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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA TENTH JUDICIAL DISTRICT

Philip Randall Vance, Case No. 19-K6-04-000736

Petitioner,

vs.

State of Minnesota,

Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR POSTCONVICTION RELIEF

TO: THE HONORABLE MICHAEL J. MAYER; STATE OF MINNESOTA; MINNESOTA ATTORNEY GENERAL'S OFFICE; AND DAKOTA COUNTY ATTORNEY'S OFFICE.

INTRODUCTION

By petition accompanying this memorandum, Philip Randall Vance ("Petitioner"), respectfully requested that this Court vacate and set aside his conviction for first-degree premeditated murder, first-degree felony murder during an aggravated robbery, and second-degree intentional murder in this matter, among other relief. Petitioner's requested relief is necessary because he was denied effective assistance of appellate and trial counsel, a right guaranteed to him by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 6, of the Minnesota Constitution. Moreover, Petitioner was denied access to exculpatory *Brady*, *Giglio,* and *Youngblood* evidence during the course of his trial, direct appeal, and prior postconviction proceedings. *See Brady v. Maryland,* 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Youngblood v. Arizona*, 488 U.S. 51 (1988). Petitioner's conviction was also dependent upon testimony and evidence now known to be false. The false testimony at issue in Petitioner's case invalidates both the conviction and the underlying indictment.

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The constitutional deficiencies in Petitioner's case have been extraordinarily detrimental, causing Petitioner to spend more than 20 years in prison despite being factually innocent of the crime of conviction.

Myriad errors in Petitioner's case, combined with the ineffective assistance of trial and appellate counsel, and fundamentally unfair trial discovery procedures, contravene our system of justice and the integrity of our jury trials, were plainly erroneous, and detrimentally affected Petitioner's substantial rights. Petitioner's convictions must be vacated and set aside in order to ensure the fairness and integrity of our judicial system and proceedings, and also because he is factually innocent. This memorandum is submitted in support of Petitioner's request for postconviction relief.

FACTS AND PROCEDURAL HISTORY

I. DISTRICT COURT PROCEEDINGS

a. Charges, Joinder, and Amendments.

Petitioner was charged by indictment in this matter on March 12, 2004. Exhibit P-1, Indictment. The indictment indicates that a Dakota County Grand Jury met on March 3, 10, and 11, 2004, regarding the investigation into the facts and circumstances surrounding the death of Khaled Al-Bakri. *Id.* at 2. Seventeen witnesses appeared and testified during this investigation, consisting of: Tariq Bakkri; Captain Daniel Vujovich; Corporal Mark Sawyer; Kathleen Johnson; Samantha Renville; Matthew Renville; Dale Marx, Jr.; Mohammed Sedqi; Dr. Lindsey Thomas; John Martin; Melissa Stites; Maynard Cross; Colleen McManus; Eric Griffen; Fabian Wilson; Regina Hagerman; and Geronimo Estrada. *Id.* The grand jury returned an indictment charging Petitioner with three crimes: (1) murder in the first degree (premeditation) in violation of Minn. Stat. § 609.185(a)(1); (2) murder in the first degree (felony murder – aggravated robbery) in

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violation of Minn. Stat. § 609.185(a)(3); and (3) murder in the second degree (intentional) in violation of Minn. Stat. § 609.19, subd.1(1). *Id.* at 2-3.

b. Evidence at Trial.

A trial was held from September 20, 2004 until October 5, 2004, taking place before the Honorable Rex D. Stacey in Dakota County, Minnesota.

The State's theory at trial was that Petitioner had killed the victim in a robbery gone bad, then subsequently admitted to this murder to various witnesses. Johnson was to be his accomplice. Sabreen's was the store. Al-Bakri was the victim. Nearly all of the key fact witnesses have since recanted or admitted they were untruthful. There was no direct witness to the murder who testified at trial.

Numerous witnesses testified falsely and materially. Much of this false testimony was only discovered or admitted to be false recently. *See infra.*

John Martin testified for the State. *See* Exhibit P-3, Trial Tr. at 180. Martin was asked if he received anything in exchange for his testimony, to which he responded "no." *See id.* at 181. However, Mr. Martin was paid $169.50 by the SSPPD to act as an informant in the case. *See* Exhibit P-6, State's Disclosure of Trial Witnesses ¶ 19. Martin claimed to be with Petitioner and co-defendant Dominick Johnson on December 22, 2002 a few hours before the robbery at Sabreen's occurred. *See* Exhibit P-3, Trial Tr. at 183-89. Martin claimed that he saw Petitioner and Johnson get in a car with two girls named Yvonne and Nicole. *See id.* Martin testified that no robbery was discussed. *See id.* at 194. On recross, Martin was asked if he was paid $169.50 to act as an informant, and he said he was not. *See id.* at 180-96. It therefore is plain that Mr. Martin lied about the inducements Martin was given to testify, and the State took no steps to correct this.

Melissa Stites testified for the State. *See* Exhibit P-3, Trial Tr. at 198. Ms. Stites testified

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that she was employed at the Radisson bar in St. Paul on December 22, 2002 and was working that night from 4:30 PM until 10:00 PM. *See id.* at 199. Stites testified that Petitioner and Johnson came into the bar she was working at on December 22. *Id.* at 202-03. Stites claimed they were with a third man who she could not identify. *See id.* at 203. Stites testified that Petitioner and Johnson were more secretive than usual. *Id.* at 203-04. Stites said Petitioner and the other two men were there at around 7:15 to 7:45 PM. *Id.* at 204. Stites claimed that as Petitioner was leaving, she made a comment seeking a tip and he responded, "Don't worry, Baby, when I get back there's going to be plenty of money." *Id.* at 205. Stites reported calling Officer John McManus ("MGSF Officer 1") of the Minnesota Gang Strike Force the next day to report this comment because she "knew something was going on." *Id.* Stites acknowledged previously providing MGSF Officer 1 information about possible criminal activity. *See id.* Stites testified that she acted as a confidential informant ("CI") on January 3, 2003, wearing a wire and having a conversation with Petitioner at a bar in St. Paul called "The Buttery." *Id.* at 205-06. Stites claimed she and Petitioner changed locations, going to another St. Paul bar called "The Lab." *Id.* at 206. Stites testified that police had given her a cell phone, and that before going to the Lab, she called Minnesota Gang Strike Force Officer Andy Shoemaker to get permission to change locations. *Id.* at 206-07. The permission was granted, and Stites drove herself and Petitioner to The Lab. *Id.* at 207. Stites claimed that once they arrived at The Lab, there was a conversation between herself and Petitioner involving guns, in which Petitioner is claimed to have said he had "shot a guy two weeks ago over south side five times in the back." *Id.* at 207.

On cross, Stites confirmed that Petitioner never admitted that he shot anyone in South St. Paul, nor did he ever admit that he shot the store clerk at Sabreen's. *Id.* at 208-09. Stites noted Petitioner did not return to the bar that night. *Id.* at 212. Stites acknowledged that Petitioner never

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claimed he was going to do anything illegal. *Id.* Stites then claimed, quite prejudicially, that she personally believed Petitioner committed the robbery at Sabreen's solely based on his statement that "I am going to get my plan on." *See id.* at 212-14. Stites then claimed that Petitioner confessed to committing the robbery on January 3, 2003. *See id.* at 214-15. Upon further questioning, she acknowledged that Petitioner never told her he committed a robbery. *Id.* at 215. Stites was asked quite directly whether she concocted this story with MGSF Officer 1 after speaking with him. *See id.* Stites acknowledged knowing Officers McManus and Shoemaker from the Minnesota Gang Strike Force quite well, and that they would sometimes pay her for information. *Id.* at 215. Stites clarified that Petitioner claimed to have told her that he shot someone five times on the South Side, and claimed, "**It's all on the recorder**." *Id.* at 216 (emphasis added).[1] Stites testified that she subsequently purchased a firearm from Petitioner for a police sting operation. *Id.* at 216-17. This recording was never produced, and was destroyed, if it ever existed.

Stites acknowledged in her testimony that she was paid $1,500 by the MGSF after the gun purchase. *Id.* at 217. Stites claimed the U-Haul truck was $999, plus expenses for gas, and claimed these were relocation expenses. *Id.* Stites also acknowledged being paid $60 for appearing in Court on the day of her testimony for lost wages, which was apparently supposed to offset an entire week of missed work. *Id.* at 218. On redirect, Stites claimed she moved out of Minnesota because she felt fear, "fear for [her]self, fear for [her] family." [2] *Id.* She claimed the $1,500 was "purely" for

[1] Task Force records that were not given to the jury indicate that officers intentionally chose to forego recording the conversation, supposedly because the bar was too loud, yet those same officers simultaneously claim to have been able to hear the conversation perfectly. *See, e.g.*, Exhibit P-7, Report of Investigation at 2 ("Although the conversations could be heard, background noise was so loud that any attempts at recording the conversations would not be successful.").

[2] When Stites moved out of state, she moved to Pennsylvania. Exhibit P-10, SmartLinx Person Report for Melissa Stites (Feb. 3, 2025). Stites appears to have been romantically involved with someone in Pennsylvania at the time. *See generally* Exhibit P-8, Jailhouse Phone Transcript

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relocation costs. *Id.* at 218.

Colleen McManus, brother of MGSF Officer 1, testified on behalf of the State. Exhibit P-3, Trial Tr. at 220. Colleen McManus testified that she was employed and working at The Buttery on December 22, 2002. *Id.* at 220-21. Ms. McManus said she worked from 7:00 PM until 8:15 PM, and from 10:15 PM until 2:00 AM on December 23, 2002. *Id.* at 222. Ms. McManus claimed to have seen Petitioner and Johnson exit the car they were in when they left the Buttery, describing the car as a mid-sized, newer model, four-door car that appeared silver or light green in color. *See id.* at 222-23. Ms. McManus then saw Petitioner and Johnson in The Buttery. *Id.* at 224. Ms. McManus claimed that Petitioner and Johnson appeared "very nervous." *Id.* at 225. Ms. McManus claimed that another gentleman at the bar, Mr. Maynard Cross, was yelling at Petitioner at some point that evening. *See id.* at 226-27. Ms. McManus also claimed that Petitioner told her he "really fucked up this time." *Id.* at 226. Ms. McManus claimed Petitioner cried. *Id.* at 227. Ms. McManus claimed Petitioner confessed, or at least failed to deny, to her that he shot someone. *Id.* at 227-28. Ms. McManus claimed Petitioner told her he was going to be skipping town the next day. *See id.* at 229. Ms. McManus testified that she reported this conversation to her brother, MGSF Officer 1. *Id.* at 229-30. Ms. McManus testified that on December 23, 2002, she was asked by Dakota County Sheriff's Office Detective David Sjogren to call Petitioner; she complied and claims that Detective Sjogren taped the phone call. *Id.* at 230.

Ms. McManus testified that Petitioner had given her his new cell phone number a day or two prior to December 22, 2002. *Id.* at 230. This is odd, considering Ms. McManus had just testified that Petitioner had been kicked out of The Buttery a few weeks prior to December 22,

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Between Stites and Johnson (Jan. 6, 2003) at 1-2, 11-13; *see also* Exhibit P-37, Google Maps Screenshot (showing that the Pennsylvania address listed for Ms. Stites from 2003-2005 is only a 30-minute drive from USP Canaan, a federal prison).

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2002 and was not allowed to return. *See id.* at 224. Ms. McManus testified that Petitioner returned to The Buttery on December 29, 2002 and told her what he had bought his kids for Christmas, noting he spent about $400-450 on their presents. *Id.*

On cross, Ms. McManus admitted that Petitioner never told her any specifics about the Sabreen's robbery. *Id.* at 233. Ms. McManus admitted that the money Petitioner spent on Christmas presents for his children was never claimed or indicated to be the proceeds of a robbery. *Id.* Ms. McManus confirmed that Petitioner never admitted or denied shooting someone. *Id.* at 234. Ms. McManus claimed that when Maynard Cross supposedly yelled at Petitioner from across the bar on December 22, he said, "Quit acting like a crazy motherfucker. Shut your mouth." *Id.* at 234-35. Ms. McManus stated that when she called Petitioner on December 23, 2002, he was still in town. *Id.* at 236.

On recross, Ms. McManus added that Maynard Cross also allegedly yelled at Petitioner from across the bar, "Don't be a dumb nigger and shut your mouth." *Id.* at 238. Ms. McManus was then asked why she would not have told her brother, MGSF Officer 1, if Petitioner had given her specific details about the robbery. *Id.* at 239. Her response was:

> A: I didn't want to interfere. I mean here's my brother, a police officer, and I am – you know, it was real complicated.
>
> Q: Why is it complicated? Why wouldn't you do that?
>
> A: I didn't want to, you know, in appearances of impropriety, the collusion or – because my [other] brother is also in the judicial practices.
>
> Q: You've got a brother that's a judge in Dakota County?
>
> A: Yes.
>
> Q: So it's your practice to try and –
>
> A: Not have it look too incestuous, you know. But I mean it was.
>
> Q: And you don't want to become a witness in your brother's case?

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> A: I didn't mind becoming a witness. I just didn't want it to appear that were was any kind of setup or coercion or --.

Exhibit P-3, Trial Tr. at 239.

Ms. McManus was then dismissed. However, after the jurors were excused, the State's prosecutor told the Court that Ms. McManus "chided [the State] for not asking [a] follow-up question" regarding Petitioner's employment at United Hospital. *Id.* at 241. The witness, Ms. McManus essentially asked the State to recall her so that she could testify that Petitioner told Ms. McManus he quit his job at United Hospital "**three** days" after being hired. *See id.* (emphasis added). Ms. McManus apparently felt this was important because it would ostensibly demonstrate that the $400-450 Petitioner spent on his children's Christmas presents would appear to have come from the Sabreen's robbery. To the State's credit, they admitted to the Court that this was a witness-driven recall request. *Id.* Petitioner's attorney objected, but that objection was overruled by the Court. *Id.* at 241-42. Ms. McManus was recalled and testified that Petitioner told her he quit his job at United Hospital "**four**" days after being hired. *Id.* at 243 (emphasis added). *But see id.* at 241 ("three days"). Ms. McManus went so far as to testify that she knew Petitioner was unemployed around Christmas time, claiming she knew this because she would "see him at all hours," notwithstanding her prior comment that Petitioner had been kicked out of The Buttery, or 86'ed, permanently, weeks prior to December 22, 2002. *Id.* at 244. No explanation was provided for how Petitioner was allowed in the bar the week after he had been 86'ed permanently.

Neither the State nor defense counsel asked Ms. McManus whether she was given any inducements to testify or cooperate with the State. *See* Exhibit P-3, Trial Tr. at 220-44. Therefore, the jury was never made aware that Ms. McManus was paid $330.00 by the SSPPD for acting as an informant in this case. *See* Exhibit P-6, State's Disclosure of Trial Witnesses ¶ 8.

MGSF and St. Paul Officer Andrew Shoemaker testified for the State. Exhibit P-3, Trial

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Tr. at 244. Shoemaker was asked about the sting operation involving Melissa Stites that occurred on January 3, 2003. *Id.* at 245. Shoemaker testified that Stites was "wired for sound." *Id.* at 246. Shoemaker testified that, prior to this operation, he was made aware of Petitioner through his partner, MGSF Officer 1, who had talked to him previously about Petitioner. *Id.* Shoemaker acknowledged participating in the actual surveillance on January 3. *Id.* Shoemaker claimed he was able to monitor the conversation between Stites and Petitioner on January 3. *Id.* at 247. Shoemaker testified that while Stites was at The Buttery and talking to Petitioner and Johnson on January 3, Stites called MGSF Officer 1 from the bar and asked if she could go to The Lab with Petitioner. *Id.* at 248. Shoemaker claims that Stites and Petitioner went to The Lab, while Johnson remained at The Buttery. *Id.* at 248-49. Shoemaker claims to have heard conversations occur between Petitioner and Stites regarding guns. *Id.* at 249. Shoemaker claims to have heard Petitioner tell Stites, while in The Lab, that he shot someone "about two weeks ago over south." *Id.* Shoemaker claims Stites asked, "What did you do? What happened?" *Id.* Shoemaker claims Petitioner responded, "I had to shoot a guy in the back five times." *Id.* Shoemaker claims Petitioner also claimed that "he's had to shoot at quite a few people previously." *Id.*

Shoemaker was asked whether he or his team were "able to record any of this conversation?" *Id.* Shoemaker responded, stating, "No. We initially intended to record this conversation, but immediately at the Buttery and then through the night, over to the Lab, Fourth Street Station, the background noise was so loud and it was so much interfering that it was difficult at points to hear the conversation. From past experience in similar situations as this, we recognized right away that a tape would not be possible, where you could actually hear the conversation on a tape-recorder. Just a lot of background noise, voices yelling and shouting, music, just a lot of noises and some distortion or static in the transmitter itself would make it impossible to receive any kind

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of quality recording – or make any quality recording that night." *Id.* at 250. Nonetheless, Shoemaker claimed that the one important part of the conversation to which he had testified was somehow able to heard "very clearly." *Id.* Shoemaker does not explain why the recording was not turned on during moments of clarity. *See generally* Exhibit P-3, Trial Tr. at 244-55. Shoemaker admitted that he was the only officer in the car monitoring the conversation. *Id.* at 251. This absurd scenario wherein the officer testified to what he heard via a recording device, but did not record, was allowed unchallenged and no recording was ever produced.

St. Paul Police Officer Sandra Kennedy, who was also assigned to the MGSF, testified for the State similarly to Shoemaker regarding the relevant portion of the allegedly monitored conversation from The Lab. *See id.* at 256, 260. Officer Kennedy acknowledged she had a bit of trouble hearing the conversation between Stites and Petitioner, as it "was a little distorted" and noted that at The Lab, "with the music in the back, it was loud, but you could still pick up what was being said." *Id.* at 261. Defense counsel did not cross-examine Officer Kennedy. *Id.*

St. Paul Police Officer John Puka, who was also assigned to the MGSF, testified for the State similarly to Shoemaker regarding the relevant portion of the bugged conversation from The Lab. *See* Trial Tr. at 262-65. Defense counsel did not cross-examine Officer Pyka. *Id.* at 266.

ATF Special Agent David Nygren testified for the State similarly to Shoemaker regarding the relevant portion of the bugged conversation from The Lab. Exhibit P-3, Trial Tr. at 266-69. Although he was part of the ATF, apparently SA Nygren was also assigned to the MGSF. *Id.* at 267. Defense counsel did not cross-examine SA Nygren *Id.* at 269. All these people claimed to have heard portions of this monitored conversation, but did not record it, or destroyed any recording of it, and no attempt was ever made to reconcile this with the fact Shoemaker testified he was the only person in the car monitoring the conversation.

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St. Paul Police Officer Thomas Kreager testified on behalf of the State. *See* Exhibit P-3, Trial Tr. at 296-301, 315-40. Officer Kreager testified that during the investigation of the Sabreen's homicide, his investigators received information about other individuals, separate from Petitioner and Johnson, who may have committed the Sabreen's homicide. *See id.* at 329-30. When Kreager was asked if it was true that Kreager authorized deals to be given to other people in exchange for information that Petitioner may have said something about the crime while he was in jail, Kreager responded in the negative. *Id.* at 330. Kreager clarified that while he did not authorize these deals or offers, he was aware such offers were being made by investigators. *Id.* Kreager also confirmed that when Petitioner was first questioned about the homicide, he was not in custody and, even after those interviews, never tried to abscond from St. Paul or leave the jurisdiction. *Id.* Kreager confirmed that Petitioner cooperated with every interview request made by police investigators. *Id.* Kreager testified that despite telling Petitioner during an investigatory interview in April 2003 that officers could get the surveillance footage from Sabreen's, and despite telling Petitioner in the same interview that officers had fingerprints, ammunition, and the shell casings from the shooting, and despite telling Petitioner that DNA and fingerprint testing would be used, Petitioner continued to proclaim his innocence and submit to interviews, confident he would be exonerated by the investigation. *See id.* at 333-34. Kreager confirmed that Petitioner was, in fact, never seen on any surveillance footage inside Sabreen's or even near Sabreen's. *Id.* at 334. Kreager testified that foot impressions of shoeprints were taken from the crime scene, and that Kreager was never made aware of any claim that those impressions matched Petitioner. *See id.* at 334-35.

South St. Paul Police Captain Daniel Vujovich testified on behalf of the State. Exhibit P-3, Trial Tr. at 342. He was employed in that position on December 22, 2002 and was the principal investigator in Petitioner's case. *See generally id.* at 342-43. Vujovich testified that Sabreen's was

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located at 345 Fourth Ave. S., South St. Paul, MN. *Id.* at 343. Vujovich indicated he received leads on potential suspects from the MGSF early on in the investigation. *Id.* The first information given to Vujovich came from informant Colleen McManus, who had called her brother, MGSF Officer 1, on December 22, 2002 from The Buttery. *See id.* Captain Vujovich then provided hearsay testimony to indicate that Petitioner mimed shooting a gun, which defense counsel objected to as hearsay. *See id.* at 343-44. The Court asked the attorneys to approach, did not rule on the objection, and the State moved onto other questions. *Id.* at 344. Vujovich also testified that he received information, via the MGSF, from Ms. Stites. *Id.* Vujovich testified that he was involved in the January 3, 2003 sting operation involving Stites and Petitioner. *Id.* at 345. Vujovich claimed he was able to monitor the conversation between Stites and Petitioner, and testified to the relevant portions of that conversation involving a firearm in a manner mostly consistent with Officer Shoemaker. *Id.* at 345-46.

Vujovich testified that The Buttery and The Radisson are approximately a block or a block and a half apart. Exhibit P-4, Trial Tr. at 358-59. Vujovich testified that the distance between that vicinity of St. Paul was approximately 5.4 miles from Sabreen's. *Id.* at 359. Vujovich claimed to have driven a route between the area in St. Paul at issue and Sabreen's, and claimed it took him about 12 minutes to make the drive. *Id.* at 360.

On cross examination, Vujovich appeared to have trouble hearing defense counsel's questions. Exhibit P-4, Trial Tr. at 364. Defense counsel asked Vujovich if he has hearing problems, and Vujovich said, "I do have slight hearing loss, yes. If you would speak up, I'd appreciate it a little bit." *Id.* Vujovich admitted that when he was sitting in on the sting operation on January 3, he also had hearing loss at that time. *Id.* Vujovich testified that he told witness Eric Griffen that he would talk to the prosecuting authorities of Ramsey County about dismissing a

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third-degree controlled substance crime case if Griffen provided information about Petitioner regarding the Sabreen's homicide. *Id.* at 366. Vujovich was asked if he arranged with the Dakota County prosecution a 36-month sentence reduction for Dontay Reese's second-degree criminal sexual conduct conviction in exchange for informing on Petitioner, but for some reason that question was never answered despite the answer being a clear and obvious yes. *Id.* at 367; *see also* Exhibit P-6, State's Disclosure of Trial Witnesses ¶ 25 ("In exchange for his cooperation, the state has agreed to a downward durational departure from 98 months to 62 months"). Vujovich admitted giving witness Geronimo Estrada "funds for his inconvenience for phone bills," but claimed this money was not an inducement to cooperate against Petitioner. *See* Exhibit P-4, Trial Tr. at 368. Vujovich said he gave Mr. Estrada approximately $400. *Id.* Vujovich admitted that Estrada claimed other people were present during the conversation between Estrada and Petitioner where Petitioner supposedly confessed to Estrada, that police talked to the other person who was there, and that the other person was uncooperative. *See id.* at 378-79.

On October 1, 2004, Petitioner's attorney moved for a mistrial because one of the State's witnesses (Keitha McKinney) was represented by counsel, and the County Attorney's office failed to notify her counsel that she was being subpoenaed to testify. *See* Exhibit P-4, Trial Tr. at 355-57. Defense counsel argued that Ms. McKinney's testimony is evidence that should not have been admitted, and that this error prejudiced Petitioner. *Id.* The State responded by questioning why defense counsel was worried about the constitutional rights of a witness. *See id.* at 355-56. The mistrial was denied.

Regina Hagerman testified on behalf of the State. Exhibit P-4, Trial Tr. at 380. Hagerman testified that she is the aunt of Darlene Jones and the daughter of Jacqueline Ezell. *Id.* at 381. Hagerman testified that

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Petitioner went to her house in January of 2003, the day before the Super Bowl (Saturday, January 25, 2003). *Id.* Hagerman testified that Petitioner was visiting Darlene, drinking, and talking, staying at the residence for about five to six hours. *Id.* Somewhat incredibly, Hagerman testified that Petitioner was openly talking about being under investigation for a murder and that he and his friend committed the murder he was under investigation for. *See id.* at 381-82. Ms. Hagerman was asked questions about whether Petitioner mentioned anything about the police investigation, and she said no. *See id.* at 382. The State tried to refresh her memory of her grand jury testimony, but even after reading the testimony, Hagerman said she did not remember Petitioner saying anything about the investigation. *Id.* at 383-84. The State's prosecutor, despite having told Hagerman not to read her testimony, then pointed to the testimony she wanted Hagerman to read, and Hagerman complied, stating that Petitioner said he was under investigation but that the police would not be able to prove Petitioner committed the crime. *Id.* at 384. The State then tried to refresh Hagerman's memory again with a different document, showing her a transcript of her police interview from April 23, 2003. *See id.* at 384-85. Hagerman reviewed it and said she did not remember that interview. *Id.* at 385. Finally, the State got the answer they were looking for, and Hagerman testified that Petitioner "said he was under investigation for a murder him and his friend committed, but he had good lawyers and they wasn't coming up with nothing, the police." *Id.* [3] The State then tried to ask Hagerman additional questions about Petitioner's demeanor, tried refreshing her recollection again, and gave up when Hagerman again insisted that she did not know whether Petitioner was serious or joking when he allegedly made that statement. *See id.* at 386.

Eric Griffen testified on behalf of the State. Exhibit P-4, Trial Tr. at 389. Griffen confirmed

[3] Petitioner was not provided with counsel in this matter until June 19, 2003. Exhibit P-9, Letter from Atty. Lisa Janzen.

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that in exchange for his testimony against Petitioner, the MGSF recommended to the Ramsey County prosecutor that Griffen's pending drug charge be dismissed. *Id.* at 389-90. Griffen claimed to be at The Buttery at approximately 10:00 PM on December 22, 2002. *Id.* at 391. Griffen said he saw Petitioner and Johnson there. *Id.* Griffen claims he spoke with Petitioner on December 22. *Id.* at 392. Griffen claimed there were other people present during the conversation, but it was just Petitioner and Griffen speaking. *Id.* Griffen claims Petitioner said, "he had just did a robbery and it had gone bad, and the guy he was robbing, he had fucked him up," and added that Petitioner claimed to have told Griffen this happened in South St. Paul. *Id.* at 393. Griffen acknowledged that his first contact with MGSF investigators regarding Petitioner was "about having them help [him] get out of jail." *Id.* at 395. Griffen said he told the investigators he had information about the case and would only speak to them if they helped him get out of jail. *Id.* Griffen stated he did not take Petitioner's story seriously on December 22, 2002. *Id.* at 396. Griffen claims he was threatened after providing information to MGSF investigators and insinuated that the threat came from Petitioner. *Id.* at 398-99. Griffen claims this caused him to move out of Minnesota. *Id.* at 399.

Isaac Hodge III testified on behalf of the State. *See* Exhibit P-4, Trial Tr. at 400. He claimed not to receive any inducements to testify against Petitioner. *Id.* at 403. Hodge testified that he was housed with Petitioner in Sherburne County Jail and that Petitioner confessed to committing a murder-robbery and that it was not worth it because he did not receive enough money. *See id.* at 402-06.

Tyrone Crawford testified on behalf of the State. *See* Exhibit P-4, Trial Tr. at 407. Crawford testified that he was housed at Sherburne County Jail from February 2002 until March 31, 2004. *Id.* at 407-08. Crawford claimed that Petitioner told Crawford he recognized Maynard Cross from the newspaper article that published his picture after Cross was involved in a murder-robbery in

Minneapolis. *See id.* at 408-11. Crawford claimed that Petitioner told him Petitioner had "shot a guy at the grocery store, and he was concerned that was going to come back on him." *Id.* at 411. Crawford claimed he did not receive any inducements to testify against Petitioner. *Id.*

John Nunn testified on behalf of the State. Exhibit P-4, Trial Tr. at 414. Nunn is Isaac Hodge III's uncle. *Id.* at 415. Nunn claims to have met Petitioner in county jail and Sandstone Prison. *Id.* Nunn claimed Petitioner told him about a robbery where someone "got murked" and that Petitioner was scared the gun would be found. *Id.* at 416. Nunn claims Petitioner admitted to committing the robbery. *Id.* at 416-17. Nunn claimed Petitioner told him that the gun used in the robbery was a .22 and that the gun was stashed at some girl's house. *Id.* at 417. Nunn claimed to have received no inducements for his testimony. *Id.* Nunn claimed he had no discussion with his nephew about the case or testimony. *Id.* at 419-20.

Sanya Clark testified on behalf of the State. Exhibit P-4, Trial Tr. at 421. Ms. Clark testified that she has been romantically involved with Petitioner and shares a child in common with him. *Id.* at 422. Ms. Clark testified that she would assist Petitioner in sending letters periodically to Johnson because she knew that inmates could not send letters from one jail to another. *See id.* at 424.

South St. Paul Police Officer Philip Oeffling testified on behalf of the State. Exhibit P-4, Trial Tr. at 424. Oeffling testified that he went to MCF Stillwater on September 23, 2004 and performed a search after learning from Captain Vujovich that Regina Hagerman had reported her fiancé, who was also house in MCF Stillwater, had received a threat over Hagerman's involvement in this case. *Id.* at 425-26. Oeffling suggested that the threat came from a letter from Johnson, who was also housed in Stillwater. *Id.* at 426. Oeffling conducted a search of Johnson's property; he did not find a threatening letter, but did find other letters, including a letter he received from

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Petitioner. *See id.* at 426-27.

Dontay Reese testified on behalf of the State. Exhibit P-4, Trial Tr. at 429. Reese confirmed that in exchange for his testimony, the Dakota County Attorney's Office would recommend a sentence reduction of 36 months on a 98-month sentence. *Id.* at 430. Reese testified that he was housed in Dakota County Jail recently with Petitioner. *Id.* at 432-33. Reese indicated he had conversations with Petitioner about Petitioner's case, but that Petitioner did not want anyone else to hear about the case so they would cut off conversations whenever any other inmates got too close. *See id.* at 433-34. Reese claimed Petitioner first said he did not do the robbery or murder. *Id.* at 434. Reese claimed Petitioner claimed to have shot the clerk solely because Johnson said Petitioner's name in Sabreen's. *Id.* Reese claimed Petitioner admitted to shooting the clerk five times before going back downtown to a bar. *Id.* at 435. Reese mentioned John Martin being at the Radisson. *Id.* at 436. Reese mentioned the names Yvonne and "Tiffany or Nikki." *Id.* Reese claimed that Petitioner said Petitioner, Johnson, and Troy Crawford robbed a mom-and-pop store. *Id.* at 437. Reese said Petitioner told him the girls dropped Petitioner at The Buttery. *Id.* at 438. Reese said Petitioner told him the make of the car was maybe a "Corsica or Accord or something like that. I don't remember." *Id.* at 439. Reese said Petitioner told him he used a .22 caliber firearm to commit the murder. *Id.* at 439.

On cross, Reese acknowledged that the first time he was asked by law enforcement about the Sabreen's murder, he told officers he had no information about the crime. *Id.* at 440. He testified that he changed his mind after speaking with his family members and lawyers, at which point he was given the offer for a 36-month sentence reduction. *Id.*

Geronimo Estrada testified on behalf of the State. Exhibit P-4, Trial Tr. at 444. Estrada testified that he was incarcerated at the Ramsey County Workhouse in February 2003. *Id.* at 445.

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Estrada testified that he and Petitioner were housed in the same unit. *Id.* at 446. Estrada testified that Petitioner was asking him questions about murder laws while Estrada was with another inmate named Deville. Estrada testified that Petitioner started randomly stating that the cops were not going to catch him, that they do not have anything on him, and claims Petitioner started mocking officers and joking around like it was nothing. *Id.* at 447-48. Estrada claimed that Petitioner said, "I touched him like they touched my cousin up on the hill." *Id.* at 448. Estrada claimed Petitioner mentioned that he had a new Cadillac that was used to leave Minnesota, but that the car hit a deer and there were holes in the hood of the car, so they left the car at the rest stop with everything else inside of it. *Id.* at 448. Estrada claimed Petitioner was calling the victim of the shooting a little bitch, and claimed Petitioner said the victim "cried like a bitch when he got shot." *Id.* at 449. Estrada, after being refreshed with his grand jury testimony, also claimed that Petitioner told him that when they entered the store, they rushed the clerk right away and "were going after the money while another guy was grabbing stuff, cigarettes, bags, and stuff like that," along with a phone. *Id.* at 451. Estrada testified Petitioner told him he had shot the clerk "once in the back of the head." *Id.* Upon hearing Estrada mention one shot, the State approached the witness and showed him his grand jury testimony again. *Id.* Estrada's memory then changed, and he said Petitioner said he fired two shots into the clerk. *Id.* at 451-52. Estrada also claimed that there was a conversation between him, Petitioner, and Johnson where Johnson started talking about having money and lottery tickets to cash in whenever he gets out of jail. *Id.* at 452-53. Estrada clarified that the rest stop the Cadillac was abandoned at was apparently in Wisconsin. *Id.* at 454.

Estrada testified that he called his fiancé and told her about what he had heard. *Id.* at 455. Estrada testified that Petitioner claimed that he and his accomplice(s) were wearing masks and dark clothing. *Id.* at 457-59. Defense counsel did not bother to cross-examine Estrada. *See id.* at

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459. The victim was shot at four times, not once or twice. In short, everything Estrada testified to was inconsistent with the actual murder, and appeared to have been gleaned from reviewing portions of Petitioner's discovery while feigning assistance in the law library at the jail. *See* Exhibit P-11, Property & Inventory Reports at 2-3 (showing what items were taken from Sabreen's). Alternatively, Estrada could have gleaned this information from being given copies of police reports or otherwise being told what was taken from Sabreen's during one of the unrecorded meetings between Estrada and police investigators.

Captain Vujovich was recalled as a witness for the State. *See* Exhibit P-4, Trial Tr. at 461. Vujovich stated that he was unable to confirm Estrada's story about Petitioner leaving the murder weapon with any specific person. *See generally id.* at 461-63. Vujovich testified that he investigated the story about the abandoned vehicle in Wisconsin and could not confirm any of the details of that story. *See id.* at 463-64. Vujovich testified that he received information from John Martin that placed Petitioner and Johnson in a blue Corsica prior to the time of the homicide. *Id.* at 464-65. Vujovich testified that the blue Corsica was found in July of 2003 and that a search of the vehicle was conducted. *Id.* at 465. Vujovich confirmed that a forensic search of the vehicle by the BCA found nothing of evidentiary value. *Id.* at 465-66.

After the State rested, defense moved for a directed verdict. Exhibit P-4, Trial Tr. at 471. The directed verdict motion was denied. Argument was reserved for the following day. *Id.* at 471-72. Petitioner was then examined out of the jury's earshot about whether he wished to testify in his own defense. *Id.* at 472. During this colloquy, Petitioner acknowledged that he had been given multiple offers by the State to plead guilty to lesser offenses during the trial. *Id.* at 474. One of the offers was to plead to a second-degree intentional murder with an expected sentence of approximately 300 or more months of imprisonment. *Id.* Another offer was for 40 years in prison.

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Id. at 475. Petitioner refused both deals. *Id.* The State clarified they never made an offer for less than 40 years. *Id.*

Defense counsel called no witnesses, introduced no alternative perpetrator evidence, and did not have Petitioner testify in his own defense. *See generally* Exhibits P-2 – P-5, Trial Tr.

c. Jury Deliberation, Verdict, and Sentencing.

Jury deliberations began on October 5, 2004 at 12:00 PM. Exhibit P-5, Trial Tr. at 561. The jury reached a verdict at 8:30 PM the same day, returning guilty verdicts on all counts. *Id.* Sentencing was set for October 8, 2004. *Id.* Petitioner was sentenced to a term of life imprisonment.

II. DIRECT APPEAL TO THE SUPREME COURT OF MINNESOTA

Petitioner appealed his conviction and sentence directly to the Supreme Court of Minnesota. The issues presented in the petition for review were: (1) the trial court erred in denying his motion to admit certain alternative-perpetrator evidence and reverse-*Spreigl* evidence; Petitioner was denied a fair trial due to the cumulative prejudicial effect of errors by the trial court, including the admission of evidence that witnesses were threatened, felt threatened, or were fearful; (3) the trial court failed to sua sponte give a cautionary instruction respecting the evidence in the preceding paragraph; (4) the trial court failed to sua sponte give a limiting instruction with respect to unredacted statements by police officers asserting that Petitioner was lying; (5) newly discovery evidence entitles him to a new trial; (6) the trial court erroneously excluded introduction of a relevant letter; and (7) prosecutorial misconduct occurred when the prosecutor cried during her opening statement. *See State v. Vance*, 714 N.W.2d 428, 433 (Minn. 2006) ("*Vance I*").

On May 25, 2006, the Supreme Court of Minnesota affirmed Mr. Vance's conviction and rejected all of these arguments for reversal. *See id.* at 433, 436-44.

The Supreme Court determined the following facts to be relevant:

Tariq Bakkri (Bakkri), Al–Bakri's brother and the owner of Sabreen's Supermarket (Sabreen's) in South Saint Paul, was working at Sabreen's on the afternoon of December 22, 2002. At about 2:00 p.m., Al–Bakri arrived and offered to work the rest of the afternoon and evening. Bakkri left the store between 9:27 p.m. and 9:30 p.m. At about 9:41 p.m., Kathleen Johnson arrived at Sabreen's. When she entered the store, she observed a man in a black mask taking money out of the cash register. She thought she heard the man shout something and she saw him make a "motion like he was going to pull a gun out from his pants." She immediately ran from the store to her car. As she drove away, she observed two people running out of the store. One person was slightly taller than the other. Both were slender and wore baggy pants, hooded sweatshirts, and masks.

Also around 9:30 p.m., four teenagers, including D.M., walked to Sabreen's. As they were walking, one of the teenagers noticed a car parked in an alley just outside of Sabreen's. He described the car as a four-door, "regular sized car," "darkish," shiny, and "tinted gray." Another of the teenagers testified that it was a big, dark, "grayish-black," four-door car. The group observed two men run from the store, jump into the car, and drive away quickly. One of the teens described the two men as wearing baggy clothing, while another observed that the two men wore sweatshirts and dark jeans.

When the teenagers entered the store, they could not locate the clerk. As they waited at the counter, D.M. noticed that the cash register was open. He leaned over the counter and saw Al–Bakri lying on the floor, motionless. He also noticed some blood. The teenagers immediately ran back to D.M.'s home and called the police.

Al–Bakri was pronounced dead at the scene. The cash register indicated that the cash drawer was last opened at 9:35 p.m. for a no-sale transaction. The police found four cartridge casings from a .22 caliber gun on the floor of the store. Two of the cartridges were determined to be Winchester Western brand ammunition and two were CCI brand ammunition. Two bullets were found in Al–Bakri's body, a third was found in a flashlight near his body, and the fourth was not located. The police were unable to find any physical evidence at the scene connecting Vance or any other suspect to the murder and the murder weapon was never recovered.

A number of witnesses testified about Vance's activities before and after the murder on December 22. John Martin, a convicted burglar, testified that on December 22, 2002, he, Vance, and Dominic Johnson were at the Radisson bar in downtown St. Paul between 7 p.m. and 8 p.m. While at the bar, the three discussed the upcoming holidays, and Vance and Johnson discussed making arrangements to buy presents for their children. Martin testified that the three did not discuss a robbery while at the Radisson bar. According to Martin, around 8:30 p.m., Johnson made a phone call from Vance's cell phone to Yvonne and Nicole, two women from South St. Paul. Vance and Johnson told Martin they were going to South St. Paul and invited him along. Martin declined, and the three left the bar. As Martin was heading to his bus, he saw Yvonne and Nicole arrive in a four-door, dark blue Chevy Corsica. The car pulled up to the area where Vance and Johnson were

standing.

Melissa Stites, the head bartender at the Radisson bar, testified that on December 22, 2002, Vance, Johnson, and a third man came into the bar around 7:30 p.m. Stites knew both Vance and Johnson, and she testified that they were "more secretive" than usual that evening. When Stites asked them what was going on, Vance replied "that they were getting their plan on." Stites interpreted "getting their plan on" to mean "planning to commit a robbery." Vance and Johnson were in the Radisson bar for about half an hour. As they were leaving, Stites commented that tips were low that night, because Vance and Johnson normally did not tip her. Vance responded, "Don't worry, Baby, when I get back there's going to be plenty of money."

Eric Griffin, an acquaintance of Vance and Johnson, testified that he saw Vance and Johnson arrive at The Buttery, a bar in St. Paul, sometime after 10:00 p.m. on December 22, 2002. Griffin testified that Vance's demeanor was "kind of wild * * * from drinking." Vance was wearing a black hooded sweater and loose-fitting dark blue jeans. Vance told Griffin "that he had did a robbery and it had gone bad, and the guy he was robbing, he had f___ed him up." Vance told Griffin that the robbery had occurred in South St. Paul.

Colleen McManus, the night manager at The Buttery, saw Vance and Johnson outside the bar as she arrived at work sometime between 10:15 p.m. and 10:30 p.m. on December 22. She saw the two get out of a car, which she believed was a four-door, "silver, light green" midsized car. Johnson wore a white hooded sweatshirt, a light blue Starter jacket, dark jeans, and white tennis shoes. Vance wore a dark blue jacket with leather sleeves, dark pants, and a dark hooded sweatshirt. As she entered the bar, she saw Vance and Johnson talking to a group of people, which included Maynard Cross. Vance approached McManus and asked her not to "throw him out" of the bar. Vance and Johnson both seemed nervous. When McManus asked Vance what was wrong he said, "I really f___ed up this time." She responded, "It couldn't have been that bad," and he said, "Oh, yeah, it was. I really did it this time. I did it this time." At one point, Vance started crying, which McManus noted was unusual for him. When she again inquired about his agitation, he said, "Well, I didn't mean for it to happen, it wasn't supposed to happen that way." He then made a motion that McManus interpreted to mean that he had shot someone. When she asked him if he had shot someone, he replied, "It wasn't supposed to happen like that."

McManus immediately called to report her conversation with Vance to her brother, John McManus, a police officer assigned to the Minnesota Gang Strike Force (MGSF). On December 23, 2002, Stites also reported the conversation she had had with Vance at the Radisson bar to Officer McManus, whom she knew because she had previously provided information to him.

Stites agreed to participate in an undercover investigation of Vance and on January 3, 2003, Stites met with Vance and Johnson at The Buttery. Stites was meeting with Vance under the guise of purchasing a gun from him, with the hope

that she would be able to elicit information about the murder. The police had arranged to intercept Stites' conversation with Vance. At some point during the meeting, Vance asked Stites to accompany him to the Lab, another St. Paul bar. Johnson did not accompany Stites and Vance to the Lab.

At the Lab, Stites asked Vance if he had any guns that she could buy and if he would teach her how to shoot. Vance told her that he had four guns. When asked by Stites if he had ever shot anyone, Vance replied that he had "shot a guy two weeks ago over south side five times in the back." Police officers who listened to the conversation corroborated Stites' recollection, with slight variations in the exact words that were used to describe the prior shooting: "Two weeks ago Winchester on the south side * * * I shot a guy five times in the back"; "Yes, about two weeks ago over south, Boo * * * I shot a guy in the back five times"; "he shot somebody in the south side five times and it was a Winchester"; "he had shot a guy five times in the back on the south side * * * I shot a guy two weeks ago on the south side." Vance subsequently sold a .22 caliber handgun to Stites. That gun did not match the weapon used to kill Al–Bakri.

The state also presented testimony from witnesses who were incarcerated with Vance before trial. According to Isaac Hodge, he and Vance were incarcerated at the Sherburne County jail together in 2003. At one point, Vance and Hodge were looking at a newspaper and Vance saw a picture of a man who was later identified as Maynard Cross, one of the people seen talking to Vance at The Buttery the night of the murder. Vance stated, "Man, this dude put my name in some bulls___t." Hodge also testified that Vance, without going into great detail, told him that he was involved in a murder-robbery. In addition, Vance said "it wasn't worth it," which Hodge interpreted to mean that the amount of money that Vance got in the robbery did not justify the murder. Tyrone Crawford, who was housed at the Sherburne County jail around the same time, had a similar conversation with Vance, in which Vance told him that Vance "shot a guy at the grocery store, and he was concerned that that was going to come back on him." Vance also indicated that Cross "was going to testify against him about shooting somebody * * * at a grocery store."

John Nunn was housed at both the Sherburne County jail and Sandstone Prison with Vance. Nunn testified that Vance told him that he had committed a robbery in which someone "got murked," which Nunn interpreted to mean the person was either hurt or shot and killed. Vance told Nunn that he was concerned about the police finding a .22 caliber handgun that had been used in the robbery.

Dontay Reese testified that, while in the Dakota County jail with Vance, he had multiple conversations with Vance about a murder in which Vance was involved. Vance told Reese, in reference to shooting the clerk, that "it wasn't supposed to go down like that" and "[Johnson] said my name and it wasn't supposed to go down like that. I was zooted, I was drunk and I gave the dude five. And then we got the money and got lit." Vance also told Reese that Johnson, Vance, and Martin were at a bar and left after Johnson called two women, named Yvonne and Tiffany or Nikki,

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to get a ride to Johnson's cousin's house. Vance told Reese that the women drove a blue Corsica or Accord. Vance and Johnson then met another man and went to a "mom-and-pop store" where Vance and Johnson went inside to commit a robbery. During the robbery, Johnson said Vance's name, so Vance shot the clerk. Vance told Reese he used a "deuce-deuce" to kill the clerk, which Reese interpreted to mean a .22 caliber handgun.

Geronimo Estrada testified that he was incarcerated with Vance at the Ramsey County Workhouse and that they discussed the murder on multiple occasions. According to Estrada, Vance told Estrada that when he entered the store he immediately ran behind the counter and grabbed the clerk, who was startled and did not know what was going on. Vance said the clerk was hysterical and crying saying, "please don't hurt me," and that Vance shot the clerk once or twice in the back of the head. Vance also told Estrada what they took from the store, which included money, cigarettes, plastic bags, lottery tickets, and a telephone. Officer Daniel Vujovich testified that those were the items taken from Sabreen's and that at no time during the investigation was the list of items stolen from Sabreen's disclosed.

At trial, the state introduced recordings of interviews Officer Thomas Kreager and other police officers conducted with Vance during the investigation. During the course of the interviews, the officers accused Vance of lying.

Vance did not testify and presented no witnesses in his defense.

Vance I, 714 N.W.2d at 433-36.

III. POSTCONVICTION PROCEEDINGS

Petitioner submitted multiple postconviction petitions after his direct appeal.

A. First Postconviction Petition – Minn. Stat. §§ 590.01, *et seq.*

Petitioner's first postconviction petition was filed pursuant to Minn. Stat. Ch. 590 and was filed timely in May 2007. *See Vance v. State*, 752 N.W.2d 509, 512 (Minn. 2008) ("*Vance II*"). The district court denied the petition, finding the claims were *Knaffla*-barred and/or baseless, lacking in specificity, and/or lacking in merit. *See id.* Petitioner appealed the postconviction denial to the Minnesota Supreme Court, arguing that he was entitled to postconviction relief based on: (1) ineffective assistance of trial and appellate counsel; (2) newly discovered evidence of witness recantation; (3) the insufficiency of the indictment in light of recanted witness testimony; (4)

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prosecutorial misconduct; (5) failure to submit his charge pursuant to Minn. Stat. § 609.11 (2006) to the grand jury or the jury; (6) cumulative errors preventing him from receiving a fair trial; and (7) the district court abused its discretion by denying him an evidentiary hearing. *Vance II*, 752 N.W.2d at 512. The Minnesota Supreme Court affirmed the district court's summary denial of the postconviction petition. *Id.* at 517.

B. Second Postconviction Petition – *Habeas Corpus* – 28 U.S.C. § 2254

On July 21, 2008, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See, e.g.*, *Vance v. King*, No. 08-CV-4756-ADM/SRN, 2009 WL 294361, at *10 (D. Minn. Feb. 5, 2009) ("*Vance III*"). Petitioner argued he was entitled to habeas corpus relief because of: (1) the trial court's refusal to admit testimony of Petitioner's witnesses; (2) the admission at trial of allegedly perjured testimony of witnesses; (3) the failure of the prosecution to disclose to Petitioner evidence favorable to him; (4) prosecutorial misconduct during closing argument; (5) prejudicial error by the prosecution misstating and misusing evidence; (6) the denial of a right of appeal; and (7) ineffective assistance of counsel. *Id.* The district court denied the habeas petition. *Id.* at *20.

The Office of the Minnesota Attorney General, through its Conviction Review Unit ("CRU"), has been reviewing Mr. Vance's convictions for years. Pursuant to the CRU charter, at the conclusion of its investigation, the CRU may join this Petition.

C. Third Postconviction Petition – Minn. Stat. §§ 590.01, *et seq.*

On May 8, 2019, Petitioner filed a third postconviction petition under Minn. Stat. Ch. 590. Index #3. The basis of the third petition was an allegation that the State offered testimony from two witnesses whose combined testimony was alleged to amount to obstruction of justice by the State. *See id.* at 3. The petition alleged this error justified granting postconviction relief. *See id.* at

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3-4. The State filed a response on May 23, 2019. Index #8. On June 7, 2019, the Honorable Rex D. Stacey issued an Order denying the petition "for the reasons set forth in the State's Answer." Index #11. In other words, the court dismissed the petition because: (1) it was untimely; (2) Petitioner failed to invoke any exceptions to the two-year filing requirement; and (3) the *Knaffla*-bar applies. *See* Index #8 at 1-2; *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976).

D. Fourth Postconviction Petition – Minn. Stat. §§ 590.01, *et seq.*

On August 22, 2019, Petitioner filed a fourth postconviction petition under Minn. Stat. Ch. 590. Index #15. The basis of the fourth petition was the same as the basis listed in the third petition. *Compare* Index #3 *with* Index #15. On August 27, 2019, the State filed a motion to dismiss the petition on the basis of collateral estoppel. Index ## 20-21. The Court denied the postconviction petition on August 28, 2019. Index #22.

E. Fifth (Present) Postconviction Petition – Minn. Stat. §§ 590.01, *et seq.*

On December 14, 2022, Petitioner, through counsel, filed a fifth postconviction petition under Minn. Stat. Ch. 590. Index #24. The bases of the fifth petition were: (1) newly discovered evidence disproves key elements of the state's case; (2) newly discovered evidence reveals a pattern of illegal police conduct in the investigation of the crime; and (3) newly discovered evidence proves that, at the time of the crime, Petitioner was with three other people at a duplex at 956 Minnehaha Ave. E. in St. Paul, Minnesota. Index #24 at 2. On the same date, Petitioner's counsel filed a letter explaining that the petition was being filed within two years of obtaining four separate witness affidavits, signed by: (1) Melissa Stites on January 22, 2021; (2) Regina Hagerman on February 2, 2021; (3) Dominick Johnson on September 19, 2021; and (4) Kentrell Anthony on August 5, 2022. Index #23 at 1-2. In the same letter, counsel requested that the matter be stayed until the Minnesota Attorney General's Conviction Review Unit ("CRU") concludes its

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review of Petitioner's case, which was ongoing at that time, and which remains ongoing. *See id.*

On December 30, 2022, the State filed a memorandum stating it does not oppose Petitioner's stay request, but noted that by agreeing to the stay, it is not waiving any arguments relating to the petition being time barred under Minn. Stat. § 590.01, subd.4. Index #26.

On January 5, 2023, the Honorable Shawn Moynihan granted Petitioner's request to stay the deadline in this matter until 45 days after the completion of the CRU's investigation. Index #27. Because of excessive delays at the CRU, Petitioner is now filing an amended petition, various exhibits, and a legal memorandum in support of his pending postconviction petition. Petitioner concurrently requests that the stay be lifted and that the case proceed to an evidentiary hearing.

IV. NEWLY DISCOVERED EVIDENCE

a. Newly Discovered Witness Recantations & Statements

i. Overview

In the period since Petitioner's conviction, ***twelve*** key witnesses (seven of whom were relied upon by the State during Petitioner's trial and/or during the grand jury proceedings preceding Petitioner's indictment) have signed statements that recant their testimony and/or otherwise provide essential information regarding the case before the Court. The witnesses who have signed recantation / statement affidavits are: (1) Maynard Cross (recantation affidavits signed in 2006, 2021, and 2024); (2) Regina Hagerman (recantation affidavit signed in 2021); (3) Dominick Johnson (recantation affidavit signed in 2021); (4) Melissa Stites (recantation signed in 2021); (5) Darlene Walton (statement signed in 2023); (6) Kentrell Anthony (statement signed in 2022); (7) Dontay Reese (recantation signed in 2007); (8) Edward Townsend (statement signed in 2007); (9) John Martin (recantation signed in 2007); (10) Michael E. White (statement signed in 2007); (11) Wayne Jones (statement signed in 2007); and (12) Trevor Crawford (statement

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signed prior to submission of 2007 postconviction petition).[4]

Each of the seven witnesses who have signed recantation affidavits provided material inculpatory evidence against Petitioner at his trial. Mr. Cross and Ms. Hagerman also provided inculpatory evidence against Petitioner in the grand jury proceedings preceding the issuance of an indictment. The other two witnesses who have signed statements that constitute newly discovered evidence (Darlene Walton & Kentrell Anthony) are alibi witnesses who should have been called at trial in Petitioner's defense, and who could have otherwise provided defense with testimony that would have likely exposed the fact that investigating law enforcement officers were bribing and threatening witnesses in order to convince them to provide false testimony at Petitioner's trial.

Of these affidavits, those signed by Melissa Stites, Dominick Johnson, Regina Hagerman, Darlene Walton, Kentrell Anthony, and Maynard Cross (2024 version) are the most important to this petition. Each of these six affidavits demonstrates to a reasonable certainty that the recanted testimony was false, and that the recantations are genuine. *See* Exhibits P-14 – P-19. Each of these six affidavits demonstrates that Petitioner was provided ineffective assistance of counsel, provided with a fundamentally unfair trial, has a substantial claim of actual innocence, and his continued conviction and incarceration violates due process and fundamental fairness. *See Pippitt v. State*, 737 N.W.2d 221, 226-27 (Minn. 2007); *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). The affidavits allow the Court to conclude that the jury might have reached a different conclusion without the recanted testimony, or in the case of Walton/Anthony, that the jury might have reached

[4] Exhibit P-12 (Cross Recantation – 2006); P-13 (Cross Recantation – 2021); P-14 (Cross Recantation – 2024); P-15 (Hagerman Recantation – 2021); P-16 (Stites Recantation – 2021); P-17 (Johnson Recantation – 2021); P-18 (Walton Statement – 2023); P-19 (Anthony Statement – 2021); P-20 (Reese Recantation – 2007); P-21 (Martin Recantation – 2007); P-22 (Townsend Statement – 2007); P-23 (White Statement – 2007); P-24 (Jones Statement – 2007); P-25 (Crawford Statement – in or around 2007).

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a different conclusion if they been called to testify in Petitioner's defense. *See Pippitt*, 737 N.W.2d at 227. The affidavits demonstrate, at least in part, that Petitioner was taken by surprise at trial or did not know of the falsity of false testimony until after trial. *See id.*; *see also* Exhibit P-17, Johnson Aff. ¶ 6 ("Back in 2004, and especially after [Petitioner] was convicted, I felt I had no way of proving that people were testifying falsely against us"). These recantation affidavits constitute "newly discovered evidence" because they: (1) "provide[] facts necessary to sustain one or more legally cognizable claims for postconviction relief"; (2) could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition"; (3) "are not cumulative to evidence presented at trial"; and (4) are not presented merely or principally for the purpose of impeachment. Minn. Stat. § 590.01, subd.4(b)(2).

Additionally, the recantation affidavits signed by Maynard Cross and Regina Hagerman demonstrate that the indictment used to prosecute and convict Petitioner is defective because the indictment relied on false grand jury testimony provided by Mr. Cross. *See Vance II*, 752 N.W.2d at 517, n.4; *see also Opsahl v. State*, 710 N.W.2d at 782.

ii. Melissa Stites Recantation

Ms. Stites' testimony was key to Petitioner's conviction. In her newly discovered recantation, Ms. Stites acknowledges that she testified at Petitioner's trial, stating: (1) she "contacted Police Officer John McManus on December 23, 2002 to report a conversation that [she] had with [Petitioner] the day before;" (2) she interpreted Petitioner's "comment about 'getting his plan on' to… mean 'planning to commit a robbery';" (3) Petitioner "was 'more secretive than usual';" and (4) when she "later wore a wire, [she] asked [Petitioner] if he ever shot anyone, and he said 'I shot a guy two weeks ago over south side five times in the back.'" Exhibit P-16, Stites

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Aff. ¶ 4. Stites now unequivocally swears, under penalty of perjury, that all of this "testimony was false." *Id.*

> Stites states that the following testimony reflects the truth:
>
> On some date on or around December 23, 2002, Police Officer John McManus and other officers came into the Radisson Hotel and asked me questions about Philip Vance, who was also known as "Florida." **During the course of my conversation with Officer McManus, I was asked to make false statements about Philip Vance. I was also pressured by the officers to wear a wire and engage in future conversations with Philip. I did not reach out to these officers; they came to me.**
>
> I was familiar with Philip and his friends because they came into the bar fairly regularly. **Philip did come into the bar on December 22, 2002, and I recall having a conversation with him. However, I did not think he was "more secretive than usual," or that he was planning to commit a robbery. Officers instructed me to say this.**
>
> Officers placed me in a potentially dangerous situation more than once by having me wear a wire to buy a gun from Philip and question him at the jail. **At no time during the conversation did Philip tell me that he committed a robbery or that he shot anyone, and I have no reason to believe he did.**
>
> **I agreed to say and do these things, because during that time, I had gotten into some legal trouble. The officers told me that they would not charge me with any crimes and I would not face any jail time if I said what they told me to say and did what they told me to do. I did not feel like I had a choice.** At the time, I was a 26-year-old woman, and I was spending time with the wrong people. I was vulnerable and scared of getting in trouble. I was also struggling with chemical dependency. **I agreed to give false statements about Philip Vance in an effort to protect myself.**
>
> Today, I am five years sober, and I help other women stay on the right path. **I am coming forward now to correct the statements I made about Philip, because it is the right thing to do.** Back then I did not feel like I had a voice or a say in the matter, but now I do. I never wanted to lie, wear a wire, or be involved in this case.

Exhibit P-16, Stites Aff. ¶ 5 (emphasis added).

Ms. Stites' newly discovered recantation implicates the Minnesota Supreme Court's 2008 decision in *Vance II* (postconviction appeal), where the Minnesota Supreme Court affirmed a denial of an evidentiary hearing requested on the basis of the Martin and Reese recantations,

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relying heavily on Stites' testimony. *See Vance II*, 752 N.W.2d at 515 ("neither Martin's nor Reese's alleged recantation satisfies the second requirement set out in Pippitt. Vance has not shown that, absent Martin's testimony, the jury might have reached a different conclusion. Martin was not the only one to testify that Vance was at the Radisson bar the night of the murder, as at least one other witness also placed him there. Stites, the head bartender at the Radisson bar, testified that Vance, Johnson, and a third man came into the bar around 7:30 p.m. on December 22, the night of the murder."); *Vance II* at 515 ("Vance has failed to show that the outcome of the trial might have been different absent Reese's testimony. Several other witnesses testified about interactions they had with Vance in which Vance implicated himself in the murder. In addition to Griffin's and McManus's testimony, there was testimony at trial that, in the course of an undercover investigation, Vance admitted to Stites that he 'shot a guy in the back five times' on the 'south side' 2 weeks before their conversation."). Now that Stites has recanted such testimony, the previously recanted testimony of Martin and Reese must be considered as well, and the Court's prior denial of relief on this basis is no longer applicable.

iii. Maynard Cross Recantation

Mr. Cross' testimony was key to Petitioner's conviction. In his newly discovered recantation, Mr. Cross acknowledges that he testified at Petitioner's trial and before the grand jury. Exhibit P-14, Cross Aff. (2024) ¶ 2. Cross states that while he was in jail "pending first-degree murder charges," in another case, he was "approached by officers from the Metro Gang Strike Force regarding the robbery and shooting at Sabreen's on December 22, 2002. [He] did not know Philip Vance and… did not know anything about what happened at Sabreen's." *Id.* ¶ 6. Nonetheless, according to Cross, "[t]he MGSF officers asked [him] to incriminate Philip Vance for the crime. [Cross] told the officers [Cross] didn't know anything about the case and told them

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to leave [him] alone. The officers told [Cross] details about the crime and about Philip Vance. The officers also mentioned a monetary reward that was being offered for information about the case." *Id.* ¶ 7. Cross states:

> **Even though I told the investigators I did not know Philip Vance, they kept coming back and asking me questions about the case. All of the information I learned about the case came from the officers telling me about it during these conversations. Each conversation I had with the officers was audio recorded.**

Id. ¶ 8 (emphasis added). Cross further states:

> **If there are not audio recordings of conversations that I had with MGSF investigators that demonstrate I knew nothing about the case and was being fed information by those investigators, then the investigators must have either lost or destroyed the tapes.**

Id. ¶ 9 (emphasis added).

Cross has also stated in a separate newly discovered affidavit on the night of the shooting, December 22, 2002, he "was in Milwaukee, Wisconsin." Exhibit P-13, Cross Aff. (2021) ¶ 8. He explains that in his testimony "before the grand jury on March 3, 2004, **I was untruthful when I stated that I was at the Buttery Bar on December 22, 2002 and that I spoke with Philip Vance and Dominick Johnson**." *Id.* (emphasis added).

Cross has been consistent in stating since 2006 that his testimony at Petitioner's trial and grand jury proceedings was false. *See* Exhibit P-12, Cross Aff. (2006). The import of the Cross affidavit, and its impact on the veracity and propriety of this conviction cannot be overstated.

iv. Regina Hagerman Recantation

Ms. Hagerman's testimony was key to Petitioner's conviction. In her newly discovered recantation, Ms. Hagerman acknowledges that she provided false testimony at Petitioner's trial. Exhibit P-15, Hagerman Aff. ¶ 1 ("I testified against Philip Vance before the Grand Jury and at his trial in 2004. **My testimony was false. I gave the false testimony because of pressure and threats from the police**") (emphasis added).

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Hagerman explains that police wanted to talk to her because Hagerman's niece, Darlene Jones, was dating Petitioner at the time of the murder. *See id.* ¶ 2. Hagerman states:

> **The police wanted me to say that [Petitioner] was involved in the robbery and killing at Sabreen's. I didn't know anything about that, and I told them so. But they would not leave me alone. They kept telling me I had to say something against [Petitioner]. I kept telling them that I didn't know anything about it, so I had nothing to say. They said I had to say something.**

Exhibit P-15, Hagerman Aff. ¶ 3 (emphasis added).

Hagerman then goes on to describe a calculated and extraordinarily coercive harassment campaign, stating:

> **Police would often be at my house when I came home from my job…, and they would keep pressuring me to say something against [Petitioner].** Also, when I went to work in the morning, the police would show up and confront me at my bus stop, still trying to get me to say that I knew something about [Petitioner] being involved with what happened at Sabreen's. But I didn't know anything so I had nothing to tell them. Sometimes they would be at the bus stop when I was coming back from work, and they would confront me again. **It scared me when I would see them at the bus stop. I thought I was in trouble.**
>
> **The police threatened me. They told me that I would go to jail if I did not tell them what they wanted to hear about [Petitioner]. Also, at the time my fiancé and my child's father, George McCleod, was in jail, and the police told me that something bad was going to happen to George in jail if I would not tell the police what they wanted to hear about [Petitioner].**
>
> **I was scared for myself and for George. I didn't want to go to jail, I didn't want anything to happen to George, and I wanted to be left alone. That is why I agreed to say that [Petitioner] was at my house the Saturday before the Superbowl in 2003. He never said that he was involved in a crime.** I testified about this before the Grand Jury and at the trial.

Exhibit P-15, Hagerman Aff. ¶¶ 4-6 (emphasis added).

Hagerman states, unequivocally and under penalty of perjury, that the testimony she gave about what Petitioner allegedly said "was false. The truth is, [Petitioner] never said that he had anything to do with the robbery and killing at Sabreen's. Like I told the police at the beginning, I don't know anything about it." *Id.* ¶ 8. Hagerman explains that she is finally willing to cop to her

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false testimony because her "false testimony… has bothered [her] more and more over the years," and she is "worried that because [she] gave in to pressure and threats from the police, an innocent man may be in prison for life." *Id.* This newly discovered evidence from Hagerman is also critically important to the analysis, and the use of coercive tactics on the part of law enforcement to obtain knowingly or recklessly false statements to obtain a conviction are not only repugnant to our system of ordered liberty, but also plainly violated the due process rights of Petitioner. First, in the obtention of the false statements through illegal and coercive means, and secondly through the failure to disclose the same, which constituted *Brady*/*Giglio* evidence.

v. Dominick Johnson Recantation

Petitioner's co-defendant was Dominick Johnson. Although Mr. Johnson did not testify at Petitioner's trial, he did plead guilty and therefore testified in his own plea colloquy hearing and at his sentencing hearing. In 2021, Mr. Johnson signed an affidavit recanting the testimony he offered at his change of plea hearing, wherein he testified that Petitioner committed the robbery and killing at Sabreen's. *See* Exhibit P-17, Johnson Aff. ¶¶ 1-5. Johnson explained that he gave this false testimony on his attorney's advice to secure a favorable plea deal and thereby avoid risking a life sentence. *See id.* ¶¶ 5-6. Johnson explains that he was aware of Petitioner's recent conviction "based on very limited evidence, and [he] was afraid that the same thing would happen to [him]." *Id.* ¶ 5. Johnson acknowledges that, "[b]ack in 2004, and especially after [Petitioner] was convicted, [Johnson] felt [he] had no way of proving that people were testifying falsely against [Petitioner and Johnson], and [Johnson] had no faith in the justice system." *Id.* ¶ 6.

Johnson's affidavit corroborates Petitioner's claim of innocence, and also goes to demonstrate that Petitioner, like Johnson, did not know how to rebut the false testimony that was presented at Petitioner's trial as a result of coercive and unconstitutional police investigatory

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tactics.

vi. Other Recantations

Because the following recantations were obtained in or around 2007, they do not constitute newly discovered evidence at this time, and are not relied upon as a basis for tolling the statute of limitations. Nonetheless, the fact that these recantations were signed in 2007 buttresses the credibility and import of the newer recantations and statements that are relied upon to toll the statute of limitations. The contents of these earlier recantations also buttress the credibility of the newer recantations and statements, and the substance thereof gains new import in light of the more recent recantations/newly discovered evidence.

Dontay Reese provided one such recantation in 2007. *See* Exhibit P-20, Reese Aff. Through his affidavit, Reese explains that he was promised leniency in his own criminal matter by investigators in Mr. Vance's case if Reese could provide any information about Mr. Vance's case. *Id.* Reese has recanted his trial testimony and stated that he never heard Mr. Vance make any statement indicating that he played any role in the killing of Khalid Al-Bakri. *Id.*

The other recantation from 2007 was provided by John Martin. *See* Exhibit P-21, Martin Aff. Martin's recantation is not especially important, but it does acknowledge that Martin is no longer sure if his trial testimony is correct. *See id.*

b. Newly Discovered Witness Statements

In addition to the newly discovered recantations of trial witnesses, Petitioner and his counsel have also obtained newly discovered affidavits and evidence of other witnesses who were not called at Petitioner's trial, but whose testimony bears on the merits of this postconviction petition.

i. Darlene Walton (formerly known as Darlene Jones)

In her newly discovered witness statement, Ms. Walton asserts numerous factual

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allegations that severely impeach the fundamental fairness of Petitioner's trial. *See* Exhibit P-18, Walton Aff.

Walton explains that she was Petitioner's girlfriend at the time of the shooting, and that she was living with her grandmother Jacqueline Ezell and her grandfather Eugene O'Connor in the lower unit of a duplex located at 956 Minnehaha Ave. E., St. Paul, MN at all times relevant to this case. *Id.* ¶ 2. Walton states that Petitioner and his co-defendant, Dominick Johnson, were with her and her family and friends at Walton's house during the afternoon and evening of December 22, 2002. *Id.* ¶¶ 4-5. Walton confirms that Petitioner and Johnson did leave the house for a few hours in the late afternoon of December 22. *Id.* ¶ 6. Walton states that her grandmother and aunt left the house at around 5 PM to play bingo. *Id.* ¶ 7. Walton states Petitioner and Dominick "returned to the house in the early evening," and that upon their return Walton used Petitioner's cell phone "to call Chicago to check on how [Walton's] young daughter was doing." *Id.* ¶ 8. Walton recalls that later in the evening, she and Petitioner got into an argument that culminated with Petitioner throwing Walton's only pair of shoes onto the roof so that she could not storm off. *See id.* ¶ 9. After throwing the shoes, Petitioner "was walking and yelling in the alley behind the house. At about that same [time] (around 10 pm that evening), [Walton's cousin] Kentrell arranged for [Walton's] uncle Demetrius O'Connor to drive [Petitioner] and Dominick from the duplex… to the Buttery Bar." *Id.* ¶ 10. Walton states that her cousin Kentrell "rode in the car with" Petitioner, Johnson, and Demetrius O'Connor. *Id.* ¶ 11. Demetrius and Kentrell then returned to the duplex. *Id.* ¶ 11. Walton reports that Petitioner, ostensibly feeling bad about throwing her shoes on the roof, "dropped by the house and gave [Walton] a new pair of shoes." *Id.* ¶ 12.

Walton states:

> Several weeks after that, the police kicked in the doors at our duplex and questioned us about Philip and Dominick and a murder that had taken place on December 22. I

> was questioned once at my grandmother's place on Minnehaha Avenue and later, when I moved in with my aunt, Regina Hagerman, at her place. But I was never taken to a police station for questioning.
>
> **On the two occasions when I was questioned by the police, no one ever told me that the robbery and murder took place at about 9:45 pm on Dec. 22, 2002. If someone had done so, I would have told the police that neither Philip nor Dominick could have been involved in that crime because they were both with me at the duplex where I was living at 956 Minnehaha Ave. East in St. Paul until about 10 pm that evening.**
>
> **The police offered my grandfather, Eugene O'Connor, lots of money if we would just say what they wanted us to say. So my grandfather, who as usual had spent most of that day in his bedroom and had no knowledge of who was there or what had happened that day, encouraged us to say whatever the police wanted us to say.**

Exhibit P-18, Walton Aff. ¶¶ 13-15 (emphasis added).

ii. Kentrell Anthony

Kentrell Anthony is the cousin of Darlene Walton and was living at 956 Minnehaha Ave. E. in St. Paul, MN with Ms. Walton, Eugene O'Connor, Jacqueline Ezell, and other persons on December 22, 2002.

In 2021, Ms. Anthony signed an affidavit which was provided an affidavit to the CRU. Exhibit P-19, Anthony Affidavit; *see also* Exhibit P-26, Anthony's CRU Interview Tr. Ms. Anthony was subsequently interviewed by CRU investigators. Exhibit P-26, Anthony's CRU Interview Tr. In that interview, Ms. Anthony explains that the police raided her residence at around 3 in the morning and pointed their guns at the occupants before escorting Ms. Anthony to the police station for questioning about the Sabreen's murder. *See id.* at 22-24. Ms. Anthony then states that while she was being questioned about the murder and Petitioner's alleged involvement in the murder, police "wound up sending [Ms. Anthony's] grandpa [Eugene O'Connor] there to talk to [Ms. Anthony]." *Id.* at 24. **Ms. Anthony's grandfather told Ms. Anthony that the police "are going to give us $10,000 if [Ms. Anthony] tell[s] [police] [Ms. Anthony] know[s] what's**

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going on." *Id.* (emphasis added). Ms. Anthony told her grandfather she did not know anything, but the officers were persistent and "that police officer used to come over every week and talk to [Ms. Anthony's] grandpa and try to get information out of us and try to make us remember stuff." *Id.* Ms. Anthony felt like she "was being stalked by [police]." *Id.* at 25. **Every time Ms. Anthony was forced to talk to the investigating officer, her grandfather "always used to bring up that this man was offering us $10,000."** *Id.* (emphasis added); *id.* ("He offered my auntie money, he offered my grandpa money. And any time he come to us and tell us to talk to him, they tell us to tell this man what they want to hear so that we can get this money."). Ms. Anthony states that she eventually told the cops what they wanted to hear. *Id.*

During the CRU interview, Ms. Anthony also stated:

> **My grandpa always just brought up the money. He always told us let's try to get this money. They telling us they gon' get us $10,000, they kicked in our door.** He always used to like, yeah Officer such-and-such is very friendly man but **my grandpa, he was more of a police loving man, so he was up, he about all the stuff with the police. Whatever the police said he, yes he's right, you know.**

Exhibit P-26, Anthony's CRU Interview Tr. at 27 (emphasis added).

Ms. Anthony even seemed to have personal knowledge of police officers bribing Ms. Hagerman (Ms. Anthony's aunt), as Ms. Anthony stated:

> [A]ll I remember is that I know that my grandpa always used to tell us "tell them what they want to hear so that we can get this money." **And my Auntie, Regina, got offered money from them to[o]. So they was offering money, I was like okay well, we needed the money, let's do it, you know? But I think that's probably why they didn't use me because I think I probably told that police officer after he was recording me, I said, "am I going to get my money now?" and he was like "what do you mean?" And I said well, my grandpa said I was getting some money from this and that police officer was mad at me after that. He never talked to me no more after that.**

Exhibit P-26, Anthony's CRU Interview Tr. at 27 (emphasis added); *see also id.* at 28 ("that police officer really hated my guts after a while. Cause **I figured, if you put me on the stand, I'm tell the judge that you told me that he was giving me some money to do this. Cause I told you I**

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didn't know nothing and you steady pushing it on me like he knew something but when you get on that stand, I'm tell the judge on you. And that officer hated me, like, he, I was not one of the people that he wanted to deal with.") (emphasis added).

Ms. Anthony further stated that both Ms. Hagerman and Ms. Ezell were told by police that they would be paid for providing testimony at the grand jury proceeding. *See id.* at 28.

Ms. Anthony also noted concerning practices by law enforcement regarding the use of audio recording devices, stating, "the police officers were in there talking to us. One minute they be recording and the next minute they wouldn't be." *Id.*

Ms. Anthony's affidavit and CRU interview corroborate Ms. Walton's recantation affidavit by demonstrating that Eugene O'Connor was offered a significant amount of money (which was never disclosed at trial or to defense counsel) if any of his family members provided false information to police for the purpose of successfully prosecuting Petitioner for the Sabreen's murder. Ms. Anthony's CRU interview corroborates Ms. Walton's statement that Ms. Anthony was in the vehicle driven by Demetrius O'Connor when Demetrius dropped Petitioner and Johnson off at The Buttery at roughly 10pm on December 22, 2002. *See* Exhibit P-26, Anthony's CRU Interview Tr. at 36-38. Ms. Anthony's CRU interview also corroborates Ms. Walton's alibi statements. *See id.* at 37 (Interviewer: "The robbery occurred around 9:45 that night." Ms. Anthony: "They couldn't have been at that robbery." … Interviewer: "Kentrell, if the police had told you that the crime occurred at 9:45, what would you have said to them?" Ms. Anthony: "That a lie cause they was at my house.").

iii. Other Statements

Because the following statements were obtained in or around 2007, they do not constitute newly discovered evidence and are not relied upon as a basis for tolling the statute of limitations.

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Nonetheless, the fact that so many of these statements were signed in 2007 buttress the credibility and import of the newer recantations and statements that are relied upon to toll the statute of limitations. The contents of these earlier statements also buttress the credibility of the newer recantations and statements.

Edward Townsend provided one such statement in 2007. *See* Exhibit P-22, Townsend Aff. The Townsend statement corroborates the newly discovered statements of Darlene Walton and Kentrell Anthony by noting that after Petitioner and Johnson left the Radisson, Petitioner and Johnson were headed back "to Darlene's and Kentrell's house." *Id.* Townsend also states that while at the Radisson with Petitioner and Johnson, there was no discussion of robberies or murders. *See id.* Townsend also explained that he knew providing this information earlier was important, but that he did not want to get involved, ostensibly because of the police pressure so many other witnesses have recently complained of. *See id.* Townsend's 2007 statement corroborates Ms. Stites' newly discovered recantation affidavit by confirming that Ms. Stites did not and could not have heard about any robbery plans.

Michael E. White also provided a statement, dated March 21, 2005, which explains that White was housed in the segregation unit of MCF St. Cloud with Dontay Reese wherein he had a conversation with Reese about Petitioner's case. *See* Exhibit P-23, White Aff. White reportedly asked Reese why Reese testified against Petitioner, and Reese responded, stating, "It's my life, and I had to do what I had to do to get home to my family." *Id.* White reports that in a subsequent conversation, Reese seemed to have a guilty conscious before stating, "it's not about how you get down, or how you don't get down, it's about doing what needs to be done to better your situations." *Id.* The White statement corroborates Reese's prior recantation.

Wayne Jones also provided a statement, dated November 1, 2007. *See* Exhibit P-24, Wayne

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Jones Aff. Mr. Jones reports that he was in the courtroom during one of the days of Petitioner's trial, and that he was represented by Cean Shands, who was Petitioner's trial attorney. *See id.* Mr. Jones reports that attorney Shands told Mr. Jones during Petitioner's trial that his client Philip Vance was guilty and that if he would of kept his mouth closed he wouldn't of been tried." *Id.* This affidavit demonstrates that attorney Shands already believed Petitioner guilty at the time of the trial, likely because of: (1) the false evidence and testimony created through coercive and unconstitutional police investigatory tactics, (2) the State's failure to disclose *Brady, Giglio*, and/or *Youngblood* evidence, (3) attorney Shand's refusal to investigate Petitioner's alibi claims, and (4) attorney Shand's refusal to call Darlene Jones (Walton) or Kentrell Anthony as alibi witnesses.

Trevor Crawford also provided a statement. *See* Exhibit P-25, Crawford Statement. Though the statement is undated, it was obtained in or before 2007, as it was submitted with Petitioner's 2007 postconviction petition. In this statement, Crawford explains that Cross' grand jury and trial testimony is false, and that Crawford knew it was false but went along with it against his better judgment because police "threatened to [i]nvolve [Crawford's] older brother." *Id.* Crawford's statement corroborates the newly discovered recantations and statements of Maynard Cross, Melissa Stites, Regina Hagerman, Darlene Walton, and Kentrell Anthony, at least to the extent that they recall coercive police tactics during the investigation.

c. Discovery of *Brady, Giglio,* and/or *Youngblood* Evidence That Was Not Previously Disclosed to Petitioner or his Counsel

i. Petitioner's Case

In the period since Petitioner's conviction, Petitioner's counsel and investigators have managed to locate, identify, and obtain exculpatory evidence in the South St. Paul Police Department's ("SSPPD") physical case files from their previous investigation into and prosecution of Petitioner. This newly discovered exculpatory evidence was not disclosed to Petitioner or to his

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trial, appellate, or previous postconviction attorneys.

The newly discovered exculpatory investigatory documents that have been identified and obtained by Petitioner's counsel include, at minimum:

- A 39-page document consisting of SSPPD Captain Daniel Vujovich's case notes from the investigation into Petitioner which consists of internal notes spanning between the dates of December 22, 2002 and November 21, 2003.[5] *See* Exhibit P-27, 39-Page Vujovich Report & Summary.

After these documents were located, counsel received a document that originated in the Dakota County Public Defender's Office which indexes all the case files their office received from the State in discovery during Petitioner's trial proceedings, and which they otherwise received, collected, or compiled. The index is numbered and lists 289 separate records received in discovery. *See* Exhibit P-28, PD Index. The 39-page Vujovich document now relied upon is not found in the Public Defender's index. *Id.*

Captain Vujovich's case notes identify numerous possible alternative perpetrators and the witnesses and contact information of witnesses who reported such persons as suspects. Exhibit P-27 at 1-5, 8-9, 11, 13, 14-17, 18, 20-25, 29-30, 37-39. The document also identifies various motives other alternative perpetrators may have had to kill the victim. *E.g., id.* at 10-11, 15.

Captain Vujovich's case notes identify that certain conversations between Petitioner and inculpatory trial witnesses were audio recorded, which is notable because such recordings were never handed over to Petitioner's trial counsel. *See* Exhibit P-27 at 11. With respect to the conversation between Petitioner and Ms. Melissa Stites on January 3, 2003, in which Petitioner is

[5] Vujovich was SSPPD's lead investigator prior to the issuance of the indictment and while the investigation remained ongoing after the indictment issued.

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claimed to have admitting having "shot an individual in the back five times with [a] Winchester," Vujovich's notes explicitly state: "MS was equipped with a voice transmitter, the conversation was recorded and heard by numerous officers." Exhibit P-27 at 11 ("**MS was equipped with a voice transmitter, <u>the conversation was recorded</u>**") (emphasis added). The contents of the conversation supposedly overheard by officers are now directly rebutted by Ms. Stites' newly discovered recantation affidavit. Exhibit P-16, Stites Aff. ¶¶ 4-5.

Captain Vujovich's case notes indicate that on January 15, 2003, Vujovich met with Mr. Irxam Tasamoun at Sabreen's, where Tasamoun was shown a photo lineup of Petitioner and his co-defendant (Dominick Johnson), and that he was unable to identify them from the lineup despite being a full-time employee at Sabreen's and working "many hours there." *See* Exhibit P-27 at 13.

Captain Vujovich's case notes indicate that he met with eventual trial witness Geronimo Estrada in the Ramsey County Workhouse on February 9, 2003; in that note, there is no indication that Vujovich recorded his initial conversation with Estrada, nor that he brought any other prove-up witnesses with him; in the note, there is no indication that Vujovich recorded this initial conversation with Mr. Estrada. *See* Exhibit P-27 at 16. A subsequent note from the same date indicates Estrada then called Vujovich on what was obviously a recorded line to report information to Vujovich about Petitioner. *See id.* at 17. The case notes indicate Vujovich then went back to the detention facility for another in person interview with Estrada on February 11, 2003, this time bringing audio recording equipment. *See id.* at 18.

Captain Vujovich's case notes indicate that officers met with Maynard Cross on March 26, 2003; it does not appear from the notes that this interview was audio recorded, but Mr. Cross swears in his affidavit that "[e]ach conversation [he] had with the officers was audio recorded." *See id.* at 24; Exhibit P-14, Cross Aff. (2024) ¶ 8. Vujovich's notes further show that the same

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investigators met with Cross again on April 16, 2003, and took an audio-recorded statement from Cross. *See* Exhibit P-27 at 25. The notes indicate Vujovich, along with the officers that previously met with Cross, all met with Cross again on May 28, 2003 and took another audio-recorded statement from Cross. Exhibit P-27 at 30. The notes indicate that investigating officers met with Cross again on October 21, 2003, and again claim to have obtained a recorded statement. *Id.* at 37. The same entry indicates that investigators arranged for Cross' custodial restrictions to be lifted in order to allow Cross to begin having contact with Petitioner's co-defendant, Dominick Johnson, who was housed in the same cell block as Cross. *Id.* The investigators also arranged for Cross's phone privileges to be restored. *Id.* The notes indicate further in-person communications between Cross and law enforcement investigators on November 12, 2003. *Id.* at 37-38.

Notably, the State's trial witness list disclosed to Petitioner's trial counsel which identifies each witness' known convictions and inducements, and which lists Maynard Cross, does not include in the inducement section for Cross anything about arranging for Cross' custodial restrictions to be lifted nor does it identify that his phone privileges were restored. *See* Exhibit P-6, State's Disclosure of Trial Witnesses ¶ 11.

Within the SSPPD's investigative file, there are numerous cassette tapes and mini cassette tapes. Within those tapes, there may be interviews with Mr. Cross or other key witnesses that are exculpatory and/or impeaching and which were not disclosed to Petitioner or his trial counsel. The SSPPD has not honored counsel's request to provide full and complete copies of each tape and other form of audio and/or video recording in the investigative case file at the SSPPD. If such tapes or recordings exist, they constitute undisclosed *Brady* and/or *Giglio* evidence; if bad faith by investigators was the reason such tapes were not disclosed, the tapes constitute *Youngblood* evidence. *See infra.*

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The documentary records in the SSPPD's possession regarding the investigation of Petitioner are extremely voluminous and likely include additional exculpatory or potentially exculpatory documents that were not disclosed, and which consequently constitute *Brady* and/or *Giglio* and/or *Youngblood* material.

ii. Investigation Into The MGSF

Many of the principal law enforcement investigators in Petitioner's case were members of the MGSF. *See, e.g.*, Exhibit P-29 at 2-7 (making repeated reference to members of the MGSF being involved in the investigation). Such investigators include, but are not limited to: Chris Freichels, John McManus, John Pyka, and Andrew Shoemaker. *Accord* Exhibit P-29 at 2-7.

On August 20, 2009, The Metro Gang Strike Force Review Panel, formed on May 26, 2009 at the Request of the Minnesota Commissioner of Public Safety, issued a report ("MGSF Review Report") following the May 20, 2009 Financial Audit Division Report by the Minnesota Office of the Legislative Auditor ("Legislative Auditor's Report"). *See* Exhibit P-30, MGSF Review Report.[6] One of the panel members is recent U.S. Attorney for the District of Minnesota, Mr. Andrew Luger. *Id.* The other panel member was Mr. John Egelhof, a retired FBI agent. *See id.*

The Legislative Auditor's report concluded that the MGSF's "internal controls were not adequate to safeguard seized and forfeited property, properly authorize its financial transactions, accurately record its financial activity in the accounting records, and conduct its financial activities in a reasonable and prudent manner." *Id.* "**Following the issuance of the Legislative Auditor's report, on the night of May 20, a number of Strike Force officers were observed shredding documents at the Strike Force offices**." *Id.* (emphasis added). "At that time, the Commissioner

[6] This document is admissible hearsay pursuant to Minn. R. Evid. 803(6) (records of regularly conducted business activity), 803(8) (public records and reports), 803(19) (reputation concerning personal or family history), 803(21) (reputation as to character), and 807 (residual exception).

of the Department of Public Safety **shut down the Strike Force** pending further investigation by this Panel and the FBI." *Id.* (emphasis added). The documents that were shredded by strike force officers could easily include administrative subpoenas for cell phone records in Petitioner's case that were obtained but never disclosed to defense counsel, exculpatory witness statements that were obtained by police in Petitioner's case but never disclosed to defense counsel, and other actual or potential exculpatory evidence. *See id.* at 28 ("We have been unable to determine what the officers shredded or why"); *id.* at 29 ("The Panel feels compelled to emphasize the unusually poor and problematic state of the Strike Force investigative documentation. The most basic underpinning of criminal investigation is preservation and documentation.").

The MGSF Review Report noted that "[s]hortly after undertaking its work, … the Panel learned of credible allegations of misconduct relating to Strike Force employees that went beyond the findings of the Legislative Auditor" which "raised serious questions regarding the Strike Force's operations." *Id.* at 2.[7] "Consequently, on June 11, 2009, the Panel issued a Preliminary Report recommending that the Department of Public Safety not re-open the Strike Force under its current structure during the pendency of the Panel's investigation. *Id.*

In conducting the investigation, the Review Panel "[r]eviewed hundreds of case files as well as other records maintained by the Strike Force" and found that "[m]any of the case files contained little documentation to explain the work performed on that matter. These poorly documented cases often made it difficult for the Panel to understand and comment on particular investigations." *Id.* at 3, n.3 and accompanying text.

The Review Panel "uncovered substantial evidence of misconduct by Strike Force employees. … [I]t is this misconduct that will always be associated with the [MGSF]. … The

[7] Using internal page numbers at the bottom of the page.

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behavior uncovered by this Panel is **deeply disturbing** and must be addressed by law enforcement leaders, policy makers and the community." *Id.* at 4 (emphasis added). The MGSF Review Report noted that "[s]ubstantial quantities of evidence that should still be in the evidence room are missing." *Id.* It found that "[m]any items that were seized by the Strike Force, including narcotics, were never entered into evidence and were found in the offices outside of the evidence room." *Id.* It found that certain items, "such as two firearms, were found outside of the evidence room and cannot be traced to any individual case." *Id.* at 5. It found that MGSF employees routinely committed thefts under color of law by seizing property and money "without regard to whether the funds could reasonably be connected to illegal activity." *Id.* It found that "[o]n repeated occasions… Strike Force officers searched the cell phones of individuals who were stopped," despite such persons not having been arrested and despite officers not having a search warrant. *Id.* It found that even when searches were conducted pursuant to lawful warrants, "Strike Force officers often seized money and personal items… that, based on our review, bore no relation to the matter under investigation and could not be tied to criminal activity." *Id.* "On at least one occasion, seized property was later ordered returned but was missing from the Strike Force offices." *Id.*

The Review Panel found that "[a] relative of a Strike Force employee had regular access to the Strike Force offices and was observed handling seized property." *Id.* at 6. The Review Panel found that:

> **On the day that the Legislative Auditor's report was released, a number of Strike Force officers shredded documents and most likely placed a large amount of additional material in bins inside the Strike Force offices for shredding by a professional firm. These bins were full when reviewed by this Panel shortly thereafter. The bins included material relevant to numerous cases, including one entire case file. Additionally, sensitive material, including official case material, old items of evidence, at least two live rounds of ammunition and sensitive information about a Strike Force officer were placed in a publicly accessible dumpster outside of the Strike Force's offices.**

Id. (emphasis added). Moreover, "[i]n the days following the Legislative Auditor's report, a Strike

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Force employee tried to delete a file relating to confidential informants working with the Strike Force." *Id.* Considering one informant in Petitioner's case was Ms. Colleen McManus, the brother of MGSF Officer 1 (who was directly involved in investigating Petitioner), and considering Ms. McManus' concern at trial about the appearance of collusion between herself and her MGSF brother, there is a material possibility that the file attempting to be deleted related to Colleen McManus' involvement in Petitioner's case. Moreover, considering the fact that Ms. Stites received more money from the MGSF for relocation expenses than was disclosed, and considering Ms. Stites now acknowledges under penalty of perjury that she never heard Petitioner admit to shooting or robbing anyone despite the fact that multiple police officers testified to hearing such words, there is also a material possibility that the file attempting to be deleted related to Ms. Stites' involvement in Petitioner's case. There is also a far more likely possibility that portions of the investigative file related to Petitioner, and especially to obtaining false testimony from cooperating witnesses was destroyed in the MGSF purge.

The Review Panel found that MGSF's problems began as early as 2003 when the predecessor to the MGSF "lost much of its state funding." *Id.* at 7; *see also id.* at 10 (breaking down the differences between the Metro Gang Task Force and its predecessor, the Minnesota Gang Task Force). Moreover, the MGSF "did not have a functional Record Management System in place, nor a uniform reporting method for its officers." *Id.* at 8. The Review Panel found that MGSF officers lacked any meaningful direction or administrative supervision. *Id.* at 7.

This information about the MGSF, coming years after Petitioner's trial but implicating the period in which the crime occurred and was investigated and prosecuted, is strong circumstantial evidence that supports concluding that members of the MGSF involved in the investigation and prosecution of Petitioner obtained exculpatory or potentially exculpatory evidence relating to

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Petitioner and failed to disclose such evidence to defense counsel while acting in bad faith, thereby committing *Brady* and/or *Youngblood* violations. *Brady v. Maryland*, 373 U.S. 83 (1963); *Youngblood v. Arizona*, 488 U.S. 51 (1988). The reasonable inferences that can be drawn from the MGSF Review Report further support this conclusion.

Recently, Petitioner's counsel obtained newly discovered documents underlying the MGSF Review Report which implicate Officer MGSF Officer 1 in unlawful and unprofessional conduct while employed at the MGSF, including but not limited to selling a jet-ski seized by MGSF to his sister, Ann McManus. Exhibit P-38 at 5-6, 12-13. It is unlikely that the documents received by counsel directly from the Department of Public Safety are exhaustive, and they appear partially redacted to protect the identity of at least one confidential informant who may have played a role in the prosecution of Petitioner. Officer Shoemaker, who was central to the prosecution of Petitioner, was also a member of the MGSF, subject to many of the subsequent federal legal actions related thereto, and was individually named in at least two federal civil rights cases as a defendant for his misconduct with the MGSF.[8] *See also* Exhibit P-38 at 6, 13 ("Shoemaker and [MGSF Officer 1] seized about $36,000 and then paid an informant out of the seized funds. ADDITIONAL INVESTIGATION.").

Officers Shoemaker and MGSF Officer 1 both eventually received suspensions in relation to their activities at the MGSF. *See* Exhibit P-31, Shoemaker Suspension Notice; Exhibit P-32, McManus Suspension Notice. The Shoemaker suspension notice implicated wrongdoing by Shoemaker in the period between 2001 to May 2009. Exhibit P-31 at 1. The MGSF Officer 1 suspension notice implicated wrongdoing between 2004 and 2008. Exhibit P-32 at 1. The MGSF

[8] *See Mackey v. Shoemaker*, 0:04-CV-04362-DWF-SRN (D. Minn. 2004); *Mackey v. Shoemaker*, 0:10-CV-00647-RHK-LIB (D. Minn. 2010).

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Officer 1 suspension notice notes that the officer repeatedly used his position to give gifts of unlawfully seized evidence to his family, and further demonstrates the officer would pay confidential informants with illegally seized property that was not properly documented. *See id.* at 1-2. The Shoemaker suspension notice indicates that Shoemaker repeatedly failed to document and preserve evidence. Exhibit P-31 at 1-2. The Shoemaker suspension notice informed Shoemaker that his "failure to follow procedures on criminal cases is an example of the type of poor police work that resulted in the Gang Strike Force being dismantled." *Id.* at 2. The MGSF Officer 1 suspension notice informed the officer that his actions have "discredited [himself]." Exhibit P-32 at 2.

The MGSF Review Report and underlying documents recently obtained by counsel buttress the claims by Stites, Cross, Walton, Anthony, Hagerman, and Crawford regarding the unconstitutional and highly coercive conduct of investigating law enforcement officers in Petitioner's case. These same documents are relevant to demonstrating that any potentially exculpatory evidence that was withheld by MGSF officers was done in bad faith.[9]

[9] Further bad faith is demonstrated by reviewing a false statement known to be false or made in reckless disregard of the truth in a search warrant application for Petitioner's DNA. *See* Exhibit P-33, Application for Search Warrant and Supporting Affidavit (May 21, 2003). The affiant is referencing three confidential informants. *See id.* at 2. CI #1 refers to Melissa Stites. *See id.* CI #2 refers to Colleen McManus. *See id.* CI #3 references Geronimo Estrada. *See id.* The affidavit states that "CI#2 has no known non-traffic criminal history." *Id.* This statement was known to be false, as public records indicate that Ms. Stites was convicted of DUI on Apr. 17, 1998 in Ramsey County Case No.: 62-K7-97-003840 and was convicted of **offering a forged check** on November 20, 1996 in Hennepin County Case No.: 27-CR-95-059976. *See* Exhibit P-34, MCRO Printout for Melissa Stites. The forged check crime implicates the CI's penchant for truthfulness, or the lack thereof, and was a material lie intentionally told to obtain a warrant for Petitioner's DNA. *See Glossip v. Oklahoma*, 604 U.S. --, -- S. Ct. --, 2025 WL 594736, at *2-3 (Feb. 25, 2025) (holding that the prosecution "violated its constitutional obligation to correct false testimony" and ordering a new trial).

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ARGUMENT

I. PETITIONER'S PETITION FOR POSTCONVICTION RELIEF IS PROPERLY BEFORE THIS COURT.

A person convicted of a crime who claims the conviction violated their rights under the Constitution or laws of the United States or of the State of Minnesota may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had. Minn. Stat. § 590.01, subd. 1. The petitioner may request the Court to vacate and set aside the judgment and to discharge the petitioner, resentence the petitioner, grant a new trial, correct the sentence, or make other disposition as may be appropriate. *Id.* Minnesota statutes limit this right for postconviction relief in distinct ways, but none of those limitations are applicable here. Two of the most common limitations are addressed below.

First, a petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence. *Id.* Similarly, "where [a] direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

Petitioner could not have raised the grounds identified in his petition during his direct appeal because they relate to the ineffective assistance he received from his appellate counsel. *See Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008) ("But we have said that '[c]laims of ineffective assistance of appellate counsel on direct appeal are not barred by the *Knaffla* rule in a first postconviction appeal because they could not have been brought at any earlier time.'"); *see also Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). Moreover, Petitioner was not aware of the legal issues identified in his petition for postconviction relief at the time of his direct appeal, did not discuss those issues with his appellate counsel, and therefore did not know the underlying

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claims would be neglected by his appellate counsel. This issue is discussed in more detail *infra* after the merits of Petitioner's underlying claims are addressed.

Second, in most circumstances, a petition for postconviction relief may be filed no more than two years after the later of (1) the entry of judgment of conviction or sentence if no direct appeal is filed, or (2) an appellate court's disposition of petitioner's direct appeal. Minn. Stat. § 590.01, subd. 4(a). However, various exceptions to the two-year filing requirement exist. Minn. Stat. § 590.01, subd.4(b). The exceptions allow a court to hear a petition for postconviction relief that would otherwise be untimely if, *inter alia*:

> [1] [T]he petitioner alleges the existence of newly discovered evidence, including [but not limited to] scientific evidence, that provides facts necessary to sustain one or more legally cognizable claims for postconviction relief, if such evidence could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition, is not cumulative to evidence presented at trial, and is not for impeachment purposes;
>
> [2] [T]he petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case; [or]
>
> [3] [T]he petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.

Minn. Stat. § 590.01, subd.4(b)(2)-(3), (5). Any petition invoking one of the above exceptions "must be filed within two years of the date the claim arises." Minn. Stat. § 590.01, subd.4(c).

A. This Petition is Timely.

Petitioner filed within two years of the recently discovered evidence, and the statute of limitations was subsequently tolled. The petition is therefore timely. Petitioner has established multiple other exceptions to the two-year filing rule. *See* Amended Postconviction Petition. Petitioner first relies on Minn. Stat. § 590.01, subd.4(b)(2), submitting that this petition is timely because it alleges the existence of newly discovered evidence that provides material facts

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necessary to sustain one or more legally cognizable claims for postconviction relief; the petition alleges such evidence could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition, is not cumulative to evidence presented at trial, and is not for impeachment purposes.

Here, Petitioner obtained four affidavits between 2021 and 2022 that constitute newly discovered evidence providing facts that are necessary to grant Petitioner postconviction relief. *See, e.g.*, Index #23 at 1-2. Petitioner, through counsel, then filed the original version of the present postconviction petition on December 14, 2022, well within the two-year filing deadline for newly discovered evidence. Since that time, one of the affidavits has been updated and supplemented, and remains timely, newly discovered evidence for purposes of the two-year filing rule. Moreover, counsel has obtained two other affidavits since 2021, which are also timely and which are now relied upon in the amended postconviction petition. Similarly, the *Brady*, *Giglio*, and *Youngblood* violations are alleged to have been discovered within two years of December 14, 2022, and/or after that date; such discoveries could not have been uncovered earlier through an exercise of diligence by Petitioner or his counsel.

Petitioner also relies upon Minn. Stat. § 590.01, subd.4(b)(5) to invoke the interests of justice exception, and submits that as a threshold matter, the petition is not frivolous. *See, e.g.*, *Gilbert v. State*, 2 N.W.2d 483, 487 (Minn. 2024) ("For an unraised claim, there are two exceptions to the *Knaffla* procedural bar: (1) if a novel legal issue is presented; or (2) if the interests of justice require review."). Further argument regarding the interests of justice is provided *infra.*

B. The *Knaffla* Bar Is Inapplicable.

The grounds that justify granting this Petition could not have been raised on direct appeal of the conviction or sentence.

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On direct appeal, Petitioner had no subpoena authority to compel further appearances or testimony from witnesses who provided false evidence at Petitioner's trial, meaning Petitioner could not have demonstrated that evidence was false on direct appeal. He therefore could not have raised any of Grounds 1-7 (as enumerated in the Amended Petition) on direct appeal.

On direct appeal, Petitioner was not yet aware and could not have become aware through an exercise of diligence that he did not receive mandatory *Brady*, *Giglio*, and *Youngblood* disclosures in criminal discovery. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Youngblood v. Arizona*, 488 U.S. 51 (1988). Petitioner was unable to learn that he did not receive *Brady*, *Giglio*, and *Youngblood* evidence from the State until his attorneys were finally given access to review the internal files related to his case that were housed at the South St. Paul Police Department, and this review did not commence until roughly 2021. Petitioner therefore could not have raised Ground 8 (as enumerated in the Amended Petition) on direct appeal.

Similarly, until 2021, Petitioner could not demonstrate that he was prevented from presenting alibi witnesses through a combination of witness tampering by police and ineffective assistance of trial counsel. Petitioner therefore could not have raised Ground 9 (as enumerated in the Amended Petition) on direct appeal.

Petitioner was prevented from bringing his ineffective assistance of trial counsel claims on direct appeal because of his appellate counsel's ineffective assistance on direct appeal. Petitioner could not have brought an ineffective assistance of appellate counsel claim on direct appeal because that would have required his counsel on direct appeal to claim to be ineffective in the course of the direct appeal. *See Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008) ("But we have said that '[c]laims of ineffective assistance of appellate counsel on direct appeal are not barred

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by the *Knaffla* rule in a first postconviction appeal because they could not have been brought at any earlier time.'"); *see also Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). Petitioner therefore could not have raised Grounds 10-11 (as enumerated in the Amended Petition) on direct appeal.

Thus, the *Knaffla* bar is wholly inapplicable to these proceedings.

Petitioner also relies upon Minn. Stat. § 590.01, subd.4(b)(5) and *Gilbert v. State*, 2 N.W.2d 483 (Minn. 2024) to invoke the interests of justice exception to the *Knaffla* bar. *See, e.g., Gilbert v. State*, 2 N.W.2d 483, 487 (Minn. 2024) ("For an unraised claim, there are two exceptions to the *Knaffla* procedural bar: (1) if a novel legal issue is presented; or (2) if the interests of justice require review."). Further argument regarding the interests of justice is provided *infra.*

II. AN EVIDENTIARY HEARING MUST BE GRANTED.

Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the Court shall promptly set an early hearing on the petition and response thereto, and promptly determine the issues, make findings of fact and conclusions of law with respect thereto, and either deny the petition or enter an order granting appropriate relief. Minn. Stat. § 590.04, subd.1. Unless otherwise ordered by the Court, the burden of proof of the facts alleged in the petition shall be upon the petitioner to establish the facts by a fair preponderance of the evidence. Minn. Stat. § 590.04, subd. 3. The Court may order the petitioner to be present at the hearing. *Id.*

"To receive an evidentiary hearing on a timely postconviction claim of newly discovered evidence, a defendant is required to allege facts that, if proven by a fair preponderance[10] of the

[10] Minn. Stat. § 590.01, subd.4(b)(2) was amended in 2024 to remove the more onerous standard of proving "by clear and convincing evidence that the petitioner is innocent of the offense or offenses for which the petitioner was convicted." MN LEGIS 123 (2024), 2024 Minn. Sess. Law Serv. Ch. 123 (H.F. 5216) (WEST); *compare* Minn. Stat. § 590.01, subd.4(b)(2) (2005) *with* Minn. Stat. § 590.01, subd.4(b)(2) (2024-2025).

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evidence, would satisfy the four-prong test set forth in *Rainer v. State*, 566 N.W.2d 692 (Minn. 1997)." *Bobo v. State*, 820 N.W.2d 511, 517 (Minn. 2012). Under the *Rainer* test, a defendant is entitled to a new trial only if he proves the following four elements. First, "the evidence was not known to the defendant or his/her counsel at the time of the trial." *Rainer*, 566 N.W.2d at 695. Second, "the evidence could not have been discovered through due diligence before trial." *Id.* Third, "the evidence is not cumulative, impeaching, or doubtful." *Id.* Fourth, "the evidence would probably produce an acquittal or a more favorable result." *Id.* For purposes of *Rainer*'s third prong, "[e]vidence is not cumulative when 'it [is] the only evidence offered on' an issue." *Bobo*, 820 N.W.2d at 518 (quoting *State v. Penkaty*, 708 N.W.2d 185, 203 (Minn. 2006)).

Here, Petitioner has demonstrated that the evidence he relies upon—*i.e.*, witness recantations, newly discovered witness statements, and unlawfully suppressed *Brady* and/or *Giglio* and/or *Youngblood* evidence—was not known to Petitioner or his counsel at the time of trial. Petitioner has likewise demonstrated that such evidence could not have been discovered through due diligence before trial. Regarding this second point, Petitioner had no effective way of compelling witnesses to tell the truth in sworn affidavits before they were willing to do so; the threats and police pressure placed on such witnesses had a natural tendency of inhibiting witnesses from being willing to come forward. Similarly, with respect to the newly discovered investigative documents that were illegally suppressed, it must be noted that in order to obtain such documents, Petitioner's counsel and agents engaged in a level of diligence far above what is meant by "due diligence," and it is likely that any efforts to obtain full and unfettered access to police investigative documents by defense counsel would have been futile prior to the close of trial. *See generally* Minn. Stat. § 13.82, subd.7 (rendering criminal investigative data "confidential or protected nonpublic while the investigation is active"). Thus, the first two prongs of *Rainer* are satisfied.

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The evidence Petitioner now relies on is not cumulative, impeaching, or doubtful. The witness recantations and newly discovered witness statements all demonstrate, for the first time, that police officers and witnesses supporting the prosecution perjured themselves at trial and before the grand jury. The recantations and statements also explain that the reason for false witness testimony stems from a combination of witness tampering, coercion and payment by police investigators. Such evidence was not offered at trial, nor largely known to trial counsel, and any acknowledgements of inducements to testify that were offered at trial were incomplete, misleading, and prejudicial to Petitioner as a result of their incomplete and misleading nature. Moreover, with respect to Mr. Cross' 2024 recantation, this affidavit demonstrates by a preponderance of the evidence that *Brady* evidence in the form of audio recorded interviews with Mr. Cross were unlawfully withheld from Petitioner and his trial counsel. Thus, the recantations and statements are not cumulative.

Similarly, the recantations and statements are not merely impeaching. The recantations and statements of Stites, Cross, Walton, Hagerman, and Anthony all deal with substantive testimony that provided key circumstantial evidence needed to convict Petitioner and affirm his conviction on appeal. Stites, Hagerman, and Cross all testified to having personal knowledge that Petitioner was at Sabreen's on the night of the robbery, or at least that Petitioner confessed to being at Sabreen's on the night of the robbery despite there being no physical evidence found to corroborate these claims. Each of these three witnesses now recants those inculpatory statements and provides exculpatory statements in their place. Similarly, the newly discovered affidavits of Ms. Walton and Ms. Anthony provide evidence of perjury by Jaqueline Ezell and Regina Hagerman (and testifying officers), a motive for committing such perjury, and further provides a substantive and exceedingly important alibi for Petitioner. Thus, the recantations and statements are not merely

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impeaching.

Likewise, the recantations and statements of Stites, Cross, Walton, Hagerman, and Anthony are not doubtful. Stites and Hagerman all provide detailed, cogent, and facially credible reasons for providing false testimony to the grand jury and at Petitioner's trial, and Walton's and Anthony's statements likewise provide detailed, cogent, and facially credible reasons for Hagerman's, Stites', and Ezell's false testimony to the grand jury and at Petitioner's trial. All of these witnesses are adamant that they were coerced and threatened by police to give such false reports, false testimony, and were consequently terrified of telling the truth after the trial. Now, however, with the passage of time and the disbanding of the disgraced MGSF, these witnesses are finally ready to come forward. Their affidavits corroborate one another and are further corroborated by the Minnesota Department of Public Safety and other governmental reports into the illegal and systemically unfair law enforcement practices of the MGSF in the period during and immediately following the investigation and prosecution of Petitioner. *See* Exhibit P-30, MGSF Review Report. Thus, *Rainer*'s third prong is satisfied.

The contents of the newly discovered witness recantations and other affidavits, especially when considered in combination with the newly discovered 39-page Vujovich summary record, would probably produce an acquittal or more favorable result at trial. Without Stites' testimony about thinking Petitioner was acting "shady," was going to commit a robbery, and her claims to have heard Petitioner confess to a murder, Petitioner would have likely been acquitted. Stites' affidavit goes one step further, however, and provides not only that Petitioner did not say these things, but that Stites was pressured to provide false testimony on these topics by police. This would almost certainly produce an acquittal if the jury heard this evidence at the original trial. Similarly, if Hagerman had not testified that Petitioner admitted to committing a murder when he

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was supposedly with Hagerman a few days before the Superbowl, it is likely the jury would have acquitted Petitioner, especially if Stites had also told the truth at trial as she does now.

Similarly, if Cross had told the truth at trial, as he does now, it would have had the effect of depriving the State of a confession and would have further had the effect of impeaching various police witnesses (or causing them to alter their testimony to be more truthful and less prejudicial), and this would have increased the likelihood of an acquittal by a significant extent. If Walton's and/or Anthony's testimony had been provided at trial, it would have lessened the prejudicial effect of Hagerman's and Ezell's perjured testimony (or caused them to be unwilling to give false testimony), and would have also provided Petitioner with a credible alibi. Each of these affidavits on their own is sufficient to make an acquittal more likely, and their effect in combination is to make an acquittal a near certainty, especially when considered in combination with the newly discovered Vujovich summary. Thus, *Rainer*'s fourth prong is satisfied.

There are material facts in dispute and the allegations, if true, entitle Petitioner to relief. *See* Minn. Stat. § 590.04; *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013); *See Glossip v. Oklahoma*, 604 U.S. --, -- S. Ct. --, 2025 WL 594736, at *2-3 (Feb. 25, 2025) (holding that the prosecution "violated its constitutional obligation to correct false testimony" and ordering a new trial). Each of the witness recantations has sufficient "indicia of trustworthiness" to warrant a hearing, especially when the recantations are considered together and in combination with other supporting evidence that corroborate the recantations and statements. *See State v. Ferguson (Ferguson I)*, 742 N.W.2d 651, 660 (Minn. 2007). Thus, the Court must grant Petitioner an evidentiary hearing. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (any doubts as to whether to conduct an evidentiary hearing should be resolved in favor of the petitioner); *see also Ferguson v. State (Ferguson II)*, 779 N.W.2d 555, 560 (Minn. 2010) (observing that an evidentiary hearing

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is often necessary to resolve credibility determinations regarding a recanting witness' conflicting statements).

III. THE RELIEF REQUESTED BY PETITIONER MUST BE GRANTED AFTER AN EVIDENTIARY HEARING DUE TO ANY ONE OF THE INDEPENDENT, BUT RELATED, GROUNDS IDENTIFIED IN HIS PETITION.

A. A New Trial Is Warranted.

After an evidentiary hearing, the Court will see that Petitioner must be given a new trial. "The *Larrison* test sets forth the criteria to determine whether a defendant is entitled to a new trial on a claim of witness recantation." *Martin*, 825 N.W.2d at 740 (citing *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)). The *Larrison* criteria are as follows:

> (1) the court is reasonably well-satisfied that the testimony given by a material witness was false;
>
> (2) that without the testimony, the jury might have reached a different conclusion; and
>
> (3) the petitioner was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after trial.

Martin, 825 N.W.2d at 740 (citing *State v. Turnage (Turnage II)*, 729 N.W.2d 593, 597 (Minn. 2007). "The first two prongs are compulsory," and the "third prong is relevant, but not an 'absolute condition precedent' to a new trial." *Martin* at 740 (citing *Opsahl v. State (Opsahl II)*, 710 N.W.2d 776, 782 (Minn. 2006)); (quoting *Ferguson v. State (Ferguson II)*, 779 N.W.2d 555, 559 (Minn. 2010)).

The first *Larrison* prong is satisfied because the Court can be reasonably well satisfied that the testimony given by Stites, Cross, Hagerman, and Walton, *inter alia*, was false; each of these witnesses is clearly material. Moreover, their new recantation testimony demonstrates that the testimony of many other trial witnesses, including but not limited to testifying law enforcement witnesses, gave false testimony at Petitioner's trial, which further adds to the materiality of the

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testimony of Stites, Cross, Hagerman, and Walton.

The second *Larrison* prong is satisfied because without the false trial testimony of these three witnesses, there would have been three less people claiming that Petitioner confessed. If the Johnson recantation is further considered, there would be four less people claiming that Petitioner confessed. Even if Stites, Cross, Hagerman, and Walton had not affirmatively testified that they were pressured to lie by police investigators, there is a real and significant chance that the jury would have reached a different conclusion. *See Martin v. State*, 825 N.W.2d at 743-44 ("Previously, we have concluded that the postconviction court should examine what testimony was recanted, and then determine whether it *might* have made a difference if that testimony had not been presented at trial.") (alteration as original); *Martin* at 743 ("'might' is 'something more than an outside chance although much less than ... 'would probably.'") (citations omitted). If Stites, Cross, Hagerman, and Walton had also testified about the coercive tactics used by police investigators, the likelihood of an acquittal would have increased exponentially.

The third *Larrison* prong is satisfied because Petitioner was taken by surprise when the false testimony was given and was unable to meet it.[11] Petitioner was unable to meet the false testimony of Stites, Cross, Hagerman, and Walton because their false testimony was corroborated by the false testimony of police officers, which had the natural effective of corroborating the false testimony of the lay witnesses to such an extent as to make a refutation impossible. Anything Petitioner said, true or not, would have been disbelieved by the jury due to the overwhelming aggregated weight of the false testimony. Petitioner was also unable to meet the false testimony

[11] Petitioner does not claim that he was unaware that the witnesses were lying when they said Petitioner confessed, as Petitioner has always known he did not commit the murder and did not confess to committing the murder. While Petitioner may have been unaware of the falsity of many of the other lies told in the case, he was firmly aware that he did not commit the murder or robbery at Sabreen's.

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provided at trial because his trial counsel pressured Petitioner not to testify in his own defense, and because trial counsel also failed to present any witnesses or evidence in Petitioner's defense despite Petitioner's request for counsel to do so.

B. The "Structural Error" Doctrine Requires Vacating Petitioner's Conviction.

In *Chapman v. California*, 386 U.S. 18 (1967), the United States Supreme Court "adopted the general rule that a constitutional error does not automatically require reversal of a conviction." *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991) (citing *Chapman*, *supra*). If the government can show "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," the Court held, then the error is deemed harmless and the defendant is not entitled to reversal. *Id.* at 24. The Court recognized, however, that some errors should not be deemed harmless beyond a reasonable doubt. *Id.* at 23, n. 8. On the other hand, certain constitutional errors can be so grave as to nearly always require reversal because they have infected the fundamental fairness and framework of the trial, and these are known as structural errors. *See Fulminante*, 499 U.S. at 309–310. "The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it 'affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.'" *Weaver v. Massachusetts*, 582 U.S. 286, 294-95 (2017) (quoting *Fulminante* at 310). "For the same reason, a structural error 'def[ies] analysis by harmless error standards.'" *Id.* (quoting *Fulminante* at 309).

"The precise reason why a particular error is not amenable to that kind of analysis—and thus the precise reason why the Court has deemed it structural—varies in a significant way from error to error. There appear to be at least three broad rationales." *Weaver* at 295.

First, an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. This is true of the defendant's right to

> conduct his own defense, which, when exercised, "usually increases the likelihood of a trial outcome unfavorable to the defendant." *McKaskle v. Wiggins,* 465 U.S. 168, 177, n. 8, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984). That right is based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty. See *Faretta v. California,* 422 U.S. 806, 834, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Because harm is irrelevant to the basis underlying the right, the Court has deemed a violation of that right structural error. See *United States v. Gonzalez–Lopez,* 548 U.S. 140, 149, n. 4, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006).
>
> **Second, an error has been deemed structural if the effects of the error are simply too hard to measure.** For example, when a defendant is denied the right to select his or her own attorney, the precise "effect of the violation cannot be ascertained." *Ibid.* (quoting *Vasquez v. Hillery,* 474 U.S. 254, 263, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986)). Because the government will, as a result, find it almost impossible to show that the error was "harmless beyond a reasonable doubt," *Chapman, supra,* at 24, 87 S.Ct. 824, the efficiency costs of letting the government try to make the showing are unjustified.
>
> **Third, an error has been deemed structural if the error always results in fundamental unfairness.** For example, if an indigent defendant is denied an attorney or if the judge fails to give a reasonable-doubt instruction, the resulting trial is always a fundamentally unfair one. See *Gideon v. Wainwright,* 372 U.S. 335, 343–345, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (right to an attorney); *Sullivan v. Louisiana,* 508 U.S. 275, 279, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993) (right to a reasonable-doubt instruction). It therefore would be futile for the government to try to show harmlessness.
>
> **These categories are not rigid.** In a particular case, more than one of these rationales may be part of the explanation for why an error is deemed to be structural. See *e.g., id.,* at 280–282, 113 S.Ct. 2078. For these purposes, however, **one point is critical: An error can count as structural even if the error does not lead to fundamental unfairness in every case.** See *Gonzalez–Lopez, supra,* at 149, n. 4, 126 S.Ct. 2557 (rejecting as "inconsistent with the reasoning of our precedents" the idea that structural errors "always or necessarily render a trial fundamentally unfair and unreliable" (emphasis deleted)).

Weaver, 582 U.S. at 295-96 (bold emphasis added).

The false testimony in this case was so pervasive that it infected the entire trial and caused a structural error. Assuming the facts alleged in support of this petition are true, as we must at this stage, it is clear that the unlawful, unconstitutional, coercive, threatening, and briberous behavior of law enforcement investigators towards actual and potential trial witnesses resulted in

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fundamental unfairness. Moreover, it is clear that such conduct by investigating law enforcement officers will *always* result in fundamental unfairness, especially when such behavior is not disclosed to defense counsel prior to trial, as was the case here.

Additionally, the fact that it is now known that investigating and testifying law enforcement officers *knowingly* provided false testimony, and caused other testifying witnesses to provide false testimony, to obtain a conviction further evidences that a structural error has occurred, even if the false testimony offered in the case does not by itself rise to the level of a structural error. The fact that so much false testimony was offered despite the declarant's knowledge of the falsity *always* results in fundamental unfairness.

The combination of knowingly false testimony, combined with the lack of disclosures of exculpatory and potentially exculpatory evidence in this matter, further demonstrates structural error even if the provision of copious knowingly false testimony does not by itself rise to the level of a structural error. The lack of required disclosures by the State *always* results in fundamental unfairness. One manifestation in which this unfairness is demonstrated is defense counsel's inability to meaningfully cross-examine the State's witnesses due to the State's failure to make mandatory disclosures of documents and evidence bearing on the witnesses' credibility or lack thereof.

The conduct of the investigating officers and other testifying witnesses consequently rises to the level of a structural error that requires automatic reversal, especially in light of the *Brady*, *Giglio,* and *Youngblood* violations that occurred in this case. *See State v. Gant*, 996 N.W.2d 1, 7 (Minn. Ct. App. 2023) ("An invalid waiver and the corresponding denial of the right to counsel are 'structural error[s]' that require reversal.") (citing *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009)); *State v. Chavez-Nelson*, 882 N.W.2d 579, 587 (Minn. 2016) ("Because the district court's

error was not a violation of [the appellant's] constitutional right to counsel, we conclude that the error in this case does not fall into the very limited class of structural errors that require automatic reversal of a conviction."); *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007) ("Structural errors require automatic reversal because such errors 'call into question the very accuracy and reliability of the trial process.'") (quoting *State v. Osborne*, 715 N.W.2d 436, 448 n.8 (Minn. 2006)); *Brown*, 732 N.W.2d at 630 ("Structural errors always invalidate a conviction whether or not a timely objection to the error was made.") (citing *Sullivan v. Louisiana*, 508 U.S. 275, 276-82 (1993)); *McGurk v. Stenberg*, 163 F.3d 470, 474 (8th Cir. 1998) (structural errors "call into question the very accuracy and reliability of the trial process"); *Glossip v. Oklahoma*, 604 U.S. --, -- S. Ct. --, 2025 WL 594736, at *2-3 (Feb. 25, 2025) (holding that the prosecution "violated its constitutional obligation to correct false testimony" and ordering a new trial).

Because a structural error implicating fundamental unfairness in every case has been demonstrated, at least to a *prima facie* extent, it is totally unnecessary for Petitioner to demonstrate ineffective assistance of trial counsel or appellate counsel; the Court must grant this petition *even if* trial and/or appellate counsel were effective because it is clear that the conduct of law enforcement officers, and the State generally, deprived Petitioner of his constitutional right to due process, inhibited his counsel's ability to be constitutionally effective, and caused Petitioner to be confronted by false witnesses and evidence. Moreover, by bribing Petitioner's alibi witnesses, law enforcement investigators effectively violated Petitioner's Sixth Amendment right to have compulsory process for obtaining witnesses in his favor by causing those witnesses to provide false testimony for the purpose of obtaining a conviction and otherwise inhibited Petitioner's ability to present a complete defense. Similarly, because of the structural error, it was impossible for Petitioner to receive constitutionally effective assistance of counsel.

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C. Petitioner Received Ineffective Assistance of Trial & Appellate Counsel.

To establish a claim of ineffective assistance of counsel, a defendant must meet a two-pronged test evaluating deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *First*, it must be proven by a preponderance of the evidence that counsel's performance was so deficient that it fell below an "objective standard of reasonableness." *Strickland*, 466 U.S. at 687–88. An attorney acts within the objective standard of reasonableness when he provides his client with the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999). *Second*, it must be proven by a preponderance of the evidence that counsel's deficient performance resulted in prejudice. *Strickland*, 466 U.S. at 687. In the context of a claim of ineffective assistance of appellate counsel, a defendant "must be able to show that absent his appellate counsel's error, the outcome of his direct appeal would have been different." *Pierson*, 637 N.W.2d at 579; *quoting Dukes v. State*, 621 N.W.2d 246, 256 (Minn. 2001).

Therefore, to receive an evidentiary hearing on a postconviction claim of ineffective assistance of counsel, a petitioner is required to allege facts that would show that counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013). A petitioner must overcome the "presumption that counsel's performance fell within a wide range of reasonable" representation. *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007). When deciding whether to grant an evidentiary hearing, a postconviction court must take the facts alleged in the petition as true and construe them in the light most favorable to the petitioner. *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018).

i. Trial counsel

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Although it should be unnecessary to demonstrate ineffective assistance of trial counsel, due to the structural error implicating fundamental fairness noted above, Petitioner nonetheless submits that his trial counsel provided ineffective assistance of counsel.

Trial counsel's representation of Petitioner was objectively unreasonable in at least two key respects. First, it was unreasonable for trial counsel not to call Darlene Jones (Walton), Kentrell Anthony, and/or Demetrius O'Connor as alibi witnesses. Petitioner informed his trial counsel that he was with these individuals on December 22, 2002 at the time the murder occurred. Exhibit P-35, Petitioner's Affidavit ¶¶ 2-7, 9.

Petitioner provided his trial counsel with the contact information of Darlene and Kentrell, or at least with enough information to allow counsel to track down their contact information. *Id.* at ¶¶ 4-6.

At minimum, if trial counsel had called Ms. Anthony as an alibi witness, she would have informed the jury that police officers were pressuring and bribing her and her family members to provide false testimony, and would have told the jury that Petitioner and Johnson were at her house at 9:45 PM on December 22, 2002. *See* Exhibit P-26, Anthony's CRU Interview Tr. at 24-27, 37-38. Ms. Anthony's testimony was absolutely necessary for Petitioner to have *any* realistic chance of rebutting the false testimony presented by the State's witnesses, yet trial counsel did not call Ms. Anthony as a witness. *See also* Exhibit P-19, Anthony Aff. ¶ 12 ("In the course of the police interviews/interrogations, no one ever told me that the robbery and murder took place at about 9:45 pm on Dec. 22, 2002. If someone had done so, I would have told the police that neither Philip nor Dominick could have been involved in that crime because they were both with me at the duplex where I was living at 956 Minnehaha Ave. East in St. Paul until about 10 or 11 pm that evening.").

Similarly, if trial counsel had called Ms. Jones (Walton) as an alibi witness, she would have

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testified that Petitioner was with her at 9:45 PM on December 22, 2002, and that Johnson was with Ms. Anthony at the same time on the same date. *See* Exhibit P-18, Walton Aff. ¶¶ 2-10. Ms. Jones (Walton) would have also testified that Petitioner and Johnson left her house around 10:00 PM on December 22, 2002 with Ms. Anthony and Mr. Demetrius O'Connor, with Mr. O'Connor driving Petitioner and Johnson to The Buttery. *Id.* ¶¶ 10-12. Moreover, if counsel had called Ms. Jones (Walton) as an alibi witness, she could have confirmed that she made at 10 minute phone call to 773-783-3952 while she was with Petitioner just two hours before the murder, solidifying Petitioner's alibi with phone records. *See* Exhibit P-35, Petitioner's Affidavit ¶¶ 2-7; Exhibit P-36, Call Detail Records at 4. Had counsel called Ms. Jones (Walton) as an alibi witness, there is a significant likelihood Ms. Jones would have admitted or discussed the coercive police investigatory tactics used against her and her family, yet trial counsel did not call Ms. Jones (Walton) as a witness.

While it would have been mostly pointless to call Mr. Demetrius O'Connor as the only alibi witness, his testimony, if called by the defense, would have corroborated the alibi testimony that should have been offered by Ms. Jones (Walton) and Ms. Anthony. Failure to investigate this alibi defense and to interview and call these witnesses was ineffective assistance of counsel, and but for that professional error, the outcome would have likely been different.

It was objectively unreasonable for trial counsel to fail to present a timely alibi notice, and to not present these alibi witnesses despite having enough information prior to trial to know of the alibi and the witnesses' availability to testify. *See, e.g.*, *Upshaw v. Stephenson*, 97 F.4th 365, 371-72 (6th Cir. 2024) ("Many courts—including this one—'have found ineffective assistance of counsel in violation of the Sixth Amendment where ... a defendant's trial counsel fails to file a timely alibi notice and/or fails adequately to investigate potential alibi witnesses.'") (quoting

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Clinkscale v. Carter, 375 F.3d 430, 443 (6th Cir. 2004)); *see also Wiggins v. Smith*, 539 U.S. 510, 534 (2003) (reaffirming counsel's duty to investigate); *Williams v. Taylor*, 529 U.S. 362, 399 (2000) (same). To the extent trial counsel did not present these alibi witnesses because trial counsel did not know what they would say, it was objectively unreasonable for trial counsel not to interview these witnesses prior to trial to investigate the veracity of Petitioner's alibi claims. *E.g.*, *Upshaw*, 97 F.4th at 373-74 (affirming the district court's determination that an attorney's "failure to investigate Upshaw's alibi witnesses, and his 'failure to attempt to remedy the situation' when he missed the alibi witness deadline, constituted independent bases supporting Upshaw's ineffective assistance of counsel claim.").

Both of these errors clearly prejudiced Petitioner and constitute independent reasons to grant this petition. The effect of such errors was to prevent the jury from hearing evidence that was capable of creating reasonable doubt as to the identity of the shooter *even if* evidence of police corruption had never been introduced. The second-order effect of such errors was to remove any chance of eliciting testimony about the police corruption that occurred during the investigation.

Thus, Petitioner has satisfied both *Strickland* factors for ineffective assistance of trial counsel with respect to trial counsel's failure to call alibi witnesses.

Trial counsel representation of Petitioner was also unreasonable because trial counsel failed to introduce any alternative perpetrator evidence relating to Michael Smith. This error is made more egregious and unreasonable by the concomitant failure to investigate or call alibi witnesses. The main point of contention in Petitioner's case was the shooter's identity. Before the defense chose not to call any witnesses, trial counsel knew that Petitioner would not be testifying on counsel's advice. Trial counsel had previously obtained an order on a motion in limine allowing the defense to introduce alternative perpetrator evidence relating to Michael Smith. *See Vance I*,

714 N.W.2d at 437-40 (discussing alternative perpetrator evidence and related evidentiary rulings). Trial counsel was therefore permitted to introduce an admission made by Smith against his penal interest "that the day after the shooting Smith called Mary Rose Martinez and told her that [Smith], [Jesse] Magnuson, and [Lorenzo] Eide had committed the murder" at Sabreen's and "that Eide, Magnuson, and Smith live in South Saint Paul." *See id.* at 438. "In the end, for reasons unknown, [Petitioner's counsel] did not offer the Smith alternative-perpetrator evidence at trial."

The effect of not introducing alternative-perpetrator evidence was fatal to Petitioner's chances of acquittal, especially in the absence of any alibi witnesses and in the presence of so much false testimony. *See Bobo v. State*, 820 N.W.2d 511, 518-19 (Minn. 2012) ("Indeed, the identification of a specific alternative perpetrator is an important, powerful, and distinct part of a defendant's constitutional right to present a complete defense.") (citing *State v. Ferguson*, 804 N.W.2d 586, 590-91 (Minn. 2011)). Trial counsel's failure to introduce alternative perpetrator evidence likely stemmed from trial counsel's apparent belief during the trial that Petitioner was guilty. *See* Exhibit P-24, Wayne Jones Aff. (declarant states his "attorney Cean Shands" told him "that [Shands'] client Philip Vance was guilty and that if [Vance] would of kept his mouth closed [Vance] wouldn't of been tried"). The combined effect of failing to investigate or call alibi witnesses and failing to introduce admissible alternative perpetrator evidence was extraordinarily prejudicial to Petitioner's defense.

The cumulative effect of trial counsel's errors and prosecutorial misconduct by police officers in this case have combined to deny Petitioner his Due Process right to a fair trial. This requires reversal of the conviction and a new trial. *State v. Keeton*, 589 N.W.2d 85, 91 (Minn. 1998); *State v. Mayhorn*, 720 N.W.2d 776, 792 (Minn. 2006); *See Glossip v. Oklahoma*, 604 U.S.

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--, -- S. Ct. --, 2025 WL 594736, at *2-3 (Feb. 25, 2025) (holding that the prosecution "violated its constitutional obligation to correct false testimony" and ordering a new trial).

ii. Appellate counsel

The United States and Minnesota constitutions guarantee a criminal defendant's right to effective assistance of appellate counsel. *See Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006) (Holding that a defendant's right to the assistance of counsel under Article I, section 6 of the Minnesota Constitution extends to one review of a criminal conviction); *see also Pierson v. State*, 637 N.W.2d 571, 579 (Minn. 2002) (acknowledging that the Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the right to effective assistance of appellate counsel and citing to *Evitts v. Lucey*, 469 U.S. 387, 396 (1985)).

Appellate counsel is not required to raise all possible claims on direct appeal, and counsel need not raise a claim if she "could have legitimately concluded that it would not prevail." *Cooper v. State*, 745 N.W.2d 188, 193 (Minn. 2008). Therefore, representation by appellate counsel does not fall below an objective standard of reasonableness if counsel could have legitimately concluded that a claim would not have prevailed. *Arredondo*, 754 N.W.2d at 571. To determine whether an appellate counsel could have legitimately concluded that a claim would not prevail, an examination of the merits of that claim is necessary. *Id.*

Although it should be unnecessary to demonstrate ineffective assistance of appellate counsel, due to the structural error implicating fundamental fairness noted above, Petitioner nonetheless submits that his appellate counsel provided ineffective assistance of counsel.

Appellate counsel's representation of Petitioner was objectively unreasonable in at least three key respects. First, it was unreasonable for appellate counsel not to argue that Petitioner's trial counsel was ineffective for failing preserve an alibi defense by timely noticing the defense.

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See Exhibit P-35, Petitioner's Affidavit ¶¶ 3-7, 9. Second, it was unreasonable for appellate counsel not to argue that trial counsel was ineffective for failing to call Darlene Jones (Walton), Kentrell Anthony, and/or Demetrius O'Connor as alibi witnesses. *See id.* Petitioner informed his appellate counsel that he was with these individuals on December 22, 2002 at the time the murder occurred. *See id.* Third, it was unreasonable for appellate counsel not to argue that Petitioner's trial counsel was ineffective for failing to introduce admissible alternative perpetrator evidence relating to Michael Smith. *See id.* at ¶¶ 2-9.

With respect to this second point, it is notable that counsel *did* argue that the trial court abused its discretion by disallowing alternative perpetrator evidence relating to Lorenzo Eide and Jesse Magnuson. *See Vance I*, 714 N.W.2d at 436-40. In response, the Minnesota Supreme Court concluded that "the exclusion of evidence of Eide as an alternative perpetrator." *Id.* at 439. The evidence that was improperly excluded was Eide's statement to Samantha O'Reilly wherein Eide told her "he would do to her what he did to the guy at Sabreen's" after O'Reilly saw Eide the day after the murder and noted Eide "had a gun and a 'couple of hundred dollars worth of drugs the very next night after the shooting.'" *Id.* Although the Minnesota Supreme Court determined that the trial court's error in disallowing the alternative perpetrator evidence relating to Eide was harmless, one is left to wonder whether the Court would have reached the same conclusion if appellate counsel had argued that trial counsel was ineffective for failing to introduce the alternative perpetrator evidence relating to Smith. Had such evidence been introduced, the likelihood of the trial court's evidentiary ruling constituting harmless error would have decreased significantly because then the alternative perpetrator evidence relating to Eide would have strengthened and corroborated the alternative perpetrator evidence relating to Smith that could and should have been introduced. This is doubly true because the Minnesota Supreme Court only

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determined that the error was harmless due to Petitioner's alleged "admissions to a number of witnesses[, many of whom have since recanted,] that he committed the murder. *Id.*

For all of the reasons stated in the previous sections, but with particular emphasis here, an appellate attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances would have both identified the ineffective assistance of trial counsel, discussed it with his client, and raised it on direct appeal. As detailed above, the claim would have been meritorious had it been raised, and therefore appellate counsel could not have legitimately concluded that it would not prevail. Moreover, there was no strategic advantage gained by appellate counsel in not raising the issue, as the ineffective assistance of counsel claim would have been congruent with appellate counsel's alternative perpetrator evidentiary argument and related sufficiency of the evidence argument relating to the identity of the shooter. Had counsel raised the issue, there is more than a reasonable probability that Petitioner's convictions would have been reversed. Therefore, Petitioner has alleged facts sufficient to obtain an evidentiary hearing on his claim. After his allegations are proven at an evidentiary hearing, a reversal of his conviction will not only be warranted, but will be necessary to ensure Petitioner's right to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 6 of the Minnesota Constitution, and the right to a fair trial under the Due Process Clause of the United States Constitution.

CONCLUSION

For the reasons articulated *supra*, Petitioner respectfully requests that this Court grant him the relief requested in his petition for postconviction relief.

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Respectfully submitted,

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