



### Kenneth “JR” McPherson & Eric Simmons: Background Information

**Quick Summary:** Brothers Kenneth “JR” McPherson, 45, and Eric Simmons, 48, were exonerated today after spending 25 years in prison for conspiracy to commit a 1994 murder. A joint investigation by the Mid-Atlantic Innocence Project, the University of Baltimore Innocence Project Clinic, and the Baltimore City State’s Attorney’s Conviction Integrity Unit proved they did not commit the crime. The parties jointly filed a Writ of Actual Innocence in Baltimore City Circuit Court. Today, that writ was granted, and the State moved to dismiss the charges against the men.

#### **Important Names & Dates:**

**Crime:** August 31, 1994

**Arrest:** September 6, 1994

**Conviction:** May 18, 1995

**Sentencing:** July 5, 1995

**Detectives:** Robert Patton & Frank Barlow

**Assistant State’s Attorney:** Sharon Holback

**Trial Counsel for McPherson & Simmons:** Warren Brown

**Codefendants:** Nicholas Richards, Daniel Ellison (Alford plea), and Marcus King (charges dismissed)

**The Crime:** Shortly after midnight on August 31, 1994, Anthony Wooden was shot in the head and killed with a .44-caliber bullet in the 1600 block of North Washington Street in East Baltimore.

**The Investigation:** Witnesses at the scene said two perpetrators ran after Wooden and that those perpetrators may have spoken with two or three other people before the shooting. On September 1, 1994, police got their first concrete lead from Diane Bailey. Bailey lived two blocks from the scene of the shooting, in the 1400 block of Washington Street. Her rent was paid for by police after she’d allegedly witnessed another shooting in West Baltimore. In exchange for her testimony in this case, police moved her again and continued paying her rent.

Bailey said that at the time of the shooting, she was at home with her teenage daughter when they heard yelling from outside. Bailey said they stuck their heads out of the third-story window and saw McPherson, Simmons, Nicholas Richards, Daniel Ellison, and Marcus King about 150 feet away. She said she heard McPherson say, “Go get the guns,” and then saw him run to a house on the 1500 block of Washington Street. She said she saw King come back with a bag, from which McPherson, Richards, and Ellison pulled out guns. She claimed Simmons already had a gun in his waist. She then said she saw Wooden and two other people walk past the group; McPherson, Richards, Ellison, and Simmons then ran after Wooden.

On September 6, 1994, police arrested the five men Bailey had named. As described by Det. Patton, their immediate focus was to “break” Marcus King. At 4’5” and 13 years old, detectives saw him as “the weak link in the group.” King was arrested at 7:20 a.m. and was handcuffed to a chair until police began to interview him more than four hours later. When police began interviewing King, he told police that he had been on Chapel Street with McPherson during the shooting and that he only saw Simmons when Simmons came to check on them after the shooting. King also told police that Ellison had confessed to being involved in the crime with Richards.

Detectives did not believe him. They yelled, pounded the table, called him a liar, and threatened to charge him with murder. They told him they knew he’d retrieved guns for the shooting and that they knew he, McPherson, and Simmons were involved. Although King initially stood by his original statement, he eventually said in a tape-recorded interview that he was with McPherson, Simmons, Richards, and Ellison on the night of the shooting, that he went to retrieve the guns, and that he brought the bag of guns to Ellison and Richards because McPherson and Simmons already had guns.

King recanted his tape-recorded statement to police, therapists, and the prosecutor. He consistently said that his initial statement to police was the truth.

Also on September 6, 1994, Ellison told detectives that McPherson and Simmons had not been involved in the shooting. He said that on the night of the shooting, Richards and two people Ellison didn’t know told Ellison they needed money for weed and were going to rob someone. Ellison pointed out the victim to Richards as a target and watched as Richards and his two companions followed and shot Wooden.

### **The Trial:**

Ellison pled guilty, and McPherson and Simmons were tried jointly with co-defendant Nicholas Richards. The state’s case rested on the testimony of Bailey and King. Bailey’s testimony largely echoed her earlier statement, but King continued to disavow his audiotaped statement and testified in accordance with his original statement to police. Ellison did not testify, and his statement to police was never referenced at trial.

McPherson and Simmons both presented alibis. McPherson said he’d been on Chapel Street at the time of the shooting, which he’d consistently told police since his arrest. Three other witnesses corroborated this. Simmons was asleep at home during the shooting; his mother asked his girlfriend to wake him to check on McPherson when she heard shots. He left the house in shorts but no shirt. His mother and a neighbor corroborated this. One of McPherson’s alibi witnesses said she was with McPherson when Simmons approached them and told McPherson he’d been sent by their mother to check on McPherson. She said Simmons was wearing shorts but no shirt.

McPherson & Simmons were represented by the same lawyer at trial, and ultimately were convicted of conspiracy to commit murder and sentenced to life; Richards was sentenced to only 30 years.

**Post-Conviction Investigation:** A joint post-conviction investigation uncovered additional proof of the men’s alibis. The team also learned that Diane Bailey’s teenage daughter did not witness the crime despite her mother’s testimony, that the crime unfolded in a different location than what Bailey described, and that Bailey could not have witnessed the shooting from her third-story window.