



## Special Master's Final Report

The Honorable Paul Renner  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 6003 - Representative Gottlieb  
Relief/Sidney Holmes/State of Florida

### SUMMARY

This is an equitable claim for \$1,722,000 to compensate Sidney Lamar Holmes for 34 years of wrongful incarceration under a 400-year prison sentence.

### FINDINGS OF FACT

#### **Crime and Initial Investigation**

On June 19, 1988 (Father's Day), at around 6:30 p.m., Vincent Wright and Anissia Johnson were robbed at gunpoint while at the OneStop convenience store located at 2525 NW 6<sup>th</sup> Street, in Broward County, Florida. Ms. Johnson was pregnant with Mr. Wright's child at the time of the robbery. The two victims had stopped at the OneStop to put air into one of the tires of Mr. Wright's 1983 Mercury Cougar vehicle. Mr. Wright was putting air in the right rear passenger side tire of the vehicle while Ms. Johnson remained in the locked vehicle. Two armed men approached Mr. Wright and demanded money while each brandished a semi-automatic handgun (with a magazine, not a revolver). Mr. Wright informed the perpetrators that he did not have any money and they proceeded to forcibly remove the gold chain he was wearing around his neck.

Around that same time, a third perpetrator arrived driving a brown Oldsmobile vehicle. Mr. Wright informed police that the brown Oldsmobile had a hole in the trunk where the lock should be and looked as if someone could use a screwdriver in the hole to open the trunk. According to police reports and subsequent depositions, the driver instructed the two armed men to take Mr. Wright's vehicle since he did not have any money to steal. Mr. Wright instructed Ms. Johnson to get out of the vehicle and let the men take it. The first two perpetrators proceeded to get into Mr. Wright's vehicle and drove eastward, while the third perpetrator, driving the brown Oldsmobile, drove off toward the North. Ms. Johnson called the police while Mr. Wright left the scene with an acquaintance to attempt to follow the men and retrieve his car. No shots were fired and neither of the victims were injured. Mr. Wright's necklace, some change from his car, and his car were stolen at the scene. Mr. Wright's car was found abandoned the next morning and was subsequently returned to him with extensive damage. No fingerprints were taken from Mr.

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DATE: 1/25/2024

Wright's vehicle upon its location and return.

Following the incident, Mr. Wright told his brother, Milton Wright, about the robbery and described the three men and the brown Oldsmobile. Milton Wright told Mr. Wright that the same thing had happened to him earlier on the same day while he was stopped at a stoplight about five minutes away from the OneStop. However, Milton Wright explained that four perpetrators attempted to rob him, with three passengers getting out of a brown Oldsmobile with a "busted" lock on the trunk while the fourth man stayed in the vehicle. Milton Wright was not at the OneStop during the incident in question and did not witness the robbery of Mr. Vincent Wright and Ms. Anissia Johnson.

Under the belief that the same perpetrators who tried to rob him earlier in the day were the ones who attempted to rob his brother, Milton Wright began to drive around the area in search of the suspect vehicle, the brown Oldsmobile. After locating what he suspected to be the brown Oldsmobile in question, he informed Mr. Vincent Wright of the license plate number. Mr. Vincent Wright called the police with the information gathered by Milton Wright and was subsequently told by the police that it was not the car involved in either incident. Two weeks later, Milton Wright found himself driving behind another brown Oldsmobile Cutlass and wrote down the license plate number. The second vehicle did not have a broken lock or a hole in the trunk and Mr. Milton Wright told his brother that the vehicle's "lock was fixed." He provided that second license plate number to Mr. Vincent Wright, who reported the same to the police.

Upon a search of the license plate number, the police learned that the vehicle belonged to Mr. Sidney Lamar Holmes, Jr., a black male who had previously pled guilty to two armed robberies which occurred on August 31, 1984, four years earlier. Based solely upon Mr. Milton Wright's identification of Mr. Holmes' Oldsmobile, Mr. Holmes became the only suspect in the armed robbery incident.

Immediately following the incident, Ms. Johnson admitted that she did not get a good look at any of the three perpetrators and was unable to make an identification throughout the case. A number of photo lineups were conducted and Ms. Johnson consistently was unable to make a single identification. Mr. Wright was not present during the initial police report taken by Deputy Kenneth Smith on the date of the incident. In fact, Deputy Smith took Ms. Johnson's statement after the incident and was unable to locate Mr. Wright to take his statement. Subsequently, Deputy Smith was never contacted by Mr. Wright per the Deputy's request to speak with him about the incident.<sup>1</sup>

### **Claimant's Identification and Arrest**

Following the robbery, Ms. Johnson described the first two perpetrators as black men in their twenties.<sup>2</sup> Ms. Johnson stated that she saw a brown car pull up but did not see the driver.<sup>3</sup> As Mr. Wright left the scene of the incident to pursue his stolen vehicle, Ms. Johnson was the only victim/witness at the scene to offer a statement and description of the perpetrators. Mr. Wright first spoke with police after the incident on June 28, 1988, nine days after the robbery, and did not offer a description of the driver in question. On July 25, 1988, during a recorded sworn statement, Mr. Wright only described the driver as a black man.<sup>4</sup> During the July 25<sup>th</sup> statement, Mr. Wright was able to offer a description of the other two perpetrators in more detail, including the clothing they were wearing and a more specific description of their skin color.

During his first deposition on January 12, 1989, Mr. Wright described the driver of the vehicle as being short, dark-skinned, with big lips.<sup>5</sup> During a second deposition on March 23, 1989, Mr. Wright described the driver as a short dark-skinned man around 5'6" and weighing around 170

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<sup>1</sup> Deposition of Deputy Kenneth Smith, Jan. 12, 1989 at 15.

<sup>2</sup> Smith Dep. at 11.

<sup>3</sup> Sworn Statement of Anissia Johnson, July 28, 1988.

<sup>4</sup> Sworn Statement of Vincent Wright, July 25, 1988.

<sup>5</sup> Wright S.S. at 2.

pounds. He further described him as being muscle-bound, having big lips, a lot haircut, muscular arms, and being a little overweight.<sup>6</sup> This second deposition occurred after three photo lineups, a live lineup, and Mr. Holmes' arrest.

### *First Photo Lineup*

Detective Robert Campbell, of the Broward County Sheriff's Office, made contact with the victim, Mr. Wright, on June 28, 1988, approximately 9 days after the date of the incident. Detective Campbell presented Mr. Wright with a photo lineup book of about 250 photographs. The photographs in the book were of people who had previously been arrested for robbery or had been contacted in connection to any possible robberies. Detective Campbell asked Mr. Wright to look through the lineup book and see if he was able to identify anyone in the book as one of the perpetrators from the June 19<sup>th</sup> robbery. Mr. Wright was unable to make an identification from the lineup book. Mr. Holmes' photograph was not included in the initial lineup book of 250 photos.<sup>7</sup>

Ms. Johnson was also presented with the 250-photo lineup book and was unable to make an identification.

### *Second Photo Lineup*

After Mr. Holmes' vehicle was identified by Mr. Milton Wright and Mr. Holmes subsequently became the only suspect in the case, a second photo lineup was compiled. On July 1, 1988, Detective Campbell presented a 6-photo lineup to Mr. Vincent Wright. A photo of Mr. Holmes from his arrest in 1984 was included as one of the 6 photographs. Mr. Vincent Wright was given the opportunity to examine the photo lineup and was unable to make an identification. Ms. Johnson was provided with the 6-photo lineup and was unable to make a single identification.

### *Third Photo Lineup*

After making contact with Mr. Holmes in regards to the robbery, Detective Campbell requested to take a new photo of him to use in the investigation. Mr. Holmes complied with the request and agreed to speak with Detective Campbell, asserting his innocence throughout the investigation. Detective Campbell used the new photo of Mr. Holmes and created a third lineup, consisting of 6 photographs. In creating the third lineup, Detective Campbell chose five other photographs of similar looking black males to include in the lineup. Mr. Holmes was the only person from the first 6-photo lineup to appear in the second 6-photo lineup.

On July 25, 1988, Detective Campbell provided the third photo lineup to Mr. Wright. Mr. Wright identified Mr. Holmes as one of the three perpetrators from the June 19<sup>th</sup> robbery. Detective Campbell presented the third lineup to Ms. Johnson and she, again, was unable to make an identification. Detective Campbell did not pursue any additional leads or suspects and proceeded to focus his attention arresting Mr. Holmes.<sup>8</sup>

### *Live Lineup*

On October 6, 1988, Mr. Holmes was arrested for the robbery at the OneStop. On October 20, 1988, Mr. Wright attended a live lineup at the Broward County Jail to identify the suspect in the robbery. During a live lineup of six men, Mr. Wright positively identified Mr. Holmes as the driver and third perpetrator of the robbery. At the time of the live lineup, Mr. Wright had previously seen Mr. Holmes' photo two times in two photo lineups. No other person in the live lineup had been included in the prior photo lineups. No other arrests were made and the remaining two perpetrators were never identified.

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<sup>6</sup> Deposition of Vincent Wright, March 23, 1989 at 9, 19-21.

<sup>7</sup> Deposition of Detective Robert Campbell, Jan. 12, 1989 at 5.

<sup>88</sup> Campbell Dep. at 17.

At the first day of Mr. Holmes' trial on April 24, 1989, Mr. Wright positively identified Mr. Holmes in court as the driver of the brown car.

Ms. Johnson was informed of the live lineup on October 20 but did not attend and, thus, did not make an identification. Ms. Johnson continued to be unable to make an identification throughout all three photo lineups and maintained that she was unable to make an identification throughout the remainder of the investigation and trial. At trial, Ms. Johnson, who previously stated that she did not see the driver inside of the brown car, testified that she saw a black, heavysset man in the driver seat of the car.

### *Arrest*

Mr. Holmes was arrested by the Broward County Sheriff's Office on October 6, 1988, at his mother's home. Pursuant to transcripts reviewed by the Special Master, Mr. Holmes fully complied with the investigation while asserting his innocence throughout. Mr. Holmes did not resist the arrest and did not have any significant sums of money or jewelry on him at the time of the arrest.<sup>9</sup>

### **Claimant's Alibi**

Mr. Holmes maintained that he was not involved in the crime as he was at his parents' home the entire day on June 19, 1988. The date in question was Father's Day and Mr. Holmes spent the entire day at his family's house with neighbors, friends, and family members celebrating the holiday with a large family meal and driving a go-kart around the street. Six witnesses from the Father's Day festivities corroborated Mr. Holmes' alibi, noting that he was present at the house from the morning until late into the evening. Further, the witnesses provided that Mr. Holmes' brown Oldsmobile was parked under a tree in the yard of the house and did not move the entire day.

At the original trial and throughout the CRU and IPF's investigation, the witnesses from the Father's Day picnic at Mr. Holmes' family's house confidently asserted that he was present at the house the entire day. The consistency in the witness statements and confidence that Mr. Holmes was present for the entirety of the day strongly supports Mr. Holmes' alibi and his inability to have perpetrated the robbery.

### **Trial and Conviction**

During the pre-sentence investigation, the prosecutor, Mr. Peter Magrino, asked the court to impose an 825-year prison sentence for Mr. Holmes. Prosecutor Magrino argued that Mr. Holmes' prior criminal conviction for armed robbery combined with his alleged actions in this matter required a sentence greater than the term of life so that "Mr. Holmes could not be released from prison while his body was still functioning."<sup>10</sup>

Prosecutor Magrino further rationalized that he had given Mr. Holmes numerous opportunities to come clean about the robbery and implicate the other two perpetrators but he "chose not to accept it" and refused to offer any helpful information.<sup>11</sup> It is the Special Master's belief that Mr. Holmes' was not simply refusing to assist the investigation but truly did not have any knowledge of the incident and was unable to offer information with respect to an incident he was not a part of.

Mr. Holmes' trial took place on April 24-26, 1989, before a jury of his peers, where he was found guilty of armed robbery. During the sentencing hearing, Judge Grossman indicated that the 825-year sentence requested by the prosecution was an overreach, stating that it was, "a little bit much," and sentenced Holmes to 400 years in prison.

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<sup>9</sup> Campbell Dep. at 24.

<sup>10</sup> Transcript from the Pre-Sentence Hearing of Mr. Holmes on May 17, 1989.

<sup>11</sup> *Id.*

## CRU Investigation

### *CRU Background*

The Broward County Conviction Review Unit (CRU) is a specialized unit within the State Attorney's Office of the 17<sup>th</sup> Judicial Circuit which was created in 2019.<sup>12</sup> The purpose of the CRU is to identify whether innocent defendants have been wrongfully convicted.<sup>13</sup> In those cases, the CRU works to promptly remedy the wrongful conviction. Mr. Holmes' case is only the second exoneration since the CRU was created in 2019. The Unit has had several inculpatations in which they found the petitioner did commit the crime. However, the vast majority of petitions submitted to the CRU end up being closed out after a preliminary review reveals that not grounds exist for further investigation.<sup>14</sup>

The CRU reviews felony convictions where there is a plausible claim of innocence and prioritizes cases where the petitioner is incarcerated and was convicted of a serious or violent felony.<sup>15</sup> The claim must be capable of being substantiated by credible, factual information and evidence not previously considered by the original fact finder.<sup>16</sup> The CRU utilizes the guidelines for its screening process provided by the Quattrone Center for the Fair Administration of Justice, the preeminent national research and policy organization that advises CRUs across the country on best practices.<sup>17</sup>

Once the CRU determines a petition for request to review a case meets the required conditions, the unit conducts an extensive review and reinvestigation of the evidence in the case. Additionally, the CRU impanels an Independent Review Panel comprised of legal professionals and citizens to take an unbiased look at the evidence in the case and identify their own conclusions as to the reasonable doubt and actual innocence of the specific case.

### *CRU and Innocence Project Investigation*

Mr. Holmes contacted the CRU in November of 2020 asserting his actual innocence for the 1988 armed robbery at the OneStop in Broward County. During the screening stage, Mr. Holmes asserted his a plausible claim of innocence. Subsequently, the CRU asked the Innocence Project of Florida (IPF) to assist Mr. Holmes in his case. The CRU and the IPF then conducted an extensive collaborative, post-conviction investigation during 2021-2022.<sup>18 19</sup>

The CRU and IPF conducted a thorough post-conviction investigation, reviewing all existing materials from the original case, consulting with experts in eyewitness identification, alibi composition, and re-interviewing victims, witnesses, and law enforcement who were involved in the original case. Following the review, the CRU concluded that there was reasonable doubt as to Mr. Holmes' guilt and that it was highly likely that he was factually innocent of the armed robbery. Further, based on the totality of the evidence known today, the CRU concluded that the Broward State Attorney's Office would not have charged Mr. Holmes if the case were presented today.<sup>20</sup>

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<sup>12</sup> Broward County State Attorney, *FAQs*, <https://browardsao.com/wp-content/uploads/2021/01/HP-FAQs-re-ConvictionReviewUnit.pdf> (last visited Jan. 21, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> Email from Arielle DembyBerger, Assistant State Attorney, Conviction Review Unit with the Office of the State Attorney for the 17th Judicial Circuit (Jan. 22, 2024), on file with the House Civil Justice Subcommittee.

<sup>15</sup> *Supra* note 12.

<sup>16</sup> *Id.*

<sup>17</sup> Arielle DembyBerger, *Conviction Review Unit Final Memorandum*, Feb. 20, 2023, on file with the House Civil Justice Subcommittee.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> The collaboration between the CRU and IPF was in furtherance of a multi-year U.S. Department of Justice grant between the CRU and IPF to screen and investigate cases of wrongful conviction. The goal of the congressionally authorized program is to create a non-adversarial approach to identifying and remedying wrongful convictions in a more time and cost-effective manner.

<sup>20</sup> *CRU Final Memorandum* at 2.

After reaching its own conclusion from the extensive reinvestigation, the CRU convened an Independent Review Panel (IRP). The specific IRP for Mr. Holmes' case was composed of six Broward County residents. Five of the members were attorneys from the community, including a retired career prosecutor, former public defenders, defense attorneys, civil attorneys, a former president of the Florida Bar Association, a hearing officer, and a former City Commissioner and Vice Mayor.

The IRP was given all transcripts, sworn statements, case docket, post-conviction motions, evidence, memorandums, legal research, and the joint investigation by the CRU and IPF. The panel was given the opportunity to ask questions to which the CRU conducted additional legal research and investigation to provide answers to said questions. After a roundtable discussion of the evidence, the IRP unanimously determined that a complete review of the evidence demonstrated that the case against Mr. Holmes gave rise to a reasonable doubt as to his culpability. Five out of the six panel members expressed their belief that Mr. Holmes was actually innocent and should be exonerated immediately.

The IRP presented its conclusions to State Attorney, Harold F. Pryor. State Attorney Pryor agreed with the IRP that Mr. Holmes' sentence should be vacated. With the agreement of the State, Mr. Holmes' conviction and sentence was vacated on March 13, 2023; the State immediately dropped the associated charges, and Mr. Holmes was released from prison.

#### *Expert Analysis (Witness Identification and Memory)*

The IPF consulted with Dr. Lora Levett, an expert in the field of psychology and eyewitness identification, to conduct a review of the case materials and prepare a report explaining the relevant psychological research on eyewitness memory and the impact on eyewitness testimony and identifications. Upon review of Dr. Levett's credentials, it is clear to the Special Master that she is a qualified expert on the subject matter.<sup>21</sup>

Dr. Levett produced a thorough 22-page report in which she identified eleven significant issues with the eyewitness testimony and identification made in Mr. Holmes' case. Dr. Levett's report focused on the following issues:

- Weapon Focus Effect;
- Significant witness stress;
- Multiple perpetrators and divided attention;
- Exposure duration and time estimation;
- Post-event co-witness contamination;
- Retention interval;
- Multiple lineup procedures;
- Lineup composition;
- Biased instruction;
- Lack of investigator blindness in administering the lineup procedure; and
- Witness confidence and accuracy.

While the entirety of Dr. Levett's report was persuasive, it was the explanation and analysis of the flaws in the lineup procedure and multiple lineups presented that were the most persuasive to the Special Master. Given the report's insight into how memory functions and the importance of a sterile and properly composed lineup, the procedures used in Mr. Holmes' case are of significant concern. It is a strong possibility that the victim, Vincent Wright, was correlating his recognition of Mr. Holmes to the previous photo lineups he had been shown (in which Mr. Holmes' photo was included and Mr. Wright was unable to make an identification) rather than his actual recollection of the perpetrators from the day of the incident.

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<sup>21</sup> See Lora M. Levett, Ph.D., *Report on the State of Florida v. Sidney Holmes*, on file with the House Civil Justice Subcommittee.

Given the myriad of issues surrounding the identification of Mr. Holmes, the lack of any other evidence supporting the theory that Mr. Holmes was involved in the crime, and Mr. Holmes' strong alibi supported by multiple witnesses, it is highly unlikely that Mr. Holmes was involved in the robbery in question. In fact, it seems more than plausible that once Mr. Holmes' vehicle was identified as matching the perpetrator's vehicle, the investigation became the victim of tunnel vision, with a conviction of Mr. Holmes by any means necessary as the ultimate goal.

The CRU consulted with Dr. Laura J. Shambaugh, who conducted an independent review of the materials and drafted a concurring review of the report by Dr. Levett.<sup>22</sup> Upon review of her credentials, it is evident that Dr. Shambaugh is a qualified expert in legal psychology and eyewitness memory.

In her concurring report, Dr. Shambaugh agreed with the findings stated in Dr. Levett's report, again emphasizing the significance of the lineup fairness and multiple lineups throughout the investigation. Both the report by Dr. Levett and the concurring report by Dr. Shambaugh were incredibly insightful, informative, and persuasive.

#### *Additional Expert Statements*

One additional source of information that was of note was information provided by Mr. Dave Pfaff, a historian/archivist at the R.E. Olds Transportation Museum in Lansing, Michigan. Mr. Pfaff responded to a request from the CRU for information about the Oldsmobile Cutlass vehicle. During a phone call on August 2, 2022, Mr. Pfaff told a CRU investigator that the Oldsmobile Cutlass was a "standout seller of the 1980s."<sup>23</sup> In 1988, Oldsmobile produced 15 different variations of the Cutlass model with 396,386 produced that year alone. Further, he told the investigator that the Oldsmobile Cutlass was the best-selling car in the United States from 1976-1983.<sup>24</sup>

The information from Mr. Pfaff supports the notion that Mr. Holmes' 1979 Oldsmobile Cutlass was not a rare car. In fact, it was one of the most popular models of car in the nation at that time, making the identification of a specific car of such popularity questionable. As such, the historical popularity of the Oldsmobile Cutlass makes the misidentification of Mr. Holmes' vehicle more probable.

#### **Claimant's Criminal History**

Mr. Holmes had two prior criminal convictions before his conviction and incarceration for the OneStop robbery. Both prior convictions were for armed robbery stemming from two incidents that both occurred on August 31, 1984. In both incidents, Mr. Holmes was driving his car with Steven Glover, his co-defendant, in the passenger seat. Around 9:30 p.m., Mr. Glover exited the vehicle, approached two people, and robbed them at gunpoint. An hour later, Mr. Glover, again, exited the vehicle, approached five people gathered in a parking lot, and robbed them at gunpoint. Mr. Glover returned to Mr. Holmes' car and Mr. Holmes drove away; Mr. Holmes did not exit the vehicle for either incident and acted solely as the driver while Mr. Glover committed the robberies.

When police began to follow Mr. Holmes' car moments after the robbery, Mr. Glover fled the vehicle and Mr. Holmes stopped the vehicle and gave himself up to the police. Subsequently, Mr. Glover gave a full confession to the crimes and told police that he committed the robberies because he needed to come up with a sum of money by the following day to purchase a car. Mr. Glover provided that he did not share any of the money or items stolen with Mr. Holmes and that Mr. Holmes was only the driver and never even had a weapon. Further, Mr. Holmes fully

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<sup>22</sup> See Laura J. Shambaugh, Ph.D., *Concurring Review of the Report on State of Florida v. Sidney Holmes* by Lora M. Levett, Ph.D., on file with the House Civil Justice Subcommittee.

<sup>23</sup> Amy Carr, *Investigation Contact Notes: R.E. Olds Transportation Museum*, Aug. 4, 2022, on file with the House Civil Justice Subcommittee.

<sup>24</sup> *Id.*

complied with police and provided a detailed confession of his involvement (unlike the instant case in which he adamantly denied having any knowledge to offer investigators). Mr. Holmes was sentenced to 5.5 years in prison and was released on March 17, 1987.

Aside from his involvement as the driver for Mr. Glover, Mr. Holmes has no other criminal history. He has not been charged with or convicted of any other misdemeanor or felony offenses.

### **Claimant's Record During and After Incarceration**

Despite facing a 400-year prison sentence, Mr. Holmes was determined to keep his head down and make the most out of his time in prison, all the while maintaining his innocence. During his 34 years of incarceration, Mr. Holmes only had seven minor violations, such as "being in an unauthorized area" and "telephone violations." None of the minor violations were for acts of violence. In fact, during the last 13 years of his incarceration, Mr. Holmes did not receive a single violation.

During his time in prison, Mr. Holmes has been working on self-improvement and remained a trusted and contributing member of the prison. He has served in many capacities including working in food service, as a chaplain assistant, and working in the prison store room. He was responsible for baking, cooking, and completing paperwork in his multiple roles. During his incarceration, Mr. Holmes also took numerous courses offered through the Florida University system and obtained his paralegal certification from the Blackstone Career Institute. Mr. Holmes obtained various food handling and food management certificates and continues to work in food service and nutrition now that he has been released from prison.

Mr. Holmes is currently working in food service and nutrition for Encompass Rehabilitation Hospital. In fact, Encompass has recently applied for a grant for Mr. Holmes to get certification to become a food service director/manager in a hospital setting.

Mr. Holmes' daughter was only seven months old when he was incarcerated in 1989. As such, he has spent his time since his release trying to rebuild a relationship with his daughter and build relationships with his five grandchildren. He is happy to be working in the healthcare industry, which was always a goal for him, even prior to his incarceration. It is apparent that Mr. Holmes took a difficult situation and made the most of it. While it would have been easy to give up while facing a 400-year sentence, Mr. Holmes used the opportunities he was offered to work towards creating the life he had always wanted, with the hope that he would one day be exonerated.

## POSITIONS OF CLAIMANT AND RESPONDENT

### **Claimant's Position**

The Claimant asserts that he is actually innocent of the charges and seeks monetary compensation for his time spent wrongfully incarcerated. At the hearing on his claim bill, Mr. Holmes explained to the Special Master that he harbored no ill feelings for his time being incarcerated and that he prided himself on being a good Christian man who believes in forgiveness.

### **Respondent's Position**

The Respondent did not present a case at the final hearing. However, during her testimony as the primary witness for the Claimant, the CRU attorney, Arielle Demby-Berger, testified that the State fully supports the claim bill and confidently believes that Mr. Holmes is actually innocent and was not involved with the armed robbery at the OneStop.

Further, during the CRU's reinvestigation of the incident, both victims, Ms. Anissia Johnson and



Mr. Vincent Wright, expressed their support for Mr. Holmes' release from prison after 34 years. State Attorney Harold F. Pryor has been vocal about his office's golden rule to "do the right thing."<sup>25</sup> In his statement regarding Mr. Holmes' exoneration, he explained that the job of a prosecutor is to promote public safety and ensure justice is served. He further provided that he "commend[s] the victims, witnesses, and law enforcement officers for their candor and assistance in reinvestigating a crime that occurred more than 34 years ago."<sup>26</sup>

## CONCLUSIONS OF LAW

### **Wrongful Incarceration Relief Under Chapter 961**

Chapter 961, Florida Statutes, governs the general process for compensating wrongful incarceration victims. This chapter requires a person claiming to be such a victim to prove that he or she is actually innocent of the crime for which he or she was incarcerated and meet other criteria, including that the claimant not have more than one felony conviction on his or her record that predates or occurred during the wrongful incarceration.<sup>27</sup>

In the instant matter, the Claimant is ineligible for and thus has been unable to obtain relief under ch. 961 because of the two felonies for which he was convicted prior to his conviction and incarceration for the armed robbery at the OneStop. However, the Legislature is not bound by the ch. 961 process and may pass this claim bill in spite of the Claimant's criminal record.

### **Evidentiary Standard for Victims of Wrongful Incarceration**

Generally, a claimant seeking tort damages under a claim bill must prove entitlement to relief by a preponderance of the evidence - that is, that the claimant's position is more likely to be true than untrue. However, a claimant seeking a claim bill for wrongful incarceration must demonstrate actual innocence.

Since 2012, the House Special Master has applied a "clear and convincing" standard to wrongful incarceration claim bills, which is an intermediate burden of proof requiring that the evidence be of "such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."<sup>28</sup> Multiple wrongful incarceration claim bills passed by the Legislature since that time applied the clear and convincing standard, and it is also the standard applied to claims for relief under chapter 961.<sup>29</sup>

While the Legislature is not bound by a previous Legislature's actions, the Legislature's prior acceptance of the clear and convincing standard, coupled with the Legislature's selection of that standard for chapter 961 proceedings, demonstrates that the clear and convincing standard is appropriate for wrongful incarceration claim bills.<sup>30</sup> In light of the foregoing, I find that the clear and convincing standard should apply in the instant matter, in accordance with House precedent and legislative intent.

### **Application of Burden of Proof to Claimant's Case**

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<sup>25</sup> Broward County State Attorney, *Broward State Attorney Announces Conviction Review Unit's Second Exoneration*, March 13, 2023, <https://browardsao.com/conviction-review-unit-second-exoneration/> (last visited Jan. 21, 2024).

<sup>26</sup> *Id.*

<sup>27</sup> See ss. 961.03, 961.04, F.S.

<sup>28</sup> See *S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So.3d 869, 872 (Fla. 2014).

<sup>29</sup> See s. 961.03(3), F.S. (stating that a wrongful incarceration victim is entitled to relief if he or she can present "clear and convincing evidence that [he or she] committed neither the act nor the offense that served as the basis for the conviction and incarceration," and meet other requirements).

<sup>30</sup> Additionally, while not dispositive as to legislative intent, it would seem odd to require a person with "clean hands" seeking relief under chapter 961, F.S., to prove his or her innocence by a clear and convincing standard, while requiring a person ineligible for relief under chapter 961, F.S., to prove his innocence by the lesser preponderance of the evidence standard.

In determining whether the Claimant proved his actual innocence by clear and convincing evidence, I find the following to be persuasive:

- The Claimant maintained his innocence from the time of arrest through his exoneration, consistently denying any knowledge of the crime, even when offered the opportunity to “flip” on the other perpetrators to his benefit.
- There is no direct evidence, such as DNA, fingerprints, or video surveillance, linking the Claimant to the crime.
- The only thing linking the Claimant to the crime was an identification of a vehicle by a third party who was not even present at the incident, and his subsequent quasi-vigilante civilian investigation.
- The photo lineup process in which the Claimant was not identified, and then was subsequently identified after his photo was used in an additional lineup wherein he was the only person to be included in each lineup is problematic.
  - The corresponding expert reports on the issues surrounding the eyewitness identification and the problematic lineup procedures support the probability for misidentification or altered memory.
- The Claimant’s strong alibi has consistently been supported by six different witnesses.
- The popularity of the make and model of the Claimant’s vehicle, along with the lack of any hole or damage to the trunk as was described on the perpetrator’s vehicle lead to significant doubt as to the accuracy of the vehicle identification.
- The issues surrounding the victim’s recollection of the events and the troublesome delay in obtaining his statements give rise to significant concern over the accuracy of the statements and subsequent identification of Mr. Holmes as the perpetrator.
- The overzealous 400-year sentence for an armed robbery in which the Claimant was alleged to be the driver and not one of the main perpetrators and in which none of the victims was physically harmed shows a disregard for consistent sentencing in crimes of a similar nature and demonstrate a plausible bias against Mr. Holmes .

Furthermore, I give great weight to the fact that the Claimant’s innocence came to light through the State’s own investigation by the Broward County CRU. Additionally, at the conclusion of the investigation, the State, convinced of the Claimant’s innocence, recommended and ultimately obtained the vacatur of the Claimant’s judgment and sentence and entered a nolle prosequi. The testimony from Assistant State Attorney Arielle Demby Berger was as persuasive as it was moving. It was obvious that her office takes its responsibilities to heart and wholeheartedly seeks to “do the right thing” while protecting its citizens.

In light of the foregoing, I find that the Claimant has successfully demonstrated, by clear and convincing evidence, that he is actually innocent of the crime for which he was convicted – that is, Armed Robbery with a Firearm.

#### AMOUNT OF CLAIM BILL

Section 961.06(1)(a), Florida Statutes, provides that “monetary compensation [shall] be calculated at a rate of \$50,000 for each year of wrongful incarceration.” The Claimant seeks a total monetary award of \$1,722,000, which is \$50,000 for each of the 34 years that he was wrongfully incarcerated.

#### EXHAUSTION OF REMEDIES

House Rule 5.6(c) requires a claim bill to be held in abeyance until a claimant has exhausted “all available administrative and judicial remedies. . . .”<sup>31</sup> In the instant matter, the Claimant is ineligible for chapter 961 relief due to his criminal record.

#### ATTORNEY AND LOBBYING FEES

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<sup>31</sup> Senate Rule 4.81(6), while including a similar exhaustion of remedies requirement, states that such requirement “does not apply to a bill which relates to a claim of wrongful incarceration.”

The Claimant's attorneys and lobbyists represent him on a pro bono basis. Thus, there are no attorney fees, lobbying fees, or costs associated with this claim bill.

RECOMMENDATION

Because I find that the Claimant has demonstrated by clear and convincing evidence that he is actually innocent of the crime for which he was convicted – that is, Armed Robbery – I recommend that House Bill 6003 be reported FAVORABLY.

Respectfully submitted,



**SARAH R. MATHEWS**

House Special Master

Cc: Representative Gottlieb, House Sponsor  
Senator Jones, Senate Sponsor  
Lucas Parsons, Senate Special Master