IN THE CIRCUIT COURT OF ST. FRANCOIS COUNTY, MISSOURI

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CASE NO. 24R059900043
	)	
MICHAEL POLITTE	)	
	)	
Defendant.	)	

MOTION TO SET ASIDE THE JUDGMENT PURSUANT TO § 547.031, RSMo, AND SUGGESTIONS IN SUPPORT

COMES NOW the State of Missouri, by and through Joshua E. Hedgecorth, Prosecuting Attorney for Washington County, and moves to set aside the judgment in the above-styled cause pursuant to § 547.031, RSMo, for the following reasons:

Michael Politte spent 23 years in prison for the murder of his mother, Rita Politte, based on physical evidence that has now been scientifically proven to be false. On the morning of December 5, 1998, Mr. Politte, then 14, found his mother's body face-up on the floor and her body on fire. During his 2002 trial, the prosecution relied on expert testimony that claimed scientific analysis confirmed the presence of gasoline on Mr. Politte's shoes. This was the only physical evidence that connected Michael Politte to his mother's murder. This evidence laid the foundation for the case against him.

In 2020, the Missouri State Highway Patrol (MSHP) Crime Lab re-evaluated the chromatography analysis of Michael Politte's shoes and concluded there were no ignitable liquids present. With that analysis, the singular physical evidence against Mr. Politte is now universally recognized as false. Similarly, the trial expert testimony that this fire was started with an accelerant – which made the alleged gasoline on Michael's shoes damning evidence of guilt –

has been proven false as well. Upon learning of the new chromatography analysis, this office undertook a review of the case against Mr. Politte and has determined that, in light of the scientific evidence, Mr. Politte's conviction cannot be sustained. Accordingly, pursuant to § 547.031, this motion seeks to set aside Michael Politte's conviction because he was erroneously convicted based upon false evidence.

Mr. Politte has maintained his actual innocence since the morning of his mother's tragic murder. He has never wavered. He sought assistance from the Midwest Innocence Project (MIP) in 2009 and is currently represented by MIP, Langdon & Emison, and the Roderick & Solange MacArthur Justice Center. Outside of the false science testimony, the other evidence used to convict Mr. Politte, which included his adolescent traumatized reaction to discovering his mother dead, an alleged admission that contained no facts or details (and which Mr. Politte denies making), and lay testimony that Mr. Politte acted like a petulant teen after his mother told him he could not have money for new motorbike parts, did little other than attempt to bolster the credibility of gasoline evidence. But that evidence is not true. With the indisputable proof that the only physical evidence against Mr. Politte is false, no credible evidence remains to convict him, and the State is now in possession of clear and convincing evidence that Michael was erroneously convicted. For all these reasons, the State moves herein to set aside the judgment and conviction in *State of Missouri v. Michael Politte*, CR1199-285F.

STANDARD OF REVIEW

Pursuant to § 547.031, RSMo, a prosecuting attorney in the jurisdiction in which a person was convicted of an offense "may file a motion to vacate or set aside the judgment at any time if he or she has information that the convicted person may be innocent or may have been

erroneously convicted." After a hearing, this Court shall grant the motion "where the court finds that there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment." § 547.031(3), RSMo. Evidence is clear and convincing when it "instantly tilts the scales in the affirmative when weighed against the evidence in opposition, and the fact finder's mind is left with an abiding conviction that the evidence is true." *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003) (internal quotation omitted). Establishing a fact by clear and convincing evidence is a lesser burden than the "beyond reasonable doubt" instruction given in criminal cases, but it is a greater burden than the "preponderance of the evidence" standard in civil cases. *Id*.

In making its determination, the Court is required to consider all evidence presented at the original trial along with any additional evidence that was presented in direct appeal or post-conviction proceedings. § 547.031(3), RSMo. The Court must also consider any and all information and evidence presented at the hearing on this motion. *Id*.

STATEMENT OF FACTS

Rita Politte's Death

On the night of December 4, 1998, Rita Politte and her 14-year-old son Michael[1] were in Rita's mobile home in Hopewell, Missouri, having turned in for the night. Michael's friend, Josh Sancoucie, was also there, "sleeping over" for the night. Rita retired to her bedroom, and Michael and Josh went to sleep in Michael's bedroom. Later that night, in the early morning hours of December 5, Michael and Josh awoke to the smell of smoke. (Ex. 15, Deposition of Joshua

[1] Due to Mr. Politte's age at the time of the crime, he will be referred to as Michael in the Statement of Facts.

Sansoucie, at 52-53). The two left the bedroom and, indeed, found that the trailer filled with smoke. (*Id.* at 55). As they made their way out of the trailer, Michael stopped to check on his mother, Rita, to make sure she escaped the fire. There, he discovered his mother on the floor of her bedroom, her body on fire. (Ex. 28, Washington County Sheriff's Office Investigative Reports, at 6).

Michael and Josh ran outside to try and get help. While Michael unsuccessfully attempted to quench the fire with a hose, Josh ran to a neighbor's house to ask them to call for emergency services. (*Id.* at 3; T. 197) Soon, first responders and the fire department arrived at the scene, followed by investigators.

Initial On-Scene Investigation

The Fire Marshal, James Holdman, was one of the first to arrive at the scene. (Ex. 26, Fire Marshal's Investigative Reports, at 1). There he found Rita's body lying face-up on the floor, legs spread apart, wearing only underwear bottoms and the remnants of a negligee. She was burned from her pubic area to her head and had an apparent head injury and there was fire damage to the interior of the home as well. (Ex. 28, Washington County Sheriff's Office Investigative Reports, at 2, 10). There was also blood visible throughout the bedroom, including on Rita's body, the floor, the bed, and the light switch. (Ex 64, Trial Transcript, at 284).[2] Without any chemical or laboratory analysis, Marshal Holdman quickly concluded, based only on his visual observations, that this was arson and that the fire had been ignited with an accelerant that he believed was poured onto Rita's body and the carpet of the home. (Ex. 26, Fire Marshal's Investigative Reports, at 4-5).

Officer Tammy Belfield arrived shortly after and was tasked with collecting evidence. (Ex. 28, Washington County Sheriff's Office Investigative Reports, at 9). Police seized several items,

[2] The Trial Transcript is marked as Exhibit 64 but will be called simply "T." after this citation for ease of reference.

with a particular focus on objects that could have been used to inflict the blunt force trauma to Rita's head, and responders photographed and video-recorded the scene. None of the items seized by police were determined to be the weapon. (Ex. 26, Fire Marshal's Investigative Reports, at 24).

Interrogation and Arrest of Michael Politte

At the scene, Michael and Josh were placed in separate police vehicles and questioned by Detective Curt Davis.[3] Detective Davis did not observe any blood, scratches, or defensive wounds on either boy.[4] He also did not report smelling any gasoline or other accelerant to indicate Michael or Josh had come within direct contact of the fire. (Ex. 28, Washington County Sheriff's Office Investigative Reports, at 3-7). Still traumatized from what they had just seen and without any parents or loved ones with them, the boys were taken to the station for further interrogation.

There, just hours after finding his mother burning on the floor, investigators conducted a Computer Voice Stress Analysis ("CVSA") test on Michael, which he "failed," indicating he was experiencing stress; this enhanced police suspicion. (Ex. 42, Michael Politte CVSA Test Report). CVSAs are now known to be unreliable. (Kelly R. Damphousse, Ph.D., *Voice Stress Analysis: Only 15 Percent of Lies About Drug Use Detected in Field Test*, NIJ (Mar. 16, 2008), https://nij.ojp.gov/topics/articles/voice-stress-analysis-only-15-percent-lies-about-drug-use-detected-field-test). But the CVSA was used to increase the pressure on Michael; he was told he failed the CVSA so they knew he was lying.

[3] While Det. Davis testified at the pre-trial suppression hearing that he did not consider the boys to be in custody at this time, resulting in the admission of statements made by Michael alleged to be odd and/or deceptive, the State recognizes that the boys were suspects and in custody at the time of this initial round of questioning, and thus should have been provided their *Miranda* rights.

[4] Neighbors Leigh Ann and Chuck Skiles, called by the State, also testified that they did not observe any blood or cuts or scratches on Michael. (T. 204, 227). Patsy Skiles, called by the defense, also confirmed that there was no blood or cuts on Michael during her testimony. Also, Josh Sansoucie testified to the same during his deposition. (Ex. 15 at 61-62).

Despite the unreliability of CVSAs, and despite Michael and Josh giving consistent stories through multiple interrogations, investigators disbelieved their accounts because Michael did not show "visible remorse." (Ex. 26, Fire Marshal's Investigative Reports, at 8). No attorney was present with 14-year-old Michael throughout the interrogations. Instead, Michael's father, Ed Politte, an alternative suspect to the crime, was the only adult present with Michael. (*See id.* at 6).

Still without any evidence with which they could arrest Michael, investigators brought a canine to the interrogation room. The canine allegedly made a "positive" alert for the presence of accelerant on Michael's shoes, which were then seized into evidence. (Ex. 26, Fire Marshal's Investigative Reports, at 8). After several more interrogations, Michael was arrested days later, despite his emotional pleas of innocence. (*Id.* at 19; Ex. 28, Washington County Sheriff's Office Investigative Reports, at 8).

Law Enforcement Did Not Investigate Evidence that Did Not Point to Michael

During the investigation, law enforcement ignored and/or failed to preserve a significant amount of forensic evidence that did not implicate Michael:

- a fresh boot print outside the Politte trailer on the path leading away from the back door of the home which did not match Michael's tennis shoes, (T. 349);
- DNA from a sperm stain on a towel in Rita's bedroom matched Richard Jarvis,[5] a boyfriend of Rita's, and

[5] Jarvis was interviewed by Detective Davis on December 5, 1998. (Ex. 28 at 7). Jarvis stated that on December 4-5, he was on his way to Marion, Georgia, as a commercial truck driver with a co-worker, Gary Gamble. Jarvis arrived home around 4:30-5:00 am and went to bed. (Ex. 33, Statement of Rick Jarvis). Jarvis had last been to Rita's house around Thanksgiving, about two to three weeks before Rita's murder. Rita had been to Jarvis's on December 2, only three days before her murder. (Ex. 26 at 12). After Jarvis showed "No Deception" during a CVSA test, law enforcement quickly disregarded him as a suspect.

- additional sperm and non-sperm stains found on Rita's bed sheet were consistent with a genetic mixture of at least three people. (Ex. 27 at 18).

Instead, the investigation remained focused only on Michael.

There was also significant evidence implicating alternative suspects, in particular, Rita's ex-husband and Michael's father, Ed Politte, which police essentially ignored, including a documented history of domestic violence as well as events surrounding their divorce. Rita and Ed had recently finalized a nasty divorce and Rita had won a significant financial settlement against Ed the week before her death. Multiple witnesses heard Ed threaten Rita's her life in court when she won this money. (*See, e.g.*, Ex. 41 at 1, Ex. 13 (Affidavit of Art Margulis)). New witness evidence also strongly suggests that Ed's cousin Johnnie Politte may have committed this crime, perhaps hired by Ed. *Id.*

Other pertinent evidence which might have been examined or tested with new technology, such as Michael's clothing or Rita's rape kit, could never be tested because the items were inappropriately stored, commingled, covered with mold, and in some cases, eaten by rats. (Ex. 43, Washington County Evidence Photographs taken May 15, 2013). Attorney General's Office emails from the four year period during which the State tried to make a case against Michael leaves no question that the evidence in this case was fatally botched.[6] Jim Weber wrote that Det. Davis was

> supposed [sic] to bring the bat and the fingerprints to the lab on more than one occasion, I went through the sheriff's dept evidence room Thursday looking for the latent prints from the crime scene….The prints are not in evidence, therefore I believe they have been misplaced by the sheriff's department…the blue baseball bat, with the red "specks" that was photographed and videotaped was in evidence. . . it had no chain of custody form and I have no idea how it got there. Correct me

[6] Another email exchange revealed that no one knew if fingernail scrapings had been taken from the victim; they had not. In a July 12, 2000, email, an Assistant Attorney General commented, "Idea: How a bout [sic] checking with the ME and learn wether [sic] we can dig up Rita's body and get those fingernail scrapings? She wasn't cremated was she? Please call the ME and learn wether [sic] we can do this and fix his flub up." (Ex. 41 at 6).

> if I'm wrong, but when you and I reviewed the evidence, that blue bat wasn't in there… **I don't even want to tell you how disorganized the evidence room is, not to mention our evidence.**

(Ex. 41 at 7) (emphasis added). As a result, physical evidence that could have excluded Michael and identified the real perpetrator was not collected or available for testing.

Subsequent Laboratory Analysis and Investigation

A pathologist subsequently conducted an autopsy of Rita's body and determined that the cause of death was carbon monoxide poisoning from the fire. However, the pathologist also determined that Rita had sustained blunt force trauma to the head based on the presence of a rear skull fracture, and a dislocated shoulder. (Ex. 25, Rita Politte Autopsy Report, at 1; T. 407-08). The skull fracture would have resulted in a "great deal of blood." (*Id.)*

Significantly, lab tests of the burned carpet samples were negative for accelerant. (T. 643). This left the State with just one piece of physical evidence connecting Michael to the crime—the results of chromatography tests performed on Michael's shoes, which law enforcement (erroneously) interpreted as showing the presence of gasoline. (T. at 641).

Michael is Arrested

On December 7, 1998, only two days after Rita's murder, Michael was arrested for his mother's murder.[7] Ed Politte surrendered Michael to the Sheriff's Department. (*Id.* at 8). Michael became visibly upset and asked for an attorney as he was being read his *Miranda* rights. (*Id.*). As he was handcuffed, Michael frantically asked the officers to take his fingerprints because someone was trying to frame him. (Ex. 26 at 19). He repeatedly told police he did not commit this crime.

[7] Law enforcement obtained a 72-hour pick-up order for Michael.

At the time of Michael's arrest, law enforcement had not conducted any laboratory testing to confirm Holdman's speculative theory that the fire was ignited with gasoline. They had not investigated alternative suspects, despite evidence pointing to others, particularly Ed Politte. And they had no explanation for why 14-year-old Michael would kill his own mother.

After his arrest, Michael was transported to a juvenile detention facility. The next day, on December 8, 1998, Michael attended his mother's funeral with "leg irons" and an escort. (Ex. 45, Transcript of Detention Hearing, December 9, 1998, at 108).

At a detention hearing on December 9, 1998, Michael's then-public defender, Renee Murphy, accurately described the case against Michael during closing argument: "This is a case where they have . . . a troubled child during the parent's divorce and they have brought in everything that could possibly make him look evil but that doesn't mean he killed his mother." (*Id.* at 108-09). Despite the Court concluding the case was "thin" and "circumstantial at the best," Michael was ordered to remain detained. (*Id.* at 109). He remained in custody until April 2022, when he was released from Missouri Department of Corrections on parole supervision.

Trial

Four years elapsed between Rita's death (and Michael's arrest) and Michael's trial in Washington County Circuit Court. During that period, Michael remained detained, despite the Court calling the case against him "thin" and "circumstantial at the best." (Ex. 65, Transcript of Detention Hearing, December 9, 1998, at 108-09). Michael refused a plea deal offer—wherein he was advised he would serve around at most ten years for voluntary manslaughter—insisting on his innocence. (*See* T. at 759-60).

Michael was tried in January of 2002. The trial lasted three days. The prosecution presented seventeen witnesses, including multiple experts. Fire Marshall James Holdman, Fire Investigator

Bob Jacobsen, and criminalist Carl Rothove provided testimony that the fire was intentionally ignited with an accelerant and that Michael had gasoline on his shoes the morning of the fire. Specifically, 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).

Rothove admitted that the carpet samples taken from the scene "did not yield the presence of an ignitable liquid" upon testing. (T. 643). To explain this away, Rothove posited that the accelerant used must have "burned up," but did not provide any support for this speculation. (T. 643-44). Rothove also 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.*).

Finally, Jacobsen testified that his police canine made 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 testified that dogs can detect accelerants that lab testing cannot, alleging that a dog's nose is more sensitive than lab equipment. (T. 444).

The prosecution's other evidence primarily comprised testimony regarding a disagreement between Michael and his mother, Michael allegedly playing with a lighter on prior occasions, and a hotly contested alleged admission that Michael purportedly made during a suicide attempt in jail, which provided no details or facts about the crime.

The defense presented three witnesses. Michael did not testify. One family member, Patsy Skiles, testified briefly. No experts were called by the defense to rebut the prosecution's expert testimony.

The prosecutor, in closing argument, argued the physical evidence was conclusive, stating "[e]verybody's been pretty consistent it was an accelerant." (T. 768). The prosecutor specifically

called the accelerant "gasoline," telling the jury Michael poured gasoline over his mother's face to "set[] her on fire." (T. 764), underscoring the central importance of the fire evidence to the State's case.

In the rebuttal phase of closing argument, the prosecutor stated "He's just demonstrated that on creosote soaked ties that he can do a controlled burn straight down. Remember the testimony. They went up there. The defendant carried this accelerant with him, likely a high octane gasoline, poured it on there, and what else do they do? They cover it up with trash to keep the flame down and to keep that burn downward…There was a material found over her face and down by her side. Somebody covered her up with something to keep the flash down and the burn low." (T. 810) However, nearly all of this "evidence" the prosecutor discussed had never been admitted in testimony. No State's witness had ever mentioned Michael and Josh pouring gasoline on a creosote soaked railroad tie, or covering it up with trash to keep the flame down and make it burn downward. No State's witness indicated that covering the gasoline up with trash was similar to placing material on Rita's face to keep the flash down. This was the first time the jury heard this theory.

During deliberation, the jury sent several questions back to the Court indicating their focus on the physical evidence in the case as well. The last question sent was a request to examine Michael's shoes. (T. 817). The jury took multiple votes. When they had not reached a decision by evening, the judge spoke privately with one of the holdout jurors and informed him that he had to make up his mind now. (Ex. 10 (Declaration of Jonathan Peterson) at 1. Shortly after, the jury returned its verdict of guilt of second-degree murder. (T. 818).

At his sentencing hearing, Michael's sisters testified to his innocence. His oldest sister Melonie addressed the Court first, stating that she believed her mother's real killer was still at

large. (T. 832). Michael's other sister Chrystal told the Court, "Today, you guys are putting an innocent person in jail." (T. 833).

Evidence Implicating Other Suspects Not Presented at Trial

No evidence of a specific alternate suspect was presented or argued by the defense at trial. However, both information known prior to trial and evidence discovered after trial strongly points to possible alternative suspects for Rita's murder. Investigation showed that Ed and Rita had recently finalized a contentious divorce, wherein Rita won custody of Michael. (Ex. 41, Email from Attorney General). The Attorney General, who began investigating this case in conjunction with the Washington County Sheriff's Department, noted "[t]he Tuesday before the murder [Ed] had been in court … and the judge ordered him to pay Rita $1000. He made a remark consisting of something like, 'You will never see the day when you'll get the money[.]'" (*Id.*). Ed also had a documented history of domestic violence against Rita. (*Id.*). After investigating Ed's alibi (he claimed he was at work during the time the fire was set), he was discarded as a suspect. (Ex. 28, Washington County Sheriff's Office Investigative Reports, at 7). However, there was a several hour window where other witnesses cannot account for him being at work or at home. (Ex. 28, at 9). No investigation was conducted into whether Ed had worked with someone else to plan and commit the crime.

New evidence also indicates that Johnnie Politte, Ed Politte's cousin and close friend, was observed near Rita's home on December 5, 1998, walking away from her house as first responders arrived at the fire; strangely, Johnnie was aware that something had happened to Rita prior to any known efforts to inform him of the fire. (Ex. 54, Affidavit Larry Lee).

Johnnie Politte also allegedly found a "bloody" tire tool (which later testing showed as negative for the presence of blood) in Michael's closet three days after Rita's murder during an impermissible search of the trailer that occurred after police had left and secured the scene. (*See* Ex. 38, Attorney General Interview of John and Gretchen Politte). Officer Belfield, who had searched the trailer for all potential weapons, averred under oath that said tire tool was not in the trailer on December 5, indicating it may have been planted by Johnnie in an attempt to inculpate Michael. (T. 545-46). While laboratory testing ultimately proved the red substance on the tire tool was rust and not blood, eliminating the possibility that the tool was the murder weapon, that testing was not completed at the time of Michael's detention hearing or his certification hearing to be tried as an adult. In other words, the State represented this as inculpatory evidence at both of those critical stages, and the Court denied the defense motion to postpone the certification hearing until testing was completed. Ex. 65 (Certification Hearing Transcript). New witness evidence also indicates that Johnnie received a financial windfall shortly after Rita's death. (Ex. 56, Affidavit of Kevin Politte).

New Evidence Proves No Gasoline on Michael's Shoes

New scientific evidence proves that, contrary to the testimony at Michael's trial, his shoes did not have gasoline on them. In 2016, chemist John Lentini re-analyzed the substance on Michael's shoes and concluded that it was not gasoline. (Ex. 2, Affidavit of John Lentini). Lentini is an expert in chemical analysis and serves as the Chair of the American Society for Testing and Materials Committee on Forensic Sciences. (*Id.* at 1-2.) He reviewed the chromatography evidence of the substance on the shoes. (*Id.* at 2.) It is now scientifically accepted that gasoline residue

shows the presence of "alkanes," chemical compounds similar to alcohols. (*Id.* at 2-3.) Lentini found that the shoes did not have alkanes, and that the substance present was instead consistent with an "aromatic solvents," which are typically chemical treatments like paints, varnishes, or adhesives. (*Id.* at 15-7). The fact that both shoes contained approximately the same amount of aromatic solvent indicates that the compounds came from the shoe manufacturing process, not gasoline splash. (Ex. 2, Affidavit of John Lentini, at 4-7).

Even the State of Missouri agrees, conceding that the substance on Michael's shoes was not gasoline, and that they were wrong when they testified otherwise in 2002. (Ex. 1, MHSP Crime Lab Letter). The MSHP now states that it "would report this case as no ignitable liquid on the shoes[,]" because the absence of alkanes ruled out the possibility that the substance was gasoline. (*Id.*) Criminalist Michael Baker declared this in a November 6, 2020, letter to the Missouri Attorney General's Office. (*Id.*) In addition, Baker 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," when it became known that the former testing method produced unreliable results. (*Id.*).

No Scientifically Valid Evidence that the Fire was Ignited with Accelerant Exists

The cause of a fire cannot be determined based upon visual inspection alone. This became clearly established in 1992 when the National Fire Protection Association ("NFPA") published NFPA 921, the "Guide for Fire and Explosion Investigations." NFPA 921 is now known as 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." (Ex. 6, NFPA 921, section 1.2.1). NFPA 921 has been formally endorsed and accepted as the standard of practice by the International Association of Arson Investigators (IAAI) and the National Association of

Fire Investigators (NAFI), the two largest U.S. fire investigator professional associations. The Department of Justice adopted NFPA 921 in 2000, two years before Michael's trial.

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. In Michael Politte's case, however, even though the laboratory testing showed there was no accelerant at the scene of the fire, the Fire Marshal testified to the jury that the fire was accelerant-caused based solely on his visual examination. (Ex. 3, Report of CFEI Paul Bieber).

ARGUMENT

A. The Only Physical Evidence Linking Michael to the Crime Has Been Conclusively Proven False

Mr. Polittes's shoes were the centerpiece of the prosecution's case: the shoes were (1) the only evidence purportedly linking him to the fire, and (2) the only direct evidence of an accelerant, to support the Fire Marshal's otherwise unfounded theory that this was an incendiary fire started by gasoline. The false fire evidence presented at Mr. Politte's trial was thus particularly prejudicial and damning because it was "mutually reinforcing." *Han Tak Lee v. Houtzdale Sci*, 798 F.3d 159, 167 (3d Cir. 2015). Fire investigators testified at trial, as experts, with certainty that the fire in the Polittes' trailer home was intentionally set with an accelerant, specifically gasoline, and that Mr. Politte was the arsonist because they found gasoline on his shoes. We now know that all of this mutually reinforcing evidence used to implicate Mr. Politte is false. Thus, the prosecution's entire trial theory falls apart.

The admission of falsity of this central piece of evidence by the MSHP Crime Lab confirms that the key evidence against Michael Politte was erroneous and misleading. Because Mr. Politte's conviction was predicated on unreliable and false evidence, there is clear and convincing evidence

of actual innocence or constitutional error at the original trial…that undermines the confidence in the judgment." *See* § 547.031, RSMo.

The fire evidence presented at trial violated Michael Politte's constitutional rights because: (1) all experts now agree a proper chromatography analysis shows no gasoline on Michael Politte's shoes, (2) the dog sniff evidence was not verified by lab results, and (3) the expert opinions that the fire was an accelerant-ignited fire were unreliable.

1. All experts now agree there was no gasoline on Michael Politte's shoes.

The MSHP Crime Lab's analysis in 2020 is consistent with expert opinions of chemical analysis expert John Lentini,[8] who was asked to analyze the case by Mr. Politte's legal team. Both Lentini and the Crime Lab determined the chromatography evidence showed no gasoline on the shoes.

Lentini explains that to be correctly identified as gasoline, a residue *must have alkanes*. (Ex. 2 at 4). Likewise, the MSHP's current identification criteria requires the presence of alkanes to report a finding of gasoline. *See also* Ex. 1. Although gasoline is dominated by aromatics, if a substance does not contain alkanes, then it is <u>not</u> gasoline. (Ex. 2at 4).

Here, both Lentini and the MSHP Crime Lab determined that the samples from Mr. Politte's shoes did not contain alkanes. Ex. 2 at 6; Ex. 1.[9] As a result, the proper conclusion is that

[8] Lentini has served as Chair of the American Society for Testing and Materials Committee on Forensic Sciences

[9] Lentini further explained that the even distribution of aromatic solvent further supported the absence of gasoline. The testing results showed the shoes contained approximately the same amount of aromatic solvent on each shoe. (Ex. 1 at 6). As Lentini explained, if the shoes contained gasoline, it is unlikely that the same amount would fall on each shoe. (*Id.*). If the compounds came from the manufacturing process, however, an equal number of compounds on each shoe would be expected. (*Id.*).

the shoes did not contain gasoline. *Id*. This new scientific evidence disproves the only physical evidence allegedly tying Mr. Politte to the scene.

2. The dog sniff evidence of Michael Politte's shoes was unreliable because it lacked laboratory confirmation.

Accelerant detecting canine evidence must be verified by a lab. Canines cannot distinguish between ignitable liquids and chemically-similar gases, and thus have a high false positive rate for accelerants. NFPA 921 § 15.5.4.7.1; S. Katz & C.R. Midkiff, *Unconfirmed Canine Accelerant Detection: A Reliability Issue in Court*, 43 J. FORENSIC SCI. 329 (1998); M. Kurtz et al., *Effect of Background Interference on Accelerant Detection Canines*, 41 J. FORENSIC SCI. 868 (1996). In 1996, before this crime occurred, the NFPA ratified an emergency amendment to NFPA 921 (the standard of care for fire investigation) that noted "[a]ny canine alert not confirmed by laboratory analysis should not be considered validated." (Ex. 4, Bieber Report, at 3).[10]

[10] The NFPA 921 reads:

> 16.5.4.7.1-In order for the presence or absence of an ignitable liquid to be scientifically confirmed in a sample. That sample should be analyzed in a laboratory.... Any canine alert not confirmed by laboratory analysis should not be considered validated.
>
> 16.5.4.7.2-Research has shown that canines have responded or have been alerted to pyrolysis products that are not produced by an ignitable liquid and have not always when an ignitable liquid accelerant was known to be present.
>
> 16.5.4.7.3-Specifically, the ability to distinguish between ignitable liquids and background materials is even more important than sensitivity for detection of any ignitable liquids or residues. Unlike explosive- or drug-detecting dogs, these canines are trained to detect substances that are common to our everyday environment....

Here, where both Lentini and the MSHP Crime Lab agree the laboratory analysis conclusively proves there was not an accelerant on Mr. Politte's shoes, the widely accepted fire investigation standards render the canine evidence unreliable because it was not verified by a lab.

3. Fire Marshal's conclusion of an accelerant-ignited fire was unreliable and contrary to widely accepted fire investigation standards.

New evidence confirms the prosecution presented erroneous expert testimony that the fire was accelerant-ignited. At trial, Fire Marshal Holdman provided expert testimony that the fire was set with an accelerant, and that the fire showed a burn pattern similar to the fire Mr. Politte started on the railroad ties the night of his mother's death. Both conclusions are erroneous.

The modern requirements and standards for fire investigation are set out in NFPA 921; every fire investigation must begin with the NFPA methods and guidelines. The recommendations are so critical to making accurate findings that courts considering arson cases today will exclude expert opinions inconsistent with NFPA 921 methods and guidelines as unreliable at trial.[11]

> [M]erely detecting [traceable] quantities [of these substances] is of limited evidential value.
>
> 16.5.4.7.5-The proper objective of the use of canine/handler teams is to assist with the selection of samples that have a higher probability of laboratory confirmation.
> 16.5.4.7.6-Canine ignitable liquid detection should be used in conjunction with, and not in place of the other fire investigation and analysis methods described in this guide.

NFPA 921.

[11] *See, e.g., Travelers Cas. Ins. Co. of Am. ex rel. Palumbo v. Volunteers of Am. Ky., Inc.*, No. 5:10-301-KKC, 2012 LEXIS 117789, at *6-8 (E.D. Ky. 2012) (explaining that NFPA 921 requires deviations from its procedures to be justified and requires that the scientific method be

Paul Bieber, a Certified Fire and Explosion Investigator (CFEI) retained by Mr. Politte's legal team, stated "[t]oday, NFPA 921 serves a de facto Standard of Care on how to conduct a thorough and objective fire or explosions investigation."[12] (Ex. 3 at 4). Bieber reviewed fire reports, testimony, photographs, and fire scene diagrams, and concluded that Holdman's conclusions and testimony were wrong, unreliable, and in violation of NFPA 921. (Ex. 3 at 12-13). First, visual inspection is not an adequate basis for determining the presence of an accelerant. It is firmly established and widely accepted today that the presence of an accelerant must be confirmed via laboratory testing. According to Paul Bieber, "NFPA 921 demands laboratory confirmation to validate the presence or absence of an ignitable liquid" because "fire patterns and burn damage created by an ignitable liquid are visually indistinguishable from those created by the melting and burning of other common items." (Ex. 3 at 5). While experts previously believed they could identify the use of an accelerant from a pour pattern, new science shows that "fire patterns resulting from burning ignitable liquids are not visually unique."[13] *Id.*

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used in every case); *Werth v. Hill-Rom, Inc.*, 856 F. Supp. 2d 1051, 1060-63 (D. Minn. 2012) (holding expert testimony inadmissible for failure to apply NFPA 921 methodology); *United States v. Myers*, No. 3:10-00039, 2010 U.S. Dist. LEXIS 67939, *7-9 (S.D. W.Va. 2010) (excluding evidence of a dog's alerts unconfirmed by laboratory tests, as required by NFPA standards); *Barr v. Farm Bureau Gen. Ins. Co.*, 806 N.W.2d 531, 534 (Mich. Ct. App. 2011).

[12] While NFPA released its first edition of 921 in 1992, establishing guidelines and recommendations for the systematic investigation of fire incidents and laying out specific procedures for the collection and analysis of evidence (*Id.* at 8), it was not widely dispersed and recognized. Since its first publication, its "influence within the fire investigation community has steadily grown." (*Id.*) "Now in its eight edition, 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." (*Id.*)

[13] NFPA 921 6.3.7.8 states that "Irregular, curved, or 'pool-shaped' patterns on floors and floor coverings should not be identified as resulting from ignitable liquids on the bases of visual appearance alone" and "the determination of the nature of an irregular pattern should not be made by visual interpretation of the pattern alone." (*Id.*)

Specifically, NFPA 921 states: "In order for the presence or absence of an ignitable liquid to be scientifically confirmed in a sample, that sample should be analyzed by a laboratory in accordance with 17.5.3." (*Id.* at 8). Here, the State's laboratory testing came back *negative* for an ignitable liquid. According to Bieber, those results indicate that "fire debris analysis failed to reveal any evidence of the presence of gasoline." (*Id.* at 8). Without laboratory results confirming the presence of an accelerant, "there is no evidence on which to base a conclusion that an ignitable liquid was present at this fire." (*Id.*).[14] Thus, Holdman's expert testimony was erroneous and further undermines confidence in Mr. Politte's conviction.

Second, Holdman's conclusion that the fire "burned very fast and for not a long period of time," and that this was relevant to causation, violated NFPA 921. (Ex. 3 at 4). Holdman told the jury that the speed and intensity of the fire further proved it was started with an accelerant: "With a liquid accelerant you are not looking at a very long period of time. Ten, twenty minutes approximately." (*Id.*) Just like his accelerant conclusions, Holdman appeared to base his conclusion about the speed and intensity of the fire upon the patterns and burn damage at the scene. But, like accelerant analysis, this has no basis in science. While it was a common practice in the past, it is no longer acceptable or valid. (*Id.* at 5.)

Third, Holdman's conclusion that the fire was incendiary also violated NFPA 921 because it was based upon his unfounded conclusion that an accelerant was used, in combination with his conclusion that all available accidental and natural causes had been eliminated. (Ex. 3 at 9, 12-13.) But NFPA 921 precludes Holdman from making these conclusions: "It is improper to base

[14] In more detail, Bieber concluded that "where an examination of the fire scene by an accelerant detecting canine and laboratory examination of fire debris samples were all negative for the presence of an ignitable liquid, there is simply no evidence to support Fire Investigator Holdman's conclusion."

hypotheses on the absence of any supportive evidence. That is, it is improper to opine a specific fire cause, ignition source, fuel or cause classification that has no evidence to support it even though all other such hypothesized elements were eliminated." (*Id.* at 9 (quoting NFPA 921)). The only classification of this fire that would comply with NFPA 921 is "undetermined." (*Id.*)

Moreover, Holdman's conclusion that this was an incendiary fire[15] required him to inappropriately "analyze and measure the human intent and deliberation that was present or absent when the fire was first ignited." (*Id.* at 11 (quoting NFPA 921)). Such analysis is "far outside [Holdman's] expertise as a fire investigator and beyond the scientific methodologies provided by NFPA 921." (*Id.*)

Fourth, and finally, Holdman testified that the fire and burn patterns, which he asserted were caused by an accelerant, matched the patterns of the burn at the railroad ties that Mr. Politte admitted starting. The prosecution emphasized this false link between the two fires and told the jurors that Michael had been "practicing," (T. at 808), and implied that he had a fire modus operandi. As explained above, the patterns do not indicate a match, or any unique similarity. Arson expert Paul Bieber unequivocally concludes that "[f]ire pattern comparison has no acceptance within the general fire investigation community and no research to support its validity." Ex. 5, Bieber Second Supp. Report, at ¶9. This imaginative speculation that the railroad fire and the fire that killed Rita have such significant similarities that they match and indicate that the same person set the two fires is simply a fiction. *Id.*

Holdman's erroneous testimony in violation of NFPA 921 was central to the State's trial theory that Mr. Politte intentionally set his mother on fire with an accelerant. Without Holdman's

[15] NFPA 921 defines an incendiary fire as a "a fire that is deliberately set with the intent to cause a fire to occur in an area where the fire should not be."

testimony, the State's theory falls apart. From opening to closing arguments, the State claimed Rita's body was covered in accelerant and then lit on fire. Multiple state witnesses vouched for Holdman's false and unreliable conclusions. First, Holdman testified that fire patterns showed an accelerant was used. (T. 282). Then Jacobsen testified that based on the patterns and damage to the room, an accelerant had been utilized. (T. 446). Even pathologist Dr. Michael Zaricor testified that the fire *appeared* to be confined to a small area from an *accelerant*, (T. 384). In closing, the State tied it all together for the jury: "everybody's been pretty consistent it was an accelerant." (T. 768). This evidence was erroneous and undermines the confidence in Michael Politte's conviction.

4. The admission of erroneous and unreliable expert opinions of Holdman, Jacobsen and Rothove provides clear and convincing evidence of constitutional error that undermines the confidence in Michael Politte's conviction.

As described above, Mr. Politte's conviction was predicated on scientific evidence and expert testimony proven to be fundamentally unreliable and factually false. The admission of that testimony "so infected Petitioner's trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright*, 477 U.S. 168, 181 (1986); *Lee v. Superintendent Houtzdale* SCI, 798 F.3d 159 (3d Cir. 2015); *Gimenez v. Ochoa*, 821 F.3d 1136, 1145 (9th Cir. 2016).

In *Lee*, the Third Circuit affirmed habeas relief because the "admission of the fire expert testimony undermined the fundamental fairness of the entire trial because the probative value of [the fire expert] evidence, though relevant, is greatly outweighed by the prejudice to the accused from its admission." 798 F.3d at 162. Specifically, the district court granted relief because "the verdict . . . rest[ed] almost entirely upon scientific pillars which have now eroded" *Id.* (citing *Lee v. Tennis*, No. 08-1972, 2014 WL 3894306, at *15-16 (June 13, 2014), and the state failed to

show other "ample evidence of guilt upon which the jury could have relied." *Id.*

The *Lee* testimony – from which the "scientific pillars" had eroded – were precisely the same types of arson and accelerant testimony presented by the State in Mr. Politte's case, including (1) testimony that visual indicators at the scene led to the conclusion that the fire was deliberately started with an accelerant, (2) evidence that the fire burned exceptionally hot (more heat and energy than a "normal" fire), and (3) evidence that the petitioner's shirt and pants had accelerant on them, linking him to the arson. *Id.* at 157. The *Lee* Court recognized that scientific developments have rendered this arson testimony "invalid." *Id.* With regard to the testimony about accelerant on the petitioner's clothing, the Court found that scientific developments and retesting of materials "undermined the reliability" of the trial testimony. *Id.*

Here, the new scientific evidence is perhaps even more damning than in *Lee* because the retesting regarding Mr. Politte's shoes not only undermined the reliability of testimony about the presence of gasoline on his shoes, the new testing conclusively proved there was *no* gasoline on his shoes. The false gasoline testimony tying Mr. Politte to his mother's death, was presented by not one, but two separate expert witnesses. With regard to the arson testimony, just as in *Lee*, Holdman's conclusions were based upon "arson science" now found to be invalid.

This testimony is not harmless. First, the gasoline evidence was the only physical evidence presented by the State to tie Mr. Politte to this crime. Second, scientific expert testimony is uniquely damaging, particularly when it goes unrebutted by the defense. Jurors are predisposed to trust and rely upon experts, particularly when multiple experts corroborate each other, and when the defense does not challenge those experts with its own defense expert. Expert testimony is particularly persuasive to jurors, and thus particularly problematic when it is false. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993) ("Expert evidence

can be both powerful and quite misleading because of the difficulty in evaluating it."); *see also United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) ("[E]xpert testimony may be assigned talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse."); *United States v. Hines*, 55 F. Supp. 2d 62, 64 (D. Mass. 1999) ("[A] certain patina attaches to an expert's testimony unlike any other witness; this is 'science,' a professional's judgment, the jury may think and give more credence to the testimony than it may deserve."). Testimony regarding scientific testing of Mr. Politte's shoes, the use of an accelerant, and the reliability of dog sniffs are "precisely the type of scientific evidence that juries are likely to consider objective and infallible." Keith A. Findley, *Innocents At Risk: Adversary Imbalance, Forensic Science, and the Search for Truth*, 38 SETON HALL L. REV. 893, 943 (2008).

Where the only physical and/or direct evidence tying Mr. Politte to the crime has been scientifically disproven, and all that remains is speculative, biased circumstantial evidence, there can be no question that the admission of the faulty scientific testimony at trial "fundamentally undermined the fairness of [Michael Politte]'s trial because the probative value of [the fire and gasoline evidence], though relevant, [was] greatly outweighed by the prejudice to the accused from its admission." *Lee*, 798 F.3d at 162.

B. Jurors Want Their Verdict Overturned

The gasoline and fire evidence was essential to the jurors' verdict convicting Mr. Politte. The majority of surviving jurors from Mr. Politte's trial now believe that Mr. Politte's conviction should be overturned based on what we now know. Juror Linda Dickerson-Bell asserts, in a sworn affidavit, that she would have voted to acquit had she known that there was not gasoline on Mr. Politte's shoes. For her, "the gasoline was the whole case." (Ex. 7, Declaration of Linda

Dickerson-Bell at ¶10, 13). She concluded "the gasoline on Michael's shoes was the nail in the coffin for me. It is the reason I voted guilty. If I had known there was not gasoline on his shoes, I would have voted to acquit." (*Id.* at ¶10). She explained that she had serious doubts about Mr. Politte's guilt at the time of trial, and she concluded: "After learning about the new evidence, my guilt has only grown. I now firmly believe Michael is innocent and that we made a terrible mistake." (*Id.* at ¶24.)

Juror Michael Short feels the same way about the gasoline evidence. (Ex. 8, Declaration of Michael Short). He explained in a sworn affidavit that the gasoline evidence was "very important evidence to me, and I believe it was important to the rest of the jury." (*Id.* at ¶6). Short is also concerned that there was significant evidence pointing to alternative suspects that the jury did not hear: "I am frustrated and disappointed that the defense attorney did not put on evidence about alternate suspects, and especially the evidence about Michael's father, the divorce, and the witnesses who saw the father's relative near the scene of the crime." (*Id.* at ¶7). Juror Linda Crites Roberts agrees. (Ex. 9, Declaration of Linda Crites Roberts). She asserted that the fact that the gasoline evidence was false and the evidence about alternative suspects needs to be heard by a court. (*Id.* at ¶12). She unequivocally stated this "evidence would have made a difference to me as a juror." (*Id.)*

Juror Jonathan Ray Peterson also "do[es] not believe justice was served when we, the jury, found Michael Politte guilty of his mother's murder." (Ex. 10 at ¶6). And jury foreman Victor Thomas agrees; he stated that he does not believe the jury would have voted to convict Michael had they "heard about the victim's contentious divorce and possible alternate suspects." (Ex. 11 at ¶9-10). Based on this new evidence, foreman Thomas "believe[s] Michael Politte is innocent" and that he "should be freed to correct this wrong." (*Id.* at ¶10).

C. The State is Duty-Bound to Correct this Injustice & Move to Vacate Michael Politte's Conviction

As public servants and officers of the criminal justice system, prosecutors have a special duty to "represent the interest of society as a whole." *Ferri v. Ackerman*, 444 U.S. 193, 202-03 (1979); Missouri Rules of Prof'l Conduct r. 4-3.8 cmt. 1 (noting that a prosecutor "has the responsibility of a minister of justice and not simply that of an advocate"). Prosecutors, as state actors, have legal, ethical, and professional obligations to uphold a defendant's constitutional right to a fair trial and due process of law. *See* U.S. Const. amend. XIV ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law."); *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986) ("[T]he Constitution entitles a criminal defendant to a fair trial.").

A prosecutor is obligated to remedy a conviction when there is "clear and convincing evidence" of a defendant's innocence. Model Rules of Prof'l Conduct r. 3.8(h).[16] Under Missouri law, "clear and convincing evidence" of a defendant's innocence exists when no credible evidence remains to convict the defendant. *See State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548-49 (Mo. 2003). The Missouri Rules of Professional Conduct and the ABA Criminal Justice Standards require that prosecutors only seek to maintain criminal convictions when evidence in support of guilt continues to exist. *See* Missouri Rules of Prof'l Conduct r. 4-3.8 cmt. 1 ("A prosecutor has

[16] The ABA Model Rules of Professional Conduct are nationally recognized standards. Missouri is one of the 37 states that have generally adopted both the rules and the comments to the ABA Model Rules. In Missouri, the Comments are intended as guides to interpretation of the Model Rules. *See* State Adoption of the ABA Model Rules of Professional Conduct and Comments, Am. Bar Ass'n (June 15, 2017), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/adoption_mrpc_comments.authcheckdam.pdf. Although the state of Missouri has not specifically adopted Model Rules 3.8(g) and 3.8(h), the ABA model rules make explicit what is implicit in the obligations of prosecutors if Model Rules 3.8(g) and 3.8(h) had been adopted.

the responsibility . . . to see that . . . guilt is decided upon the basis of sufficient evidence"); ABA Standard 3-4.3(b) (stating that prosecutors should only maintain criminal charges if they "continue[] to reasonably believe" that evidence is "sufficient to support conviction beyond a reasonable doubt").

Since the State no longer believes that Mr. Politte's conviction is valid, the Prosecuting Attorney is obligated to seek to remedy the error. As a "minister of justice," a prosecutor has an ethical duty to remedy wrongful convictions. Missouri Rules of Prof'l Conduct r. 4-3.8 cmt. 1. Unlike other lawyers, prosecutorial duties do not end after a conviction. Prosecutors have continuing responsibility to act upon any evidence that may surface to cast doubt upon the justness of a past conviction. *See generally* Daniel S. Medwed, *The Prosecutor as Minister of Justice: Preaching to the Unconverted from the Post-Conviction Pulpit*, 84 WASH. L. REV. 35 (2009). This responsibility is at its apex where a prosecutor learns of new evidence that suggests an earlier conviction may have been unjust. The U.S. Supreme Court has held that prosecutors are "bound by the ethics of [their] office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction." *Imbler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976). The Supreme Court of Missouri has also recognized that a state attorney's "role is to see that justice is done—not necessarily to obtain or to sustain a conviction." *State v. Terry*, 304 S.W.3d 105, 108 n.5 (Mo. 2010).

When a prosecutor becomes aware of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of a crime that the defendant did not commit—the position in which the Prosecuting Attorney now finds himself—the prosecutor is obligated to seek to remedy the conviction. Model Rules of Prof'l Conduct r. 3.8(h). Prosecutors must not only "promptly disclose that evidence to an appropriate court," Model Rules of Prof'l

Conduct r. 3.8(g), but "must seek to remedy the conviction." Model Rules of Prof'l Conduct r. 3.8 cmt. 8. A prosecutor's duty is not circumscribed by time or place. A prosecutor's duty is to maintain the integrity of our justice system as a whole, *see* Missouri Rules of Prof'l Conduct r. 3.8 cmt. 1, obligates him to act to correct injustices, regardless of whether he was in office at the time of the errors or conviction.

This prosecutorial duty is the rule, not an exception. The vacation of Claude Garrett's conviction in Nashville, Tennessee just last week is an example of a prosecutor abiding by this prosecutorial duty to correct a similar injustice in a case of an alleged arson.[17] Mr. Garrett was convicted 30 years ago in the death of his fiancé who died in a fire in their shared home. Last year, the county district attorney general's office asked that the conviction be vacated. An evidentiary hearing was conducted earlier this year, where the court heard expert fire testimony, including from the expert in Mr. Politte's case, John Lentini. The court ultimately vacated Mr. Garrett's conviction on May 6, 2022. (Ex. 67, Order Overturning Conviction of Claude Garrett). The judge found that Garrett had presented "clear and convincing evidence showing that no reasonable jury would have convicted Claude Garrett of felony murder in light of the new evidence that if jurors had been aware of new scientific evidence at the time of his trial, they never would have convicted him of setting the 1992 fire that sent him to prison for life. (*Id.* at 1-2).

The Garrett Court recognized that "Petitioner and the State presented substantial proof that since Garrett's retrial in 2003 there have been significant advances in the science of fire investigation. These specific advances relate particularly to the evidence used to convict Garrett. The parties presented expert testimony that the field of fire investigation has undergone a

[17] https://theintercept.com/2022/05/07/claude-garrett-murder-arson-conviction-overturned/

paradigm shift whereby the field has rejected the untested ideas that were used to conclude arson in this case, in favor of rigorous analysis following the scientific method." *Id.* at 5. Specifically, all similar to Mr. Politte's case, the court noted: (1) "[s]pecific advances in the field debunk the leading piece of evidence, namely the 'pour pattern' on the living room floor," and the fact that fire investigators determined it was an arson based solely upon "visual inspection" – "[i]n short, [agent] testified he could look at the floor and, due to his expertise, he could tell, solely by visual observation, the fire had been started by burning an accelerant;" (2) an overall "paradigm shift" whereby investigators previously followed "untested notions which pointed to arson" but today "follow the scientific method, concluding a fire is 'incendiary (intentionally set) only if all available evidence comports with the hypothesis"), and pointing to NFPA 921 as the guiding standard of care for the relevant scientific methodology; (3) carpet samples from the scene and Garrett's clothing were negative for kerosene.

For all of the same reasons that the Tennessee court vacated Mr. Garrett's conviction upon the motion of the prosecutor, this Court should vacate Michael Politte's conviction.

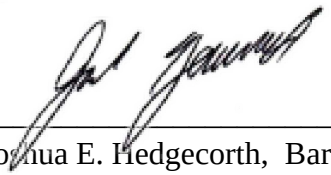
CONCLUSION

Given that the evidence underlying Mr. Politte's conviction has been scientifically proven false, the Prosecuting Attorney is duty-bound to move to vacate his conviction. Justice is twenty-three years delayed for Rita Politte and her son Michael, but it is never too late. The Prosecuting Attorney requests that this Court set a hearing pursuant to § 547.031, RSMo, as soon as possible, and subsequently vacate Mr. Politte's conviction. Even though Mr. Politte is home with family on parole supervision, he remains in the custody of the State and his felony conviction criminal record

will immeasurably impede his ability to rebuild his life until this wrong can be righted. The Prosecuting Attorney requests this Court act with haste.

WHEREFORE, the State prays the Court set aside the judgment in this cause.

Respectfully submitted,



Joshua E. Hedgecorth, Bar No. 56555
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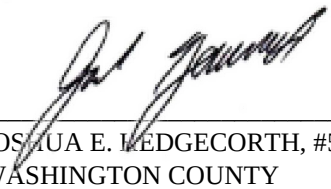
Washington County, Missouri

CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of this instrument was mailed to the Missouri Attorney General to his address on the 16th day of May, 2022.



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