

## THE CASE FOR TIMOTHY McKINNEY

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# I. INTRODUCTION

On Christmas night, 1997, hundreds of people attended a Christmas party at Crumpy's Comedy Club in Memphis, Tennessee. (See photographs of [Crumpy's Comedy Club](#) and [Crumpy's Comedy Club, Aerial View](#)) The party was sponsored by Magic Clippers, a popular area barber shop, and attended by scores of young people from the shop's north Memphis neighborhood.

In the early morning hours of Friday, December 26, as the party was winding down and guests were leaving, Donald Williams, an off-duty Memphis police officer moonlighting as a security guard at Crumpy's Comedy Club, was shot and fatally wounded by a masked assailant. In the chaotic moments after the shooting, the assailant and dozens of potential eyewitnesses to his

deed evaporated into the night. Within hours of this senseless tragedy, Memphis police identified a suspect, a man with whom Officer Williams had quarreled in the club's parking lot a couple of hours prior the shooting. That man was 23-year old Timothy Terrell McKinney, a Magic Clippers patron and life-long resident of that north Memphis community.

At the time of the shooting, Timothy McKinney was on parole after pleading guilty to his part in a 1993 aggravated robbery of a grocery store (Mr. McKinney drove the getaway car.) and serving three years in state prison. Still, Mr. McKinney's juvenile and adult arrest record did little to distinguish him from dozens of other young men and women who also attended that Christmas party. What set Mr. McKinney apart was the fact that his name and address was written on a piece of paper found in Officer Williams' coat pocket.

Timothy McKinney was arrested on Saturday, December 27, and, when Officer Williams succumbed to his wound a month later, Mr. McKinney was charged with 1st degree murder. On Tuesday, July 13, 1999, Timothy McKinney's 25th birthday, Mr. McKinney went on trial for his life. By Friday morning, July 16, Mr. McKinney had been convicted and sentenced to death. Today, Timothy McKinney resides on Death Row in Unit 2 at Riverbend Maximum Security Institution in Nashville, Tennessee where he awaits the ultimate disposition of his case. Through it all, Mr. McKinney has never stopped proclaiming his innocence.

## **II. THE STATE'S CASE AT TRIAL**

### **A. Summary**

The State's theory at trial centered around the testimony of Officer Frank Lee, another off-duty police officer working security at the party. Officer Lee described an altercation between Officer Williams and Timothy McKinney that occurred when Mr. McKinney emerged from the club, could not immediately locate his car, and jumped to the rash conclusion that the car had been stolen or towed. Officer Williams and Mr. McKinney exchanged heated words until a companion of Mr. McKinney's discovered the car, which had actually been borrowed and relocated earlier by another friend. The argument between Officer Williams and Mr. McKinney subsided, Mr. McKinney was asked to leave the club, and he got into his car and drove away. Officer Lee testified that Mr. McKinney later returned and tried to reenter the club. When the security guards refused to allow Mr. McKinney back into the club, he chose to sit outside in the parking lot to wait for his friends to come out. At some point, Officer Williams became concerned about Mr. McKinney's continued presence and called MPD dispatch for assistance regarding a drunken black male. Within minutes, four squad cars from the North Precinct had converged on the club, but, by then, Mr. McKinney had left again. The squad cars stayed for a while, cruising the vicinity of the club. After the last squad car had cleared the parking lot, another Memphis police officer arrived at the club. This officer, Ronald Marshall, was on duty, assigned to the Downtown Precinct, and he had driven out to the club on personal business. As Officer Marshall stood in front of the club talking with Officer Williams, Mr. McKinney returned and once again tried to enter the club. This time, Officer Williams asked Officer Marshall to handle Mr. McKinney. Officer Marshall detained Mr. McKinney in his squad car, questioning him and taking his driver's license back to Officer Williams so Officer Williams could write down Mr.

McKinney's name and address. Officers Marshall and Williams discussed the situation, and decided to send Mr. McKinney on his way. Officer Marshall returned Mr. McKinney's license to him and Mr. McKinney drove away from the club. Later, as the party was ending and patrons were leaving the club, a man ran up to Officer Williams and shot him point blank in the back of the neck. The man then fled into an alley on the east side of the building with Officer Frank Lee in pursuit. Officer Lee and the man exchanged gunfire in the alley before the man got into a car and sped away. The man's face was covered, but Officer Lee would later identify the man as Timothy McKinney and the getaway car as the vehicle Mr. McKinney had been driving earlier.

## **B. The Witnesses**

### **1. Eyewitness Testimony:**

DNA evidence has recently exonerated many innocent people who were convicted because of mistaken eyewitness identification testimony. [The Innocence Project](#) has concluded that “[i]n over two-thirds of the first 138 post-conviction DNA exonerations, mistaken eyewitness identification played a major part in the wrongful conviction. Modern technology is proving what scientists, psychologists, and legal scholars have noted for years: eyewitness identification is often faulty and is the major cause of wrongful convictions. Identifications are even more problematic when they are based on observations made under stress or in less than ideal conditions (e.g. from a distance, in darkness).”

### **2. Officer Frank Lee:**

Officer Lee testified to the chronology of events that night at the party. He easily identified Timothy McKinney as the man involved in the prior argument with Officer Williams in the parking lot due to his own personal observation of Mr. McKinney during the course of the evening and Mr. McKinney's distinctive style of dress that night. The State did, in fact, produce a Polaroid photograph of Mr. McKinney and his friends (See [McKinney Party Photo.](#)) taken by the party's photographer, one that showed Mr. McKinney wearing a bright, multi-colored sweater, a goldish-brown vest, and a black hat. Officer Lee also identified Mr. McKinney as the man who shot Officer Williams. In Officer [Lee's Police Statement](#) given to detectives the morning after the shooting, he described how he heard a shot, turned, saw the assailant running away, and chased him into the alley. According to Officer Lee, he exchanged gunfire with the assailant in the alley, and he saw the assailant's face “from the nose up” as the assailant was getting into his car. The assailant, Officer Lee said, was wearing “a black T-shirt, black pants, orange or gold hushpuppy-like shoes, orange bandana around his mouth, no hat.” By the time of the trial, however, Officer Lee's perception of events had changed. He testified that he heard a gunshot, turned, and saw the assailant “eye to eye,” and he said the assailant was wearing the same multi-colored sweater he had seen Mr. McKinney wearing earlier. (The existence of another statement by Officer Lee, the first one he gave detectives at the scene immediately after the shooting, would remain unknown to defense investigators until January, 2005.)

Perhaps just as damaging to Mr. McKinney's case was Officer Lee's testimony under direct examination that Timothy McKinney was the only person who created any kind of disturbance that night:

(Prosecutor) Q. Had anyone else had a confrontation with either of you, or Officer Williams that night?

(Officer Lee) A. No

Q. But not a single other altercation or...

A. No one.

### **3. Joyce Elizabeth Jeltz:**

Joyce Jeltz was leaving the club at the time of the shooting. Though she originally told detectives she could not identify the assailant, she nonetheless tentatively picked two men out of a six-man photo lineup. One of these two men was Timothy McKinney. In Ms. [Jeltz's Police Statement](#), she said the assailant was wearing brown pants and a dark, turtleneck sweater with the neck pulled up over his mouth and nose. At trial, however, Ms. Jeltz was not only able to positively identify Mr. McKinney as the shooter, she suddenly remembered that the shooter was wearing the same brown/gold vest Mr. McKinney had on at the party earlier. Under cross-examination, Ms. Jeltz admitted that the prosecutors had shown her the vest that morning before she testified. (Ms. Jeltz had also admitted to a court-appointed defense investigator long before the trial that she had seen pictures of Mr. McKinney broadcast on the news after the shooting, a detail that Mr. McKinney's defense attorneys failed to ask her about during cross-examination.)

### **4. Officer Steven Jackson:**

Memphis police officer Steven Jackson was on patrol in the North Precinct that night. He testified that he stopped by Crumpy's Comedy Club and that Officer Williams told him then about the man Williams had "a minor altercation with" earlier. According to Officer Jackson, Officer Williams' concern prompted Officer Jackson to offer to return to the club at closing time, but Jackson would be delayed by another call and would not arrive back at the club until after the shooting. When asked by the prosecutor what he was doing at the club that night, Jackson replied that he had dropped by on routine patrol because the club was in a high crime area.

### **5. Officer Ronald Marshall:**

Officer Ronald Marshall testified that he left his Downtown Precinct that night and drove out to Crumpy's Comedy Club to deliver his apartment keys to a visiting relative, and, while there, he assisted Officer Don Williams in detaining Timothy McKinney and acquiring Mr. McKinney's identification when Mr. McKinney attempted to reenter the club. Marshall's testimony that he acquired permission to make this trip from his supervisor during roll call at the precinct that night, and that he arrived at the club at around 12:30 AM and did not stay more than 15 minutes, differed from his story as reported in a MPD [Aggravated Assault Supplement](#) from that night. In that police report, Officer Marshall indicated that, "after completing several calls after leaving role call, he realized that his cousin did not have any keys to get back into the apartment after leaving the Club." Marshall then "secured permission from his supervisor Lt. Miles Car 605 to

take the house keys to his relative at 2659 North Hollywood, arriving at the Club at approximately 1:00 and 1:30 AM. (Officer Marshall had actually offered a third version of his activities that night, one that would not be known until January, 2005.)

## **6. Debra Kimble:**

Timothy McKinney's girlfriend at the time of the shooting, she saw and spoke to Mr. McKinney in the early morning hours of December 26 before Officer Williams was shot. Ms. Kimble told the police the day after the shooting that Mr. McKinney arrived at her north Memphis home at about 2:15 or 2:20 AM, she gave him permission to sleep on her couch, and, when she awoke the next morning, he was gone. At trial, Ms. Kimble testified that she and Mr. McKinney were supposed to get together that night but, when he did not show up and failed to respond to her pages, she went to bed. She was awakened at 2:15 AM by Mr. McKinney knocking on her door, Ms. Kimble said. Ms. Kimble got out of bed, let Mr. McKinney into her house, and then fussed at him before Mr. McKinney offered to sleep on the couch and she agreed. Ms. Kimble estimated the length of this encounter to be probably a couple of minutes, maybe. Ms. Kimble could not say how long it took her to fall asleep again, only that she never heard Mr. McKinney leave. (Months before the trial, Ms. Kimble had told a court-appointed defense investigator that she and Mr. McKinney talked for 15-20 minutes before she went back to bed. When Ms. Kimble appeared as a witness for the State, Mr. McKinney's attorneys did not bring up this discrepancy during their cross-examination of her.)

## **7. Officer Parke Harber:**

One of the officers involved in the investigation, Officer Harber testified that he drove his own personal car from Debra Kimble's home to Crumpy's Comedy Club in four and one-half minutes. There are, Officer Harber conceded, many different routes that one could use to travel from Ms. Kimble's address to the club. Harber could only testify to the one he used the morning of his testimony, a route that involved the interstate, I-240, and was, he said, 4.1 miles in distance. (Officer Harber could also testify only to the length of time that it took him to travel from Point A (the house) to Point B (the club) as no crime reenactments were done. See [Consent Order](#).)

## **C. The Physical Evidence**

The prosecution did not present any conclusive physical evidence during Timothy McKinney's trial. Although the clothing Mr. McKinney was wearing at the party that night was seized and logged into evidence, the State did no scientific testing of the sweater Officer Frank Lee said Mr. McKinney was wearing the night of the shooting. Instead, the State chose to send Mr. McKinney's black pants and brown/gold vest to the Tennessee Bureau of Investigation for analysis. At trial, a TBI forensic scientist testified that he found particles consistent with gunshot residue on the vest. The scientist could not testify conclusively to the presence of gunshot residue on the vest because he was unable to locate all three elements of gunshot residue in any one sample from the garment.

□I need to find three out of three,□ in order to identify any of the microscopic samples he studied as gunshot residue, the scientist testified.

Of greater significance than the discovery of microscopic particles □consistent with□ gunshot residue was the scientific evidence that was not found, and, in some cases, not even tested for.

Though eyewitness reports and the testimony of the medical examiner would suggest that the murder weapon was a .38 caliber revolver, no gun was ever found, and there wasn□t enough left of the bullet that struck Officer Williams to determine conclusively the type or caliber of the weapon. No blow back of blood spray, typical of close gunshot wounds, was found on any of Timothy McKinney□s clothing.

In Officer [Lee□s Police Statement](#), he told detectives that he was about 3 car lengths away from the getaway car when he fired □two or three more shots□ after the shooter had gotten into the car. The [Crime Scene Sketch](#) would indicate that he was even closer. Yet, Mr. McKinney□s car, which Officer Lee said he was able to identify because of its tail lights, showed no bullet strikes or damage when it was seized by the police. Detailed measurements and photographs were taken of the skid marks left at the scene (See [Skid Marks 1](#) and [Skid Marks 2](#)). Yet the State would later tell the defense that no forensic testing was ever done on Mr. McKinney□s car: □□there were no tests done on the skidmarks that were photographed at the crime scene, including but not limited to tests in which comparisons would have been made to tires on any cars□there are no reports with respect to the existence of blood, gunshot residue, skidmark comparisons, bullet holes, fingerprints, weapons, etc□□ (See [Consent Order](#).) Incredibly, Mr. McKinney□s car was sold at a police auction on March 3, 1998, just two months after the shooting and Mr. McKinney□s arrest.

### **III. THE DEFENSE**

Prior to Timothy McKinney□s trial, court-appointed defense investigators located witnesses and developed evidence that might have helped Mr. McKinney at trial, but their attempts to convey this information to Mr. McKinney□s court-appointed attorneys all too often fell upon deaf ears. Of crucial concern to the investigators were police reports and dispatch logs that would have enabled the defense to create an accurate timeline of the events that night, but Mr. McKinney□s attorneys were reluctant to even ask for the records, much less subpoena them. The investigators□ continued insistence that they needed these records eventually resulted in the [Consent Order](#) addressing the investigators□ requests: □Defense counsel has also been advised that the State cannot facilitate the receipt of copies of the police reports, call sheets and log reports regarding the activities of the officers on the night of the murder.□

At trial, after the State completed its case, Mr. McKinney□s attorneys rested their case without calling a single defense witness.

### **IV. POST-CONVICTION**

A person sentenced to death in the state of Tennessee has a right to a post-conviction hearing, a comprehensive review of his case to determine if he had a fair trial. While, interestingly enough, a defendant's actual innocence of the crime for which he was convicted and condemned is legally not grounds for post-conviction relief, ineffective assistance of counsel and prosecutorial misconduct at the original trial are.

The Tennessee Public Records Act (TPRA) allows defendants in post-conviction complete access to police records and the District Attorney's files regarding their cases. Since 2003, Timothy McKinney's attorneys and investigator have had such records and files in their possession, including documents that were denied Mr. McKinney's defense team prior to his 1999 trial. These records and the results of a 2-year field investigation of the shooting death of Officer Don Williams paint a very different picture of the tragic events at [Crumpy's Comedy Club](#) on Christmas night, 1997, than the State's version presented at trial. In January and February of 2006, Timothy McKinney finally had his day in court when his post-conviction hearing was held in Memphis, Tennessee in Criminal Court Division 7, presided over by Judge Arthur Bennett.

## A. The Witnesses

At Timothy McKinney's original trial, the State made no attempt to claim that Mr. McKinney or anyone else was ejected from the club that night. In fact, Officer Frank Lee testified under oath that the only disturbance of any kind at the Christmas party that night was the argument between Officer Williams and Timothy McKinney in the parking lot after Mr. McKinney left the club to go to his car. At Timothy McKinney's post-conviction hearing, eleven witnesses testified to the different altercations they witnessed that night between the club's security guards and different party patrons.

(Note: The authors of this report have chosen not to identify recently discovered witnesses whose names did not surface during the original investigation and/or trial. Their names will become part of the public record soon, however, as Judge Bennett hands down his decision regarding the hearing, the transcript of the hearing is published, and the case continues to move forward.)

One witness, a *Magic Clippers* barber, testified that he was working the door at the party when he saw a rowdy, drunken guest thrown out of the club by Officer Don Williams. The barber identified this guest as someone he knew from the neighborhood, a young man known by the street name "Goldie." ("Goldie," one of the many party patrons there that night with lengthy criminal records, pled guilty to voluntary manslaughter after shooting a man to death in 1988.) Though the barber and his story were known to Mr. McKinney's attorneys in 1999, they failed to call him as a defense witness during the guilt-innocence phase of the trial. (Another party guest who knew Goldie and was entering the club as Officer Williams, who she also knew, was throwing him out, signed an affidavit to that effect for Mr. McKinney's post-conviction defense, but complications from emergency surgery prevented her from testifying in person at the hearing.)

Two friends of Timothy McKinney testified about a confrontation they had inside the club with an angry, intoxicated man they did not know.



Seven other party guests testified to the altercations and confrontations they saw that night between guests and security guards. At least three of these guests were, like the Magic Clippers barber, able to positively identify Officer Don Williams as one of the security guards involved in the incidents they witnessed. None of these party guests knew Timothy McKinney or each other, and all of them described a person who did not fit Mr. McKinney's description and/or an incident that occurred inside the club after Officer Williams and Officer Lee had denied Mr. McKinney reentry into the club.

Some party patrons remembered seeing more than two security guards working that night, at least one other person in addition to Officer Don Williams and Officer Frank Lee. This discrepancy would be cleared up by two witnesses who were present at the party that night and at the scene when Officer Williams was shot, the club manager and Crumpy, the club owner. Both men testified that Crumpy's Comedy Club employed two other Memphis police officers as security guards for events at the club, Officer Eugene Ross and Sgt. Anthony (A.C.) Carter. According to the manager and Crumpy, Officer Ross was the third security guard working the party that night. Neither Ross's nor Carter's names ever came up in the initial investigation. This may have been, in part, due to the fact that, inexplicably, neither the club manager nor Crumpy were ever interviewed by anyone from the police, the District Attorney's Office, or Timothy McKinney's defense prior to Mr. McKinney's trial. As it turned out, Crumpy had a lot to say.

Crumpy explained under oath that he personally ejected an intoxicated party guest from the club at around 1:00 AM. A few minutes later, Crumpy walked outside and saw an encounter between the man he had thrown out of the club and Officer Don Williams. There were two squad cars in the main parking lot at the time; it appeared to Crumpy that Officer Williams was about to have the man arrested. Crumpy intervened on the man's behalf, asking Officer Williams to let the man go. Officer Williams agreed, and allowed the man to leave.

Crumpy went on to testify about events he witnessed on Saturday, December 27. Crumpy also operated a hot wing restaurant in the Orange Mound neighborhood where Timothy McKinney would be arrested that day. By chance, Crumpy saw a news bulletin about the police closing in on the suspect in Officer Williams's shooting, and he left his restaurant in time to be present outside the apartment where Mr. McKinney was taken into custody. When Crumpy saw Mr. McKinney exit the apartment to surrender, Crumpy turned to the police officer standing next to him, Crumpy's friend and part-time employee, Sgt. Anthony (A.C.) Carter, and told A.C. that Mr. McKinney was not the man he (Crumpy) had thrown out of his club that night.

Timothy McKinney's post-conviction attorneys also entered into evidence the statement Karen Thornton, Joyce Jeltz's friend and companion at the party that night, gave to the police after the shooting. In Karen [Thornton's Police Statement](#), she described the shooter the same way Ms. Jeltz and Officer Lee had described him in their initial statements, a black man wearing a black turtleneck sweater and dark pants.

Mr. McKinney's post-conviction attorneys called another eyewitness to the shooting, a party guest who was unknown to the police and Mr. McKinney's defense team in 1999. This man, who lives in Mississippi now, did not know Timothy McKinney, Officer Don Williams, or



Officer Frank Lee, but, when located and interviewed by a post-conviction defense investigator in the fall of 2004, this man volunteered to come to Mr. McKinney's post-conviction hearing to share what he remembered about that night. This married family man with no prior criminal record testified that he was exiting the club and was only a few feet away from Officer Don Williams when he saw the shooter emerge from the alley on the east side of club, run up behind Officer Williams, shoot him point-blank in the back of the head with what appeared to be a revolver, and then flee back into the alley. He described the shooter as wearing black pants and a black turtleneck shirt with a low fade haircut, a moustache, and a slim build. While this witness saw basically the same shooter all the previous witnesses had originally reported seeing, a man wearing black clothing, this witness also observed something strange in the moments after the shooting. As he and a friend took cover behind a car in the parking lot, this man saw a group of people rush towards the southwestern corner of the club (See [Crumpy's Comedy Club, Aerial View](#)), an area overlooking an open field that extended northward all the way to James Road. He heard voices in the group shouting about someone who was running across that field, followed by the sound of several gunshots. It was this man's impression then that the gunshots originated from behind the club (the north side) and were directed northwest toward the field.

The Mississippi witness's story would not be the only new anomaly to emerge from the post-conviction hearing. Mr. McKinney's attorneys called another witness to the stand, Mark Lester, a man who standing on the sidewalk in front of [Crumpy's Comedy Club](#) when Officer Williams was shot. Mr. Lester, a reluctant witness, has, since his name resurfaced in this investigation, consistently denied any memory today of what he saw that night. However, he was able to authenticate the statement he gave to detectives only four hours after the shooting. Mark [Lester's Police Statement](#) describes a scene much different from the one recounted by other witnesses, perhaps because Mr. Lester witnessed the event from a slightly different perspective. Mr. Lester had his back turned to Officer Williams when he heard what sounded to him then as two shots. Then "I turned around and saw a dude fall down in front of the club. I then heard the dude that shot him say "Pay back is a mother fucker". This dude ran into there (the) parking lot and got into a blue Olds 4-door, box style, being driven by a M/B with a dark colored cap on. This vehicle had a dim right tail light and left the parking lot toward Hollywood." Mr. Lester went on to describe the man he thought was the shooter: "A M/B, about 6'2", 190 lbs, short black hair, he was wearing blue jeans a blue shirt with darker blue around the shoulders." When questioned further, Mr. Lester admitted that he did not see a weapon. It would appear today that, while others standing outside at the time of the shooting saw the man in black fleeing into the alley, Mr. Lester's attention was directed to another man, the guy he saw and heard taunt the victim as he fell. Mr. Lester's statement was never turned over to Mr. McKinney's original defense. They asked for Mr. Lester's statement, as well as other witness statements, but their requests were denied "since the State indicates that no exculpatory material is in the statements." (See [Consent Order](#).) Mr. McKinney's post-conviction defense team found the Lester statement in the DA file.

The chaotic events described by Mr. Lester and the witness from Mississippi create a scene incongruent with the State's version of events, as does the unique testimony of another witness called by Mr. McKinney's post-conviction attorneys. This witness, a high school principal and basketball coach, knew both Officer Don Williams and Officer Frank Lee before that night, and she was greeted by and exchanged pleasant words with Officer Williams when she arrived at the

Christmas party at Crumpy's Comedy Club. She testified that she saw Officer Williams dragging a drunken party guest out of the club about 30 to 45 minutes prior to the shooting. She did not witness the shooting, but, according to her, a distraught Officer Lee burst into the club immediately afterwards exclaiming: "Those motherfuckers shot Don!"

## **B. The State's Timeline**

In the fall of 2002, Timothy McKinney's attorneys acquired under the provisions of TPRA the complete District Attorney File regarding Mr. McKinney's case. Included in this file were the witness statements, police supplements and dispatch logs that had been denied Mr. McKinney's defense prior to his 1999 trial. (See [Consent Order](#).) In January of 2005, Mr. McKinney's attorneys also received a file heretofore unknown to Mr. McKinney's defense, the Inspectional Services Bureau (Internal Affairs) investigation into Officer Frank Lee's actions the night of the shooting. Documents contained in both files would enable Mr. McKinney's post-conviction defense team to construct the accurate timeline of events that had eluded Mr. McKinney's original investigators, a timeline that portrays a different version of the case than the one presented by the State at trial.

### **1. Chronology:**

The chronology of the events of that night as recounted in the police supplements is undisputed, corroborated by statements and trial testimonies of Officers Frank Lee and Ronald Marshall. A brief recap: Timothy McKinney and Officer Williams quarreled in the club's parking lot; Mr. McKinney left. Mr. McKinney returned later and sat out in the parking lot. Officer Williams became concerned and called dispatch. Police squad cars from the North Precinct converged on the club, but Mr. McKinney was nowhere to be found. The squad cars left the scene. Officer Ron Marshall from the Downtown Precinct arrived at the club on personal business. While he was visiting with Officer Williams, Mr. McKinney came back for the second time. At Officer Williams's request, Officer Marshall dealt with Mr. McKinney. Mr. McKinney left the club again. Later, as the party was ending, a masked man emerged from the alley to shoot Officer Williams.

### **2. The Dispatch Logs:**

[MPD Dispatch Logs 1](#) contained in the DA file show that Officer Williams phoned dispatch at 1:18 AM to report a drunk and threatening black male at the club. Three minutes later, squad cars from the North Precinct were dispatched to the club. Four squad cars responded to the call. The first car arrived at 1:24 AM; all four were at the club by 1:27 AM. The cars stayed for some time. One car left at 1:45 AM, another at 1:47 AM, and the final two cars did not clear the scene until 2:01 AM. Officer Ronald Marshall's differing statements and testimony concerning his activities that night have him encountering Timothy McKinney at Crumpy's Comedy Club at some point between 12:30 AM and 1:30 AM. The dispatch logs make it clear that Officer Marshall did not arrive at the club until some point after 2:01 AM, and he would not have made contact with Timothy McKinney until after that. [MPD Dispatch Logs 2](#) show a call at 2:36 AM indicating that an officer had been shot in the head. At that time, dispatch issued a description of the suspect in the shooting: 5'11", 180 lbs, whi (white) cap, blk (black) shirt, blk (black) pants.

The identity of the citizen or police officer who provided that information to dispatch is not documented and has never been revealed to Mr. McKinney's defense, but documents found in the Inspectional Services Bureau (ISB) file on Officer Frank Lee do indicate conclusively when the shooting actually occurred. The ISB files show that Officer Lee used his police radio to call in the shooting at 02:32:09. This first transmission was followed by another at 02:32:16, a third transmission at 02:32:46, and a final transmission at 02:33:30. A [Transcript of Tape Recording of Officer Lee's Transmission on December 26, 1997](#) is included in the ISB file. The ISB investigative report concludes that Lee radioed the first "Officer down" call *after chasing the shooter, exchanging gunfire in the alley until the shooter sped off in a car, and then returning to render aid to Officer Williams*. Based on these events, the shooting had to take place at approximately 2:30 AM, or even earlier.

At trial, the State placed Mr. McKinney at his girlfriend Debra Kimble's house at 2:15 AM, presenting testimony that, between 2:15 AM and 2:35 AM, Ms. Kimble "fussed at" Mr. McKinney, gave him permission to sleep on her couch, returned to her bedroom and went back to sleep, and then Mr. McKinney left her house unheard by her and drove back to Crumpy's Comedy Club in time to park his car in the alley and sneak up upon and ambush Officer Williams. The police supplements and the dispatch logs, the very documents requested by the defense but denied to them by the State, contradict that timeline.

Timothy McKinney had to meet Officer Ronald Marshall at some point after 2:01 AM. How long after is not known, only that the last squad cars from the North Precinct cleared the area at 2:01 AM before Officer Marshall got to the club, and Mr. McKinney approached the club after Officer Marshall arrived there and took care of his personal business. Then, according to Officer Marshall, he detained Mr. McKinney in his squad car, questioned him, took his driver's license back to Officer Williams so he could write down Mr. McKinney's name and address, discussed the disposition of Mr. McKinney with Officer Williams, and then released Mr. McKinney, allowing him to leave the club. Even using Officer Parke Harber's unscientific measurement of 4 ½ minutes driving time between Crumpy's Comedy Club and Debra Kimble's house, it becomes virtually impossible for Mr. McKinney to have arrived at the house by 2:15 AM. And, if Mr. McKinney knocked on Ms. Kimble's door at 2:20 AM (as she originally told the police in her initial statement) or, more likely, even later, it becomes equally as impossible for Mr. McKinney to engage Ms. Kimble in conversation, retire to her couch, slip out of her house after she went back to bed and without her knowledge, return to Crumpy's Comedy Club, park his car in the alley, and then sneak up upon and shoot Officer Williams by 2:30 AM. (See [Timeline: What Really Happened](#))

### **3. Officer Steven Jackson:**

Officer Jackson was the witness called by the State to testify that he had spoken with Officer Williams at the club that night, and that Officer Williams had expressed his concern then about a guy "he had a minor altercation with." When asked during direct examination why he was there that night, Officer Jackson replied that he had dropped by on routine patrol because the club was located in a high crime area. [MPD Dispatch Logs 1](#) located inside the DA's file tell a different story. Officer Jackson was one of the two officers in Car 126A, one of the squad cars dispatched to Crumpy's Comedy Club following Officer Williams' phone complaint. Officer Jackson's

car arrived at the club at 1:27 AM and cleared the scene at 1:47 AM. The prosecutor's question on direct examination effectively preempted Mr. McKinney's defense attorney from asking the same question on cross-examination and possibly soliciting the truth, the answer that would have demonstrated that there was, or at least should have been, a paper trail establishing exactly when and how long squad cars from the North Precinct were at Crumpy's Comedy Club that night.

[MPD Dispatch Logs 2](#) shows that Officer Jackson's squad car was the first on the scene after the shooting, arriving at 2:36 AM

## **C. The Internal Affairs Investigation**

### **1. Officer Frank Lee's Disciplinary Hearing:**

During the course of their original investigation, Timothy McKinney's court-ordered investigators reviewed Officer Frank Lee's personnel file and learned that he received a written reprimand from Deputy Police Chief Walter Crews for charges against Lee related to the shooting at Crumpy's Comedy Club. The paperwork indicated that the Inspectional Services Bureau (Internal Affairs) had determined that Officer Lee had violated department policy by failing to obtain prior approval to work the off-duty security job at Crumpy's Comedy Club and using his departmental issued duty weapon on that job. (See [Lee's Administrative Summons](#).) Officer [Lee's Hearing Summary Form](#), dated March 26, 1998, indicated that Officer Lee and his representative explained to Deputy Chief Crews that Officer Lee had not filled out the necessary application to work the off-duty job because he thought the position would be short-term, only that one weekend. Officer Lee's representative assured the deputy chief that Officer Lee had no intention of keeping his off-duty employment from the police department. Under the tragic circumstances, Deputy Chief Crews chose to let Officer Lee off with a written reprimand.

Officer Lee declined to speak with Mr. McKinney's investigators back then, and, with other police reports and documents already denied to them by the [Consent Order](#), Mr. McKinney's investigators had no way of knowing then that this blip in Officer Lee's personnel file was just the tip of the iceberg. In January of 2005, Mr. McKinney's post-conviction attorneys acquired the ISB's complete file on this case, a file that showed the full scope of the Internal Affairs investigation into events that took the life of Officer Donald Williams.

### **2. Officer Frank Lee's First Statement:**

Detectives from the ISB Security Squad were the first investigators to interview Officer Frank Lee. This was established procedure then in all cases of officer-involved shootings. The statement was taken from Officer Lee at 4:53 AM in the parking lot of Crumpy's Comedy Club, 2 ½ hours after the shooting and 5 ½ hours before Officer Lee would go to police headquarters at 201 Poplar to give his statement to detectives investigating the shooting of Officer Williams.

Officer [Lee's ISB Statement](#), taken at the scene before he had the opportunity to leave, confirmed the well-documented chronology of events with one curious exception. When Officer Lee explained how the suspect in the shooting returned to the club after the squad cars from the North Precinct left, he described Officer Williams taking down the suspect's personal

information, omitting the presence of Officer Ronald Marshall at the club. (Officer Lee would not leave out the existence of this obviously important witness when he gave his statement at 201 Poplar 5 ½ hours later.) Officer Lee told the detectives about the earlier argument between the suspect and Officer Williams in the parking lot, describing the suspect and the distinctive clothing he was wearing in detail. When asked directly if that person was the man who shot Officer Williams, Officer Lee replied: "I believe so, yes he didn't have his sweater on he had on a black tee shirt, black pants, but he still had the orange tennis shoes on." In recounting the shooting itself, Officer Lee told the detectives that he turned around when he heard the shot, saw Officer Williams already down, observed a male suspect running away, pursued the fleeing man into the alley, exchanging gunfire with the man as the man made his escape. At no time did Officer Lee mention that the man's face was covered or that he ever saw the man's face. (5 ½ hours later, Officer Lee would repeat his description of the clothing the shooter was wearing but add an orange bandana covering the man's face from the nose down. When asked directly if he ever saw the shooter's face, Officer Lee would answer: "Yes. When he turned and shot at me (in the alley) I could see his face from the nose up" 1 ½ years later at trial, Officer Lee would be able to tell the jury that he saw the shooter "eye to eye" immediately after the shooting and before the shooter turned to run, and that the shooter was wearing Timothy McKinney's bright, multi-colored sweater.)

The detectives from the ISB security squad asked Officer Lee some direct questions regarding the circumstances of his employment at Crumpy's Comedy Club, and Officer Lee provided candid and revealing answers. No, Officer Lee admitted, he was not bonded and secured as a security officer, he did not work for any private security company, and he had not filed any off-duty employment forms with the department in connection with his job at the club.

"I was just out there," he told them.

Officer Lee would go on to tell the detectives that he had been working as a security guard at Crumpy's Comedy Club for *four months*.

This initial ISB statement was unknown to Timothy McKinney's defense prior to his trial. However, in the summer of 2004, Mr. McKinney's post-conviction investigator learned from Crumpy that Officer Lee had been the head of security at Crumpy's Comedy Club, the man in charge of scheduling and dispersing cash payments to the other off-duty police officers employed there, including Officer Williams, facts Crumpy would testify to at Mr. McKinney's post-conviction hearing.

Former Deputy Chief Walter Crews was also called to the witness stand by Mr. McKinney's post-conviction attorneys. On direct examination, Deputy Crews reviewed the report he had authored in 1998, [Lee's Hearing Summary Form](#), and stood by his decision, insisting that he had never seen Officer [Lee's ISB Statement](#) or any other evidence that would have contradicted what he was told at Lee's disciplinary hearing. On cross-examination, Deputy Crews declared that he was embarrassed today by the report he had written back then and the way Officer Lee and Lee's representative had deceived him.

### **3. Memphis Police Department Policy and Procedures:**



The ISB investigation revealed that the Security Squad detective investigating Officer Lee consulted Lois Washington, the department's Off-Duty Employment Coordinator at the time, and learned that Officer Don Williams, like Officer Lee, had also failed to file the necessary paperwork for off-duty employment.

There is no mention anywhere in the police files, ISB file, or DA file of Officer Eugene Ross or Sgt. Anthony Carter, the two other police officers employed at Crumpy's Comedy Club. When two members of Mr. McKinney's post-conviction defense team reviewed these officers' personnel files in January of 2005, they found no paperwork in either file concerning off-duty employment by Crumpy or Crumpy's Comedy Club.

Further investigation by Mr. McKinney's post-conviction defense team revealed that working at clubs like Crumpy's was prohibited by the MPD policies and procedures for off-duty employment. When Mr. McKinney's investigator spoke with Lois Washington in the spring of 2005, the former Off-Duty Employment Coordinator assured him that no police officer could have gotten permission to work at Crumpy's Comedy Club then. If the appropriate paperwork had been filed, the request would have been denied. Ms. Washington was attempting to testify to that at Mr. McKinney's post-conviction hearing when the prosecutor objected to her testimony as cumulative, and the judge sustained.

Officer Williams' shooting at Crumpy's Comedy Club had followed a major public scandal involving off-duty employment by police officers in the city of Memphis. In August of 1996, it was discovered that eight moonlighting Memphis police officers were providing security at the site of a marijuana hothouse, a warehouse that had been under surveillance by local and federal officials for three weeks prior to the raid of the warehouse and the arrest of the building's owners. The eight police officers were suspended and, as noted by the Memphis Commercial Appeal, "the revelation has forced a top-level departmental review of the off-duty employment of hundreds of city officers."

Yet, in the wake of Officer Williams' Christmas, 1997, shooting and subsequent death, no one in the local media discovered or reported off-duty employment irregularities at Crumpy's Comedy Club involving any of the four police officers employed by the club.

#### **4. Officer Ronald Marshall:**

The Inspectional Services Bureau also investigated the role Officer Ronald Marshall played in the events at Crumpy's Comedy Club, interviewing both Officer Marshall and Officer Marshall's supervisor, Lt. Raymond Miles. On January 30, 1998, the day after Officer Williams died at St. Francis Hospital, Lt. Miles told the Security Squad detective that he granted Officer Marshall permission at roll call at approximately 11:30 PM to deliver Marshall's keys to his cousin at the club. "I gave him permission to go by there and take some keys, not to be at the club," Lt. Miles said. (See [Miles' ISB Statement](#).) On February 23, 1998, the Security Squad detective interviewed Officer Marshall. In Officer [Marshall's ISB Statement](#), he reported that he arrived at Crumpy's Comedy Club at 0045 hours, and he was there "between five to ten minutes max." He described again his encounter with Timothy McKinney at the club, and even confirmed that he was aware that police officers from the North Precinct had already been there

looking for Mr. McKinney prior to his arrival. Though the detective had also collected the [MPD Aggravated Assault Supplement](#), the report that detailed the version of events Officer Marshall gave detectives in the hours after the shooting, and [MPD Dispatch Logs 1](#), the contradictory evidence contained within these documents apparently escaped her attention.

The ISB file also included Officer [Marshall's Patrol Log](#), the handwritten log he kept in his squad car on which to record the details of the calls he made during his shift. The log indicated that Officer Marshall received six calls between the time he left roll call just before midnight and the time he was summoned to 201 Poplar to provide information concerning the Williams shooting about 3 ½ hours later. Of those six calls, he responded to four and disregarded two. Every minute of the time Officer Marshall was on duty that night is accounted for in his log, but there is no mention of his trip to Crumpy's Comedy Club in the North Precinct. (Unfortunately, no one thought then to secure the actual dispatch logs for Officer Marshall's Downtown Precinct, computer printouts like the MPD Dispatch Logs entered into evidence at Mr. McKinney's post-conviction hearing, documents that would have detailed every call Officer Marshall made that night, where he went, when he arrived, and when he left. When Mr. McKinney's post-conviction defense team attempted to obtain these logs in 2005, they were told that the files had been destroyed.) At the post-conviction hearing, Officer Marshall read aloud the handwritten entries in his log for that night as well as testified to the training he had received in keeping the logs and the importance of their accuracy. Under cross-examination, Officer Marshall did concede that his log might not always include everything he did during a shift, and that he might not have recorded his errand to Crumpy's Comedy Club that night if he just stopped by there while answering another call. On re-direct Officer Marshall confirmed that Crumpy's Comedy Club was not in his Downtown Precinct but, rather, was located in the North Precinct about 5-6 miles away. (Note: In geographical terms, the Downtown Precinct is the smallest precinct in the city. Approximately two miles separate the northern border of the precinct from its southern border; it is less than a mile from Danny Thomas, the eastern border of the precinct to the western border, the Mississippi River. The MPD website reports that the average response time for calls in the Downtown Precinct is 2.06 minutes. The odometer readings reported on Officer [Marshall's Patrol Log](#) indicate that he put 28 miles on his vehicle between midnight and 3:30 AM.)

One of the party patrons who testified at Mr. McKinney's post-conviction hearing was a life-long friend of Officer Ronald Marshall. This man had witnessed part of the earlier argument between Mr. McKinney and Officer Williams. He testified that he saw and spoke with Officer Marshall twice at the club that night, once earlier in the evening before the argument and again after the shooting when he encountered Officer Marshall outside the club and told him about the argument he had seen. The police files on the case indicate that, while other guests remaining at the club when police arrived were detained there for hours after the shooting, this man told his story to uniformed officers at the scene and was allowed to leave before the detectives arrived.

## **D. The Physical Evidence**

Mr. McKinney's post-conviction attorneys presented evidence and testimony concerning three topics:



## **1. The Ineffectiveness of Original Trial Counsel:**

The testimony of the TBI forensic scientist describing microscopic particles □ consistent with gunshot residue □ but not conclusively gunshot residue on Timothy McKinney □ s vest should never have been allowed to be presented in front of Mr. McKinney □ s jury. (The TBI Special Agent admitted finding the presence of only two out of the three elements of gunshot residue in the samples he examined by electron microscope.) Nevertheless, competent defense attorneys could have easily countered that testimony with independent testing by their own expert and/or scientific information about the nature and properties of gunshot residue widely available at the time.

## **2. Transfer:**

Particles like the kind found on Mr. McKinney □ s vest can be created by other means besides the discharge of a weapon. For example, fireworks deployed to celebrate holidays can be a ready source of particles consistent with gunshot residue. These particles are also easily transferable from one surface to another. Microscopic particles on a floor, a table, a garment, or even a human hand can be transferred to the surface of another garment by casual contact. Once such particles attach themselves to a surface, there is no way to determine when the contact occurred or how long the particles have been present. An outer garment like Mr. McKinney □ s vest, one that is not machine washable, could carry such particles for months unless it was dry cleaned.

Of greater significance here than the presence of microscopic particles □ consistent with □ gunshot residue were the lack of such particles on Mr. McKinney □ s pants, and the decision not to test Mr. McKinney □ s sweater, shirt(s), or his car for gunshot residue. (If the shooter doesn □ t stick his just-fired handgun into his pants, he has to toss it on the seat or floorboard of his car.) Even more curious were the efforts to test the vest, a distinctive garment that none of the eyewitnesses at the scene that night described seeing at the time of the shooting, but not the sweater, particularly the sleeve of the shooting hand which would have been most likely to collect gunshot residue. Stranger still was the choice to show the vest to eyewitness Joyce Jeltz only after suspicious particles had been reported on it by the TBI lab.

## **3. Mishandling of the Evidence:**

Mr. McKinney □ s post-conviction attorneys called witnesses including two police officers and the civilian supervisor of the Memphis Police Property Room to demonstrate that Mr. McKinney □ s clothing, including the vest, was sloppily handled in a manner inconsistent with the usual property room procedures before the vest was shipped off to the TBI lab. [Property Room Photo 1](#), [Property Room Photo 2](#), and [Property Room Photo 3](#) introduced into evidence at the post-conviction hearing show the clothing strewn on the property room floor, a table, and piled together on a ripped open paper bag. The police detective who took those photos testified at the hearing, authenticating the photos for the court.

## **E. Suspects**

Estimates of the total number of guests in attendance at the Magic Clippers 1997 Christmas Party at Crumpy's Comedy Club range from 200-500 people. Timothy McKinney's post-conviction team has been able to identify over 150 people who were there that night. Of that number, over a third of them have arrest records, many of them quite extensive. Eighteen are currently posted on the state-sponsored Tennessee Felony Offender website. Several are presently scattered around local, state, and federal prisons.

While the purpose of this report is to highlight the miscarriage of justice in Mr. McKinney's case, not to point the finger of guilt at others, three party guests were singled out during the post-conviction hearing, young men whose names will soon become part of the public record in this case.

One of these men, "Goldie," has already been mentioned. The Magic Clippers barber who testified at the hearing, and at least one other witness, identified Goldie as one of the drunken guests thrown out of the club by Officer Williams.

Police patrolling north Memphis near *Magic Clippers* in the early morning hours after the shooting pulled over and detained another young man because he and his car matched the description of the suspect they were looking for. As it turned out, this man had, in fact, attended the Christmas party at Crumpy's Comedy Club, and he had a lengthy criminal record. His car was searched, drugs were found, and he was arrested on a variety of charges. A photograph of this man taken at the party that night was introduced into evidence at Mr. McKinney's hearing. (See [Party Photo 2](#).) The man, who is wearing a multi-colored sweater, is standing on the viewer's right, to the left of the other man in the multi-colored sweater.

Several party guests have recounted at one time or another their encounters with the late Christopher Long, a party guest who was inside the club in the minutes after the shooting telling everyone who would listen that he knew who shot the security guard. Mr. Long was from the Magic Clippers' north Memphis neighborhood and was well known to many at the party. At Mr. McKinney's post-conviction hearing, one of Mr. Long's close friends testified that Mr. Long identified to him another young man from the neighborhood as the shooter before Mr. Long's activities attracted the attention of Memphis police officers who took him into custody. The young man named by Mr. Long was no stranger to law enforcement. He had a long arrest record, had been incarcerated for over three years for shooting and wounding two men with a shotgun in 1993, and had just been released from the Shelby County Jail on December 23 after serving time for other unrelated charges. Testimony and police files introduced at the post-conviction hearing indicated that two other people interviewed by detectives also implicated this young man as the shooter. Detectives visited his house once, and, when told he wasn't at home, they left a business card for him. The detectives followed this up with a couple of phone calls to the residence. No one from the Memphis Police Department or the DA's office ever talked to him.

## V. CLOSING

This report attempts to accurately summarize the original capital murder case against Timothy Terrell McKinney and the 2006 post-conviction hearing held in Memphis. This report contends that Mr. McKinney was railroaded by the justice system, and it makes serious allegations of INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL MISCONDUCT, and PERJURY committed before and during Mr. McKinney's 1999 trial.

This report implores the reader to ask the following questions:

1. Was Timothy McKinney adequately represented by counsel?
2. Did the State of Tennessee act honorably in turning over exculpatory evidence to Timothy McKinney's defense?
3. Did every witness against Timothy McKinney tell the complete, unvarnished truth?
4. Did Timothy McKinney receive a fair trial?

And, finally, if you, the reader, cannot answer **YES** to all four of these questions, does Timothy McKinney belong on Death Row?