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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

Philip Randall Vance,

Petitioner,

STATE'S ANSWER TO FIFTH POSTCONVICTION PETITION

vs.

State of Minnesota,

Court File No. 19-K6-04-000736

Respondent.

TO: THE HONORABLE MICHAEL J. MAYER, DAKOTA COUNTY DISTRICT COURT JUDGE; AND DEFENDANT ABOVE-NAMED AND HIS ATTORNEY, NICO RATKOWSKI, ATTORNEY AT LAW, 332 MINNESOTA STREET, SUITE W1610, ST. PAUL, MN 55101

INTRODUCTION

Petitioner has filed his fifth petition for postconviction relief. Most of the claims have been previously raised, or were known of at the time of one of his many prior petitions and appeals, and should have been raised, and, accordingly, are time barred by *State v. Knaffla,* 309 Minn. 246, 243 N.W.2d 737 (1976). Additionally, at Petitioner's request, the Minnesota Attorney General's Conviction Review Unit (CRU) conducted a years-long investigation into all of Petitioner's claims, whether new or *Knaffla* barred. After a thorough and exhaustive investigation, the CRU concluded that his claims were not supported by reliable evidence and determined it could not recommend his conviction be vacated. The 111 page report and supporting documentation is attached for the court, as

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State's Exhibits 1, 2 and 3, as it directly addresses Petitioner's claims and was done at Petitioner's request. His fifth postconviction petition should be summarily denied.

STATEMENT OF FACTS

Trial

On Sunday, December 22, 2002, at approximately 9:43 p.m., officers of the South St. Paul Police Department were dispatched to Sabreens Market (hereafter "Sabreens") located in South St. Paul, Minnesota, upon a report of a robbery in progress. (Trial Transcript, hereafter "TT", 89). Upon reaching the store, officers found a deceased adult male lying on the floor behind the counter with gunshot wounds to his head. (TT 90-92). The victim was identified as Khaled Al-Bakri, the brother of the store owner, Tariq Bakkri. According to Tariq Bakkri, between $625.00 and $650.00 was stolen from the cash register. (TT 57). Also taken were lottery tickets, a cordless phone, cigarettes, and white plastic bags. (TT 58-65). According to the cash register tape, the register was last opened at 9:35 p.m. for a "no sale." (TT 67).

Officers subsequently searched the store for evidence. In doing so, officers found four .22 caliber brass cartridge casings behind the counter near where the victim was found. (TT 144). Three bullets were recovered, one inside the store near the victim and two from the victim's head. (TT 150-151). Dr. Lindsey Thomas performed an autopsy of the victim. (TT 168). Dr. Thomas determined that the victim's death was caused by two gunshot wounds to the victim's head and ruled the manner of death to be a homicide. (TT 169 and 176). According to Dr. Thomas, both bullets went from back to front and went very slightly

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from down to up. (TT 174). Given the trajectory of the bullets, Dr. Thomas opined that the victim was either sitting, kneeling, or lying down when he was shot. (TT 175). Dr. Thomas also noted that the victim had no bruising or scrapes to his face which was consistent with her opinion that the victim was positioned close to the floor at the time he was shot. (TT 175).

Kurt Moline, a forensic scientist in the firearms and toolmarks section of the Minnesota Bureau of Criminal Apprehension Laboratory, examined the four cartridge casings recovered at the crime scene. (TT 281). Mr. Moline determined that the four cartridge casings were .22 caliber and were fired from the same gun. (TT 281). Mr. Moline also examined the bullet that was recovered at the crime scene and determined that it was consistent with a .22 caliber bullet. (TT 284). Based on his examination, Mr. Moline opined that the bullet was fired from a gun barrel that was .22 caliber in diameter. (TT 284).

Kathleen Johnson testified that on December 22, 2002, she drove from her friends' residence in South St. Paul to Sabreens to purchase cigarettes. (TT 96). Ms. Johnson arrived at the store at approximately 9:41 p.m. (TT 97). Ms. Johnson parked in front of the store, but was unable to see inside because of the advertisements posted in the windows. (TT 97-98). Ms. Johnson entered the store and saw a male standing behind the counter who was quickly taking money out of the cash register. (TT 98). The male was wearing a black mask that covered his face. (TT 98-99). Upon seeing Ms. Johnson, the male pulled up his shirt and moved his hand as if he were reaching for a gun in his waistband. (TT 99). Ms. Johnson heard the male yell something as if alerting a second person in the store. (TT

99). Ms. Johnson screamed, ran from the store and got inside her car. (TT 99, 101). Shortly thereafter, Ms. Johnson observed two men run out the front door of the store and around the side of the building towards the back. (TT 101, 102). Ms. Johnson observed that both men were wearing black masks that covered their faces and were wearing big, baggy pants and hooded sweatshirts. (TT 101, 102). Ms. Johnson described both men as having slender builds and that one was a few inches taller than the other. (TT 101). Petitioner is 5'9" and Dominick Johnson is 5'7". (TT 344-45). Ms. Johnson left Sabreens and returned to her friends' residence. (TT 103). One of Ms. Johnson's friends called 911. (TT 103).

Three juveniles testified including Samantha Renville (TT 116-124), her brother Matthew Renville (TT 106-115), and Dale Marx, Jr. (TT 125-131). These witnesses related the following facts. On the evening of December 22, 2002, the three juveniles were at the Renville residence in South St. Paul when they decided to walk to Sabreens. (TT 108). The three left the residence at approximately 9:30 p.m. and walked to Sabreens via an alley located behind Sabreens. (TT 109, 117, 127). As they approached Sabreens, they noticed a car parked in the alley hind Sabreens. (TT 110, 118, 127). The Renvilles noted that the car was a medium sized 4-door. (TT 110, 112, 118). As they approached Sabreens, all three saw two men run out to the alley from between Sabreens and a neighboring garage. The men ran to the parked car. (TT 111, 120, 127). As the men neared the car, the Renvilles heard them yell, "Go, hurry, hurry" or words to that effect. (TT 112, 120). Samantha Renville described both men as wearing loose fitting jeans and hooded sweatshirts. (TT 121). Matthew Renville described that both men were wearing dark,

baggy clothing. (TT 112). Matthew Renville and Dale Marx saw the two men enter the car via the front passenger door and a rear passenger door. (TT 112, 128). Matthew Renville and Dale Marx observed the car speed off without its headlights illuminated immediately after the two men entered the car. (TT 113, 128).

The juveniles entered Sabreens and Mr. Marx walked around the store looking for the victim, with whom who he was well acquainted. (TT 129). Mr. Marx observed that the cash register was open and looked behind the counter where he observed the victim on the floor lying face down (TT 129-30). The victim appeared to be dead. (TT 130). After finding the victim, the juveniles ran from the store, went to Mr. Marx's residence located across the street from Sabreens and called 911. (TT 130-31).

Melissa Stites testified and related the following facts. (TT 198-219). On the evening of December 22, 2002, Ms. Stites was working as a bartender at the Capitol City Market Café located in the Radisson Hotel in St. Paul and worked from approximately 4:30 p.m. to 10:00 p.m. on that date. (TT 199) The café was commonly referred to as the "Radisson Bar." (TT 199). At approximately 7:30 p.m., two men known to Ms. Stites their street names of "Florida" and "Stacks" entered the bar. (TT 199). Ms. Stites subsequently identified "Florida" as Petitioner and "Stacks" as Dominick Johnson. (TT 199-202). There was a third male sitting with Petitioner and Johnson who was unknown to Ms. Stites. (TT 203). Ms. Stites observed that the three men were whispering and acting secretive and that Petitioner and Johnson were not as friendly with her that evening as they usually were. (TT 203-04). Ms. Stites waited on the three men and at one point asked them "What's going on?" (TT 204). In response, Petitioner told her that they were "getting

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their plan on." (TT 204). Ms. Stites observed the three men leave the bar approximately twenty (20) to thirty (30) minutes after their arrival. (i.e., between 7:50 p.m. and 8:00 p.m.). (TT 204). As they were leaving, Ms. Stites commented to Petitioner that tips were low that night. (TT 205). In response, Petitioner stated, "Don't worry, Baby, when I get back, there's going to plenty of money." (TT 205). Believing that the three men had been planning a robbery, Ms. Stites called Officer John McManus of the Minnesota Gang Strike Force on December 23, 2002, and reported to him her interactions with the three men. (TT 205).

John Martin testified and related the following facts. On December 22, 2002, Mr. Martin met Petitioner and Johnson on Sixth Street and Minnesota in downtown St. Paul. (TT 183). The three men went to the Radisson Bar and arrived there sometime between 7:00 p.m. and 8:00 p.m. (TT 183). While sitting together at a table, Petitioner and Johnson discussed how they were going to come up with extra money to buy Christmas presents for their children. (TT 183-84). Petitioner and Johnson did not discuss plans for a robbery, but they did mention that they were going to South St. Paul that evening. (TT 184-85). According to Mr. Martin, as the three of them left the bar together at approximately 8:30 p.m., Johnson called "Nicole" and "Yvonne." (TT 184-86). Mr. Martin was familiar with who "Nicole" and "Yvonne" were because he had previously met them. (TT 185). After leaving the bar, Mr. Martin walked to a bus stop. (TT 187). Petitioner and Johnson walked over to another bus stop. (TT 188). While waiting for the bus, Mr. Martin saw a dark blue, 4-door Corsica car turn a corner. "Nicole" was driving the car and "Yvonne" was a passenger. (TT 188-191). After Mr. Martin got on the bus, he saw the car again and noticed

that there were additional people inside it. (TT 189). "Nicole" was subsequently identified as Nicole Rauschnot and "Yvonne" was subsequently identified as Yvonne White. (TT 321-22). At the time, Ms. Rauschnot was the owner of a dark blue, 4-door, Chevy Corsica. (TT 322).

Colleen McManus testified and related the following facts. (TT 220-44). Ms. McManus was the night manager at The Buttery bar in St. Paul, a position she had held approximately two years prior to December 22, 2002. (TT 220). During the course of her employment at the bar, she came to know Petitioner and Dominick Johnson because they would come into the bar three or four times a week. (TT 221). Ms. McManus worked the night of December 22, 2002, and started her shift at 7:00 p.m. (TT 222). At approximately 8:15 p.m., Ms. McManus left the bar and went home for a period of time. (TT 222). Ms. McManus returned to the bar between 10:15 p.m. and 10:30 p.m. (TT 222). As she was driving up to the bar, Ms. McManus observed Petitioner and Johnson exit a mid-sized, 4-door automobile. (TT 222-23). After parking her car, Ms. McManus walked along side the bar and looked inside the window to see who was inside. (TT 224). In doing so, Ms. McManus observed Petitioner and Johnson inside the bar speaking to a group of people. (TT 238). One of the members of the group was Maynard Cross. (TT 238).

Ms. McManus entered the bar and spoke briefly with Petitioner. (TT 224). Petitioner asked her not to "throw him out" as he had been asked to leave the bar approximately two weeks prior. (TT 224). Ms. McManus described that Petitioner was wearing a hooded sweatshirt under a letter jacket, dark blue pants, and new tennis shoes. (TT 225). Ms. McManus described that Johnson was wearing a hooded sweatshirt under

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a blue colored Starter jacket, as well as dark jeans and white tennis shoes. (TT 225).

Ms. McManus left the bar area to hang up her coat. (TT 224). After doing so, she returned to the bar and spoke to Petitioner and Johnson. (TT 225). Ms. McManus observed that both Petitioner and Johnson were very nervous. (TT 225). Johnson was hanging onto Petitioner's arm and both men appeared to be very uncomfortable and skittish. (TT 225). Ms. McManus asked Petitioner what he was doing in the bar in light of the fact that he had been kicked out two weeks prior. (TT 226). Petitioner asked Ms. McManus no to kick him out because he was leaving the area and had just wanted to talk to some of the guys that were sitting at the bar. (TT 226). Ms. McManus observed that Petitioner was upset and that his voice was quaking as he spoke. (TT 226). Ms. McManus asked Petitioner what was wrong. (TT 226). In response, Petitioner stated, "I really fucked up this time." (TT 225). Ms. McManus replied that, "It couldn't have been that bad." (TT 226). Petitioner told Ms. McManus, "Oh yeah, it was. I really did it this time. I did it this time." (TT 226). At that point, the conversation was interrupted when Maynard Cross yelled across the bar to Petitioner telling him to shut his mouth. (TT 226-27, 235).

Following the interruption, Ms. McManus and Petitioner continued their conversation. While talking, Petitioner began to cry which Ms. McManus found "incredibly unusual." (TT 227). Ms. McManus told Petitioner that he did not appear to be himself and asked him what he could have possibly done. (TT 227). In response, Petitioner told her that he had "really screwed up," that he "had to get out of here," and that he "really fucked up this time." (TT 227). Ms. McManus asked Petitioner what he could "possibly have done that would have been that bad." (TT 227). Petitioner told her, "Well, I didn't

mean for it to happen, it wasn't supposed to happen that way." (TT 227). As Petitioner made this comment, he reached down in his jacket and pulled out his hand as if pulling out a gun. (TT 228). With his hand, Petitioner mimicked that he shot a gun. (TT 228). Ms. McManus asked Petitioner if he had shot somebody to which Petitioner replied, "It wasn't supposed to happen like that. It wasn't supposed to happen like that." (TT 228). Following this conversation with Petitioner, Ms. McManus called her brother, John McManus, and told him about her conversation with Petitioner. (TT 230). During subsequent interviews of Petitioner, he initially denied making any type of admissions to Ms. McManus, but later admitted that he had made the statements but did so to garner sympathy from Ms. McManus for a free drink. (*See* Trial Exhibit 36-C, pp. 32-33 and 71-73).

While at The Buttery on the evening of December 22, 2002, Petitioner also had a conversation with Eric Griffin. Mr. Griffin had known Petitioner for approximately two years and would see him approximately three to four times per week. (TT 390-91). On the evening of December 22, 2002, Mr. Griffin went to The Buttery arriving at approximately 10:00 p.m. (TT 391). Mr. Griffin saw Petitioner and Johnson enter the bar after he had arrived. (TT 392). Mr. Griffin observed that Petitioner was wearing a black hooded sweatshirt and loose fitting, dark colored blue jeans. (TT 392). While in the bar, Mr. Griffin had contact with Petitioner and described Petitioner's demeanor as being "wild." (TT 392). Mr. Griffin had a conversation with Petitioner during which Petitioner told Mr. Griffin that he (Petitioner) had committed a robbery, that it had gone bad, and that he had "fucked him up." (TT 393). Petitioner told Mr. Griffin that he had committed the robbery in South St. Paul. (TT 393).

On the morning of December 23, 2002, John McManus advised the South St. Paul Police Department of the information that had been reported to him by Melissa Stites and Colleen McManus. (TT 297). The South St. Paul Police Department determined that the shooting at Sabreens had been the only reported shooting on December 22, 2002. (TT 297).

Ms. McManus had a subsequent encounter with Petitioner at The Buttery on or about December 29, 2002. (TT 231). This was the first time Ms. McManus had seen Petitioner since speaking with him on December 22/23. 2002. (TT 231). During this encounter, Ms. McManus asked Petitioner how his Christmas had been. (TT 231). Petitioner told Ms. McManus that his Christmas was nice and described to her how he had spent approximately $400.00 to $450.00 in purchasing presents for his children. (TT 231). Ms. McManus knew that the last employment Petitioner had was at United Hospital. (TT 243). Petitioner started that job on December 6, 2002, and quit approximately four days later. (TT 243). During the course of his interviews, Petitioner indicated that he had been unemployed for approximately one year. (*See* Trial Exhibit 36-C, p. 28).

In early January 2003, the South St. Paul Police Department and the Minnesota Gang Strike Force coordinated an undercover operation utilizing Melissa Stites. On January 3, 2003, arrangements were made for Ms. Stites to meet Petitioner for the purpose of purchasing a gun from him. (TT 205). Ms. Stites was equipped with an electronic monitoring device to enable officers to monitor the meeting. (TT 206, 247). The meeting was not recorded, due to sound issues. (TT 249-50). On that date, Ms. Stites went to The Buttery and met up with Petitioner. (TT 247). Ms. Stites and Petitioner subsequently drove

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together to The Lab, another bar located in St. Paul. (TT 248). During her contact with Petitioner, Ms. Stites asked Petitioner if he owned any guns and if he would be willing to teach her to shoot." (TT 249). Petitioner told Ms. Stites that he had four guns and that he would be willing to teach her to shoot. (TT 249). Ms. Stites next asked Petitioner if he had ever used a gun to shoot anybody. (TT 249). Petitioner replied that he had, approximately two weeks prior on the south side. (TT 207, 249). Ms. Stites asked Petitioner what he had done. (TT 249). Petitioner told her that he "shot a guy in the back five times." (TT 249). Ms. Stites then inquired of Petitioner whether Petitioner checked to see if the guy was dead. (TT 249). Petitioner told her "No, I just kept going." (TT 249). Petitioner denied that he ever made such statements to Ms. Stites despite the fact that several law enforcement officers had been monitoring the conversation and heard his admission. (Trial Exhibit No. 37C, p. 123).

Later that evening, Ms. Stites and Petitioner drove to the Jacqueline Ezell residence in St. Paul. (TT 291). At the time, Petitioner was dating Ms. Ezell's granddaughter, Darlene Jones (now Walton). (TT 291). Petitioner spoke to Ms. Ezell upon reaching the residence and asked to enter the residence to retrieve something from Ms. Jones' bedroom. (TT 293) Ms. Ezell obtained the item for Petitioner and gave it to him, after which Petitioner left the residence. (TT 293). Approximately one-half hour later, Dominick Johnson came to the residence and spoke to Darlene Jones. (TT 294). This conversation occurred in the presence of Ms. Ezell. (TT 294). Johnson asked Ms. Jones if she had seen Petitioner to which both Ms. Ezell and Ms. Jones told him that Petitioner had just been there. (TT 294). Johnson then told Ms. Jones to relay a message to Petitioner, "When you

see Florida, you tell him that he was bogus. And he's no longer – I don't want nothing to do with him, he's no longer my friend. He played me wrong. And I just want my money. Be sure to tell him that." (TT 294).

On the Saturday immediately preceding Super Bowl Sunday in January 2003, Petitioner was at the home of Regina Hagerman. (TT 381). Petitioner went to Ms. Hagerman's residence with Darlene Jones. Ms. Jones is Ms. Hagerman's niece. (TT 381). While at the residence, Petitioner told Ms. Hagerman that he was under investigation for murder, that he and a friend had committed the murder, but that he had a good lawyer and the police had nothing on him. (TT 385).

Petitioner and Johnson were both incarcerated in the Ramsey County Workhouse in early February 2003. (TT 445). Geronimo Estrada was incarcerated during that same time frame and was housed in the same dorm as Petitioner. (TT 446). While in the dorm together on February 9, 2003, Petitioner asked Mr. Estrada if there was a statute of limitations on homicide. (TT 447, 457). Petitioner commented that he was being harassed by some cops who were investigating him for a homicide. (TT 447). Petitioner further commented that the cops were not going to catch him because they did not have anything on him. (TT 447). Petitioner made additional comments about the homicide telling Mr. Estrada that he laid the victim down and "capped his ass." (TT 449). Petitioner also stated that the victim, "Cried like a bitch before he died." (TT 449). Petitioner told Mr. Estrada that the victim was hysterical and crying before he shot him and that the victim was pleading with Petitioner, "Please don't hurt me." (TT 450). Petitioner indicated that he shot the victim one or two times in the head. (TT 451-52). During this conversation,

Petitioner indicated that the incident had occurred at the store and that he and another person had entered the store. (TT 451). Petitioner stated that upon entering the store, he immediately went behind the counter and grabbed the victim while the second person went around the store grabbing things. (TT 459). Petitioner also stated that at the time of the commission of the crime, he and the second person were wearing masks that covered their entire faces except their eyes. (TT 457-58).

Later that same day, Petitioner again spoke about the crime in front of Mr. Estrada. This conversation took place in the gym of the Ramsey County Workhouse. (TT 452, 457). Both Petitioner and Johnson were present. (TT 452). During the course of this conversation, Mr. Estrada ascertained that Johnson was the second person who committed the crime with Petitioner, given comments made by Johnson. (TT 452-53). During this second conversation, Petitioner said that they took a number of items during the incident including cash, lottery tickets, baggies, cigarettes, and a phone. (TT 453).

Petitioner and Isaac Hodge were incarcerated together in the Sherburne County Jail from April 21, 2003, to July 18, 2003. (TT 469). One day Petitioner saw Maynard Cross' picture in the paper and told Mr. Hodge that Cross had put Petitioner's "name in some bullshit." (TT 402). Petitioner went on to tell Mr. Hodge that Petitioner had been involved in a murder-robbery. (TT 404, 405). Petitioner also told Mr. Hodge that the murder "wasn't worth it" given the amount of money that was taken. (TT 406).

Petitioner and Trevor Crawford were incarcerated together in the Sherburne County Jail from April 21, 2003, through December 19, 2003. (TT 469). Petitioner voiced his concern to Mr. Crawford that Maynard Cross was going to testify against Petitioner. (TT

410). Petitioner raised this concern after seeing Mr. Cross' picture in the paper. (TT 409-10). Petitioner told Mr. Crawford that he and another person shot a guy at a grocery store. (TT 411).

Petitioner and John Nunn were incarcerated together at the Sherburne County Jail from April 21, 2003, through June 9, 2003, and again at the Sandstone Correctional Facility from December 19, 2003, through July 18, 2003. (TT 469). While together in the Sandstone Correctional Facility, Petitioner told Mr. Nunn that he had committed a robbery, that somebody got "murked" during the robbery, and that Petitioner was afraid that the gun used would be found. (TT 416-17). Mr. Nunn's interpretation of "murked" was that somebody got hurt, was shot at, or was shot and killed. (TT 417). Petitioner told Mr. Nunn that the gun was a "twenty-two." (TT 417).

Petitioner and Dontay Reese were incarcerated together in the Dakota County Jail from March 18, 2004, through March 20, 2004, and again from June 22, 2004, through August 4, 2004. (TT 469). Mr. Reese had known Petitioner for approximately five to six years prior to their incarceration together. (TT 431). Mr. Reese had also known Dominick Johnson for four to five years. (TT 432). Mr. Reese described that Petitioner and Johnson were "very close" and that the two men were "like brothers." (TT 432).

During the course of several conversations, Petitioner described his involvement in the homicide to Reese. (TT 433). During the first conversation, Petitioner told Mr. Reese that Johnson said Petitioner's name while they were inside the store and that "it wasn't supposed to go down like that." (TT 434-35). Petitioner told Mr. Reese that Petitioner was "zooted" (i.e. drunk), that he "gave the dude five," that they "got the money and got

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it," and that the girls "dropped us back off downtown." (TT 435).

During a second conversation, Petitioner told Mr. Reese that prior to the commission of the crime, Petitioner, Johnson, and "John" were at the Radisson Bar and that while there, Petitioner and Johnson called two girls for a ride. (TT 436). Mr. Reese recalled the girls' names to be Yvonne and Tiffany or Nicky. (TT 436).

During subsequent conversations, Petitioner told Mr. Reese that he and Johnson got a ride to a "mom-and-pop" store, that Petitioner and Johnson entered the store, that Johnson yelled Petitioner's name while in the store, that Petitioner "gave the dude five to the back of the head," and that they took the money and left. (TT 438). As to the type of weapon used, Petitioner told Mr. Reese that Petitioner used a "deuce-deuce" which Mr. Reese interpreted to mean a "twenty-two handgun." (TT 439). Petitioner told Mr. Reese that afterwards, the two girls dropped Petitioner and Johnson off at The Buttery. (TT 438). As to the vehicle that was used, Mr. Reese recalled Petitioner telling him it was a blue Corsica or Accord. (TT 438-39).

Several interviews were conducted of Petitioner during the course of the investigation. The interviews were conducted on the following dates: (1) January 15, 2003; (*See* Trial Exhibit Nos. 36A, 36B, 36C); (2) January 16, 2003; (*See* Trial Exhibit Nos. 37A, 37B, 37C); (3) January 23, 2003; (*See* Trial Exhibit Nos. 38A, 38B – this was a telephone call initiated by Petitioner); (4) April 17, 2003; (*See* Trial Exhibit Nos. 39A, 39B); (5) April 18, 2003; (*See* Trial Exhibit Nos. 40A, 40B); (6) April 21, 2003; (*See* Trial Exhibit Nos. 42A, 42B); and June 18, 2003. (*See* Trial Exhibit Nos. 43A, 43B). Petitioner did not provide consistent answers as to his whereabouts during the time frame from when he left

the Radisson Bar until he arrived at The Buttery. (*See e.g.* Trial Exhibit No. 37C). Petitioner stated that he was with Johnson the entire evening. (Trial Exhibit No. 37C, p. 123). Throughout all the interviews, Petitioner denied any involvement in the homicide and denied having any information regarding the crime.

Petitioner was found guilty and sentenced to life in prison in October 2004.

Postconviction History

Appeal to the Minnesota Supreme Court- 2005

In his direct appeal, Petitioner's appellate counsel argued that the trial court erred when it denied Petitioner's motion to admit reverse *Spreigl* evidence related to Maynard Cross, and alternative perpetrator evidence related to Lorenzo Eide, Michael Smith and Jesse Magnuson. *State v. Vance*, 714 N.W.2d 428, 433 (Minn. 2006). He also claimed trial error by allowing testimony that witnesses felt threatened or intimidated, and trial error for allowing unredacted recordings of statements law enforcement took from him. *Id.* In his *pro se* brief, Petitioner cited the recantation of Trevor Crawford in support of his appeal as well, in addition to prosecutor misconduct and erroneous exclusion of a letter he wished to admit. *Id.* 444. The supreme court affirmed his conviction and held that it was not error for the trial court to deny admitting evidence of Maynard Cross as an alternative perpetrator, and it was harmless error to exclude alternative perpetrator evidence regarding Eide, citing the strength of the incriminating evidence against the Petitioner. *Id.* 437, 440. The supreme court noted that the trial court thought there was sufficient evidence to support an alternative perpetrator theory re: Smith, but Petitioner did not offer that evidence at trial. *Id.* 438.

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First Postconviction Petition- 2007

After the supreme court issued its decision, Petitioner filed his first postconviction petition. He claimed errors by the trial court and the prosecutor, including a failure to disclose exculpatory evidence. He also claimed trial counsel was ineffective for failing to call credible defense witnesses, failure to do basic investigation to reveal surveillance recording, and failure to object to certain actions by the prosecutor. He also raised a claim that appellate counsel was ineffective for not raising fundamental errors on appeal. Finally, he raised the recantations of two trial witnesses, John Martin and Dontay Reese. His petition was denied, and the supreme court affirmed the denial of postconviction relief in an opinion dated July 10, 2008. *Vance v. State*, 752 N.W.2d 509 (Minn. 2008). The supreme court held that Petitioner did not show ineffective assistance of trial counsel, and therefore could not show ineffective assistance of appellate counsel. *Id*. 514. The court also held that he was not entitled to a hearing based on his claim of recanted trial testimony because it lacked a sufficient indicia of trustworthiness, having come several years after the murder, and that the outcome of the trial would not have been different due to the numerous witnesses against him. *Id.* 514-515.

Petition for a Writ of Habeas Corpus- Federal District Court- 2008

Petitioner next filed a writ of habeas corpus in Federal District Court, alleging the same issues he had raised before, including the following.

- The trial court's refusal to admit evidence of Petitioner's witnesses, and alternative perpetrator evidence;
- Admission of perjured testimony from witnesses;
- *Brady* disclosure violation by the prosecutor;
- Prosecutorial misconduct during closing argument;

- Prosecutor's misstatement and misuse of evidence;
- Denial of the right of appeal; and
- Ineffective assistance of counsel for failing to object to evidence, not calling witnesses, not communicating with Petitioner, not investigating, and not properly cross examining witnesses.

The Federal District Court denied this third request for relief on February 5, 2009, finding that he his claims were either unproven, or not subject to federal habeas relief because they were procedurally barred. The federal court determined that Petitioner's petition must be denied, that there was no need for an evidentiary hearing, and appointment of counsel was not warranted.

Third Postconviction Petition- May 2019

Petitioner filed his third postconviction petition. Petitioner again raised a trial issue, and claimed ineffective assistance of trial counsel because there was no recording recovered of Petitioner's January 3, 2003 interaction with Melissa Stites, where he admitted to shooting someone multiple times on the south side. Petitioner filed a 32 page memorandum, claiming several errors, including that numerous witnesses should have been allowed to testify in his defense to support an alternative perpetrator defense, prosecutorial error, discovery violations, newly discovered evidence, and improper admission of evidence. On June 7, 2019, his petition was denied without an evidentiary hearing.

Fourth Postconviction Petition- August 2019

Petitioner filed his fourth postconviction petition. Petitioner filed the same claims that were denied in June 2019. The trial court again denied his petition without a hearing on August 19, 2029.

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Fifth Postconviction Petition and CRU Involvement- 2021-2025

Petitioner filed his fifth postconviction petition on December 14, 2022. Prior to that filing, on July 30, 2021, Petitioner filed an application with the CRU requesting it review his conviction. State's Ex. 1, p. 1. He acknowledged in his application that the CRU does not represent him, but could assist him by cooperatively investigating his case and recommending that action be taken to correct an injustice. *See* State's Ex. 2, Application to CRU. He specifically asked that the State agree to toll the statute of limitations on his postconviction petition until the CRU completed its investigation, and requested that he be able to submit his memorandum 45 days after completion of the CRU's investigation. Index #27. The State agreed, provided that it did not waive any arguments related to affidavits or arguments that were known to Petitioner and were argued, or should have been argued, in one of his earlier petitions or on appeal. *Id.*

During the investigation requested by Petitioner, the CRU and Petitioner's legal team met several times. State's Ex. 1, p. 69. In June of 2023, the CRU met with Petitioner's legal team and informed them that after a couple of years of review of the evidence, follow up with witnesses, and investigation, it had not found convincing evidence of his innocence and instead found further inconsistencies in Petitioner's narrative. *Id.* 85. After that, Petitioner's team filed an amended petition for postconviction relief and accompanying memorandum on February 27, 2025. Index #30. In the amended petition, Petitioner alleged his conviction was defective for the following reasons.

1.) Melissa Stites' affidavit, signed in 2021, proved she provided false testimony at Petitioner's 2004 trial.

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2.) The unnotarized affidavit purported to be signed by Regina Hagerman in 2021 proved that she provided false testimony at Petitioner's 2004 trial.

3.) The affidavits procured from Maynard Cross in 2006, 2021 and 2024 proved he provided false testimony before the grand jury that indicted Petitioner.

4.) The indictment charging Petitioner with first degree murder relied on false testimony from Maynard Cross, Regina Hagerman, and Jacqueline Ezell.

5.) The 2007 affidavit of Dontay Reese proves that he provided false testimony in Petitioner's 2004 trial.

6.) The affidavit signed by Trevor Crawford in 2010 proves that he provided false testimony at Petitioner's 2004 trial.

7.) The State failed to disclose *Brady/Giglio* evidence.

8.) Petitioner was prevented from presenting alibi witnesses, which was the result of witness tampering by police and ineffective assistance of counsel.

9.) Ineffective assistance of both trial and appellant counsel for numerous reasons, including failure of trial counsel to present alternative perpetrator evidence re: Michael Smith and/or Lorenzo Eide, failure to investigate, develop, or call alibi witnesses, and failure of appellate counsel to argue these failures on appeal.[1]

Id. Additional arguments are made in Petitioner's memorandum in support of postconviction relief (Index #31) and will be addressed below. Petitioner has made nearly identical claims in both his fifth petition for postconviction relief and in his request to the

[1] Most of the claims are either time barred or barred by *State v. Knaffla*, or lack the required trustworthiness to warrant a hearing. This will be discussed below.

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Minnesota Attorney General's CRU for an independent investigation into his conviction. The CRU investigated all of Petitioner's claims, communicating with Petitioner's legal team throughout. The CRU ultimately concluded there was a lack of reliable evidence to support Petitioner's claim of innocence.

In his fifth postconviction petition, Petitioner seeks an evidentiary hearing and new trial. All of Petitioner's claims are time barred or barred by *State v. Knaffla*. Additionally, any "newly discovered evidence" claims are both doubtful and untrustworthy, and would not affect the outcome of his trial. Accordingly, this court should deny his fifth request for postconviction relief without an evidentiary hearing.

ARGUMENT

I. The most recent affidavits submitted by Petitioner are procedurally barred, untrustworthy and do not justify an evidentiary hearing or postconviction relief.

In a petition for postconviction relief, the petitioner must allege facts that, if proven, would entitle him to the relief he seeks. If the petitioner fails to do that, then the petition may be summarily denied. Minn. Stat. 590.04, subd. 1 (2024). The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner, and may summarily deny a petition when the issues raised in it have previously been decided by the court of appeals or the supreme court in the same case. Minn. Stat. 590.04, subd. 3 (2024). Additionally, petitions for postconviction relief must be brought within two years unless an exception applies. See Minn. Stat. 590.01, subd. 4 (2024). One such exception is if the Petitioner claims he has newly discovered evidence that could not have been

ascertained within two years by the exercise of due diligence by Petitioner or counsel. *Id.,* subd. 4(b)(2)(2024)

"Once a direct appeal has been taken, all claims raised in that appeal, all claims known at the time of that appeal and all claims that should have been known at the time of the appeal will not be considered in a subsequent petition for postconviction relief." *Vance v. State,* 752 N.W.2d 509, 513 (Minn. 2008), citing *Leake v. State*, 737 NW2d 531, 535 (Minn. 2007); *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). There are two exceptions to this rule- if a novel legal issue is presented, or if the interests of justice require review. *Vance* at 513; *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006).

Petitioner bears the burden to establish by a preponderance of the evidence that facts exist that warrant postconviction relief. *Tscheu v. State*, 829 N.W.2d 400 (Minn. 2013). When a postconviction petitioner offers newly discovered evidence, such evidence will be considered using the following test, and in order to be granted an evidentiary hearing, the petitioner must allege facts that, if proven by a fair preponderance of the evidence, would satisfy all four prongs of the test: (1) the new evidence was not known to the petitioner or his or her counsel at the time of trial; (2) the new evidence could not have been discovered through due diligence prior to trial; (3) the new evidence is not cumulative, impeaching, or doubtful; and (4) the new evidence would probably produce an acquittal or a more favorable result. *Ranier v. State*, 566 N.W.2d 692 (Minn. 1997); *Bobo v. State*, 820 N.W.2d 511(Minn. 2012); *Fort v. State,* 2013, 829 N.W.2d 78, habeas corpus dismissed 2015 WL 138079

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Additionally, when Petitioner seeks a new trial on the basis of newly discovered evidence consisting of witness recantations, three requirements must be met. *Pippett v. State*, 737 N.W. 2d, 221, 226 (Minn. 2007). First, the postconviction court must be "reasonably well satisfied" that the recanted testimony was false. Second, the Petitioner must show that the jury might have reached a different conclusion without the recanted testimony. Third, the petitioner must show that he was not taken by surprise at trial or did not know the falsity until after trial. *Pippett* at 227. See also *Tichich v. State*, 4N.W.3d 114, 120 (Minn.2024); *Larrison v. United States*, 24 F.2d 83 (7th Cir, 1928). Petitioner's latest claims are time barred, or barred by *State v. Knaffla*. Additionally, the most recent affidavits submitted Petitioner are not only "doubtful" but contradicted by the evidence, and the court cannot be reasonably well satisfied that recanted testimony offered at trial was false. Petitioner cannot meet his burden, and this Court should summarily deny his fifth petition for postconviction relief without an evidentiary hearing.

A. Melissa Stites

One of the cornerstones of Petitioner's fifth postconviction petition is the affidavit procured from Melissa Stites, claiming she lied under oath when she testified that Petitioner was acting secretively the night of the murder and that he made admissions to her about shooting a man five times in the back when they met on January 3, 2003. An affidavit recanting her testimony was signed by Ms. Stites on January 22, 2021. Pet. Ex. 16/Index #48.

As part of the investigation into his conviction that Petitioner requested from the CRU, the lead attorney and an investigator from the CRU met with recanting witnesses and

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analyzed the facts surrounding the recantations to assist in determining if recantations warranted a recommendation that Petitioner's conviction be vacated. The CRU noted that recantations can be lacking in trustworthiness, and for that reason, the judicial system looks at post-trial recantations with considerable skepticism. State's Ex. 1, p. 44, citing Adam Helder & Michael Goldsmith, *Recantations Reconsidered: A New Framework for Righting Wrongful Convictions*, 2012 Utah L. Rev. 99 (2012) at 104-05. Not only do the affidavits submitted by Petitioner lack trustworthiness, in the case of Melissa Stites, the CRU learned that she was pressured into signing and recanting, and her trial testimony was truthful. State's Ex. 1, pp. 48, 50-51.

As part of the investigation, the CRU team met with Melissa Stites in 2023 to ask her about her 2021 affidavit where she recanted her trial testimony. Ms. Stites told the CRU team that she did not write the affidavit, and she wished she had not signed it. State's Ex. 1, p. 50. She said a woman from the NAACP flew to Pennsylvania and showed up at her workplace unannounced. *Id*. The NAACP woman took Ms. Stites to dinner and told her the other person charged had been exonerated, causing Ms. Stites to doubt herself and her testimony. *Id.* p. 51. Ms. Stites told the CRU investigators that she felt pressured to recant because she is not "into discrimination" and after speaking with the woman from the NAACP, she became worried there was a "racial component to the conviction." [2] *Id.*

[2] Even more disheartening than people pressuring witnesses into doubting their testimony is the information Dominick Johnson provided to an investigative journalist when he told the reporter that he has "seen dudes give dudes ten thousand dollars just for a piece of paper saying they lied on you." Report, p. 44 FN 235.

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Ms. Stites told the CRU investigators that the testimony she gave at Petitioner's trial was truthful, and that the police did not do anything wrong in her interactions with them. *Id.*

Not only did the CRU receive this information directly from Ms. Stites, it analyzed the information in the context of the other evidence in the case, in spite of pressure from Petitioner's team. *Id*. (Petitioner's counsel voiced strong objections to how the CRU interviewed Stites and wanted it to go line by line through the affidavit to determine which lines were true or untrue.) *Id*. However, the CRU correctly noted that such leading and suggestive questions could lead to further contamination of the witness's memory over 20 years after conviction.[3] *Id*. p. 51-52.

The CRU investigation also looked at the surrounding evidence when assessing the credibility of Melissa Stites' original testimony, including any corroborating evidence from the case. *Id*. p. 51. The investigation noted the significant corroboration of her trial testimony that Petitioner confessed to her on January 3, 2003, that was evident during the January 23, 2003, visit Stites had with Petitioner when he was in jail. During that visit, Petitioner did not deny his involvement in the murder when Stites mentioned it on a few occasions, and merely tried to redirect the conversation. *Id*. p. 53-54. Additionally, numerous officers were listening in on the conversation that Stites had with Petitioner when he admitted to shooting someone on the south side in the back of the head five times and took notes of the conversation and testified at trial. *Id*. p. 10. Finally, Petitioner's own

[3] Ironically, Petitioner's legal team pushed the CRU to engage in tactics when questioning witnesses akin to the tactics they claimed police had used in securing statements from witnesses. Report, p. 51-52. As will be discussed further, such claims about law enforcement by Petitioner are unfounded, and as noted in the CRU's report, the tactics suggested by Petitioner's legal team are the tactics that make it impossible to tell what facts are from actual memory v. what facts are due to the suggestion of the interviewer.

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repeated confessions corroborate Stites' trial testimony about what Petitioner told her. *Id*. p. 17-20.

While Petitioner attempts to circumvent the time bar to postconviction relief under Minn. Stat. 590.01, subd 4 by submitting an affidavit stating Ms. Stites felt threatened by police, and that is why they couldn't have gotten this statement within the two year time limit, such an argument lacks merit, given Ms. Stites assertion that police were more than fair to her. There is no indication that Petitioner attempted to discuss this with Ms. Stites within the time limit and was unsuccessful Accordingly, this claim is time barred. Additionally, under *Ranier* and *Pippett*, this court should deny an both an evidentiary hearing and his new trial request. The affidavit submitted by Petitioner's legal team was not only doubtful, it was false. The court cannot be reasonably well satisfied there was false testimony based on Ms. Stites' affidavit. Additionally, given the multiple witnesses who overheard the admission to Ms. Stites, along with the many admissions Petitioner made to others, the outcome of the trial would be unchanged. Petitioner has failed to carry his burden to establish by a preponderance of the evidence that Ms. Stites' trial testimony was false, and the courts should summarily deny his petition without a hearing.

B. Regina Hagerman

Regina Hagerman was one of many witnesses who testified at Petitioner's trial that Petitioner admitted the murder. *Id*. p. 56, citing TT at p. 537. Petitioner confessed to Ms. Hagerman on the day before the 2003 Superbowl that he and a friend committed the murder. Report, p . 56. Nearly 20 years later, Petitioner submitted an affidavit purported to be signed by Ms. Hagerman recanting her testimony. The affidavit was signed on

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February 2, 2021, but the signature was not notarized, a critical step in validating the signature of the person's affidavit. *Id.* p. 56. Such a critical step is even more important here because Regina Hagerman died on June 28, 2022. *Id*. at fn. 303.

Because of her death, the CRU team was unable to interview Ms. Hagerman. In the affidavit purported to be from Ms. Hagerman, there were claims that police would not leave her alone, and they were threatening her until she agreed to say what they wanted her to say. *Id*. p. 56, Pet. Ex. 15. In an attempt to determine the veracity of her affidavit, the CRU team interviewed Jacqueline Ezell, who is Ms. Hagerman's mother and grandmother to Darlene Walton and Kentrell Anthony. Ms. Ezell described interactions with law enforcement far differently than they were depicted in the affidavit claimed to be from her daughter. Ms. Ezell said she believed the officer who kept in touch with her was named McManus, and that he never promised her anything or ever did anything to her. Based on that, and the fact that the signature on the affidavit purported to be from Ms. Hagerman did not closely resemble the signatures Ms. Hagerman used on official state document, the CRU Team could not corroborate the information found in the affidavit.[4]

Due to Ms. Hagerman's death, she cannot offer testimony about her purported affidavit, and there is no admissible evidence of this recantation of trial testimony. Because of this, Petitioner fails to carry his burden warranting a hearing. Additionally, this affidavit is time barred for the same reasons Ms. Stites affidavit is time barred. Finally, even if there

[4] The lack of notarization and difference in signature on the affidavit purported to be from Ms. Hagerman is even more concerning when one considers what the CRU learned when listening to conversations between Petitioner and a supporter, N.H. In one call, N.H. advised that she would be willing to falsify an affidavit, and that she would get Petitioner out of prison by any means necessary. Report, p. 94, citing calls between Petitioner and N.H.

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was admissible evidence, the affidavit is very doubtful, and lacks the needed trustworthiness and veracity to support an evidentiary hearing. Additionally, as with all the latest submissions from Petitioner, this statement purported to be from Hagerman would not change the outcome of this case, where Petitioner repeatedly changed his alibi, and told numerous people that he had committed the murder, and phone records supported his involvement. The proffered affidavit of Ms. Hagerman does not assist the court to be reasonably well satisfied that her testimony at trial was false. Under *Ranier* and *Pippett*, Petitioner cannot meet his burden, and this court should summarily deny Petitioner's latest postconviction petition on this basis.

C. Maynard Cross

The remaining affidavits submitted by Petitioner are time barred or barred by *State v. Knaffla*. Petitioner continually submits affidavits from Maynard Cross, who did not testify at trial, to support his claim of wrongful conviction. Mr. Cross spoke with law enforcement eight times in the course of their investigation, testified before the grand jury, and subsequently signed three statements for Petitioner. The first statement was notarized August 15, 2006, where he advised that the police "fed" him the case, and he didn't know Petitioner until police questioned him. Pet. Ex. 12, Index #44.

The second statement from December of 2021, was not notarized, but in that affidavit, purported to be from Mr. Cross. He reiterated his 2006 claim that he did not know Petitioner and that police gave him details about the case. He claimed he provided false testimony to get better treatment on his criminal charges. Pet. Ex. 13, Index #45. He also

claimed that he was in Milwaukee at the time he said he had seen Petitioner after the homicide. *Id*.

The third affidavit, which was not notarized, was purported to be signed by Mr. Cross on November 30, 2024. Pet. Ex. 14, Index #46. He acknowledged his prior affidavits and indicated his most recent affidavit was intended to supplement his previous affidavits. *Id*. He repeated his claim that he didn't know Petitioner, police approached him, gave him details about the crime and asked him to inculpate Petitioner in the crime. *Id*. The only new detail he added in 2024 is that officers recorded the interviews, and if the recordings don't exist, the investigators must have lost or destroyed the tapes. *Id*. Because the claims allegedly made by Mr. Cross were known to Petitioner's team or should have been known at the time of his previous appeal and postconviction petitions, they are procedurally barred. However, even if the court were to find that they are not barred, the affidavits are so unreliable and refutable, that they are more than just doubtful- they are false.

The *Knaffla* rule bars consideration of claims when the underlying facts were known, or should have been known, at the time of a previous appeal. *Fox v. State*, 913 N.W.2d 429 (Minn. 2018). Here, Petitioner's team knew of Mr. Cross's claim, that he provided false testimony at the grand jury, in 2006.[5] The new affidavits only contain identical claims, or claims that Cross certainly would know at the time of his first affidavit

[5] A grand jury indictment will not be dismissed on inadmissible evidence if there is sufficient probable cause to support the indictment without the tainted evidence. Reception of inadmissible evidence does not provide grounds for dismissing an indictment if sufficient admissible evidence exists to support the indictment. Minn. R. Crim. P. 18.05, subd. 2; *State v. Penkaty*, 709 N.W.2d 185 (Minn. 2006). Here, Petitioner admitted shooting the Victim to multiple people, and even admitted to police that he had told Colleen McManus that he shot someone on the night of the homicide, before denying he ever made that statement when meeting with the CRU.

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if true. For example, if Cross actually was in Milwaukee at the time he told law enforcement he was talking with Petitioner at the Buttery, he certainly would have known that in 2006. Due diligence and follow up by Petitioner would have lead Mr. Cross to disclose this in 2006, when, if true, it was no doubt true then. Instead, this detail emerged 15 years later in a new affidavit. Mr. Cross' claim in 2024, that officers must have destroyed or lost tapes of his conversations with them where he alleged to be pressured, if they are not found, is not even newly discovered evidence- it is Mr. Cross's speculation. Such speculation is not evidence, and the court should not consider this latest affidavit for multiple reasons. This detail was added to a new affidavit 18 years after his first affidavit. Because the claims made by Mr. Cross were known by Petitioner in 2006 or should have been known and brought forth in one of the many petitions filed before this one, they are procedurally barred and should not be considered.

Even if these statements are not procedurally barred, Petitioner's own requested investigation found that Cross's affidavits were repeatedly contradictory and not reliable. Report, p.54-56. Cross testified under oath before trial that he knew Petitioner, that he saw Petitioner on the night of the murder at the Buttery, and Petitioner told him he committed a robbery and shot someone. *Id*. 55. The CRU noted that witnesses corroborated this accounting, including Petitioner's own acknowledgement that he had told Colleen McManus that he had killed someone that night. *Id*. Colleen McManus said she saw Cross at the Buttery the night of the murder before Petitioner and Johnson arrived, and that Cross was trying to get Petitioner to be quiet about the murder. *Id*. The CRU noted many other contradictions in Cross's reports and noted that there was no corroboration for the claims.

Id. p. 56. Petitioner's submissions are highly doubtful, and he cannot meet his burden of proof with Cross's affidavits. Additionally, the outcome of the grand jury would not be changed, as there was an overwhelming amount of evidence against Petitioner presented.

D. Darlene Walton (formerly Jones) and Kentrell Anthony

Petitioner has submitted affidavits from Kentrell Anthony and Darlene Walton (formerly Jones, referred to as Walton in this memorandum) in support of his latest alibi. Additionally, Petitioner submitted his own affidavit, where he states that he asked his trial counsel on numerous occasions to call Walton and Anthony during trial to testify to his alibi. Accordingly, by his own affidavit, he knew of this claim of ineffective assistance of counsel for not calling Anthony and Walton back in 2004, yet failed to raise this basis for his claim until his fifth postconviction petition. Because this claim was known to Petitioner in 2004, and not raised, it is barred now, 21 years later, by *State v. Knaffla* Minn. Stat. 590.01, subd. 4 and even if the court finds that these latest affidavits are not barred by *Knaffla*, they are so untrustworthy and doubtful, that the court should deny a hearing under *Ranier* and *Pippett* as well.

Darlene Walton

Walton and Petitioner were dating at the time of the murder. *Id*. During the investigation, Walton initially claimed she did not know Petitioner and Johnson. Report, p. 69. Throughout the investigation, Walton did not go to police with alibi information for Petitioner or Johnson. *Id*. But Walton's affidavit, from May 1, 2023, states that 21 years earlier, Petitioner was with her the night of the murder, and remained there until about 10 p.m., when he was given a ride to the Buttery, along with Johnson. Pet. Ex. 18, Index #50.

She claims in her affidavit that several weeks after the homicide, police kicked in the doors at the duplex where she resided and asked her about Petitioner and Johnson and a murder that had taken place on December 22, 2002. *Id*. She claimed that her grandfather was offered money if she would say what they wanted her to say.[6] Walton says in her sworn affidavit that, although she knew the homicide took place on December 22, no one told her that it took place at 9:45 pm. *Id*. If they had, she definitely would have advised them immediately of Petitioner's location at that time.

The CRU investigation followed up with Darlene Walton after receipt of her affidavit dated May 1, 2023. On May 8, 2023, the CRU conducted a video recorded interview with Walton. Report, p. 73. Just seven days after she signed her affidavit, Walton's version of events changed. *Id*. Walton now said that Petitioner stayed at her place until 2:00-3:00 a.m., not 10 p.m. as she had said on May 1, 2023. *Id*. She also contradicted herself when she told the CRU that Petitioner and Johnson did not leave together, a claim she repeated several times in the CRU interview, which directly contradicted her claim a week earlier that they left together. *Id.* During her CRU interview, she was certain that police "raided' the home 30 minutes after Petitioner left the house on December 22. *Id*. According to her affidavit from a week earlier and police records, a warrant was not executed on the home until a couple weeks later. *Id*. The numerous contradictions from Walton over the years are documented in the CRU's report**.** State's Ex. 1, pp. 72-75.

[6] This claim is refuted by Walton's grandmother, Jaqueline Ezell, who said she did not believe Lugene, her husband, got any money from law enforcement. "The only thing he (McManus) gave my husband was his guns back." Report, p.57-58.

Walton's sworn affidavit contradicts Petitioner as well. While Walton claims in her affidavit that she and Petitioner were fighting and he threw her shoes up on the roof on the night of the murder, December 22, Petitioner contradicts that claim himself on multiple occasions. He informed his trial counsel during the trial that he threw Walton's shoes on the roof on December 21. *Id*. p. 74. He told his appellate attorney that he "hid" Walton's shoes from her on December 20th. *Id*. 75.

Walton's affidavit is clear that 20 years ago Petitioner was with her during the murder-at 9:45 p.m. But in Petitioner's only mention to law enforcement about being at Walton's house during the original investigation, he told police he left Walton's house between 9-10 p.m., exactly when the murder happened. Report, p. 78, citing Petitioner's January 16, 2003 interview. Walton's affidavit does not support Petitioner's latest version of an alibi.[7] Under *Ranier* and *Pippett*, Petitioner has failed to carry his burden to get a hearing, as the evidence proffered is highly doubtful, and not trustworthy. As illustrated above, given the Petitioner's shifting alibis and numerous confessions to the crime, the outcome of the case would not be different.

Kentrell Anthony

Kentrell Anthony never provided police with alibi information during the original investigation. Report. p. 69. In nearly 20 years, and four prior postconviction petitions, federal litigation, and direct appeals, she did not advise anyone that she was with the Petitioner and Johnson on the night of the murder. In fact, during the original investigation,

[7] Additional inconsistencies in Walton's recent affidavit are noted in the CRU's report, at pages 69, 71,72.

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she gave police evidence that incriminated Petitioner and Johnson. *Id*. Anthony reached out to law enforcement after they searched Rauchnot's car after the homicide. *Id*. When she talked with police on August 1, 2003, she told them she knew Petitioner and Johnson partied with Rauchnot in South St. Paul. *Id*. p. 70. She told police that Petitioner always used to say he was going to South St. Paul. *Id*. She told police they all knew about the homicide, and it had been in the paper. *Id*. Petitioner had told her he killed someone, and he, Johnson, and Rauchnot all disappeared for a while afterwards. She told police that Petitioner got caught after he came back to get his tax refund. *Id*. During one of her interviews with police, Anthony told police she was at the Economy Inn when the homicide happened, and that she had been staying there the week before Christmas. *Id*. p. 71. Phone records corroborated this claim. *Id.* 72.

Now, nearly 20 years later, Petitioner obtained an affidavit from Anthony, providing an alibi for Petitioner and Johnson. Pet. Ex 19. In the affidavit, Anthony said she was one of Johnson's girlfriends at the time, and both Johnson and Petitioner were with her and Walton at Walton's home in St. Paul. *Id.* Sometime after 11 p.m., she claims she rode with Petitioner, Johnson, and her uncle to the Buttery bar. *Id*.

In nearly identical language to Walton's affidavit, Anthony says police kicked down the door to the St. Paul address and questioned them about Petitioner and Johnson and the December 22 murder. *Id*. She said they were questioned numerous times and the officers were rude and intimidating, which is why she remembers the evening of December 22 so well all these years later. *Id*. In identical language to the Walton affidavit, Anthony claims that no one ever told her the homicide took place at 9:45 p.m., which is the reason that she

provided this information 20 years later and not back when the homicide happened. *Id*. Anthony's affidavit contradicts her prior statements made close in time to the murder, and Petitioner's own most recent alibi. Additionally, other evidence contradicts her most recent story and is consistent with her earlier statement.

First, it strains credulity that Anthony remembers the events of December 22 so clearly, was interviewed multiple times by police during that time, and did not provide an existing alibi for her boyfriend and his friend because she didn't know the homicide happened at approximately 9:45 p.m. Besides defying logic, it also contradicts her prior claim that they all knew about the homicide because it was in the news.

And perhaps more significantly, neither Petitioner nor Johnson corroborate these latest alibi witnesses. Anthony's initial statement to law enforcement about being at the Economy Inn during this time period is corroborated by Petitioner's phone records that show calls to and from the Economy Inn on December 22-23, 2002. Report, p. 72. Johnson's sworn affidavit, signed in September of 2021, makes no mention of being with Anthony on December 22, 2002. In fact, he specifically states that he felt he "had no way of proving that people were testifying falsely against us." Had Johnson actually been with Anthony during the murder, he would have had a way to prove that people were testifying falsely. Instead, he makes no mention of being with Anthony when the murder happened. As the CRU noted, the inconsistencies in Anthony and Walton's affidavits are too numerous to detail fully in their report. State's Ex. 1, p. 71.

Petitioner's proffered evidence, again, is more than doubtful, and lacks even the most basic indicia of trustworthiness. And like Walton, Anthony's affidavit and purported

alibi for Johnson and Petitioner is something Petitioner claims in his most recent affidavit he knew back in 2004 when his trial was held, but he has deliberately failed to raise this basis or even mention the names of Anthony and Walton in multiple petitions and appeals. These submissions by Anthony and Walton relating to Petitioner's claimed alibi are procedurally barred. Additionally, given the many inconsistencies in the affidavits and to Petitioner's own claims, the outcome of his case would not be different as a result of these latest affidavits. The court should summarily deny Petitioner's latest postconviction petition.

E. Dominick Johnson

Dominick Johnson pled guilty to his involvement in the murder in 2004 and admitted that Petitioner was also involved and that Petitioner was the one who shot the victim. Pet. Memo. p. 34. He was sentenced to prison for 150 months. He did not testify at Petitioner's trial. Report p. 58. After Johnson's release from prison, Petitioner submitted an unnotarized affidavit from Johnson dated September 19, 2021, recanting his under-oath testimony from his plea hearing. Pet. Ex.17. Petitioner claims that the recantation corroborates his claim of innocence. A review of the affidavit shows that is not the case.

In his recantation, Johnson makes several unsupported and contradicted statements. He claims to not know who committed the crime, but asserts that he knows that Petitioner did not commit the crime. *Id.* State's Ex. 1, p. 58. He does not provide an alibi for Petitioner, nor does he say how he knows Petitioner did not commit the crime. *Id.*

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As the court considers the veracity of Johnson's claims it is important to know that that prior to the September 2021 affidavit, Johnson was speaking with an investigative journalist, where he made several concerning statements.

First, Johnson told the journalist he had just been on the phone with Petitioner. State's Ex. 1, p. 59, quoting audio of conversation in State's Ex. 3. He gave numerous conflicting statements to the journalist that didn't align with the most recent alibi for Petitioner. *Id.* He first claimed an alibi for himself and none for Petitioner. *Id*. Then he claimed Petitioner came over to his location, then Petitioner left and "whatever happened, happened" and they both ended up in prison somehow. He stated he and Petitioner were at the Radisson together that night and he knew they were with "Nicolle and Yvonne."[8] He then noted "If [Petitioner] did something, I don't know about it, I didn't do it, I didn't do anything with him." *Id*. Most concerning is Johnson's statements to the reporter about how often people in prison are paid thousands of dollars to provide a statement in proceedings just like this one to say that they lied either to police or under oath at a trial or a plea hearing. *Id*.

Petitioner puts forward no reason he could not have procured this latest statement with due diligence. In fact, there is nothing in Johnson's affidavit to explain why this could not have been procured within the time limits under Minn. Stat. 590.01, subd. 4. Accordingly, this basis for postconviction relief is time barred. Additionally, the CRU did not consider Johnson's affidavit reliable evidence of Petitioner's innocence, due to its many

[8] It is somewhat curious that none of the details Johnson gave the reporter in his conversations with her are included in the affidavit he purportedly signed six months later.

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contradictions and the fact that it did not even corroborate Petitioner's latest alibi. State's Ex. 1, p. 59-60. Again, Petitioner's proffered support for his request for postconviction relief is not only doubtful, but appears to be patently false. As noted, the outcome of the trial would not be different with this latest effort, given all of the admissions made by Petitioner, and his shifting alibis, and the court should summarily deny his petition.

F. Other *Knaffla* barred recantations.

Petitioner submitted numerous older recantations that are barred from consideration due to *State v. Knaffla*, including affidavits from Dontay Reese, Pet. Ex. 20, Index # 52 (2007), Trevor Crawford, Pet. Ex. 25, Index #57 (2007), John Martin, Pet. Ex. 21, Index # 53 (2007), Edward Townsend, Pet. Ex. 22, Index # 54 (2007), Michael White, Pet. Ex. 23, Index # 55 (2005) and Wayne Jones, Pet. Ex. 24, Index # 56 (2007). In spite of his acknowledgement that these affidavits do not constitute new evidence, he argues that these affidavits should be considered along with the additional affidavits submitted in his fifth petition for postconviction relief as buttressing the "credibility and import" of the newer recantations. Pet. Memorandum, p.35. Such an assertion lacks merit when one considers the circumstances highlighted above and discovered by the CRU-contradictions in the affidavits to Petitioner's own claims, contradictions to the affidavit one week after signature (Walton), contradictions in the affidavit to the phone records evidence verifying location at the time of the murder (Anthony), members of Petitioner's team willing to falsify affidavits to get him out of prison and the knowledge that people frequently get paid thousands of dollars to provide recantations of their testimony or statements. All of the above leads to an inevitable conclusion that the court cannot be reasonably well assured

that prior testimony given at trial was false, and regardless, the trial outcome would not have changed.

II. Petitioner's efforts to tie 2009-2011 data to his claim that witnesses were continually harassed and paid by police to lie is time barred and not supported by any evidence, let alone reliable evidence.

One of the cornerstones of Petitioner's latest postconviction petition is heavy reliance on the above witness statements, and the disbandment of the Minnesota Gang Strike Force (MGSF) to support a claim that officers used manipulation, coercion, monetary incentives and threats during interviews to gain information to implicate Petitioner in the murder of Khaled Al-Bakri. This argument fails for several reasons. First, a report from 2009, and discipline from 2010 and 2011, is time barred by the statute of limitations, as the well-publicized report came out in 2009, over 10 years before Petitioner's latest postconviction filing. Pet. Ex. 30, Index #62. The sustained final discipline of Officers Shoemaker and McManus, Pet. Ex. 31, Index #63 and 32, Index # 64, respectively, in cases unrelated to Petitioner's case, came out in 2010 and 2011. Sustained final discipline against a police officer is public. Minn. Stat. 13.42, subd. 2 (5) (2024). Petitioner is well-aware of how to make a request for data. (See Petitioner's third petition for postconviction relief from May, 2019, Exhibit 2). Petitioner knew or should have known about the report back when it was widely published and received much media attention, but failed to raise any of the issues in his prior petitions it now raises. A simple data request for disciplinary records of officers could also have been done in 2010 and 2011. Because these claims were known or should have been known by Petitioner many years ago, he is time barred and *Knaffla*-barred from raising them now.

Even if the court were to find these reports somehow constitute newly discovered evidence and are not barred by the postconviction statute of limitations, the effort to link conduct documented in an investigation into the MGSF in 2009 fails. As the Petitioner knows, the MGSF was not the primary investigative agency in his case- the South St. Paul Police department led the investigation. Second, as illustrated above, the statements provided by Petitioner are not supported by the evidence. Finally, even Petitioner's own requested investigation found no reliable evidence of this claim.

Petitioner makes the tenuous connection in his latest petition between Colleen McManus and Melissa Stites and the investigation into the practices of the MGSF that occurred in 2009. After reviewing the 2009 investigation into the MGSF for multiple pages in his memorandum, Petitioner makes many unsupported claims. He now claims that because Colleen McManus was a sibling of one of the members of the MGSF, and that Melissa Stites received money for relocation expenses, that there is a "material possibility" that the MGSF destroyed their files related to this case. Pet. Memo., p.47-48. Petitioner also claims that MGSF involvement resulted in a "far more likely possibility" that portions of Petitioner's investigative file "especially to obtaining false testimony from cooperating witnesses" was destroyed by the MGSF. *Id.* p. 48. Petitioner also claimed that discipline against two officers, McManus and Shoemaker, which occurred in 2010-2011, also supports that the MGSF coerced, threatened, and paid witnesses to provide "false" testimony eight to nine years earlier. *Id.* At Petitioner's request, these claims were investigated by the CRU and deemed to be unsupported. State's Ex. 1, p. 106-108.

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The CRU correctly noted that the MGSF was not the primary investigative agency in this matter. *Id.* p. 107. The conduct for which two members of the MGSF were disciplined occurred many years after the SSPPD concluded its investigation into the Victim's murder. *Id.* The CRU also correctly noted that the conduct would not have been able to be used for impeachment, as it had not actually occurred. *Id.*

Reliance on affidavits submitted by Johnson, Anthony, Walton and allegedly by Hagerman about alleged police conduct is also misplaced. Petitioner attempts to use the MGSF report from 2009 to be the reason why Walton and Anthony would not come forward with their new affidavits until now, in an attempt to overcome the time bar to his petition in Minn. Stat. 590.01, subd. 4. But both the evidence and/or their own subsequent statements contradict the veracity of those affidavits: Jaqueline Ezell stated her husband received no financial benefit; Hagerman's affidavit was unnotarized and had a signature that appeared different than her signature on other documents; Walton contradicted her assertions in her affidavit seven days after signing it when interviewed by the CRU; Anthony's affidavit is contradicted by telephone records that placed her at the Economy Inn at the time of the homicide, where she said she was when first interviewed by police; and finally, Dominick Johnson's recantation of his admission that he and Petitioner committed the homicide makes no mention of the alibi that he has supposedly had for 20 years.

Most significantly, the primary evidence which led to Petitioner's conviction was Petitioner's own admissions and shifting statements to investigators, including the CRU. Unlike the coercive tactics Petitioner claims officers engaged in during the investigation,

the most damning evidence came from Petitioner's own words. In his several interviews, he gave numerous changing and conflicting accounts of things. State's Ex. 1, pp. 31-32, 60-68. As the CRU points out, the most inculpatory evidence came when officers just allowed Petitioner to talk. *Id.* p. 108. He initiated these conversations, was unable to provide a consistent alibi, and abandoned his alibi when confronted with his phone calls. *Id.* After telling officers several times during the murder investigation that he told Colleen McManus that he had shot someone on the night of the murder, but only to get free drinks, when interviewed by the CRU, he denied ever having a conversation with Colleen McManus on the night of the murder, causing his counsel to attempt to clarify this new position. *Id.*, p. 32. While Petitioner complained during his CRU interview about his ability to provide an alibi when police didn't ask him until one month after the murder, he signed an affidavit over 23 years after the homicide stating unequivocally that he was with Darlene Jones (Walton) and that he had taken that position all along with his attorneys. See State's Ex. 1, p. 79, Pet. Ex. 35, Index #67. The CRU correctly points out that that Petitioner cannot complain that law enforcement's delay in interviewing him in 2002 is what caused his inability to provide a consistent accounting for his whereabouts during the victim's murder, and now claim he has a reliable, detailed memory of where he was. State's Ex. 1, p. 80. Even if the court does not find this argument is time barred, the arguments raised are based on affidavits so lacking in trustworthiness, they are beyond doubtful, and no hearing is required.

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III. Petitioners claims of ineffective assistance of trial and appellate counsel are procedurally barred and meritless.

Petitioner has repeatedly claimed that both his trial counsel and his appellate counsel were ineffective for a wide variety of reasons. These claims have been raised repeatedly over Petitioner's many filings and are procedurally barred. Both Minnesota Supreme Court decisions have addressed both of these claims, as has the Federal District Court. Accordingly, they are barred by *State v. Knaffla*, and the court should deny his latest basis for ineffective assistance of counsel without a hearing.

Petitioner's latest claim is that trial counsel was ineffective because it failed to call Darlene Walton, Kentrell Anthony and/or Demetrius O'Connor as alibi witnesses. As noted earlier, in an affidavit dated February 26, 2025, Petitioner states for the first time in any of the numerous filings and multiple interviews that he told his trial counsel he was with Walton, Anthony, and O'Connor during the time of the murder. See Pet. Ex. 35, Index #67, Pet. Memo., p. 67. If this were true, his communication with his trial counsel about calling witnesses Walton and Anthony was something Petitioner knew since his first appeal. However, he never mentioned Walton or Anthony in multiple prior filings. In fact, Petitioner submitted a 32 page memorandum in support of his May 2019 petition for postconviction relief where he alleged numerous failures on the part of his trial counsel. In 32 pages, Petitioner never asserted that one of the reasons his counsel was ineffective was because he ignored Petitioner's repeated assertions that he was with Walton at the time of the murder, a fact that, if true, would be known at the time of trial. In fact, his latest alibi witnesses were never mentioned in the memorandum Petitioner filed.

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Petitioner's claim of ineffective assistance of trial counsel was not raised in his first appeal to the supreme court, even though he was aware of what he believed to be ineffective assistance of counsel at the time his first appeal was filed. Because he knew of this claim about trial counsel, but deliberately failed to raise it, he is barred from raising it now.

He then raised it in his first petition for postconviction relief, citing to bases that he knew at the time of appeal but failed to raise- failure to call credible witnesses, failure to do investigation, failure to raise certain objections. In *Francis v. State,* the defendant was procedurally barred from raising in a second postconviction petition claim that his trial counsel was ineffective because he was not prepared for trial and failed to call alibi witnesses, where the Supreme Court had specifically rejected claims raised on direct appeal and on appeal from denial of first postconviction petition that defendant's trial counsel failed, among other things, to investigate his case, to call alibi witnesses, and to defend him adequately at trial. 781 N.W.2d 892 (Minn. 2010.). *Francis* is applicable here, where Petitioner has repeatedly raised claims of ineffective assistance of both trial and appellate counsel which have repeatedly been denied by the trial court, the Minnesota Supreme Court, and the Federal District Court. His latest claim is procedurally barred and the court should summarily deny this basis for his most recent petition.

Similarly, Petitioner claims that trial counsel was ineffective for failing to raise Michael Smith as an alternative perpetrator. This assertion is also barred by *Knaffla*, as he knew about this decision during trial, and failed to raise it in multiple appeals and petitions for postconviction relief.

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IV. Petitioner's claim of a *Brady* violation based on 39 pages of case notes is procedurally barred and unfounded.

Petitioner claims that 39 pages of case notes of Detective Vujovich's were not disclosed to his counsel at trial, and that those case notes contain exculpatory evidence. He bases the claim that these were not disclosed on a document he claims was generated by the public defender's office which Petitioner purports to be complete list of all the discovery Petitioner's trial attorney received. Pet. Ex. 28, Pet. Memo. P. 42 ("The index is numbered and lists 289 separate records received in discovery.") Such an argument is problematic for several reasons. First, this claim is procedurally barred. If this document was not disclosed, which is not conceded, it has clearly been in the SSPPD's file for over 20 years, and Petitioner apparently did not access this public data for many years since his conviction. (See Minn. Stat. 13.82, subd. 7 categorizing closed criminal investigative data as public). Petitioner's efforts to continually and incrementally claim something to be "new evidence" when it was available to him for many years is at the heart of the reasoning behind *State v. Knaffla.* At some point, his continual claims that should have been raised earlier under Minn. Stat. 590.01, subd. 4 must end.

Additionally, even a cursory review of Exhibit 28 shows the document is not a discovery inventory. Exhibit 28 contains motions filed by Petitioner's counsel, motions filed by the State, numerous emails from IP Megan Odom to Petitioner, notes of the public defender investigator, notes related to cross examination of the State's witnesses, newspaper articles and orders of the trial court, in addition to some discovery. Exhibit 28 appears to be a random list of documents, notes, reports, pleadings and orders related to

the case, but not all the discovery, and Petitioner does not carry his burden to warrant a hearing.[9]

A review of Detective Vujovich's lengthy police report contains all the details contained in the case notes. Petitioner fails to meet his burden that trial counsel never received these notes, let alone that the notes had any exculpatory value. Petitioner does not overcome the *Knaffla* bar to his latest claim, nor the necessary trustworthiness needed for this document to warrant a hearing.

Petitioner next claims that because the case notes indicate that a January 3, 2003 conversation with Melissa Stites was recorded, there was a discovery violation, because he never received the audio recording. Pet's Memo. P. 42-43. This issue has been repeatedly raised in prior petitions for relief and is procedurally barred. Regardless, the issue with recording was addressed during Officer Shoemaker's testimony back in 2004.

Petitioner attempts to argue a discovery violation because the SSPPD has not honored his request to provide him full and complete copies of each tape and audio recording. He claims that there "may be" interviews with Cross or other key witnesses which are exculpatory and/or impeaching and which were not disclosed to Petitioner or his trial counsel. Pet. Memo. p. 44. And "if" such tapes or recordings exist, they constitute *Brady* or *Giglio* evidence. For multiple reasons, this claim is invalid. First, this is the definition of a fishing expedition. Relying only on the discredited affidavit of Maynard Cross, Petitioner implies there must be recordings that were not disclosed to trial counsel.

[9] Additionally, all of the content of the Exhibit 27 are contained in Detective Vujovich's report, attached as State's Exhibit 4.

Petitioner does not meet his burden with these speculative accusations more than 20 years after his trial.

Second, Petitioner's counsel appears to have gone through SSPPD's file and acknowledged that there are numerous cassettes and mini cassettes in the file. They make no mention if they actually listened to any of the tapes and noted any missing tapes of any kind. Petitioner's claim, without support, that there is a discovery violation is the equivalent of a fishing expedition. His claim that discovery has been withheld in bad faith is meritless.

V. There is no applicable exception to the submissions that are procedurally barred under *State. V. Knaffla.*

As argued above, nearly every one of Petitioner's claims were previously argued, known to the Petitioner before during his prior petitions, or should have been known, and accordingly, are barred by *State v. Knaffla*.

A. None of Petitioner 's claims present novel legal issues.

There are two possible exceptions to the *Knaffla* rule. The first is "where a claim known to the defendant at the time of a direct appeal, but not raised, is so novel that its legal basis was not reasonably available at the time of the direct appeal."

Townsend v. State, 582 N.W.2d 225, 228 (Minn. 1998). Petitioner does not claim to meet this exception.

B. Fairness does not require review of any of Petitioner's claims.

The second *Knaffla* exception applies "in limited situations when fairness so requires and when the petitioner did not 'deliberately and inexcusably' fail to raise the issue

on direct appeal." *Townsend*, 582 N.W.2d at 228. *Fox* is an example of this exception, where Fox was unable to participate in his original defense because he had been administered a powerful antipsychotic medication. *Fox v. State*, 474 N.W.2d 821 (Minn. 1991); *Roby v. State*, 531 N.W.2d 482, 484 n.1 (Minn. 1995). But this is a limited exception which is meant to allow review of exceptional cases. *See Ademodi v. State*, 616 N.W.2d 716, 719 (Minn. 2000) ("…fundamental fairness does not require substantive review of Ademodi's Vienna Convention claim."). Petitioner's claim does not even come close to meeting this extraordinary exception.

Petitioner's case is very unusual and extraordinary in one respect – he had a qualified team of investigators run down every single lead he provided them. They traced every claim, they listened to hours and hours of interviews, they located every witness they could, they read hundreds of pages of transcripts, and they went back to Petitioner time and time again. They took years to come to the conclusion that the jury was right. They generated a 111-page report detailing all the ways Petitioner's claims fail and are without merit and how his case has been manipulated by his supporters providing false evidence to support this latest efforts to overturn his conviction and get out of prison. Petitioner does not meet the fundamental fairness exception.

C. The Structural Fairness Doctrine is inapplicable.

Finally, Petitioner attempts to argue that the "the false testimony in this case was so pervasive that it infected the whole trial and caused a structural error." Pet. Memo. 63. Petitioner misunderstands this doctrine . First, Petitioner bases his assertion on a series of claims that are either procedurally barred or have been completely debunked.

Structural error is a very limited class of error, which generally requires automatic reversal. See *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011). This is because structural errors are "defects in the constitution of the trial mechanism" such that the entire course of the trial is affected. *Arizona v. Fulminante*, 499 U.S. 279, 309–10, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). Structural errors defy an analysis of the harmfulness of the error. *Weaver v. Massachusetts*, 578 U.S. 286, 294-297, 137 S. Ct. 1899, 1907–08, 198 L.Ed.2d 420 (2017). This is because "the effects of the error are simply too hard to measure," "harm is irrelevant to the basis underlying the right," or "the error always results in fundamental unfairness." *Id.* at 296, 137 S. Ct. at 1908. *State v. Bey*, 975 N.W.2d 511, 520 (Minn. 2022)

The allegations Petitioner raises are not what our appellate courts have considered for structural error analysis. See *State v. Bey*, (No structural error for failing to poll entire jury); *Weaver v. Massachusetts,* (structural error in the denial of the right self representation); *Pulczinski v. State,* 972 N.W. 2d 347 (Minn. 2022)(no structural error on a claimed violation of a right to a public trial where no objection). Structural errors are errors in the trial mechanism, not what petitioner pursues here-an evidentiary hearing based on claims 21 years after the trial itself. Structural error is inapplicable here.

Petitioner's claims all fall solidly under claims for postconviction relief. As argued, all his claims are either time barred or *Knaffla* barred, or would not change the outcome of the case due to the many statements, both by Petitioner and others, against him. Finally, all the submissions and assertions of counsel are so doubtful that Petitioner does not carry

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his burden for an evidentiary hearing and the "structural error doctrine" is inapplicable here.

CONCLUSION

Petitioner's postconviction petition is barred by the statute of limitations. If not barred by statute of limitations, the issues are *Knaffla*-barred. For the limited circumstances where proffered evidence could be considered "new evidence," such evidence lacks even the slightest trustworthiness. Petitioner's petition for postconviction relief should be summarily denied.

Dated: January 5, 2026

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