

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION**

STATE OF FLORIDA

CASE NO.: 1990-CF-003270

VS.

**TONY HOPPS,
DEFENDANT-MOVANT**

DIVISION: B

**DEFENDANT'S SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF AND TO
VACATE JUDGMENT AND SENTENCE PURSUANT TO FLA. R. CRIM. P. 3.850**

Defendant-Movant, TONY HOPPS (hereafter "Tony" or "Mr. Hopps"), by and through undersigned counsel and pursuant to Fla. R. Crim. P. 3.850, moves this Honorable Court to vacate his convictions and sentences in this case based on newly discovered evidence indicating he likely did not commit the armed burglary and armed robbery for which he was convicted.

On July 16, 2021, the Conviction Review Unit of the Thirteenth Judicial Circuit State Attorney's Office ("CRU") issued a Fact Finding Summary Report on Mr. Hopps' case. This Fact Finding Summary Report, which was unanimously confirmed by an Independent Review Panel and accepted by the elected State Attorney, made a number of key findings that demonstrate the lack of reliable foundation for Mr. Hopps' convictions:

1. That the photo lineup procedure used by law enforcement in this case did not comport with best practices at the time of its administration and the resulting identifications would not be admissible today;
2. Mr. Hopps did not match the description of the perpetrator provided by the victims;
3. That witnesses at the time of trial, one new witness, and objective evidence from law enforcement reports provided an alibi for Mr. Hopps that put him in a location that was

far enough from the scene of the crime that it is highly unlikely that he committed these crimes; and

4. Mr. Hopps could not have been one of the men fleeing from the vehicle containing the victims' stolen belongings because he was indisputably in jail at the time.

See CRU Fact Finding Summary Report, at 10-12, attached at Tab A. As a result, the CRU recommended that Mr. Hopps' convictions and sentences should be vacated because the State can no longer stand behind the validity of these convictions.

The CRU's factual conclusions and recommendation were a direct result of Mr. Hopps' efforts to have his claims of innocence and wrongful conviction heard. In May 2020, he applied to the CRU and requested that it review his case. *Id.* His application began the CRU's comprehensive review of his case, during which it reviewed all available case materials and located and interviewed additional witnesses. *Id.* This newly discovered evidence is such that it would probably produce an acquittal on retrial. *Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1991). As a result, this Court should vacate Mr. Hopps' convictions and sentences.

**REQUIREMENTS OF MOTION TO VACATE JUDGMENT AND SENTENCE MADE
PURSUANT TO FLA. R. CRIM. PRO. 3.850**

To be facially sufficient, a Motion to Vacate Judgment and Sentence made pursuant to Fla. R. Crim. P. 3.850 must be made under oath and include the following information:

- (1) The judgment or sentence under attack and the court which rendered the same;
- (2) whether there was an appeal from the judgment or sentence and the disposition thereof;
- (3) whether a previous postconviction motion has been filed, and if so, how many;
- (4) if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;
- (5) the nature of the relief sought; and

(6) a brief statement of the facts (and other conditions) relied on in support of the motion.

Fla. R. Crim. P. 3.850(c)(1)-(6). Defendant addresses requirements (1), (2), (3), (4), and (6) in the Statement of Facts and the Case. Requirement (5) is addressed by the Prayer for Relief. The Motion is made under oath as indicated in the attached Verification. Thus, this motion is facially sufficient.

STATEMENT OF FACTS AND THE CASE

1. Crime

On January 23, 1990, Ruby and Dunbar Dyches arrived in Tampa, Florida to visit their son, who lived and worked as an attorney in Tampa. (T. 21-22, 60). They were staying in Room 137 at the Tahitian Inn at 601 S. Dale Mabry Blvd. (T. 22, 60). On January 25, 1990, Ruby and Dunbar shopped at a mall and returned to their room at the Tahitian Inn at about 3:00 p.m. (T. 22, 61). Within 10 to 15 minutes, while the couple was looking at their purchases, someone knocked on the motel door. (T. 22, 62).

Ruby was facing away from the door while sitting at a table toward the rear of the room. (T. 62). Dunbar inquired as to who was at the door. (T. 22, 62). The person who knocked would not identify himself, but Dunbar still opened the door about five to six inches to see who was there. (T. 23-24, 62). Dunbar tried to pull the door closed but was unsuccessful and the unknown man (Suspect #1) at the door pulled a pistol from his waistband. (T. 24). Dunbar later described this pistol as dark black, flat on the sides, and either a "9 mm or 45 automatic." (T. 29-30). Suspect #1 pushed the pistol into Dunbar's stomach and said "I'm going to kill you. I want your money." (T. 24). Dunbar told the man that the man did not "want to kill anybody. Get out of here. We don't want you in here. We don't have any money." (T. 25, 26). Ruby turned toward the door and heard Dunbar speaking to Suspect #1. (T. 63).

Suspect #1 finally pulled the door fully open, which pulled Dunbar outside the room. (T. 26). Once outside the room, Dunbar saw a second individual (Suspect #2) standing against the wall, who then hit Dunbar on the left side of the head and knocked him against a concrete pillar in the corridor outside the room. (T. 26-27). Dunbar skinned his arm from the fall and sustained a bruise on the left side of his head. (T. 27). He was dazed for a few minutes from getting hit in the head. (T. 27). Dunbar testified that 30 to 60 seconds passed from the time he opened the door to when he was struck in the head and fell on the concrete. (T. 25-26, 42).

Dunbar was farsighted, meaning he had trouble seeing things clearly that were close to him, and he was not wearing his glasses during this incident. *See Dunbar Dyches Deposition*, at 13-14. Dunbar and Suspect #1 were “eyeball to eyeball” when they were fighting over the door. (T. 25-26, 42-43).

After Dunbar was pulled out of the room, Suspect #1 entered the room and trained his gun on Ruby. (T. 63). Suspect #1 asked Ruby for money; he grabbed Ruby’s purse, which was on the chair by the door to the motel room, and then left the room. (T. 63, 72). Ruby testified that 60 to 90 seconds elapsed from when Suspect #1 entered the motel room to when he left. (T. 65). While on the ground outside the room, Dunbar saw the two men flee and get into a maroon-colored car with very dark tinted windows. *See Dunbar Dyches Deposition*, at 8-9.

After Dunbar came to and received medical attention at the scene, he returned to his motel room and discovered that his wife’s handbag, including all its contents, was missing. (T. 28-29). The contents included \$1,790 in cash, Demerol pills, and other personal effects. (T. 28-29, 42, 65).

2. Subsequent Police Investigation

Shortly after the incident, Tampa Police Department Officer C.W. Gieyere interviewed two motel guests present at the Tahitian Inn at the time of the crime—Bill Claude Waddle and Charles

Gelfound. Waddle stated that while he was in the swimming pool at the motel, he heard some arguing. *Gieyere Report* (Jan. 25, 1990), at 4. He then observed two Black males running west down the hallway outside the motel rooms and enter into a 1984 or 1985 maroon Buick. *Id.* Waddle caught a partial license plate for the vehicle of either DWV070 or DVS70C. *Id.* Similarly, Gelfound told Officer Gieyere that he saw two Black males jump into a maroon four-door Oldsmobile or Buick with dark tinted windows while carrying a blue purse. *Id.* at 3. Gelfound saw the vehicle leave the parking lot and drive north on Church Avenue at a high rate of speed. *Id.*

Later that afternoon, at 5:45 p.m., Tampa Police Department Officer Palmira recovered a stolen vehicle that was left running and abandoned at 3001 West Deleon Street. *O’Nolan Report* (Feb. 26, 1990), at 1. This 1985 maroon two-door Pontiac with the Florida Tag 0SV70C appeared to be the vehicle used by the perpetrators of the robbery to flee from the Tahitian Inn. *Id.* The vehicle was stolen sometime after 2:00 p.m. earlier that day from the same location where it was eventually found. *Id.*

On January 26, 1990, at 11:54 p.m., Tampa Police Department Officer M.A. Yost pursued a different maroon Pontiac occupied by four unknown Black males. *Id.* All four Black males abandoned the vehicle and fled on foot, managing to escape. *Id.* Officer Yost recognized one of the fleeing men as Calvin Fisher, who lived at 503 E. Amelia Street. *Id.* However, Officer Yost was unable to positively identify Fisher as being in the vehicle and, when questioned, Fisher denied any involvement. *Id.*

Tampa Police Department Officer M.W. Bushell arrived at the location of this second abandoned maroon Pontiac and found (1) two guns—a Smith and Wesson .357 revolver and a Ruger .44 Magnum—(2) six live .357 rounds and six live .44 rounds, (3) a camouflage green ski mask, (4) a navy blue sweater ski mask, (5) a black sweater hat, (6) a black right hand leather

glove, and (7) a black Los Angeles Raiders ball cap. *TPD Property Record* (Jan. 26, 1990). Importantly, Office Bushell also recovered multiple items of property belonging to Dunbar and Ruby Dyches: (1) a navy blue leather purse, (2) miscellaneous cosmetics, (3) personal identification for Ruby Dyches and Dunbar Dyches, (4) a maroon wallet, and (5) 50 milligrams of Demerol. *Bushell Report* (Jan. 26, 1990). The Dyches' stolen money was not recovered. *Id.*

There were no fingerprints lifted from either recovered stolen vehicle, the guns recovered from the second stolen Pontiac, or from the crime scene. *O'Nolan Report* (Feb. 26, 1990), at 1.

3. Description of Suspect #1

Suspect #1 was a Black male with a mustache, but no beard. *See* Dunbar Dyches Deposition, at 7; Ruby Dyches Deposition, at 6. Dunbar further described him as being “stacked,” “muscular and overweight,” and not skinny. *Id.* Dunbar and Ruby both described Suspect #1 as wearing a camouflage cap and camouflage pants. (T. 42-43, 73-74). Neither could recall any further details about the cap or the shirt worn by Suspect #1. (T. 48, 74). Neither could remember whether Suspect #1 had a belt on or any details about his shoes. (T. 49-50, 74). Despite being “eyeball to eyeball” with Suspect #1 (T. 25-26, 42-43, 74), neither noticed any marks, bruises, scars, bumps, or pimples on his face. (T. 50-51, 75). Dunbar stated he was not looking for details because he had a gun pressed against his stomach. (T. 49).

Dunbar only saw the back of the Suspect #2 and could not provide a detailed description. (T. 27).

4. Identification of Tony Hopps as Suspect #1

Tampa Police Department Detective Gene Strickland had requested that Tampa Police Department Officer Mark Scott stop Tony Hopps so Detective Strickland could take Mr. Hopps' picture and do a field information report. (1995 Postconviction Hearing T. 75). On January 25,

1990, Officer Scott stopped Mr. Hopps at the corner of Francis and Central—near where Mr. Hopps lived at 505 E. Francis Avenue. (1995 Postconviction Hearing T. 75, 80). Police dispatch records indicated that this encounter occurred at 3:49 p.m. on January 25, 1990. (T. 96-97).¹ The location of this police encounter was 5.1 miles from the Tahitian Inn; it took approximately 21 minutes to travel by car between the two locations during the time of day that this crime occurred. (1995 Postconviction Hearing T. 47-48).²

Later that evening, Mr. Hopps accompanied his girlfriend to Tampa General Hospital because she may have been having a miscarriage. *O’Nolan Report* (Feb. 26, 1990), at 2. He was subsequently arrested on January 25, 1990 at 11:30 p.m. and was in jail on January 26, 1990 when the maroon Pontiac containing the guns and the Dyches’ stolen property was recovered. *Id.* It does not appear that either the police encounter with Officer Scott and Detective Strickland at 3:49 p.m. or Mr. Hopps’ arrest later that evening had any relation to the investigation of the burglary and robbery at the Tahitian Inn.

Tampa Police Department Detective James Dean O’Nolan was assigned to investigate this burglary and robbery at the Tahitian Inn. (T. 76-77). On February 1, 1990, Detective O’Nolan requested to compare the fingerprints of six individuals with any fingerprints recovered from the stolen vehicles and recovered guns. *O’Nolan Latent Fingerprint Comparison Request* (Feb. 1, 1990). These six individuals were Calvin Fisher, Willie Hopps, Tony Hopps, John Clay, Michael Hart, and Calvin Harris. *Id.* This request did not yield any usable evidence because no fingerprints were recovered from any items of physical evidence collected in the case. It is not clear from any

¹ During a sidebar outside earshot of the jury, counsel for the defense indicated the time of this encounter based on dispatch records he had in his possession but he did not offer to admit these records into evidence and the jury never heard the precise time of this encounter.

² The crime at the Tahitian Inn occurred at approximately 3:15 p.m.

available records how Detective O’Nolan chose these individuals, other than Calvin Fisher, as potential suspects.

Detective O’Nolan then prepared a six-person photographic lineup in which he included photos of these same suspects, with their photos in the following positions within the photo lineup:

- Photo #1 – Vincent “Willie” Hopps
- Photo #2 – Tony Hopps
- Photo #3 – Calvin Fisher
- Photo #4 – Calvin Harris
- Photo #5 – Michael Hart
- Photo #6 – John Clay

O’Nolan Report (Feb. 26, 1990), at 1. Other than Calvin Fisher, who was identified as fleeing the second stolen maroon Pontiac that contained the victims’ stolen belongings, it appears that Tony Hopps and the remaining individuals depicted in this photo lineup were not chosen for inclusion in the photo lineup due to any independent evidence suggesting their involvement in the burglary and robbery at the Tahitian Inn. Rather, Detective O’Nolan developed this photo lineup with “subjects who are known to have committed and/or are suspects in similar offenses.” *Id.*

After the incident, Ruby and Dunbar returned to their home in Augusta, Georgia. (T. 30, 66). Detective O’Nolan sent the photographic lineup of suspects to the Dycheses in the mail “sometime in February.” (T. 30, 46, 67-68, 79). Detective O’Nolan instructed Dunbar to look at the photos and determine whether any of the individuals depicted looked familiar. (T. 30-31, 79). Dunbar relayed this instruction to his wife. (T. 31). Dunbar told Ruby that only after they had both looked at the photos separately would they discuss their identifications. (T. 32). Both Dunbar and Detective O’Nolan testified that Dunbar was not told whether any particular person was placed in the photo lineup. (T. 31, 78). However, Detective O’Nolan conceded that he told the Dycheses that police had a suspect, and that the suspect’s picture was in the photographic lineup. (T. 78).

Upon receipt, Dunbar looked at the photo lineup while he was in the den of his home; he identified photo #2 as the individual who was at the motel room door with the gun—Suspect #1. (T. 32-33, 46-47, 67). It took Dunbar three to four minutes to review and choose the photo. (T. 47). He indicated his choice on a form provided with the photos. (T. 53). He then gave the photo lineup to Ruby, who was in a separate room, and repeated the instructions provided by Detective O’Nolan. (T. 33, 47, 67). Dunbar did not tell Ruby that he made an identification, nor did he give her any indication of which photo he chose before she reviewed the photo lineup. (T. 33-34, 67). Ruby then looked at each photo, made an identification of a photo #2, and signed the form indicating her choice. (T. 67-68, 80). It took Ruby about five minutes to choose a photo. (T. 73).

After completing the identification procedure, Detective O’Nolan received the photos and forms back from the Dycheses by mail on or about February 14, 1990. (T. 79). As a result of these identifications, Tony Hopps was arrested for burglary of a dwelling with a firearm and two counts of robbery with a firearm on February 26, 1990. *Criminal Report Affidavit* (Feb. 26, 1990).

5. The Trial

The State presented only three witnesses at trial—Dunbar Dyches, Ruby Dyches, and Detective O’Nolan. Its case relied entirely on the Dyches’ identification of Tony Hopps as Suspect #1. Indeed, both Dunbar and Ruby made an in-court identification of the Defendant, Tony Hopps, as Suspect #1 during the trial. (T. 25-26, 65-66). The State did not present any evidence to explain how Mr. Hopps became a suspect in the first instance or what independent evidence suggested that law enforcement should have included him in the photo lineup.

The Defense presented three witnesses at trial in an attempt to establish an alibi for Mr. Hopps. Ellie Mae Fisher was a friend of Mr. Hopps’ mother. (T. 89). After Mr. Hopps’ mother died, Tony became homeless from time to time and Ms. Fisher would cook food for him. (T. 89-

90). Ms. Fisher stated that she saw Mr. Hopps every day. (T. 90). She testified that on the day of this crime, she saw Mr. Hopps around her home earlier in the day and she gave him food. (T. 88). The next time she saw Mr. Hopps, he was speaking with police between 3:00 p.m. and 4:00 p.m. on Central, near the corner of North Frances and Amelia Streets. (T. 88). She did not hear the content of this conversation. (T. 90). While Ms. Fisher could not give a precise distance in miles, she testified that this encounter was “a long ways” from the location of the crime at the Tahitian Inn and that it was too far to walk. (T. 89, 91).

Police dispatch records indicated that Tampa Police Department Detective Gene Strickland encountered Tony Hopps outside of Hopps’ residence, after Hopps was stopped by Officer Mark Scott at 3:49 p.m. on January 25, 1990. (T. 96-97). Detective Strickland confirmed that this encounter occurred at Amelia and Central. (T. 94-95).

Lashawn Galton³ lived near Tony Hopps and his family and knew him. (T. 100). Ms. Galton testified that on the afternoon of January 25, 1990, she had a conversation with Mr. Hopps at 3:25 p.m. (T. 100-01). She remembered this encounter because she was waiting at the bus stop for her daughter and Mr. Hopps was standing with her. (T. 102-03). She also witnessed Mr. Hopps have a conversation with two white police officers near the corner of Central and Frances around 3:30 p.m. (T. 101).

6. Verdict and Sentencing

Mr. Hopps’ trial took place on June 25 and 26, 1990. On June 26, 1990, the jury convicted Mr. Hopps of burglary of a dwelling with a firearm and two counts of robbery with a firearm. (T. 179). On July 13, 1990, this Court sentenced Mr. Hopps as a habitual violent felony offender to three concurrent life sentences. (Sentencing T. 15-16). The Second District Court of Appeal

³ Lashawn’s last name is spelled three different ways within all of the available case materials: Galton, Gallon, and Galtin. For the sake of consistency, this motion will refer to her by one of those iterations, Lashawn Galton.

affirmed Mr. Hopps' convictions and sentences for burglary of a dwelling with a firearm and one count of robbery with a firearm as to the offense against Ms. Dyches, but reversed the conviction for robbery with a firearm as to Mr. Dyches due to insufficiency of the evidence. *See Hopps v. State*, 594 So. 2d 848 (Fla. 2d DCA 1992). On remand, this Court removed one count of robbery with a firearm and amended the sentences of the remaining counts to run consecutive.

7. Previous Postconviction Litigation

Mr. Hopps filed his initial motion for postconviction relief claiming that his counsel was ineffective for failing to call an alibi witness and that he was not given an opportunity to testify at trial. After holding an evidentiary hearing on March 14, 1995, this Court denied the motion.

On September 23, 2013, Mr. Hopps filed a successive motion for postconviction relief claiming that the predicate felony conviction used to designate him as a habitual violent felony offender was unconstitutional due to his plea to that predicate offense being involuntary. This Court summarily denied the motion on November 12, 2013.

Mr. Hopps filed numerous motions to correct illegal sentence and petitions for writ of habeas corpus, all of which were summarily denied.

Notably, on December 22, 2016, Mr. Hopps filed a motion to disqualify then presiding Judge Michelle Sisco because her brother-in-law, Dale Sisco, was the trial prosecutor in this case. On January 9, 2017, Judge Sisco found the motion legally sufficient, granted the motion, and transferred the case to Division B, where it currently resides.

8. The Conviction Review Unit Investigation

a. The Innovation of Conviction Integrity/Review Units

Conviction Integrity Units ("CIUs") and Conviction Review Units ("CRUs") are divisions in prosecutors' offices that investigate claims of innocence and possible miscarriages of justice.

See Exonerations in 2018, The National Registry of Exonerations, April 9, 2019 *available at* <http://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (last visited Sept. 4, 2020); *see also* Scheck, Barry, *Conviction Integrity Units Revisited*, 14 Ohio S. Crim. Law 705 (2017). The National Registry of Exonerations reported that in 2018, CIUs and CRUs in sixteen counties were responsible for fifty-eight exonerations. *Id.* One of the main catalysts for the creation of CIU/CRUs is that the rules of professional responsibility require prosecutors to act upon “new, credible and material evidence” that creates a reasonable likelihood that a convicted defendant did not commit the offense for which he was convicted. *See* American Bar Association Rule 3.8: Special Responsibilities of a Prosecutor. Thus, prosecutors have a unique obligation, both ethically and as officers of the court, to act on evidence of innocence, whenever it avails itself, to ensure that no factually innocent person remains wrongfully convicted. In 2018, State Attorney Andrew Warren announced that he created a CRU that would work to “prevent, identify, and remedy wrongful convictions.” *See* State Attorney Andrew Warren Unveils Groundbreaking Conviction Review Unit, *available at* <https://www.sao13th.com/2018/11/state-attorney-andrew-h-warren-unveils-groundbreaking-conviction-review-unit/> (last visited Sept. 4, 2020).

a. The CRU Reinvestigation in this Case

On May 12, 2020, Mr. Hopps submitted a petition for review to the CRU within the Thirteenth Judicial Circuit State Attorney’s Office, alleging that he was wrongfully convicted and requesting that the CRU reopen and review his case. (CRU Fact Finding Summary Report, at 10-12).

In addition to reviewing all available police reports, the trial transcript, witness depositions, all available postconviction pleadings and hearing transcripts, and other available materials, the

CRU located and interviewed four additional witnesses who did not testify previously in this case. (*Id.* at 10-12):

1. Calvin Fisher

At the time of the robbery in this case, Calvin Fisher lived at 503 E. Amelia Avenue in Tampa, Florida, which is next to where the police detained Mr. Hopps at around 3:49 p.m. on January 25, 1990. *Id.* at 10. Calvin is the son of trial witness Ellie Mae Hopps and was good friends with Willie Hopps, Tony Hopps' brother. *Id.* at 10-11. Calvin claimed to have no knowledge of any robbery at the Tahitian Inn and denied having knowledge of a stolen vehicle or being chased by police on January 26, 1990. *Id.* at 11.

2. Vickie Hopps

Vickie Hopps is the biological sister of Tony Hopps. *Id.* at 11. At the time of the burglary and robbery in this case, Tony Hopps lived with Vickie Hopps. *Id.* She indicated to the CRU that while in front of their home on the afternoon of January 25, 1990, she saw Mr. Hopps speaking with Ellie Mae Fisher when a marked police car pulled up and handcuffed Mr. Hopps. *Id.* A few minutes later, another officer arrived and took a photo of Mr. Hopps while he was wearing only shorts and no shirt. *Id.* Vickie indicated that later that day, Mr. Hopps went to Tampa General Hospital with his girlfriend. *Id.*

Vickie also indicated a possible motive for law enforcement treating Mr. Hopps as a suspect. She told the CRU that prior to being arrested, Mr. Hopps "worked" for Tampa Police Department Detective George McNamara as an informant in homicide cases. *Id.* At some point, Mr. Hopps ceased assisting Detective McNamara and even discarded a recording device, which angered Detective McNamara. *Id.*

3. Victoria Hopps

Victoria Hopps, although only 16-years-old at the time of the crime, went on to marry Jerome “Willie” Hopps, Tony Hopps’ brother. *Id.* At the time of the crime, Victoria lived with her parents across the street from the Hopps residence. *Id.* Victoria told the CRU that Mr. Hopps was good friends with his neighbor, Lashawn Galton, who had a special needs child. *Id.* Tony would stand at the bus stop every day with Ms. Galton and wait for the child to come home from school. *Id.* Victoria recalled that the bus came every day between 3:00 p.m. and 3:25 p.m., and someone always had to wait for the child due to the child’s special needs. *Id.* The bus stop was located in front of Lee’s Groceries at 2210 N. Central Avenue. *Id.* at 12. Victoria recalled that on the day of this crime, Mr. Hopps was standing with Lashawn Galton at the bus stop waiting for her child to arrive when the police detained him to take photos of him. *Id.*

4. Retired Tampa Police Department Detective George McNamara

Detective McNamara told the CRU that the procedures used by the Tampa Police Department in this case to compose and administer the photo lineup did not comport with best practices in place in 1990. He indicated that the normal protocol for administering a photo lineup, even in 1990, would never allow inclusion of two or more suspects in the same photo lineup. *Id.* at 12. Further, if a witness was out of town or in another state, the TPD detective should have contacted the local police agency and requested that they administer the photo lineup. *Id.* Detective McNamara told the CRU that the photo lineup should not have been mailed directly to the witnesses. *Id.*

The CRU also spoke with Jeanne Coleman, Mr. Hopps’ defense counsel at the 1995 postconviction evidentiary hearing. *Id.* at 12. Additionally, the CRU located Detective O’Nolan, but could not interview him because he has been diagnosed with dementia. *Id.* The CRU determined that witnesses Jerome (Willie) Hopps, Ellie Mae Fisher, Miriam Anderson, Mary

Wiggins, Lashawn Galton, and the victims Dunbar and Ruby Dyches are now deceased. *Id.* at 12-13.

The CRU reviewed color copies of the photo lineup viewed by Ruby and Dunbar Dyches and verified that Willie Hopps was in Photo #1, Tony Hopps was in Photo #2, and Calvin Fisher was in Photo #3. *Id.* at 13. Most notably, the CRU also located the color photograph of Tony Hopps taken on the day of the crime by Detective Strickland and Mr. Hopps does not appear “stacked” or muscular as the victims described Suspect #1. *Id.* The photo also shows that Mr. Hopps had a beard at that time, whereas both Ruby and Dunbar Dyches specifically stated that Suspect #1 did not have a beard and only had a mustache. *Id.*

The CRU attempted to obtain school bus records for January 25, 1990 and TPD records of calls made near the time of Tony Hopps’ encounter with police at 3:49 p.m. on January 25, 1990, but such records no longer exist. *Id.* at 13.

b. The CRU Findings in this Case

After a thorough reinvestigation, the CRU made the following findings:

1. That the method used by Detective O’Nolan for procuring the positive identification of Mr. Hopps as Suspect #1 did not meet Tampa Police Department standards in 1990. If this method had been used today the photo identification would likely be suppressed.

The CRU found the following issues with the photo lineup:

- The photo lineup was mailed directly to the victims instead of being mailed to, and administered by, a local law enforcement agency in Augusta, Georgia;
- There was some discussion between the two victims about the identification of Suspect #1; and

- Tampa Police Department included two other suspects with Tony Hopps, including his own brother, in the six-person photo lineup. *Id.* at 13.
2. On January 26, 1990, some of the stolen items were found in a stolen vehicle from which Calvin Fisher had been seen running. Tony Hopps could not have been one of the other suspects that ran from the car because he was in jail at that time after being arrested on January 25, 1990 at 11:30 p.m. *Id.* at 13-14.
 3. There was not a feasible amount of time between the robbery and when Mr. Hopps was detained by Officer Mark Scott outside his home to allow for Mr. Hopps to have committed the crime at the Tahitian Inn and be present outside his home for that police encounter. The CRU came to this conclusion based on:
 - The testimony of Ellie Mae Fisher and Lashawn Galton;
 - The timing of Officer Scott stopping Mr. Hopps outside his home; and
 - The clothing that Mr. Hopps was wearing when he was stopped did not match the clothing that Suspect #1 was wearing at the time of the robbery. *Id.* at 14.
 4. The description of Suspect #1 that Ruby and Dunbar Dyches provided to the police does not match Tony Hopps. Discrepancies include:
 - The clothing Mr. Hopps was wearing compared to what they reported the robber was wearing;
 - Tony Hopps had a beard at the time of his arrest later on the day of this crime and both victims stated Suspect #1 only had a mustache, not a beard;
 - Tony Hopps was skinny and would not have been considered “stacked” or muscular; and

- Cross racial misidentification could have been a factor in the victim’s misidentification of Tony Hopps. *Id.* at 14.
5. That Victoria Hopps has now come forward and provided an alibi for Tony Hopps at the time of the robbery. Ms. Hopps substantiates the previous testimony by Lashawn Galton that Tony Hopps was with Galton at the bus stop waiting on Galton’s child to get home from school. *Id.* at 14.

c. The CRU Recommendation of Entitlement to Relief

Based on its reinvestigation and its findings, the CRU recommended that Mr. Hopps’ convictions and sentences should be vacated because the State can no longer stand behind the validity of these convictions. Although the CRU made no definitive determination as to Mr. Hopps’ innocence, it did believe that the investigative techniques used by Detective O’Nolan were faulty. Further, the CRU found newly discovered evidence that was not submitted at trial that calls the convictions into question. This evidence includes issues with the likely inability for Mr. Hopps to physically be at the location of the robbery and also in front of his home soon after, the problematic construction and administration of the photo lineup sent to the victims, and alibi witnesses that were not called at trial.

On June 23, 2021, the Independent Review Panel reviewed the reinvestigation and recommendations of the CRU and unanimously agreed with the recommendation for relief.

On July 20, 2021, the CRU disclosed its Fact Finding Summary Report to Mr. Hopps, through undersigned counsel. This report and its contents regarding the CRU’s investigation qualify as the newly discovered evidence upon which Mr. Hopps predicates this timely-filed Motion for Postconviction Relief.

ARGUMENT

I. WHEN VIEWED IN LIGHT OF ALL THE EVIDENCE ADMISSIBLE AT A NEW TRIAL, THE NEWLY DISCOVERED EVIDENCE OF THE CONVICTION REVIEW UNIT’S REPORT CREATES A REASONABLE DOUBT AS TO MR. HOPPS’ GUILT. SUCH EVIDENCE IS PRESENTED TO THE COURT IN A TIMELY MANNER AND PROBABLY WOULD PRODUCE AN ACQUITTAL ON RETRIAL.

In order to obtain relief based on a claim of newly discovered evidence, a defendant must demonstrate new facts (1) that were “unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known them by the use of diligence,” and (2) that if considered by the jury are “of such a nature that it would probably produce an acquittal on retrial.” *Jones*, 591 So. 2d at 915-16. In making this determination, this Court “must consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at a new trial,” so there is a “total picture” considering “all the circumstances of the case.” *Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014) (citing *Swafford v. State*, 125 So. 3d 760, 775–76 (Fla. 2013)) (emphasis added).

As the Supreme Court of Florida explained, the *Jones* materiality standard is met when the newly discovered evidence “weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.” *Williamson v. State*, 961 So.2d. 229, 234 (Fla. 2007) (internal quotations omitted). A postconviction court must even consider testimony previously excluded as procedurally barred or presented in another postconviction proceeding in determining if there is a probability of an acquittal. *Swafford*, 125 So. 3d at 775-76. “In evaluating the legal sufficiency of a motion based on newly discovered evidence, the court must accept the allegations as true for the purpose of determining whether the alleged facts, if true, would ‘render the judgment vulnerable to collateral attack.’” *Nordelo v. State*, 93 So. 3d 178, 184 (Fla. 2012) (citations omitted). The determination of facial sufficiency “rest[s] upon an examination of the face, or

contents, of the postconviction motion.” *Id.* at 185 (quoting *Spera v. State*, 971 So. 2d 754, 758 (Fla. 2007)).

A. The Newly Discovered Evidence

After accepting the case, the CRU thoroughly reexamined the case, including reviewing all available historical case materials and conducting additional investigation. This reexamination analyzed the entirety of the State’s work, including the initial police investigation. The CRU’s review culminated in a series of conclusions that have completely changed the evidentiary profile of this case in a way that makes the conviction wrongful and Mr. Hopps’ continued incarceration untenable.

1. The CRU Confirmed that the Composition and Administration of the Photo Lineup Was Improper, Rendering the Resulting Identifications Inadmissible and Leaving the State with No Evidence of Guilt to Offer.

The CRU confirmed that the procedures used by the Tampa Police Department to compose and administer the photo lineup in this case did not comport with best practices in place in 1990. First, the composition of the lineup was improper because it had more than one suspect in it, making any choice, Tony Hopps or otherwise, by the victims a correct one. CRU Fact Finding Summary Report, at 10-13. Second, because the witnesses were in Augusta, Georgia, the TPD detective should have contacted the local police agency in Augusta and requested that they administer the photo lineup. *Id.* The photo lineup should not have been mailed directly to the witnesses and should not have been self-administered. *Id.* The CRU determined that these infirmities in the composition and administration of the photo lineup undermine its reliability and would render it inadmissible at a new trial under current legal standards.

Moreover, there does not appear to be any independent, objective evidence that led law enforcement to include Mr. Hopps in this photo lineup in the first instance. There were no

witnesses who saw him at the crime scene. He could not have been in the car that the victims' stolen belongings were found in because he was in jail at the time. He did not match the description of Suspect #1 provided by the victims. He was not found with any of the stolen property. It appears he was 5.1 miles, a 21-minute drive, from the crime scene at the time of the crime. It also appears that Mr. Hopps was only included in the photo lineup because he was a "usual suspect" and nothing more, making the eventual cross-racial identification dubious at best.

This case could not have been, and could now not be, prosecuted without Ruby and Dunbar Dyches' identifications of Mr. Hopps as Suspect #1 being admissible and available to a jury—as their identifications were the only evidence connecting Mr. Hopps to this crime. It would be a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution to convict an individual based on not a single piece of evidence tending to show his guilt. *See Jackson v. Virginia*, 443 U.S. 307, 314 (1979) (citing *Thompson v. City of Louisville*, 362 U.S. 199 (1960)). A "conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm." *Id.*

2. The CRU Investigation Revealed Facts Available But Not Presented at Trial that Further Prove Mr. Hopps Was Misidentified

The CRU investigation strongly suggests that Mr. Hopps could not have been Suspect #1 in this burglary and robbery. First, the historical records available even before trial demonstrate that Mr. Hopps did not match the victims' description of Suspect #1. During their pre-trial depositions, both victims unequivocally stated that Suspect #1 was a Black male with a mustache, but no beard. *See Dunbar Dyches Deposition*, at 7; *Ruby Dyches Deposition*, at 6. Dunbar further described Suspect #1 as being "stacked," "muscular and overweight," and not skinny. *Dunbar Dyches Deposition*, at 7. Both victims described Suspect #1 as wearing a camouflage cap and camouflage pants (T. 42-43, 73-74). The CRU obtained the photo of Mr. Hopps taken by Detective

Strickland within less an hour of when the crime occurred and it depicts Mr. Hopps as having a beard, skinny, and not wearing the clothes worn by Suspect #1 during the crime. CRU Fact Finding Summary Report, at 13. Additionally, Mr. Hopps could not have been one of the individuals fleeing from the stolen vehicle that contained the victims' stolen property on January 26, 1990 because he was indisputably arrested the previous evening and in jail at the time this vehicle was abandoned by the suspects.

For reasons that are not clear from the record, none of these vital exculpatory facts were presented at trial by either party. Yet, these facts would be admissible at a new trial and strongly suggest that Mr. Hopps had no connection to the crime or actual perpetrators, that he did not resemble and, therefore, was not Suspect #1, and that he was a victim of eyewitness misidentification.

3. The CRU Investigation Revealed a New Witness Not Presented at Trial Who Fortifies Mr. Hopps' Alibi Defense Presented at Trial

At trial, Mr. Hopps presented three witnesses who collectively indicated that he was outside his home talking to neighbors Ellie Mae Fisher and Lashawn Galton when he was detained by police. (T. 88-90, 101-03). However, at trial, the jury did not hear the precise time that Mr. Hopps was talking to his neighbors, the precise time of the police encounter near his home or the precise distance and driving time between the Tahitian Inn and Mr. Hopps' home. Thus, the jury was left with an imprecise, incomplete alibi and the impression that Mr. Hopps had sufficient time to both commit the burglary and robbery at Tahitian Inn and get back to his home to speak with his neighbors and interact with law enforcement.

However, during a postconviction evidentiary hearing, Mr. Hopps presented evidence from a former law enforcement officer that the driving time between the Tahitian Inn and Mr. Hopps' home during the same time of day as the crime in this case was 21 minutes. (1995 Postconviction

Hearing T. 47-48). Further, the CRU investigation revealed that on the day of this crime, Victoria Hopps (a 16-year-old child at that time) saw Mr. Hopps standing with Lashawn Galton at the bus stop waiting for Ms. Galton's child to arrive when the police detained him to take photos of him. CRU Fact Finding Summary Report, at 11. For the first time, however, she provided the precise timing of this event. She stated that the bus came every day between 3:00 p.m. and 3:25 p.m., and she was sure of this because someone always had to wait for the child at the bus stop due to the child's special needs. *Id.* Thus, this new information substantially strengthens the alibi defense that would be presented at a new trial because it demonstrates that Mr. Hopps would have had insufficient time to both commit the crime at the Tahitian Inn at 3:15 p.m. and be back outside his home in time to be waiting with Lashawn Galton at the bus stop no later than 3:25 p.m. In fact, depending on when the bus arrived between 3:00 p.m. and 3:25 p.m. on that day, it would have been impossible for Mr. Hopps to be in two places, 5.1 miles apart, at the same time.

When taken together, the totality of the CRU reinvestigation refutes the only evidence presented against Mr. Hopps and substantially strengthens existing evidence suggesting that he did not commit these crimes. It creates more than mere reasonable doubt, which would be enough to grant relief. Rather, it points strongly and convincingly to Mr. Hopps' innocence. Thus, the totality of the evidence that would be admissible at a new trial leads to only one conclusion: that a jury would be required to acquit, and any other result would be a baseless, arbitrary deprivation of liberty violative of Mr. Hopps' due process rights.

B. Mr. Hopps Exercised Diligence

To vacate a conviction based on a claim of newly discovered evidence, a defendant must first show that the evidence was unknown to counsel at the time of trial and could not have been known by the use of diligence. *See Jones*, 591 So. 2d at 915-16. It is clear that a 2021 Fact Finding

Summary Report from the State renouncing its 1990 prosecution and conviction of Mr. Hopps was unknown at the time of trial and could not have been discovered by the exercise of diligence. The CRU did not even exist until 2018, and the reexamination leading to this newly discovered CRU report would not have come into existence but for Mr. Hopps' diligence in applying to the CRU—proclaiming his innocence and urging the CRU to reexamine his case.

C. The CRU Fact Finding Summary Report is Material Such That It So Weakens the State's Case to Require this Court to Vacate the Convictions and Sentences.

A defendant must also prove that the newly discovered evidence is of such a nature that it would probably produce an acquittal on retrial. *Id.* This is demonstrated by showing that the evidence so “weakens the case . . . so as to give rise to a reasonable doubt as to [the defendant’s] culpability.” *Williamson*, 961 So.2d. at 234 (internal quotations omitted). It is for the above-stated reasons that the CRU no longer has confidence in Mr. Hopps' convictions and it recommended vacating his convictions and sentences. Thus, the conclusions and recommendation in the CRU Fact Finding Summary Report represent a significant change in position by the office that initially prosecuted Mr. Hopps and previously opposed all of his appellate and postconviction efforts to overturn his convictions and sentences. Such a change in position and transformation of the evidence in favor of Mr. Hopps, leaving no evidence of guilt and only a strengthened alibi and significant evidence that Mr. Hopps was misidentified, requires vacating the convictions and sentences in this matter.

CONCLUSION

The evidence in this case, as it stands today, provides no basis to connect Tony Hopps to this crime and strongly suggests that he is innocent and was wrongfully convicted of the 1990 burglary of a dwelling with a firearm and robbery with a firearm of Ruby and Dunbar Dyches. The totality of the evidence in this case stands as it does today because the State Attorney in this circuit

created a Conviction Review Unit to resolve cases of wrongful conviction, Tony Hopps affirmatively sought the assistance of this unit, and the CRU performed a comprehensive reinvestigation that unraveled its office's own prosecution.

The CRU was created to do just what it did in this case—identify cases where individuals have been wrongfully convicted and facilitate appropriate relief through the court system. After a thorough reinvestigation, the CRU concluded that, based on the totality of the available admissible evidence, it can no longer stand behind its original conviction in this case. Thus, the CRU has recommended relief, conceding that Mr. Hopps' convictions and sentences in this matter should be vacated. This change of position and the totality of the admissible evidence discussed *supra* and in the CRU Fact Finding Summary Report, create more than a reasonable doubt about Mr. Hopps' guilt. Had this evidence been available at the time of his trial, a jury probably would have acquitted. *Jones*, 591 So. 2d at 915-16. As a result, this Court must vacate Mr. Hopps' convictions and sentences.

PRAYER FOR RELIEF

WHEREFORE, Mr. Hopps prays this Court grant him relief including but not limited to:

- A. An opportunity to amend the Motion as necessary;
- B. An opportunity to file a Reply to any pleading filed by the state;
- C. An evidentiary hearing on the allegations made herein, should the State contest them;
- D. The authority to exercise compulsory process, to issue subpoenas for the production of witnesses and documentary evidence, and to undertake pre-hearing discovery as necessary;
- E. The vacatur of his convictions and sentences for burglary of a dwelling with a firearm and robbery with a firearm; and
- F. All other and further relief that the Court deems just and proper.

Respectfully Submitted,

/s/ Seth Miller

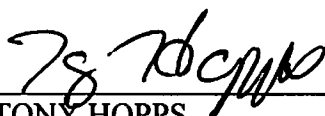
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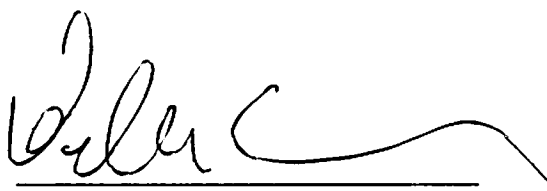
VERIFICATION

STATE OF FLORIDA)
)
HARDEE COUNTY)

Under the penalties of perjury, I, TONY HOPPS, swear that (1) I speak, read, write and understand English, (2) I have read this Motion or that it has been read to me, (3) I understand its contents, and (4) that all the facts stated in the Motion are true and accurate, this, 13th day of August, 2021.

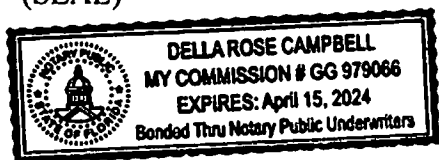


TONY HOPPS
484313



Notary Public, State of Florida

(SEAL)



Della Campbell
Printed Name

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail to the following person, this 15th day of August, 2021:

Teresa A. Hall
Assistant State Attorney
State Attorney's Office
419 N. Pierce St.
Tampa, FL 33602-1441
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/s/ Seth Miller
Seth Miller
Counsel for Mr. Hopps

Tab A



STATE v. TONY HOPPS

90CF003270

DOB: 4/12/1965

Florida Department of Corrections

DOC: # 480313

TPD: 90-006584

State Attorney: Dale Sisco

Defense Attorney: Roy Gerard

Victims: Dunbar and Ruby Dyches

**I. Armed Burglary of a Dwelling/F1
810.02(1) & (2)(b)**

- (1) That the defendant unlawfully entered a dwelling**
- (2) Property of Dunbar Dyches and Ruby Dyches**
- (3) With the intent to commit an offense**
- (4) While Hopps was armed with a firearm**

**II. Robbery with a firearm, 1st degree felony with possibility of life
812.13(1) and (2)(a)**

- (1) Defendant**
- (2) Used force, violence, assault, or putting in fear**
- (3) To rob, steal and take away from Dunbar Dyches**
- (4) U.S. Currency and/or wallet**
- (5) With intent to deprive Dunbar Dyches of his property**
- (5) While carrying a firearm**

**III. Robbery with a firearm/F1
812.13(1) and (2)(a)**

- (1) Defendant
- (2) Used force, violence, assault, or putting in fear
- (3) To rob, steal and take away from Ruby Dyches
- (4) U.S. Currency and/or wallet
- (5) With intent to deprive Ruby Dyches of his property
- (5) While carrying a firearm

Note: Noticed as a Prison Re-release Offender. At sentencing, the defendant was sentenced to life as PRR.

VICTIM(S): **I. Dunbar Dyches DOB: 6/30/1919**
 II. Ruby Dyches DOB: 7/23/1921

DATE & TIME OF OFFENSE: **January 25, 1990, at 3:15 p.m. (Thursday)**

LOCATION OF OFFENSE: **601 S. Dale Mabry, Room 137, Tampa Florida**
 Tahitian Inn Motel

BRIEF OVERVIEW OF CRU PETITION CLAIMS

- 1) **Claims misconduct due to the way the photo array was given to the victims and thus tainted the identification.**
- 2) **Newly discovered evidence in reference to Vicki Hopps and Victoria Hopps.**
- 3) **Police misconduct due to their faulty testimony that would have supported Hopps' alibi.**

FACTUAL SUMMARY OF THE CASE

On January 25, 1990, at about 3:15 p.m., Ruby and Dunbar Dyches returned to their motel room at the Tahitian Inn, located at 601 S. Dale Mabry. The couple had been out shopping and brought their purchased items back to the room. Within 10-15 minutes someone knocked on the motel door. Dunbar inquired as to who was at the door, but even though the person that knocked would not identify himself Dunbar opened the door anyway. At the door was a black male, muscular build, mustache, wearing camouflage pants and a cap pointed a gun at Dunbar, demanding his money. When suspect #1 (later identified as Tony Hopps) pulled the motel room door open, Dunbar came out into the hallway and was struck by a second black male. Inside the room was Ruby. Suspect #1 entered the motel room and demanded money from Ruby. Suspect #1 grabbed Ruby's blue handbag from the chair and fled. Two witnesses at the pool saw two black men running down the hall and get into a maroon car. These witnesses were able to provide a partial plate. It was determined that the vehicle was stolen and was recovered 2 hours later within one mile of the motel. During the same 3:00 p.m. hour, Tony Hopps was at home at 505 E. Francis Ave. At 3:49 p.m. Officer Mark Scott makes a stop of Hopps and detains him for Detective Strickland. Strickland then responded and took photographs of Hopps for an unrelated

investigation. Later on the 25th of January (11:30 p.m.) Hopps is arrested on an unrelated robbery and taken into custody. The next day on the 26th of January, a second stolen vehicle is pursued. Once the vehicle was stopped some of Ruby's personal belongings were found inside the vehicle (along with guns and ski masks.) Calvin Fisher was seen running near the stolen vehicle. Within a week or so, Detective O'Nolan mailed a photo array to Ruby and Dunbar Dyches at their home in Augusta, Georgia. Included in the photo array were Tony Hopps, Calvin Fisher, and Willie Hopps. Both Ruby and Dunbar picked Tony Hopps as the robber (suspect #1) that had entered the hotel room. Both made in court identifications of Hopps. There were no other witnesses and no forensic evidence. Hopps presented alibi witnesses to the jury. Included in those witnesses was Officer Mark Scott and Detective Strickland. Both police officers were unable to testify as to date and time. Although defense had the computer records of the stop by Scott, defense counsel did not admit them at trial. Hopps was convicted of armed burglary of a dwelling and sentenced to life (as PRR).

WITNESSES-CIVILIAN

(1) Dunbar Dyches, victim

DOB: 6/30/1919

Witness summary

- Was staying at the Tahitian Inn Motel on S. Dale Mabry; visiting his son.
 - Staying in Room 137
- His wife Ruby was also present for the robbery
- At 3:15 p.m. on 1/25/1990 there was a knock on the motel room door
- Both Dunbar and his wife Ruby had just returned from shopping at a mall
 - Note: The knock on the door occurred about 10-15 minutes after Ruby and Dunbar had returned from shopping.
- Dunbar thought the knock on the door could be the maid because he had seen her down the hall
- Dunbar asked who was at the door and the male voice indicated he needed to speak to Dunbar
- Dunbar asked the male to identify himself but the male did not.
- Dunbar opened the motel room door to see who was outside
- Saw a black male with a pistol in his hand.
 - Dunbar thought the gun might have been a .45 caliber pistol (no indication whether it was a revolver or semi-automatic.)
- The black male pulled the door open which caused Dunbar to come out of the doorway
- The suspect threatened to kill Dunbar if he didn't give him the money
- As the door was pulled open a second black male was standing to the side and struck Dunbar in the head. This caused Dunbar to be dazed and fall to the ground
- The next action that Dunbar recalled was the two men running back out into the corridor and getting into a vehicle
 - Dunbar described the vehicle as maroon with dark tinted windows
- Both men were between 5' 8" to 5' 10" in height

- The first man that pulled the door open was dressed in camouflage pants with a cap and shirt. The suspect was “stacked” and had a mustache (no beard)
- Could not give any description of the second male (other than he was black)
- Dunbar and Ruby Dyches live in Augusta, Georgia
- After returning home, a detective mailed to Dunbar and Ruby a photo array that contained six photos.
 - Detective O’Nolan
- Dunbar states that Ruby was with him when they opened the envelope but that they did not speak about the photos
- Dunbar picked out Tony Hopps as the person that had a gun and pulled the door open.
- Denies that he told Ruby who he was picking out of the photo array.
- The following property was taken during the robbery:
 - Large leather bag, navy blue in color
 - Cash of \$1791
 - Large leather lady’s wallet with typical contents
 - Two sets of car keys; house keys; gold pen, checkbook and 20 tablets of Demerol
- Dunbar did make an in-court identification of Hopps.

(2) Ruby Dyches, Victim

DOB: 7/23/1921

Witness summary

- Had just returned from shopping and was in the motel room with her husband, Dunbar.
- Believes the robbery occurred around 3:00 p.m.
- Heard a knock on the motel room door and Dunbar went to see who was at the door
- Dunbar opened the door.
- Ruby could hear Dunbar tell the person that they didn’t want him in the room
- The door to the room flew open and a black male entered the room
- The suspect pointed a gun straight at Ruby and threatened to kill her
- The suspect grabbed Ruby’s purse from a chair and then ran out the door
- Ruby did not see the second suspect
- Ruby ran to the door yelling that the man had her handbag.
- Did see two males getting into a car and leaving.
 - The car was maroon in color
- Does not recall the color of the shirt that the suspect who pointed a gun at her was wearing. Does recall he had a cap on and camouflage pants.
 - States the suspect had a mustache but no beard
 - Described this suspect as 5’ 4” to 5’ 5” ; very muscular
- Was at home when she and Dunbar received the photo array in the mail
- As she looked at the photo array she told Dunbar that she thought the suspect was in the photographs
- Dunbar then agreed with Ruby on who she thought the suspect was
- Ruby did make an in-court identification of Hopps

(3) Bill Claude Waddle

DOB: 10/28/1941

Witness Summary

- Had been swimming in the pool on 1/25/1990
- Heard arguing coming from somewhere at the hotel
- Saw 2 black males running west in the hallway outside the hotel room doors
- Both men got into a vehicle described as a 1984-85 Maroon Buick
- Obtained a partial plate of DWV070 or DVS70C
- The police did not show a photo pack to this witness

Bill Claude Waddle did not testify at trial

(4) Charles Gelfound

DOB: 4/10/1931

Witness Summary

- Saw two black males get into a maroon 4 door Oldsmobile or Buick with dark tinted windows
- One of the men was carrying a blue purse
- Vehicle left the scene at a high rate of speed
- The police did not show a photo pack to this witness.

Charles Gelfound did not testify at trial

[Tampa Police Department]

(1) Detective J.D. O’Nolan, Lead Detective

Witness Summary

- Determined that on 1/25/1990 at 5:45 p.m. a stolen 2 door maroon vehicle with license plate tag OSV70C was recovered at 3001 W. Deleon by Officer Palmira.
 - This address is approximately 1 mile from the Tahitian Inn.
- On January 26, 1990 Officer M.A. Yost was involved in a pursuit of a maroon Pontiac vehicle
 - 4 suspects fled on foot from the vehicle
 - One of the suspects that fled was recognized to be Calvin Fisher
 - Fisher was questioned and denied any knowledge of the robbery of Dyches
 - No fingerprints were lifted from the stolen vehicle
 - Note: Tony Hopps had been arrested and placed in jail at 11:30 p.m. on 1/25/1990 for an unrelated robbery. This would indicate that Tony Hopps could not have been any of the 4 men that fled from the stolen vehicle

- **Note:** The State declined to prosecute Hopps for the robbery that he had been arrested for at 11:30 p.m. See 90CF001407; TPD case number 90-007575.
- Created a photo array that included Tony Hopps, Jerome Hopps and Calvin Fisher and mailed it to the Dyches in Augusta, Georgia.
- Both Ruby and Dunbar positively identified Hopps as the man that forced his way into the hotel room and robbed them.
- Interviewed Hopps on February 20, 1990
 - Denied any involvement in a robbery
 - Stated that he was at Tampa General Hospital the afternoon/evening of the robbery (was with his girlfriend who may have been having a miscarriage.)

(2) Officer M. W. Bushell

Witness Summary

- On January 26, 1990, Officer M. A. Yost had pursued a stolen vehicle.
- At some point the 4 occupants of the stolen vehicle got out and fled on foot
- Bushell then secured the stolen vehicle for processing
- Inside the stolen vehicle the following items were found:
 - Blue purse with identification to Ruby Dyches
 - Revolver, Smith and Wesson, 357
 - Ruger .44 revolver
 - 3 masks, one glove and a L.A. Raider's cap
- Calvin Fisher was recognized as one of the four men fleeing the vehicle

(3) Officer C.W. Gievere

Witness Summary

- Interviewed Bill Claude Waddle at the hotel robbery scene
- Interviewed Charles Gelfound at the hotel robbery scene
- Recovered a black leather cigarette case in the hotel parking lot

Officer C.W. Gievere did not testify at trial

[CRIME LAB]--NONE CALLED TO SCENE OR INVOLVED IN INVESTIGATION

[EXPERTS]

NONE CALLED IN THIS TRIAL.

[DEFENSE CASE IN CHIEF]

Theory of defense: Mistaken identity with the defendant having an alibi.

DEFENDANT'S PRETRIAL STATEMENTS:

- Denied involvement and denied robbing anyone.
- Believed he was at Tampa General Hospital with his girlfriend that afternoon/evening.

DEFENDANT'S TRIAL TESTIMONY

Defendant did not testify.

[WITNESSES CALLED BY DEFENSE]

(1) Ellie Mae Fisher

Witness Summary

- Had seen Hopps earlier in the day on January 25, 1990.
- A little bit later in the day saw Hopps speaking with police
 - Believes it was between 3:00 p.m. and 4:00 p.m.

(2) Detective Gene Strickland

Witness Summary

- Per the dispatched records for January 25, 1990, Strickland encountered Tony Hopps outside of Hopps' residence at 3:49 p.m. on January 25, 1990.
- At trial Detective Strickland couldn't recall the date that he had encountered Hopps at Amelia and Central; also states he doesn't know what time.
- **Note: The dispatch records were never admitted at trial.**

(3) Lawshawn Galton (Gallon or Gatlin)

Witness Summary

- Knows Hopps and lives near him and his family
- Saw Hopps on 1/25/1990 while she was at the bus stop waiting on her child to get home from school.
- Knows it was 3:25 p.m. because she had to be at the bus stop every day at that time
- Saw two white police officers in a marked police car stop Hopps at Central and Frances

[POST-CONVICTION/3.850 MOTIONS/EVIDENTIARY HEARINGS]

Pertinent Claims of Innocence in 3.850 Motion

- Unreliability of eyewitness testimony
- Alibi witnesses that were not called at trial

(1) Roy Gerard, Defense trial counsel

Witness Summary

- Tony Hopps defense counsel at trial
- Was brand new in the felony division when he was assigned Hopps' case
- Hopps did tell Gerard that he had an alibi defense
- Hopps relayed the following information to Gerard, with regards to his alibi
 - Scott first stopped Hopps at 1:00 p.m. and then let Hopps go around 1:30 p.m.
 - At about 2:30 p.m. Scott returns and told Hopps that Detective Strickland wanted to speak to him.
 - Strickland showed up around 3:00 p.m. and took photos of Hopps
 - Hopps then went to his girlfriend's house and then went to Tampa General Hospital
- Hopps provided to Gerard 3 witnesses
 - Mary Wiggins
 - Lashawn Gatlin (Galton or Gallon)
 - Yula Mae Fisher
- Interviewed Mary Wiggins prior to trial
 - Was at work all day and didn't get home until 3:30 p.m.
 - Believes she saw Hopps later in the afternoon/evening
- Interviewed Lashawn Gatlin (Galton or Gallon)
 - Does not recall what Galton said at trial
- Hopps also mentioned Marian Anderson but defense did not call her as a witness due to her criminal records
- Didn't believe the computer print out of when Hopps was detained by Scott would have assisted because the suspects had fled in a car.

(2) Charles Hartzner

Witness Summary

- Investigator for Brown's Services
- Prior experience with the Tampa Police Department
- Measured the distance between the robbery scene and where Hopps was stopped by

Officer Scott

- Took 21 minutes to drive between the two locations

(3) Janet Pauley

Witness Summary from 3.850 testimony

- Works for the City of Tampa Police in the computer division
- In 1990 there were records available to document radio transmissions
- These records are only kept for 13 months

(4) TPD Officer Mark Scott

Witness Summary from 3.850 testimony

- Stops Hopps at Central and Frances on 1/25/1990
 - This was near where Hopps was known to live
- Detective Strickland had requested officers to watch for Hopps because Strickland wanted to get a photograph of Hopps
 - **Note: Strickland wanting a photograph of Hopps would not have been related to this robbery due to the timing. The robbery occurred at 3:15 p.m. and officers stopped Hopps at 3:49 p.m. There wouldn't have been enough time to develop Hopps as a suspect in the robbery of the Dyches.**
- Thought Hopps had a warrant but after a check it was determined Hopps did not have a warrant.
- Due to the stop, Officer Scott does an FIR on Hopps
- 15 minutes after Scott stopped Hopps, Detective Strickland arrives at the scene
- Strickland takes photos of Hopps.
- **At trial, no radio transmission logs were submitted to the jury.**

(5) Gene Strickland

Witness Summary

- At the time of the robbery was a police detective with Tampa Police Department
- Has no independent recall of what the date was when he spoke with Hopps
- Does recall taking Hopps' photo at Central and Francis
- Recalls that it was during daytime hours and that uniformed officers had been present prior to his arrival

(5) Tony Hopps, Defendant

Witness Summary

- Lived with his sister at 505 E. Francis Ave.
- Hopps had came out of the house and saw Lashawn Galton across the street from Hopps' home
- Hopps new it was near 3:25 p.m. because this was when Galton was always outside at the bus stop waiting on her child.
- Uniformed police officers approached Hopps while he was outside speaking with Galton.
- Officer Scott thought Hopps had a warrant but later it was determined there was no warrant.
- Detective Strickland responded to where Hopps was being detained
- Strickland took a photograph of Hopps
- Denies being involved in the robbery

[PROCEDURAL POSTURE OF CASE]

Criminal report affidavit:	2/26/1990
Information filed:	3/19/1990
Jury verdict/Sentencing:	7/13/1990
Direct appeal affirmed:	3/28/1992
1st 3.850 petition:	3/3/1994
Final 3.850 filed:	6/29/2018
Conviction Review Petition received:	5/12/2020

[CRU PETITION: NEW EVIDENCE/WITNESSES AFTER TRIAL]

Claims within the petition

- 1) **Claims misconduct due to the way the photo array was given to the victims and thus tainted the identification.**
- 2) **Newly discovered evidence in reference to Vicki Hopps and Victoria Hopps.**
- 3) **Police misconduct due to their faulty testimony that would have supported Hopps' alibi.**

[WITNESSES]

(1) Calvin Fisher

DOB: 7/28/1967

Witness Summary

- At the time of the robbery Calvin Fisher lived at 503 E. Amelia Ave.
 - The address is next to the stop that the police conducted for Hopps at approximately 3:40 p.m. on January 25, 1990
- Can't recall what he was doing in January of 1990

- Good friends with Willie Hopps
- Ella Mae Fisher is Calvin's mother
- Claims no knowledge of any robbery at the Tahitian Inn
- Denies any knowledge of a stolen vehicle or being chased by police
- Has no opinion as to whether Tony Hopps committed the robbery or not

(2) Vickie Hopps

DOB: 8/21/1963

Witness Summary

- Biological sister to Tony Hopps
- Prior to being arrested for the robbery, Hopps was working for Detective George McNamara providing information on homicide investigations
- At some point Hopps declined to assist McNamara anymore
- Allegations that McNamara provided a recording device to Hopps and Hopps threw it away. This action by Hopps allegedly angered McNamara
- At the time of the robbery Tony Hopps lived with Vickie Hopps
- Was present when Tony was out front of their home on January 25, 1990, in the afternoon sometime.
 - Saw Hopps speaking with Ellie Mae Fisher, Calvin Fisher's mother
 - A marked police car pulled up and handcuffed Hopps
 - A few minutes later another police officer arrived and took photos of Hopps
 - Hopps was then released
 - When the photos were taken by police, Hopps was wearing only shorts, no shirt.
- Later on January 25, 1990, Hopps went to Tampa General Hospital with his girlfriend

(3) Victoria Hopps

DOB: 6/5/1968

Witness Summary

- Married to Jerome (Willie) Hopps.
- Willie was Tony's baby brother
- Willie Hopps is now deceased.
- At the time of the robbery, Victoria was only 16 years of age and still living with her parents
 - Note: Victoria's family lived across the street from the Hopps' brothers
- Hopps was good friends with a neighbor that had a special needs child.
- Hopps would stand at the bus stop everyday with the neighbor, Lashawn Gallon, and wait for Ms. Galton's child to come home from school.
- States the bus came every day between 3:00 p.m. and 3:25 p.m.
 - Note: Per Victoria Hopps, someone would always have to be waiting at the bus stop due to the child's special needs.

- The school bus would stop in front of Lee's Groceries, 2210 N. Central Ave.
- It wasn't uncommon for Detective McNamara to come to the house to speak to Hopps.
- Recalls the day that the police came by the house and detained Hopps and then took photos of him.
 - States that Hopps had been at the bus stop with Lashawn Gallon, waiting on her child.

(5) Jeanne Coleman, Defense counsel for 3.850 filings

Witness Summary

(6) Retired TPD Detective George McNamara

Witness Summary

- Was a Detective with TPD in January of 1990
- Was very familiar with Tony Hopps and his brother Jerome (Willy) Hopps
- Discussed the protocol for administering a photo array in 1990
 - The normal practice would never have been to include two suspects in the same photo pack
 - Further, if the witness was out of town or state the TPD detective should have contacted the local police agency and requested that they administer the photo pack.
 - A photo pack should not have been mailed to the witness directly.

(7) J.D. Nolan

Witness Summary

- The CRU attempted to locate and interview retired Detective Nolan who was the lead detective on the investigation
- Mr. Nolan has been diagnosed with dementia and is unable to be interviewed

Note: The CRU attempted to locate the following individuals and it was determined that they are deceased:

- Jerome (Willie) Hopps
- Ellie Mae Fisher
- Miriam Anderson
- Mary Wiggins
- Lashawn Gallon (per records shows she is deceased; however Victoria Hopps claims she is alive.)
 - **Note: Through out the police reports, depositions, trial transcripts and post-conviction writings Ms. Lashawn's last name was spelled in 3 different formats:**

Galton, Gallon and Galtin. The CRU has not been able to get one spelling to be consistent between any of the witnesses interviewed.

- Ruby and Dunbar Dyches (victims)

[EVIDENCE SUBMITTED OR RE-SUBMITTED FOR TESTING]

- No evidence was re-submitted for evaluation.
- Attempted to get school bus scheduling for January 25, 1990, however those records do not exist.
- Attempted to get records from TPD as to calls that would have been made near the time Tony Hopps was stopped by police at 3:49 p.m. on the day of the robbery. These records no longer exist.
- Color copies of the photo array sent to Ruby and Dunbar Dyches was retrieved from the evidence vault with the Clerk's Office.
 - It was verified that Willie Hopps was in position #1; Tony Hopps position #2 and Calvin Fisher position #3.
- A color photo that Detective Strickland had taken of Tony Hopps was also obtained from the Clerk's Office. It is of importance to note that Hopps does not appear to be "stacked" or muscular has both Ruby and Dunbar Dyches described him. Further, he had a beard at the time of the photo, which both Ruby and Dunbar specifically stated that suspect #1 did not have a beard, only a mustache.

[JAIL PHONE CALLS DURING THE PENDENCY OF THE CASE]

Summary of calls

None were found to review.

[CONVICTION REVIEW UNIT FINDINGS AND RECOMMENDATION]

[Findings]

- That the method used by Detective O'Nolan did not meet Tampa Police Department standards in 1990. That if this method had been used today the identification through the photo array would likely be suppressed. The CRU finds the following issues with the photo array:
 - That it was mailed to the victims instead of a local law enforcement agency
 - That there was some discussion between the two victims on the identification of suspect #1.
 - That TPD included two other suspects with Hopps, including his own brother.
- On 1/26/1990 some of the stolen items were found in a stolen vehicle that Calvin

Fisher had been seen running from. Tony Hopps could not have been one of the other suspects that ran from the car because he was in jail from being arrested on 1/25/1990 at 11:30 p.m.

- There was not a feasible amount of time between the robbery and when Hopps was detained by Officer Mark Scott at his home. The CRU comes to this conclusion based off of:
 - The testimony of Ellie Mae Fisher
 - The testimony of Lashawn Galton (Gallon or Galtin)
 - The timing of Officer Scott stopping Hopps at his home
 - The clothing that Hopps was wearing when he was stopped did not match the clothing that suspect #1 was wearing at the time of the robbery.
- The description that Ruby and Dunbar Dyches provided to the police does not match Tony Hopps. Discrepancies include:
 - The clothing he was wearing compared to what they reported the robber was wearing.
 - Tony Hopps had a beard and both victims stated the robber did not have a beard
 - Tony Hopps was skinny and would not have been considered “stacked” or muscular
 - Cross racial misidentification could have been a factor in the victim’s identification of Hopps.
- That Victoria Hopps has now come forward and provided an alibi for Tony Hopps at the time of the robbery. Ms. Hopps substantiates the previous testimony by LaShawn Galton that Hopps was with Galton at the bus stop waiting on Galton’s child to get home from school.

[Recommendation by the CRU]

- It is the recommendation of the CRU that the State can no longer stand behind the conviction of Tony Hopps. Although the State cannot produce clear and convincing evidence that Tony Hopps is innocent, the CRU does believe that the investigative techniques used by Detective O’Nolan is faulty. Further, there is newly discovered evidence not submitted at trial that calls into question the conviction. This includes issues with the time line of the robbery, the photo pack sent to the victims, and alibi witnesses that were not called at trial. For this reason, the CRU recommends that defense file a 3.850 motion based on newly discovered evidence and that the State stand silent and agree to the basis of the 3.850 motion.

[Recommendation by the Independent Review Panel]

On June 23, 2021, the Independent Review Panel met and agreed with the recommendation put forth by the Conviction Review Unit

[Final Decision by State Attorney]

On July 7, 2021, the Conviction Review Unit met with State Attorney Andrew Warren. Mr. Warren agrees with the recommendation made by the Conviction Review Unit.