

MAN REMAINS IN PRISON AS PROSECUTORS APPEAL DECISION

## Son crusades for father's freedom

By JOE LAMBE  
The Kansas City Star

Cliff Middleton never believed his father murdered his step-mother.

Not after his father's arrest in Blue Springs. Not after his conviction. And not 14 years later, as his father remains behind bars, serving a life sentence without parole.

Now, after years of appeals, both men finally have hope. A judge recently overturned Kenneth Middleton's convictions for first-degree murder and armed criminal action.

### First glance

■ Fourteen years after Kenneth Middleton's murder conviction, hope springs anew for the son trying to clear his father's name.

Cliff Middleton relayed the news by phone to his 60-year-old father.

"Dad," he said through tears, "we've finally done it."

But Jackson County prosecutors appealed the judge's ruling, and Kenneth Middleton must remain in prison through an appeals proc-

ess that could last many months. On the advice of his attorney, he has declined to speak publicly until the case ends.

Prosecutor Mike Sanders said: "Our office obtained a murder conviction, and we are trying to uphold our conviction by exercising our right to appeal."

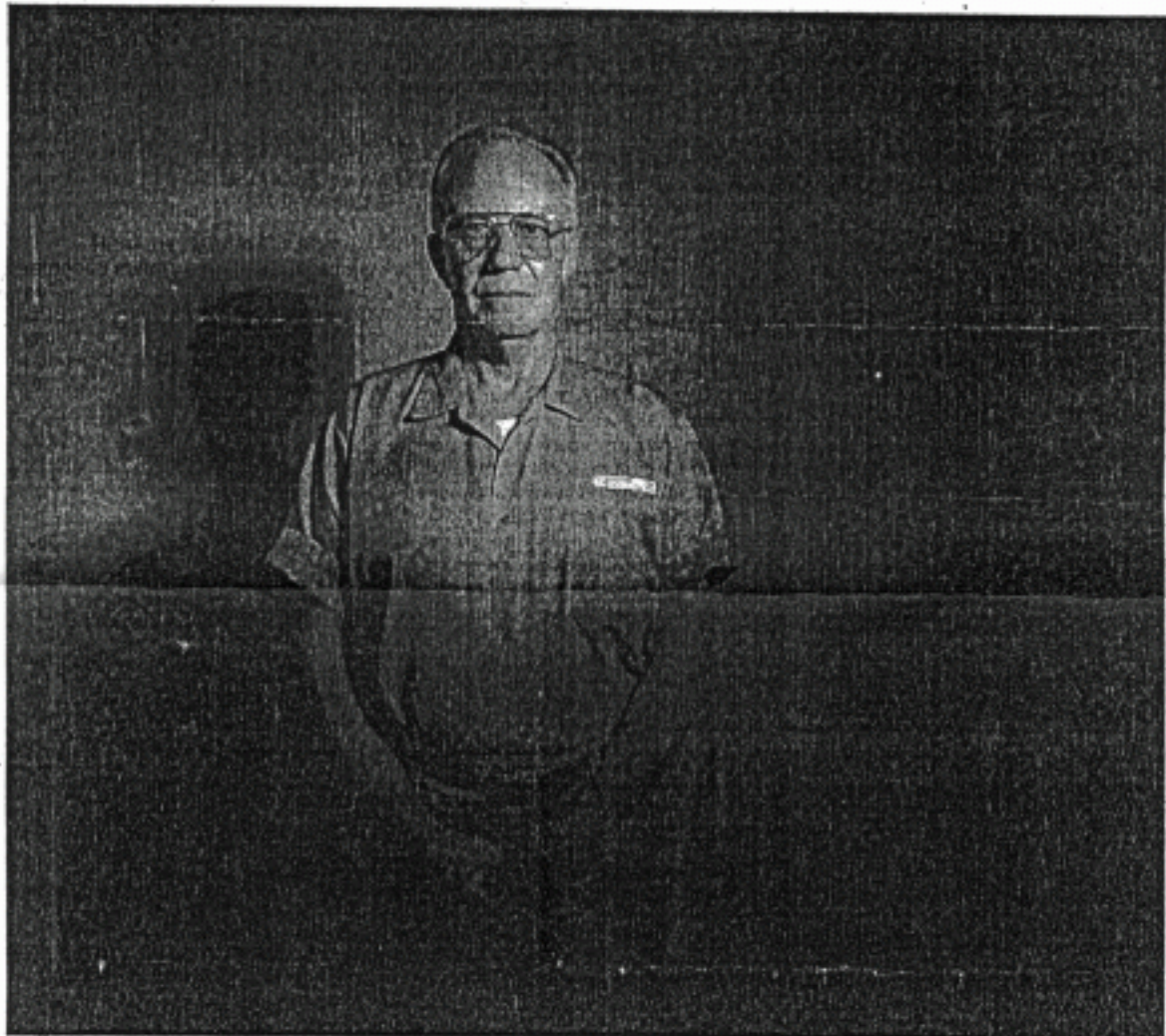
If the state loses the appeal, prosecutors still could decide to retry the case, but Middleton would be eligible for bond pending trial.

So for now he remains in prison.

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For the past 14 years, Kenneth Middleton, 60, has been serving a life sentence without parole in the murder of his wife. A judge recently overturned his first-degree murder conviction, but prosecutors are appealing.



# JUSTICE: Man seeks imprisoned father's release

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R.A. (Alford plea: July 2004!!)

Prosecutors suggested a possible plea to second-degree murder and immediate release, but Middleton would not consider it.

"I want to exonerate myself," his son said, "and we know we'll want a new trial."

## Ineffective counsel alleged

In a 38-page ruling on May 26, Jackson County Circuit Court Judge Edith Messina said she threw out the convictions because Middleton's defense lawyer was ineffective at trial. With a proper defense, the verdict could have been not guilty, she wrote.

Such a ruling is highly unusual 14 years after a conviction. Ineffective-attorney appeals are usually handled quickly. They rarely prevail and cannot be repeated except under extraordinary circumstances.

In Middleton's case, the extraordinary circumstance was that a lawyer who handled his ineffective-attorney appeal also performed so poorly that he in effect abandoned his client, Messina ruled.

When the shooting happened, Cliff Middleton was just 20 and living with his mother at her house on Ward Parkway, and he knew little of law. Now the Shawnee man is 36 and knows more law than he ever wanted to learn.

It all began on Feb. 12, 1990, when a hysterical Kenneth Middleton called police to his Blue Springs home. They found his wife of 16 years, Katherine Middleton, 45, dead on the dining room floor, shot once in the head. Kenneth Middleton, then 45, gave police two different stories about how it happened.

Authorities sent him to a mental hospital. A day later, a relative took him home. Two weeks later, police arrested him. The family raised money to pay defense lawyer Bob Duncan for the criminal case.

They would not learn for years that Duncan, who died in 1997, owed hundreds of thousands of dollars in federal taxes and was juggling several big murder cases at the time.

The 1991 criminal trial lasted just a few days. Assistant prosecutor Patrick Peters painted Middleton as a cold-blooded killer who for unknown reasons planned his wife's death and tried to lie his way out of it.

Duncan gave no opening statement, called no witnesses or experts and did not have Middleton testify. Duncan argued that the .357-caliber Magnum went off by accident when Katherine Middleton dropped it to the floor.

State experts said that could not have happened. Blue Springs police testified that Middleton told them he was ill and called his wife home from work to care for him. They said he gave them two stories.

In one, police said, he was sitting in his chair wiping the gun when his wife took it and said she would call the doctor. As she walked toward the phone, she dropped the gun. In the other version, he arose to hand her the gun but blacked out, then awakened and found them both on the floor.

Police reported that Middleton acted hysterical. At one point, he went into the bathroom and acted as if he was throwing up into the sink, police said, but they thought he was actually trying to wash gunpowder residue off his hands. Such actions could explain why tests



Cliff Middleton, who was 20 when his stepmother died in 1990, has worked for years to clear his father's name.

found no such residue on his hands, authorities said.

As an ambulance took Middleton away, he unconsciously acted as if he was drifting in and out of consciousness, authorities said.

Prosecutors also pointed to a button ripped from the victim's blouse and said it was consistent with a struggle. Peters told jurors that a boot print indentation on a wall showed where Middleton probably pinned her while he shot her.

Middleton was lying, Peters told jurors, and for proof he told them there was no telephone on the wall where Middleton said it was.

Watching in the courtroom, Cliff Middleton knew that was wrong. The phone had been on the wall. He wanted to stand up and scream.

But Duncan did not object. He did not refute the telephone statement, that even prosecutors later admitted was wrong.

Cliff Middleton, who expected a not-guilty verdict, waited with family members in the courtroom that February day in 1991. The jury deliberated only about two hours. The guilty verdicts hit him like a fist.

In 1993, the appeals court in Kansas City affirmed Middleton's conviction on appeal and also denied the ineffective-attorney appeal.

Cliff Middleton hired other lawyers and gathered evidence that Duncan was ineffective, but he could not get it into court.

## Trying again

Three years ago he hired Kansas City lawyer Jonathan Laurans, who filed an 81-page motion supported by hundreds of pages of exhibits. Laurans asked to restart the ineffective-attorney appeal on the grounds that the other lawyer who handled it had abandoned his client, Messina agreed. The defense finally presented its case at a June hearing last year.

Among its points: Katherine Middleton died from a gunshot wound in the left side of her face that went at an upward angle. Her right hand, like both her husband's hands, tested negative for gunshot residue, but police produced no test for her left hand. Yet samples were taken for a test, and the test apparently was done. Mysteriously, a request for the test from Blue Springs police to the crime lab in Kansas City later was altered with whiteout to cover the spot where a left-hand test would have been requested.

A Blue Springs police officer later testified that he didn't know what happened to the form or to any test result of Katherine Middleton's left

hand, but he never ordered tests for just one hand. Duncan had known about the missing test but never raised the issue at trial.

A defense expert now testified that the gun was fired from about 12 inches away. Gunpowder residue and blood spatter should have been on Kenneth Middleton's long-sleeved white shirt, but none was. The expert also testified that it was physically impossible for the crime to have occurred as prosecutors said. For one thing, the boot print on the wall was a heel indentation and could not have been left by a standing man who was pinning or beating a woman.

Cliff Middleton, whom Duncan never called to the stand, gave a sworn statement that he saw the boot print weeks before the crime.

Two firearms experts testified that the gun had among the lightest trigger pulls of any handgun they had ever tested.

The button that was supposedly ripped off Katherine Middleton's shirt could have come off when police at the crime scene took off her clothes.

The actual crime scene photos did not turn out, so police later put items back where they thought they were and took more photos that were not correct but were used at trial. Among the changes: At the time of the shooting, a planter and brass statue were in front of the boot print. In photos shown at the trial, they were not.

Duncan presented no medical evidence to refute the state's claim that Middleton was faking illness. But medical records listed him as tearful, suffering from post-traumatic stress and acute grief reaction, and said he possibly had a heart attack. They also said he had long suffered from severe epilepsy, which could explain the strange drifting into unconsciousness.

After the two-day hearing in June 2004, Cliff Middleton felt upbeat. He and his family, their attorney and the experts went out for a joyous lunch.

"We rolled over them like a tank," he said of the opposition.

Next, they waited nearly a year for Messina's ruling. The younger Middleton likened it to "an 11-month wait for a jury verdict."

Last month, Blue Springs police declined to comment. Peters, the trial prosecutor and now a defense lawyer, said he believed years ago that Kenneth Middleton was guilty because his stories did not make sense or match evidence. Now, he said of the conviction, "if somebody cheated and his attorney didn't present stuff that's important, it should be set aside."

Cliff Middleton and Laurans recently sat in the lawyer's office in the historic Scarritt Arcade and discussed the case.

Laurans said it is likely that Katherine Middleton took the gun, dropped it with her left hand, tried to catch it and grabbed the hair trigger. Kenneth Middleton, Laurans said, "is a guy who doesn't really remember what was going on and was trying to help police."

What Cliff Middleton really wants is to collect his father from prison and take him home.

"My son is 13 years old," Cliff Middleton said, "and never saw his grandpa outside a prison visiting room."

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