IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS, PETITIONER,	)	
vs.	)	No. 17-CR-10-PC
STATE OF TENNESSEE, RESPONDENT.	)	FILED 10 DAY OF June 2024 AT 4:25 AM PM TAMMIE WOLFE, CLERK BY [illegible] CLERK

STATE OF TENNESSEE'S REPLY TO PETITIONER ADAMS' RESPONSE TO THE STATE'S MOTION TO DISMISS WRIT OF ERROR CORAM NOBIS WITHOUT AN EVIDENTIARY HEARING

COMES NOW, the State of Tennessee, by and through undersigned counsel, replying to Petitioner Adams' Response to the State of Tennessee's Motion to Dismiss Petitioner Zachary Rye Adams' Writ of Error Coram Nobis without an Evidentiary Hearing. As grounds, the State of Tennessee would show as follows:

1) **The petition is time-barred, and due process tolling is not warranted.**

As correctly stated in Petitioner Adams' *Response*, the untimeliness of a Writ is not an affirmative defense but rather lies on the [Petitioner], who must show on the [Petition's] face that it is timely or supported by facts to equitably toll the statute of limitations. *Nunley v. State,* 52 S.W.3d 800, 828 (Tenn. 2018). In his *Response*, Petitioner Adams conceded that his coram nobis petition was untimely filed. Therefore, to survive the State's *Motion to Dismiss*, Petitioner Adams' petition must contain specific facts showing entitlement to equitable tolling in order to avoid being summarily dismissed without an evidentiary hearing.

While a witness's recantation of his prior trial testimony may be newly discovered evidence, *State v. Mixon*, 983 S.W.2d 661, 673 (Tenn. 1999), before granting a new trial on the

basis of newly discovered recanted testimony, the trial court must find: (1) it is reasonably well satisfied that the testimony given by the material witness was false and the new testimony is true; (2) the defendant was reasonably diligent in discovering the new evidence, or was surprised by the false testimony, or was unable to know of the falsity of the testimony until after the trial; and (3) the jury might have reached a different conclusion had the truth been told. *State v. Ratliff*, 71 S.W.3d 291, 298 (Tenn. Crim. App. 2001) (citing *State v. Mixon*, 983 S.W.2d 661, 673 n.17 (Tenn.1999); *see also State v. Vasques*, 221 S.W.3d 514 (Tenn. 2007). In other words, the court may grant a petition for writ of error coram nobis if it determines that if the newly discovered evidence had been introduced at trial, "there is a 'reasonable probability' that the result of the proceeding would have been different." *State v. Workman,* 111 S.W.3d 10, 17-18 (Tenn. Crim. App.2002).

Petitioner Adams cannot show that Jason Autry's prior testimony was false, nor has Petitioner Adams provided any specific proposed testimony of Mr. Autry that contradicted his trial testimony—only unsworn blanket statements (he concocted the entire story by reviewing discovery material: he recreated his day and "added Holly to it"; General Nichols trained him to testify). Jason Autry's unsworn statements should be given even less weight than is already applied to recanted testimony, which is "looked upon with distrust rather than favor due to the great temptation to strengthen the weak points of the case discovered during the trial by perjury or subornation of perjury. *Tyler Wayne Banes v. State*, No. 02C01-9508-CC-00249, 1996 WL 218355, at 2 (Tenn. Crim. App. May 1, 1996) (no perm. app. filed).

a. Jason Autry's unsworn statements are insufficient to establish Petitioner Adams' actual innocence.

Petitioner Adams' *Response* argues that his Petition's noncompliance with coram nobis law and procedure is simply a technicality (although Petitioner Adams seemingly acknowledges in his

Response that dismissal could be warranted due to this "technicality"). Post-conviction petitioners seeking a new trial based on newly discovered evidence must satisfy "rather exacting standards." *See* 11 *David Louis Raybin,* Tennessee Practice: Criminal Practice and Procedure § 33:20, at 477 (2008). The contents of a petition for writ of coram nobis are of the "utmost importance." *Harris v. State*, 301 S.W.3d 141, 154 (Tenn. 2010) (Koch, J., concurring in part and concurring in the result)). Judges anticipate that the petition itself embodies the best case the petitioner has for relief from the challenged judgment...[t]hus the fate of the petitioner's case resets on the ability of the petition to demonstrate that the petitioner is entitled to the extraordinary relief that the writ provides." *Id.* at 150.

In his *Response*, Petitioner Adams identified several coram nobis cases in which a non-affidavit petition ended up obtaining an evidentiary hearing. However, many of the examples (which will be discussed below) cited by Petitioner Adams were not challenged by way of the State of Tennessee filing of a motion to dismiss. Petitions for a writ of error coram nobis have always been subject to challenge by a motion to dismiss. *Id.* at 154. The only case cited by Petitioner Adams referencing the State filing a motion to dismiss is *Pittman v. State.* Tenn. Crim. App. LEXIS 56 (Tenn. Ct. Crim. App. 2001). In *Pittman*, the State motioned to dismiss the coram nobis petition, arguing that it was untimely and that it failed to state a cognizable claim for relief. Yet nothing in this opinion indicates that the State's motion to dismiss was addressed prior to the final hearing. At the final hearing, the coram nobis court ultimately dismissed the petition, finding that the proffered newspaper article did not constitute newly discovered evidence.

None of the remaining cases cited by Petitioner Adams stand for the proposition that a non-affidavit coram nobis petition is sufficient to justify an evidentiary hearing. *See Freshwater v. State*, 160 S.W.3d 548 (Tenn. Crim. App. 2004) (Involved undisclosed Brady material concerning

a written witness statement that implicated someone other than the Defendant as the shooter. The written statement was in the possession of the State at trial and was not turned over to the defense counsel during discovery, who had no knowledge of the evidence's existence. The Court of Criminal Appeals reversed the coram nobis court's summarily dismissal of the petition and ordered an evidentiary hearing); *Hayes v. State*, 2019 Tenn. Crim. App. LEXIS 439 (Tenn. Ct. Crim. App. 2019) (Coram nobis court denied the petition - while the defendant was reasonably diligent in securing an affidavit, the victim's recanted testimony was not likely to have changed the outcome of the defendant's trial and the majority of her hearing testimony was merely cumulative of her trial testimony); *Bland v. State*, 2022 Tenn. Crim. App. LEXIS 169 (Tenn. Crim. App. 2022) (Coram nobis court declined to grant the petition after expressing doubt about the veracity of the witness's testimony and finding that there was no reasonable basis to conclude that, had the recanting of his testimony been presented, the result of the proceedings would be different). *Ward v. State*, 2022 Tenn. Crim App. LEXIS 214 (Tenn. Ct. Crim. App. 2022). (Coram nobis court summarily dismissed the petition, finding that even if the information proffered by the petitioner could qualify as newly discovered evidence, it could not avail her of any relief because the evidence would not have led to a different outcome at trial); *Munford v. State*, 2018 Tenn. Crim. App. LEXIS 151 (Tenn. Ct. Crim. App. 2018) (Petitioner denied relief, finding that the Petitioner's post-conviction claims were time-barred and that the coram nobis claims were without merit).

There is no reason for this Court to be satisfied that Lisa Carroll and Jason Autry's statements, as referenced in Petitioner Adams' petition, have any indicia of truthfulness. Neither statement is in the form of an affidavit. Petitions for coram nobis relief must be supported by affidavits that are "relevant, material, and germane" and are based on the affiant's "personal knowledge." *Harris v. State,* 301 S.W.3d 141, 152 (Tenn. 2010) (*citing State v. Hart*, 911 S.W.2d 371, 375 (Tenn.

Crim. App. 1995). "Affidavits of the witnesses through whom the newly discovered evidence is sought to be introduced must explain the materiality of the evidence and must state that the evidence was not communicated to the prisoner or his or her trial counsel prior to the original trial." *Id.* at 153. Given that Lisa Carroll and Jason Autry's statements are not in the proper form of affidavits, this Court should not consider any reference to these unsworn statements in Petitioner Adams' coram nobis petition.

Moreover, many of the statements included in Katie Spirko's affidavit lack her own personal knowledge, specifically paragraphs 6 (a, 6 (b, 6 (c, 6 (e, 6 (f, 6 (g, 6 (h, and 6 (i). Spirko's affidavit contains inadmissible hearsay of others and does not contain information regarding any newly discovered evidence or its materiality that Katie Spriko herself has personal knowledge of. Similar deficiencies exist in the statements contained in Jennifer Thompson's affidavit. Although it is a signed affidavit by Petitioner Adams' trial counsel, Jennifer Thompson fails to set forth any examples of newly discovered evidence, explain the materiality of any such evidence, or state that the evidence was not communicated to Petitioner Adams' prior to the original trial.

b. Even if Jason Autry's statements from the December 22, 2023, video interview were in the form of a sworn affidavit, his statements are cumulative.

Newly discovered evidence that is "merely cumulative or 'serves no other purpose than to contradict or impeach' does not warrant" coram nobis relief. *State v. Hall*, 461 S.W.3d 469, 495 (Tenn., 2015). When impeachment or cumulative evidence does not establish grounds for showing that it may have resulted in a different judgment, it cannot serve as the basis of relief. *State v. Hart*, 911 S.W.2d 371 (Tenn. Crim. App. 1995).

Petitioner Adams' *Response* unfortunately misconstrues the State's position as to "cumulative" evidence in the context of a coram nobis proceeding. To clarify in the simplest terms, Jason Autry denied any involvement in Holly Bobo's disappearance, rape, and murder until roughly January

2017. At trial, Jason Autry acknowledged that he previously denied any involvement in Holly Bobo's disappearance, rape, and murder and was thoroughly cross-examined by defense counsel on this issue. Jennifer Thomspon confronted Jason Autry with example after example of his previous denials. In his December 22, 2023, video interview, Jason Autry once again claimed that he wasn't involved in Holly Bobo's disappearance, rape, and murder. Jason Autry's video interview is merely cumulative to the evidence and arguments already presented to the fact-finding jury at trial.

Not only is Jason Autry's video interview not "newly discovered evidence," but any potentially useful statements from Jason Autry have already been elicited by Petitioner Adams' trial counsel during his cross-examination at trial and argued to the jury during closing arguments:

"And so Jason Autry was able to sell his death penalty to the government for a tall tale. And what that means is he's arrested in the spring of 2014 on this crime, and he had years and years. He had three years to sit from 2014 until January of 2017 to sit and perfect his story so that he could finally sell it to the government."

Jennifer Thompson, Closing Arguments
Transcript 17, pp. 2654, 6-11.

"So let's talk about Jason Autry and some of what he did. And as you can see, Jason Autry, he's trying to come across -- sitting up here on the witness stand as we looked at him, he comes across as all shucks, I'm just a good ole boy and just trying to do the right thing, and I was lying when I said I was innocent, and now I've come to you and told the truth."

Jennifer Thompson, Closing Arguments
Transcript 17, pp. 2654, 12-19.

The other thing he says is -- the thing to keep in mind also is that when Jason is developing his story, he has access to the discovery, and that's the evidence in the case.

Jennifer Thompson, Closing Arguments
Transcript 17, pp. 2657, 4-7.

Well, remember Jason Autry had access to all the evidence in the case.

Jennifer Thompson, Closing Arguments
Transcript 17, pp. 2658, 5-7.

If you think about -- and I'll try to go through some of it as we go along, but a lot of the "evidence" that Jason Autry talks about, the things that he's using that are going to bolster his story, are things and information that would have been available to him as he was going through the evidence.

Jennifer Thompson, Closing Arguments
Transcript 17, pp. 2658, 13-19.

But Jason Autry was very well coached when he was giving his story, because three times he used the word allegedly. If you're really telling a story about what you saw, you would never ever use the word allegedly.

Jennifer Thompson, Closing Arguments
Transcript 17, pp. 2692, 13-19.

These trial transcript excerpts, coupled with Jennifer Thompson's thorough cross-examination of Jason Autry's previous denials of involvement (set forth in the State's *Motion to Dismiss*, pages 12-14) demonstrate that Autry's trial testimony was attacked and impeached throughout the jury trial. Simply put, Petitioner Adams is not seeking to bring new evidence before this Court that might have an effect on the judgment. Jason Autry's denials of involvement in Holly Bobo's disappearance, rape, and murder were already litigated and at length. As such, Petitioner Adams' coram nobis petition does not contain a cognizable claim.

c. Different Conclusion

To demonstrate that Jason Autry's testimony was only a part of the State's substantial proof of Petitioner Adams' guilt, the State's *Motion to Dismiss* identified numerous witnesses at trial who

testified that Petitioner Adams' made incriminating admissions about his involvement in the victim's kidnapping, rape, and murder, along with multiple items of physical evidence that linked Adams to these crimes. In his *Response,* Petitioner Adams' focuses on attacking the credibility of these trial witnesses, characterizing them as "circumstantial, unrecorded, subjective, immunity-agreement ladened, and otherwise impeachable and/or unreliable." Any attempts, by either party, to discredit trial witness testimony outside the established post-conviction procedures is inappropriate as the fact-finding jurors, who heard the proof and rendered a verdict.

In a coram nobis proceeding, Tenn. Code Ann. § 40-26-105 explicitly identifies the subject matter to be litigated by the parties:

> The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.
>
> T.C.A § 40-26-105(b)

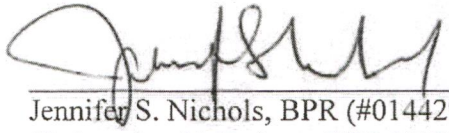
Trial witness credibility is within the province of the fact-finder jury, which must assess and weigh the proof in light of the applicable law and arrive at a verdict of guilt or acquittal. Of course, witness credibility was an issue litigated at trial by both parties. The coram nobis court cannot reweigh or reevaluate the trial evidence and questions regarding "the credibility of witnesses [and] the weight and value to be given the evidence ... are resolved by the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984). Petitioner Adams cannot go outside of the record and reweigh and reevaluate the trial evidence and substitute his opinion for that of the fact-finding jury.

To reiterate, Petitioner Adams' own admissions to multiple individuals concerning his involvement in the disappearance, rape, and murder of the Holly Bobo are the most incriminating pieces of evidence the State of Tennessee presented at trial. His admissions came from his own mouth, not anyone else, including co-defendant Jason Autry. Mr. Autry's alleged "recantation" does not exculpate Petitioner Adams and he cannot show actual innocence, which in plain language means "nothing other than that the person did not commit the crime." *Keen v. State,* 398 S.W.3d 594, 612 (Tenn. 2012).

Conclusion

For the reasons stated in the State's *Motion to Dismiss* and this *Reply*, this Court should summarily dismiss Petitioner Adams' coram nobis petition without an evidentiary hearing for failing to allege specific facts showing entitlement to equitable tolling and/or alternatively, because the information contained in the petition is not newly discovered evidence.

Respectfully Submitted,



Jennifer S. Nichols, BPR (#014429)
Christopher V. Boiano, BPR (#030076)
Assistant District Attorney General
113 West Main Street
Cordell Hull Building, 3rd Floor
Gallatin, Tennessee 37066
615-451-5810 | (fax) 615-451-5836
jsnichols@tndagc.org
cvboiano@tndagc.org

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been emailed and mailed to Douglas Thompson Bates IV, attorney for Petitioner Adams, on this 10th day of June 2024.

Douglas Thompson Bates, IV
Bates & Bates Law Office
406 W. Public Sq., 2nd Floor, Bates Building
P.O. Box 1
Centerville, TN 37033
dtbates4@bates.law

Jennifer S. Nichols / Christopher V. Boiano