In the Missouri Court of Appeals
Eastern District

ST. LOUIS UNIVERSITY LAW SCHOOL DOCKET

IN RE: CIRCUIT ATTORNEY, 22nd JUDICIAL CIRCUIT ex rel. CHRISTOPHER DUNN, Respondent, v. STATE OF MISSOURI, Appellant.	)	ED112933-01 Filed: May 19, 2026

Appeal from the Circuit Court of the City of St. Louis
The Honorable Jason M. Sengheiser, Judge

Introduction

The State appeals the circuit court's judgment vacating Christopher Dunn's convictions for first-degree murder, first-degree assault, and armed criminal action. The State claims the circuit court relied upon inadmissible information, excluded impeachment testimony from its investigator, and its judgment was not supported by substantial evidence. The judgment is affirmed.

Procedural and Factual Background

Shortly after midnight on May 19, 1990, three teenage boys sat on the porch of a home on Labadie Avenue. An individual ran by the home and fired shots at the boys. One boy was hit, taken to the hospital, and died.

The other two boys on the porch, DeMorris Stepp and Michael Davis, identified Dunn as the shooter. Dunn was found guilty of first-degree murder, two counts of first-degree assault, and three counts of armed criminal action. The circuit court sentenced him as a prior and persistent offender to life imprisonment without parole for the murder offense, 30 years' imprisonment for each assault offense, and 10 years' imprisonment for each armed criminal action offense, with all sentences to be served consecutively.

Dunn filed a direct appeal and a Rule 29.15 post-conviction motion. The court of appeals remanded the case to the circuit court for proceedings on his *Batson v. Kentucky,* 476 U.S. 79, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986), challenge, but affirmed all other issues and denied him post-conviction relief. *State v. Dunn*, 889 S.W.2d 65 (Mo. App. 1994).

On remand, the circuit court conducted an evidentiary hearing and denied Dunn's *Batson* challenge. Dunn appealed. The court of appeals affirmed the circuit court's judgment. *State v. Dunn*, 906 S.W.2d 388, 389 (Mo. App. 1995).

In 2017, Dunn filed a habeas corpus petition alleging he was actually innocent. Dunn presented evidence of another eyewitness, Eugene Wilson; Stepp's and Davis's recantations; and other alibi witnesses. The circuit court found no jury would convict Dunn, but it overruled his motion because Missouri does not recognize freestanding

actual innocence claims in a habeas corpus proceeding when the death penalty is not imposed, citing *In re Lincoln v. Cassady*, 517 S.W.3d 11 (Mo. App. 2016). Dunn sought and was denied federal habeas corpus relief pursuant to 28 U.S.C. § 2241. *In re Dunn*, 143 S. Ct. 1776, 215 L. Ed. 2d 664 (2023).

In 2024, the Circuit Attorney of the City of Saint Louis filed a motion to vacate or set aside the judgment of Dunn's underlying conviction pursuant to section 547.031, RSMo Supp. 2021. Following a hearing, the circuit court found the Circuit Attorney established "a clear and convincing showing of 'actual innocence' that undermines the basis for Dunn's convictions because in light of the new evidence, no juror, acting reasonably, would have voted to find Dunn guilty of these crimes beyond a reasonable doubt." The circuit court sustained the motion and vacated Dunn's conviction. Dunn was released from prison on July 30, 2024. The State appealed. The Circuit Attorney sought to dismiss the State's appeal, claiming the State did not have the right to appeal pursuant to section 547.031.

This Court issued a show cause order to the parties, directing them to address whether the State had the right to appeal. The State sought transfer to the Supreme Court of Missouri prior to opinion. Mo. Const. article V, section 10. The Court granted the application. *In re Cir. Att'y, 22nd Jud. Cir. ex rel. Dunn*, 708 S.W.3d 867, 870 (Mo. banc 2025). The Court concluded that pursuant to section 512.020(5), the State had the right to appeal the circuit court's judgment vacating Dunn's convictions under section 547.031 and retransferred the appeal. *Id*. at 874. This appeal follows.

Standard of Review

A case filed pursuant to section 547.031 "is a new civil action representing a collateral attack on the conviction and sentence." *Prosecuting Att'y, 21st Jud. Cir., ex rel. Williams v. State*, 696 S.W.3d 853, 860 (Mo. banc 2024) (quoting *State ex rel. Bailey v. Fulton*, 659 S.W.3d 909, 914 (Mo. banc 2023)) (internal quotations omitted). "When reviewing a civil judgment entered after a bench trial, this Court will affirm the judgment 'unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.'" *Id*. at 862 (quoting *Lollar v. Lollar*, 609 S.W.3d 41, 45-46 (Mo. banc 2020)). This Court reviews issues of law *de novo*. *Id*.

Analysis

Admissibility of Evidence

Three of the State's points on appeal argue the circuit court erred by admitting Davis's audio recorded 2015 interview, the transcript of that interview, and his 2016 affidavit wherein Davis recanted his eyewitness identification of Dunn as the shooter. The State challenges the circuit court's reliance on these exhibits because they were inadmissible hearsay and could not support a finding of clear and convincing evidence of actual innocence. The Circuit Attorney does not argue that the exhibits were admissible under the rules of evidence. Instead, the Circuit Attorney argues that section 547.031 permits the circuit court to consider evidence "and information" presented at the hearing regardless of admissibility.

The dispute regarding the admissibility of these three exhibits, and the circuit court's reliance on them, turns on section 547.031.3's language. "The primary goal of statutory interpretation is to give effect to legislative intent, which is most clearly evidenced by the plain text of the statute." *State ex rel. Bailey v. Fulton*, 659 S.W.3d 909, 912 (Mo. banc 2023) (quoting *State ex rel. Goldsworthy v. Kanatzar*, 543 S.W.3d 582, 585 (Mo. banc 2018)). "Accordingly, '[i]f the language of a statute is plain and unambiguous, this Court is bound to apply that language as written and may not resort to canons of construction to arrive at a different result.'" *Id*. (quoting *State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 605 (Mo. banc 2019)).

Section 547.031 not only created a new avenue for a prosecuting or circuit attorney to seek to set aside a conviction previously obtained by that office, but also set forth, in an abbreviated fashion, some of the procedures to be used. Under the statute, a prosecuting or circuit attorney may file a motion to vacate or set aside the judgment of a person believed to be actually innocent or erroneously convicted. Section 547.031.1. Once this motion is filed, the circuit court is required to hold a hearing and issue findings of fact and conclusions of law. Section 547.031.2.

In order to sustain a section 547.031 motion, the circuit court must find "there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment." *Id.* at 547.031.3. In making that determination, the statute requires the circuit court to consider three categories of evidence. Specifically,

> the [circuit] court shall take into consideration the evidence presented at the original trial or plea; the evidence presented at any direct appeal or post-conviction proceedings, including state or federal habeas actions; and the information and evidence presented at the hearing on the motion.

Id.

The Circuit Attorney and the circuit court both agreed that the circuit court could consider the exhibits because section 547.031's third category of evidence permits the circuit court to consider "information" presented at the hearing, and although the exhibits may not be evidence, they could be considered "information." Yet, the State claims that the circuit court may only consider admissible evidence in ruling on a section 547.031 motion because the statute requires the court to find actual innocence by clear and convincing "evidence." The parties seem to agree that the three exhibits at issue were inadmissible hearsay and, therefore, not "evidence."

This is a dispute the Court need not resolve at this time. The second category of evidence under section 547.031 is "evidence presented at any direct appeal or post-conviction proceedings, including state or federal habeas actions." Both the written transcript of Davis's statement and the 2016 affidavit were presented in Dunn's prior habeas corpus proceedings. There is nothing in the record to suggest the State objected to their admission in that proceeding, and the habeas corpus judgment clearly shows they were relied on by that court. Section 547.031 obligated the circuit court to consider these documents.

It is not clear from the record whether the audio recording was presented in the habeas proceedings. Nonetheless, to the extent there was any error in considering the

audio recording, that error does not rise to the level of reversible error because the audio recording offers little more than the written transcript.

The circuit court followed the statutory mandate, considered the evidence from Dunn's prior state habeas action, and found that it supported Dunn's claim of actual innocence. The circuit did not err by considering the exhibits from Dunn's state habeas action as required by section 547.031.

Exclusion of Testimony

Next, the State argues the circuit court abused its discretion by excluding a State investigator's ("Investigator") testimony regarding Investigator's interview with Stepp. According to the notes from Investigator's interview, Stepp told Investigator that his original trial testimony was true and his recantation was a lie.

The State initially did not disclose Investigator as a witness, in part because Investigator did not interview Stepp until closer to the hearing and, in part, because the information she possessed was protected by the work product doctrine. But as trial approached and the court-ordered discovery deadline passed, the State disclosed Investigator as a possible witness. At a pre-trial hearing, the Circuit Attorney sought to exclude Investigator's testimony as a result of the late disclosure and the State's refusal to produce her for deposition. The State argued that the only information possessed by the Investigator concerned her conversation with Stepp, and as a result, anything she knew was work product.

The circuit court agreed with the Circuit Attorney and excluded Investigator's testimony. As a potential solution, however, the circuit court issued a writ of habeas

corpus ad testificandum to ensure Stepp's presence at the hearing. The circuit court ruled that, while he agreed that Investigator should not be permitted to testify, Stepp would be available to testify regarding his conversation with Investigator. The State opted not to call Stepp, reaffirmed its desire to call Investigator, and submitted Investigator's notes as an offer of proof of her expected testimony. The State now claims that the circuit court erred in excluding Investigator's testimony as a discovery sanction.

"A [circuit] court has broad discretion in administering the rules of discovery and in determining the proper remedy—including sanctions—for a party's non-compliance with the rules of discovery." *Vetter Constr. Co. v. Innovated Constr., LLC*, 696 S.W.3d 442, 446 (Mo. App. 2024) (quoting *Frontenac Bank v. GB Investments, LLC*, 528 S.W.3d 381, 390 (Mo. App. 2017)). The circuit court also "has broad discretion to admit rebuttal evidence …." *Moore v. Ford Motor Co.*, 332 S.W.3d 749, 768 (Mo. banc 2011). "Judicial discretion is abused when the [circuit] court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Giddens v. Kansas City S. Ry. Co.*, 29 S.W.3d 813, 819 (Mo. banc 2000).

The State's argument that it was not obligated to produce Investigator because her interviews with Stepp and the statements he made to her were protected work product is incorrect. The State disclosed Investigator as a "person having knowledge about any discoverable matters in this case" and asserted that it had control over the witness by indicating that the witness should not be contacted other than through the State's counsel. Once disclosed, the State had no basis on which to refuse to produce her for a deposition.

Generally speaking, "[b]lanket assertions of work product are insufficient to invoke protection." *State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 367 (Mo. banc 2004). At the deposition, the State could make specific objections to any question it believed sought disclosure of work product. Alternatively, the State could have sought a protective order from the circuit court. Given the State's late disclosure and refusal to produce Investigator for a deposition despite being obligated to do so, the circuit court was within its broad discretion to exclude Investigator's testimony.

Moreover, this Court does not find any prejudice in the circuit court's decision to exclude Investigator's testimony. To remedy the exclusion, the circuit court specifically ensured that Stepp would be available to testify during the hearing. If the State had called him, his testimony may have matched the statements he gave to Investigator, rendering Investigator's testimony unnecessary. If his testimony did not match his statement to Investigator, then the State could consider impeaching him with his prior inconsistent statement. If he denied making the statements to Investigator, then the circuit court may have reevaluated the decision to exclude Investigator's impeachment testimony. Because the State made the strategic decision not to call Stepp despite his availability, this Court cannot say that any prejudice resulted because the circuit court excluded Investigator's testimony.

Substantial Evidence Challenge

Finally, the State claims the circuit court erred by vacating Dunn's convictions because Dunn's innocence was not supported by substantial evidence. The State argues

that the evidence presented did not have sufficient probative force to support the circuit court's finding that Dunn was actually innocent.

"Substantial evidence is evidence that, if believed, has some probative force on each fact that is necessary to sustain the circuit court's judgment." *Wilmoth v. Dir. of Revenue*, 669 S.W.3d 102, 112 (Mo. banc 2023) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 199 (Mo. banc 2014)). This Court views the evidence in the light most favorable to the circuit court's judgment to determine whether the judgment is supported by substantial evidence. *Id*. Appellate courts "'accept as true the evidence and inferences ... favorable to the [circuit] court's decree and disregard all contrary evidence.'" *Ivie*, 439 S.W.3d at 200 (quoting *Zweig v. Metro. St. Louis Sewer Dist.,* 412 S.W.3d 223, 231 (Mo. banc 2013)).

Raising a not-supported-by-substantial-evidence challenges requires the State to follow three sequential steps:

> (1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
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> (2) identify all of the favorable evidence in the record supporting the existence of that proposition; and,
>
> (3) demonstrate why that favorable evidence, when considered along with the reasonable inferences drawn from that evidence, does not have probative force upon the proposition such that the trier of fact could not reasonably decide the existence of the proposition.

Houston v. Crider, 317 S.W.3d 178, 187 (Mo. App. 2010).

In the first step, the State identifies the circuit court's factual finding that Dunn is actually innocent. Although the State's challenge is nominally brought against the evidence supporting that determination, the substance of the argument addresses how the

circuit court applied the law. The State's argument on this point largely comes down to identifying a seeming legal contradiction between the evidence and the circuit court's ruling. The State notes, correctly, that Dunn was convicted after a jury trial. The jury heard the evidence presented at that time and necessarily weighed the credibility of both Stepp and Davis. The jury must have found them to be sufficiently credible to convict Dunn without direct physical evidence connecting him to the crime. In the current case, the circuit court heard additional evidence that the jury did not hear. The Circuit Attorney presented the circuit court with affidavits and testimony from Stepp and Davis that contradicted their original identification of Dunn as the shooter.

The circuit court did not, despite having held a hearing on the issue, make any express determination regarding Stepp and Davis's credibility. Instead, the circuit court determined simply that it was now unclear at which point Stepp and Davis were telling the truth. Because there was no other credible evidence linking Dunn to the shooting, the circuit court determined that the Circuit Attorney presented clear and convincing evidence of actual innocence in that no reasonable juror would now convict Dunn in light of the recantations.

The circuit court's ruling does, however, find some support in *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003), which bears a number of similarities to this case. In *Amrine*, a defendant was convicted of a jailhouse murder solely on the testimony of several other inmates. The defendant was then sentenced to death. Following the conviction, each of the inmates recanted their trial testimony. The case came to the Supreme Court of Missouri on a petition for a writ of habeas corpus. After recognizing

the availability of freestanding claims of actual innocence in capital cases, a plurality of the Court went on to determine that based on the recantations, and the lack of any other credible evidence, the defendant undermined the Court's confidence in the verdict. *Id.* at 548-49. In a concurring opinion, Judge Wolff wrote that:

> With the witnesses' recantations, we do not know whether Amrine is actually innocent. We similarly do not know whether he is guilty, despite the final judgment in his case. The question is: which time were these three witnesses lying? When they testified against Amrine, or when they recanted? ...
>
> What we do know is that all three witnesses—upon whom Amrine's conviction and sentence of death solely depend—are liars.

Id. at 550.

Despite similarities, there are significant differences between this case and *Amrine*. The most significant may be that *Amrine* was a capital case on habeas corpus review. The *Amrine* opinion contains multiple references to the undeniably different nature of a death sentence. *See, e.g., id.* at 547 ("This is all the more true here, where the execution of a potentially innocent man is at stake, for the death penalty is fundamentally different from other cases in which innocence is asserted after a fair trial."). Even one of the dissenting opinions noted that, although the defendant had not yet established he was entitled to relief from his conviction, "Mr. Amrine has established that his sentence of death cannot now stand." *Id.* at 551 (Price, J., dissenting).

Another significant difference is that the *Amrine* court did not conduct a hearing on the matter because it came to the court as a habeas corpus petition. This fact was the basis of complaint for the three dissenting judges in *Amrine*, who would have appointed a

special master to conduct a hearing and evaluate the credibility of the recantations. *Id.* at 550-51 (Benton, J., dissenting), 552 (Price, J., dissenting).

In contrast, this case was before the circuit court on a section 547.031 motion. Under the statute, the circuit court conducted the type of hearing that the dissenting judges in *Amrine* would have required. As a result, the circuit court had the opportunity to make credibility determinations.[1] The circuit court's failure to do so may well have undermined the *legal* basis for its conclusions of law.

The procedural posture of *Amrine* is also relevant in one other way. By granting the writ of habeas corpus, the Court relieved Amrine from his conviction and sentence but noted that he could be retried. According to the Court, a retrial would be an effective method of testing the credibility of the recanting witnesses. Here, although a retrial is technically possible, the fact that the Circuit Attorney brought this case makes a retrial exceedingly unlikely. This, of course, would prevent a second jury from hearing the evidence, including the recantations, and deciding Dunn's guilt.

This cuts to the heart of the State's argument. In Dunn's original trial, the primary question before the jury was Stepp's and Davis's credibility. The jury found them credible and convicted Dunn. The circuit court faced the same question in this case. Rather than making an express credibility determination, the circuit court's judgment

[1] In an ideal world, the circuit court would determine the credibility of the witness recantations and base its actual innocence determination on those findings. It may well be that the circuit court felt it was not in a good position to judge credibility because neither party opted to put on the live testimony of either of the relevant witnesses. While it appears that Davis absconded from justice and could not be located, Stepp was down the hall from the courtroom and made available by the circuit court.

seemed to follow Judge Wolff's concurrence in *Amrine* and rule simply that it was unclear which time Stepp and Davis were telling the truth, and as a result, no reasonable juror could convict.

The State takes issue with the circuit court's position, in large part, because juries and judges sitting as fact-finders make precisely this kind of determination all the time. Fact-finders at trial assess the credibility of witnesses in every case. Frequently those cases require the fact-finder to sift through varied and inconsistent statements and determine which is accurate. At trial, the mere existence of contradictory evidence does not prevent a fact-finder from deciding guilt.

The State's position appears to be that if the circuit court is unable to determine which version of the facts is true, then a section 547.031 motion cannot be sustained as a matter of law.

This Court is, however, bound to review only the point the State actually brought on appeal. The State does not challenge the application of law,[2] but rather challenges whether substantial evidence supported the court's determination that Dunn was actually innocent. In making this determination, this Court accepts as true all favorable evidence and inferences and disregards all contrary evidence. *Ivie*, 439 S.W.3d at 200.

Disregarding any contrary evidence, the favorable evidence shows that Stepp provided an affidavit explaining he lied at trial because he was scared and felt pressured

[2] "This Court is a neutral arbiter, not an advocate." *State v. League of Women Voters of Missouri*, 730 S.W.3d 591, 611 (Mo. banc 2026) (quoting *City of Harrisonville v. Mo. Dep't of Nat. Res.*, 681 S.W.3d 177, 182 (Mo. banc 2023)). Accordingly, this Court cannot advance arguments that were not made by the parties. *Id*.

by police to identify Dunn. He explained he tried to tell police he made a mistake in identifying Dunn, but the police would not listen to him. Stepp also testified at the habeas corpus hearing that he and Davis agreed they would mis-identify Dunn as the shooter. Stepp testified that while he saw the gunfire, it was too dark to see the identity of the shooter. Stepp testified he did not see Dunn with a firearm that night.

The favorable evidence supporting Davis's statements included his 2015 interview explaining he did not see the shooter and only named Dunn as the shooter because Dunn belonged to a different gang. Davis explained he was encouraged by others to name Dunn as the shooter. In 2016, Davis again explained that he could not see nor could he identify the shooter. He stated that he and Stepp agreed to name Dunn as the shooter even though they knew it was not true. In 2017, Davis reiterated that no one saw Dunn shoot the victim because it was so dark he was unable to identify anyone.

Further, there was evidence from another eyewitness supporting Stepp and Davis's statements they could not have identified Dunn as the shooter because it was too dark. An eyewitness identification expert testified that based upon the circumstances at the time of the shooting, she believed Stepp and Davis's initial identification of Dunn was highly unreliable and likely the result of post-event suggestions, influences, and incentives.

In the final step of the substantial evidence analysis, the State must demonstrate why the circuit court could not have found the asserted factual proposition—that Dunn is actually innocent—when considering only the evidence favorable to the judgment. The State's analysis of this step incorrectly compares the favorable evidence with the unfavorable evidence. "[T]his Court has made clear that no contrary evidence need be

considered on a substantial-evidence challenge, regardless of whether the burden of proof at trial was proof by a 'preponderance of the evidence' or proof by 'clear, cogent, and convincing evidence.'" *Ivie*, 439 S.W.3d at 200.

A proper analysis considering only the favorable evidence and inferences shows there was substantial evidence from which a reasonable trier of fact could conclude there was clear and convincing evidence of actual innocence. The trial eyewitnesses recanted their trial testimony identifying Dunn as the shooter and admitted they lied at trial. There was expert testimony indicating their initial eyewitness identification was highly unreliable. Another eyewitness testified that it was too dark to identify the shooter. On this record, the circuit court's judgment is supported by substantial evidence.[3]

Conclusion

The judgment is affirmed.



John P. Torbitzky, Chief Judge

James M. Dowd, Judge, and
Michael S. Wright, Judge concur.

[3] A circuit court's decision to vacate a defendant's sentence is fact-specific and merits a case-by-case analysis. Because recanted testimony is inherently unreliable and suspicious, *State v. Manley*, 414 S.W.3d 561, 566 (Mo. App. 2013), this opinion does not create precedent that sanctions vacating a conviction every time a witness recants his or her testimony.