

No. S07A-1758

IN THE
Supreme Court of Georgia

TROY ANTHONY DAVIS,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

ON GRANT OF DISCRETIONARY REVIEW TO THE RULING OF
THE HONORABLE PENNY HASS FREEMAN, JUDGE SUPERIOR COURT OF
CHATHAM COUNTY, STATE OF GEORGIA

**BRIEF *AMICUS CURIAE* OF
THE CHARLES HAMILTON HOUSTON INSTITUTE FOR
RACE AND JUSTICE**

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THIS IS A CAPITAL CASE

QUESTIONS PRESENTED

I. Whether the trial committed reversible legal error when it ruled as a matter of law that recantation evidence is inadmissible as a category of evidence?

II. Whether the trial court committed reversible legal error when it found appellant's newly discovered evidence to be "merely cumulative" of the testimony presented at trial?

III. Whether the trial court committed reversible legal error when it conducted a piecemeal analysis of appellant's new evidence rather than considering the evidence taken "as a whole"?

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INTERESTS OF *AMICUS CURIAE*

Established in the fall of 2005 at Harvard Law School, the Charles Hamilton Houston Institute for Race and Justice (CHHIRJ) seeks to honor the extraordinary contributions of one of the great lawyers of the twentieth century. Charles Hamilton Houston dedicated his life to using the law to address matters of racial discrimination. CHHIRJ is committed to continuing Mr. Houston's legacy through research, instruction, and advocacy directed to the judicial, legislative and executive branches of government, with a consistent and particular emphasis on securing racial fairness and equality.

CHHIRJ, through research and litigation, seeks to address various issues of disparity and racial justice. In the present case, CHHIRJ seeks to have the newly discovered evidence in the case of Troy Davis evaluated for its substance, and thereby potentially to prevent the unfair execution of a man who has thus far been denied the opportunity to have the totality of the newly discovered evidence weighed to determine if a new trial is warranted.

STATEMENT OF THE CASE

Whether this case should be remanded for an evidentiary hearing is the sole issue properly before this Court. The ultimate issue in Troy Davis' case is whether the weight of his newly discovered evidence entitles him to a

new trial, but that issue is for the trial court to decide after a full and exhaustive evidentiary hearing.

Since the conclusion of Davis' trial, evidence has come to light that points strongly to his innocence. Despite the diligence of trial defense counsel, this newly discovered evidence was not discovered until after Troy Davis was convicted of murdering Officer Mark MacPhail. The evidence used to convict Davis consisted entirely of witness identification. Here, seven out of nine of the State's identification witnesses have recanted their trial statements, and new eyewitnesses have surfaced that support the fact that Davis did not shoot Officer MacPhail. Even the State observes that Appellant's evidence "looks overwhelmingly persuasive." State Brief at 46.

Procedurally, this Court is not the proper forum to conduct a fact-specific inquiry into the credit of this evidence or into the facts of this case in the first instance. Justice and the precedents of this Court demand a lower court forum so that this evidence may be reviewed.

SUMMARY OF THE ARGUMENT

The trial court erred as a matter of law in summarily denying Appellant's Extraordinary Motion for a New Trial without first conducting an evidentiary hearing to evaluate the substance of Davis' newly discovered evidence. The trial court erred by: (1) categorically denying the admissibility of witness recantations as a class of admissible evidence; (2) incorrectly holding that several of the affidavits contained evidence that would be cumulative to evidence presented by defense counsel at the time of trial; and (3) failing to examine Davis' newly presented evidence "as a whole" rather than piecemeal.

The wise precedents of this Court have required an evidentiary hearing in cases less compelling than that of Troy Davis. Amicus Charles Hamilton Houston Institute respectfully urges this Court to remand to the trial court for an evidentiary hearing so that the substance of Davis' Extraordinary Motion for a New Trial can be evaluated on the merits prior to his scheduled execution.

ARGUMENT

I. THE TRIAL COURT’S CATEGORICAL REJECTION OF RECANTATIONS AS A CLASS OF ADMISSIBLE EVIDENCE CONSTITUTES REVERSIBLE ERROR BECAUSE THIS COURT’S JURISPRUDENCE REQUIRES THE CONTENT OF RECANTIONS TO BE EVALUATED FOR RELIABILITY AND MATERIALITY

The trial court incorrectly ruled that the recantations of seven-out-of-nine eyewitnesses called by the State of Georgia to testify against Mr. Davis at trial are inadmissible as a category of evidence. Order at 3.¹ Without conducting a substantive analysis of any of the seven recanted testimony affidavits, the trial court ruled “[a] post-trial declaration by a State witness that his former testimony is false is not cause for a new trial. *Pryor v. State*, 179 Ga. App. 293, 294 (1986)(cit. omitted); *Brown v. State*, 209 Ga. App. 314, 316 (1993); *Drake v. State*, 248 Ga. 891, 894 (1982).”

The categorical rejection of this class of evidence is wrong as a matter of law. A procedure, upon which Georgia courts have relied, exists to examine the content of such evidence. In fact, in two of the three cases incorrectly relied upon by the superior court as precedent for refusing to

¹ This section addresses only the first of six categories of evidence as grouped by the trial court: “(1) evidence characterized by the Defendant as recantations of trial testimony.” Order at 3.

consider this recantation evidence, the courts utilized this procedure—an evidentiary hearing.²

The trial court erred by adhering to the conclusions of sister courts without engaging in a reasoned analysis of the logic that supported those conclusions. The cases upon which the lower court based its judgment do not support a summary ruling in a case with seven recanting witnesses, where no substantive analysis of the content of the recantation evidence has yet occurred. Order at 3. In both *Brown* and *Drake*, two of the three cases upon which the trial court relied, the court denied defendant’s motion for a new trial only *after* conducting evidentiary hearings, and *after* evaluating the *content* of the recantations. See *Brown*, 209 Ga. App. at 316; *Drake* 248 Ga. at 893. The only case where an evidentiary hearing was not conducted involved a single witness recantation with no additional new evidence. See *Pryor v. State*, 179 Ga. App. 293, 294 (1986).

² Decisions from other jurisdictions evaluating post-trial recantations reflect consideration of *all* evidence. See *Bell v. State*, 50 So. 704 (Fla. 1956) (“In determining whether a new trial is warranted due to recantation of a witness's testimony, a trial judge is to examine all the circumstances of the case, including the testimony of the witnesses submitted on the motion for the new trial.”); *Russell v. State*, 849 So. 2d 95 (Miss. 2003) (“[J]udge must review all of the circumstances of the case, ‘including the testimony of the witnesses submitted on the motion for the new trial.’”) (citing *Bradly v. State*, 214 So.2d 815, 817 (Miss.1968)).

As a matter of Georgia law, Davis is entitled to an evidentiary hearing to evaluate the content of his recantations if his case has “any merit.” *Dick v. State*, 898, 899 (1982) Troy Davis brought to the trial court an overwhelming array of newly discovered evidence supporting his claim that he was not the shooter and dismantling the thrust of the state’s case. In fact, the only two State eyewitnesses whose trial testimonies remain unchanged are Stephen Sanders, who had his trial testimony impeached by defense counsel because he was unable to identify Davis immediately after the shooting, and Red Coles, who newly discovered evidence implicates as the actual shooter.

The State concedes in its reply brief that Davis’ evidence “looks overwhelmingly persuasive” and offers no affirmative argument against its persuasive force. The State’s only attempt to answer this “overwhelmingly persuasive” new evidence is to suggest that the evidence could only be true if it were less persuasive: “We can imagine pretty easily how, in an aberrant case, there might be an over-the-top cop, or a witness with an undisclosed grudge that only comes to light after the trial. But how likely is it, in any trial, that 78% of witnesses would independently come to refute their own testimony...?” State at 46. However, the State overlooks the fact that this *is*

an aberrant case. Savannah police detectives were investigating the tragic murder of one of their own. Contrary to the State's assertion, recognizing the unconscious and understandable vulnerability of mourning investigators as they sought justice for their fallen brother requires judicial notice of no fact beyond human nature. Facially, the seven recanted witness affidavits have at least "some merit" given the quality and volume of the new evidence and the internal consistency of the recantations. The trial court should have conducted an evidentiary hearing to review the substance of these statements and determine the extent of aberrance.

The trial court's improper procedural dismissal of recanted statements as a class of evidence prevented its substantive analysis of whether the affidavits, along with the newly discovered eyewitness testimony, entitle Davis to a new trial. Amicus asks that the Court remand this case to give the trial court an opportunity to conduct an evidentiary hearing, and evaluate Davis' new evidence of actual innocence.

II. THE TRIAL COURT ERRED BY EXCLUDING AS CUMULATIVE EYEWITNESS AFFIDAVITS CONTAINING CREDIBLE AND MATERIAL INFORMATION, VITAL TO DAVIS' CASE, AND NOT TESTIFIED TO AT TRIAL.

A. Affiant Gary Hargrove Presented the Trial Court with Eyewitness Evidence Separate and Distinct from that of Joseph Washington and Critical to the “Controlling Point of Controversy.”

Gary Hargrove's affidavit and Joseph Washington's testimony cannot be cumulative because Hargrove's affidavit provides a crucial piece of evidence missing from the account of Joseph Washington. Gary Hargrove's testimony is *not* important because he inferentially identifies Red Coles as the shooter. Rather, Hargrove's testimony is essential because he is the *only* person to definitively put Red Coles in the parking lot after the first gunshot and simultaneous to the second. (¶ 2-3). This observation establishes a critical missing link in the defense theory that Red Coles was the shooter. If Hargrove had testified at Davis' trial, he certainly would have been the trial's most important witness.

Joseph Washington *only* testified to what occurred leading up to and at the point of the first gunshot. T. 1343. At trial, he explained that, after watching Red Coles fire the first shot, he fled the scene and was therefore

unable to notice whether Coles remained on the scene following the firing of the first bullet. T. 1343.

At the point of the first gunshot, there is no dispute that both Davis and Coles were in the parking lot. The central point of contention in the case is whether it was Davis or Coles who fired the shot while the other ran away from the scene. Gary Hargrove affirms that, at the time of both shots, he observed Red Coles in the parking lot “facing the Officer’s direction,” in close proximity to where the Officer’s body was found. (¶ 2-3)

The portion of the story that Washington supplies is akin to showing the jury a video of a drunk driver speeding down the road toward a pedestrian, and then shutting off the video right as the brakes slam on but before the car makes any contact. Gary Hargrove’s account permits the video to continue, allowing the jury to see the driver strike the pedestrian and observe the pedestrian’s body lying across the road. The jury receives a complete record of the event.

The trial court erred by superficially categorizing the statements of Gary Hargrove and Joseph Washington as both identifying Red Coles as the shooter, and then treating that irrelevant inferential overlap as conclusive on the question of whether their testimonies constitute cumulative evidence.

This Court's unbroken chain of precedent dating back more than fifty years establishes that evidence cannot be merely cumulative when it, "if believed, would in and of itself, establish or disprove the controlling point in the controversy." *Johnson*, 196 Ga. at 806; *see also*, *Walters v. State*, 128 Ga.App. 232, 234 (1973) (newly discovered evidence not categorically cumulative solely because it happens to strengthen defendant's case).

Gary Hargrove presented the trial court with a distinct and indispensable piece of evidence pointing to a different conclusion than the jury reached on the ultimate issue of contention—that Red Coles and *not* Troy Davis was present in the Burger King parking lot subsequent to the first shot and simultaneous to the second.

B. Gary Hargrove's Unobstructed View of "Red" from Within the Same Parking Lot is of Higher and Different Grade than Joseph Washington "observing this from a different parking lot at a warehouse, and through some trees"³.

"It is only when newly discovered evidence...is of a higher and different grade from that previously had on the same material point that it will ordinarily be taken outside the definition of cumulative evidence, and afford basis for a new trial." *Johnson v. State*, 196 Ga. 806, 27 S.E.2d 749

³ State of Georgia--Appellee Brief at 12 citing Tr. at 1349-1350.

(1943). Affiant Gary Hargrove identifies Red Coles from a superior vantage point than Joseph Washington, rendering his identification more credible and reliable. Even if Davis is not ultimately deserving of a new trial on this point, the question of the relative “grade” of the two identifications deserves an evidentiary hearing.

The trial court erred by focusing *solely* on the global level subject-matter of Hargrove’s affidavit rather than engaging in a content-specific analysis to determine whether Hargrove’s affidavit was of a “higher grade” than Washington’s trial testimony. The trial court found Hargrove’s affidavit to be “merely cumulative” of Washington’s because the former corroborates the latter. (Superior Court Order at 4) “But the true test as to whether evidence is cumulative depends not only on whether it tends to establish the same fact, but it may depend on whether the new evidence is of the same or different grade.” Id.

Gary Hargrove’s affidavit is of a higher grade than Washington’s trial testimony. Hargrove viewed the shooting from a vantage point in the Burger King parking lot that afforded him a direct, head on view of Red Coles. Hargrove notes nothing obstructing his view of Coles. Hargrove observed Coles standing in the parking lot when he heard the first shot. (¶2). Upon

hearing the second shot, Hargrove saw Coles standing in the parking lot and facing the same direction as the officer's fallen body. (¶ 2-3). Gary Hargrove confidently asserts, "I am sure that Red was facing the Officer's direction when I heard the shooting." (¶ 3)

By contrast, Joseph Washington was not in the Burger King parking lot when the gunshots were fired. Instead, Washington was located in a physically separate parking lot at a warehouse. T. 1349. Washington admitted at trial that a row of trees prevented him from having an unobstructed view of the shooter he identified as Red Coles. T. 1350.

The fact that Hargrove's unobstructed and more proximate viewpoint constitutes a "higher and different grade" of evidence is facially evident.

Yet, even if the Superior Court did not find Hargrove's affidavit facially non-cumulative, the record of Washington's trial testimony makes clear that the relative grade of these two witnesses' testimony cannot be fully gleaned absent an evidentiary hearing. The record of the trial transcript does *not* include the aerial photograph of the crime scene relied upon by the state's attorney at trial to impeach the testimony of Joseph Washington. Without this photograph, the Superior Court judge could not have answered several questions critical to determining the relative grade of identification

evidence: How far away from Red Coles was Joseph Washington when he made the identification? From what angle did Washington view the events? How thick were the trees that separated the two parking lots and obstructed Washington's view? How did the quality of the lighting where Washington was standing compare to the lighting where Hargrove was standing?

This Court should remand to the superior court for an evidentiary hearing in order to make a proper determination of the relative "grade" of the new evidence after the superior court hears the direct and cross-examination testimony of both Gary Hargrove and Joseph Washington.

C. Newly Discovered Evidence of Red Coles' Demeanor After the Shooting Supplies Material Facts that Support a Contrary Finding on the Central Issue at Trial, Filling a Substantial Gap in the Defense Theory of the Case.

The trial court erred both by determining that the affidavit of Anita Saddler was merely cumulative of trial testimony and by failing to address the affidavit of April Hester, which supplies distinct new facts not previously before the jury.

Under *Johnson*, the affidavits of Anita Saddler and April Hester fall outside the definition of cumulative evidence because: (1) Tonya Johnson and Anita Saddler reach contrary conclusions that materially support the

State's case and the defense case, respectively; and (2) though the accounts of Tonya Johnson and April Hester have some temporal overlap, the accounts, taken together, show a pattern of suspicious behavior that is not possible with the testimony of only one witness.

Amicus asks this Court to remand this case to the Trial Court for an evidentiary hearing so the trial judge can engage in a content-specific analysis of whether the testimony of April Hester and Anita Saddler, in conjunction with the new testimony of Gary Hargrove, Tonya Johnson, Peggie Grant, and Joseph Washington would materially alter the trial verdict if they were before the jury.

- 1. The testimony of Tonya Johnson and the sworn affidavit of Anita Saddler are not merely cumulative where each comes to a contrary conclusion about Red Coles' involvement in Officer MacPhail's death.**

Whereas Johnson inferred Red Coles' innocence from his request that she and Saddler investigate the happenings in the Burger King parking lot, Saddler interprets the encounter as suggesting Coles' involvement in the crime. Anita Saddler's impression about Red Coles' state of mind after the shooting supports the conclusion that Red Coles shot Officer MacPhail, while Tonya Johnson's testimony cuts the opposite way.

Whether Red Coles or Troy Davis shot Officer MacPhail is the material issue in this case. To the extent that Saddler's account fills a gap in the defense case left by the testimony of Tonya Johnson, her affidavit is not cumulative under *Johnson*, 196 Ga. at 806.

At trial, Tonya Johnson testified she and Anita Saddler ran into Red Coles and his friend, Terry, on Fahm Street shortly after the shooting. T. 1358-59. After the group walked back to Johnson's mother's house, Coles asked Johnson and Saddler to "go back up there [to the Burger King] and see was the police there?" T. 1360. On Cross-examination, Johnson explained that, from this statement, she formed the impression that Coles did not know what had happened at the Burger King. T. 1366.

Saddler draws the opposite conclusion from this encounter with Red Coles. After going to the Burger King at Coles' request, and reporting that Officer MacPhail was lying on the ground and not moving, "Red got even more nervous...Red was stuttering when he spoke. It was clear to me that he knew exactly what happened at Burger King by the way he was acting." (¶5). Whereas Johnson inferred Red Coles' innocence from his request that she and Saddler investigate the happenings in the Burger King parking lot,

Saddler interprets the encounter as suggesting Coles' involvement in the crime.

The only evidence presented at trial bolstered the weight of the State's case. The newly discovered impressions of Anita Saddler, on the other hand, go to the weight of the defense's case by supporting the claim that Red Coles was the gunman. See *Peebles v. Windham*, 177 Ga. 741, 743 (1933) ("in view of the materiality of the fact to which the newly discovered evidence relates, and the weight of this newly discovered evidence as the determining factor on the next trial, we are of the opinion that a new trial should have been granted, and that the court erred in refusing it").

2. April Hester's affidavit is not merely cumulative of Tonya Johnson's trial testimony because Hester describes behavior that Johnson did not witness, establishing a pattern, rather than a single instance, of suspicious behavior.

At trial, Tonya Johnson testified that Red Coles asked her and Saddler to go to the Burger King to investigate the actions of the police. T. 1360. Sometime after this encounter, Hester arrived on the scene, approaching Coles as Johnson walked away. (¶ 3). At this time, Hester was alone with Red Coles, leaving her as the only witness who can testify regarding Coles' behavior during this time. *After* Tonya Johnson left, Coles asked Hester "if

[she] would walk with him up to the Burger King so ‘they wouldn’t think that I had nothing to do with it.’” (§ 3). “I told Red that I had to go and he shot me a glare. He told me that I better not tell anybody what he had said. I got real scared...I didn’t want nothing to do with Red. He was crazy and always beat people up.” (§ 4).⁴

Heard in isolation, the incident recounted by Tonya Johnson could easily be interpreted as innocent curiosity. However, when presented in conjunction with Coles’ later statements to April Hester, Coles’ earlier behavior is recast in a different light. His actions take on a dubious, inculpatory tenor.

Thus, April Hester’s sworn affidavit is not merely cumulative because it provides facts not previously before the jury that add force to Davis’ claim that Red Coles shot Officer MacPhail. *See Brinson v. State*, 201 Ga.App. 80 (1991) (holding that newly discovered evidence was not cumulative where it added force to defendant’s argument and detracted from the contentions of the victim).

⁴ Under *Timberlake*, admissibility is a threshold inquiry for newly discovered evidence. 246 Ga. at 491. The testimony of April Hester about statements made falls under a hearsay exception.

III. THE TRIAL COURT ERRED IN DETERMINING WHETHER A NEW TRIAL SHOULD BE GRANTED BY EXAMINING THE EVIDENCE IN PIECEMEAL FASHION, RATHER THAN AS AN INTEGRATED WHOLE.

*“A brick is not a wall.”*⁵

When each piece of appellant’s new evidence in support of a new trial is viewed in isolation, it is impossible to see the entire picture. Taken as a whole, however, the new evidence paints a disturbing picture that overwhelmingly favors a new trial.

Georgia courts have long acknowledged the importance of considering the evidence as a comprehensive whole. In *Bell v. State*, this Court overturned the superior court’s denial of a new trial on the basis of newly discovered evidence, where the defendant presented new evidence including affidavits and the confession of the actual robber in support of his motion for a new trial. *Bell*, 227 Ga. at 804. This Court considered all of the evidence as an integrated whole and detailed the ways in which the evidence *taken as a whole* conformed to the six factors required by *Burge v. State*, 113 Ga. 431, 432 (1909), a predecessor of *Timberlake*. *Bell*, 227 Ga. at 805-808

⁵ John W. Strong et al., McCormick on Evidence § 185, at 339 (4th ed., student ed., 1992).

The *Bell* court specified that “while the statute provides that a new trial ‘may be granted,’ this does not mean that in a proper case, where all the rules of law have been met, a new trial may or may not be granted, but on the contrary it means that in such a case a new trial *must* be granted.” *Bell*, 227 Ga. at 809 (emphasis added). This is just such a case, where the evidence, when viewed as a whole, meets the requirements of the law and necessitates a new trial.

Because the lower court reviewed each piece of evidence in isolation, the court found that the evidence was insufficient to meet the *Timberlake* standard. See *Timberlake v. State*, 246 Ga. 488 (1980). However, *Timberlake* does not require that each piece of evidence offered in support of an extraordinary motion for a new trial be considered piecemeal – all that is required is that the evidence presented in support of a new trial satisfy all six of the elements. *Timberlake*, 246 Ga. at 491. See also *Dick v. State*, 248 Ga. 898 (1982); *Drake v. State*, 248 Ga. 891, 894 (1982). When taken as a whole, the appellant’s proffered evidence satisfies *Timberlake*.

The United States Supreme Court’s jurisprudence mirrors this Court’s wisdom with respect to evidence in support of motions for new trials and claims of actual innocence. The substantive *Timberlake* element requiring

new evidence to be “so material that it would probably produce a different verdict” is analogous to the reasonable probability prejudice standard as defined by the United States Supreme Court in cases alleging ineffective assistance of counsel and state suppression of exculpatory evidence. *See Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Bagley*, 473 U.S. 667, 682 (1985). Reasonable probability requires a cumulative analysis, involving “an assessment of the cumulative effect of the evidence, not [an] item by item assessment, but a responsibility to gauge the likely net effect of all such evidence.” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Similarly, new evidence in support of a new trial cannot be viewed piece by piece and should be analyzed as a whole.

In *Schlup v. Delo*, 513 U.S. 298 (1995) a case, like Troy Davis’, arising out of a request for an evidentiary hearing on an actual innocence claim, the Court was careful to note that when assessing claims of actual innocence,

[t]he district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on “actual innocence” allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial.... The habeas court must make its determination concerning the petitioner’s innocence “in light of *all the evidence*, including that alleged to have been illegally

admitted...and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial.”

Schlup at 327-28 (emphasis added). Further, the Court instructed that the district court “must assess the probative force of the newly presented evidence *in connection with* the evidence of guilt adduced at trial,” implying that all of the evidence must be viewed together to assess its value accurately. *See Schlup* at 332.

In *House v. Bell*, the Supreme Court once again addressed the issue of actual innocence claims, reinforcing the notion that evidence in support of such claims must be viewed globally, not as individual pieces:

“*Schlup* makes plain that the habeas court must consider ‘*all the evidence*,’ old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under ‘rules of admissibility that would govern at trial.... *Based on this total record*, the court must make ‘a probabilistic determination about what reasonable, properly instructed jurors would do.’”

547 U.S. 126 S. Ct. 2064 (2006). The *House* Court makes clear that the danger of looking at evidence piecemeal rather than as a cohesive whole is that, “*If considered in isolation, a reasonable jury might well disregard it*”. *House* at 2087.

Moreover, “[i]t is impossible for a petitioner to make a “truly persuasive demonstration of actual innocence” when he is forced to present

each piece of evidence in isolation. The notion that each single piece of evidence must conform to the six *Timberlake* elements would render it utterly impossible for any defendant to obtain a new trial, even when the new evidence is, as in this case, so compelling and overwhelmingly supports the defendant's claim of actual innocence. Such a policy is contrary to the interests of justice and fundamental fairness.

Aside from its probative value, evidence serves as building blocks for a compelling narrative, which jurors often require to decide a case fairly:

Unlike an abstract premise, whose force depends on going precisely to a particular step in a course of reasoning, *a piece of evidence may address any number of separate elements, striking hard just because it shows so much at once.... Evidence thus has force beyond any linear scheme of reasoning, and as its pieces come together a narrative gains momentum*, with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict. This persuasive power of the concrete and particular is often essential to the capacity of jurors to satisfy the obligations that the law places on them.

Old Chief v. U.S., 519 U.S. 172, 187 (1997) (emphasis added).

If it had reviewed Davis' evidence cohesively, the lower court would have seen a disturbing pattern of inconsistency. Antoine Williams swears that police told him to sign a statement they had prepared, even though the witness could not read. Dorothy Ferrell swears that the police coerced her

into identifying Davis as the shooter, and that she did so out of fear of reprisal since she was on parole herself. D. D. Collins, who was only 16 at the time of the incident, swears that the police threatened to charge him as an accessory if he did not agree with their version of events. Finally, and most compellingly, Red Coles, who testified against Troy Davis, has confessed to three people that he was the actual shooter. This startling evidence, taken in conjunction with all of the other new evidence Davis offers in support of his extraordinary motion for new trial, cannot be ignored. A trial court weighing the new evidence against the tatters of the State's remaining case would have no alternative but to rule in favor of Troy Davis' motion. It is precisely the sort of evidence for which the extraordinary motion statute was created, and to disregard it would be to perpetuate the most grievous injustice known to our legal system – the execution of a truly innocent man.

CONCLUSION

For the aforementioned reasons, *amicus* Charles Hamilton Houston Institute for Race and Justice urges the Court to remand this case back to the Superior Court for an evidentiary hearing.

Respectfully submitted,

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I hereby certify that on this eighth day of November, 2007 I have served a copy of the within Amicus Brief by priority mail, postage prepaid upon:

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