

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Case No. 07-015-018-01-FC
Hon. _____

DAVONTAE SANFORD,
Defendant

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DEFENDANT'S MOTION AND MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM JUDGMENT

INTRODUCTION

Davontae Sanford, by his undersigned attorneys and student attorneys from the Michigan Innocence Clinic at the University of Michigan Law School and the Center on Wrongful Convictions of Youth at Northwestern University School of Law, asks this Court to grant relief from his judgment of conviction and sentence and order a new trial, pursuant to MCR 6.501 *et seq.*, and states the following:

1. On March 18, 2008, in the middle of a bench trial presided over by Judge Brian R. Sullivan, No. 07-015018-01, Davontae Sanford, who was then 15 years old, pleaded guilty to four counts of second-degree murder and one count of felony firearm related to a quadruple homicide that occurred on September 17, 2007, on Runyon Street in Detroit.
2. On April 4, 2008, Judge Sullivan sentenced Mr. Sanford to four concurrent terms of 37 to 90 years of imprisonment on the murder convictions and two years for the felony firearm. He is currently serving those sentences at Ionia Correctional Facility.
3. On April 19, 2008, Vincent Smothers was arrested by the Detroit Police Department and confessed to twelve murders, including the four Runyon Street homicides for which Mr. Sanford had just been sentenced fifteen days earlier. Mr. Smothers was charged with, and convicted for, every murder to which he confessed except for these four murders.
4. After Mr. Smothers confessed, Mr. Sanford moved to withdraw his guilty plea, pursuant to MCR 6.310(C), on the basis of actual innocence. Judge Sullivan ordered an evidentiary hearing, after which relief was denied, but the Court of Appeals vacated and remanded for further proceedings. On April 25, 2014, the Michigan Supreme Court vacated the Court of Appeals' decision because actual innocence is not a ground for a MCR 6.310(C) motion. *People v Sanford*, 495 Mich 989; 844 NW2d 725 (2014). The Supreme Court's

decision was “without prejudice to the defendant’s ability to file a motion for relief from judgment pursuant to MCR 6.500, *et seq.*” to present the same issues he had raised in his MCR 6.310(C) motion. *Id.*

5. Robert Slameka represented Mr. Sanford during preliminary matters and at trial. Kim McGinnis represented Mr. Sanford on appeal and in the plea withdrawal proceedings. Mr. Sanford is currently represented by the undersigned attorneys and students from the Center on Wrongful Convictions of Youth at Northwestern University School of Law and the Michigan Innocence Clinic at the University of Michigan Law School.
6. This is Mr. Sanford’s first and only Motion for Relief from Judgment. The newly discovered evidence claim could not have been raised at the time of his trial or plea because the underlying evidence did not yet exist. Although this claim was improperly raised in the motion to withdraw his guilty plea, the Michigan Supreme Court denied that motion without prejudice to Mr. Sanford’s ability to file this motion for relief from judgment raising the same issue. The other issues in this motion are being presented for the first time and could not have been raised at trial or on direct appeal.

GROUND FOR RELIEF

I. DAVONTAE SANFORD IS ENTITLED TO RELIEF FROM HIS CONVICTION AND SENTENCE BECAUSE NEWLY DISCOVERED EVIDENCE DEMONSTRATES THAT HE IS ACTUALLY INNOCENT.

7. A defendant who has pleaded guilty is entitled to relief from plea if he can present “compelling evidence of innocence,” *People v Shanes*, 155 Mich App 423, 428; 399 NW2d 73 (1986), or establish that allowing the plea to stand given the new evidence would produce a “miscarriage of justice,” see *People v Winegar*, 380 Mich 719, 731; 158 NW2d 395 (1968); *People v Haynes*, 221 Mich App 551, 558; 562 NW2d 241 (1997), or

show that the new evidence “makes a different result probable on retrial,” *People v Cress*, 468 Mich 678, 692; 664 NW2d 174, 182 (2003).

8. As explained in detail in the accompanying memorandum, the accurate, corroborated, and highly detailed confession of professional hitman Vincent Smothers, establishing that he and an adult male accomplice committed the Runyon Street murders and that Davontae Sanford was not involved, is compelling new evidence of Mr. Sanford’s actual innocence. When Mr. Smothers’ reliable confession is considered against Mr. Sanford’s wildly inaccurate, uncorroborated confession, and the paltry remaining purported evidence of guilt, it would be a manifest injustice to allow Mr. Sanford’s plea to stand.

II. DAVONTAE SANFORD IS ENTITLED TO RELIEF FROM JUDGMENT BECAUSE TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO MOVE TO SUPPRESS OR CHALLENGE DAVONTAE SANFORD’S STATEMENTS AT TRIAL, AND FAILING TO EXCLUDE PURPORTED VOICE IDENTIFICATION TESTIMONY AT TRIAL.

9. The Sixth Amendment guarantees the effective assistance of trial counsel. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). To establish ineffectiveness, a defendant must show that “counsel’s performance was deficient” and that “the deficient performance prejudiced the defense.” *Id.*, 466 US at 687.
10. As discussed in the accompanying memorandum, a reasonably diligent attorney would have investigated the circumstances under which Mr. Sanford made statements to the police and moved to suppress those statements on voluntariness and *Miranda* grounds. A reasonably effective attorney also would have objected to inadmissible witness testimony that Mr. Sanford’s voice was similar to one of the shooters’ voices.
11. Mr. Sanford was prejudiced by counsel’s errors because if Mr. Sanford’s police statement had been suppressed and the eyewitness testimony excluded, the prosecution would have

had essentially no case left to proceed to trial, and Mr. Sanford would not have been forced to plead guilty in order to avoid the likelihood of being found guilty at trial based on his false confession.

III. DAVONTAE SANEORD IS ALSO ENTITLED TO RELIEF FROM JUDGMENT UNDER THE ACTUAL INNOCENCE STANDARD DEEINED BY THE U.S. SUPREME COURT IN *HERRERA* v. *COLLINS*.

12. Since Mr. Sanford has made a truly persuasive demonstration of actual innocence, bis continued incarceration violates the Eighth and Fourteenth Amendments. *See Herrera v Collins*, 506 US 390, 417; 113 S Ct 853; 122 L Ed 2d 203 (1993).

IV. DAVONTAE SANEORD SHOULD ALSO BE GRANTED RELIEF UNDER MCL 770.1 BECAUSE “JUSTICE IIAS NOT BEEN DONE.”

13. MCL 770.1 allows this Court to grant relief when “justice has not been done.”

14. Because all of the evidence demonstrates that Davontae Sanford is innocent, justice will not be done until this Court grants relief from judgment and orders a new trial.

V. BECAUSE DAVONTAE SANEORD’S CONSTITUTIONAL RIGHTS TO EEEECTIVE APPELLATE COUNSEL WERE VIOLATED, HE IS ENTITLED TO HAVE THIS COURT REVIEW CLAIMS WITHOUT PREJUDICE OE ANY PRIOR POST-CONVICTION RULINGS.

15. The Fourteenth Amendment guarantees a defendant the effective assistance of appellate counsel on direct appeal. *Evitts v Lucey*, 469 US 387, 395-97; 105 S Ct 830; 83 L Ed 2d 821 (1985). The standard for effective assistance of appellate counsel is the same as for trial counsel.

16. Mr. Sanford’s appellate counsel engaged in deficient performance by presenting new evidence of actual innocence in a motion to withdraw a guilty plea under MCR 6.310(C), rather than a motion for relief from judgment under MCR 6.500 *et seq.*

17. If the claim for ineffective assistance of trial counsel presented in this motion could have been raised on direct appeal in a MCR 6.310(C) motion, appellate counsel was ineffective in failing to raise it.

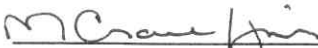
18. The Michigan Supreme Court's April 25, 2014, order specifically provides that Mr. Sanford is entitled to present his claims in this motion for relief from judgment without being prejudiced by appellate counsel's mistake. This follows from the rule announced in *Evitts*; as a consequence of appellate counsel's ineffectiveness, Mr. Sanford is entitled to have his claims heard without prejudice from the prior attempt to present them.

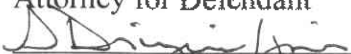
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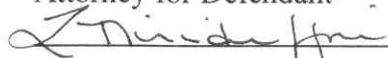
For all of these reasons, and as explained in more detail in the accompanying Memorandum in Support, Davontae Sanford respectfully requests that this Court hold an evidentiary hearing on the claims presented, grant this motion for relief from judgment, and order a new trial.

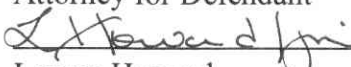
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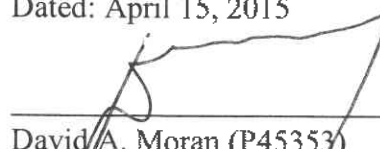
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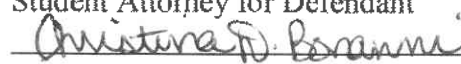

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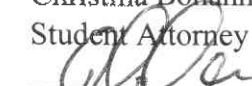

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**DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR
RELIEF FROM JUDGMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIESiv

INTRODUCTION 1

STATEMENT OF FACTS2

 The Runyon Street Homicides2

 Investigation by Detroit Police Department4

 The Investigation and Statements of Davontae Sanford5

 Trial and Guilty Plea9

 The Confession of Vincent Smothers 11

 Sanford’s Post-Conviction Proceedings 14

ARGUMENT 15

 I. DAVONTAE SANFORD IS ENTITLED TO RELIEF FROM HIS
 CONVICTION AND SENTENCE BECAUSE NEWLY DISCOVERED
 EVIDENCE DEMONSTRATES THAT HE IS ACTUALLY
 INNOCENT 15

 A. The Smothers Evidence Is Newly Discovered and Could Not Have
 Been Discovered At the Time Davontae Sanford Was Convicted 17

 B. The Newly Discovered Smothers’ Confession Evidence, Corroborated By
 Undisputed Ballistics Evidence, Is Extraordinary New Evidence Of
 Innocence That Warrants a New Trial 17

 i. Smothers’ Confession Is Accurate, Corroborated, and Highly
 Reliable 18

 ii. The Purported Evidence of Guilt Presented at Trial Would Be Far
 Outweighed by Smothers’ Accurate and Reliable Confession 22

 1. Davontae Sanford’s Confessions Are Inherently Unreliable22

 a. Davontae Sanford’s Police Confession Was Wildly
 Inaccurate and Not Corroborated by the Evidence23

 2. To the Extent That Davontae Sanford’s Police Confession
 Occasionally Contains Accurate Details, Strong Circumstantial
 Evidence Indicates Tbat Such Details Were Disclosed to Him...24

 3. Police Obtained This Unreliable Confession By Knowingly
 Exploiting Highly Vulnerable 14-Year-Old Davontae Sanford ..27

4. Davontae Sanford Recanted at His First Opportunity Because His Confession Is False.....	29
iii. Valerie Glover’s Testimony that Davontae Sanford’s Voice “Sounded Like” That of the Killer Is Inherently Unreliable and Meaningless.....	30
iv. The Purported Gunshot Residue Evidence is Inherently Unreliable and Meaningless.....	32
v. Courts Across the Country have Overturned Convictions in Situations Analogous to This Case	32
II. DAVONTAE SANFORD IS ENTITLED TO RELIEF BECAUSE TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO MOVE TO SUPPRESS OR CHALLENGE HIS STATEMENTS BEFORE OR AT TRIAL AND FAILING TO EXCLUDE MS. GLOVER’S PURPORTED VOICE COMPARISON TESTIMONY BEFORE OR AT TRIAL	33
A. Trial Counsel’s Failure to Move to Suppress the Police Statements Was Objectively Unreasonable	34
1. A Reasonably Competent Lawyer Would Have Moved to Suppress the Statements on <i>Miranda</i> Grounds	34
2. An Effective Attorney Would Have Moved to Suppress the Police Statements on Due Process Voluntariness Grounds	36
B. A Reasonably Competent Attorney Would Have Moved to Exclude, or At Least Objected to, Valerie Glover’s Testimony Regarding Davontae’s Voice.....	39
C. Davontae Sanford Was Prejudiced By Trial Counsel’s Failure to Move to Suppress His Statements and Challenge Them at Trial, and By His Failure to Move to Exclude Ms. Glover’s Testimony Regarding His Voice.....	40
III. DAVONTAE SANFORD IS ALSO ENTITLED TO RELIEF FROM JUDGMENT UNDER THE ACTUAL INNOCENCE STANDARD DEFINED BY THE U.S. SUPREME COURT IN <i>HERRERA v COLLINS</i>	40
IV. DAVONTAE SANFORD SHOULD ALSO BE GRANTED RELIEF UNDER MCL 770.1 BECAUSE “JUSTICE HAS NOT BEEN DONE.”.....	41

V. BECAUSE DAVONTAE SANFORD'S CONSTITUTIONAL RIGHTS TO EFFECTIVE APPELLATE COUNSEL WERE VIOLATED, HE IS ENTITLED TO HAVE THIS COURT REVIEW HIS CLAIMS WITHOUT PREJUDICE FROM ANY PRIOR POST-CONVICTION RULINGS42

A. Appellate Counsel's Failure to File a Motion for Relief from Judgment to Present the Newly Discovered Evidence of Actual Innocence Was Constitutionally Deficient..... 43

B. Appellate Counsel's Failure to Raise Claims of Ineffective Assistance of Trial Counsel Was Constitutionally Deficient..... 44

CONCLUSION AND RELIEF REQUESTED 45

APPENDICES

- Appendix 1 - Affidavit of Vincent Smothers, 3/6/15
- Appendix 2 - Affidavit of Gabi Silver, 3/20/15
- Appendix 3 - Affidavit of James Trainum, 3/23/15
- Appendix 4 - Affidavit of Jeffrey Aaron, 3/2/15
- Appendix 5 - Affidavit of David Balash, 3/9/15
- Appendix 6 - Affidavit of Randolph Stone, 3/17/15
- Appendix 7 - Affidavit of Kim McGinnis, 3/16/15
- Appendix 8 - Crime Scene Summary Police Report, 9/17/07
- Appendix 9 - Statement of Valerie Glover, 9/18/07
- Appendix 10 - Briggs Report & Sketch, 9/18/07
- Appendix 11 - John Matyn Statement, 9/18/07
- Appendix 12 - Booking Form, 9/19/07
- Appendix 13 - Miranda Competency Report, 12/4/07
- Appendix 14 - Witness Conveyance Consent Form, 9/18/07
- Appendix 15 - Davontae Sanford First Statement, 9/18/07
- Appendix 16 - Police Printout of Gun Images, 9/18/07
- Appendix 17 - Taminko Sanford Handwritten Consent Form, 9/18/07
- Appendix 18 - Miranda Form and Davontae Sanford's Police Statement (Unannotated and Annotated), 9/18/07
- Appendix 19 - Davontae Sanford's Sketch, 9/18/07
- Appendix 20 - Presentence Report, 4/2/08
- Appendix 21 - Vincent Smothers' Statement to Police, 4/20/08
- Appendix 22 - Rose Cobb Evidence Technician Report, 12/26/07
- Appendix 23 - Vincent Smothers Sentencing Transcript, 7/23/10
- Appendix 24 - Affidavit of Vincent Smothers, 8/16/12
- Appendix 25 - Davontae Sanford's Polygraph Report
- Appendix 26 - Vincent Smothers' Polygraph Report
- Appendix 27 - ATF Ballistics Report
- Appendix 28 - Police Reports Pertaining to "Accomplices" Named by Davontae Sanford

TABLE OF AUTHORITIES

Cases

<i>Arizona v Evans</i> , 514 US 1; 115 S Ct 1185; 131 L Ed 34 (1995)	41
<i>Arizona v Fulminante</i> , 499 US 279; 111 S Ct 1246; 113 L Ed 2d 302 (1991).....	40
<i>Colorado v Connelly</i> , 479 US 157; 107 S Ct 515; 93 L Ed 2d 473 (1986).....	29
<i>Evitts v Lucey</i> , 469 US 387; 105 S Ct 830; 83 L Ed 2d 821 (1985)	42, 43
<i>Fare v Michael C</i> , 442 US 707; 99 S Ct 2560; 61 L Ed 2d 197 (1979)	36
<i>Gallegos v Colorado</i> , 370 US 49; 82 S Ct 1209; 8 L Ed 325 (1962).....	27, 36
<i>Haley v State of Ohio</i> , 332 US 596; 68 S Ct 302; 92 L Ed 224 (1948)	36
<i>Herrera v Collins</i> , 506 US 390; 113 S Ct 853; 122 L Ed 2d 203 (1993)	40, 41
<i>Hill v Lockhart</i> , 474 US 52; 106 S Ct 366; 88 L Ed 2d 203 (1985)	34
<i>In re Gault</i> , 387 US 1; 87 S Ct 1428; 18 L Ed 2d 527 (1967).....	27
<i>J.D.B. v North Carolina</i> , 131 S Ct 2394; 180 L Ed 2d 310 (2011)	27, 35
<i>McDougall v Schanz</i> , 461 Mich 15; 597 NW2d 148 (1999)	41
<i>Miranda v Arizona</i> , 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)	35
<i>Missouri v Seibert</i> , 542 US 600; 124 S Ct 2601; 159 L Ed 643 (2004)	34
<i>Moody v State</i> , 209 Md App 366; 59 A3d 1047 (2013).....	35
<i>People v Bozzi</i> , 36 Mich App 15; 193 NW2d 373 (1971)	31, 39
<i>People v Butler</i> , 30 Mich App 561; 186 NW2d 786 (1971).....	42
<i>People v Cress</i> , 468 Mich 678; 664 NW2d 174 (2003).....	15, 16
<i>People v Gray</i> , 457 Mich 107; 577 NW2d 92 (1998).....	31
<i>People v Haynes</i> , 221 Mich App 551; 562 NW2d 241 (1997).....	16
<i>People v Lemmon</i> , 456 Mich 625; 576 NW2d 129 (1998).....	42

<i>People v Mauch</i> , 397 Mich 646; 247 NW2d 5 (1976).....	16
<i>People v Rao</i> , 491 Mich 271; 815 NW2d 105 (2012)	17
<i>People v Reed</i> , 449 Mich 375; 535 NW2d 496 (1995).....	44
<i>People v Shanes</i> , 155 Mich App 423; 399 NW2d 73 (1986).....	16
<i>People v Winegar</i> , 380 Mich 719; 158 NW2d 395 (1968).....	16
<i>Poindexter v Booker</i> , 301 Fed Appx 522 (2008)	9
<i>Strickland v Washington</i> , 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984)	33, 40, 42
<i>Thompson v Keohane</i> , 516 US 99; 116 S Ct 457; 133 L Ed 2d 383 (1995).....	35
<i>United States v Preston</i> , 751 F3d 1008 (9 th Cir 2014).....	38
<i>United States ex. rel. A.M. v Butler</i> , 360 F3d 787 (7th Cir 2004)	35

Rules and Statutes

MCL 770.1.....	41, 42
MCR 6.310(C)	14, 43, 44
MCR 6.500.....	15, 16, 41, 43
MCR 6.508(D)(2)	44

Other Authorities

A. Daniel Yarmey, <u>Earwitness Speaker Identification</u> , 1 Psychol. Pub. Pol’y & L. 792 (1995)	30, 31
Ann Mullet, Confessions and Recantations, Detroit Metro Times (Jan 21, 2004).....	37
Allison D. Rcdlich, <i>The Susceptibility of Juveniles to False Confessions and False Guilty Pleas</i> , 62 Rutgers L. Rev. 943 (2010).....	30
Brandon Garrett, <u>Convicting the Innocent</u> (Harvard U. Press, 2011).....	24

<i>Brooklyn District Attorney Will Ask Judge to Throw Out Murder Convictions</i> , N.Y. Times (Oct 15, 2014)	25
Inbau, Fred E., Reid, John E., Buckley, Joseph P. & Jayne, Brian C., <i>Criminal Interrogations and Confessions</i> (5th ed.2013).....	24
Joe Swickard, <i>Detroit Criminal Defense Lawyer Could Face Suspension After Board Rules He Revealed Client's Secrets</i> , Detroit Free Press (Aug 19, 2011)	9
National Registry of Exonerations	32, 33
<i>Not Enough Money or Time to Defend Detroit's Poor</i> , National Public Radio (Aug 17, 2009)	9
Saul Elbein, <i>Kim Possible</i> , National Public Radio, This American Life (Oct 11, 2013).....	18
Samuel R. Gross, <i>Convicting the Innocent</i> , 4 ANN. REV. L. & SOC. SCI. 173 (2008).....	30
Samuel R. Gross et al., <i>Exonerations in the United States, 1989 Through 2003</i> , 95 J. Crim. L. & Criminology 523 (2005)	27
Solan and Tiersma, <i>Speaking of the Crime: The Language of Criminal Justice</i> , (Chicago: University of Chicago Press, 2005)	31
<i>Take Special Precautions When Interviewing Juveniles or Individuals With Significant Mental or Psychological Impairments</i> . John E. Reid & Assoc., Inc.	28

INTRODUCTION

On the night of September 17, 2007, professional hit man Vincent Smothers shot and killed four adults at 19741 Runyon Street in Detroit. Borne of a drug feud, this quadruple homicide was just one in a string of eight paid hits that he committed in 2006 and 2007. As Smothers confessed to police on video in April 2008, he committed the Runyon murders with a single adult accomplice: 26-year-old Ernest “Nemo” Davis, whom Smothers knew was ruthless, experienced, and would not hesitate to shoot. Without prompting, Smothers gave police intimate non-public details that were exactly right, from his exchange of words with a survivor who hid underneath a child’s bed to his exchange of gunfire with a neighbor during his escape. Most strikingly, Smothers led police to the gun Davis used in the Runyon hit. That .45-caliber gun, later found at the home of Davis’ cousin, was a perfect ballistics match for several .45-caliber casings left at the Runyon scene. Similarly, the other casings left at Runyon Street – fired from an AK-47 – perfectly matched casings left at the scene of a 2006 hit undisputedly committed by Smothers, for which he has been convicted and is serving time. And Smothers used a .40 caliber pistol he stole from the Runyon house to kill his final victim, the wife of a Detroit police officer.

Just weeks before Smothers’ confession to the Runyon homicides, Davontac Sanford, a developmentally immature, 14-year-old boy who was blind in one eye, had been convicted of the Runyon homicides based largely on his indisputably inaccurate confession to the police. Davontae’s confession, elicited during an unrecorded interrogation, describes his use of a “Mini-14” gun whose casings were nowhere to be found at the scene; it names four teenage accomplices who were cleared by police; and it does not mention Smothers or Davis. Indeed, Davontae’s confession includes no accurate facts about the killings whatsoever other than the information that his interrogator already knew. Moreover, Davontae quickly recanted his

confession, telling a court-appointed psychologist that he had simply “ma[de] something up” because “they said I had blood on my shoes and I should sign it, sign it.” Sign it he did; and after his trial attorney failed to move to suppress that confession – or do anything to challenge the prosecution’s theory of the case – he entered a plea of guilty during the trial.

Smother, on the other hand, was charged with eight murders – every hit to which he confessed *except* the Runyon murders, for which neither he nor Davis has ever been charged. The prosecution never informed Davontae or his counsel that Smother had exculpated him; to the contrary, prosecutors offered Smother a plea deal conditioned on his silence in Davontae’s case. Smother refused because, “it seemed ludicrous . . . that the state would actually go this far to make sure Davontae Sanford remained in prison for crimes I committed and confessed to.”

To this day, Smother staunchly maintains that he and Davis committed these crimes alone; that he never met Davontae Sanford before his own arrest in 2008; and that he finds the idea of using a child, let alone a child who is blind in one eye, as an accomplice to such a crime “absurd.” The only tenable conclusion is that Davontae Sanford, now 22 years old, and eight years into a sentence of at least 39 years, is entirely innocent of the Runyon Street homicides.

Davontae Sanford has been fighting to clear his name and gain his freedom for eight years, and actively litigating his actual innocence for six. Justice is sorely overdue. Every additional day he sits in prison compounds the injustice of his wrongful convictions and immeasurable harm done to him. He asks this Court to grant him relief by ordering a new trial.

STATEMENT OF FACTS

The Runyon Street Homicides

On Monday, September 17, 2007, shortly before 11:30 p.m., four people were shot and killed at 19741 Runyon Street in Detroit. Crime Scene Summary Police Report, 9/17/07, 2; App.

8; PE, 10/1/07, 26-29. Michael Robinson, a 33-year-old marijuana grower and dealer who owned the white-sided, single-family home, was killed in the attack. Three of his houseguests – Dangelo McNoriell, Nicole Chapman, and Brian Dixon -- were murdered alongside him. PE, 10/1/07, 26. His fourth guest, Valerie Glover, was shot five times but survived. *Id.* at 11.

The quadruple homicide began when the killers shot several bullets through the front door and the living room's front window. *Id.* at 10-11; Statement of Valerie Glover, 9/18/07, App. 9; Crime Scene Summary Police Report, 9/17/07, 8; App. 8. The killers then entered the house and continued shooting. Glover, Chapman, and Dixon were shot in the middle of the room, McNoriell was shot while sitting on a couch in front of the house's front window, and Robinson was shot while sitting on a loveseat facing the television. PE, 10/1/07, 27-28. The lone adult survivor, Valerie Glover, fled to a back bedroom, where – in terror for her life – she hid under the bed of Robinson's sleeping seven-year-old son. PE, 10/1/07, 10-11; Glover Statement, 9/18/07, App. 9. She was followed by one of the killers, who told her to “be quiet” and that she “better pretend to be dead” while the other killer in the living room started yelling: “where the shit at?” Glover Statement, 9/18/07, App. 9.¹ She heard movement in the basement and a series of additional shots fired in the living room, and then heard the killers leave. PE, 10/1/07, 12, 16-7. The killers did not further harm Glover, and they spared the boy entirely.

The killers left four bodies and a litter of .45-caliber and 7.62 x 39-millimeter casings, which are commonly used in an AK-47. EH, 2/12/2010, 12.² As the killers fled the carnage, Robinson's neighbor, Jesse King, who had just heard the shots fired, saw two men heading

¹ In court, however, she apparently conflated these statements by the two shooters and instead testified that she heard the man who entered the bedroom ask where the “shit” was, and say something like “I'm about to kill you.” PE, 10/1/07, 14.

² All citations to testimony presented at the 2009-2010 evidentiary hearing are proffers of testimony petitioner will present at an evidentiary hearing if one is granted by this Court.

northbound on the other side of the street. EH, 12/11/09, 22-24. One was carrying a rifle; the other had a pistol. TT, 3/18/08, 5-6; EH, 12/11/09, 22-24. King exchanged gunfire with the man holding the rifle, hiding behind a small wall on his porch for protection, and then watched them cut west across a vacant lot at the end of Runyon Street near State Fair and head towards Teppert Street. TT, 3/18/08, 12-15; EH, 12/11/09, 34-35, 45. Police located a number of 7.62 x 39 mm casings on the sidewalk across the street from King's house consistent with those left at the Runyon scene. EH, 2/12/2010, 16-17.

King told police the man who fired the rifle was 5'11" or 6'0" and wearing dark clothing, while the other man was slightly shorter. EH, 12/11/09, 27-28. Similarly, Valerie Glover told police that the man who followed her to the back bedroom was a six-foot-tall, slim black man, dressed in dark clothing, "no more than 30 and 35," with a "soft voice." Glover Statement, 9/18/07, App. 9. In September of 2007, Vincent Smothers was 26 years old, 6'1", 140 pounds, and a "quiet, soft-spoken guy." EH, 3/16/10, 19. Davontae Sanford was 14 years old, 5'5", and 150 pounds. Booking Form, 9/19/07; App. 12.

Investigation by Detroit Police Department

Officers from the Detroit Police Department ("DPD") arrived at the scene starting at 12:15 a.m. EH, 7/13/10, 33. Based on the .45 and 7.62 x 39 ballistics evidence, the police concluded that two guns were likely used in the attack. Crime Scene Summary Police Report, 9/17/07, 8-9; App. 8.³ A neighbor also reported hearing shots fired from two guns. Statement of John Matyn 9/18/07; App. 11. Evidence technician Lori Briggs began sketching the living room crime scene, capturing the rough position of the furniture and the location of the bodies. Briggs

³ This was further supported at trial. Prosecution expert, Forensic Certified Firearms Examiner David Pauch, submitted a report opining that the 7.62 x 39-mm casings and slugs were all fired from the same gun and the .45 casings and slugs were fired from the same gun. Pauch did not testify at trial because defense counsel stipulated to his conclusions. TT, 3/18/08, 58-64.

Report & Sketch, 9/18/07; App. 10. Meanwhile, neighbor Sadie Hunt told Officer Moises Jiminez that she suspected two neighborhood teens nicknamed "Tone-Tone" and "Twan." Crime Scene Summary Police Report, 9/17/07, 2; App. 8.

Sergeant Mike Russell, who would later interrogate Davontae Sanford, focused on the crime scene itself. Over the course of an hour, Russell examined the victim's injuries and positions; familiarized himself with the house's layout; saw bullet holes in the front door and front window; examined the back bedroom and the basement; and, importantly, deduced from the casings left at the scene that two or more firearms, including an assault-type weapon, had been used. TT, 3/17/2008, 31-32, 54; EH, 07/21/09, 31-34. After learning from another officer that the killers had fired at King from a position north of Robinson's house, Russell and Officer Chris Salisbury used a police dog to track the killers' scents. TT, 3/17/2008, 33. The dog took Russell and Salisbury northwest towards State Fair, through a vacant lot at the end of the block, westward along State Fair Avenue to Teppert Street; from Teppert, the dog continued to Beland Street before stopping in the middle of the sidewalk. *Id.* at 34-35. The police thus concluded that the killers may have left in a car. TT, 3/18/08, 28-29.

The Investigation and Statements of Davontae Sanford

When Sgt. Russell and his dog lost the scent on Beland Street, 14-year-old Davontae Sanford had just heard about a shooting in the neighborhood and was standing outside his home a half-block down the street. TT, 3/18/08, 35-37; *Miranda* Competency Report, 12/4/07, 6-7; App. 13. The officers and Davontae conversed, though what was said is unclear and was never documented in any police reports. Russell testified at the trial in March 2008 that he could not recall any particulars, but Officer Dale Collins, who came up to the group as the conversation began, later testified that Russell approached the boy but the boy refused to talk. PE, 10/1/07, 30;

TT, 3/17/08, 36; EH, 7/13/10, 156. After the boy told Collins that his “uncle” was DPD officer Bill Rice, however, Collins responded that Bill was “my motherfucking man, you need to help the police” and “[y]ou better tell us what you know.” EH, 7/13/10, 156, 167.

After this exchange, Collins went into the boy’s home, where he obtained his grandmother’s signature on a form allowing him to be transported to a police station. Witness Conveyance Consent Form, 9/18/07; App. 14. Collins and Russell, joined by Commander James Tolbert, took Davontae first to Osborn High School, then on a drive around the neighborhood. They eventually brought Davontae to the crime scene where, at 3:13 a.m., a technician swabbed Davontae’s hands and face for gunshot primer residue – a test that later came back negative. TT, 1/11/08, 3. The police then took him to the homicide bureau at 1300 Beaubien.

Over the course of the next twenty-four hours, Sgt. Russell elicited two statements from Davontae – neither of which got anything right about the crime except information already known to the police. In the first statement, typed by Russell at approximately 4:00 a.m. on September 18, 2007, Davontae allegedly stated that he and four older teenagers from his neighborhood – nicknamed Tone, Tone Tone, Carrie, and Los – met inside the Coney Island at 7-Mile Road and Albion at 3:00 p.m., where they concocted a plan to rob “Milk Dud” – a name that has never been linked to Michael Robinson – at his home on Runyon Street. Davontae Sanford First Statement, 9/18/07; App. 15. The five teens purportedly gathered at a park around 9:20 p.m. armed with four guns – a “chopper,” a mini-14, a .45, and a .38 – and then headed to Runyon. Davontae told Russell, however, that he changed his mind and went home before the crime. *Id.* He heard the gunshots and then saw Tone Tone run through his yard and heard him say “I shot the nigga dog, I got to go.” *Id.* On a fuzzy photograph of a firearm apparently printed from a social media website, Davontae even wrote in childlike letters, “the .38 I hade [sic].”

Police Printout of Gun Images, 9/18/07; App. 16. Importantly, no casings found at the Runyon scene had been fired from either a .38 caliber gun or a mini-14, which fires .223 bullets; nor had any witness ever claimed that as many as four perpetrators were involved. Affidavit of David Balash, 3/9/15, 5; App. 5; Crime Scene Summary Police Report, 9/17/07, 8-9; App. 8.

Police reports do not reflect when Davontae's questioning ended, but he was eventually returned home sometime during the day of September 18. *Miranda* Competency Report, 12/4/07, 7; App. 13. That same day, the police arrested and interrogated Tone and Los, both of whom denied involvement and provided alibis that police confirmed were true.⁴ Sgt. Russell also learned that the Coney Island at 7-Mile and Albion was closed for renovations. EH, 7/21/09, 47. Armed with this new information, around 8:40 p.m., Russell returned to Davontae's house, where he told Davontae's mother, Taminko Sanford, that Davontae had not been truthful. PE 10/1/07, 37. Taminko signed a consent "form" handwritten by Russell on the spot, granting Russell permission to bring Davontae back to DPD Homicide for further questioning "regarding his involvement in a homicide." PE, 10/1/07, 38; Handwritten Consent Form, 9/18/07; App. 17. En route to the station, the police told Davontae that they knew he had committed the homicides. *Miranda* Competency Report, 12/4/07, 7; App. 13.

Back at DPD Homicide, Russell began to type out a second statement for Davontae at 9:30 p.m. in question-and-answer format. Russell, however, failed to read Davontae his *Miranda* rights until 10:00p.m. – long after he began typing the statement. PE, 10/1/07, 38-40; *Miranda* Form 10:00 PM 9/18/07; App. 18. As he later told psychologist Dr. Lynne Schwartz, who

⁴ 18-year-old Antonio "Tone" Langston and 18-year-old Angelo "Los" Gardner were arrested and questioned on September 18. Both were released the next day after police confirmed their alibis. Police Documents for Langston, Gardner and Green; App. 28. A third purported accomplice, Santo Green who went by "Tone-Tone," was arrested by police on September 21, 2007, and he also was released shortly thereafter. *Id.*

evaluated Davontae's competency to waive his *Miranda* rights, Davontae asked for a lawyer but was called a "dumbass" and told that "no lawyer was up at this time of night." *Miranda* Competency Report, 12/4/07, 8; App. 13. He also told Dr. Schwartz, that the interrogation – which was conducted entirely off-camera – quickly became confrontational. Russell falsely told him, for example, that "we know you did it now" because police had found blood on his shoes.⁵ *Id.* at 7. Davontae denied this and protested that he did not know what happened. *Id.* After police indicated to Davontae that they would take him home if he would "just tell [them] something," he "started making up something" based on details about the crime that the police fed him and on photographs of the crime scene that Sgt. Russell showed him. *Id.* Indeed, Sgt. Russell agreed at the preliminary hearing that while he was questioning Davontae, "I'm sure – I'm sure I had pictures because that's my general practice," though he denied showing them to Davontae. PE, 10/01/07, 59.

The resulting statement was far more inculpatory. It placed Davontae in the house, along with the same four accomplices, and claimed that he personally used a Mini-14 to fire at the victims (even though none of the shell casings or bullets at the crime scene could have come from a Mini-14). Davontae Sanford Second Statement, 9/18/07; App. 18. After the initial barrage of bullets in the living room, the statement continued, two intruders went to the back of the house, where shots were fired; Tone Tonc then checked the basement and came back with two duffel bags. *Id.* All the perpetrators opened fire again in the living room before they all drove away in Los' car – except for Davontae, who fled, apparently alone, on foot. *Id.* The statement claimed that Davontae threw his weapon into a nearby AT&T facility's field while fleeing, but police never recovered any weapons from that location. *Id.*

⁵ It is undisputed that none of Davontae's shoes were ever submitted for forensic testing, contrary to Russell's assertion that blood had been found on them.

The statement also includes a sketch of the Robinson living room depicting the position of the victims' bodies. Tolbert initially claimed Davontae drew it "entirely," but conceded on cross-examination: "I don't know" and "I can't recall exactly" whether the Davontae had drawn the entire diagram on his own. Davontae's Sketch, 9/18/07; App. 19. It is undisputed that Russell had been inside the house and seen the position of the bodies before he interrogated Davontae.

In the early morning hours of September 19, Russell memorialized Davontae's final statement in a short, ten-minute-long video recording. TT, 10/1/07, 56-60. Shortly thereafter, despite promises that Davontae would go home, Davontae was arrested, booked, and sent to juvenile detention. When he was examined by Dr. Schwartz, he told her that his confession was false and explained the tactics Russell had used to obtain the confession. *Miranda Competency Report*, 12/4/07, 8; App. 13.

Trial and Guilty Plea

The preliminary hearing was held on October 1, 2007, where Davontae was represented by court-appointed attorney Donald Cook. Shortly thereafter, Cook was replaced by private counsel Robert Slameka.⁶ Even though the prosecution's case rested almost entirely on

⁶ Unfortunately, Davontae's family did not know of Slameka's extensive disciplinary history for failing to investigate cases or zealously represent clients. See, e.g., Ailsa Change, NPR, *Not Enough Money or Time to Defend Detroit's Poor*, <<http://www.npr.org/templates/story/story.php?storyId=111811319>> (accessed March 16, 2015) (highlighting Slameka's misconduct involving 16 clients, including Eddie Joe Lloyd, who was exonerated by DNA after serving 17 years in prison); Joe Swickard, Detroit Free Press, *Detroit Criminal Defense Lawyer Could Face Suspension After Board Rules He Revealed Client's Secrets*, <<http://www.freep.com/article/20110819/NEWS01/108190411/Detroit-criminal-defense-lawyer-could-face-suspension-after-board-rules-he-revealed-client-s-secrets>> (accessed April 2, 2015); *Attorney Discipline Board File for Robert Slameka*, <<http://www.adbmich.org/CES6/default.aspx?sortf=@sysdate&sortd=false&q=20567>> (accessed April 2, 2015) (documenting current suspension, as well as four additional reprimands and one previous suspension for misconduct in 22 cases); see also *Poindexter v Booker*, 301 Fed Appx 522 (MI 6, 2008) (affirming grant of habeas relief based on ineffective assistance of counsel claim against Slameka for failure to investigate and present certain defense witnesses). On March 23, 2015,

Davontae's confession, Slameka did not file a motion to suppress his 14-year-old client's statements, even after he received Dr. Schwartz's report describing how Davontae asked for an attorney and detailing Davontae's recantation and explanation for why he falsely confessed. *Id.*

Davontae's bench trial commenced on March 17, 2008. Over the course of March 17 and 18, the prosecution presented the testimony of, among others: Sgt. Russell, who testified in great detail about Davontae's confession; Jesse King, who testified to his exchange of gunfire with the killers as they fled; and the prosecution's final witness, Valerie Glover, who testified that the killer with whom she spoke as she hid under the bed "didn't have no bass in his voice. He just sounded like a kid." TT, 3/18/08, 48. After Davontae was ordered to speak on the record, Glover testified that his voice "sound[ed] like" and was "consistent" with the killer's voice, but she could not identify Davontae's voice as the killer's. *Id.* at 49.

Throughout trial, Slameka never raised the obvious inconsistencies between Davontae's accounts and the way in which the crime actually occurred. Similarly, he did not ask Sgt. Russell even a single question in cross-examination. Instead, on March 18, 2008, after a mid-trial lunch break, Davontae, then 15 years old, entered a plea of guilty to four counts of second-degree murder and felony firearm on Slameka's advice. TT, 3/18/08, 71-75. During the plea colloquy, Davontae's account of the crime changed yet again. Though he struggled to give answers that made any sense, he now claimed that he committed the crime with three of his cousins: "Bug," "T," and "Homie."⁷ TT, 3/18/08, 79-86. When asked the purpose of the shootings, he said: "I guess just to rob them and take the money." *Id.* at 84.

Slameka was suspended by the Michigan Attorney Discipline Board for 180 days, effective May 1, 2015, after he was convicted of theft and breaking and entering.

⁷ For instance, when the prosecutor asked, "Did you see how the K-9 Officer testified in this trial about how some people ran afterwards? Is that how you ran?" Davontae answered "[N]o." The prosecutor persisted, "Who ran that way?" to which Davontae asked, "What way?" The

On April 4, 2008, Judge Sullivan sentenced Davontae to four concurrent terms of 37 to 90 years in prison, plus two years for the felony firearms charge. TT, 4/4/08, 29-31. In his presentence report, Davontae told yet another inconsistent version of the story: "It wasn't me from the beginning anyway. It was my cousin. We was in the car smoking weed, drinking... I always looked up to my cousin as like my role model or brother. They used to put me up on licks [robberies] and stuff... I'd never do it. I took it [one Ecstasy pill]. I told police I didn't shoot one time, 'cause I was scared. I walked in the door and saw the bodies and got scared. I'm chasing behind my cousin, running." Presentence Report, 4/2/08, 4; App. 20.

Despite Davontae's plea, no charges were brought and, indeed, no investigation was apparently done into the involvement of any of Davontae's cousins, including those nicknamed Bug, T, and Homie. To this day, only Davontae Sanford has ever been charged.

The Confession of Vincent Smothers

Just two weeks after Davontae Sanford was sentenced, the police arrested 27-year-old Vincent Smothers for an unrelated murder. The next day, Smothers told police during a recorded interrogation that he had been paid to commit a string of murders in 2006 and 2007 – in other words, that he was a hit man. On April 20, 2008, as Smothers was telling Officer Gerald Williams, who was also involved in the Runyon homicide investigation, how he shot a man named Carl Thornton with an AK-47, he volunteered – without any prompting – that he and a single accomplice, Ernest "Nemo" Davis, used the same AK-47 to kill three men and a woman in

prosecutor replied "The way that the K-9 Officer testified," to which Davontae replied, "Oh, yeah. That's how we ran." At another point, when the prosecutor asked, "What did you do with the Mini 14?" Davontae could only say "I gave it back to him"; no one clarified who "him" might have been. Similarly, when the Court asked, "How is it that you got to the house? You said that somebody drove you?" Davontae echoed, "Oh. Somebody drove us to the house." Again, no one clarified who that "somebody" was.

2007 at a white single-family home on the west side of Runyon Street. Statement of Vincent Smothers, 4/20/08, 28-29, 42, 55-56, 41; App. 21. Smothers said he was paid by a man named Leroy Payne to commit the hit for reasons related to a drug dispute.

Again without any prompting, Vincent Smothers went on to describe the Runyon Street murders in intimate detail. *Id.* at 27. The hit began when Davis fired a .45-caliber weapon through the outside window of the house and then waited in the living room while Smothers, alone, went through the rest of the house. *Id.* at 28-29. Smothers freely recalled seeing a woman run to a back bedroom, where he followed her and found her hiding under a bed in which a little boy was lying. *Id.* at 56. Smothers told her that everything was all right and that she didn't have anything to worry about before proceeding to the basement, at which point he heard Davis firing more shots in the living room. *Id.* at 55-56. Smothers and Davis took some marijuana and about \$2000, which they split; Smothers also took a .40-caliber gun which, he told Officer Williams, he later used to murder Rose Cobb, the wife of a Detroit police officer. *Id.* at 57.

Noticeably absent from Smother's detailed account was Davontae Sanford. Indeed, the first person to mention Davontae – although not by name – was Sgt. Russell. Smothers Affidavit, 3/6/15, 18-19; App. 1. While taking Smothers to the restroom during his interrogation, Sgt. Russell told Smothers that they already had the kid who did the Runyon murders, to which Smothers responded that they must have the wrong guy. *Id.* at 19.

Forensic evidence provided strong independent corroboration of Smothers' confession – in other words, evidence the police did not know about until Smothers revealed it. After Smothers told Williams he had stored weapons at Davis' cousin's house in Detroit at 14457 Promenade, the police searched this house and seized the .45 caliber Springfield pistol used in the Runyon murders, which was confirmed by ATF agent and prosecution expert Walter

Dandridge. Trainium Affidavit, 3/23/15, 25; App. 3; Smothers Statement, 4/20/08, 19; App. 21; EH, 3/16/10, 48-49; 7/13/10, 81-82 (seizure of .45 related to search warrant of 14457 Promenade); ATF Report, 7/14/09; App. 27. Police also seized the .40 caliber pistol Smothers stole from Runyon and used to kill Rose Cobb, as confirmed by the ballistics evidence from the Cobb scene. Trainium Affidavit, 3/23/15, 25; App. 3; Smothers Statement, 4/20/08, 55-57; App. 21; Rose Cobb Evidence Technician Report, 12/26/07, 2-4; App. 22; ATF Report, 7/14/09; App. 27. All of the independent forensic corroboration of Smothers' confession is undisputed.

Despite this powerful forensic evidence corroborating his detailed confession, Smothers was charged with only eight of the twelve murders to which he confessed – that is, he was charged with every murder *except* the four on Runyon Street. Smothers Sentencing Transcript, 7/23/10; App. 23. Neither Ernest “Nemo” Davis, his named accomplice, nor Leroy Payne, who ordered the Runyon hit, was ever arrested for these crimes.

At the outset of plea negotiations in his case, the prosecutor offered Smothers a plea deal of 50-100 years for all eight murders if he promised to not testify on behalf of Davontae Sanford. Smothers refused. Smothers Affidavit, 3/6/15, 20; App. 1. He later accepted the same deal with the condition removed. *Id.* At his sentencing hearing, Judge Craig Strong referred to Smothers' presentence report, which included his confession to the Runyon murders, and told him: “[Y]ou cannot bring back those you killed but you can correct wrongs for those who were wrongfully convicted for killing people that you killed.” Smothers Sentencing Transcript, 7/23/10, 11; App. 23. Smothers replied: “If that's a question, then the Police Department knows of any crimes that have been committed.” *Id.*

Sanford's Post-Conviction Proceedings

Davontae's post-conviction attorney, Kim McGinnis, filed a motion to withdraw his guilty plea pursuant to MCR 6.310(C), based in part on actual innocence, in the fall of 2008. Soon after she filed this motion, she learned of Smothers' confession to the Runyon murders not from the prosecution or the police, but a journalist. She amended her motion to include it as newly discovered evidence. Judge Sullivan denied the motion orally without holding a hearing, but the Court of Appeals reversed and remanded for an evidentiary hearing on actual innocence.

During the course of that hearing, Smothers invoked his Fifth Amendment rights but waived his attorney-client privilege so that his attorney, Gabi Silver, could testify on his behalf concerning what he had told her about Davontae's innocence. Smothers also spoke with a defense investigator and told her about the Runyon murders. When Judge Sullivan allowed neither Silver nor the investigator to testify, however, Smothers agreed to take the witness stand himself – but Judge Sullivan barred him from doing so based on his earlier invocation of the Fifth Amendment. In a final effort, Smothers submitted an affidavit again attesting to Davontae Sanford's innocence. Affidavit of Vincent Smothers, 8/16/12; App. 24. However, Judge Sullivan once again denied Davontae's motion to withdraw the guilty plea.

On September 26, 2013, the Court of Appeals vacated Judge Sullivan's ruling and remanded for a hearing in which Smothers would be given an opportunity to testify and, if he declined, in which Silver would be permitted to testify to Smothers' confession. The court also held that the defense was entitled to discovery relating to Smothers' other crimes and that the trial court had erred in excluding expert testimony about the ways in which police interrogation techniques could induce a false confession. *People v Sanford*, No 291293, 2013 WL 5379673, at *5-10 (Mich App Sept. 26, 2013), vacated, 495 Mich 989; 844 NW2d 725 (2014).

On April 25, 2014, the Michigan Supreme Court vacated that ruling, holding that a motion to withdraw a guilty plea was the wrong vehicle for an innocence claim. The Supreme Court specifically provided that its order was “without prejudice to the defendant’s ability to file a motion for relief from judgment pursuant to MCR 6.500 et seq. raising the issues addressed in his motion to withdraw plea.” *People v Sanford*, 495 Mich 989, 990; 844 NW2d 725 (2014). This Motion for Relief From Judgment follows.

ARGUMENT

I. DAVONTAE SANFORD IS ENTITLED TO RELIEF FROM HIS CONVICTION AND SENTENCE BECAUSE NEWLY DISCOVERED EVIDENCE DEMONSTRATES THAT HE IS ACTUALLY INNOCENT.

Applicable Legal Standard

Because MCR 6.500 *et seq.* does not set forth any specific standard for relief from judgment based on new evidence of actual innocence discovered following a guilty plea, the standard must be derived from precedent. In newly discovered evidence claims arising in cases that went to trial, the standard in Michigan is well-settled: newly discovered evidence raised pursuant to MCR 6.500 warrants a new trial where: (1) the evidence itself, not merely its materiality, is newly discovered; (2) the newly discovered evidence is not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. *People v Cress*, 468 Mich 678, 692, 664 NW2d 174, 182 (2003). While Michigan courts have yet to address what standard governs a claim of newly discovered evidence of actual innocence in a case where the defendant pled guilty, other jurisdictions apply the same standard whether the conviction results from trial or plea. See, e.g., DC Code § 22-4135 (2001); Utah Code 78B-9-402 (LexisNexis 2009).

If this Court holds that it must apply precedent from withdrawal of plea case law, then it should look to the Court of Appeals' prior opinion in Mr. Sanford's case, in which it held that the appropriate standard is "compelling evidence" of actual innocence. See *People v Sanford*, No. 291293, 2013 WL 5379673, at *3 (Mich App Sept 26, 2013), vacated, 495 Mich 989; 844 NW2d 725 (2014). The Supreme Court vacated the judgment of the Court of Appeals because it concluded Mr. Sanford's claims could not be raised in a motion to withdraw the plea but did so, "without prejudice to the defendant's ability to file a motion for relief from judgment pursuant to MCR 6.500 *et seq.* raising the issues addressed in his motion to withdraw plea." *Id.* In so holding, the Supreme Court expressed no opinion as to the proper standard of review.

The Court of Appeals panel in this case derived its standard from *People v Shanes*, 155 Mich App 423, 428; 399 NW2d 73 (1986), which found no abuse of discretion when a trial court denied a post-sentencing motion to withdraw a plea where the defendant failed to present "any compelling evidence of innocence." Other published cases from both the Supreme Court and the Court of Appeals indicate that a defendant seeking to overturn a guilty plea after sentencing must establish a "miscarriage of justice." See *People v Winegar*, 380 Mich 719, 731; 158 NW2d 395 (1968); *People v Haynes*, 221 Mich App 551, 558; 562 NW2d 241 (1997). In *People v Mauch*, 397 Mich 646, 658-59 n5; 247 NW2d 5 (1976), the Supreme Court presented a list of circumstances that could constitute a miscarriage of justice in the context of a plea-based conviction, including "where subsequent evidence strongly suggested defendant's innocence."

It does not matter whether this Court applies the "compelling evidence of innocence" standard from *Shanes*, the "subsequent evidence strongly suggest[ing] defendant's innocence" standard from *Winegar* and *Mauch*, or the "different result probable" standard from *Cress*. Under any of these standards, it is clear that the reliable, accurate, sworn confession by professional hit

man Vincent Smothers, corroborated by physical evidence, warrants a new trial. As discussed below, that evidence is far more reliable than all of the evidence against Mr. Sanford.

A. The Smothers Evidence Is Newly Discovered and Could Not Have Been Discovered At the Time Davontae Sanford Was Convicted.

Whether evidence is newly discovered turns on whether the defendant or defense counsel knew of the evidence at the time of trial – or, in this case, at the time of the guilty plea. See *People v Rao*, 491 Mich 271, 281; 815 NW2d 105, 111 (2012). No one knew about Vincent Smothers’ role in the Runyon murders until he confessed to police on April 19, 2008 – more than a month after Davontae’s guilty plea, and two weeks after the sentencing. EH, 5/13/10, 20-25. Because the prosecution and police did not disclose Smothers’ confessions to Davontae or his counsel, his appellate counsel did not learn about them until February 2009, when reporters told Davontae’s mother that Smothers had confessed to the Runyon killings.⁸ Plainly, Smothers’ confession is not only newly discovered, but also could not have been discovered before Davontae’s guilty plea because it simply did not exist.

B. The Newly Discovered Smothers’ Confession Evidence, Corroborated By Undisputed Ballistics Evidence, Is Extraordinary New Evidence Of Innocence That Warrants a New Trial.

Vincent Smothers’ confession that he and Ernest “Nemo” Davis alone committed the Runyon murders – filled with non-public details and corroborated by undisputed ballistics evidence linking Smothers and Davis to each of the two murder weapons, as well as by physical evidence and witness statements to police – proves that the confession given by 14-year-old

⁸ Neither DPD nor the Wayne County Prosecutor’s Office disclosed Smothers’ confessions to Mr. Sanford or his counsel, and the prosecution went so far as to offer Smothers a plea deal conditioned on his silence in Mr. Sanford’s ongoing proceedings. See e.g. *Imbler v Pachtman*, 424 US 409, 427 n. 25; 96 S Ct 984, 993; 47 L Ed 2d 128 (1975) (“after a conviction, the prosecutor is . . . bound by the ethics of his office to inform the appropriate authority of after-acquired or other material information that casts doubt upon the correctness of the conviction”).

Davontae Sanford gave was false and, in turn, that he is innocent. Smothers' Statement to Police, 4/20/08; App. 21. As nationally renowned police practices expert James Trainum concluded: "Smothers' confessions to the Runyon Street murders, in contrast to Sanford's confession, were detailed, consistent over time, and, crucially, provided details not known to the police that were proven to be true." Trainum Affidavit, 3/23/15, 2; App. 3.⁹ Indeed, such third-party confessions have led courts to overturn convictions across the country, including in cases where the third-party confession had far less substantial corroboration than here. *Id.*

i. Smothers' Confession Is Accurate, Corroborated, and Reliable.

Vincent Smothers' confession to the Runyon murders – as well as his identification of Ernest "Nemo" Davis as his only accomplice – is remarkably detailed and uncannily accurate. Smothers' Statement to Police, 4/20/08; App. 21; see also Smothers' Affidavit, 3/6/15; App. 1. Smothers provided what interrogation experts call the "hallmark" of a confession's reliability: **details not known to the police, which were later proven to be true.** Trainum Affidavit, 3/23/15, 2, 10, 47-50; App. 3. Not only did he correctly state that the only two guns used were a .45-caliber gun and an AK-47 – guns that correspond to the two types of casings left at the scene – but he also led the police to one of these murder weapons. During his April 20, 2008 confession, Smothers told Sgt. Williams that some of **his and Davis' weapons were hidden at Davis' cousin's home.** Smothers' Statement to Police, 4/20/08, 19; App. 21. See also Balash Affidavit 3/9/15, 7-8; App. 5. **The DPD searched that house, found the .45 gun, and determined it to be a perfect ballistics match to the casings left at the Runyon scene.** Ira

⁹ Police practices expert James Trainum is uniquely qualified to evaluate the reliability, and potential contamination, of confessions because he inadvertently induced a false confession from a suspect during his 20-year career as a D.C. homicide detective. See Saul Elbein, NPR, *Confessions*, < <http://www.thisamericanlife.org/radio-archives/episode/507/confessions> > (accessed February 27, 2015) (interview with Trainum about how he came to realize that he induced a woman to falsely confess and inadvertently supplied all of the crime details to her).

Todd Testimony, EH, 3/16/10, 35. **Smothers also told police that he committed the Carl Thornton murder with his AK-47, and the casings at the Thornton scene were matched to the Runyon casings.** *Id.*; Trainum Affidavit, 3/23/15, 26; App. 3; ATF Report, 7/14/09; App. 27. These ballistic matches constitute irrefutable evidence that Smothers' confession is true. Trainum Affidavit, 3/23/15, 1, 25-6, 54; App. 3.

Indeed, the fit between the details in Smothers' confessions and the provably true facts about the Runyon murders, as revealed by evidence and witnesses' statements, is tailor-made:

Known Facts	Smothers' Confessions
2 perpetrators seen fleeing from scene	2 perpetrators
2 guns fired: assault-style rifle and .45 caliber gun	AK-47 (an assault-style rifle) and .45 pistol
Police reports indicate that Michael Robinson, owner of the home, was growing marijuana plants in basement	Smothers reported that he was hired to do this bit over drugs; he and Davis stole marijuana and money
<i>Description of Perpetrators' Clothing</i> Dark clothing	<i>Description of Perpetrators' Clothing</i> Dark clothing
<i>Valerie Glover:</i> <ul style="list-style-type: none"> • She spoke with one of the shooters in the back bedroom as she hid under a bed. • The man told her to be quiet and she better pretend to be dead. • No shots were fired in the back bedroom. 	Smothers reported: <ul style="list-style-type: none"> • He followed a female survivor who fled from the living room and found her hiding under a bed in a back bedroom. • He told her everything was going to be all right and to stay in the room until they left. • No shots were fired in back bedroom.
<i>Michael Robinson Jr.</i> <ul style="list-style-type: none"> • He was a 7-year-old boy at the time. • He was asleep in back bedroom where Glover was hiding. 	Smothers reported: <ul style="list-style-type: none"> • Young boy between 7-10 years old. • He was in bed in the bedroom where the woman was hiding.
<i>Jesse King</i> <ul style="list-style-type: none"> • King had a shoot-out with one of the 2 killers as they left the scene, headed towards State Fair. • The shooter was carrying and fired a long gun. • King lived at 19764 Runyon, across the street and a few houses north of 19741 Runyon. • 3 casings from an assault-style weapon were found at the spot on the sidewalk indicated by King; matched casings from the Runyon scene. 	Smothers reported: <ul style="list-style-type: none"> • He and Davis left 19741 Runyon and headed towards a vacant lot next to State Fair. • He fired shots with his AK-47 at a neighbor. • This neighbor lived across the street and a few houses north, towards State Fair. • Smothers accurately described the King's home and drew a diagram of its approximate location in relation to 19741 Runyon St.

Known Facts	Smothers' Confessions
<p><i>Escape Path</i></p> <ul style="list-style-type: none"> • King described seeing the shooters flee through the vacant lot next to State Fair. • The police dog followed a path down Runyon towards State Fair, through the vacant lot, and then lost it once it hit Beland Street. 	<p>Smothers reported:</p> <ul style="list-style-type: none"> • He and Davis fled through the vacant lot on State Fair, towards Teppert Street. • There they got into his Jeep Commander, did a U-turn, and drove away.
<p><i>Location of Victims</i></p> <ul style="list-style-type: none"> • Police sketch of location of victims and interior of living room. See App. 10. 	<p>Smothers reported:</p> <ul style="list-style-type: none"> • Smothers accurately drew locations of the victims and the layout of the house interior. See App. 1.
<p><i>Victims' Injuries</i></p> <ul style="list-style-type: none"> • Michael Robinson – Shot 9 times, likely from one AK-47 style gun • D'Angelo McNoriell – Shot while sitting on couch in front of the living room window; shot only with .45 caliber gun; shot only above shoulders, in neck and the head 	<p>Smothers reported:</p> <ul style="list-style-type: none"> • He shot target (Robinson) many times in quick succession from outside the door with his AK-47. Davis did not shoot Robinson with his .45 • Davis shot man on couch through front window with his .45 pistol. He shot from the ground beneath the window so gun was pointed up.

Importantly, as any observer can see from the video of Smothers' interrogation on April 20, 2008, *the police gave Smothers none of this information*. As James Trainum observed, "Smothers confessed during non-confrontational, non-accusatory interviews where there was no contamination by the police." Trainum Affidavit, 3/23/15, 47; App. 3. He was not asked a single leading question and he never saw any police reports, diagrams of the scene, or photographs from the Runyon murders, during that interrogation or since. Smothers' Affidavit, 3/6/15, 26; App. 1. Rather, Smothers was able to accurately describe the crime purely – and provably – based on his memory alone. Indeed, Sgt. Williams testified that he did not "really" ask Smothers any detailed questions about the Runyon murders. EH, 5/13/10, 54-55. As the Court of Appeals noted, "[N]either Williams nor any other officer thoroughly questioned Smothers about the Runyon Street homicide." COA Opinion at 2, 5.