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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT CRIMINAL COURT OF JEFFERSON COUNTY,
ALABAMA

STATE OF ALABAMA V. JOHNSON TOFOREST ONESHA
01-CC-1996-000386.61

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C001 STATE OF ALABAMA
STATE'S AMICUS CURIAE BRIEF
[Filer: CARR DANNY DARNELL]

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**IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT
JEFFERSON COUNTY, ALABAMA
CRIMINAL DIVISION**

STATE OF ALABAMA,

Plaintiff,

v.

TOFORREST JOHNSON,

Defendant.

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CASE NO. CC1996-386.60

JEFFERSON COUNTY DISTRICT ATTORNEY’S SUPPLEMENTAL AMICUS

CURIAE BRIEF IN SUPPORT OF PETITIONER

COMES NOW The Office of the Jefferson County District Attorney, by District Attorney Danny Carr, respectfully submits this amicus brief in support of Toforest Johnson’s Rule 32 petition and request that a new trial be granted. For the reason contained within this brief, it is the position of the District Attorney’s Office (“the District Attorney”) that Mr. Johnson’s Rule 32 petition should be granted, and that a court of competent jurisdiction grant said request. The District Attorney takes no position regarding Mr. Johnson’s guilt or innocence.

The District Attorney seeks to intervene as *amicus curiae* because of its duty to the Court and the people of Jefferson County. A prosecutor’s duty is not merely to secure convictions, but to seek justice. *Stickler v. Greene*, 527 U.S. 263, 281 (1999). After reviewing the circumstances of Mr. Johnson’s conviction, the District Attorney has determined that its duty to seek justice requires intervention in this case based on several factors.

INTRODUCTION

On June 12, 2020, at the conclusion of an extensive investigation, the Office of the Jefferson County District Attorney (“the DA’s Office”) filed an amicus brief in the Circuit Court of Jefferson County summarizing its conclusion that Toforest Johnson’s capital murder

conviction and death sentence must be vacated in the interest of justice. At the time, for the reasons detailed in this report, the DA's Office concluded that Johnson's conviction was fundamentally unreliable and that the duty to seek justice required intervention in this case.

The DA's Office launched its Conviction Review Unit (CRU) on January 1, 2021. In doing so, we established a formal protocol for reviewing past convictions, including a protocol for creating reports upon completion of the review of a case. Because the CRU was not established until after the DA's Office's review of Johnson's case, there was no official report produced at the time. However, the office is pleased to provide this concise summary of its investigation with detailed support for its conclusion that the conviction and death sentence of Toforest Johnson cannot stand.

This report is based on a review of the entire prosecution and law enforcement file in this matter; trial and post-conviction transcripts; pleadings filed by the State and the defense; interviews with trial prosecutors, defense and post-conviction counsel, and witnesses; recordings of witness interviews with investigators; and consultations with the victim's family.

A significant impetus for the DA's Office's thorough investigation of Johnson's case was the position of the original trial prosecutor, Jeff Wallace. Wallace served as the lead prosecutor in this case for four years and knew the case better than anyone else. He sought and obtained Johnson's conviction and death sentence over the course of two trials and many years. He now firmly believes, in light of information about which he was unaware at the time he prosecuted this case, that Johnson should receive a new trial. While Wallace's position alone is not dispositive, it did corroborate the necessity of this office conducting a thorough review.

SUMMARY OF BASIS FOR CONCLUSION THAT NEW TRIAL IS WARRANTED

Jefferson County Deputy Sheriff William G. Hardy was shot and killed in the parking lot of the Crown Sterling Suites hotel in Birmingham, Alabama on July 19, 1995. Deputy Hardy was a dedicated and beloved 23-year veteran law enforcement officer.

Five men and one woman were arrested and charged in connection with the murder: Omar Berry, Quintez Wilson, Leon Colvin, Latanya Henderson, Ardragus Ford, and Toforest Johnson. The charges were eventually dropped against Berry, Wilson, Colvin, and Henderson. Johnson and Ford were each tried separately for Deputy Hardy's murder, and the initial trials of each man ended in a mistrial when the jury could not agree on guilt. At Johnson's second trial, in 1998, he was convicted of capital murder and sentenced to death. At Ford's second trial, in 1999, he was acquitted and released.

Johnson has always maintained his innocence, stating that at the time of the shooting he was at Tee's Place, a nightclub across town. At trial, there was no physical evidence or eyewitness accounts tying him to the crime. Instead, the case centered on the testimony of one witness, Violet Ellison, who claimed she overheard Johnson confess to the murder on a three-way phone call on which she was eavesdropping. Nobody contests that Ellison is the key to Johnson's conviction and the reason he is on death row today.

There were reasons to doubt Ellison's credibility from the beginning. For example, her testimony conflicts with the physical evidence, and the notes she claimed to have taken contemporaneously contained information she knew only from other sources. In fact, the grand jury was presented with an account that contradicted Ellison's account, even after she came forward. (The grand jury was told that Ford and Berry shot Deputy Hardy.) In the years since

Johnson's trial, additional evidence has undermined Ellison's credibility and the case against Johnson:

- In 1999, just after Johnson was convicted, the theory of the murder that was based on Ellison's testimony was abandoned in the trial of Ardragus Ford. At Johnson's trial, based on Ellison's testimony, it was argued that Johnson and a man named Quintez Wilson shot Deputy Hardy. At Ford's subsequent trial, the argument was that Ford pulled the trigger. The names Violet Ellison and Quintez Wilson were never mentioned. This was because at Ford's trial, Yolanda Chambers was the key witness, even though she had been called a "liar" at Johnson's trial and even though she had admitted telling "hundreds of lies" to the police about the case. (Chambers' original claim that Johnson was involved – which she later recanted – was the reason he was arrested in the first place.)
- In 2008, multiple alibi witnesses submitted sworn, uncontested affidavits that they saw Johnson across town from the crime scene the night of Deputy Hardy's murder.
- In 2014, lead prosecutor Jeff Wallace acknowledged in a court hearing that the State's case against Johnson was "not very strong because it depended on the testimony of Violet Ellison."
- In 2019, it was discovered that the State paid Ellison \$5,000 for her testimony. This was just months after the circuit court was told that the State's files contained nothing about anyone applying for a reward or being granted a reward in the matter of the murder of Deputy Hardy. Months later (and 17 years after Johnson first alleged that Ellison had been paid), a check for \$5000 surfaced. The

check dated August 18, 2001 was paid to Violet Ellison for her testimony against Johnson in this case.

- In 2020, lead prosecutor Wallace announced his support for a new trial for Johnson.
- In 2022, it was revealed that Ellison served as a key witness for the State in several other criminal cases, including one Jefferson County case, pending at the same time as the Johnson case, that resulted in an acquittal and another that was dismissed prior to trial.

The conclusion that Johnson's conviction is fundamentally unreliable is not based on any one fact. Instead, it is based on the totality of the facts. Johnson's conviction hinges on Ellison's account. And we know now that the physical evidence contradicts Ellison's account *and* that Ellison's notes contained information based on other sources *and* that credible alibi witnesses place Johnson elsewhere at the time of the crime *and* that Ellison was paid \$5,000 for her testimony. We also know that Ellison was not believed by law enforcement initially *and* that a different theory of the case that contradicted her account was pursued after Johnson's trial *and* that the lead prosecutor now has such grave concerns about Ellison's account that he supports a new trial for Johnson.

When reviewed all together, the conviction and death sentence in this case cannot be justified or allowed to stand.

CONCLUSION

The role of the Conviction Review Unit is to assess convictions holistically. The evidence in this case has unraveled over 20 years. It has not been possible, until recently, to fully appreciate the full extent to which the foundation of this conviction has disintegrated. The jury

and judges who previously assessed this case did not have the benefit of all of the information that we have access to now.

The DA's Office's conclusions concerning the facts discussed in this report are not influenced by the opinions of the public or those involved in the case. The findings are based on a thorough review of the evidence in this case. A thorough review and investigation of the entire case leaves no confidence in the integrity of Johnson's conviction. The interest of justice demands that Johnson be granted a new trial.

/s/ Danny Carr
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CERTIFICATE OF SERVICE

I do hereby certify that on May 20, 2024, the forgoing document was electronically filed with the Clerk using the Alafire system and served via email on the following counsel:

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