

IN THE SUPREME COURT OF MISSOURI

No. _____

STATE ex rel. MICHAEL POLITTE,

Petitioner,

v.

DORIS FALKENRATH,

Respondent.

Original Habeas Corpus Proceedings
Writ Denied by Missouri Court of Appeals, No. WD84748
Writ Denied by Circuit Court of Cole County, No. 20AC-CC00109

PETITION FOR WRIT OF HABEAS CORPUS

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Under Rules 84.22 and 91.01, *et seq.*, of the Missouri Rules of Civil Procedure, Petitioner Michael Politte seeks a writ of habeas corpus to vacate his conviction for second-degree murder for the 1998 murder of his mother, Rita Politte. It is undisputed that Michael was convicted on the basis of false physical evidence, and that the State either knew or should have known the evidence was false at the time Michael was tried and convicted and sentenced to life in prison as a teenager. This Court should grant relief on this basis alone.

The undisputed, false evidence, along with a host of additional compelling evidence detailed below and in the Suggestions filed herewith, proves Michael's actual innocence. The State's misconduct and Michael's innocence would have been proven much sooner if he had effective assistance of counsel at trial, on appeal, or for a Rule 29.15 post-conviction petition. Because he did not, and because of the State's conduct, Michael presents his substantial constitutional claims for the first time in habeas proceedings. Michael's actual innocence overcomes any procedural default this Court may find.

Michael brings six counts: (I) violation of Michael's right to due process because his conviction is based on undisputed false evidence; (II) violation of Michael's right to due process because the State knowingly presented false evidence and expert testimony to the jury; (III) violation of Michael's right to due process because the prosecution prejudicially misrepresented evidence in closing arguments; (IV) violation of Michael's right to due process because the State intimidated a critical defense witness; (V) violation of Michael's right to due process because the trial court improperly

interfered with the jury's decision-making; and (VI) violation of Michael's right to effective assistance of counsel at trial because of multiple significant failures including, but not limited to, his failure to consult with or present an arson or a chemical expert.

JURISDICTION AND VENUE

1. On January 31, 2002, Petitioner Michael Politte was convicted of second-degree murder for the murder of his own mother. He was convicted in the Circuit Court of St. Francois County and sentenced to life.

2. Michael's conviction was affirmed on appeal. *State v. Politte*, 122 S.W.3d 611 (Mo. Ct. App. E.D. 2003). A motion for rehearing and/or transfer to the Supreme Court of Missouri was also denied. *State v. Politte*, 122 S.W.3d 611 (Mo. Ct. App. E.D. 2003).

3. Michael was informed by his father, Ed Politte, that he retained Michael's appellate attorney to continue to represent Michael in post-conviction proceedings and specifically to file a Rule 29.15 petition on Michael's behalf. But a 29.15 petition was not filed. Michael repeatedly tried to contact the man he believed was his post-conviction attorney but never received a response. Eventually, he learned that his father Ed had lied to him and had not paid the appellate attorney to represent Michael in post-conviction proceedings. (Ex. 23, Affidavit of Art Margulis). At that point it was too late, Michael was out of time to file a 29.15 petition.

4. Michael is currently a prisoner at the Jefferson City Correctional Center, where Doris Falkenrath is the current Warden. *See* Rule 91.04(a)(1), (2). Respondent is sued solely in her official capacity.

5. On March 6, 2020, undersigned counsel filed a Petition for Writ of Habeas Corpus in Cole County Circuit Court; a First Amended Petition For Writ of Habeas Corpus was then filed on March 31, 2021. Case No. . 20AC-CC00109. The case was assigned to Judge Daniel Green, and the State was directed to file a Response to Show Cause why the petition should not be granted. The State also filed a Motion to Decide Case Without An Evidentiary Hearing on July 18, 2020 and a Motion for Summary Judgment on November 16, 2020.

6. Michael filed his response, including an Additional Statement of Uncontroverted Facts, on December 16, 2020. (Ex. 68). The State never responded to Michael’s Additional Statement of Uncontroverted Facts. Because the State failed to respond to Michael’s facts, these facts “were deemed admitted when [the State] failed to respond. . . .” *Green v. Fotoohigham*, 606 S.W.3d 113, 118 (Mo. banc 2020), reh’g denied (Sept. 29, 2020). *See also* Missouri Rule of Civil Procedure 74.04.

7. After a brief hearing on pending motions, (*see* Ex. 70 (Transcript)), Michael’s petition for a writ of habeas corpus was denied with prejudice on February 8, 2021, without an evidentiary hearing. (Ex. 71 (Cole County Order)).

8. On August 22, 2021, Michael filed a petition for writ of habeas corpus in the Missouri Court of Appeals, Western District. Case No. WD84748. The Court of Appeals summarily denied his petition on September 1, 2021, without explanation or comment. (Ex. 72 (W.D. Order)).

9. Michael brings these original writ proceedings in this Court seeking a writ of habeas corpus vacating his conviction for second-degree murder. *See In re Ferguson v. Dormire*, 413 S.W.3d 40, 50-51 (Mo. App. W.D. 2013).

10. Jurisdiction and venue for this original writ proceeding are appropriate in this Court because Michael is incarcerated within the State of Missouri and has exhausted all avenues for habeas corpus relief in the lower courts. *See* Rules 84.22(a), 91.04(a)(4).

STANDARD OF REVIEW

11. Upon denial of habeas relief by a circuit court, habeas petitioners file a new petition before this Court. *Ferguson*, 413 S.W.3d at 50-51. This Court is then “required to independently consider [the] Petition as an original writ filed pursuant to the authority of Rule 91 and Rule 84.22, and subject to the procedure set forth in Rule 84.24.” *Id.* By offering a petition for “independent consideration,” this Court does not “conduct[] appellate review of the judgment entered in Cole County.” *Id.* at 51-52.

FACTS

12. Rita Politte was found burning on her bedroom floor by her 14-year-old son Michael in the early morning hours of December 5, 1998. Her body was face-up with her legs spread apart, in underwear, and with remnants of a burnt negligee. There was significant blood at the scene, on the victim, and on her bedroom walls, but none on Michael or Josh. The autopsy revealed that she had suffered a blunt force trauma to the head, but the cause of death was carbon monoxide poisoning from the fire. Her body was burned from her head to her pubic area.

13. Michael unsuccessfully tried to put the fire out with a hose he dragged in from the yard, while his friend Josh Sansoucie, who had slept over in Michael's bedroom, ran to Michael's neighbors, Michael's aunt and uncle, to get help.

14. The Fire Marshall, James Holdman, was one of the first to arrive at the scene. He quickly concluded, based only on his visual observations, that this was arson and that the fire had been ignited with an accelerant.

15. Deputy Sheriff Tammy Belfield searched the scene for evidence and was tasked with attempting to locate the weapon that caused the blunt force trauma. No possible murder weapon was located. In other words, neither she nor other law enforcement found any object on the scene consistent with the blunt force trauma to Rita's skull.

16. Male DNA was found on Rita's bedsheets and on a towel in her bathroom. The profile from the towel matched an ex-boyfriend. The DNA from the sheets contained additional sperm and the non-sperm stains found on Rita's bed sheet were consistent with a genetic mixture of at least three people.

17. Boot prints were located outside the sliding glass door of the trailer, heading down a trail away from the house. The boots that made these prints were never identified. There is no indication that there was any follow-up investigation on this lead.

18. When Detective Curt Davis arrived at the scene, he separated Michael and Josh, placing each of them in a different police car for questioning. He questioned Michael first, then Josh. Michael and Josh told the same account of their activities the

night before and what happened from the time they woke up to the smell of smoke and found Michael's mother on fire to the arrival of first responders.

19. While Michael and Josh provided identical accounts of the night before and early morning hours, Davis brought them to the police station for further questioning, claiming there were inconsistencies in their stories.

20. At the station, both of the boys were given computerized voice stress analysis tests ("CVSA"), a tool that was frequently used by law enforcement in the 1990s to purportedly detect deception but which is now known to be wholly unreliable. Both tests showed stress, which according to the test, indicated deception.

21. Because Michael's CVSA test indicated deception, and because Michael was not showing as much emotion in response to his mother's murder as police expected, they focused on him as the prime suspect and proceeded to interrogation.

22. Michael was then interrogated on and off over the course of the next two days by multiple officers at a time, without an attorney. While his father, Ed Politte, was present for some of the interrogations, Ed was also a suspect and thus not in a position to protect Michael's rights.

23. Michael was not permitted to go home to sleep or to grieve with his sisters before days of interrogation.

24. Michael never confessed—because he did not kill his mother—but the State ended up using things Michael said in response to the police's coercive accusations and manipulative questions against him at trial.

25. Michael was arrested for his mother's murder on December 8, 1998, and he has been in custody ever since.

26. Rita's funeral was the next day; Michael attended in leg irons, handcuffs, and an orange jumpsuit, with armed guards.

27. On the one-month anniversary of Rita's death, Michael tried to kill himself by hanging himself with a bedsheet in his cell at the juvenile detention facility. When staff found him and asked why he was trying to kill himself, he responded that he had not wanted to live and had not cared since his mother's death.

28. The specifics of his statement, however, have been hotly contested. The State claims that Michael said, "I have not cared since December 5; that's when I killed my mom." Michael has always maintained that he said, "I have not cared since *they* killed my mom."

29. Michael remained in custody for the over three years that it took for the State to take this case to trial. By the time he went trial, Michael had grown from a boy into a man, so the jury looked at a man sitting before them as they considered the State's case against him.

30. During that time, law enforcement worked hard to turn Josh Sansoucie into a witness against Michael. They questioned and interrogated him between eight and ten times. They charged him with crimes. They used coercive, manipulative, and deceptive tactics known to induce false statements, particularly when used with youth. They offered him immunity. Ultimately, however, the State did not call him as a witness because nothing he had to say helped their case.

Trial

31. Before trial, the State offered Michael a deal of a 15-year sentence in exchange for a plea to voluntary manslaughter. Michael's counsel advised him that he would only serve about a decade more, accounting for time served. But Michael rejected the offer. (T. 759-60). He refused to plead guilty to a crime he did not commit.

32. Michael was tried in April of 2003. The trial lasted three days. The State presented seventeen witnesses, including multiple experts. The defense presented only three witnesses, and no experts.

33. The State's first witness was Derek Politte, a man Rita briefly dated, who testified about a disagreement Michael had with his mother when he was over for dinner.

34. The State's star witnesses were Fire Marshall James Holdman, Fire Marshall Bob Jacobsen, and criminalist Carl Rothove, who provided the mutually reinforcing testimony that this fire was intentionally ignited with an accelerant and that Michael had gasoline on his shoes the morning of the fire.

35. Specifically, Fire Marshall Holdman testified based upon his visual inspection that "it was clearly evident that a liquid accelerant" had been used to set the fire. (T. 295).

36. Crime Lab Supervisor Carl Rothove admitted that the carpet samples taken from the scene "did not yield the presence of an ignitable liquid" upon testing. (T. 643). Unfazed by the scientific evidence from the lab in front of him, Rothove provided an alternative theory: that the accelerant used must have "burned up," so it could not be detected. (T. 643-44).

37. Rothove conclusively testified that “gasoline was found on [Michael’s] shoes,” (T. 641), and that while he could not know “how much of this accelerant had soaked into the shoes,” (T. 647), or if it was “leaded or unleaded,” (T. 648), he was sure that it was gasoline. (*Id.*).

38. Rothove’s testimony was bolstered by testimony from Fire Marshall Bob Jacobsen, who testified that his police canine made three positive alerts to Michael’s shoes, indicating the presence of accelerants. (T. 441). While Jacobsen could not recall the results of laboratory testing on Michael’s shoes, he assured the jury that dogs can detect accelerants that lab testing cannot because a dog’s nose is more sensitive than lab equipment. (T. 444).

39. The prosecutor, in closing argument, underscored that “[e]verybody’s been pretty consistent it was an accelerant.” (T. 768). The prosecutor specifically called the accelerant “gasoline” during closing argument, telling the jury Michael poured gasoline over his mother’s face to “set[] her on fire.” (T. 764).

40. The State also presented testimony from two staff members of the juvenile detention center, who claimed that Michael admitted to killing his mother as he tried to kill himself.

41. Michael’s defense lasted less than half a day.

42. He was represented by a new public defender, who only called three witnesses. None of the witnesses were the family members of Rita and Michael, all present and willing to testify, who all believed Michael was innocent.

43. Michael’s counsel did not consult with or present any expert witnesses to challenge the State’s expert testimony.

44. Michael’s counsel did not call Michael to testify, even though he desperately wanted to explain to the jury that he was innocent. His attorney told him that he did not have time to get him ready for the stand.

45. The jury was initially divided, and they sent several questions back to the court. The last question sent was a request for Michael’s shoes—the shoes that they were told were covered in gasoline.

46. When the jury had not reached a decision by evening, the judge spoke privately with one of the holdout jurors and informed that he had to make up his mind now.

47. Shortly after, the jury returned its verdict of guilt of second-degree murder.

48. At sentencing, Michael’s sisters emotionally testified to his innocence. Michael’s oldest sister, Melonie, addressed the Court first, telling the Court that she believed her mother’s real killer was still at large. (T. 832). Chrystal Politte put it most succinctly, telling the Court, “Today, you guys are putting an innocent person in jail.” (T. 833).

Post-Trial

49. Michael was represented by Arthur Margulis for his direct appeal.

50. Michael’s father Ed told Michael that he retained Margulis to also represent him in post-conviction proceedings, and to file a R. 29.15 petition on Michael’s behalf. But an R. 29.15 petition was never filed.

51. Michael repeatedly tried to contact Margulis to find out what was going on with his case, but he did not receive a response until it was too late. When Michael informed Margulis that he was going to file a bar complaint if he did not respond, Margulis informed Michael that he was not his attorney and he had in fact not been retained or paid by Ed to file a R. 29.15 petition for Michael.

No Gasoline on Shoes

52. In 2016, chemist John Lentini, retained by undersigned counsel, re-tested the substance on Michael's shoes and concluded that it was not gasoline.

53. Instead, it was an aromatic solvent from the manufacturing process, which is found in every pair of these shoes.

54. On November 6, 2020, a criminalist from the Missouri State Crime Lab sent a letter to the Assistant Attorney General agreeing that the substance on Michael's shoes was not gasoline.

55. In addition, the criminalist informed the Attorney General that the testing method he (and Lentini) used to reach this result was adopted by the Crime Lab in "the late 1990s" because it became known that the former testing method produced unreliable results.

56. Specifically, the issue of mistakenly identifying accelerants in shoes had been known since at least 1996.

57. Yet, Michael's shoes were not retested before the State tried him for murder and sentenced him to life in prison.

58. Instead, the prosecutor presented expert testimony that there was gasoline on Michael's shoes as if that evidence was scientifically certain.

Fire Marshall Testimony Violated NFPA 921

59. Since around the time of Rita Politte's murder, there has been a sea change in how fires are investigated. Fire investigation was previously treated more as a craft, and was guided by a series of rules of thumb passed down by generations of firefighters. But in the 1990s, the investigation of fires became more scientific and rigorous.

60. In 1992, this culminated in a guide published by the National Fire Protection Association ("NFPA") called NFPA 921, or the "Guide for Fire and Explosion Investigations." NFPA 921 established the standard of care for objective fire investigations, laying out "guidelines and recommendations for the safe and systematic investigation or analysis of fire and explosion incidents." NFPA 921 has been formally endorsed and accepted as the standard of practice by both of the nation's largest fire investigator professional associations: the International Association of Arson Investigators (IAAI) and the National Association of Fire Investigators (NAFI). The Department of Justice adopted NFPA 921 in 2000.

61. According to NFPA 921, the cause of a fire cannot be determined based on visual examination alone. Instead, confirmation by laboratory testing of samples is required.

62. Here, the laboratory testing showed there was no accelerant at the scene of the fire. But the Fire Marshalls maintained and testified to their unfounded conclusion that the fire was started with an accelerant.

Alternative Suspects

63. From the beginning, Ed Politte was a more likely suspect than Michael. He and Rita had just wrapped up a contentious divorce and Ed had lost his appeal of a financial award to Rita just the week before her murder. At the time, Ed threatened Rita in court, telling her she would not live to see a penny of the money.

64. Even before their divorce, Ed violently physically and sexually abused Rita.

65. As an Assistant Attorney General said at the time in an email:

Ed is a suspect because he had gone through a nasty divorce from Rita. [Michael] was wanting to live with his father but Rita got custody. Ed appealed and lost an [sic] regarding money he was to pay for child support or attorney fees of Rita. The Tuesday before the murder he had been in court regarding his appeal and the judge ordered him to pay Rita \$1000. He made a remark something like, ‘You will never see the day when you’ll get the money’ or something kinda threatening like that. Also interesting was a visit Ed had with his son in jail and Bernie was obviously pissed and yelled out, “You MF’er, you framed me.”

The relationships were not good among the members of this family. Apparently, Ed had abuse [sic] Rita reportedly physically and sexually.

66. While police disregarded Ed because he had the alibi of being at work, multiple new witnesses have come forward with evidence implicating Ed’s cousin Johnnie Politte, suggesting that he had a financial windfall shortly after Rita’s murder. This strongly supports the possibility that Ed and Johnnie worked together.

67. Today, there is compelling evidence that Michael is innocent and his father hired his cousin, Johnnie Politte, to kill his ex-wife, Rita Politte. A reasonable juror would more likely than not have reasonable doubt that Michael killed his mother. *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. banc 2000); *Schlup v. Delo*, 513 U.S. 298 (1995). For

a more complete discussion of the underlying facts, Michael refers the Court to his Suggestions in Support of Petition for Writ of Habeas Corpus.

Jurors & Prior Counsel Believe Michael is Innocent

68. Multiple jurors who voted to convict Michael have come forward and signed affidavits asserting that had they known then what they know now, they would have had at least a reasonable doubt.

69. Two jurors unequivocally state they believe Michael is innocent.

70. Michael's trial counsel has also come forward to assert he believes Michael has innocent, and he has since he began representing him. Furthermore, he admits that did many things wrong in this case, including failing to investigate the viable alternative suspects. With many more years of experience as a trial attorney, he admits he would do things differently today.

71. Because Michael is actually innocent, this Court must review the merits of Michael's substantial constitutional claims and grant relief on those bases. *See, e.g.*, Special Master Report, *Nash v. Payne*, No. SC97903 (Mo. Supreme Court, June 12, 2020)(finding *Schlup* actual innocence, and granting habeas petition on basis of due process violations where State admitted false expert testimony and misrepresented central evidence in closing argument, and basis of ineffective assistance of counsel for failure to object to the unreliable expert testimony); Special Master's Amended and Final Report, *Robsinson v. Cassady*, No. SC95892 (Mar. 7 2018)(finding *Schlup* actual innocence, and granting habeas petition on basis of due process violations).

COUNT I

Violation of Due Process

Michael's Conviction Based on Undisputed False Physical Evidence

72. Michael repeats and re-alleges the foregoing paragraphs as if set forth herein.

73. This Count arises from the State's presentation of false expert opinions that Michael had gasoline on his shoes, tying him to the fire that killed his mother.

74. This Count also arises from the State's presentation of unreliable expert opinion from Fire Marshall Holdman concluding that the fire was started with an accelerant, making the alleged gasoline on Michael's shoes damning evidence of his guilt, and the *only* physical evidence connecting Michael to the murder.

75. The admission of false expert opinion from both Jacobsen and Rothove was error and violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution.

76. The admission of unreliable expert opinion from Holdman, Jacobsen, and Rothove was error and violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. *Darden v. Wainwright*, 477 U.S. 168, 181 (1986).

77. Holdman, Jacobsen, and Rothove's testimony fatally infected Michael's trial and was immensely prejudicial to Michael. If their testimony had not been admitted, the outcome of the trial likely would have been different.

WHEREFORE, for the foregoing reasons, Petitioner Michael Politte prays the Court grant him a writ of habeas corpus, vacate his conviction for second-degree murder, and grant him a new trial or permanent release from State custody. In the alternative, Petitioner Michael Politte prays the Court appoint a Special Master under Supreme Court Rule 68.03, conduct an evidentiary hearing on the allegations of this petition, and grant him such further relief as the Court deems proper and consistent with the ends of justice.

COUNT II

Violation of Due Process

The State Knowingly Presented False Evidence & Expert Testimony

78. Michael repeats and re-alleges the foregoing paragraphs as if set forth herein.

79. This Count arises out of the same set of facts as Count I. These facts constitute an additional claim, however, based on the fact that the State knew, or should have known, that the testimony of all three experts (Holdman, Jacobsen, and Rothove) was false.

80. Since the time of Jacobsen and Rothove's expert testimony that Michael had gasoline on his shoes, the State has admitted that the Missouri Crime Lab (the entity that tested Michael's shoes in 1998) adopted new testing methods in "the late 1990s" because they recognized that the testing method previously used produced unreliable results. This means that the crime lab was using new, more reliable testing before Michael's trial. Yet, the State did not retest his shoes using the current, reliable testing.

Instead, the prosecutor presented the old test results to the jury as if it was scientifically certain evidence.

81. In addition, the State knew or should have known that Fire Marshall Holdman's conclusion that the fire was started with an accelerant was unreliable and false because his testimony violated NFPA 921, which was adopted in 1996 and formally endorsed by the U.S. Department of Justice in 2000, years before Michael's trial.

82. The State's knowing admission of false evidence and expert opinion testimony was error and violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. *Napue v. Illinois*, 360 U.S. 264, 269-70 (1959); *Giglio v. United States*, 405 U.S. 150 (1972).

83. Holdman, Jacobsen, and Rothove's testimony fatally infected Michael's trial and was immensely prejudicial to Michael. If their testimony had not been admitted, the outcome of the trial would more likely than not have been different.

WHEREFORE, for the foregoing reasons, Petitioner Michael Politte prays the Court grant him a writ of habeas corpus, vacate his conviction for second-degree murder, and grant him a new trial or permanent release from State custody. In the alternative, Petitioner Michael Politte prays the Court appoint a Special Master under Supreme Court Rule 68.03, conduct an evidentiary hearing on the allegations of this petition, and grant him such further relief as the Court deems proper and consistent with the ends of justice.

COUNT III

Violation of Due Process

Prosecution Prejudicially Misrepresented Evidence in Closing Argument

84. Michael repeats and re-alleges the foregoing paragraphs as if set forth herein.

85. The prosecutor, in closing argument, told the jury that Michael poured gasoline on his mother's face and lit her on fire, but there was no testimony or evidence that the fire was ignited by gasoline. Holdman testified that the fire was ignited with an accelerant, but never specified that it was gasoline. In fact, he could not give that testimony because laboratory testing of samples from the scene were all negative for gasoline (or any other accelerant).

86. In addition, the prosecutor misrepresented the evidence later in closing argument when he told the jury that Michael covered his mother's face with his shirt before lighting her face on fire. The prosecutor claimed this was how Michael destroyed evidence that would have implicated him, i.e. his shirt that may have had gasoline on it. In fact, there was no evidence of this.

87. The State's prejudicial misrepresentation of the evidence violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. *Washington v. Texas*, 388 U.S. 14, 18 (1967); *State v. Allen*, 800 S.W.2d 82, 86 (Mo. Ct. App. 1990); *State v. Brown*, 543 S.W.2d 56, 59 (Mo. Ct. App. 1976).

WHEREFORE, for the foregoing reasons, Petitioner Michael Politte prays the Court grant him a writ of habeas corpus, vacate his conviction for second-degree murder, and grant him a new trial or permanent release from State custody. In the alternative, Petitioner Michael Politte prays the Court appoint a Special Master under Supreme Court Rule 68.03, conduct an evidentiary hearing on the allegations of this petition, and grant him such further relief as the Court deems proper and consistent with the ends of justice.

COUNT IV

Violation of Due Process *State Bullied & Intimidated Critical Defense Witness*

88. Michael repeats and re-alleges the foregoing paragraphs as if set forth herein.

89. This Count arises from the State's coercion and intimidation of Josh Sansoucie, the only person who could corroborate Michael's account of the night of his mother's murder, resulting in Josh's unavailability to testify as a witness for the defense.

90. The State's coercive treatment of a critical defense witness violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. *Washington v. Texas*, 388 U.S. 14, 18 (1967); *State v. Allen*, 800 S.W.2d 82, 86 (Mo. Ct. App. 1990); *State v. Brown*, 543 S.W.2d 56, 59 (Mo. Ct. App. 1976).

91. The absence of Josh Sansoucie's testimony was extremely prejudicial. Josh was the only person who could definitively testify to Michael's innocence. Josh would have testified that Josh and Michael woke up at the same time and about the State's

coercive efforts—during eight separate “interviews”—to pressure Josh into a confession, where the State vacillated between niceties and screaming, cursing, and calling him a liar. Josh could have testified about how the State had “put words in Josh’s mouth” about if Josh could see Michael sleeping in his bed when Josh woke up during the night. Though the State tried for years to use Josh as the lynchpin of their case, the State did not call Josh to the stand. And, though Josh and Michael told consistent accounts of the events of December 4th and 5th, neither did Michael’s counsel.

WHEREFORE, for the foregoing reasons, Petitioner Michael Politte prays the Court grant him a writ of habeas corpus, vacate his conviction for second-degree murder, and grant him a new trial or permanent release from State custody. In the alternative, Petitioner Michael Politte prays the Court appoint a Special Master under Supreme Court Rule 68.03, conduct an evidentiary hearing on the allegations of this petition, and grant him such further relief as the Court deems proper and consistent with the ends of justice.

COUNT V

Violation of Due Process

Court Improperly Interfered with Jury’s Decision-Making

92. Michael repeats and re-alleges the foregoing paragraphs as if set forth herein.

93. This Count arises from the trial judge’s private conversation with juror Jonathan Ray Peterson in which the trial judge pressured Peterson to make up his mind about Michael’s guilt and stop being a hold-out.

94. The trial judge's pressuring of a juror witness violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. *State v. Meagher*, 49 Mo. App. 571 (1892); *Chinn v. Davis*, 21 Mo. App. 363 (1886); *State v. Cooper*, 648 S.W.2d 137, 141 (Mo. Ct. App. W.D. 1983).

95. The prejudice is obvious. If the judge had not pressured a hold-out juror to change his vote, Michael would have been acquitted or at least had a mistrial due to a hung jury.

WHEREFORE, for the foregoing reasons, Petitioner Michael Politte prays the Court grant him a writ of habeas corpus, vacate his conviction for second-degree murder, and grant him a new trial or permanent release from State custody. In the alternative, Petitioner Michael Politte prays the Court appoint a Special Master under Supreme Court Rule 68.03, conduct an evidentiary hearing on the allegations of this petition, and grant him such further relief as the Court deems proper and consistent with the ends of justice.

COUNT VI

Violation of the Sixth Amendment Right to Counsel *Ineffective Assistance of Trial Counsel*

96. Michael repeats and re-alleges the foregoing paragraphs as if set forth herein.

97. Michael's ineffective assistance of counsel claims were also procedurally defaulted but may be heard upon showing of the "gateway" claim of actual innocence.

98. This Count arises out of the multiple significant failures by Michael's trial counsel, enumerated below and described in more detail in the Suggestions in Support of Petition for Writ of Habeas Corpus filed herewith. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Vaca v. State*, 314 S.W.3d 331, 335 (Mo. banc 2010).

99. Trial counsel failed to investigate, consult with or present rebuttal experts, or effectively challenge the false physical evidence allegedly tying Michael to the crime – the gasoline on his shoes.

100. Trial counsel failed to investigate, consult with or present rebuttal experts, or effectively challenge the State's testimony and evidence that a canine sniff reliably determined the presence of an accelerant on Michael's shoes.

101. Trial counsel failed to investigate, consult with or present rebuttal experts, or effectively challenge the State's arson evidence and expert testimony that this fire was ignited with an accelerant.

102. Trial counsel failed to object and request that the State call Michael Politte by his proper name rather than a prejudicial and misleading nickname.

103. Trial counsel failed to object or investigate, consult with or present rebuttal experts, or effectively challenge the State's inflammatory characterization of Michael as a cold-blooded, remorseless killer.

104. Trial counsel failed to investigate and effectively challenge the State's claim that Michael was a firebug.

105. Trial counsel failed to investigate, consult with or present rebuttal experts, or effectively challenge the State's claim that Michael admitted to killing his mother.

106. Trial counsel failed to investigate or effectively challenge the State's weak theory of motive and failed to investigate or present rebuttal testimony regarding Michael's close and loving relationship with his mother.

107. Trial counsel admittedly failed to investigate and present evidence supporting Michael's statements to police about what the occurred the night and morning of the crime.

108. Trial counsel was prejudicially ineffective for advising Michael not to testify in his own defense, where that decision was not informed by a reasonable investigation.

109. Trial counsel admittedly failed to adequately investigate or present evidence of viable alternative suspects.

110. Trial counsel failed to deliver on promises made in opening statement.

WHEREFORE, for the foregoing reasons, Petitioner Michael Politte prays the Court grant him a writ of habeas corpus, vacate his conviction for second-degree murder, and grant him a new trial or permanent release from State custody. In the alternative, Petitioner Michael Politte prays the Court appoint a Special Master under Supreme Court Rule 68.03, conduct an evidentiary hearing on the allegations of this petition, and grant him such further relief as the Court deems proper and consistent with the ends of justice.

Dated: October 13, 2021

Respectfully submitted,

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CERTIFICATE REGARDING SERVICE

I hereby certify that a true and accurate copy of the Petition for Writ, Suggestions in Support, Form 16 Writ Summary, Index of Exhibits and Exhibits were sent via E-Mail to counsel for Respondent, Doris Falkenrath and Office of the Attorney General on October 13, 2021 upon the filing of the foregoing document.

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