The Work Of The Innocence Project

David Schultz
Maslon Edelman Borman & Brand (Minneapolis, MN)

david.schultz@maslon.com | 612.672.8399
http://www.maslon.com/dschultz

THE INNOCENCE PROJECT OF MINNESOTA
Reprinted with the Permission of the Innocence Project of Minnesota

WHAT WE DO
The Minnesota Innocence Project represents people who were wrongfully convicted for crimes they did not commit, we educate attorneys and criminal justice professionals on best practices, and we work to reform the procedures that produce such unjust results.

The Innocence Network, using DNA testing, has worked to free 311 innocent people, after serving an average of 13.6 years in prison for crimes they didn't commit. Added together, they spent over 4,100 years behind bars. Imagine spending the past thirteen years of your life in prison. Then imagine the effect it would have on those who care about you.

In addition to DNA exonerations, hundreds of other innocent people have been freed through lengthy re-investigation of their cases. The Minnesota Innocence Project will act in any Minnesota case where clear evidence of innocence is present. We also work to change procedures. We have taught countless lawyers forensic science both as part of continuing legal education and through clinics and law school classes. We continue to work with police and prosecutors to change the procedures that lead to the conviction of innocent men and women.

Finally, we regularly reach out to community groups, to further the public understanding of innocence related issues.

WHAT CASES WE REVIEW
We review wrongful convictions in cases of actual innocence. Actual innocence almost always means that you weren't present at the time the crime was committed and always means you played no role in its commission. Actual innocence means you didn't do it. Before we take on a case there must also be a realistic possibility that new evidence will prove your innocence. For example, DNA testing may exonerate you. Similarly, the investigation may prove that someone else committed the crime.

If your request passes preliminary screening, a detailed questionnaire will be sent. When we receive your completed questionnaire, we will send you a letter letting you know that your application has been received. We thoroughly review each application and examine the relevant records.

To have a case considered, you must contact the Minnesota Innocence Project in writing. Because of the volume of requests, we are unable to respond to requests received by e-mail or telephone.

Please keep in mind that you must actually be innocent and that we must have a realistic chance of proving your innocence. In your letter, tell us why you are innocent, where you were convicted, how much of your sentence remains to be served, and what you were convicted of.

MICHAEL RAY HANSEN
Michael Hansen was wrongfully convicted of murdering his 3 month old daughter, Avryonna Hansen. He served 6 years of a 14.5-year sentence before being exonerated by Innocence Project of Minnesota. On the morning of Avryonna's death, Mr. Hansen called 911 because she would not wake-up. Paramedics were unable to revive her. Because Avryonna's death was unexpected, an autopsy was performed. The medical examiner testified that Avryonna died from a significant skull fracture that he believed was caused by an intentional blow to her head while she was in her father's care. The medical examiner testified that the skull fracture itself caused the baby's death even though he did not find meaningful swelling, bleeding, or

brain injury during the autopsy. He dismissed the idea that the fracture could have been caused by Avryonna's well-documented fall from a shopping cart 6 days before her death.The Innocence Project of Minnesota re-opened the case and presented the testimony from a team of experts at a post-conviction hearing. Many of the experts worked on the case at nocharge, and half of them spent their careers regularly testifying on behalf of the prosecution. According to the medical experts, the physical evidence demonstrated that Avryonna's skull fracture was healing and occurred at least three days before she died. From this, the experts surmised that Avryonna's skull fracture came from her shopping cart fall. Further, the experts testified that a skull fracture alone does not cause death but rather must be accompanied by underlying bleeding or brain injury – neither of which were present. They explained that Avryonna likely passed away from accidental suffocation in her sleep. The district court judge held that portions of the State's medical examiner's trial testimony were not credible and that other portions were false or incorrect. Mr. Hansen was exonerated when the State formally dismissed the charges against him.

KOUA FONG LEE

Koua Fong Lee was wrongfully convicted of vehicular homicide in 2007 after his 1996 Toyota Camry accelerated uncontrollably at the end of a St. Paul freeway exit ramp and crashed into two vehicles, ultimately killing a man and two children and injuring two others.

Lee, who always maintained his innocence, was convicted and sentenced to eight years in prison. Two years later, Toyota revealed that some of its cars were experiencing acceleration issues. The Innocence Project of Minnesota, and attorneys Brent Schafer and Bob Hilliard uncovered strong evidence that—like other Toyota vehicles—Lee's car malfunctioned, causing it to accelerate and crash.

Students working on the case through the Innocence Project Clinic at the University of Minnesota Law School interviewed numerous other Toyota drivers who had experienced the same problems with their own Toyotas and drafted and collected over 50 affidavits from them. After serving almost three years in prison, Mr. Lee was released and exonerated on August 5, 2010, when the judge ordered a new trial and the prosecution decided to drop the charges.

SHERMAN TOWNSEND

Sherman Townsend was wrongfully convicted and imprisoned for over 10 years after being falsely identified by the true perpetrator of a 1997 home invasion. Townsend always maintained his innocence and reached out to anyone who would listen.

Townsend brought his plight to the attention of the Minnesota Innocence Project in 2002 as soon as we began accepting cases. His case was worked on by a number of law students at the Hamline University School of Law and the University of Minnesota Law School, as well as professors and attorneys who believed in Sherman's innocence. This is how the search for the true perpetrator of the crime began.

The search ended when David Jones, the neighbor of the victim, came forward and confessed to the crime. He gave a chilling and detailed description of the events that occurred that night. Jones had been intoxicated and was attempting to sexually assault his female neighbor when he discovered her boyfriend in her room, causing him to flee the scene. In an attempt to avoid going to prison himself in case the victim recognized him, he went back to his neighbor's home after the crime and acted as a concerned neighbor when the police arrived on the scene. Jones claimed that he saw a man fleeing the scene and falsely identified Townsend after Townsend was picked up by the police and brought to the scene.

Despite numerous inconsistencies and a lack of any physical evidence tying Townsend to the scene, Jones testified at trial that Townsend was the man that ran into him that night, and Townsend was subsequently convicted. Years later, Jones went to prison himself for rape. While in prison, he suffered a true crisis on conscience when he realized Townsend was still in prison for the crime Jones had committed.

After Jones came forward with a map and affidavits detailing his guilt, and a lengthy hearing where Jones admitted under oath his guilt in the offense, the prosecutor agreed to release Mr. Townsend from prison immediately. After serving over 10 years for a crime he didn't commit, Mr. Townsend remains upbeat stating, "I don't think they took my life away; I think I go from this day forward."

EYEWITNESS MISIDENTIFICATION

Misidentification is the number one cause of wrongful convictions. Whether by perjury or eyewitness/victim error, innocent people are spending time behind bars

for crimes they did not commit. The criminal justice system puts a lot of faith in eyewitness testimony, but there is no way to guarantee their testimony is fact. Only after innocence is proven is it made evident that eyewitness testimony was erroneous. Due to this fact, it is not possible to know the number of wrongful convictions by mistaken identity, because many who are mistakenly identified will never have a chance to prove their innocence.

Furthermore, the scope of the problem cannot be known because of instances where prosecutors drop the case or in cases where people are acquitted after reversals on appeal. While appellate decisions are published and readily available online, the problem with trial acquittals or dropped cases, is that they are not systematically catalogued and made public, so there is no way to be sure of the role of eyewitness testimony in those cases.

The Facts

In June of 2000, an analysis by the Center on Wrongful Convictions found that of 51 exonerations by DNA testing in the United States and Canada, 76.1% had been based in whole or in part on eyewitness identification testimony. Another study of 86 exonerated capital cases by the Center on Wrongful Convictions found:

> Of the 86 cases, eyewitness testimony played a role in 46 (53.5%)
> In 33 cases (38.4%), eyewitness identification was the only evidence
> Of the 46 cases that involved eyewitness testimony, 32 cases only had one eyewitness (69.6%), while the remaining 14 cases had multiple eyewitnesses (30.28%)
> In 19 cases (41.3%), the eyewitnesses were strangers, in 9 cases (19.6%), they were non-accomplice acquaintances

The Remedies

There are multiple remedies to minimize the number of wrongful convictions by mistaken identification. The most important remedy is to reform eyewitness identification procedures.

Sequential lineups is one technique that has been increasingly used in eyewitness identification procedures. In a sequential lineup, the witness is shown lineup members one at a time. The witness has to identify whether or not the person is the perpetrator before they can move on to the next person. This method differs from the traditional procedure of the witness viewing all members at once (simultaneous lineup). The sequential lineup procedure has proven to be more accurate because it forces witnesses to use an absolute judgment strategy rather than a relative judgment strategy (where they compare all the members and simply choose the best match from the group). After all, it is certainly possible that the perpetrator is not in the lineup at all.

Double-blind is another technique in lineup procedures. In double-blind procedures, neither the administrator nor the witness know who the suspect is. This prevents the administrator from influencing the witness by unintentional or intentional clues to the identity of the suspect.

Specific instruction to witnesses includes spoken instructions from the administrator to the eyewitness. These instructions are meant to deter the witness from feeling forced to make a selection from the lineup. Specific instructions also prevent the witness from looking at the administrator for feedback during the procedure; they are made aware that the administrator does not know who the suspect is and that he or she will not be able to assist the witness during the procedure. One recommended instruction is that the suspect may or may not be in the lineup.

Composing the lineup: Photographs of the suspect should be selected that do not bring unreasonable attention to him or her. In addition, it is vital that non-suspect photographs and lineup members are chosen by their resemblance to the description provided by the witness, not by their resemblance to the suspect. The suspect should also not really stand out from the other photographs or lineup members.

Confidence statements: Immediately following the lineup procedure, the witness should provide, in his or her own words, a statement regarding his or her confidence in making the right identification.

Recorded lineup procedure: Where possible, the lineup procedures should be video-recorded. Audio or written records should be made where this is not possible.

FORENSIC SCIENCE: Limitations and Misconduct

False testimony, exaggerated statistics, and laboratory fraud have all led to wrongful convictions. Jurors often give forensic science more weight, because it is provided by “experts.” However, when misconduct occurs the added weight is damaging and can lead to

wrongful convictions. In some cases, labs and their personnel are not impartial, because they are too closely tied to police and prosecutors. Other times, a criminologist who lacks necessary knowledge may exaggerate findings and does not have to worry about being caught because the lawyer, judge, and jury have no background in the relevant science. In many cases, critical evidence is destroyed making re-testing to uncover the misconduct is impossible.

The Facts

Many people deal with forensic evidence at different stages in the criminal process. Identification, collection, testing, storage, handling, and reporting of evidence can be deliberately or accidentally mishandled at any stage:

- At the crime scene, evidence can be planted, destroyed, or mishandled.
- At the forensic lab, evidence can be contaminated, poorly tested, consumed or mislabeled.
- In the report, results can be misrepresented DNA exonerations have revealed a number of cases where results were reported on evidence when no test was actually done!

Examples of Forensic Misconduct that have lead to wrongful convictions:

Fred Zain, the former director of the West Virginia state crime lab, testified for the prosecution in 12 states over his career (many in West Virginia and Texas) and has left a trail of fabricated results, false testimony on results, and has willfully omitted evidence from his reports.

Pamela Fish, a Chicago lab technician, has testified for the prosecution about false matches and suspicious results in at least eight cases that secured convictions, but were later proven innocent by DNA testing.

The Remedies

A number of reforms could limit the number of cases where forensic misconduct occurs. For example, the Innocence Project suggests states impose standards on the preservation and handling of evidence. In addition, when exonerations suggest misconduct of an analyst or that a facility lacked proper procedures or oversight, independent audits of their work in other cases should take place to uncover the possibility of other wrongful convictions.

FALSE CONFESSIONS

The Causes

In more than 25% of exonerated cases the defendants made incriminating statements or gave outright confessions to crimes that DNA evidence proves they did not commit. There are many reasons why defendants give false confessions:

- Duress
- Coercion
- Intoxication
- Diminished capacity
- Mental impairment
- Ignorance of the law
- Fear of violence
- Infliction of harm by interrogator
- Threat of harsh sentence
- Misunderstanding of situation
- Mental State of the Confessor

Juvenile confessions are often unreliable, because children can be easily manipulated or do not fully understand the situation. Both juveniles and adults think that they can go home if they just confess.

People with disabilities are likely to give a false confession, because they are tempted to accommodate and respect authority. In addition, most interrogators lack the training to question people who are mentally disabled, which can lead to false confessions.

Lengthy interrogations or exhaustion can also cause people to falsely confess. Some also believe that they can confess now and go home and worry about proving their actual innocence later.

The Remedy

All states should follow Minnesota's lead in mandating all interrogations to be electronically recorded with audio and video. These recordings help both prosecutors and defense lawyers accurately portray the confession of the accused while also identifying false confessions.

INFORMANT TESTIMONY

The Facts

In over 15% of wrongful conviction cases reversed using newly discovered DNA evidence, a snitch or informant testified against the defendant. It should not come as a surprise that snitches lie or falsify evidence on the stand. For a desperate inmate, incentives like a shortened sentence can become very enticing. Similarly, snitches facing possible jail time are

often compelled to testify on behalf of the prosecution as a way to avoid incarceration themselves. This kind of informant testimony can literally make or break a case when no hard evidence is involved.

People have been wrongfully convicted in cases where the snitch:

- Was paid to testify
- Testified in exchange for being released from prison
- Testified that they overheard a confession or witnessed the crime

The Remedies

Reform is necessary to reduce the weight juries attach to the unreliable testimony of snitches. Possible remedies include assessing the credibility of the informant and revealing their prior history to the jury, electronically recording all meetings with the informant, and ensuring the snitch does not have access to sensitive case information.

GOVERNMENT MISCONDUCT

Official misconduct includes both police and prosecutorial misconduct. Coercive conduct and poor investigation by police can lead to wrongful convictions. Law enforcement officials have also used forced confessions, violence toward suspects, and manufactured evidence, which have led to wrongful accusations and convictions. Prosecutor misconduct includes suppression of exculpatory evidence, destruction of evidence, use of unreliable and untruthful witnesses and snitches, and the fabrication of evidence.

The Facts

Police Misconduct in the first 74 exonerated cases:

- 34% Suppression of Exculpatory Evidence
- 33% Allegation of Undue Suggestiveness in Pre-Trial ID Procedures
- 11% Evidence Fabrication
- 9% Allegation of Coerced Witness
- 8% Coerced Confession/Admission Alleged
- 5% Other Misconduct

Prosecutorial Misconduct in the first 74 exonerated cases:

- 37% Suppression of Exculpatory Evidence
- 25% Knowing Use of False Testimony
- 11% Coerced Witness
- 9% Improper Closing Arguments
- 9% False Statements to Jury
- 5% Evidence Fabrications
- 4% Other Misconduct

The Remedies

Police and prosecutors need to be trained to avoid, and held accountability for, using improper techniques. One step would be to create disciplinary committees that would focus on the misconduct of police officers and prosecutors. In addition, the higher involvement of federal agencies could also work to limit official misconduct

BAD LAWYERING

The Causes

There are a number of reasons why a defendant's defense may not be sufficient:

- Resources in judicial system are stacked against poor defendants.
- Defense lawyers can be ineffective, incompetent, or overburdened with too many cases.
- Overworked lawyers may fail to properly investigate, call key witnesses, or adequately prepare for trial.
- Public defenders and court-appointed attorneys are not able to access adequate resources because of decreased funding.

A review of exonerated cases has shown a trail of unacceptable defense lawyering practices at the trial and appeal levels. In some of the worst cases, defense attorneys have:

- Slept in the courtroom during trial
- Been disbarred shortly after finishing a death penalty case
- Failed to investigate alibis
- Failed to call or consult experts on forensic evidence
- Failed to show up for hearings

The Remedies

Public defense offices must be adequately funded and staffed so that attorneys are not required to take on more cases than suggested by ABA guidelines. In order to provide the best possible defense for the accused, state and local funds need to remain substantial. Securing adequate pay for public defenders can improve competency and quality of defense attorneys by insuring that the best attorneys are hired and will remain in those positions as they gain more experience. All defense attorneys must have the training, ability, and desire to provide sincere advocacy for their clients.

COMPENSATING THE WRONGFULLY CONVICTED

The Punishment Continues After Incarceration

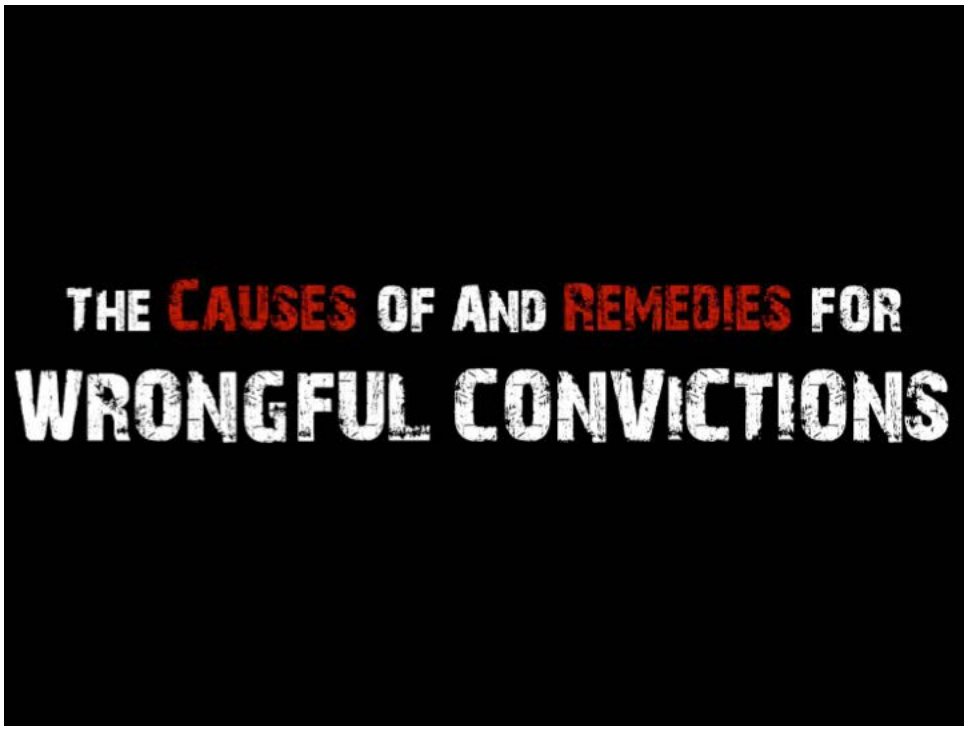
When an exoneree is released from prison, their immediate feelings are often joy and relief. Shortly after release however, the realization of what was taken becomes a major hurdle in the struggle to resume their former life. The agony of prison life and the complete loss of freedom are compounded by thoughts of what life might have held if not for the wrongful conviction. Deprived for years of family, friends, and the ability to forge a career, the nightmare of a wrongful conviction does not end upon release.

Who Should be Compensated?

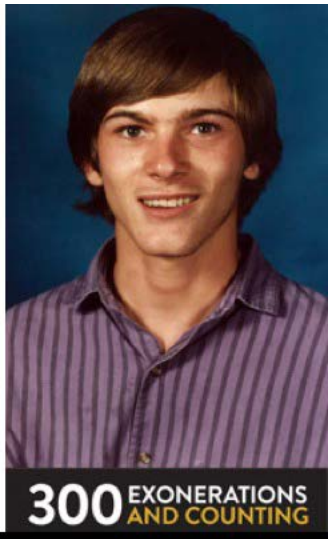
A person who has been wrongfully convicted of a crime in Minnesota and sentenced to serve time, but who later proves that they were actually innocent, should receive compensation for the time they spent in prison. Under the proposed legislation, an exoneree must meet 5 specific requirements in order to receive compensation.

Do All States Have Compensation Statutes?

29 states, the District of Columbia, and the federal government, all have some form of a compensation statute. The following 21 states do not: Alaska, Arizona, Arkansas, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Michigan, Minnesota, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wyoming. As a leader in so many ways, Minnesota should join the states that already have compensation statutes.



Over 300 people in the US have been exonerated by DNA testing, including several who served time on death row. Over 70 % are persons of color. On average, they've served 13 years; collectively, they've served more than 4000 years in prison for crimes they didn't commit.

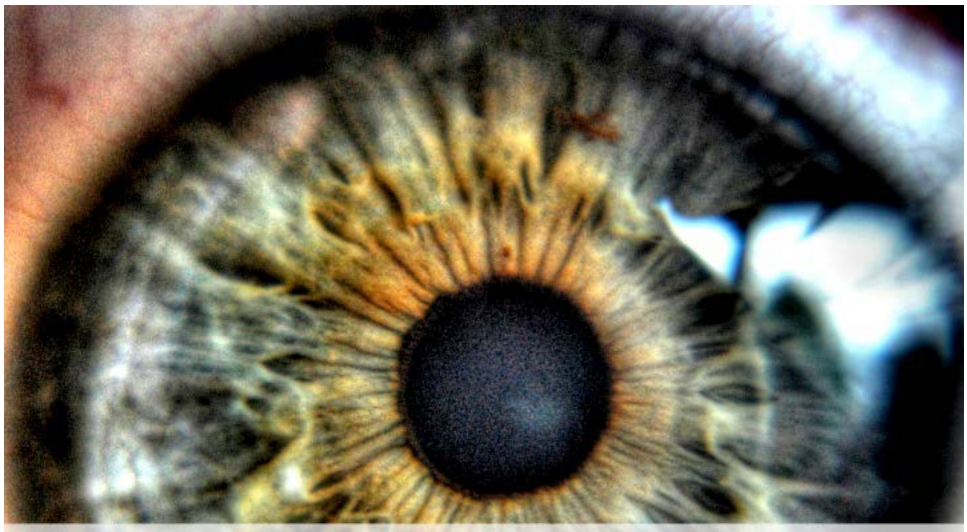


The Innocence Project

- Founded in 1992 by Barry Scheck and Peter Neufeld
- Innocence National – an affiliate of 60 organizations
- Law schools and journalism schools

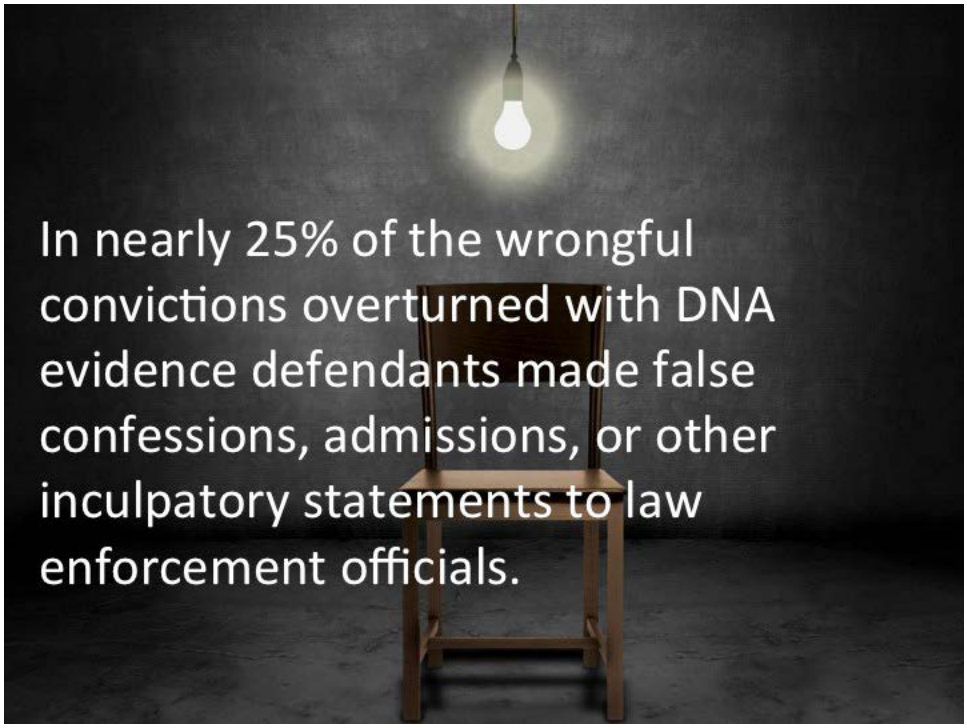
The Causes of Wrongful Convictions

- Eyewitness Misidentification
- Forensic Science
- False Confessions
- Informant Testimony
- Government Misconduct
- Bad Lawyering

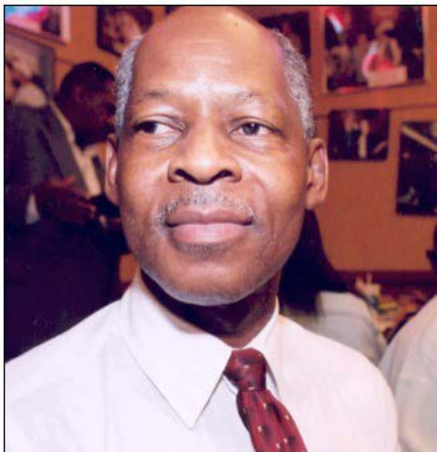


Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, contributing to 77% of wrongful convictions later overturned through DNA testing.


FALSE
confessions

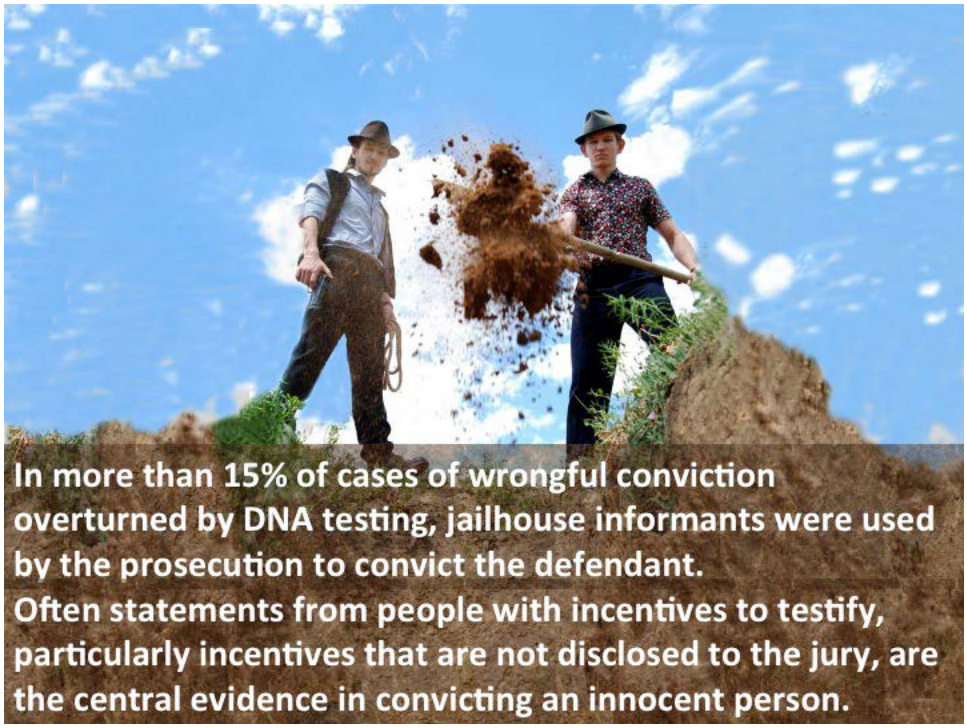

In nearly 25% of the wrongful convictions overturned with DNA evidence defendants made false confessions, admissions, or other inculpatory statements to law enforcement officials.


1010 WINS



JAILHOUSE
informants

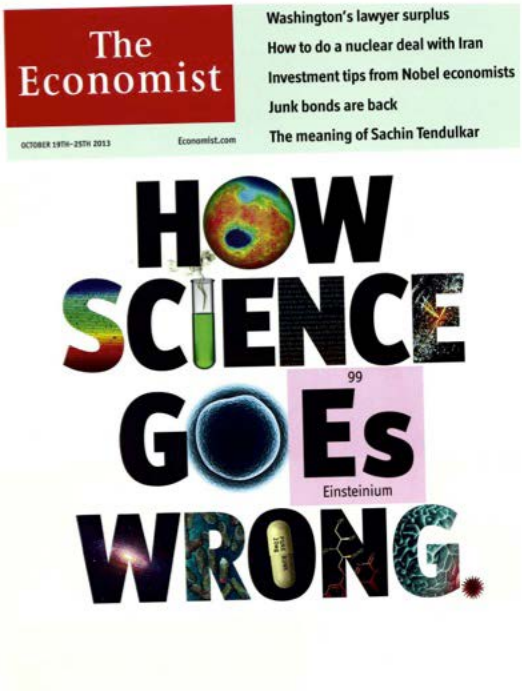
DNA testing exonerated Dennis Fritz in 2002 after 11 years of wrongful incarceration. He and Ron Williamson were convicted in 1988 for the 1982 murder of Debra Sue Carter of Ada, Oklahoma.



In more than 15% of cases of wrongful conviction overturned by DNA testing, jailhouse informants were used by the prosecution to convict the defendant.
Often statements from people with incentives to testify, particularly incentives that are not disclosed to the jury, are the central evidence in convicting an innocent person.

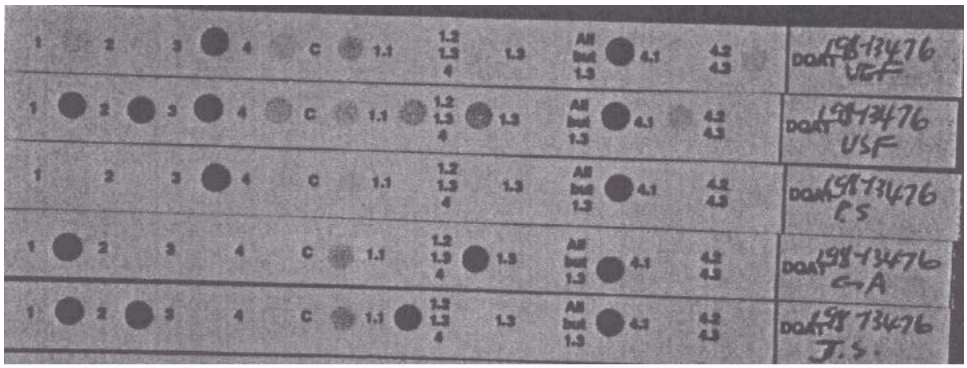
Forensic error plays a significant role in wrongful convictions

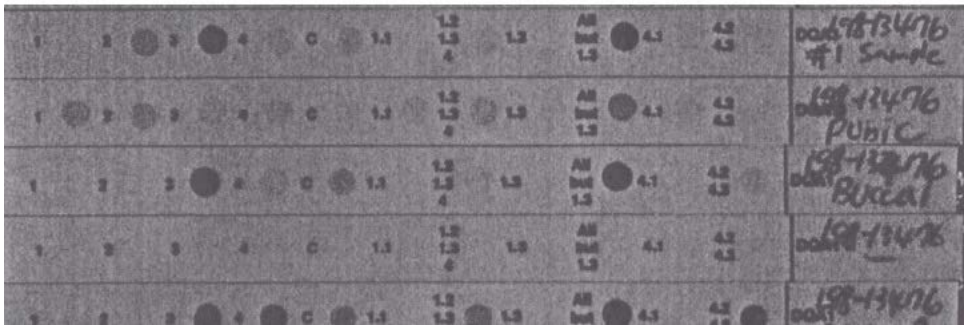
- **Over 50% of the first 225 wrongful conviction cases overturned with DNA evidence involved unvalidated or improper forensic science**



State of Texas v. Josiah Sutton (1999)

- Woman raped in car by two men
- Identifies Sutton and Adams
- DNA test on vaginal swab, pubic combings, jeans, and semen stain on car seat





STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF WRIGHT | TENTH JUDICIAL DISTRICT

D.C. File No. 86-K4-05-003795

Terry Lynn Olson,

Petitioner,

SUPPLEMENTAL MEMORANDUM OF LAW

v.

State of Minnesota,

Respondent.

ARGUMENT

PETITIONER, TERRY OLSON, IS ENTITLED TO A NEW TRIAL BASED ON THE RECANTATION EVIDENCE OF HIS CO-DEFENDANT, DALE TODD.

A. Introduction

In evaluating claims of witness recantation, Minnesota appellate courts follow the three-prong test set forth in *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)(overruled by *United States v. Mitrione*, 357 F.3d 712, 719 (7th Cir. 2004)); *State v. Caldwell*, 322 N.W.2d 574, 584-85 (Minn. 1982). In order to receive a new trial based on recanted testimony, the petitioner must establish these three criteria by a fair preponderance of the evidence: 1) the court must be reasonably well-satisfied that the testimony in question was false; 2) without that testimony, the jury might have reached a different conclusion; and 3) the petitioner was taken by surprise at trial or did not know

of the falsity until after trial. *Ferguson v. State*, 645 N.W.2d 437, 442 (Minn. 2002). The third prong – surprise – is not a condition precedent for granting a new trial, but rather a factor a court should consider when deciding whether to grant the petitioner's request. *Ferguson*, 645 N.W.2d at 442.

In ruling on a petition based, in part, on recanted testimony, a post-conviction court should be mindful that the showing required for a petitioner to receive an evidentiary hearing is lower than that required to receive a new trial. *Opsahl v. State*, 677 N.W.2d 414, 423 (Minn. 2004). A hearing is required unless "the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. 590.04, subd. 1. Any doubts by the court about whether to hold an evidentiary hearing should be resolved in favor of the party requesting the hearing. *Ferguson*, 645 N.W.2d at 446.

Based on these criteria, petitioner, Terry Olson, more than meets the standard for being granted a hearing at which he can present evidence to support his petition for post-conviction relief.

A. Dale Todd's Testimony at Olson's Trial Was False.

The Minnesota Supreme Court has repeatedly emphasized the necessity of an evidentiary hearing to evaluate the credibility of the recantation. In *Wilson v. State*, 726 N.W.2d 103 (Minn. 2007), the supreme court reversed the district's order denying the petitioner such an evidentiary hearing. The court said that without such a hearing, it would be "difficult if not impossible to test [the recanting witness's] conflicting

statements without examining [him] under oath." *Id.* at 107. Absent such a hearing, the court reasoned, "the postconviction court cannot make a judgment about which story is true and which is false." *Id*. The court "reiterate[d]" this statement in *State v. Turnage*, 729 N.W.2d 593, 598 (emphasizing necessity of evidentiary hearing "to resolve credibility issues"). *See also Opsahl v. State*, 677 N.W.2d 414, 423 (Minn. 2004) ("Although we are generally reluctant to challenge the basis for a conviction, we are more reluctant to deny a hearing for postconviction relief when our decision turns on the credibility of recanting witnesses.")

In deciding whether to grant a hearing, the postconviction court should consider whether an allegation of recantation provides "sufficient indicia of trustworthiness" that the recantation is genuine. *Ferguson v. State*, 779 N.W.2d 555, 560 (Minn. 2010). The court noted in that case that the witness's affidavit gave "a reason for his change in testimony, which, if believed, could arguably support a finding that [the witness's] recantation was genuine." *Id*. The court in *Ferguson* found it sufficient that the witness's affidavit said that he had "lied" and explicitly noted what the lie was. *Id*. at 558.

On the other hand, a "bare bones" assertion of the petitioner's innocence is not enough to satisfy the first criterion. *See Doppler v.* State, 771 N.W.2d 867, 873, n. 2 (Minn. 2009) (witness's assertion that "I know that [defendant] did not kill [the victim]" did not warrant an evidentiary hearing. An allegation "must be more than just an argumentative assertion to warrant an evidentiary hearing." *See Ferguson,* 645 N.W.2d at 466.

In petitioner's case, Dale Todd's affidavit plainly satisfies the first requirement of the *Larrison* test. Todd flatly states that the "statements [he] gave to law enforcement in 2003 and 2006 …. were not true." (Todd Affidavit at para. 8.) The affidavit also specifies that the following statements were untrue: that "Terry Olson left the party with me and Mr. Michaels"; that "I saw Mr. Hammill on the road and that Mr. Olson, Mr. Michaels and I pulled over in my car to talk to him"; and that Olson and Michaels got out of the car to talk to Hammill. (Todd Affidavit at paras. 13, 14, and 31.)

Moreover, Todd's affidavit explains what actually did happen. He states that he and Olson did give Hammill a ride to a party at Olson's sister's house (Todd Affidavit at para. 9), but that Todd, Olson, and Michaels did not leave the party with him; in fact, Todd did not recall seeing Hammill leave the party, and never saw him again. (Todd Affidavit at paras. 11, 15.) While Todd and Michaels did leave the party together, Olson remained at his sister's house. (Todd Affidavit at para. 13.) After Todd took Michaels home, he returned to Olson's sister's house and talked briefly to Olson, who was asleep on the couch when Todd returned. (Todd Affidavit at para. 16.)

Not only does Todd explain what did happen on the night of August 11, 1979, he also gives a number of reasons why he made the false statements in the first place—reasons that, when viewed in their entirety, provide a convincing explanation of why a person would implicate himself and his friends in a "murder" that never occurred. First, Todd acknowledged that in 2003, he was addicted to pain killers, and was using those drugs at the time he was talking to the police. (Todd Affidavit at para. 19.) Moreover, after he told the police that he had nothing to do with Hammill's death, the police "didn't

believe [him] and kept asking [him] questions." (Todd Affidavit at para. 17.) They "falsely told [him] that there were not only "witnesses," but also "physical proof" of the men's involvement in Hamill's death. (Todd Affidavit at para. 18.) So insistent were the police that Todd "started to believe what the police were telling him [him] and doubted [his] own memory." (Todd Affidavit at para. 18.) Even when Todd testified—truthfully—at Ron Michaels' trial that none of the three men was involved in Hammill's death, the police continued to interrogate him, to "intimidate [him,] and get [him] on edge." (Todd Affidavit at para. 26.) Because of this continued interrogation, Todd was "terrified that the police would charge [him] with murder … for something [he] did not do." (Todd Affidavit at para. 34.) Todd was also "unsure of [his] memory…. After hours of questioning, [he] started to believe what the police were saying could have been what happened." (Todd Affidavit at para. 35.) Only after he received a letter from former Deputy Sheriff Jim Powers, who told Todd that Todd had actually passed a polygraph test when he denied being involved in Hamill's death, did he begin to trust his own memory. (Todd Affidavit at paras. 37, 41 and Powers Affidavit.)

Todd's detailed affidavit makes clear what emotional and physical state led him to make a false confession, and later to renounce that confession. In addition, the affidavit explaining his transition from belief that he could be guilty of something he did not remember to understanding that he was not actually guilty of anything is supported by expert explanations and evaluations.

Dr. Richard Leo, a law professor at the University of San Francisco and an expert on false, coerced, or persuaded confessions, concluded that police questioning of Todd

"bore the characteristics of a guilt-presumptive interrogation" rather than a "mere interview." (Leo Affidavit at para. 7.) Leo outlined the interrogation techniques used by the police (Leo Affidavit at para. 9) and outlined the "risk factors for false confession" that existed in Todd's interrogation. (Leo Affidavit at para. 10.) Leo's Affidavit also explains the "personal factors," such as Todd's previous history of anxiety attacks, that could make Todd particularly susceptible to the techniques used by law enforcement. (Leo Affidavit at para. 11.) And Leo believed that Todd's statements induced by the police "bear the characteristics … of what is known as a *persuaded (*or *internalized*) false confession." (Leo Affidavit at para. 12 (emphasis in original).) Finally, Leo pointed out the numerous internal "indicia of unreliability" existing in Todd's statements; that is, when Todd presented details that were not suggested to him by the police, these details were often verifiably factually incorrect. *See* examples cited in Leo Affidavit at para. 25.

In addition to Leo's opinion about the qualities of Todd's confession that made it appear of dubious value, psychologist Hollida Wakefield has interviewed Dale Todd and administered several psychological tests. Most notably, these tests showed that Todd had a "recall score" on the Gudjonsson Suggestibility Scale, which is "below the 5th percentile for the general population and reflects significant problems in concentration and memory." (Wakefield evaluation at p. 6.) Significantly, his score on the Gudjonsson Compliance Scale showed that he is "much more compliant" than average and is "likely to be eager to please people and to avoid conflict and confrontation." *Id*. In addition, his suggestibility scores made him "somewhat more suggestible than average." (*Id*. at p. 7.) As a consequence, Wakefield concluded, because the testing indicates that Todd is

"unusually vulnerable to [manipulative, deceptive, and coercive] interrogation," he "eventually went along with what the police wanted him to say." *Id.* at p. 8.

The combination of these three documents—Dale Todd's Affidavit, Richard Leo's Affidavit, and Hollida Wakefield's psychological report—strongly indicate that the lengthy, suggestive, and coercive police interrogation yielded a false confession. Though Todd recanted that confession during his testimony at Ron Michaels' trial, he was pressured and terrified by police into reiterating his false confession at Terry Olson's trial. Now, however, Todd is ready to correct both the false confession and the false testimony. His convincing recantation goes far beyond the minimal standard needed to meet the requirement that sufficient indicia of trustworthiness exist that Todd's recantation is genuine.

B. Without Todd's False Testimony, the Jury Might Have Reached a Different Conclusion.

The second prong of the *Larrison* test requires the court to find that without the false testimony, the jury *might have* reached a different conclusion. *State v. Caldwell*, 322 N.W.2d 574, 585 (Minn. 1982). Thus, the standard is "less stringent" than the standard set forth in *Rainier v. State*, 566 N.W.2d 692, 695 (Minn. 1977), which demands that other forms of newly discovered evidence must be admissible at retrial and reliable enough to "probably produce an acquittal or more favorable result." *Ferguson v. State*, 645 at 443. Because of the unique procedural history of Olson's case, he easily meets this standard.

In most cases, a court will have to rely on supposition to determine the evidentiary weight a jury might give to recantation evidence. In this case, however, it requires no speculation to know what the result would be. In Olson's trial, Todd testified consistently with his police interrogation. Olson was convicted. In co-defendant Ron Michaels' trial, Todd testified that his "confession" was not truthful and that neither Todd, Michaels, nor Olson had been involved in Jeffrey Hammill's death. Michaels was acquitted. There could be no surer or more obvious example of the strength of a co-defendant's testimony against one person, and the result of withdrawing that same testimony against another. One man is free; another is in prison for 40 years.

The state will doubtless argue that its case against Olson was stronger than its case against Michaels, citing to the six snitches who testified that Olson had made some incriminatory statements to them. But the testimony of these eager witnesses would almost surely not have resulted in a conviction absent Todd's testimony. As an initial matter, although Minnesota law does not specifically require that jailhouse informants' testimony be corroborated, a number of courts have recognized the inherent problems of credibility in such testimony. For example, an Ohio federal court recently reversed a defendant's conviction, in part, because of the state's reliance of jailhouse informants. In *U.S. v. Lewis*, ___ F.Supp. ___ , 2012 WL 407173 (N.D. Ohio 2012), the court concluded that it would be a "miscarriage of justice" to affirm the verdict, as it "rests predominantly on the testimonies of witnesses who were impeached, stood to gain from providing testimony…." *See also State v. Arroyo*, 292 Conn. 558, 973 A.2d 1254, 1259 (2009)

(holding that trial court should give credibility instruction to jury whenever jailhouse informant testimony is given "[i]n light of growing recognition of the inherent unreliability" of such testimony; *Zappulla v. New York,* 391 F.3d 462, 470, n. 3 (2d Cir. 2004) ("numerous scholars and criminal justice experts have found the testimony by 'jailhouse snitches' to be highly unreliable"); *Dodd v. State*, 993 P.2d 778, 784 (Okla. Crim.App. 2000) (adopting special procedures to use in cases involving jailhouse informant testimony, including specific jury instruction); *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993) ("Criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from falsely accusing the innocent, from manufacturing evidence against those under suspicion of crime, and from lying under oath in the courtroom." *See also* Peter A. Joy, "Brady and Jailhouse Informants: Responding to Injustice," 57 Case W. Res. L.Rev. 619, 625 (noting that false testimony from these informants is one of the "major contributing causes to wrongful convictions.")

The "snitch" testimony given at Olson's trial provides a telling example of why the criminal justice system should be wary of such testimony. Most of the federal defendants who claimed that Olson, for some reason, came running to them to confess his involvement in Hamill's death, admitted that they sought sentencing relief for themselves after testifying for the state at Olson's trial. And Andrea George, a federal public defender, testified that about half of her clients engage in cooperation agreements with the state because the federal sentencing guidelines provide for downward departures for

defendants who provide substantial cooperation in the prosecution of another person. (T. 1079-82, T. 1090.) Such a system provides a powerful incentive for exaggerating, embellishing, or making things up out of whole cloth. Their testimony is especially highly prized in cases—like Olson's—that are devoid of any real, substantial evidence of guilt. In weak cases such as this, media coverage—as occurred in Olson's prosecution—is chum in the jailhouse waters. It draws snitches like sharks to a feeding frenzy. Because of the unreliability of these jailhouse informants, their testimony should not be legally sufficient to sustain a conviction. Without Dale Todd's testimony, therefore, the jury would have—and should have—reached a different conclusion.

C. Olson Was Taken By Surprise at Trial by Todd's Testimony Because Todd Had Admitted at Ron Michaels' Trial That His Confession Was False.

The third prong of the *Larrison* test for granting a new trial based on recantation of false testimony at that trial focuses on whether the petitioner was either taken by surprise at trial or had not known of the falsity until after trial. This third prong is not an absolute condition for granting a new trial when the state's primary witness recants his trial testimony. *Ferguson v. State*, 645 N.W.2d 437, 442 (Minn. 2002). Although Olson is not required to establish surprise, he could do so.

When Todd testified at Ron Michaels's trial, he first testified consistently with his admissions to the police. On redirect by the prosecution, however, he made a dramatic recantation when he told the jury, "we didn't do this." (Ron Michaels trial, T.-III 47.) He admitted that he had implicated himself, Michaels, and Olson because he was

"scared" and he "didn't want to go to jail for something [he] didn't do." *Id*. He admitted that he had initially confessed because, during a five-hour interrogation, "nobody wanted to believe [him]" when he said he was not guilty. Rather, the police kept "hounding" him until he said what they wanted to hear. *Id*.

At Olson's trial his attorneys assumed that Todd would once again testify that his confession to the police was a product of his fear and police coercion. Instead he reverted to his initial statement. Olson's attorneys were so unprepared for this turnaround that they failed to plan for such a possibility. *See* Memorandum of Law accompanying original Petition for Post-Conviction Relief (arguing that Olson's trial attorneys were ineffective for failing to move for admission of Todd's previous trial testimony as substantive evidence and for failing to call investigator Jill Nitke as a witness, when Nitke would have testified that Todd told her that none of the three men was involved in Hammill's death).

Because Todd gave sworn testimony that Olson did not kill Hammill and because he reiterated that fact when Nitke talked to him, it was reasonable for Olson's attorneys to believe that he would again testify to this version. He therefore meets the third—unrequired—*Larrison* prong: that he was taken by surprise at trial.

If this court determines that he was not taken by surprise, this would not be, as noted above, fatal to his claim. Because his arguments regarding the first two *Larrison* criteria are so strong, he should prevail on his argument that newly discovered recantation evidence entitles him to a new trial. At the very least, it entitles him to an evidentiary hearing at which the court makes a credibility determination.

CONCLUSION

The Affidavit of Dale Todd averring that neither he nor Terry Olson was involved Jeffrey Hammill's death provides newly-discovered evidence showing that Todd's testimony at Olson's trial was false and that his recantation would likely have made a difference in the outcome of another trial. For these reasons, Olson is entitled to a new trial. At the very least, he must have an evidentiary hearing at which the court can determine the credibility of his recantation.

Dated: September __, 2012

Respectfully submitted,

By _____

David T. Schultz, No. 169730
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Innocence Project of Minnesota
1536 Hewitt Avenue
MS-D2205
St. Paul, MN 55104
Telephone: (651) 523-2796

ATTORNEYS FOR PETITIONER

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF WRIGHT TENTH JUDICIAL DISTRICT

Terry Lynn Olson,

Petitioner,

vs.

State of Minnesota,

Respondent.

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATON AND CLARIFICATION OF OCTOBER 8, 2012 ORDER AND AMENDED PETITION

D.C. File No. 86-K4-05-003795

If Dale Todd had told the truth at Olson's trial, the jury would not have convicted Olson of second-degree murder. There was no physical evidence connecting Olson to the death of Jeffery Hammill. Indeed, there was no reliable evidence whatsoever connecting Olson to Hammill's death. Olson was convicted of second-degree murder because Todd told the jury Olson and Ron Michaels killed Hammill. But, as Todd admitted in an August 2012 affidavit, he did not testify truthfully at Olson's trial. Apart from the recantation, which counsel could not have anticipated at the time of trial and direct appeal, Olson's trial and appellate counsel missed critical opportunities to address Todd's false testimony. If his attorneys had adequately challenged Todd's testimony at trial and on appeal, Olson would not be in prison for a crime he did not commit.

Todd did tell the truth on several occasions before Olson's trial. He was questioned in 1979, and passed a polygraph test administered by law enforcement. Officers again questioned Todd in 2003. Initially, Todd maintained that he, Michaels, and Olson were not involved in Hammill's death. Todd falsely confessed and implicated Michaels and Olson only after officers threatened him with murder charges and lied to him, telling Todd that they found Hammill's

blood on a bat seized from Todd's car. At Michaels's trial, Todd admitted that his 2003 confession was false. Todd admitted that he, Michaels, and Olson were not involved in Hammill's death. The jury acquitted Michaels. After Michaels's trial, however, the investigating officer, Haggerty, again pressured Todd into testifying that he, Michaels, and Olson were involved with Hammill's death.

Olson's trial attorneys attempted to impeach Todd with his prior testimony, but failed to introduce his prior testimony as substantive evidence. They also failed to object to the jury instruction that explicitly told the jury it could only use Todd's prior testimony for impeachment purposes. Olson's trial attorneys attempted to call two witnesses, including Christopher Politano,[1] to testify that an officer and Todd's parents pressured him into testifying falsely at Olson's trial, but the trial court excluded their testimony. Olson's trial attorneys failed to call their investigator, who would have testified that Todd told her that he, Michaels, and Olson had nothing to do with Hammill's death. Olson's trial attorneys also failed to call an expert to testify about the phenomenon of false confessions, which would have helped the jury evaluate Todd's shifting statements. Last, despite the fact that the medical examiner, Dr. Janis Amatuzio, changed the cause of death from "undetermined" to "homicide" based upon Todd's confession, Olson's trial attorneys failed to inform her that Todd had recanted at Michaels's trial.

Olson's appellate counsel also failed to adequately address Todd's false testimony. Like trial counsel, appellate counsel failed to assert Todd's prior testimony should have been admitted as substantive evidence. Counsel also failed to argue on appeal that the trial court erred by prohibiting the defense from calling witnesses who would have testified about the pressure Todd received prior to testifying, despite the fact that this was a strong issue in its own right, and

[1] The Affidavit of Christopher Politano is appended to this Memorandum.

would have bolstered the issues raised on direct appeal. Appellate counsel also failed to assert that trial counsel was ineffective for failing to call the investigator, a false confession expert, and failing to inform Amatuzio about Todd's recantation.

In the October 8, 2012, Order, this Court ruled that Olson's recantation claim was Knaffla-barred because Olson knew about Todd's recantation from Michaels's trial at the time of direct appeal. This Court also ruled Olson's claim ineffective assistance of trial counsel for failing to admit Todd's prior testimony as substantive evidence was Knaffla-barred. The claim that appellate counsel was ineffective for failing to raise this issue, however, was properly before the Court. The remaining claims of ineffective assistance of trial counsel were not addressed in the Order.

Olson files this motion for reconsideration following the Minnesota's Supreme Court decision in LaMonte Rydell Martin v. State of Minnesota, No. A12-0089 (Minn. January 30, 2013), which clarified the Larrison standard. Olson also asks this Court to clarify whether the remaining issues of ineffective assistance of trial counsel claims are Knaffla-barred. If this Court intended the Order to be read as denying all claims of ineffective assistance of trial counsel, Olson respectfully asks this Court to reconsider that ruling because Knaffla does not bar subsequent claims of ineffective assistance of trial counsel when investigation outside the record is necessary to raise those claims. See Dukes v. State, 621 N.W.2d 246, 255 (Minn. 2006). To the extent that any issues are Knaffla barred, Olson asserts appellate counsel was ineffective for failing to raise those issues on direct appeal or in postconviction proceedings prior to the direct appeal. Last, Olson asserts that appellate counsel was ineffective for failing to assert Olson was deprived of his due process right to a fair trial by the court's exclusion of two witnesses who would have testified that Dale Todd was pressured into testifying falsely.

ARGUMENT

1. The Supreme Court's Recent Decision In Martin Makes Clear That Olson Is Entitled To A Larrison Hearing On Dale Todd's Recantation.

The significance of Todd's testimony at Olson's trial cannot be overstated. Aside from jailhouse snitches who were discredited at trial, Todd was the only witness who tied Olson to Hammill's death. There was no physical evidence linking Olson to Hammill's death. There was no convincing evidence of motive. Todd was the only witness who testified at Olson's trial who was allegedly present at the time of Hammill's death. But in his August 3, 2012, affidavit Todd admitted that he testified falsely at Olson's trial. Neither Todd nor Olson were present when Hammill was killed.

This Court denied Olson a Larrison hearing, reasoning that Olson knew about Todd's recantation at Michaels's trial, and failed to raise the issue on direct appeal. October 8, 2012 Order at 7. While both trial and appellate counsel knew that Todd recanted his *Michaels* testimony at Michaels's trial, counsel could not possibly know that five years after the trial, Todd would recant his testimony in Olson's case.

Knaffla only bars claims that are known, but not raised on direct appeal. See e.g. Reed v. State, 793 N.W.2d 725, 732 (Minn. 2010). Without a recantation of his testimony in *Olson's* trial, appellate counsel had no factual basis to raise Todd's recantation on direct appeal. Moreover, in Todd's affidavit, he did not merely repeat his testimony from Michaels's trial; he provided an explanation for his false statement to police and the events leading to his false testimony during Olson's trial. Under Martin, Olson is entitled to a hearing to address Todd's recantation. See Martin v. State, No. A12-0089, slip op. at 14-15 (Jan. 30, 2013) (attached).

A. Todd's testimony at Michaels's and Olson's trials, and subsequent recantation.

At Michaels's trial, Todd initially testified consistent with his 2003 statement to police. Then, on redirect, the following exchange occurred:

Q: Are you here now today saying that you lied yesterday when you that Ron Michaels had something to do with the death of Jeffrey Hammill?

A: Correct.

…

Q: Why?

A: Because I didn't do this, we didn't do this.

Q: Why did you tell the police you did it?

A: Because I was – I didn't want to go to jail for something I didn't do.

Q: So you're now saying that your statement to the police in September of '03 was a lie?

A: Some of it was – most of the statement in '03 was the first part and I had told my attorney that I had lied on the last part of the statement.

Q: Are you saying that your statement to the police in July of –

A: You wanted me to be honest. I'm being honest.

Q: Yes.

A: Yes I did.

Q: Okay.

A: Okay. What I am saying is that nobody wanted to believe me.

Q: Okay.

A: They kept hounding me and hounding me what they wanted me to say.

Q: Okay so –

A: And I just – nobody would believe me.

Q: So did you leave the party or not?

A: No we did not leave the party…

(Michaels Trial, Vol. III at 47-48).

At Olson's trial, however, Todd testified consistent with his 2003 statement. At the time of Olson's trial, counsel knew about Todd's Michaels trial testimony, and used it to impeach him. Appellate counsel, likewise, knew about Todd's testimony at Michaels's trial. Neither trial nor appellate counsel, however, knew or could have known that in 2012, Todd would recant his *Olson trial testimony*. Nor could either counsel have predicted that Todd's 2012 recantation would go far beyond his trial testimony in Michaels.

In his affidavit, Todd provided details about August 10, 1979, his false confession in 2003, his testimony at Michaels's trial and his false testimony at Olson's trial. Todd also explained the circumstances leading up to his recantation in 2012.

In 1979, Todd worked with Olson and Hammill.[2] On the night of August 10, 1979, Todd and Olson gave Hammill a ride to a party at the home of Deb Springer, who is Olson's sister. They got a flat tire on the way to the party, and fixed that flat with a stolen tire. After changing the tire, Todd and Olson stayed at the party. Todd did not see Hammill leave. In fact, he did not see Hammill again after they changed the tire. Later that night, Todd drove Michaels home from the party, and listened to Michaels's stereo. Todd later returned to Springer's house, and saw Olson asleep on the couch. Olson woke up, and the two men talked briefly.

When interviewed in 2003, Todd made false statements because he was scared and confused. He initially told officers that he, Olson, and Michaels had nothing to do with

[2] All facts regarding Todd's recantation are taken from Todd's affidavit, which was filed with the Amended Petition for Postconviction Relief.

Hammill's death. The officers kept questioning him, and Todd felt like he would say anything to make them stop. Todd believed the police when they told him there were witnesses who said he, Michaels, and Olson were involved. He believed police when they told him there was physical proof linking them to the offense. Todd, who was addicted to pain killers, and taking pain killers at the time of the statement, became confused. He started to doubt his own memory, and to believe the officers' version of events. Todd was offered a deal: In exchange for his testimony against Michaels and Olson, the murder charges against him would be dismissed, and he could plead guilty to the offense of aiding an offender. Todd took this deal, and pleaded guilty on July 21, 2006.

At Michaels's trial, Todd initially testified consistent with his false confession. But, during re-direct examination, Todd admitted that neither he, nor Michaels, nor Olson participated in the murder of Hammill. The jury acquitted Michaels.

Because Todd did not testify consistent with his 2003 statement, his probation was revoked, and he was sentenced to an executed prison term of 37 months. After Michaels's trial, and before Olson's trial, law enforcement officials visited Todd at least twice, once in prison and once at the Wright County jail just before he testified. Todd's counsel was not present at those meetings or at Olson's trial. Todd recalled that he did not want to speak with the officers or testify at Olson's trial. The officers tried to intimidate him and they wanted to ensure that he testified at Olson's trial consistent with his 2003 confession. Todd attempted to "plead the Fifth" at Olson's trial, but the judge warned him that he would face contempt charges and could get additional jail time. Todd reluctantly testified.

At Olson's trial, Todd testified consistent with his 2003 statement. Todd testified that Olson left Springer's party with him and Michaels, that they stopped for Hammill, who was

walking down the road, and that Olson and Michaels got out of the car to talk with Hammill. This was false. Olson did not leave the party with Todd, and they did not see Hammill. Todd testified falsely because he was terrified that he would be charged with murder and face up to 40 years in prison for an offense he did not commit. Todd does not believe he told anyone about this fear.

Several years after testifying at Olson's trial, Todd received a letter from Jim Powers, who investigated Hammill's death in 1979. He performed a polygraph on Todd in 1979, which Todd passed. Powers told Todd that police manipulated him into providing the statement because they thought he was the most likely to break down while being interrogated. Powers said he was convinced that Todd and Olson were not involved in Hammill's death. After reading Powers' letter, Todd realized what happened to him, and why he gave a false statement. Todd also began to trust his memory about the events of the night Hammill died. Todd realized that he made false statements at Olson's trial because police manipulated him, he was scared, and he no longer trusted his own memory.

Todd is now certain that he did not see Hammill after Hammill left Springer's party. Todd is certain that Olson did not leave Springer's house with him. Todd is certain that he gave Michaels a ride home, and that Olson did not accompany them. He is certain that he did not see Hammill on the road. And, Todd is certain that when he returned to Springer's home, Olson was asleep on the couch.

B. A Larrison hearing is required to evaluate the credibility of Todd's recantation.

Olson is entitled to a Larrison hearing because Todd has recanted his testimony from Olson's trial. A Larrison hearing is required anytime a petitioner presents "competent material evidence that, if found to be true following an evidentiary hearing, could satisfy the Larrison

test." Martin v. State, No. A12-0089, slip op. at 14-15 (Jan. 30, 2013) (attached). Under Larrison, a new trial is necessary when the court is reasonably well-satisfied that 1) the testimony in question was false, 2) without the testimony, the jury might have reached a different conclusion, and 3) the petitioner was surprised by the false testimony at trial or did not know of its falsity until after trial. Id. (citing State v. Turnage, (Turnage II), 729 N.W.2d 593, 597 (Minn. 2007)). "The third prong is relevant, but not an 'absolute condition precedent' to a new trial." Martin, slip op. at 10 (citing Opsahl v. State, (Opsahl II), 710 N.W.2d 776, 782 (Minn. 2006)). The postconviction court must view the evidence in the light most favorable to the petition when determining whether to grant a hearing. See Minn. Stat. § 590.04 (A postconviction hearing is required unless the evidence presented, considered in the light most favorable to the petitioner, conclusively show that the petitioner is not entitled to relief). Moreover, "an evidentiary hearing is often necessary to resolve credibility determinations regarding a recanting witness'sss conflicting statements." Martin, slip op. at 10 (citations omitted).

Martin's claim of witness recantation was markedly similar to Olson's claim of Todd's recantation. Like Olson, Martin filed a petition for postconviction approximately two years his murder conviction was affirmed. In that petition, Martin raised a number of claims, including an assertion that the two eyewitnesses who identified Martin as the shooter had recanted. Martin, slip op. at 7.

The first witness, Pettis, testified at trial that he saw Martin and his co-defendant, Jackson, with guns and running toward the house where the victim was found dead. Id. at 12. Pettis claimed that after hearing the gunshots, he saw Martin and Jackson get into a white car and flee the scene. Id. Pettis later provided an affidavit, stating he "wished to make a wrong right,"

and that he was pressured into testifying Martin and Jackson killed the victim. Id. at 13. Pettis admitted in the affidavit that he did not know who murdered the victim. Id.

The second witness, Mack-Lynch, admitted at trial that he knew Martin and that they were members of rival gangs. Id. He claimed that he was with the victim during the shooting. Id. In his affidavit, however, Mack-Lynch admitted that he did not see Martin or Jackson with weapons or at the scene of the shooting. Id. He further admitted that he implicated Martin and Jackson because they belonged to a rival gang. Id.

Despite these affidavits, the postconviction court denied Martin's petition without a hearing. Id. at 8. The Supreme Court held that the postconviction court abused its discretion by denying Martin a hearing on the recantation issue. Id. at 15. The Court first made clear that there are different standards for granting an evidentiary hearing and a new trial. Id. at 14-15. To obtain a hearing, Martin was merely required to "present competent evidence that, if found to be true following an evidentiary hearing, could satisfy the Larrison test." Id. Pettis' and Mack-Lynch's affidavits formally recanted their trial testimony, and explained why they testified falsely. Id. at 15. So, "when viewed in a light most favorable to the petition, the Mack-Lynch and Pettis affidavits present prima facie evidence of the first prong of the Larrison test." Id.

Like the affidavits in Martin, Todd's affidavit provided an explanation for his false testimony; like Pettis, Todd explained that he was pressured into testifying falsely. See Id. at 13. In this case, there is more evidence than in Martin that the recantation is genuine. Richard Leo's affidavit provides an explanation for why Todd provided a false statement to police. Christopher Politano's affidavit bolsters Todd's claim that he was pressured into testifying falsely. Like the affidavits in Martin, Todd's affidavit provided prima facie evidence of the first prong of the

Larrison test. A Larrison hearing is necessary, therefore to evaluate the credibility of Todd's recantation. See Minn. Stat. § 590.04; Martin, slip op. at 15.

When viewed in the light most favorable to the petition, Todd's affidavit also provides sufficient evidence to satisfy the second prong of the Larrison test, that the jury *might* have found Olson not guilty if Todd had not testified. See Martin, slip op. at 15. In Martin, the postconviction claim involved "allegedly false trial testimony … that [constituted] the only direct evidence identifying Martin as one of the shooters." Id. at 17. Likewise, in this case, Todd's testimony was the only evidence directly linking Olson to Hammill's death. Without Todd's testimony, it is clear that the jury *might* have come to a different conclusion. Indeed, the jury likely would have reached a different conclusion.

Olson's Larrison claim is not barred by Knaffla because Todd's 2012 recantation is new evidence that was not known to counsel at the time of direct appeal. See Schleicher v. State, 718 N.W.2d 440, 446-447 (Minn. 2006). Olson respectfully asks this Court to reconsider its ruling, and grant a hearing to evaluate the credibility of Todd's recantation, consistent with the Minnesota Supreme Court's decision in Martin.

2. Olson's Claims Of Ineffective Assistance Of Trial Counsel Are Not Knaffla-Barred Because Additional Evidence Is Needed To Evaluate The Claims.

This Court clearly ruled in the October 8, 2012, Order that Olson was barred from asserting trial counsel was ineffective for failing to introduce Todd's prior testimony as substantive evidence. The Order did not specifically address the additional claims of ineffective assistance of trial counsel, which included trial counsel's failure to call Jill Nitke to impeach Todd, failure to call an expert to testify about false confessions, and failure to inform Dr. Amatuzio that Todd had recanted at Michaels's trial. Because these claims could not be raised

on direct appeal, and required a hearing where Olson could present additional evidence, they are not Knaffla-barred.[3]

In 1976, the Minnesota Supreme Court announced what is now known as the Knaffla rule: "where 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). There are two exceptions to the Knaffla rule: "(1) if a novel legal issue is presented, or (2) if the interests of justice require review." Schleicher v. State, 718 N.W.2d 440, 447 (Minn. 2006). The Minnesota Supreme Court has clearly explained that the second exception applies when, as in Olson's case, the claim cannot be determined from the district court record, and an evidentiary hearing is required. See Id. (citing Torres v. State, 688 N.W.2d 569, 572 (Minn. 2004); Zenanko v. State, 688 N.W.2d 861, 864 (Minn. 2004)).

The Supreme Court recognizes that there are two types of ineffective assistance of counsel claims—those that can be decided based on the trial court record and those that require additional fact finding. Torres, 688 N.W.2d at 572.

> A claim of ineffective assistance of trial counsel that can be decided on the basis of the trial court record must be brought on direct appeal and is procedurally barred when raised in a postconviction petition. But a claim of ineffective assistance of trial counsel that cannot be decided on the district court record because it requires additional evidence need not be brought on direct appeal and may be brought in a postconviction petition.

Id. Put simply, "ineffective assistance of counsel claims that require additional fact finding are properly raised in a postconviction petition, *even if they were known at the time of the defendant's direct appeal."* Dukes v. State, 621 NW.2d 246, 255 (Minn. 2006).

---

[3] These claims were addressed in Olson's Memorandum in Support of Petition For Post Conviction Relief, filed on January 18, 2012. The substance of these claims will not be repeated here.

Dukes, for example, raised several claims in a postconviction petition following his direct appeal, including: (1) the accomplice's guilty plea testimony was admitted improperly, (2) trial counsel conceded his guilt during closing argument. Dukes, 621 N.W.2d at 251-252. The postconviction ruled that both claims were Knaffla-barred because they were not raised in the direct appeal. Id. at 251-252, 255. On appeal, the Supreme Court held the first issue was Knaffla-barred because "the legal basis for this claim was available at the time of Dukes' direct appeal." Id. at 251. That is, no evidentiary hearing was required for the court to decide the issue on appeal. Id. The second issue was not Knaffla-barred, however, because the court could not make a decision on the merits of the claim without considering testimony from Dukes and his trial attorney. Id. at 255.

Likewise, in Robinson v. State, 567 N.W.2d 491 (Minn. 1997), Robinson raised a number of claims of ineffective assistance of trial counsel. Most of the claims were Knaffla-barred because they could have been decided "by an appellate court on direct appeal based on the briefs and trial court transcript, without any additional fact-finding." Id. at 495. Robinson's claim that trial counsel failed to communicate two plea offers was not Knaffla-barred because to evaluate the claim the court would need to hear from the defendant, the trial attorney, and any other potential witness who might have knowledge of conversations between the defendant and his attorney. Id. The Court concluded, "for this reason, an ineffective assistance of counsel claim such as this is properly raised in a petition for post-conviction relief, even though it was known at the time of direct appeal."

Olson's claims of ineffective assistance of trial counsel might have been known at the time of direct appeal, but they could not be raised on direct appeal because the claims require

additional fact-finding. See Dukes, 621 N.W.2d at 255; Robinson, 567 N.W.2d at 495. Accordingly, the claims are not Knaffla-barred.

Counsel's failure to call Jill Nitke to impeach Dale Todd:[4]

The appellate record does not include any reference to Nitke's discussion with Todd. There is nothing in the record suggesting that she met with Todd, and that he told her neither he nor Olson were involved in Hammill's death. There is nothing in the record explaining why the defense did not call Nitke after Todd testified inconsistent with his statement to Nitke. This issue could not be raised on direct appeal.

As in Dukes, this "is exactly the type of claim that needs additional fact-finding before it can be resolved." See Dukes, 621 N.W.2d at 255. It is unclear from the trial record that Nitke had relevant information, that she was available to testify, and whether there was a tactical reason to not call her. A postconviction hearing is necessary to receive testimony from Nitke, as well as trial counsel, who could explain the failure to call Nitke. At the postconviction hearing, Nitke will testify that she took a statement from Todd in June, 2007, and that she knew could be called as a witness if Todd testified differently from his statement. See Nitke Aff. Despite the fact that Todd testified contrary to his statement, the defense did not call Nitke. See Nitke Aff.; Murphrey Aff. Murphrey will testify that Nitke was a credible witness who would have impeached Todd. See Murphrey Aff. Murphrey's failure to call Nitke was not a tactical decision. See Murphrey Aff. Because this claim could not be brought on direct appeal, it is not Knaffla-barred.

[4] See Olson's Memorandum in Support of Petition for Postconviction Relief and Affidavit of Jill Nitke for a thorough discussion of this issue.

Counsel's failure to call an expert to testify about false confessions:[5]

In this case, it was apparent from the record that Todd was vulnerable, and that there were problems with his confession. But, this issue could not be raised on direct appeal. To evaluate whether trial counsel was ineffective for failing to call an expert on false confessions, the court must hear from one or more experts and from trial counsel. That is precisely what Olson seeks to do in these postconviction proceedings.

Dr. Richard Leo, a leading expert on false confessions, will testify at the postconviction hearing that he reviewed Todd's confession and other materials. See Leo Aff. After his comprehensive review, Dr. Leo concluded that the questioning of Todd on September 23, 2003, "bore the characteristics of a guilt-presumptive interrogation…there were numerous situational risk factors for false confession present in Mr. Todd's interrogation…the statements elicited from Mr. Todd during the…interrogation bear the characteristics or hallmarks of what is known as a *persuaded* (or *internalized)* false confession…[and] there are numerous indicia of unreliability – i.e., factual errors, inconsistencies, and impossibilities…that cast doubt on its veracity and suggest that it is at best untrustworthy and at worst completely false." See Leo Aff.

In addition to Dr. Leo, Hollida Wakefield, a licensed psychologist, will testify that she also reviewed Todd's interrogations and his testimony from Olson's and Michaels's trials. See Psychological Evaluation, appended to the Amended Petition for Postconviction Relief. Wakefield also met with Todd and administered several psychological tests, which revealed that Todd was very suggestible, that he is more compliant and eager to please than the general population, that he lacks self confidence, and that he is gullible. See Psychological Evaluation.

---

[5] See Memoranda in Support of the Petition for Postconviction Relief and Amended Petition for Postconviction Relief, along with the Affidavit of Richard Leo and Psychological Evaluation completed by Hollida Wakefield, for a thorough discussion of this issue.

Wakefield concluded that Todd was "unusually vulnerable" to the interrogation techniques officers used with him, and he "eventually went along with what police wanted him to say." See Psychological Evaluation.

In addition to considering evidence presented by Dr. Leo and Wakefield, it is also necessary to hear testimony from trial counsel regarding why they failed to call an expert on false confessions at trial. Virginia Murphrey will testify that she believed Todd's 2003 statement was "the result of police coercion of an individual of limited capacity." See Murphrey Aff. Despite this belief, Murphrey did not contact an expert on false confessions. See Murphrey Aff. This was not a strategic decision. See Murphrey Aff.

While appellate counsel might have known that Todd's statement to police was unreliable, this issue could not have been raised on direct appeal because there was no record available for the court to consider this issue. Accordingly, this claim is not Knaffla-barred. See Dukes, 621 N.W.2d at 255 (citing Robinson, 567 N.W.2d at 495) (stating "ineffective assistance of counsel claims that require additional factfinding are properly raised in a postconviction petition, even if they were known at the time of the defendant's direct appeal").

Counsel's failure to inform Dr. Janis Amatuzio that Dale Todd recanted at Ron Michaels's trial:[6]

In 2003, Dr. Amatuzio initially reviewed the 1979 coroner's report regarding Hammill's death, and she agreed that the "manner of death" was properly "undetermined." See Amatuzio Aff. She informed officers that she would only change the manner of death classification if provided with new information that called the original "undetermined" classification into question. See Amatuzio Aff. In 2005, the Bureau of Criminal Apprehension provided new

[6] See Memorandum in Support of Petition for Postconviction Relief and appended Affidavits of Virginia Murphrey and Janis Amatuzio for a thorough discussion of this issue.

information: Dale Todd's statement that he witnessed the assault on Hammill. See Amatuzio Aff. After receiving this information, Dr. Amatuzio reevaluated Hammill's injuries in light of Todd's statement, and changed the manner of death to "homicide." See Amatuzio Aff. Despite her testimony that she changed the manner of death classification based on Todd's testimony, no one told Amatuzio that Todd's statement was unreliable. See Amatuzio Aff.; Murphrey Aff. No one told her that Todd had recanted at Michaels's trial. See Amatuzio Aff.; Murphrey Aff. Although Murphrey knew Amatuzio relied on Todd's statement when she changed the manner of death classification, Murphrey did not tell Amatuzio about Todd's recantation at Michaels's trial. See Murphrey Aff. This was not a strategic decision.

Although Dr. Amatuzio explained at Olson's trial that she changed the manner of death classification based on Todd's statement, appellate counsel could not raise this issue on direct appeal. Rather, postconviction proceedings are necessary to explore this issue because the postconviction court would need to hear testimony from Dr. Amatuzio and trial counsel before reaching the merits of the claim. See Dukes, 621 N.W.2d at 255 (concluding the claim of ineffective assistance of counsel for admitting Dukes' guilt was not Knaffla-barred because "the postconviction court needs to hear testimony from Dukes and his counsel in addition to reviewing the trial record before it can decide the merits of this claim").

None of the issues addressed above could have been raised on direct appeal because additional factfinding is necessary to evaluate the claims. These claims, therefore are not Knaffla-barred.

3. If Any Claim Of Ineffective Assistance Of Trial Counsel Is Knaffla-Barred, Appellate Counsel Was Ineffective For Failing To Raise The Issue Prior To Or In Olson's Direct Appeal.

If this Court determines that the ineffective assistance of trial counsel claims are Knaffla-barred because appellate counsel knew or should have known about them at the time of the direct appeal, then appellate counsel was ineffective for failing raise these issues on direct appeal or in postconviction proceedings prior to the direct appeal.

Appellate counsel is ineffective when "counsel's representation fell below an objective standard of reasonableness" and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[7] See Arredondo v. State, 754 N.W.2d 566, 571 (Minn. 2008) (citations omitted). "When an ineffective assistance of appellate counsel claim is based on appellate counsel's failure to raise an ineffective assistance of trial counsel claim, the [petitioner] must first show that trial counsel was ineffective." Wright v. State, 765 N.W.2d 85, 91 (Minn. 2009) (citing Fields, 733 N.W.2d 468).

The claims of ineffective assistance of trial counsel were thoroughly addressed in Olson's Memorandum in Support of Petition for Postconviction Relief, and will not be repeated here. If appellate counsel had raised the issues Olson now raises, there is a reasonable probability Olson would have prevailed on appeal or postconviction proceedings, and therefore, Olson was deprived of effective assistance of counsel.

---

[7] The law of ineffective assistance of trial and appellate counsel is thoroughly addressed in Olson's Memorandum in Support of Petition for Postconviction Relief, and will not be repeated here.

4. Appellate Counsel Was Ineffective For Failing To Argue On Direct Appeal That The Trial Court Erred By Excluding Testimony From Two Witnesses[8] Who Would Have Testified That Dale Todd Was Pressured Into Testifying For The State.

Todd told Politano that he and Olson were not involved in Hammill's death.[9] Todd told Politano that he did not want to testify. Todd told Politano that officers were pressuring him to testify against Olson. Politano was present when, after hours, Todd was called out for a visit from Haggerty and Todd's parents. After that visit, Todd told Politano that he was scared that he would lose his plea bargain, and face murder charges, if he did not testify against Olson. Todd also told Politano that his parents would cut him off, and he would not have a place to live, if he did not testify against Olson. But the jury did not hear from Politano because, without any explanation whatsoever, the trial court excluded his testimony, along with the testimony of a second witness who would have provided similar testimony (T 1208-1210).[10]

Trial counsel preserved this meritorious issue, but appellate counsel failed to raise the issue on direct appeal. Appellate counsel failed to raise this issue even though it would have bolstered the argument that the trial court abused its discretion by allowing Haggerty to sit at counsel table during trial. That is, on appeal, counsel alleged that Haggerty's presence at trial was prejudicial. But, by not asserting that the trial court erred by excluding the bias testimony, counsel missed the opportunity to point out the most significant prejudice: Given that Haggerty had strong-armed Todd into testifying against Olson, Todd was unlikely to testify truthfully with Haggerty in the courtroom.

Had counsel raised this issue on appeal, there is a reasonable probability that the outcome would have been different because it is well-settled that a criminal defendant has the right to

---

[8] The second witness was "unnamed," but Olson would have subpoenaed the witness if the court had allowed the testimony. At this time, Olson has an affidavit only from Politano.

[9] See Affidavit of Christopher Politano, attached.

[10] The transcript of Todd's rebuttal testimony is attached.

present evidence to expose an adverse witness's bias. Due process guarantees a criminal defendant's right to present a complete defense. See State v. Quick, 659 N.W.2d 701, 712 (Minn. 2003). "This right necessarily includes the ability to present the defendant's version of the facts through witness testimony." State v. Penkaty, 708 N.W.2d 185 201 (Minn. 2006). The trial court deprives a defendant of due process by denying the opportunity to reveal an adverse witness's bias. See State v. Pride, 528 N.W.2d 862, 867 (Minn. 1995). By excluding bias evidence, the trial court deprived Olson of his right to present a complete defense. Although evidentiary rulings are reviewed for abuse of discretion, when an evidentiary ruling denies a defendant the right to present a defense, reversal is necessary unless the error is harmless beyond a reasonable doubt. See Penkaty, 708 N.W.2d at 201; State v. Richardson, 670 N.W.2d 267, 277 (Minn. 2003). In this case, the error was not harmless beyond a reasonable doubt because it is possible that the jury would have acquitted Olson if it had heard from Politano and the other witness.

The bias evidence was relevant and admissible to show Todd was pressured into testifying, which is evidence of bias. That is, Todd was inclined to testify for the state because he feared the consequences of refusing to testify. "Bias is a catch-all term describing attitudes, feelings, or emotions of a witness that might affect her testimony, leading her to be more or less favorable to the position of a party for reasons other than the merits." State v. Lanz-Terry, 535 N.W.2d 635, 640 (Minn. 1995) (quoting Mueller & Kirkpatrick, Federal Evidence, § 307. A witness's bias is always relevant, and may be shown by extrinsic evidence. Lanz-Terry, 535 N.W.2d at 640 (citing Davis v. Alaska, 415 U.S. 308, 315 (1974); United States v. Abel, 469 U.S. 45, 55 (1984)); see also Minn. R. Evid. 616 ("For the purpose of attacking the credibility of

a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible.").

The trial court's exclusion of bias evidence was a legitimate appellate issue in its own right. The trial court erred by excluding the testimony of Politano and the other witness. Had the jury heard this testimony, it might have further questioned Todd's testimony. The state's case was already weak, and any evidence that further called Todd's testimony into doubt could have affected the outcome at trial. Moreover, the court's exclusion of this testimony allowed the state to argue in closing that there was no evidence that Haggerty pressured Todd to testify, and that there was "absolutely no evidence of any pressure being put on Dale Todd by any of the law enforcement officers or the prosecutors in this case, except maybe his own guilt and the defendant" (T 1311, 1313).

If counsel had raised this issue on appeal, there is a reasonable likelihood the outcome would have differed because the trial court abused its discretion by prohibiting Olson from introducing evidence that the state's most important witness was biased. Moreover, raising this issue on appeal would have illuminated the prejudice of allowing Haggerty to be present during trial. Because there is a reasonable probability Olson would have prevailed on appeal if he had raised this issue, Olson was deprived of effective assistance of appellate counsel.

CONCLUSION

Under the Minnesota Supreme Court's decision in Martin, Olson is entitled to a Larrison hearing so this Court can evaluate the credibility of Todd's recantation. Olson's postconviction claims of ineffective assistance of trial counsel are not Knaffla-barred because further factfinding is necessary to address the claims. But, if this Court determines that any claim is Knaffla-barred, then appellate counsel was ineffective for failing to raise the issues prior to or in the direct

appeal. Finally, appellate counsel was ineffective for failing to assert the trial court abused its discretion by prohibiting the defense from introducing evidence that the state's most important witness, Todd, was biased. Olson respectfully requests that this Court grant a hearing to address all the issues raised in Olson's Petition for Postconviction Relief and the Amended Petition for Postconviction Relief.

Dated: March 12, 2013

Respectfully submitted,

By _____

David T. Schultz, No. 169730
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Sara Martin, No. 287064
Innocence Project of Minnesota
1536 Hewitt Avenue
MS-D2205
St. Paul, MN 55104
Telephone: (651) 523-2796

Attorneys for Terry Olson, Petitioner

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF WRIGHT TENTH JUDICIAL DISTRICT

D. C. File No. 86-K4-05-003795

Terry Lynn Olson,

Petitioner,

v.

State of Minnesota,

Respondent.

NOTICE OF PETITION, AMENDED PETITION FOR POST-CONVICTION RELIEF, AND MEMORANDUM OF LAW IN SUPPORT OF PETITION

TO: The Honorable Geoffrey W. Tenney, Judge of the District Court, Wright County Courthouse, 10 Second Street N.W., Buffalo, MN 55313; Tom Kelly, Wright County Attorney, Wright County Courthouse, 10 Second Street N.W., Buffalo, MN 55313; Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and Peggy Gentles, Wright County Court Administrator, Wright County Courthouse, 10 Second Street N.W., Buffalo , MN 55313

PLEASE TAKE NOTICE that petitioner, through undersigned counsel, has filed this amended petition for post-conviction relief and memorandum of law pursuant to Minn. Stat. § 590 (2008), to challenge his October 18, 2007 Judgment of Conviction.

Dated: September __, 2012

Respectfully submitted,

By _____

David T. Schultz, No. 169730
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

and
Innocence Project of Minnesota
1536 Hewitt Avenue
MS-D2205
St. Paul, MN 55104
Telephone: (651) 523-2796

ATTORNEYS FOR PETITIONER

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF WRIGHT TENTH JUDICIAL DISTRICT

Terry Lynn Olson, D.C. File No. 86-K4-05-003795

Petitioner,

vs. **AMENDED PETITION FOR POST-CONVICTION RELIEF**

State of Minnesota,

Respondent.

TO THE DISTRICT COURT ABOVE-NAMED:

The undersigned represents and states:

I.

That he is the attorney for the petitioner, Terry Olson, who is imprisoned and restrained of his liberty in the Minnesota Correctional Facility – Stillwater.

II.

That Mr. Olson is confined and restrained of his liberty by virtue of the following judgment of conviction:

Mr. Olson was found guilty on August 20, 2007 of one count of second-degree murder and one count of third-degree murder in connection with the August 11, 1979 death of Jeffrey Hammill, after a jury trial before the Honorable Kim Johnson.

III.

August 11, 1979:	Date of alleged offense.
November 4, 2005:	Grand Jury indictment filed in Wright County District Court, charging Terry Lynn Olson, Ron Michaels and Dale Todd with: Count One: first-degree premeditated murder (Minn. Stat. § 609.185(a)(1) (1978)); Count Two: aiding and abetting first-degree premeditated murder (Minn. Stat. §§ 609.05, subd. 1 and 609.185(1) (1978)); Count Three: second-degree intentional murder (Minn. Stat. § 609.19 (1978)); Count Four: aiding and abetting second-degree intentional murder (Minn. Stat. §§ 609.05, subd. 1 and 609.19 (1978)); Count Five: third-degree murder—depraved mind (Minn. Stat. § 609.195 (1) (1978)); Count Six: aiding and abetting third-degree murder—depraved mind (Minn. Stat. §§ 609.05, subd. 1 and 609.195(1) (1978)); Count Seven: third-degree murder—committing or attempting to commit felony aggravated assault (Minn. Stat. § 609.195(2) (1978)); and Count Eight: aiding and abetting second-degree murder—committing or attempting to commit felony aggravated assault (Minn. Stat. §§ 609.05, subd. 1 and 609.195(2) (1978)).
August 10-17, 2007:	Jury trial held before the Honorable Kim R. Johnson. Counts Five and Six are dismissed by the State for insufficient evidence. Olson is found not guilty on Counts One, Two, Four and Eight. Olson is found guilty on Counts Three (second-degree murder) and Seven (third-degree murder).
October 18, 2007:	Sentencing hearing held before Judge Johnson. Olson is sentenced to an indeterminate term of zero to 40 years imprisonment on the second-degree murder conviction.

August 4, 2008	Olson appealed his convictions on the grounds that the trial court erred in allowing the deputy sheriff who led the investigation to sit at counsel table during the trial and on the grounds of insufficient evidence.
July 21, 2009:	The Court of Appeals affirmed Olson's conviction in an unpublished opinion. *State v. Olson,* No. A08-0084, 2009 WL 2147262 (Minn. App. July 21, 2009).
October 20, 2009:	The Minnesota Supreme Court denied Olson's petition for review.
January 18, 2010:	The time period to petition for certiorari to the United States Supreme Court expired and Olson's conviction is considered final.
December 20, 2010:	Olson filed a petition for postconviction relief based solely on the grounds that he had been sentenced incorrectly.
February 15, 2011:	Order filed by the Honorable Geoffrey W. Tenney denying post-conviction relief without an evidentiary hearing.
July 18, 2011:	Olson appealed the trial court's denial of his petition for post-conviction relief.
January 18, 2012:	Olson's Petition for Post-Conviction Relief on ineffective assistance of counsel grounds is filed and served.
September 7, 2012:	Olson's Amended Petition for Post-Conviction Relief based on newly discovered evidence is filed and served.

IV.

Olson requests relief as follows:

That the judgment of conviction and sentence of the Wright County District Court, dated August 17, 2007 and October 18, 2007, respectively be vacated and new trial ordered.

In the alternative, that a hearing be promptly held to determine the issues set forth in this petition.

V.

That the facts and grounds upon which this petition is based are:

Facts: Almost exactly twenty-eight years after Jeffrey Hammill was found dead on the side of County Road 12, Petitioner, Terry Lynn Olson, was charged with and convicted of his murder. Hammill was discovered at 4:00 a.m. on August 11, 1979 dead of an apparent head injury. The county coroner could not determine his manner of death and, despite a lengthy investigation, no one was charged in the case. Three men, Terry Olson, Ron Michaels and Dale Todd, had been with Hammill at a party earlier in the evening. All gave statements to the police and cooperated fully with the investigation in 1979.

Twenty-four years later, with no new evidence, the Wright County Sheriff's Office reopened the case. During a five hour interrogation at a local police department, Todd gave a halting and convoluted statement that he, Olson and Michaels were involved in Hammill's death. In exchange for this statement, Todd pled guilty to aiding an

offender and was not charged with murder. Michaels and Olson, however, stood trial separately for Hammill's murder.

When Todd was called to testify in Michaels' trial, he recanted his earlier statements and denied that he, Michaels or Olson had any involvement in Hammill's death. The jury acquitted Michaels of all charges. At Olson's trial, with a Wright County deputy sheriff sitting next to the prosecutor throughout his testimony, Todd reverted to his vague statements implicating Olson and Michaels. In addition, the state presented six jailhouse informants who testified that, in various ways, Olson had admitted to them that he had killed Hammill. Based almost entirely on the testimony of Todd and the informants, Olson was convicted of second-degree murder and sentenced to an indeterminate term up to forty years in prison.

Grounds for Relief:

1. Olson was deprived of his constitutional right to a fair trial because the deficient performance of both his trial and appellate counsel seriously prejudiced his case. Olson's trial counsel fundamentally mishandled a critical witness, Dale Todd, by failing to submit his prior recantation as substantive evidence, failing to call a known and available witness to impeach his testimony and failing to retain an expert witness to explain the phenomenon of false confessions to the jury. The medical examiner who changed Hammill's manner of death from "undetermined" to "homicide" in 2005 did so largely because she believed that Todd had credibly confessed to the assault. Olson's trial attorneys never told her that Todd had recanted at Michaels' trial and that there were significant reasons to doubt his truthfulness.

Olson's appellate attorney did not call the Court of Appeals' attention to the fact that Dale Todd's recantation was only admitted as impeachment evidence, even though Minnesota law is clear that a prior inconsistent statement given under oath is substantively admissible. A memorandum of law that fully explicates Olson's legal arguments was filed on January 18, 2012, with Olson's original petition for post-conviction relief.

2. Olson is entitled to a new trial based on the recantation evidence of his co-defendant, Dale Todd.

The recantation shows that Todd's trial testimony was false, that the false testimony took his attorneys by surprise, and without it, the jury might have found Olson not guilty. A memorandum setting forth this legal argument is attached.

VI.

That all grounds for relief known to Olson are included in this petition, and The Innocence Project of Minnesota, 1536 Hewitt Avenue, MS-D2205, St. Paul, MN 55104, and David T. Schultz, are the attorneys for Olson.

VII.

An evidentiary hearing is essential to understanding the claims set forth in Olson's petition and is therefore requested.

Dated: September __, 2012

Respectfully submitted,

By _____

David T. Schultz, No. 169730
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Innocence Project of Minnesota
1536 Hewitt Avenue
MS-D2205
St. Paul, MN 55104
Telephone: (651) 523-2796

ATTORNEYS FOR PETITIONER

About David Schultz

Partner | Maslon Edelman Borman & Brand | Minneapolis, MN

612.672.8399 | david.schultz@maslon.com
http://www.maslon.com/dschultz

David Schultz is a trial lawyer and partner in Maslon's Litigation Group. He focuses his practice on high stakes litigation in the areas of product liability, healthcare, civil and criminal fraud, and intellectual property. David has tried cases to verdict in state and federal courts throughout the country. He is certified as a Civil Trial Specialist by the National Board of Trial Advocacy and the Minnesota State Bar Association, and has taught trial advocacy at the National Institute for Trial Advocacy (NITA). He has developed an active appellate practice as well, having argued more than 40 cases before several federal circuits as well as the Minnesota Supreme Court and Court of Appeals. David is particularly adept in the analysis and elucidation of complex technical issues, a skill which he leverages for clients across all areas of his practice.

David's work on product liability cases is extensive, dating back to his time with the Minnesota Attorney General's Office where he defended the state in design and construction of highways, catastrophic aviation and railroad crashes, and toxic torts. In private practice, he has successfully represented a broad range of product manufacturers, from chemical companies that have been sued for toxic exposures to leading manufacturers of sophisticated medical devices.

In addition, David regularly represents physicians, clinics, hospitals and other providers in a wide range of matters including regulatory investigations and enforcement, licensing investigations and contested cases, professional liability litigation, credentialing and medical staffing, and civil and criminal investigations under the Federal False Claims Act and other fraud statutes. David also represents health maintenance organizations, insurers and third party payors in state and federal regulatory enforcement and investigative matters.

David has also developed a niche practice conducting government and internal investigations for corporations and public institutions. He has conducted investigations into matters involving state and federal regulatory compliance, Medicare/Medicaid billing practices and fraud (including unbundling, upcoding, certification, cost reporting, medical necessity, and duplicate payments), FDA civil and criminal regulatory violations, NIH grants, academic fraud, financial fraud, and sexual misconduct. His work in this area is further distinguished by time served in the Law Enforcement Section of the Minnesota Attorney General's Office as a white collar crime prosecutor and in the Solicitor General's Section as a civil trial attorney prior to his career in private practice.

David has represented clients in intellectual property litigation as well, including trademark and patent infringement, and theft of trade secrets. Throughout his career, he has worked across a broad range of matters, all of which have enriched his experience and enabled him to provide an exceptional level of service in bet-the-company matters.

Education

- Stanford Law School; J.D., 1985
- Carleton College; B.A., magna cum laude, distinction, 1981 -- Honors: Phi Beta Kappa, Major: Political Science