

- (2) Paragraph four of this section begins “The evidence assembled here is not speculative...”

The final sentence of this paragraph reads “The star witness who put two men on death row later raped a child, after prosecutors themselves testified at his parole hearing to set him free.” Replace this sentence with the following sentence

The star witness, who gave one man two death sentences and another life without parole, later raped a child, after prosecutors themselves testified at his parole hearing to set him free.

- (3) The box at the end of this section is entitled “Summary of What the Evidence Shows”. The first two sentences of the paragraph read “**Dockside Dolls:** James arrived before his brother. He retrieved a gun from a car trunk after his brother was stabbed – the stabbing is undisputed even by the prosecution.” Replace these two sentences with the following two sentences

**Dockside Dolls:** James arrived before his brother, unarmed. Meyers retrieved a gun from a car trunk after James’s brother was stabbed – the stabbing is undisputed even by the prosecution.

- (4) The box at the end of this section is entitled “Summary of What the Evidence Shows”. The fifth sentence of the paragraph reads “A key eyewitness (Carlton Hilson) was permitted to testify by court order and then never called by defense counsel.” Replace this sentence with the following sentence

A key expert witness (Carlton Hilson) was permitted to testify by court order and then never called by defense counsel.

## **X. Relevant Portions of Judge Marbley’s decision regarding Kareem Jackson**

*Jackson v. Warden, Chillicothe Corr. Inst.*, 2025 U.S. Dist. LEXIS 206067 (S. Dist. Of Ohio)

Opinion by: ALGENON L. MARBLEY

### **OPINION AND ORDER**

Petitioner Kareem Jackson, a prisoner sentenced to death by the State of Ohio, has filed, with authorization by the United States Court of Appeals for the Sixth Circuit, a successive habeas corpus petition. This matter is before the Court for final disposition upon all of the pleadings

and proceedings. Because the Court finds that Jackson's claims are without merit, and that Jackson cannot satisfy the standard for avoiding dismissal of a successive habeas petition set forth in 28 U.S.C. § 2244(b)(2)(B) and 28 U.S.C. § 2244(b)(3)(C), the instant Petition must be DENIED, and this action DISMISSED with prejudice.

#### I. OVERVIEW [\*2]

As the United States Court of Appeals for the Sixth Circuit remarked in its decision authorizing the instant successive petition, this is not Jackson's second federal habeas petition, but his fourth.<sup>1</sup>Link to the text of the note In re Jackson, 12 F.4th 604, 611 (6th Cir. 2021); ECF No. 12, at PageID 197. Jackson raises the following three claims for relief:

First Claim for Relief: Petitioner's sentence is void or voidable because material, exculpatory evidence was withheld from him in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution. *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Second Claim for Relief: Petitioner's sentence is void or voidable because his rights to Due Process and a fair trial were violated by the false and coerced testimony of Ivana King in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution. *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

Third Claim for Relief: Ohio's successor post-conviction statute, O.R.C. § 2953.23(A)(1)(b), as applied, violates the Supremacy Clause because it mandates a post-conviction petitioner must satisfy an additional, higher, standard of proof than this Court's constitutional precedent requires in order to obtain post-conviction review, effectively raising the standard of proof necessary to win relief.

(Petition, ECF No. 1-2, at PageID 36, 38.)

The Sixth Circuit determined that Jackson had satisfied the statutory *prima facie* showing for filing a successive petition—namely that Jackson had presented [\*3] sufficient allegations of fact together with some documentation that would warrant fuller exploration in the district court.<sup>2</sup>Link to the text of the note At issue with respect to Jackson's Brady claim, as framed by

the Sixth Circuit, is that police suppressed: (1) "evidence that Rebecca Lewis, who was a key witness at trial, had initially described the suspect who had hit her in the head with a gun in a way that did not match Jackson, but did match a shorter alternative suspect, 'Little Bee;' " and (2) "a statement from a neighbor support[ing] the inference that Little Bee committed the murders." In re Jackson, 12 F.4th at 609; ECF No. 12, at PageID 194. As for the Napue claim, the Sixth Circuit noted that "Ivana King provided Jackson's counsel with a declaration that law enforcement had intimidated her into falsely testifying that Jackson had confessed to the murders." Jackson, 12 F.4th at 609; ECF No. 12, at PageID 195.

## II. FACTUAL HISTORY

The details of this capital murder are set forth in numerous state court opinions, including the Supreme Court of Ohio's published opinion in *State v. Jackson*, 92 Ohio St. 3d 436, 2001- Ohio 1266, 751 N.E.2d 946 (2001):

The evidence at trial revealed that on the evening of March 24, 1997, appellant and four other individuals decided to rob an apartment in Columbus, Ohio. Appellant and a man called "Little [\*4] Bee" devised the plan, which called for both men to enter the apartment and purchase drugs. The men would then be joined by two others, Michael Patterson and Derrick Boone, who would enter the apartment armed with guns. Malaika Williamson was put in charge of driving the men to and from the robbery.

Just past midnight, on March 25, 1997, Malaika Williamson drove the men to the Lupo Court apartment. The victims, Antorio Hunter and Terrance Walker, were inside the apartment with their friends, Nikki Long and Becky Lewis. Long and Walker were in the back bedroom talking when appellant and Little Bee knocked at the door. Hunter answered the door and allowed appellant and Little Bee to enter. Walker came out of the back bedroom, recognized appellant, shook appellant's hand and said, "I haven't seen you in a long time." Appellant and Little Bee then bought some marijuana.

Almost immediately after the purchase, Patterson and Boone burst into the apartment armed with shotguns. The men searched the apartment for drugs and money. Appellant struck Lewis on the head with his handgun, placed a pillow behind her head and threatened to kill her. Lewis begged appellant not to kill her, and appellant [\*5] refrained from doing so. Appellant led Lewis into the kitchen. Patterson and Little Bee left the apartment, but appellant and Boone remained.

According to Boone's testimony, Walker and Hunter were both lying on the floor. Appellant ordered one of them to crawl beside the other and to lie face down on the floor so that his head was next to the other's. While on the floor, either Hunter or Walker told appellant that he "didn't have no money or weed" and that he wouldn't call the police. Nevertheless, appellant told Boone, "They know my name. I have to kill them." Appellant then grabbed a pillow, hesitated, and shot one of the men in the head. The other, while still lying on the floor, begged for his life, saying, "Please don't kill me. I ain't going to say nothing." Despite his plea, appellant placed a pillow behind the second victim's head. Appellant hesitated again and then shot him in the back of the head.

Following the shootings, appellant and Boone left the apartment and joined the others in the car. Williamson drove the men back to her apartment, where they divided the proceeds from the robbery, which consisted of approximately \$40 in cash, \$60 worth of marijuana, and a cellular [\*6] phone.

In the meantime, Long and Lewis, who had heard the gunshots but had not witnessed the shootings, waited in the kitchen until they felt it was safe to leave. They called Hunter's name, and when there was no response, they went into the living room and saw that Hunter and Walker had been shot. The two women, afraid to leave through the front door, fled through a bedroom window. They went into another apartment and called the police.

Officer Andrew Shuster of the Clinton Township Police Department responded to a dispatcher's call at about 12:42 a.m. Upon arriving at the Lupo Court apartments, the officer found the door to the apartment ajar and discovered the bodies of Hunter and Walker lying face down on the floor just inside the doorway. A cushion with bullet holes was found next to the victims.

Later that morning, an agent from the Bureau of Criminal Identification and Investigation met with Long, who provided him with enough information to make a composite portrait of Boone using a face kit. Police distributed the sketch of Boone to the sheriff's department and to the media. Soon after the release of the composite, Boone turned himself in to the Franklin County Sheriff's Department. [\*7]

Boone cooperated with the police and gave them a statement implicating appellant and the others involved in the shootings. As a result, the police presented Lewis with a photo array lineup, which included a photo of appellant. Lewis positively identified appellant from the photo array lineup as the "guy with the little gun," the person who hit her over the head with the gun during the robbery and threatened to kill her.

Police then collected physical evidence relating to the shootings. Police retrieved a handgun from Williamson's apartment, which was tested and found to have fired the bullets retrieved from Antonio Hunter. The firearms expert could not conclusively state that the handgun fired the other bullet removed from Terrance Walker.

However, this bullet possessed some characteristics matching appellant's handgun, and the bullet was the same caliber as his weapon. Police also searched the apartment appellant shared with his girlfriend, Ivana King, and found a shotgun in a closet and two rifles hidden beneath the molding under the kitchen sink cupboard. Police retrieved nine .38 caliber bullets from the apartment. Police also interviewed Ivana King, who said that appellant had told [\*8] her that "he [had] done two people."

Deputy coroners from the Franklin County Coroner's Office performed autopsies on Hunter and Walker. Each coroner concluded that the victims had died from gunshot wounds to the head.

Appellant was arrested on March 28, 1997, and was subsequently indicted on six counts of aggravated murder for the deaths of Hunter and Walker. Each murder count included two death penalty specifications for multiple murder and murder during an aggravated robbery and/or kidnapping in violation of R.C. 2929.04(A)(5) and (A)(7). Appellant was also charged with four counts of aggravated robbery, four counts of kidnapping, and one count of felonious assault. Each of the fifteen total counts carried a firearm specification.

At trial, the trial court granted appellant's motion for acquittal on count eight, the aggravated robbery of Lewis. However, the jury found appellant guilty as charged on the remaining counts.

At the conclusion of the penalty phase, the jury recommended that the court sentence appellant to death. The trial court accepted this recommendation and sentenced appellant accordingly.

Jackson, 92 Ohio St. 3d at 436-38.

### III. EVIDENTIARY HEARING

On June 7, 2023, this Court conducted an evidentiary hearing during which Ivana [\*9] King testified about the circumstances that prompted her to falsely tell police that Jackson had confessed to killing two people. (Opinion and Order, ECF No. 41; Transcript, ECF No. 47.)

By way of background, several days after the murders, on the morning of Friday, March 28, 1997, police executed a search of Ivana King's apartment on Bancroft, where Jackson was also staying. Police arrested Jackson and eventually recovered several long guns from the apartment. (Warden's Rule 7 Supplemental Exhibits, Interview of Ivana King, ECF No. 24-1, at

PageID 3586.) Several hours later, two detectives picked up King from her mother's nearby apartment in an unmarked car and took King to sheriff's headquarters to get her statement. In her statement, King said, among other things, that Jackson, Boone, and several other men left her apartment on the evening of Monday, March 24, 1997, and that Jackson and Boone did not return until 5:00 or 6:00 am on Tuesday, March 25, 1997. She stated that she did not know where Jackson was during those hours, but that when Jackson did return to the apartment on March 25th, he told her that he had "done two people." (Id. at PageID 3583, 3585, 3587.)

King testified at Jackson's [\*10] trial that the apartment on Bancroft where she lived was in her name, and that Jackson, several of his children, several of her children, and the baby they shared together had been staying at the apartment for a few weeks before the murders. She testified that Boone also began staying with them a few nights a week, and that he kept some belongings there and had a key. She also testified about a telephone call that Jackson made to her just a week or so before her testimony in what she perceived to be his asking her to change the statement she had made to police when they questioned her at headquarters after the search. According to King, Jackson threatened to say that she had been involved in the crimes if she did not change her statement. Specifically, she testified that Jackson wanted her to testify that he had been home with her on the evening of the murders. She also testified that she did not know anything about the guns that police found during their search of her Bancroft apartment. With respect to the statement that she had made to police a year earlier about Jackson telling her that he had "done two people," King confirmed that even though she had heard the tape of her statement [\*11] and had read the transcript of the statement, she denied when asked during her testimony having any recollection about Jackson having made that statement. King also testified that when one of the detectives who picked her up to give her statement said, "I hope you have someone to watch your kids," she took that to mean that they were "going to keep" her if she "didn't say anything." (Trial Tr., King testimony, ECF No. 15-2, at PageID 2189.)

But in a 2015 declaration, obtained by federal habeas counsel while preparing Jackson's clemency case, King stated that, "Kareem Jackson never told me he 'done two people,' or killed two people." (Warden's Rule 7 Supplemental Exhibits, ECF No. 24-1, at PageID 3703.) Her four-

page declaration was also replete with examples and explanations for why she felt coerced by police to tell "them what they wanted to hear\*\*\*." (Id. at PageID 3701-04.) In view of these variations regarding a statement that the Sixth Circuit characterized as "quite incriminating evidence," In re Jackson, 12 F.4th at 611 (quoting Jackson, 681 F.3d 753, 763 (6th Cir. 2012)), this Court determined that an assessment of King's credibility would assist the Court in determining whether Jackson could demonstrate a meritorious Napue claim and satisfy the heightened [\*12] standard applicable to successive habeas petitions. Below are a few key takeaways from King's testimony. (King was the only witness at the hearing.)

First, King confirmed several times that Jackson never made the "done two people" statement to her that she told police he had.

Q: [by Jackson's counsel, Mr. Rossman]: Let's be clear. In your presence, did Kareem Jackson ever say he done two people?

A: From my recollection of my memory, no, he did not say that.

Q: Did you ever testify under oath that you had memory of him saying that?

A: I never testified - under oath, I testified, but I cannot say I remember if I said that he did it at that time.

Q: Is that because he didn't say it?

A: He did not say it. I don't remember him saying it.

Q: If he had said it, do you believe you would have remembered?

A: I would have remembered. I probably would have turned him in. I ain't going to lie.

(Evid. Hrng. Tr., ECF No. 47, at PageID 4064.)

Q: [by Mr. Rossman]: Was the confession true?

A: The confession Kareem told me, no.

Q: Did you make that known to the police?

A: I told them repeatedly that I had no knowledge of Kareem killing those people. I didn't know anything about the guns as well.

(Id., at PageID 4082.) [\*13]

Second, revealed for the first time, or least expanded upon and explained in a way it had not been before, was the length of time between when King was taken by detectives to police headquarters and when King finally gave her two-minute, taped interview/statement. King testified that two plain-clothes officers picked her up at her mother's home around 5:00 p.m. on March 28, 1997. (Id., at PageID 4051-52.)<sup>3</sup>Link to the text of the note Earlier that morning, as referenced above, an untold number of police officers clad in riot-gear and brandishing assault rifles had searched her apartment, recovered weapons and other evidence, and arrested Jackson.

Q: Okay. Once you were - so it was some time - it didn't look like a police station, but it was some area. What did they do when you got there?

A: When we got there, we got out the car. We went through these doors. They took me to a room which had all the guns that they supposedly found at my apartment, and then they took me into another room which didn't have windows.

Q: And when you say "they," you're talking about these two law enforcement persons?

A: Yes.

Q: So you're there about 5:30. And in this other room you're talking about, what happened there? Were you interviewed [\*14] there?

A: By the statement that's - that's what they say, that I was interviewed. But I was talked to for a long time.

Q: Well, this is - okay. Just to be clear, there is a taped interview, and you're talking about now the time - from the time you arrived at this place, this detective bureau, say, until the taped interview, we're talking about this time in between, okay?

A: Okay.

Q: Can you approximate for the Court how much time elapsed between the time you arrived at this place and the time they actually taped your interview?

A: We was there hours before they even taped anything. They were just talking and talking and talking about the murders.

Q: What sort of things were they saying to you?

A: They were asking me about Kareem's whereabouts and about Kareem talking to me and about Kareem, what he - how he know the people that he were with, which would have been Red to me, and these other people which I don't know, can't remember their names, but these other people.

And when I just wasn't, I guess, giving what they needed, they asked me did I have somebody to take care of my children.

Q: What did you understand that to mean?

A: That they were trying to put me in jail.

Q: How long did this go [\*15] on?

A: To me, it seemed like a lifetime. But it was hours and hours, but it seemed like a lifetime.

(Evid. Hrng. Tr., ECF No. 47, at PageID 4051-56 (emphasis added).)

Although King could not independently recall what time she gave her taped statement, ("There was no clocks in the room as well."), she did not dispute that the tape log slip from the detective bureau indicated that her taped interview began at 7:51 p.m. (Id. at PageID 4057.)

Q: But you indicated previously it felt like two or three hours since you had been taken there before they took your interview.

A: Yes.

Q: And during that two- or three-hour period, was it pretty much the police officers talking to you throughout?

A: Yes.

(Id. at PageID 4057-58.)

Third, King testified several times that the "done two people" language of Jackson's alleged confession to her were not her words, were not language that Jackson ever used, and instead were words repeatedly uttered by her interrogators. Similarly, the inclusion in her taped interview of the name "Derrick Boone" as one of the people Jackson left with on the night of the murders was not the product of her own recollection. Specifically, she explained that at the time of her taped interview, [\*16] she did not know that the actual name of the person she knew only as "Red" was Derrick Boone. This suggests that the "done two people" language and

the name "Derrick Boone" were pieces of information that had been suggested to King by her interrogators during the hours preceding her taped interview/statement.

Q: [by Mr. Rossman]: To your understanding, what was it they wanted from you?

A: They wanted me to make sure that Kareem - Kareem would go to jail for the murders.

Q: Was there anything specific they told you to say?

A: When they started, they said just tell us that Kareem done two people. They just kept bringing - reiterating that Kareem done these two people, just tell us.

Q: Was that repeated to you?

A: Yes.

(Id., at PageID 4055.)

Q: Now you previously indicated in your testimony that the officers were telling you that Kareem Jackson done two people?

A: Yes.

Q: So in your answer, you indicate, Kareem Jackson told me he done two people. Are those your words?

A: No. That was the words they kept asking me just to tell them, that he had just done those two people.

Q: And you told them?

A: Yes.

Q: Something else I noticed in your answer on page 1 where you say, Five guys left from my house, Kareem [\*17] Jackson, Derrick Boone, a guy named Red, another guy. Now, Red is Derrick Boone, you indicated, is that correct?

A: I know Red. Derrick Boone I didn't know was Red until the date of the arrest.

Q: When you gave this answer, did you know at that time that Red was Derrick Boone?

A: No.

Q: So I believe your - correct me if I'm wrong, your prior testimony was you didn't know at that time Derrick Boone's real name?

A: No, I did not.

Q: Where did you get the name Derrick Boone from?

A: From the officers or the detectives, whoever they were in the room.

\*\*\*

Q: To be clear, the language Kareem Jackson told me he done two people, where did that phrase he done two people come from?

A: It came from the officer that kept - that were talking to me about the killing.

Q: Is that a phrase that Kareem would have used?

A: No.

Q: Why do you say that?

A: He was a street man, we'll say that. He talked like he belong on the streets.

(Id., at PageID 4061-63. (emphasis added).)

Q: [by Mr. Rossman]: We have talked about that four-word confession "he done two people," correct?

A: Yes.

Q: Did Kareem ever make that statement to you?

A: Not to my knowledge.

Q: Would you remember if he had said it, do you believe?

A: What I remember [\*18] today, no.

THE COURT: In other words, Ms. King, is that the kind of statement that if made to you, you would remember even today?

THE WITNESS: Him stating he done two people, yes, I would remember that if he talked in that language, yes.

THE COURT: Are you saying that he didn't talk in that language?

THE WITNESS: He does not, and to this day does not talk in that language.

(Id. at PageID 4071. (emphasis added).)

Q: [by Mr. Rossman]: So let me try again. The language he done two people you said were not your own words?

A: Correct.

Q: Whose words were they?

A: They were the officers' that were talking to me prior to being taped.

Q: And what did you understand you were required to do when they turned on the tape?

A: I was required to let - to state that Kareem had done two people and that he had told me

(Id. at PageID 4080-81.)

Finally, it was confirmed during the hearing that King's taped statement did not start until 7:51 p.m. (Id. at PageID 4057), and ended just two minutes later, at 7:53 p.m. (Id. at PageID 4059).

#### IV. LEGAL STANDARDS

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#### V. DISCUSSION

A. Ground One: Petitioner's sentence is void or voidable [\*22] because material, exculpatory evidence was withheld from him in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution. *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

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B. Ground Two: Petitioner's sentence is void or voidable because his rights to Due Process and a fair trial were violated by the false and coerced testimony of Ivana King in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution. *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

Jackson argues that his rights to due process and a fair [\*54] trial, as set forth in *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), were violated when the

prosecution presented the false testimony of Ivana King that Jackson had told her, when he returned home the morning after the murders, that he had "done two people." (Petition, ECF No. 1-2, at PageID 79-80; Jackson's Brief, ECF No. 48, at PageID 4184-99.) The Napue evidence, according to Jackson, is the 2015 declaration by Ivana King, as well as the evidentiary hearing testimony before this Court, in which King swore that Jackson had never said to her that he "done two people," and why she felt coerced by police to tell them what they wanted to hear (essentially to incriminate Jackson).<sup>19</sup>[Link to the text of the note](#)

Napue v. Illinois involved a witness falsely testifying that the prosecution had not promised him anything in return for his trial testimony and the prosecutor, knowing that to be false, failing to correct the testimony. The Sixth Circuit has developed a three-part test for determining if the prosecution has committed a Napue violation:

The knowing use of false or perjured testimony constitutes a denial of due process if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. In order to establish [\*55] prosecutorial misconduct or denial of due process, the defendants must show (1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false. The burden is on the defendants to show that the testimony was actually perjured, and mere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony. *Coe v. Bell*, 161 F.3d 320, 343 (6th Cir. 1998) (quoting *United States v. Lochmondy*, 890 F.2d 817, 822 (6th Cir. 1989)).

*Brooks v. Tennessee*, 626 F.3d at 894-95 (cleaned up).<sup>20</sup>[Link to the text of the note](#) The Court considers each element in turn.

#### 1. Actually False

The first element of a Napue claim requires proof that the statement/testimony at issue was actually false. "The burden is on the defendants to show that the testimony was actually perjured, and mere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony." *Coe*, 161 F.3d at 343 (quoting *Lochmondy*, 890 F.2d at 822). That is, a petitioner must demonstrate that the statement in question was "indisputably false,"

not just misleading or inconsistent. *Lochmondy*, 890 F.2d at 823; see also *Rosencrantz v. Lafler*, 568 F.3d 577, 585 (6th Cir. 2009) (citing *Coe*, 161 F.3d at 343.).

The Court is persuaded that the "done two people" statement that King attributed to Jackson was actually false. That is, the Court finds from the evidence, its assessment of Ivana King's credibility, and the arguments that King falsely told police that Jackson [\*56] had confessed to killing two people—and that police were complicit in the manifestation of her lie. The circumstances leading up to and surrounding the interrogation of King were—if not by the letter of the law, certainly in every other way that mattered—custodial and coercive.

First, King stated unequivocally in her 2015 Declaration that Jackson never uttered the "done two people" confession she had attributed to him when she gave her taped interview/statement to police on the evening of March 28, 1997. (Warden's Supplement, ECF No. 24-1, at PageID 3703, ¶ 28 ("Kareem Jackson never told me he 'done two people,' or killed two people.") When she testified on June 7, 2023, she did not waver from that position.

Q: [by Jackson's counsel, Mr. Rossman]: Let's be clear. In your presence, did Kareem Jackson ever say he done two people?

A: From my recollection of my memory, no, he did not say that.

(Evid. Hrng. Tr., ECF No. 47, at PageID 4026.)

Q: [by Mr. Rossman]: Was the confession true?

A: The confession Kareem told me, no.

(*Id.* at PageID 4082.) The Court found Ms. King to be credible.

The Court also found persuasive, in its assessment of King's credibility, her testimony about the lengths to which [\*57] she went to further her education and her employment opportunities—all while caring for her young children. (*Id.* at PageID 4023-32.) It appears from her testimony that she has been duly employed, as a single mother and while furthering her education, since at least the age of 20. Nothing about the fact that she received help from her mother and stepfather, who lived nearby, or had the benefit of Title 20 housing assistance, diminishes that fact. When asked how she found the time to work, take classes, and take care of her four young

children, she answered: "I just was determined to better my life situation for my children." (Id. at PageID 4027.)

The Court sensed no evidence of a biased motive on King's part. She was forthcoming about the up's and down's of her relationship with Jackson before, at the time of, and in the many years since the murders. (Id. at PageID 4022, 4032, 4036.) Most telling was the tempered attitude she demonstrated toward ensuring that the daughter she shares with Jackson would have a relationship with her father.

Q: [by Jackson's counsel Mr. Rossman]: So Mr. Jackson is the father of your daughter?

A: Yes.

Q: As a father, does that have any bearing on the reasons [\*58] why you maintained your relationship with him?

A: I wanted my child to know her father because I believed regardless of where he's at and what he's ever done in his life, she has one and she needs to know that's her father and no one else's.

(ECF No. 47, at PageID 4022.) King testified that even now that their daughter is an adult, King and Jackson are "friends and we can maintain a decent conversation." (Id. at PageID 4023.)

King confirmed that she had turned Jackson in for bank robbery he had committed in 1992 or 1993, (id. at PageID 4033-34), and that she would have turned him in on the murders of Hunter and Walker if he had actually confessed to her (Id. at PageID 4064). The Warden suggests that her motive for turning him for the bank robbery—namely, anger that he had robbed a bank and did not pay back money he had borrowed from her—diminishes her credibility. (Warden's Brief, ECF No. 49, at PageID 4220.) The Court did not perceive her testimony that way. Rather, her explanation came across not as motivated by vindictiveness or personal greed, but as motivated by providing for her children. She explained, convincingly, that when Jackson failed to repay money he had borrowed from her, [\*59] "[h]e cheated my child out of their money...." (Evid. Hrng. Tr., ECF No. 47, at PageID 4025.) The Court also credits as testament to her character and credibility her testimony that she never attempted to claim the reward money.

One of the more compelling aspects of King's testimony was her explanation that the "done two people" statement she attributed to Jackson utilized language that he never used, and that that essentially was language that had been fed to her by the interrogating officers.

Q: Was there anything specific they told you to say?

A: When they started, they said just tell us that Kareem done two people. They just kept bringing — reiterating that Kareem done these two people, just tell us.

Q: Was that repeated to you?

A: Yes.

(Id. at PageID 4055.)

Q: Now you previously indicated in your testimony that the officers were telling you that Kareem Jackson done two people?

A: Yes.

Q: So in your answer, you indicate, Kareem Jackson told me he done two people. Are those your words?

A: No. That was the words they kept asking me just to tell them, that he had just done those two people.

Q: And you told them?

A: Yes.

Q: To be clear, the language Kareem Jackson told me he done two people, where [\*60] did that phrase he done two people come from?

A: It came from the officer that kept — that were talking to me about the killing.

Q: Is that a phrase that Kareem would have used?

A: No.

Q: Why do you say that?

A: He was a street man, we'll say that. He talked like he belong on the streets.

(Id. at PageID 4061-63. (emphasis added).)

Q: [by Mr. Rossman]: We have talked about that four-word confession "he done two people," correct?

A: Yes.

Q: Did Kareem ever make that statement to you?

A: Not to my knowledge.

Q: Would you remember if he had said it, do you believe?

A: What I remember today, no.

THE COURT: In other words, Ms. King, is that the kind of statement that if made to you, you would remember even today?

THE WITNESS: Him stating he done two people, yes, I would remember that if he talked in that language, yes.

THE COURT: Are you saying that he didn't talk in that language?

THE WITNESS: He does not, and to this day does not talk in that language.

(Id. at PageID 4071. (emphasis added).)

Q: [by Mr. Rossman]: So let me try again. The language he done two people you said were not your own words?

A: Correct.

Q: Whose words were they?

A: They were the officers' that were talking to me prior to being taped. [\*61]

Q: And what did you understand you were required to do when they turned on the tape?

A: I was required to let — to state that Kareem had done two people and that he had told me.

(Id. at PageID 4080-81.)

Corroborating the inference that interrogating officers "fed" Ms. King information to eventually repeat back during her taped interview/statement is Ms. King's reference in her taped interview/statement to Derrick Boone. In her taped interview/statement, Ms. King stated:

On Monday, I don't know the exact date or anything, Monday evening to be exact five guys left from my house, Kareem Jackson, Derrick Boone, a guy named Red[,] another guy named Sonny and another guy unknown to me. They left came back 5 or 6 o'clock in the morning on a Tuesday, left again that same morning, didn't see them until dark on Tuesday.

(Warden's Supplement, ECF No. 24-1, at PageID 3705.) Her statement's reference to Derrick Boone and Red as two different people is nonsensical, since the record establishes that the person referred to as "Red" was Derrick Boone. In fact, her statement then contains several other references to "Red" being Derrick Boone. (Id. at PageID 3706.) But Ms. King explained during her testimony [\*62] before this Court that at the time of the murders, she knew Derrick Boone only as "Red," and did not know what his real name was (Derrick Boone) until after police told her. (Evid. Hrng. Tr., ECF No. 47, at PageID 4061-63).

In view of the foregoing, the Court found particularly credible Ms. King's testimony about the "done two people" language not being language Jackson ever used, and evidence in support of a finding that the statement was actually false.

As noted in more detail above, although officers picked her up to give her statement downtown around 5:00 p.m., her taped statement did not begin until 7:51 p.m. (Id. at PageID 4059). In the hours between, according to Ms. King, that language was pushed by the officers who picked her up.

A: We was there hours before they even taped anything. They were just talking and talking and talking about the murders.

Q: What sort of things were they saying to you?

A: They were asking me about Kareem's whereabouts and about Kareem talking to me and about Kareem, what he — how he know the people that he were with, which would have been Red to me, and these other people which I don't know, can't remember their names, but these other people.

And when [\*63] I just wasn't, I guess, giving what they needed, they asked me did I have somebody to take care of my children.

Q: What did you understand that to mean?

A: That they were trying to put me in jail.

Q: How long did this go on?

A: To me, it seemed like a lifetime. But it was hours and hours, but it seemed like a lifetime.

(Evid. Hrng. Tr., ECF No. 47, at PageID 4051-56 (emphasis added).)

Any finding that the "done two people" statement attributed to Jackson was actually false presents the question of why King would falsely tell police that Jackson told her he had "done two people." The Court is of the view that that question is answered by considering the coercive atmosphere element created by (1) the nature of the search of King's residence earlier that day; and (2) the threat King perceived of being taken from her young children and put in jail for crimes she did not commit.

The record demonstrates that on the morning of March 28, 1997, six or more FCSO SWAT officers—clad in riot-gear, brandishing assault rifles, and shouting—burst into King's townhouse apartment, even breaking the front door off its hinges. (Evid. Hrng. Tr., ECF No. 97, at PageID 4037-41.) King and Jackson were upstairs, [\*64] naked and about to take a shower. (Id. at PageID 4041.) King was given a hand towel and forced to stand there naked for fifteen or twenty minutes before police allowed her to cover herself with a robe. (Id.) When their infant daughter, who was in a crib in the upstairs master bedroom near the bathroom, began to cry nonstop, officers denied King's request to go to her daughter. (Id. at PageID 4042-43.) King testified that one of the officers picked up her infant daughter by her arm to search the crib, before putting her back into her crib and eventually allowing King to pick her up. According to King's testimony, and photographs offered as exhibits, police proceeded to ransack her apartment, overturning furniture and splaying the contents of drawers and cabinets all over the floor. (Id. at PageID 4046-49.) King also testified that police found weapons in her apartment that she knew nothing about. (Id. at PageID 4044.)

King testified with emotion about the impact the search had on her that day, and the lasting impact it had on her going forward.

A: After that, I went to my mom's house. I didn't go back to the apartment. My dad had to clean it out. I walked the floor for six months just [\*65] not knowing if somebody is going to kick in my door. To this day I lock my door. I still — I'm so afraid

— the police shoved in somebody's door the other day and I just stood there because I don't know if somebody is going to kick in my door.

(Id. at PageID 4043.)

The Court recognizes that the initial sudden entry of officers in tactical gear and with weapons drawn was justified because they were attempting to apprehend a suspected double-murderer. But once Jackson was discovered (naked) and detained without incident, any continued heavy-handedness on the part of the police strikes the Court as unnecessary at best and deliberately intended to intimidate King at worst.

King testified that the search went on for a couple of hours, and that when she left around 11:30 a.m. to go to her mother's, she was told by police that she would have to give a statement. (Id. at PageID 4049-50.) She was not told when; she was not told where. (Id. at PageID 4050-51.)

Eventually, around 5:00 p.m. that evening, two plain-clothes officers showed up at her mother's home in an unmarked car. (Id. at PageID 4051-52.)

Q: [by Mr. Rossman]: Did you understand that you had a choice about that?

A: No, I did not.

(Id. [\*66] at PageID 4052.) She also testified that she did not feel that she was able to bring anyone with her. Once they arrived at what she assumed was a police station, King testified that "[t]hey took me to a room which had all the guns that they supposedly found at my apartment, and then they took me into another room which didn't have windows." (Id. at PageID 4053.) That is when, as discussed above, King "was talked to for a long time." (Id. at PageID 4054.)

King stated several times during her testimony that she felt that if she did not tell police what they wanted to hear (evidence incriminating Jackson for the murders), she would be taken from her children and/or be put in jail for the presence of guns and commission of crimes she had nothing to do with.

Q: What sort of things were they saying to you?

A: They were asking me about Kareem's whereabouts and about Kareem talking to me and about Kareem, what he — how he know the people that he were with, which would have been Red to me, and these other people which I don't know, can't remember their names, but these other people.

And when I just wasn't, I guess, giving what they needed, they asked me did I have somebody to take care of my children.

Q: What did you understand that to mean?

A: That they were trying to put me in jail.

[\*67] Q: How long did this go on?

A: To me, it seemed like a lifetime. But it was hours and hours, but it seemed like a lifetime.

Q: To your understanding, what was it they wanted from you?

A: They wanted me to make sure that Kareem — Kareem would go to jail for the murders.

Q: Was there anything specific they told you to say?

A: When they started, they said just tell us that Kareem done two people. They just kept bringing — reiterating that Kareem done these two people, just tell us.

Q: Was that repeated to you?

A: Yes.

(Id. at PageID 4054-56.)

King confirmed that she had no way of getting home on her own and was afraid she was not going to be allowed to go home. (Id. at PageID 4057.) She testified she was "[s]cared to death." (Id. at PageID 4058.) She clarified that she was afraid of "[l]osing my kids, being in jail for the rest of my life for a crime I didn't commit." (Id.)

As noted above, after hours of this one-way discussion, King gave a taped interview/statement that began at 7:51 p.m, concluded at 7:53 p.m., and during which she said twice that Jackson told her he had "done two people." (Id. at PageID 4058-59; see also Warden's Supplement, ECF No. 24-1, at PageID 3705-08.)

The foregoing constitutes [\*68] compelling evidence of a level of leverage, intimidation, and coercion designed to obtain, and succeeding in obtaining, from King a statement incriminating Jackson for the murders. The Warden confirmed during cross-examination that King was not under arrest, had committed no crimes, and was indeed permitted to go home once the taped interview/statement was completed. (Evid. Hrng. Tr., ECF No. 47, at PageID 4086, 4088, 4089-90.) But the Warden will not be heard to argue that the police possessed no leverage over her. She was a 22-year-old, black, single mother of several young children in whose home (albeit believably unbeknownst to her) weapons and ammunition had been discovered. She testified at trial and before this Court that she did not feel free not to go with the officers, or to leave when she wanted. This questioning had all of the hallmarks of a custodial interrogation, minus the safeguard of a Miranda warning. The Court finds credible King's testimony that the "done two people" statement that police fed to her during hours of "talking," and that she fed back to them during a two-minute taped interview/statement was a lie.

The Court is mindful that recantations generally are [\*69] viewed with inherent suspicion. See, e.g., *Welsh v. Lafler*, 444 Fed. Appx. 844, 850 (6th Cir. 2011) (collecting cases); *Carter v. Mitchell*, 443 F.3d 517, 539 (6th Cir. 2006) (citations omitted). But the Court is satisfied that the circumstances surrounding King's making the "done two people" statement that she attributed to Jackson, as well as this Court's assessment of her credibility, constitute sufficient indicators of reliability to mitigate the inherent suspicion normally attendant to recantations. See, e.g., *Hyman v. Brown*, 927 F.3d 639, 660 (9th Cir. 2019) (discussing factors courts consider when assessing the reliability of recantations, such as motives that prompted recantation, timing of the recantation, and inconsistencies between recantation and existing evidence).

For the foregoing reasons, the Court is satisfied that Jackson has proven the "actually false" element of his Napue claim.

## 2. Materiality

A false statement or testimony gives rise to a Napue violation only if it is material. "A false statement is material under this standard, and "[a] new trial is required[,] if the false testimony could in any reasonable likelihood have affected the judgment of the jury.'" *Brooks*, 626 F.3d at

895 (citing Giglio v. United States, 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)). The Court already determined, in granting Jackson's request for an evidentiary hearing, that the "done two people" confession introduced at trial during [\*70] King's testimony was material for Napue purposes. (Opinion and Order, ECF No. 41, at PageID 3993-7.)

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