codefendants, make a statement on a different occasion. The purported statements, though, are strikingly similar, in that each statement is directly relevant to the legal issue of transferred intent. Delveccio Smith claimed that he had a conversation with Ike Tyson, who said that Burrell had been aiming for Timothy Oliver. Dameon Leake claimed that he heard Burrell say that

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June 7, 2007, available online at https://www.twincities.com/2007/06/07/fourteen-arrested-in-twin-cities-and-faribault-on-guns-and-drugs-charges/.

[56] 3/14/2008 Hodge Trial Testimony at 555. Notably, Associated Press reporter, Robin McDowell, who wrote a Feb. 1, 2020, article about the Burrell case, has stated that when she contacted Hodge's brother DeLeon Walker (who was incarcerated at the time) for comment, Isaac Hodge returned her call on behalf of Walker and told her that she could only speak to Walker if Hodge was also on the line.

[57] 3/14/2008 Hodge Trial Testimony at 587. ("Q. . . . But you did know Hauglid and Klund? A. Yeah. . . . Q. . . . [Y]ou had relations with them? A. Yeah."). *See also* 3/18/2008 Darcy Klund Trial Testimony at 881-882. ("Q. Did you know Mr. Hodge for sometime []? A. Yes, I did." . . . Q. . . . How would you characterize the information [provided by Hodge] . . . how it helped in your investigation? A. It led us in the direction that the case unfolded.").

[58] 3/17/2008 Leake Trial Testimony at 638.

[59] 3/17/2008 Arrington Trial Testimony at 712-713.

[60] 3/17/2008 Williams Trial Testimony at 672.

[61] 3/27/2008 Ross Trial Testimony at 1436.

he was aiming for Oliver when he shot Edwards. Kiron Williams testified that he heard Burrell say that the bullet had been intended for Oliver. Terry Arrington similarly testified that he heard Burrell say that the bullet was meant for Oliver. Notably, in a post-conviction affidavit, Terry Arrington indicated not only that Hodge recruited his federal co-defendant, Kiron Williams, as an informant before Burrell's second trial, but also that Hodge and Williams were selling information about Burrell's case to potential informants.

As strikingly similar as their statements were at trial, some of these informants had told police different stories before trial. For example, Delveccio Smith—who was facing a twenty-year federal sentence— testified at Burrell's 2008 trial that Ike Tyson had made statements implicating Burrell; before trial, though, Smith told police several other stories too, including (1) he had a conversation with Burrell in which Burrell confessed; (2) he had a conversation with Tyson in which Tyson confessed and (3) he had a conversation with Hans Williams in which Hans Williams also confessed.[62] The State did not present Smith's additional statements at Burrell's trial.

In any event, in exchange for their extensive cooperation, all six informants gave testimony indicating that they expected or hoped to receive benefits pursuant to deals—often federal deals—made in exchange for their testimony. Importantly, not all of the informants' deals had been signed as of the time of trial; rather, some informants' deals appear to have been signed after trial, i.e., after they provided helpful testimony. For this reason, the trial record is often incomplete with respect to the details of the precise deals struck, and further investigation needs to be done to ascertain these details. But the record does clearly show that the deals being discussed—and, in some cases, that had been offered—were extraordinarily generous. Arrington, for example, has stated in a post-conviction affidavit that his federal sentence was reduced from 16 years to 3 years— a dramatic, and highly unusual, reduction.[63] Similarly, Walker testified at trial that his state sentence was functionally cut in half, from 147 months to 75 months.[64] The panel surmises that the truly extraordinary nature of these sentence reductions may reflect the degree of public pressure that authorities were feeling to produce evidence that could support

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[62] MPD Report 2/26/2008 Supplement 109.

[63] 3/17/2008 Arrington Trial Testimony at 699, 711; Arrington Aff; *see also* 11/7/2019 Arrington recorded interview with Robin McDowell and Sasha Aslanian.

[64] 3/17/2008 Walker Trial Testimony at 790-792, 811-815.

a conviction in this high-profile case. Despite all this, however, nowhere in the trial judge's 2008 written decision, in which the court finds Burrell guilty, is the likely existence of jailhouse informant deals discussed or weighed.[65]

There are also facts in the record indicating that Isaac Hodge's brother, informant DeLeon Walker—and perhaps also Timothy Oliver—may have received additional benefits in an unrelated case in exchange for testimony against Burrell. An unrelated shooting occurred at a coffee shop not far from Edwards' house on the morning of November 25, 2002, three days after Edwards was shot. A few hours later, on the afternoon of November 25, police pulled over a green van containing Oliver, his girlfriend, Shea Arrington (sister of informant Terry Arrington), informant DeLeon Walker, and others—all of whom were allied with Isaac Hodge and the Family Mob.[66] That afternoon, at 3:25 p.m., Oliver, Arrington, Walker, and others were brought to a police station and described in a police report as "possible suspects" in that unrelated coffee shop shooting.[67] It was at this time that Oliver was held for up to ten hours and, as explained in greater detail below, ultimately provided police with a statement indicating that Myon Burrell was responsible for the Tyesha Edwards shooting[68]—a statement that Isaac Hodge had already previewed for the police three days earlier, and a statement that would go on to serve as the centerpiece

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[65] *State v. Burrell*, 27-CR-02-0978794, 2008 WL 2794144 (Minn. Apr. 9, 2008), Findings of Fact, Conclusion of Law, and Order.

[66] MPD Report 11/25/2002 Supplement 46. ("[S]everal individuals were stopped in a green van as *potential suspects* that took place at Park Ave. S and Lake St. E.") (emphasis added); s*ee also* MPD Report 11/30/2002 Supplement 58. ("Timothy Oliver and Antoine Williams were being transported to the homicide office. They were apparently the *victim's* of another shooting.") (emphasis added).

[67] *Id.* Also in the green van was Tim Oliver's cousin, Harold Beaman, to whom police offered "major dollars" in exchange for information in Tyesha Edwards's case. Beaman, like other individuals aligned with the Family Mob, mentioned Burrell's name, along with several other names. Beaman did not testify at either trial. Robin McDowell, *Amy Klobuchar Helped Jail Teen for Life, But Case Was Flawed*, Associated Press, Feb. 1, 2020, available online at https://apnews.com/article/115076e2bd194cfa7560cb4642ab8038.

[68] MPD Report 11/30/2002 Supplements 38, 44, 58, 62, 75, 78.

of Burrell's first trial.[69] A subsequent police report later describes Oliver and his associates as "apparently the victims" of the coffee shop shooting.[70] Much later, at Burrell's 2008 trial, Hodge's brother DeLeon Walker testified that Burrell was responsible not only for Edwards' death, but also for that coffee shop shooting.[71] These facts support an inference that Oliver and Walker were converted from suspects to victims in the coffee shop shooting after providing information that implicated Burrell. Notably, during Walker's initial police interview concerning the coffee shop shooting, he stated only that he had heard the shots—not that he saw the shooter. He did not implicate Burrell at all.[72]

Since trial, at least two informants have provided formal recantations. Terry Arrington recanted his testimony and explained that he had made it up in order to win a shorter federal sentence.[73] Dameon Leake has also come forward with a post-conviction affidavit in which he recants his testimony, and explains that he, too, had lied to earn a sentence reduction.[74] Also of note, Antoine Williams has provided a letter statement asserting that Tim Oliver told him before he died that Oliver, too, never actually saw the shooter's face.[75]

It is worth observing that in addition to so many others aligned with the Family Mob, even Isaac Hodge himself testified at Burrell's trial—albeit not as a traditional jailhouse informant. Rather, he testified as a gang "expert" for the State; in other words, his testimony was used to provide information surrounding Burrell's gang

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[69] *Id.* Supplement 58. ("11-25-02, 0830 hrs., Sgt. Hauglid received information from a confidential reliable information (CRI) that "Ike" Tyson was involved in the murder and that the shots were being fired at 'Little Timmy' Timothy Oliver.").

[70] *Id.*

[71] 3/17/2008 Walker Trial Testimony at 797-807.

[72] MPD Report 11/25/2002 Supplement 46. ("He [Deleon Walker} state[d] while they were in the coffee shop he heard a loud shot ring out.")

[73] Arrington Aff. at ¶ 15.

[74] Leake Aff. at ¶ 7.

[75] 7/14/2010 Statement of Antoine Williams, Witnessed by Michael Morley ("My best friend Timothy Oliver told me many times, including just moments after the shooting, that he never saw, and couldn't identify, the shooter or anyone else when the shooting took place.").

affiliation.[76] To the best of the panel's understanding, Hodge has not testified as an expert witness in any other case. In any event, Hodge also appears to have received benefits in exchange for serving as a gang expert in this case. When he testified in 2008, Hodge appeared to no longer be facing the possible life sentence that he had been facing in 2002; instead, he testified that he was facing a sentence of 57-63 months on a drug possession charge.[77]

This overarching situation—in which several serial informants, all members of the same gang, offer similar information about a rival gang member in a high-profile but thinly-evidenced case, all in exchange for vague or even undisclosed benefits—is well-recognized as highly problematic. To reiterate, the Report makes clear that "criminal informants are well-known to proactively collaborate and collude in order to render their evidence more plausible and thus more valuable to the government," including using media stories to help script their stories. The Report notes that such collusion is particularly common "in gang cases where multiple members of the same gang testify to the same information." The Report goes on to indicate that in cases that are both serious and high-profile—but that do not involve physical evidence or other clear evidence of guilt—experienced informants understand that their stories are "especially valuable to the government and likely to be well-rewarded." Such a situation, in the Report's words, calls for "great caution," as experienced informants may use the government's perceived need for informant testimony to "eliminate rival criminal actors or competitors." In sum, the Report deems informant arrangements such as those in Burrell's case "a red flag that should trigger exacting scrutiny of incentives and opportunities for informant collusion."[78]

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[76] 3/14/2008 Hodge Trial Testimony at 567. (In argument to the Court, State prosecutor Furnstahl stated, "I think the witness has . . . understands the gang life. He's better than any other kind of gang expert we could introduce and nobody would know better than this witness." Burrell's attorney objected to this representation and the Court overruled the objection.) *See also State v. Burrell*, 27-CR-02-0978794, 2008 WL 2794144 (Minn. Apr. 9, 2008), Findings of Fact, Conclusion of Law, and Order at 9 ("The State presented gang expert testimony in the form of firsthand information, with its primary gang expert being Isaac Hodge, a self-described longtime leader of the Family Mob gang.").

[77] 3/14/2008 Hodge Trial Testimony at 548-549.

[78] Report at 2.

This panel has investigated these incentives and opportunities as much as possible given limited time and access to information about what deals these informants ultimately received, and what it has seen raises grave concerns about the reliability of the informant testimony in this case. More exacting scrutiny, based on greater access to this information, should be undertaken by the conviction review unit.[79] As a part of such scrutiny, the conviction review unit should seek all federal and state files relating to the deals and communications with the informants concerning the deals. It should also seek the testimony given by these informants in other cases, along with the related files, in order to investigate whether these informants were considered truthful or untruthful in those other cases.

B. Troubling Examples of Tunnel Vision Relating to Guilt or Innocence

In the social science and legal literature, investigative "tunnel vision" is generally understood to mean a "compendium of common heuristics and logical fallacies" that can cause actors in the criminal justice system inadvertently to "focus on a suspect, select and filter the evidence that will build a case for conviction, while ignoring or suppressing evidence that points away from guilt."[80] In a criminal investigation, this can lead police unintentionally to focus on a particular suspect and theory of the crime and then filter all evidence in the case through the lens provided

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[79] Indeed, "government actors and informants alike have a shared interest in maintaining the confidentiality of their interactions, and many communications take place in secret with the understanding that they will not be disclosed. Officials such as police, prosecutors, and sheriffs have nearly unfettered discretion to communicate with and reward incarcerated informants in both formal and informal ways that can remain undocumented or siloed within the law enforcement apparatus. Jailhouse informants, in turn, have enormous incentives to provide false information to the government in exchange for leniency or other benefits with the knowledge that the details of their cooperation will typically remain secret." Report at 5.

[80] Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases,* 2006 Wis. L. Rev. 291, 292 (quoting Dianne L. Martin, *Lessons About Justice from the "Laboratory" of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. Rev. 847, 848 (2002)) (internal citations omitted).

by that conclusion.[81] Through that filter, all information supporting that theory of guilt is inadvertently "elevated in significance, viewed as consistent with the other evidence, and deemed relevant and probative. Evidence inconsistent with the chosen theory is easily overlooked or dismissed as irrelevant, incredible, or unreliable."[82] Tunnel vision is a hallmark of virtually all known wrongful convictions.

It is not uncommon to find instances of investigative tunnel vision in cases that rely heavily on jailhouse informant testimony. Indeed, even though jailhouse informant testimony can be unreliable, such testimony can nonetheless appear to be extraordinarily—albeit misleadingly—powerful. This effect can lead to investigative tunnel vision, as investigators may tend to discard evidence that contradicts what the informants have said:

> Studies have shown that law enforcement decisionmakers and judges rely on cognitive sorting mechanisms, heuristics, and tunnel vision that may make informant-based evidence look both more valuable and reliable than it actually is. For example, federal prosecutors have described the difficulty of evaluating the reliability of their own informants on which their cases are heavily or even entirely reliant, a phenomenon they call "falling in love with your rat." Such challenges may be magnified by the presence of multiple informants. As a result of these inherent difficulties in evaluating informant reliability, the conventional criminal process often does a poor job at sorting truthful from untruthful informants and thus relies too heavily on the latter.[83]

The record to date reveals several indications that tunnel vision was present in this case. From the moment Isaac Hodge called police from jail only a few hours after Tyesha Edwards was shot, the police investigation appears to have been premised on the view that Myon Burrell was both the third man in the car and the shooter. Evidence supporting these theories of Burrell's guilt appears to have been elevated, while evidence supporting his innocence was minimized, not fully

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[81] *Id.*; *see also* Myrna Raeder, *What Does Innocence Have to Do With It?: A Commentary on Wrongful Convictions and Rationality*, 2003 MICH. ST. L. REV. 1315, 1327-28.

[82] Findley & Scott, *supra* note 2, at 292.

[83] Report at 4-5 (emphasis added).

explored, or, in some cases, suppressed. Evidence that tends to exculpate Burrell—and that should have been more fully pursued, but was not—includes the following.

1. Angela Buboltz Williams has consistently identified Tyson as the shooter and Burrell as uninvolved[84]

According to Angela Buboltz Williams' testimony at Burrell's 2003 trial, she was Hans Williams' girlfriend at the time of Tyesha Edwards' death.[85] On November 22, 2002, Angela drove her maroon Chevrolet Malibu to work.[86] Before she left, she asked Hans to fix her broken car stereo. Hans and his friend Ike Tyson arrived at Angela's place of work midday and drove off in her car, ostensibly to repair the stereo. When Hans returned hours later to pick up Angela from work – later than expected – his eyes appeared watery and puffy, as though he'd been crying.[87]

On the drive home, Angela asked Hans several times what happened. Hans told her that something bad had happened, and a little girl had died. When they arrived at their home, Ike Tyson was there. A teenage girl was braiding Tyson's hair while they watched the television news. Angela heard a reporter talking about the death of a young girl that day. The reporter said eight shots had been fired, and at that moment, Tyson looked up and said, "No, it was nine shots." It was then that Angela Williams knew that Ike Tyson and Hans Williams were involved in the shooting of Tyesha Edwards. Sometime during the next few days, Hans told Angela that on the day of the shooting, Hans and Ike had been driving down Chicago Avenue when someone pulled a gun on them. Ike retrieved a gun, and they drove back down Chicago Avenue and parked on a block behind the street. Ike Tyson then got out of

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[84] Angela Buboltz Williams agreed to speak with several panel members on November 11, 2020. Details from that recorded interview included in this report are cited to as "Angela Williams Panel Interview".

[85] 4/29/2003 A. Buboltz Williams Trial Testimony at 563.

[86] *Id.* at 564. In March 2003, well after the Edwards shooting, Hans and Angela got married. They are now divorced. First names are used in this section to avoid confusion. Outside of this section, all references to "Williams" refer to Hans Williams.

[87] *Id.* Angela Williams Panel Interview.

the car and ran up an alley, where he "did" the shooting and came running back to the car.[88]

The following Monday, Angela was so upset by what she had heard about the shooting of a little girl, and because it had become clear to her that Ike was not going to turn himself in, that she herself called 911 to report what she knew.[89] She made this call even though it meant alerting police to information that would implicate Hans, who was not only her boyfriend but also the father of her child, as well as Hans' best friend, Ike.[90]

At no time during any of these conversations that Angela Williams had with Hans Williams and Ike Tyson did Angela Williams hear Ike or Hans implicate Myon Burrell in any way. When Angela called 911 on November 25, 2002, three days after the shooting, she made no mention of Myon Burrell. To the contrary, she can be heard on the 911 recording contemporaneously reporting that *Tyson* was the shooter—not Burrell.[91]

On November 11, 2020, the panel spoke with Angela Williams via a recorded Zoom meeting, at which point she gave a statement that was consistent with her earlier trial testimony. Notably, during this interview, Angela Williams also stated that before Burrell's first trial, she told the police and prosecutors several times that Hans Williams and Ike Tyson never mentioned Burrell's name—and, indeed, that once Burrell had been arrested and publicly named, Williams told her that Burrell was not involved.[92]

Angela Williams' statements are powerful, contemporaneous evidence that Burrell was not involved. Indeed, unlike so many of the jailhouse informants in this case—and unlike Tyson, Williams, Hodge, and Oliver—Angela Williams has no interest in the outcome of this case. To the contrary, she had a strong interest in protecting Hans Williams, given the relationship she had with him and that he was the father of her child, while she had no relationship at all with Burrell, either then or since. The panel found her statements to be credible. Her statements, however,

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[88] Angela Williams Panel Interview.

[89] *Id.*

[90] *Id.*

[91] 11/26/2002 Bloomington Police Department recorded 911 call.

[92] Angela Williams panel Interview.

appear to have been discounted—by police, prosecutors, and perhaps even defense counsel at the second trial—in favor of the inculpatory evidence provided by witnesses who received consideration in exchange for their testimony.

2. Statements of Ike Tyson and Hans Williams identify Tyson as the shooter and exculpate Burrell

It is apparent that the two men who were definitely involved in the shooting—Ike Tyson and Hans Williams—made numerous statements to investigators concerning Burrell's innocence, only some of which may have been documented and all of which were discounted.[93] Indeed, both Ike Tyson and Hans Williams made similar statements under oath to the 2008 trial judge, testifying that Tyson was the shooter and Burrell was not the third man in the car.[94] Those statements were apparently disregarded by police and prosecutors. If it agrees to review this case, it is critical for the conviction review unit to obtain access to the complete police and

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[93] For example, Ike Tyson told the panel that when he was first interrogated at the precinct the detectives kept turning the tape off and rewinding it whenever he said something they did not like, particularly with respect to Burrell's lack of involvement. The panel has asked Hennepin County Attorney Freeman to produce that tape so that an expert could analyze it and determine if, in fact, it was being turned on and off. Mr. Freeman agreed to that request and efforts were being made to conduct that analysis when our preliminary inquiry ended.

[94] 3/25/2008 Tyson Trial Testimony at 990-993 ("Q. How did it come about that someone else got in the vehicle? A. Me and Hans was – was riding down Chicago and we seen somebody he knew and he got in the car. . . . Q. Okay. Was it Mr. Burrell? A. No."); *see also* 996-999 ("Q. Okay. Was, in fact, Mr. Burrell with you that day in the car? A. No. His name never came up that day when I talked to them until they brought it up." "I told them that he wasn't there from the beginning. They wasn't trying to hear that." "Q. And is your testimony that Mr. Burrell was or was not present and involved that day? A. He was not.") 3/25/3008 H. Williams Trial Testimony at 1176-1178 (A. . . . when a third person was walking and Ike had pulled over and told the third person to get in. . . . Q. Okay. And did you know this individual? A. No. No. No. Q. Had you ever seen him before? A. Not really, no. No."); *see also* 1186-1187 ("Q. Now this third individual, other than you and Mr. Tyson, was that Myon Burrell? A. No, it was not. Q. Are you sure of that? A. I'm positive it was not Myon Burrell . . . [h]e was not there.").

prosecution files so as to allow accurate reconstruction of all the exculpatory statements Tyson and Williams made and when they made them.

Indeed, the Minnesota Supreme Court recognized the need for such an inquiry when it reversed Burrell's first conviction. In so doing, the Court noted that the plea agreements made with Tyson and Williams were unusual and improper.[95] Both plea agreements were conditioned on Tyson and Williams *not* providing information that exculpated Burrell. In exchange for a lesser sentence, Tyson agreed that he would abandon his prior statements indicating that he, Tyson, had personally been the shooter and that Burrell had not been involved.[96] For his part, Hans Williams agreed on the record not to say who was *not* the third person, in exchange for a sentence reduction; in other words, this was an agreement in which Williams promised to refrain from saying that the third participant was *not* Burrell.[97] The mere existence of those arrangements in the first place illustrates a troubling, tunnel-vision-driven effort to hew from this case any evidence that did not support Burrell's guilt.

The Minnesota Supreme Court held that Burrell's request for an *in camera* hearing before his trial concerning what happened during Tyson and Williams' plea negotiations should have been conducted and further "affirmative steps" should have been taken to obtain discovery of potential *Brady* information.[98] This panel has not

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[95] *State v. Burrell*, A03-1293, 697 N.W. 2d 579, (Minn. 2005).

[96] 3/3/2003 Plea transcript in *State v. Tyson,* CV-02-6981, at 3, ("We would agree that we would not, however, call Mr. Tyson to testify at their trials. As part of this agreement, Your Honor, the State would reserve the right to withdraw or pull this negotiation, if you will, if the defendant were to attempt to testify falsely after today's date."); *see also* 24-25 ("Q. Would you agree, Mr. Tyson, that if you had said – if you've said anything inconsistent with what you've said in court today, that what you're saying in court today is the truth? A. Yes.).

[97] 6/2/2003 Plea transcript in *State v. Williams,* File No. 02098781, at 17 (Q. You were with two individuals that afternoon? A. Yes, I was. Q. One by the name of Ike Tyson and the other is an unknown person to you? A. That is true.); *see also* 23-24 (Q. You're telling us today, sir, that you don't know who that third person was in the car one way or the other, is that correct? A. That is correct. I don't know. . . . Q. And to put it another way, Mr. Williams, what you telling us today about that third person is you don't know who it was and you do not know who it was not. You could not say one way or the other, is that correct.? A. [] That is correct.").

[98] *State v. Burrell*, A03-1293, 697 N.W.2d 579 (Minn. 2005).

been able to ascertain whether such a hearing was ever held before Burrell's second trial or in subsequent post-conviction proceedings. We believe it is important for the CRU to explore Tyson and Williams' many statements, and plea deal-related efforts to suppress their statements that were favorable to Burrell, as best it can.

3. Other disinterested witnesses corroborate Tyson's statement that he was the shooter

Two utterly disinterested witnesses saw the events surrounding the shooting: William Chapdelaine,[99] a worker on a nearby roof, and James Lanser,[100] who was at the printer's shop across the street. Lanser described the person running away from the scene immediately after the shooting as wearing a gray puffy jacket, which is consistent with the clothing worn by Ike Tyson that day.[101] Moreover, and significantly, Lanser explained that the second individual he saw appeared to be "clearly taller" than the person wearing the gray jacket and was thinner and leaner.[102] For his part, Chapdelaine described the individual in the gray jacket as wearing his hair in an "Afro" style, which is consistent with Tyson's hairstyle before he got it braided immediately after the shooting.[103] He also described a second individual who was leaner and taller than the man in the gray puffy jacket.[104] Importantly, Myon Burrell is 5'3''—half a foot shorter than Ike Tyson who is 5'9''. Significantly, after hearing shots, Chapdelaine told detectives the following: the individual with the gray jacket and "Afro" hairstyle took off running "like the devil

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[99] 4/29/2003 Chapdelaine Trial Testimony at 461; *see also* MPD Report 11/22/2002 Supplement 25 (was repairing a roof or chimney at 3432 Chicago Ave. So.).

[100] 4/29/2003 Lanser Trial Testimony at 575; *see also* MPD Report 11/24/2002 Supplement 36 (was picking up "Prayer Cards" at the Atlantic Press Company, a store on 35th Street and Chicago Avenue.).

[101] 4/29/2003 Lanser Trial Testimony at 576-577 ("A. … He had what would be . . . an Afro hairdo and a puffy silver jacket."); MPD Report 11/24/2002 (he was wearing "[a] silver or gray puffy jacket, down.").

[102] MPD Report 11/24/2002 Supplement 34 (A. The one walking was taller than the gentleman with the afro . . . very clearly taller.).

[103] 4/29/2003 Chapdelaine Trial Testimony at 465; MPD Report 11/22/2002 Supplement 25.

[104] MPD Report 11/22/2002 Supplement 25.

was on his tail…You could tell which one was probably doing the shooting, the most excited one."[105] Chapdelaine also described the individual wearing the puffy jacket and running as if one side of his jacket had a heavy object in it.[106]

Both these witnesses' statements undermine the notion that Burrell was the shooter—and, furthermore, provide reason to question Tim Oliver's identification of Burrell. Their claims appear not to have been thoroughly investigated; for example, no ballistics or gunshot residue tests were run on Tyson's jacket.[107] Moreover, the details they provide about the individual who was not wearing the gray jacket do not appear to match the height and weight description of Burrell—someone clearly shorter and heavier.

4. Burrell's alibi was not fully investigated

The panel's evaluation revealed that the police focused on Burrell in part because he gave inconsistent statements to them about his whereabouts during the shooting. During his 2020 interview with the panel, Burrell explained these inconsistent statements by saying that as a teenager, he did not appreciate the importance of providing a complete and accurate alibi until he realized, well into his interrogation, that police suspected him of Tyesha Edwards' murder.[108] Initially, his only thought was to distance himself as far as possible from the scene, regardless of the truth; only later did he understand that it was important to provide a true accounting of his activities.[109] As soon as he understood the importance of giving a

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[105] MPD Report 11/22/2002 Supplement 25.

[106] *Id.*

[107] MPD Report listed as evidence item 2002-37734 3 "Silver/Red Reversable Winter Jacket from Trunk of ASM-978"; *see also* MPD Report 12/3/2002 Supplement 60 (William James retrieved the jacket from the car trunk and "photographed it". MPD Report does not contain any other forensics details relating to the coat.").

[108] Myon Burrell agreed to speak with several panel members on October 14, 2020. Details from that recorded interview included in this report are cited to as "Myon Burrell Panel Interview".

[109] Myon Burrell Panel Interview.

truthful alibi, Burrell's account has long been that he was at Cup Foods during the time of the shooting and, in fact, for a significant portion of the afternoon.[110]

On recorded jail phone calls, Burrell can be heard expressing his belief that once Cup Foods' video surveillance tapes are reviewed, he will be released. Indeed, several calls between Burrell and his mother and others reflect his steadfast assertion that he was not present and that Cup Foods' surveillance video would demonstrate his whereabouts.[111]

The only police reference to surveillance tapes from Cup Foods exists in a supplemental report by Sgt. Keefe, which states that he "reviewed the surveillance tapes at Cup Foods. The Cup Foods tapes did not show the maroon/red SUV." The supplemental report is silent regarding whether Sgt. Keefe reviewed any surveillance tapes that would have recorded the interior of Cup Foods, or whether any review was conducted at all for the purpose of identifying the individuals who were inside Cup Foods.[112] This appears to constitute a failure to investigate that illustrates tunnel vision. A hallmark of one of the central psychological components of tunnel vision, confirmation bias, frequently manifests as a tendency to seek only information that can confirm prior beliefs or conclusions, and a disinclination to seek evidence that can disconfirm those beliefs. Because a surveillance video of the interior of Cup Foods showing Burrell inside those premises could *only disconfirm* the operative theory that Myon was engaged in the shooting at that time, a failure to even look for those videos can be understood as an expression of confirmation bias and tunnel vision. Indeed, no video surveillance tapes were in the records made available to the panel for review; none of them were introduced as evidence; and none of them appear to have been collected and preserved at all. The panel is troubled by this gap in the record, which could have conclusively proved Burrell's alibi.

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[110] *Id.*

[111] *See, e.g.*, 11/30/2002 Telephone call between Burrell and his mother; 1/2/2003 Telephone call between Burrell and Dino (Donnell) Jones.

[112] MPD Report Supplement 61.

C. Evidence Calling into Question Burrell's involvement in the Shooting Death of Tyesha Edwards

Although the panel's investigation was limited by the factors identified above, the panel's investigation to date has raised significant questions regarding whether Burrell was involved in the shooting death of Tyesha Edwards.

1. Contemporaneous evidence suggests that Burrell was not present

Both Ike Tyson and Hans Williams testified in the second trial that Burrell was not present during the shooting.[113] Tyson also testified that he shot the bullet that tragically killed Edwards.[114] To be clear, Tyson failed to identify the involved third party both in his testimony during the second trial and in his interview with the panel.[115] With the panel, Tyson gave a general description of the third person, but would not explicitly disclose that person's name.[116] He did say that the person was alive and still around.[117] The panel acknowledges that Tyson's failure to identify the third person is troubling. Having said that, Tyson's consistent statements that Burrell was not present both before and after 2008, coupled with his willingness to make a statement that is against his penal interest, provide support for his credibility on important issues. Additionally, Williams corroborates Tyson's statements that Burrell was neither present nor the shooter.

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[113] 3/25/2008 Tyson Trial Testimony at 990-993, 996-999; 3/25/3008 H. Williams Trial Testimony at 1176-1178, 1186-1187.

[114] 3/25/2008 Tyson Trial Testimony at 990-993; Ike Tyson agreed to speak with several panel members on September 16, 2020 in a recorded Zoom meeting. Details from that recorded interview included in this report are cited to as "Tyson Panel Interview". In this meeting Ike said he was "surprised" to learn about Tyesha Edwards death when he saw it on the TV later on at Hans Williams house.

[115] 3/25/2008 Tyson Trial Testimony at 1073 ("Q. And you don't know who this person is? A. No.").

[116] *Id.* Ike told the panel third person was about the same age and height, i.e. approximately 5'10".

[117] *Id.*

Pointing to inconsistencies in their statements over time, the trial court determined in the second trial that Tyson and Williams were not credible.[118] But crucial—and contemporaneous—evidence exists that was never presented to the trial court that would have corroborated Tyson's assertion that Burrell was not present. This evidence includes Angela Williams' prior testimony and statements that neither Tyson nor Williams ever mentioned Myon Burrell in their pre-arrest statements about the shooting.

Significantly, in a recorded conversation between Tyson and Shondell Dickerson on November 27, 2002, Tyson expressed surprise that Burrell had been identified by police as being present, stated that he thought Burrell was in Bemidji during the shooting, and then further suggested that other individuals—not Burrell—were involved in the shooting:

Shondell Dickerson	14:23	Oh my goodness! So, what are they saying?
Isaiah "Ike" Tyson	14:27	They're saying that Skits did that shit though.
Shondell Dickerson	14:29	Was he there when they- when they-um-
Isaiah "Ike" Tyson	14:31	Na they got Skits and [inaudible] as well.
Shondell Dickerson	14:35	Man, I'm telling you-
Isaiah "Ike" Tyson	14:35	And the news sitting saying a seventeen-year-old boy killed a little girl.
Shondell Dickerson	14:39	They're not saying that in the newspaper.
Isaiah "Ike" Tyson	14:41	Yea- on the news it is.
Shondell Dickerson	14:43	Nigga they said-
Isaiah "Ike" Tyson	14:44	I just got through watching the news just now.
Shondell Dickerson	14:46	They said it was a twenty-three-year-old, a twenty-one-year-old, and twenty-four-year-old.

[118] *State v. Burrell*, 27-CR-02-0978794, 2008 WL 2794144 (Minn. Apr. 9, 2008), Findings of Fact, Conclusion of Law, and Order, ¶ 14.

Isaiah “Ike” Tyson	14:51	Na, it’s a 23, 21 and a 17. I’s 23.
Shondell Dickerson	14:59	[inaudible] … Man.
Isaiah “Ike” Tyson	15:04	How the fuck did they even get Skits in the pictures?
Shondell Dickerson	15:07	Ike, I don’t think I want to know. I mean damn I thought he was in Bemidji.
Isaiah “Ike” Tyson	15:10	You know who, um, was there though?
Shondell Dickerson	15:14	Huh?
Isaiah “Ike” Tyson	15:14	Don’t say no names, but you know who was there.
Shondell Dickerson	15:18	Yea.
Isaiah “Ike” Tyson	15:19	Yea.
Shondell Dickerson	15:20	Yea.
Isaiah “Ike” Tyson	15:22	How the fuck did they get Skits out of that?
Shondell Dickerson	15:25	Yea…. Ah, I thought he was in Bemidji than?
Isaiah “Ike” Tyson	15:28	That’s what I thought!
Shondell Dickerson	15:29	What the fuck-

This telephone call was not introduced as evidence in either of Burrell’s trials. The trial court did not, therefore, have the opportunity to weigh it against the other evidence he evaluated to determine Tyson’s credibility.

The trial court also determined that Burrell made several incriminating statements while in jail, undermining Burrell’s claim that he was not present at the scene. In addition to the statements from other jailhouse informants, described above, the record on which the trial court based those conclusions was incomplete. For example, the trial court relied on testimony from Esque Dickerson regarding a phone call between her and Burrell. Dickerson testified that Burrell admitted to

being with Tyson and Williams during the shooting.[119] Yet the record did not include a recording of that phone call, even though the phone call would have taken place while Burrell was in jail and while all of his calls were, therefore, being recorded. This panel reviewed all of the recorded calls in the record, and did not find a recording or any other evidence of any such phone call, such as a telephone log or transcript. The panel is troubled by this missing evidence, which, if it existed, would be important evidence in determining either guilt or innocence.

Similarly, the trial court relied on a statement made by Burrell to his mother, in which he said, "I mean, I'm not innocent, mom . . ." Yet the full recording of that call provides significant context for Burrell's statements and undermines the notion that he was admitting to being involved. Indeed, portions of that same call include Burrell's repeated statements that he's innocent and that he cannot be charged for a crime that the did not commit:

> CALLER: Yeah, I mean, cause I was, **I was thinking why, they can't, they can't, they can't charge me for nothing I didn't do,** you know what I'm saying? But, they was just trying to find anything about me.[120]

And later, in the same call,

> CALLER: A girl who didn't have a chance to do anything, you know what I'm saying? And then, they trying to take (inaudible-you know what I'm saying); I mean, I'm not innocent, mom, but you (inaudible-can't) ...
>
> ANSWER: But they still. …
>
> CALLER: .... .I'm still (inaudible-here), I'm not (inaudible-) years old.

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[119] *State v. Burrell*, 27-CR-02-0978794, 2008 WL 2794144 (Minn. Apr. 9, 2008), Findings of Fact, Conclusion of Law, and Order, ¶¶ 30-36.; *see also* MPD Report 2/2/2003 Supplement 85 (statement of Esque Madonna Dickerson) and 3/11/2008 Dickerson Trial Testimony at 287-294.

[120] 2008 Trial Exhibit 102, Transcription of 12/9/2002 telephone conversation at 5, #140307, between Myon Burrell and his mother, Markeeta, since deceased. (emphasis added).

ANSWER: But if you're not guilty of that.

CALLER: **I'm not [interrupted by telephone tone] guilty, you know what I'm saying?**

ANSWER: Em-hmm.

CALLER: **Taking and trying to, like, you know what I'm saying, put an innocent person in the same** [END OF CALL-CUT OFF PHONE][121]

The additional portions of this call—again, not presented to the trial court[122]—call into question the conclusion that Burrell confessed to his mom and, instead, provides another plausible conclusion: Burrell was attempting to state his innocence in this case and at the same time acknowledge previous challenging or even criminal behavior. Fairly read in its full context, his statement was anything but an admission of guilt to this crime.

2. Burrell's contemporaneous statements evince consciousness of innocence

As discussed above, Myon Burrell repeatedly told the Minneapolis Police Department ("MPD") to go check Cup Foods' interior surveillance videotape and to talk to a young woman he had seen and talked to that day. The MPD appears to have done neither. In addition to evincing tunnel vision by the police, Burrell's repeated requests to seek video that would prove his innocence shows a consciousness of innocence.[123] So convinced of his innocence, Burrell tells his mom he will be home once detectives recover video evidence. For instance, after his mom tells him that she thinks the police have all the surveillance tapes from Cup Foods, Burrell says: "I bet you they already know I'm innocent. They just don't know, they aint found the right person and they don't want to let me go until they find him." Although Burrell gave inconsistent statements early on about his whereabouts, as the panel noted

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[121] *Id.* at 10. (emphasis added).

[122] 3/13/2008 Zimmerman Trial Testimony at 485-490 (Zimmerman notes Exhibit 101 is a cd with the 12/9/2002 call and Exhibit 102 is a "transcribed portion of the call.").

[123] Burrell told the panel that he was saying he was not innocent like an 11-year-old kid.

above, he insisted shortly after making those statements that surveillance tapes would prove him innocent. Alibi witnesses corroborate Burrell's own statements about where he was. Jillian Sully told police she saw Burrell near Cup Foods. Though she was impeached on her work history, the substance of that statement remained unimpeached.[124]

D. Evidence Calling Into Question the Reliability of Timothy Oliver's Identification of Burrell

The panel also evaluated the principal eyewitness testimony that placed Burrell at the scene of the shooting—the testimony from Tim Oliver. The panel's investigation raised significant questions about Oliver's credibility and warrants further evaluation.

Oliver was the primary witness who identified Burrell as the shooter, but his testimony was flawed for several reasons. First, Oliver testified that Burrell was over 150 feet away from him. Second, Oliver made inconsistent statements about where the shooter was standing. Moreover, there was a two-way street between the location of the shooter and Oliver. Oliver would have had difficulty seeing across the street, which was typically busy with traffic. And, based on the physical evidence, the shooter was standing beside a porch, and likely was at least partially obscured by the porch pillar or wall. The distance and the obstructed view create concerns about Oliver's opportunity to make an accurate and reliable identification of Burrell.[125] But more importantly, disinterested witnesses, including Lanser and Chapdelaine undermine Oliver's identification of the shooter. Chapdelaine's own initial observations indicate that the person in the gray jacket appeared to have a heavy object in his jacket.

Statements from two of Oliver's friends, Antione Williams and Anthony Collins, also suggest that Oliver could not have seen the shooter. Although the panel acknowledges that they gave inconsistent statements over time, in their initial statements to police both Williams and Collins stated (1) that they saw Oliver on the ground immediately after the shooting and (2) that neither of them could see or identify the shooter.

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[124] 3/26/2003 Sully Trial Testimony at 1336-1342; *see also* 2008 Trial Exhibit 113 (Jillian Sully statement to Sgt. Zimmerman on 3/25/2008).

[125] 4/28/2003 Oliver Trial Testimony at 276-279.

Most significantly, Oliver himself had incentives to name Burrell. Hodge testified that he ordered Oliver to cooperate.[126] Dameon Leake testified that Hodge ordered Oliver to cooperate, because Hodge was "in a jam."[127] These factors all raise questions about Oliver's identification of Burrell as the shooter. Particularly without any contemporaneous handwritten notes, audio, or video of the initial interrogation, the doubts raised by Oliver's identification are such that further investigation is warranted.

Finally, Tyson has admitted that he was the individual who shot at Oliver. If Tyson was the shooter, as Tyson himself has said, as independent eyewitnesses corroborate, and as Angela Williams appeared to believe, then Oliver's identification of Burrell is simply wrong and unreliable. This, in the end, raises grave concerns.

Conclusion as to Conviction Integrity

The panel is deeply cognizant that the questions we have raised in this Report do not in any way minimize the tragedy of Tyesha Edwards' death. Her death has left a mark on her family, neighborhood, and city for eighteen years, and will continue to leave a mark for many years to come. Ultimately, in reviewing this conviction, the panel has come to conclude that her family, neighborhood, and city deserve a thorough review of the integrity of Myon Burrell's conviction—and deserve confidence that his conviction rests on credible evidence.

If the conviction review unit undertakes a review of this case, we offer the following questions with which our own review has left us.

Critically, Ike Tyson has admitted that he was the individual who shot at Oliver. If Tyson was the shooter, as Tyson himself has admitted, as independent eyewitnesses corroborate, and as Angela Williams concluded from her conversations with Tyson and Williams right after the shooting, then Oliver's misidentification of Burrell raises troubling questions about the prosecution's entire theory of the case:

-- How did Oliver come to misidentify Burrell as the shooter if Oliver really "hit the dirt," was unable to see the shooter, and immediately ran away, as witnesses Anthony Collins and Antoine Williams suggest?

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[126] 3/14/2003 Hodge Trial Testimony at 584.

[127] 3/17/2008 Leake Trial Testimony at 634.

-- Did the suggestion that Burrell was the shooter begin with the unrecorded telephone call from Isaac Hodge to detectives shortly after the shooting?

-- In the unrecorded portion of the interrogation of Oliver on November 25, 2002, did Oliver come to believe it would help him to identify Burrell as the shooter?

-- Was Oliver more than willing to identify Burrell because Burrell had fired shots at members of the Family Mob on a prior occasion?

-- Does the statement by Antoine Williams indicating that Oliver never saw the shooter and recanted his identification of Burrell before he died, viewed in this context, now have greater weight?

-- What is the precise nature of the incentives offered to the jailhouse informants and were there in fact concerted efforts by the Family Mob to coordinate their stories?

-- If Myon Burrell was not the third participant in Tyesha Edwards' death, was there a third participant and who was it?

In light of these questions and other questions raised throughout this report, we urge the Conviction Review Unit to take up this case and fully reinvestigate it, including complete review of police and prosecution files and all files and communications related to the jailhouse informants.

Appendix One

Panel Members[128]

Keith Findley-Madison, Wisconsin

Keith Findley received his B.A. from Indiana University and his J.D. from Yale Law School. For all but six years since 1985—during which he served as a state public defender—Keith Findley has been a faculty member at the University of Wisconsin Law School. For 20 of those years, he taught in the Law School's clinics. In 2012, he moved to the tenure track, where he teaches Evidence, Wrongful Convictions, Criminal Procedure, and Law & Forensic Science. In 1998, along with Professor John Pray, he co-founded the Wisconsin Innocence Project, and he served as co-director of the project until the spring of 2017, when he assumed the role of Senior Advisor. For five years, from 2009 to November 2014, he served as president of the Innocence Network, an affiliation of nearly 70 innocence organizations throughout the world. In 2018, he joined with Jerry Buting and Dean Strang (made famous as Steven Avery's attorneys in the Netflix documentary *series Making a Murderer*) to create a non-profit, the Center for Integrity in Forensic Sciences, dedicated to improving the reliability and safety of criminal prosecutions through strengthening forensic sciences.

Prof. Findley is the author of more than 50 law review articles and book chapters. His primary areas of scholarship and expertise are in wrongful convictions, criminal law and procedure, law and forensic science, and appellate advocacy. He has previously worked as an assistant state public defender in Wisconsin, both in the Appellate and Trial Divisions. He has litigated hundreds of postconviction and appellate cases, at all levels of state and federal courts, including the United States Supreme Court. He also lectures and teaches nationally on wrongful convictions, forensic science, evidence, and appellate advocacy.

Maria Hawilo-Chicago, Illinois

Maria Hawilo has a B.S. and a J.D. from the University of Michigan, and serves as a Distinguished Professor in Residence at Loyola Law School-Chicago.

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[128] The panel also received invaluable assistance from Jenny Gassman-Pines and Carynne Levy of Greene Espel PLLP in Minneapolis, Andrea Lewis of Northwestern Pritzker School of Law, and St. Thomas Law School student Andrea Meitler.

She joined Loyola from Northwestern Pritzker School of Law where she was a clinical assistant professor in the Bluhm Legal Clinic. She focuses her teaching and research on the criminal justice system and its vast overreach and disparate impact on African-American and Latino individuals. She also focuses on international law, particularly rule of law and trainings of institutional justice actors. Hawilo has served as a supervising attorney for the District of Columbia's Public Defender Service representing individuals charged with felony criminal offenses. She was a member of the Forensic Practice Group, a committee focused on the use of forensic science in the courtroom. Hawilo served as a law clerk for the Honorable David W. McKeague, U.S District Court, Western District of Michigan.

Mark Osler- Minneapolis, Minnesota (Chair)

Mark Osler received his B.A. from William and Mary and his J.D. from Yale Law School. A native of Detroit, he served as an assistant united states attorney there from 1995-2000. He taught at Baylor Law School from 2000-2010, and currently serves as the Robert & Marion Short Distinguished Prof. of Law at the University of St. Thomas (MN). In 2016 and 2019, the graduating class chose him as Professor of the Year. He played a role in striking down the mandatory 100-to-1 ratio between crack and powder cocaine in the federal sentencing guidelines by winning the 2009 case of *Spears v. United States* in the U.S. Supreme Court, with the Court ruling that judges could categorically reject that ratio. He is also the sole author of a casebook, *Contemporary Criminal Law* (West, 2018).

Jim Petro-Columbus, Ohio

Jim Petro received his J.D. from Case Western Reserve University, and his B.A. from Denison University. Petro served as an assistant prosecuting attorney for Franklin County as a trial lawyer responsible for felony prosecutions, and then as assistant director of law for the city of Cleveland, Ohio. After starting his private practice, Petro became prosecuting attorney for the city of Rocky River. Petro began his political career in 1977 when he was elected to the Rocky River city council, and later served as the law director of the city. In 1980, he was elected to the Ohio House of Representatives. He served eight years as a state representative. He later served as a county commissioner, state auditor, and as attorney general for the State of Ohio, as well as the Chancellor of Ohio's university system.

As attorney general, Petro began advocating for the wrongly convicted. Petro and his wife Nancy co-authored "False Justice: Eight Myths that Convict the Innocent," a memoir of awakening to this injustice through Ohio cases. The book

explores contributors to wrongful conviction, hurdles to reversing conviction errors, and reform recommendations.

David Singleton-Cincinnati, Ohio

David Singleton received his J.D., cum laude, from Harvard Law School in 1991, and his A.B. in Economics and Public Policy, cum laude, from Duke University in 1987. Upon graduation from law school, David received a Skadden Fellowship to work at the Legal Action Center for the Homeless in New York City, where he practiced for three years. He then worked as a public defender for seven years, first with the Neighborhood Defender Service of Harlem and then with the Public Defender Service for the District of Columbia. After moving to Cincinnati in the summer of 2001, David practiced at Thompson Hine before joining Ohio Justice & Policy Center as its Executive Director in July 2002. David is also a Professor of Law at Northern Kentucky University's Salmon P. Chase College of Law.

Mike Ware-Fort Worth, Texas

Mike Ware lives in Fort Worth, Texas, and graduated with honors from the University of Texas with a degree in philosophy. He graduated from the University of Houston Law School in 1983, where he was research editor for the Houston Law Review and the Houston Law Review's Texas Rules of Evidence Handbook. In addition, he was a law clerk for the Honorable David O. Belew, Jr., United States District Judge for the Northern District of Texas in Fort Worth from 1983 to 1984.

In 1984, Ware began private practice, specializing in criminal defense. His practice included representing police officers in criminal, civil, and administrative matters as well as investigating and litigating whistle-blower claims. He became board certified in criminal law in 1990. His criminal defense practice has involved pre-charge investigations, grand jury proceedings, trials, direct appeals, and other post-conviction proceedings in both state and federal courts throughout the United States. From July 2007 until July 2011, Ware was the special fields bureau chief for the Dallas County District Attorney's office, which included the Conviction Integrity Unit. In April 2009, Ware was featured in "Dallas DNA," a six-week television series on Investigation Discovery (ID) based on his work with the Dallas County District Attorney's Conviction Integrity Unit (CIU). In July 2011, Ware resumed private practice in Fort Worth.

Ware was a faculty member at the Criminal Trial Advocacy Institute in Huntsville, Texas from 1993 to 1996, and has an AV rating from Martindale-

Hubbell. Ware's peers voted to name him a "Texas Super Lawyer." In 2014, the TCDLA gave Mike the Percy Foreman "Lawyer of the Year" award. Currently, Ware is an adjunct professor at the Texas A&M School of Law and is the Executive Director of the Innocence Project of Texas. He is on the board of directors of the Texas Criminal Defense Lawyer's Association.

Advisors

Laura Nirider—Chicago, Illinois

Laura Nirider is a Clinical Associate Professor of Law and Co-Director of the Center on Wrongful Convictions at Northwestern Pritzker School of Law in Chicago. Nirider represents individuals who were wrongfully convicted of crimes when they were children or teenagers. Her clients have included Brendan Dassey, whose case was profiled in the Netflix Global series *Making a Murderer*, and Damien Echols of the West Memphis Three, whose case was profiled in the documentary *West of Memphis*.

In addition to her courtroom work, Nirider regularly publishes scholarly and practitioner-focused articles on interrogations and post-conviction relief. In partnership with the International Association of Chiefs of Police, she has co-authored one of the only existing juvenile interrogation protocols. She is also a frequent presenter on interrogations at defender and law enforcement training conferences around the country and has been featured in film and television programs on interrogations. Recently, she co-authored an amicus curiae brief that was cited by the U.S. Supreme Court in *J.D.B. v. North Carolina* for the proposition that the risk of false confession is "all the more troubling...and all the more acute...when the subject of custodial interrogation is a juvenile."

Barry Scheck—New York, New York

Barry Scheck is a Professor of Law at Cardozo Law School and Co-Founder of the Innocence Project. He has worked with and advised Conviction Integrity or Review Units across the country and has written extensively on different models for re-investigating possible miscarriages of justice involving multiple stakeholders. He advises the panel in his personal capacity.

Legal and Administrative Support

Jenny Gassman-Pines—Minneapolis, Minnesota

Jenny Gassman-Pines is a partner and trial lawyer at Greene Espel PLLP. A fierce courtroom advocate, Jenny is known for her presence, poise, and persistence when examining witnesses and arguing motions. Many of Jenny's cases involve the defense of employment claims in court and agency settings, including claims of wrongful termination, discrimination, whistleblower violations, retaliation, and violation of non-competition and non-solicitation agreements. Jenny also regularly conducts internal investigations regarding allegations of employee misconduct ranging from threats of violence to sexual harassment and misconduct.

Gassman-Pines has an active pro bono practice, including representing Mark Esqueda, an American citizen and military veteran, in a successful lawsuit to compel the United States to recognize his citizenship.

Carynne Levy—Minneapolis, Minnesota

Carynne Levy is a Litigation Specialist at Greene Espel PLLP with over twenty years' experience in all aspects of complex litigation case management in multiple jurisdictions including Alabama, Arizona, Florida, Georgia, and Minnesota.

Levy has an extensive background in orchestrating crucial day-to-day assistance to attorneys in the areas of mass tort product liability cases, general commercial litigation matters with significant claims at stake, FINRA arbitrations, and SEC investigations. She assists in all phases of litigation, including document collection and analysis, discovery requests and responses, fact development, case investigation and organization, depositions, arbitration, trial preparation and trial support. Levy also has experience in bankruptcy and immigration matters. Levy regularly works with the latest litigation support and courtroom technologies. Before joining Greene Espel, Levy was a lead paralegal and project manager for discovery matters, where she established and implemented procedures and negotiated with vendors on eDiscovery procedures including document imaging and coding.

Appendix Two

REPORT REGARDING CRIMINAL INFORMANT COLLUSION AND UNRELIABILITY:

PREPARED FOR THE INDEPENDENT COMMISSION ON MYON BURRELL

Alexandra Natapoff
Lee S. Kreindler Professor of Law
Harvard Law School

November 22, 2020

BACKGROUND

I have been asked to prepare this Report in my capacity as a nationally-recognized scholar and expert regarding the use and abuse of criminal informants, jailhouse informants in particular, and the attendant risks of wrongful conviction. I am the author of several law review articles on the subject[129] as well as the book *Snitching: Criminal Informants and the Erosion of American Justice* (NYU Press, 2009), which won the 2010 ABA Silver Gavel Award, Honorable Mention for Books. I am a 2016 Guggenheim Fellow and a member of the American Law Institute (ALI). I received my undergraduate degree from Yale University and my J.D. from Stanford Law School.

I have testified as an expert in numerous cases and before numerous state and federal tribunals regarding informant use, including the U.S. Congress, the California Assembly, the Texas Timothy Cole Commission, the Wisconsin Criminal Justice Commission, and in the following cases: *Williams v. Chappell*, Case No. 00-

[129] Alexandra Natapoff, *Deregulating Guilt: The Information Culture of the Criminal System*, 30 Cardozo L. Rev. 965, 992-1011 (2008); Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 Golden Gate U. L. Rev. 107 (2006); Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. Cin. L. Rev. 645 (2004).

10637 (C.D.C.A. 2015), *Larson et al. v. State*, Case No. 14-2-00090-6 (Wash. 2015), *U.S. v. Savage*, Crim. No. 07-550 (E.D. P.A. 2013), *State v. Green*, Case No. 1170853 (Harris Cty., TX, 2010), and *State v. Leniart*, (Conn. Sup. Ct., Feb. 22, 2010) (New London, Jongbloed, J.).

The past decade has seen an significant expansion of data and research regarding criminal informant use. Prior to 2009 when I published my book on the subject, there were scattered sources regarding various forms of informant unreliability and dysfunction, typically associated with an individual scandal or wrongful conviction. Today, the field of study includes legal, psychological, and forensic expertise, and numerous states have engaged in reform.[130]

Accordingly, we know a great deal more about the dynamics and risks of this law enforcement practice than we did just ten years ago.

THE RISKS POSED BY MULTIPLE INFORMANTS

Great caution should be used in cases where multiple informants are used to establish evidence and corroborate each other's testimony. Such cases often arise where several jailhouse informants provide information about another inmate, and in gang cases where multiple members of the same gang testify to the same information. In a typical criminal case, the existence of multiple sources for the same evidence tends to render that evidence more reliable, in part on the assumption that each piece of evidence has been independently generated. By contrast, criminal informants are well-known to proactively collaborate and collude in order to render their evidence more plausible and thus more valuable to the government. Accordingly, the existence of multiple, apparently corroborating informants is a red flag that should trigger exacting scrutiny of incentives and opportunities for informant

A. Experienced and Repeat-Player Informants

In particular, experienced or repeat informants have been known to develop collusive strategies to procure, fabricate, share, and trade information regarding other criminal suspects and/or other jail or prison inmates. Experienced informants learn that such collusive bolstering increases the appearance of credibility and

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[130] For an early overview see Alexandra Natapoff, "Snitching and the Use of Criminal Informants." *Oxford Bibliographies* in CRIMINOLOGY. Ed. Richard Wright. New York: Oxford University Press (2012).

therefore the value of their information, which in turn increases the likelihood of receiving rewards from the government. Such informants may also use their ongoing relationships with the government to eliminate rival criminal actors or competitors.[131]

Because informant use and government interactions with informants are an under-documented, low visibility, and typically secretive law enforcement practice, there are no national data on the extent of such collusive practices or the frequency with which they lead to wrongful conviction, just as there are no national data on the extent of jailhouse informant use generally. Nevertheless, informant collusion is a documented aspect of informant culture in many gangs, jails, and prisons.

B. Informant Collusion

Sometimes informant collusion is highly organized. For example, Ann Colomb and her three sons were wrongfully convicted of federal drug trafficking charges in Louisiana based on the testimony of a standing group of colluding prison informants. The informants were part of an information-selling network inside the federal prison in which inmates purchased files and photographs in order to help them fabricate testimony which they then marketed to prosecutors in exchange for sentence reductions. The presiding judge, U.S. District Court Judge Tucker

Melancon, described the scheme as "revolving-door inmate testimony." *See* Radley Balko, *Guilty Before Proven Innocent*, Reason Magazine, May 2008, available at https://reason.com/2008/04/14/guilty-before-proven-innocent/.

A comparable informant collusion scheme operated for many years in the Atlanta jail. Inmates bought and sold "packages of information" to each other to be offered to the government in exchange for leniency. Prices for information ran as high as $250,000. In 2010, U.S. District Court Judge Julie Carnes excoriated the situation as "abominable." Brad Heath, *Federal Prisoners Use Snitching For Personal Gain*, USA Today, Dec. 14, 2012, available at

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[131] *See, e.g., Congressional Report: H. Rpt. 108-414: Everything Secret Degenerates: The FBI's Use of Murderers As Informants*, U.S. House of Representatives, Committee on Government Reform (2004) (documenting the FBI's reliance on organized crime actors who provided the federal government with information about their organized crime rivals in a different gang), *available at* https://www.govinfo.gov/content/pkg/CRPT108hrpt414/html/CRPT-108hrpt414-vol1.htm.

https://www.usatoday.com/story/news/nation/2012/12/14/jailhouse-informants-forsale/1762013/.

Jailhouse informant collusion also takes place in a less organized fashion on an individual level. The 1989 Los Angeles Grand Jury Report provided one of the earliest investigations of informant misconduct and collusion. Informants reported that they shared information and tactics with each other and collectively developed fabricated stories by running those stories repeatedly by law enforcement officials until they got the desired response. *Report of the 1989-1990 Los Angeles County Grand Jury: Investigation of the Involvement of Jail House Informants in the Criminal Justice System in Los Angeles County*, at 18, 26, 28, June 26, 1990, available at http://grandjury.co.la.ca.us/pdf/Jailhouse%20Informant.pdf.

In *United States v. Lewis*, the district court overturned Antun Lewis' arson conviction and granted him a new trial based on the likelihood of collusion between multiple jailhouse informants in the Cleveland jail. All of the informants had connections to a single, highly experienced ATF informant who claimed that Mr. Lewis had confessed to him in the jail. The main witness against Mr. Lewis was an accomplice who shared a pod in the jail with the ATF informant. Multiple other jailhouse informants came forward to corroborate the ATF informant's allegation that Mr. Lewis confessed to him. As the court put it, "the cumulative nature of the jailhouse testimony only served to highlight suspect connections." *United States v. Lewis*, 850 F. Supp. 2d 709, 761 (N.D. Ohio 2012), aff'd, 521 F. App'x 530 (6th Cir. 2013).

C. Informant Informational Strategies

Jailhouse informants have developed an array of skills and strategies to acquire, fabricate, and deploy information. In particular, experienced informants have demonstrated highly entrepreneurial tactics which they often use repeatedly across different cases. Such tactics include researching other inmates' cases on the internet, in newspapers, and public court records, and getting friends and relatives to do so from outside the jail.[132] Access to this type of information permits

[132] *See, e.g.*, Russell D. Covey, *Abolishing Jailhouse Snitch Testimony*, 49 WAKE FOREST L. REV. 1375, 1380 (2014) ("Snitches can [] obtain details about fellow prisoners' cases by speaking with complicit friends and relatives who can monitor preliminary hearings and other case proceedings and feed details to the aspiring snitch."); Valerie Alter, *Jailhouse Informants: A Lesson in E-Snitching*, 10 J. Tech. L. & Pol'y 223, 225 (2005) ("[B]y reading newspapers in the prison library,

informants to construct confessions that comport with information already known to law enforcement and thus renders those confessions more credible. For example, the Los Angeles Grand Jury found that informants routinely gathered information on other inmates from newspapers, external sources, law enforcement, and each other. In the Atlanta informant ring, jail inmates relied on and paid for information provided by individuals outside the jail.

As a result of this entrepreneurial culture, high profile or very serious cases create special risks for informant fabrication. Informants understand that testimony against defendants in cases such as murder or rape is especially valuable to the government and likely to be well rewarded. Information regarding those cases tends to be available in the public media and/or other public sources in way that informants can access and use. By the same token, where the physical evidence in a case is weak or nonexistent, it is difficult to corroborate or contradict informant information while simultaneously making such information especially attractive to the government and thus more likely to be used.

California has formally recognized the high risk of jailhouse informant collusion. California law contains a jailhouse informant corroboration requirement which bars the use of the uncorroborated testimony of an in-custody informant. The law specifically forbids the use of another jailhouse informant to serve as corroboration, unless the government can prove that the testifying informant has not communicated with other informants. Specifically, the statute provides:

> Corroboration of an in-custody informant shall not be provided by the testimony of another in-custody informant unless the party calling the in-custody informant as a witness establishes by a preponderance of the evidence that the in-custody informant has not communicated with another in-custody informant on the subject of the testimony. Cal. Penal Code § 1111.5 (West).

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informants keep up-to-date on criminal investigations and then use the information they obtain to claim credibly that a cellmate, or another inmate housed in the same prison, confessed to the crime."). *See also Maxwell v. Roe*, 628 F.3d 486, 502 (9th Cir. 2010) (describing methodology of an experienced jailhouse informant which was "to gain physical proximity to a high-profile defendant [and] get information about the case from the media, usually a newspaper").

D. Structural and Psychological Barriers to Evaluating Reliability

New scientific evidence has shed light on the procedural and cognitive difficulties that attend the evaluation of informant reliability. Researchers have documented the substantial effect that incentives have on a witness's decision to provide false testimony.[133] Conversely, behavioral psychologists have demonstrated that jurors do not internalize the risks of fabrication when evaluating informant witnesses, even when the jury is informed that the informant may receive a benefit for their testimony.[134] These evaluative failures flow from universal cognitive biases and dynamics that are shared by all human decisionmakers, which is to say they may affect law enforcement, prosecutors and judges as well.

Additional studies have shown that law enforcement decisionmakers and judges rely on cognitive sorting mechanisms, heuristics, and tunnel vision that may make informant-based evidence look both more valuable and reliable than it actually is.[135] For example, federal prosecutors have described the difficulty of evaluating the reliability of their own informants on which their cases are heavily or even entirely reliant, a phenomenon they call "falling in love with your rat." Ellen Yaroshefsky, *Cooperation with Federal Prosecutors: Experiences of Truth Telling and Embellishment*, 68 Fordham L. Rev. 917, 944 (1999). Such challenges may be magnified by the presence of multiple informants. As a result of these inherent difficulties in evaluating informant reliability, the conventional criminal process often does a poor job at sorting truthful from untruthful informants and thus relies too heavily on the latter.

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[133] Christopher T. Robertson & D. Alex Winkelman, *Incentives, Lies, and Disclosure*, 20 U. Pa. J. Const. L. 33, 55-77 (2017).

[134] *Id.*; *see also* William Blake Erickson, *et al.*, *When Snitches Corroborate*: *Effects of Post-identification Feedback from a Potentially Compromised Source*, Psychiatry, Psych. & Law, Vol. 23, No. 1, 148-160 (2016); Jeffrey Neuschatz *et al*., *The Effects of Accomplice WitnessesaAnd Jailhouse Informants on Jury Decision Making*, Law & Human Behavior 32(2):137-49 (May 2008).

[135] *See generally,* Dan Simon, *In Doubt: The Psychology of The Criminal Justice Process* (Harvard Univ. Press, 2012); Daniel Medwed, *Prosecution Complex: America's Race to Convict and Its Impact on the Innocent* (NYU Press, 2013).

E. Informant Culture of Secrecy

Finally, informant use is characterized by a culture of secrecy that impedes documentation and accountability during investigations and throughout ongoing cases as well as post-conviction. Government actors and informants alike have a shared interest in maintaining the confidentiality of their interactions, and many communications take place in secret with the understanding that they will not be disclosed. Officials such as police, prosecutors and sheriffs have nearly unfettered discretion to communicate with and reward incarcerated informants in both formal and informal ways that can remain undocumented or siloed within the law enforcement apparatus.[136] Jailhouse informants, in turn, have enormous incentives to provide false information to the government in exchange for leniency or other benefits with the knowledge that the details of their cooperation will typically remain secret. Consequently, information and evidence that would naturally be generated in other legal circumstances, for example a record of communications, contacts, new or contradictory evidence, negotiations, and the offer of benefits, will often be missing from any record at all and difficult if not impossible to reconstruct after the fact.

CONCLUSION

As a result of the inherent and demonstrated risks of collusion and unreliability, exacerbated by the informant culture of secrecy, evidence or testimony provided by multiple informants should be viewed with presumptive skepticism. Informants—especially experienced ones—are known to affirmatively collect and fabricate information on which to base inaccurate claims, to expect benefits in return even without express representations from law enforcement, and to share information with other informants. Evidence offered by multiple informants should thus be evaluated in light of the strong possibility of collusion and fabrication; the existence of multiple informants presenting the same or similar evidence should itself be viewed as a potential flag for unreliability.

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[136] *See, e.g.*, Matt Ferner, *A Mass Shooting Tore Their Lives Apart. A Corruption Scandal Crushed Their Hopes For Justice*, Huffington Post, Mar. 9, 2018 (documenting decades-long law enforcement practice in Orange County, California, of using jailhouse informants and withholding that information from courts and defense counsel).