19-7312

No._____

In the

Supreme Court for the United States

In re Mo Savoy Hicks,

Plaintiff / Petitioner,

v.

Tony Palumbo, Anoka County Attorney,

Defendant / Respondent.

28 U. S. C. § 2254

PETITION FOR WRIT OF HABEAS CORPUS FOR APPELLATE REVIEW

Mo Savoy Hicks
#201228
Plaintiff/Petitioner/*In Propria Persona*
Counsel of Record
Minnesota Correctional Facility
Stillwater
970 Pickett St. N.
Bayport, MN 55003

CLAIMS PRESENTED

1. New evidence establishes Petitioner's actual innocence and his continued incarceration is fundamentally unjust.

PARTIES TO THE PROCEEDING

Plaintiff / Petitioner is, Mo Savoy Hicks, In Propria Persona, Counsel of Record, who is Constrained at the Minnesota Correctional Facility Stillwater.

Defendant / Respondent for the State of Minnesota, Anthony Palumbo, Anoka County Attorney.

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CITATIONS OF REPORTS OPINIONS AND ORDERS

The Anoka County District Court, the Honorable James A. Cunningham Jr., after a Court trial in the city of Anoka, Minnesota, file number: 02-CR-11-3045, after a plea of not guilty, in a conviction on February 10, 2012 on one count of Second-Degree Unintentional Murder, Hicks was sentenced on April 3, 2012 to 420 months in prison. This sentence was a double durational upward departure from the Minnesota Sentencing Guidelines. Hicks' sentence was enhanced on the ground of particular cruelty (concealment of a dead body). Hicks did not testify at any of the pre or post-trial proceedings. Hicks appealed his conviction.

Hicks appealed his conviction and sentence to the Minnesota Court of Appeals on February 1, 2013. On September 3, 2013 the Court of Appeals affirmed Hicks' conviction and sentence. Case Number: A12-1107. *State v. Hicks*, 837 N.W.2d 51 (Minn. Ct. App., 2013). Hicks appealed to the Minnesota Supreme Court. On November 13, 2013 the Minnesota Supreme Court granted review, in part. Case Number: A12-1107. On June 3, 2015, the Minnesota Supreme Court affirmed Hicks' durational departure for particular cruelty overturning *State v. Leja*, 684 N.W.2d 442 (Minn. 2004) which held the same decision unconstitutional. Case No: A12-1107, *State v. Hicks*, 864 N.W.2d 153 (2015).

On June 3, 2016, Hicks filed a Habeas Corpus claim to the Minnesota Federal District Court on the single issue of the upward departure. The Minnesota Federal District Court denied review on the ground it was procedurally defaulted. *Hicks v.*

Hammer, 2017 U.S. Dist. LEXIS 49897 (D. Minn., Jan. 19, 2017). Hicks then filed an appeal for C.O.A. to the Eighth Circuit Court of Appeals. The Court denied this request. *Hicks v. Hammer*, 2017 U.S. Dist. LEXIS 49851 (D. Minn., Mar. 31, 2017). Hicks appealed the decision without a C.O.A. to the Eighth Circuit Court of Appeals and was denied. *Mo Savoy Hicks v. Hammer*, 2017 U.S. App. LEXIS 22845 (8th Cir. Minn., Sept. 28, 2017). Hicks did not file a Writ of Certiorari to the Supreme Court.

JURISDICTION

This is an original Habeas Corpus action challenging a February 10, 2012 Minnesota state conviction. This Court has appellate and original habeas Jurisdiction under 28 U.S.C. §1651, §2241(b), and §2254(a) & (b) in an attack on a Minnesota Court, Anoka County District Courts' decision because Hicks is in custody in violation of the Constitution for the United States of America.

CONSTITUTIONAL PROVISIONS

The United States Constitutions *Article III*, § 2, Cl. 2, *Fifth Amendment*, *Fourteenth Amendment*; Section 1, are reproduced in the appendix.

STATEMENT OF THE CASE

A. Actual Innocence

I was never guilty, the presumption of innocence never lost, if all the evidence against me was false. I will, below, set out facts that will demonstrate a wrongful conviction. Actual innocence is a contentious issue because, "[w]hether such a

federal right exists is an open question. [The Court has] struggled with it over the years, in some cases assuming, *arguendo*, that it exists while also noting the difficult questions such a right would pose and the high standard any claimant would have to meet." *House*, 547 U.S., at 554-555, 126 S. Ct. 2064, 165 L. Ed. 2d 1; *Herrera*, 506 U.S., at 398-417, 113 S. Ct. 853, 122 L. Ed. 2d 203; see also *id.*, at 419-421, 113 S. Ct. 853, 122 L. Ed. 2d 203 (O'Connor, J., concurring); *id.*, at 427-428, 113 S. Ct. 853, 122 L. Ed. 2d 203 (Scalia, J., concurring); *Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 159, n. 87 (1970)." *DA's Office v. Osborne*, 557 U.S. 52, 72 (2009).

1. Forensic Fraud

The State, through its agents, provided false and mischaracterized evidence to the District Court. The Court believed this "evidence" and upon this information convicted Hicks of murder. The Physical evidence will show how the States agents manipulated, mischaracterized, or directly lied about the evidence to help obtain a wrongful conviction.

2. Discarded Evidence

The County of Anoka's medical examiner Dr. Janice Amatuzio, conducted an examination of a mattress where the alleged murder of J.R. occurred. After her examination the mattress was discarded preventing any other analysis of the evidence that was of or on the mattress. This evidence was material, central, and pivotal to the States case.

3. Perjured Testimony

The State knowingly used perjured testimony, they intentionally cultivated, of two jailhouse informants. The main informant recanted and tried to force the Anoka County attorney to uphold its end of some bargain through a series of letters.

B. State Court Proceedings

Hicks was convicted in the State of Minnesota, County of Anoka, of Second-Degree murder (Unintentional) *Minn. Stat.* 609.19 Subd. (2). The facts and circumstances of the case can be read in *State v. Hicks*, 837 N.W.2d 51 (2013) and *State v. Hicks*, 864 N.W.2d 153 (2015). Hicks has exhausted all direct appeals, and 28 USC § 2254, as to the above-mentioned conviction. This original habeas corpus for appellate review follows.

C. Writ Will be in Aid of Court's Appellate Jurisdiction

"To enable this court then to issue a [writ], it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction." *Marbury v. Madison*, 5 U.S. 137, 175 (1803). The cause presented here is of an appellate nature that needs to be addressed by this Court due to the nature and circumstances of the case and the fact that Petitioner has exhausted multiple state remedies and a § 2254 in an attempt to correct this manifest injustice. "It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause." *Id.*

D. Exceptional Circumstances Warrant The Exercise of the Court's Discretionary Powers

The exceptional circumstances, herein, are a combination of State misconduct that resulted in the conviction of an innocent man. "The substantial risk of putting an innocent man to death clearly provides an adequate justification for holding an evidentiary hearing. Simply put, the case is sufficiently "exceptional" to warrant utilization of this Court's Rule 20.4(a), 28 U.S.C. § 2241(b), and our original habeas jurisdiction." *In re Davis*, 557 U.S. 952 (2009). Likewise, allowing an innocent man to languish in prison, through pain and suffering, for years is an exceptional circumstance requiring this Court's attention. "In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States v. Atkinson*, 297 U.S. 157, 160 (1936).

E. Adequate Relief Cannot be Obtained in any other Form or From Any Other Court

Because of the contentious, unresolved nature of an innocence claim, there isn't any form or guidance that *any* court would be able to take. What is actual innocence? This Court or any court has yet to effectively answer this question without contention. Relief cannot be obtained because what does actual innocence mean, actually innocent of the sentence? Does it mean actually innocent of the facts of the crime or factually innocent? Or does it mean actually innocent because there

was no crime committed? Combine this with the fact that, although there may be similarities in certain cases, each innocence claim is unique and will have a multitude of factors that will need to be addressed and weighed and will need to be done so by this Court in order to give guidance to lower courts until reliable precedents are established.

REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH THE APPLICANT IS HELD

Federal courts will look to the totality of circumstances that surround each Habeas petition to determine if seeking a state remedy would be futile. See, e.g, *Meadows v. Legursky*, 904 F.2d 903, 909 (4th Cir. 1990). This is in line with the principle of "[t]he United States Supreme Court's admonishment that a defendant may not fail to raise a constitutional objection in "the state courts simply because [the defendant] thinks [the state courts] will be unsympathetic to the claim." *Engle v. Isaac*, 456 U.S. 107, 130, 71 L. Ed. 2d 783, 102 S. Ct. 1558 (1982). Petitioner has not skipped the state level because he thinks he will be more successful at the federal level versus the state level, he has done so because the claim has gone through decades of review, through the states and federal courts, and has never been resolved making this step necessary. See, *28 USCS* § 2254 (b)(1)(B)(ii). It can only begin to be resolved by this Court setting a lodestar.

Furthermore, the state committed a "fundamentally unfair act" by presenting perjured testimony resulting in a wrongful conviction, See *Sena v. New Mexico State Prison*, 109 F.3d 652, 654-655 (10th Cir. 1997), so any procedural default or

exhaustion requirements should be excused because addressing the merits of this claim would better serve comity and federalism. See, *Padavich v. Thalacker*, 162, F.3d 521, 522 (8th Cir. 1998). If there is *any* case that deserves excuse to any procedural default it's this one.

REASONS FOR GRANTING HABEAS CORPUS

A federal court may grant habeas relief to a prisoner incarcerated on a state conviction only if the petitioner demonstrates that he is in custody in violation of the Constitution or law of the United States. 28 U.S.C. § 2254 (a). If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the states courts or otherwise comes within the provisions of 28 USC § 2254(b), S. Ct. R. 20.4(a).

Actual Innocence and Miscarriage of Justice

The Miscarriage of Justice standard "balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case," *Schlup v. Delo*, 513 U.S. 298, 324 (1995), the Court has recognized a miscarriage-of-justice exception. "'[I]n appropriate cases,'" the Court has said, "the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a fundamentally unjust incarceration,'" *Carrier*, at 495, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (quoting *Engle*, *supra*, at 135, 102 S. Ct. 1558, 71 L. Ed. 2d 783).

When a petitioner in order to avoid a state procedural bar predicates his claim on actual innocence the miscarriage of justice inquiry is governed by the standard set out in *Murray v. Carrier*, 477 U.S. 478 (1986). The Court ruled that procedural default would be excused when "a constitutional violation has probably resulted in the conviction of one who is actually innocent." 477 U.S. at 496; see also *House v. Bell*, 126 S. Ct. 2064, 2076-77

Hicks, here invokes the Miscarriage of Justice standard because this is "the extraordinary case." *Schlup*, supra. This is Hicks' second *Habeas* petition and Hicks has not raised this issue in state or district court because "[t]he gravamen of [Hicks'] complaint is that his continued incarceration for engaging in conduct" *United States v. Gobert*, 139 F.3d 436, 438 (1998), he didn't commit resulted in a Fundamental Miscarriage of Justice.

Hicks has broken up his claim into eight grounds in order to allow the Court to consider the significance of each piece and how it impacted Hicks' substantive due process rights. Although the evidence Hicks is presenting is not "new" *per se*, it was known to the State and its agents who *did* know of the true nature of the evidence and knowingly presented perjured testimony, destroyed evidence and misrepresented the evidence to the trier of fact.

In *Schlup*, the Court adopted a specific rule to implement this general principle. It held that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, "it is more likely than not that

no reasonable juror would have found petitioner guilty beyond a reasonable doubt." 513 U.S., at 327, 115 S. Ct. 851, 130 L. Ed. 2d 808. This formulation, *Schlup* explains, "ensures that petitioner's case is truly 'extraordinary,' while still providing petitioner a meaningful avenue by which to avoid a manifest injustice." *Ibid.* (quoting *McCleskey* v. *Zant,* 499 U.S. 467, 494, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991)). In the usual case the presumed guilt of a prisoner convicted in state court counsels against federal review of defaulted claims. Yet a petition supported by a convincing *Schlup* gateway showing "raise[s] sufficient doubt about [the petitioner's] guilt to undermine confidence in the result of the trial without the assurance that that trial was untainted by constitutional error"; hence, "a review of the merits of the constitutional claims" is justified. 513 U.S., at 317.

This Court has recognized when it's "dealing with the defendant's right to a fair trial mandated by the *Due Process Clause* of the *Fifth Amendment* to the *Constitution*[, the] construction of that Clause will apply equally to the comparable clause in the *Fourteenth Amendment* applicable to trials in state courts." *United States v. Agurs*, 427 U.S. 97, 107 (1976).

"Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'" *Brady v. Maryland*, 373, at 88.

In addressing innocence this Court recognized, "[f]or though the attorney for the sovereign must prosecute the accused with earnestness and vigor, he must always be faithful to his client's overriding interest that 'justice shall be done.' He is the 'servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.' *Berger v. United States,* 295 U.S. 78, 88.

Ground A. Crime Scene

The crime scene, J.R.'s Apartment, was initially entered by Columbia Heights police officers Sgt. Rogers, Ofc. Tessa Huber and Ofc. Steven Korts. T.T. 185, 22-24.[1] They entered the apartment around dusk when it was dark enough for them to need their flashlights. T.T. 184, 4-5. As they entered the apartment they noticed several items as they walked through trying to locate J.R. T.T. 185, 5-6. Still using their flashlights, they entered the bedroom and noticed blood on the floor, on the bed with a sheet and they also observed blood spatter on the walls. T.T. 185, 7-16.

The officers noted what they saw as they moved through the apartment shining their flashlights on all surfaces going all the way back to the bedroom. T.T. 189, 7-11. They never saw any "bloody shoeprints" in the hallway. T.T. 1239, 20-25; 1240, 1-25; 1241, 1-25. The "bloody shoeprints" would have been hard to miss since they were red and the floor was white. Ofc. Steven Korts testified that he didn't know if Sgt. Rogers had turned any lights on or not while they were exiting the apartment. T.T. 1246, 14-17. If there were no lights on when the officers entered the

[1] T.T.; Trial Transcript

apartment then there would be no confusion as to lights being turned on or off upon exit of the apartment.

In his earlier testimony Ofc. Korts testified that he wanted to make sure he and his fellow officers didn't "track on anything." T.T. 186, 12-13. However, later when pressed under questioning if he viewed the floor he contradicts himself and states "he wasn't really watching to make sure he didn't step on anything." T.T. 1241, 5-9. There were no "bloody shoeprints" on the floor and not one state agent testified that they walked in and saw "bloody footwear impressions."

Crime Scene Analyst

Deputy Bruce Hatton was the crime scene analyst T.T. 190, 7, (hereinafter CSA), who came to the crime scene and took several notes. He was not the first officer to arrive nor was he the first CSA officer to arrive or enter the scene. Hatton noted stains on the living room carpet as well as "assumed bloody shoeprints" on the linoleum tiles in the hallway. The "bloody shoeprints" in the hallway were an anomaly since the states theory of murder was that Hicks carried J.R.'s body out of the bedroom after having walked in J.R.'s blood in the bedroom and tracked it into the hallway. T.T. 1373, 22-25; 1374, 1-2.

The problem with this theory is that there is a "six feet to between five and ten" foot gap between the blood on the carpet in the bedroom and the "bloody shoeprints" in the hallway. T.T. 275, 19-21. Hatton testified that the distance between the "bloody shoeprints" in the hallway was one foot from center mass to

center mass. T.T. 274, 16-18. If that's true, then there should be at *least* five more "bloody" footprints between the "blood" on the carpet in the bedroom and the "bloody shoeprints" in the hallway.

None of the state's witnesses could account or explain this large gap between stains which seriously undermines the state's theory of J.R. being carried out of the bedroom and down the hall. Combine this with the fact that not one police officer or CSA testified as having walked into J.R.'s apartment and seen "bloody footprints" on the floor. Hatton is the only CSA to "make note" of the shoe impressions he did not initially walk in and seem them, *no one* did. An examination of the entire record shows the "assumed blood" evidence that was supposedly on the floor of J.R.'s apartment was never confirmed as blood or tested for DNA. T.T. 1372, 11-25.

Ground B. Bloody Shoes

The State relied heavily upon Hicks' shoes in their case in chief admitting "several weaknesses in [their] case" T.T. 1144, 11-12. The State also admitted "the only thing we have to connect it [murder] to the defendant is, of course, the shoes, and the observations of him attempting to discard some items." T.T. 1144, 22-25.

S.E. 8[2], the black fabric shoes, K-Swiss brand, which belonged to Hicks, were a central part of the state's case. According to the state Hicks shoes were covered in J.R.'s blood on all sides and presumptive tests seemed to indicate this. T.T. 761, 2-5;

[2] State's Exhibit

762, 1-4. There were no confirmatory assays[3] done on Hicks' shoes to confirm that what was being indicated by the presumptive tests was actually blood.

The *Locard Exchange Principle,* "which theorizes that the cross-transfer of evidence occurs when a perpetrator has any physical contact with an object or another person. [] Likewise, victims and their belongings should be examined for the same reason." *Forensic Biology*, p. 6. From the blood spatter in J.R.s bedroom and the "assumed bloodstains" on the floor and the amount of "blood" on Hicks shoes, Hicks would have definitely transferred this "blood" from the crime scene to his car and the "blood" would have been detected.

Ground C. Serologist

The serology in this case was done by a single BCA serologist Angela Blaalid. Blaalid examined all the state's blood evidence and did presumptive assays on all of them which some came back as having potential blood on them. Blaalid used a chemical called phenolphthalein T.T. 749, 13-14, which is a reagent[4] that can detect potential blood evidence. "However, precaution should be taken since these reagents are not usually very specific to blood. Certain substances such as bleach, various metals, and plants may also lead to chemical reactions with the field tests and the enhancement reagents." *Forensic Biology*, p. 15. Blaalid never did any confirmatory assays to *confirm* the presence of blood. "Confirmatory assays for identification of blood include microcrystal assays specifically hemochromagen crystal assays and

[3] Assay; 1. an examination or testing. *Webster's New World College* Dictionary (2018)
[4] Reagent; A substance used in a chemical reaction to detect, examine, measure, or produce other substances. *Webster's II, New College* Dictionary (1999)

hematin crystal assays, all of which apply chemicals to treat bloodstains, forming crystals of heme molecules."

"The morphologies of the resulting crystals are distinctive for heme and can be compared with a known standard using a microscope. A positive microcrystal assay strongly indicates the presence of blood." *Forensic Biology*, p. 239-241. These assays that were available, would have confirmed if what was appearing in the presumptive assay was a false positive or blood. Another way to confirm is "a two-step catalytic assay" that can be performed. "The substrate is applied first to the sample in question. A color change occurring before the addition of hydrogen peroxide indicates a false-positive result due to a possible oxidant in the sample. If a color change is observed after the addition of hydrogen peroxide, the result is a true positive." *Forensic Biology*, p. 238, 12.2.4.1.

Furthermore, "Confirmatory assays are more specific for the bodily fluid in question. These assays are utilized to identify bodily fluids with higher certainty than presumptive assays. [] If the result of the presumptive assay on the alleged bloodstain is positive, the stain is then further analyzed by forensic DNA analysis. This approach *indicates* the presence of blood. Confirmatory assays are performed when a sample has to be *identified* as blood." *Forensic Biology*, p. 200, 11.1.3. (Emphasis original). Since the fabric on the shoes was black and there was a presumptive positive, there needed to be a confirmatory assay done to identify if the presumed blood was actually blood or if it was indeed a false positive.

Ground D. DNA Analyst

For the DNA analysis of all the "assumed blood" stains in this case the State of Minnesota relies solely upon the testimony of BCA scientist Kristine Deters. She testified to the four samples taken of the assumed blood stains on Hicks' black shoes, T.T. 795, 16-25; 796, 1, as well as the DNA testing process itself. T.T. 786, 18-25; 787, 16-25; 788, 1-6; 796-802. Deters lied about this process to the Court due to incompetence or she was trying to cover for the prosecution by giving false-favorable testimony. In the first part of her DNA testing process testimony, T.T. 780, 8-13, she describes the polymerase chain reaction (PCR) amplification assay. *Forensic Biology*, p. 143-144.

Deters then goes on to describe what's known as DNA electrophoresis, T.T. 782, 8-21, where DNA fragments are separated by size and identified. *Forensic Biology*, p. 159. Deters lies here because what she describes is a polyacrylamide gel electrophoresis, *Forensic Biology*, p. 164, which is *incompatible* with a PCR-based assay. A polyacrylamide gel assay uses a different DNA detection method, *Forensic Biology*, p.175, than a PCR-based detection assay. *Forensic Biology*, p. 182, 9.3.1.1; 9.3.1.2; 9.3.1.3. This is a lie, which mislead the Court, which the Court believed. F.F. # 60.[5]

Deters was unable to obtain DNA results from any of the samples, T.T. 796, 10-14, stating there are "two different levels of negatives." One, is "no DNA times at all," and the second, "several DNA types [developed], but collectively that

[5] Findings of Fact, Verdict and Order; is reproduced in appendix A.

information is not enough to be able to render a comparison because it's just too weak, it's not complete and no statement can be made about the source of that DNA." T.T. 796, 16-25; 797, 1-5.

Deters went on to testify that there were reasons for these "negatives." "[T]here was indications that there was inhibition of the DNA testing process." "Basically what that means is that there's some sort of factor that was causing me to not be able to obtain a result." T.T. 797, 24-25; 798, 1-3. Deters elaborated on this "inhibition" pointing to "soil and dirt" and the "dye, the black dye itself" as inhibiting the DNA testing process. T.T. 798, 4-13. Here, Deters grossly mischaracterizes DNA analysis. "Inhibitors, if present, can interact with the DNA template or polymerase, causing PCR *amplification failure*. The presence of PCR inhibitors can be detected using an internal positive control. A number of PCR inhibitors *commonly* encountered in evidence samples include heme molecules from blood, indigo dyes from fabrics, and melanin from hair samples. Thus, it is important to remove PCR inhibitors during DNA extraction." *Forensic Biology*, p. 149, 7.5.2. (Emphasis added). Deters repeatedly mischaracterized this process to make it sound like the *end* result was inhibited, but it would have been the amplification that was inhibited, not the *result*.

Deters claims she "did multiple things to try and overcome this inhibition, but sometimes we're just not able to get a result." T.T. 798, 14-17. This is another lie by Deters because in PCR-based assays these "commonly encountered" inhibitors can be removed. In the first step of the DNA process, extraction, there are several

extraction methods, *Phenol-Chloroform* extraction, *Boiling Lysis*, *Chelation* extraction, and *Silica-Based* extraction; the last two have a washing phase which removes contaminate and inhibitors. Deters describes the Silica-Based extraction method T.T. 786, 18-23; *Forensic Biology*, p. 118-119. This extraction method yields "high-quality DNA." *Forensic Biology*, p. 119, 5.2.3.4. This extraction method has a wash phase that removes all contamination from the DNA extract. *Forensic Biology*, p. 119, 5.2.3.3.

The first method is in the PCR-based assay and an additional procedure "such as the use of centrifugal filtration devices can be used. Centrifugal filtration devices can separate molecules by size. After the centrifugation step, small molecular weight inhibitors are filtered by passing through the membrane and are discarded. Alternatively, increasing the amount of DNA polymerase or adding bovine serum albumin (BSA) in the reaction can overcome the inhibition effects." *Forensic Biology*, p. 117, 5.2.2.1; p. 119, 5.2.3.3; p. 149, 7.5.2. If Deters had done these "multiple things," especially with the silica-based extraction she claims was done with all her testing, she would have been able to remove all inhibitors and contamination and amplify any DNA, if it were there, and she would have obtained a DNA *result*.

Deters also pointed to DNA degradation as a possibility as to why there were no results obtained. T.T. 798, 18-25; 799, 1. In the PCR-based assay, after inhibition has been removed, and the DNA amplified, at the electrophoresis stage, degraded DNA can be detected. In the VNTR (Variable Number Tandem Repeat) profiling

method, which utilizes the RFLP (Restriction Fragment Length Polymorphism) analysis technique, "DNA degradation can be detected prior to conducting RFLP by the use of agarose gel electrophoresis, also known as Yield gel, used for evaluating the yield and integrity of the isolated genomic DNA." *Forensic Biology*, p. 360. So, had there actually been degradation of the DNA, Deters would've detected it.

Deters went on to claim that in all four samples she was able to detect human DNA. T.T. 799, 10-16; 800, 24-25; 801, 1-7. Deters claimed "the testing chemicals target human DNA specifically." T.T. 801, 6-7. These are blatant lies because there are only human specific methods, not chemicals, to determine if human DNA is present. *Forensic Biology*, p. 133. These methods "are manually read, and conclusions are based on subjective judgments." *Forensic Biology*, p. 134.

Since Deters was using the PCR amplification assay she would then be using the quantitative PCR assay to determine if there was human DNA. "The quantitative PCR method is the most sensitive of [] the three methods. It is the only method that can detect PCR inhibitors." *Forensic Biology*, p. 133. Inhibitors lead "to a failure of DNA *amplification*," not *result* failure. *Forensic Biology*, p. 133 (Emphasis added). If there were zero results after removing the inhibitors and contaminates there was *no* DNA, human or otherwise. This Court has dealt with blood and DNA degradation.

"During House's habeas proceedings, Dr. Cleland Blake, an Assistant Chief Medical Examiner for the State of Tennessee and a consultant in forensic pathology

to the TBI for 22 years, testified that the blood on House's pants was chemically too degraded, and too similar to blood collected during the autopsy, to have come from Mrs. Muncey's body on the night of the crime. The blood samples collected during the autopsy were placed in test tubes without preservative. Under such conditions, according to Dr. Blake, "you will have enzyme degradation. You will have different blood group degradation, blood marker degradation." Record, Doc. 275, p 80 (hereinafter R275:80).

The problem of decay, moreover, would have been compounded by the body's long exposure to the elements, sitting outside for the better part of a summer day. In contrast, if blood is preserved on cloth, "it will stay there for years," *ibid.;* indeed, Dr. Blake said he deliberately places blood drops on gauze during autopsies to preserve it for later testing. The blood on House's pants, judging by Agent Bigbee's tests, showed "similar deterioration, breakdown of certain of the named numbered enzymes" as in the autopsy samples. *Id.*, at 110. "[I]f the victim's blood had spilled on the jeans while the victim was alive and this blood had dried," Dr. Blake stated, "the deterioration would not have occurred," *ibid.*, and "you would expect [the blood on the jeans] to be different than what was in the tube," *id.*, at 113. Dr. Blake thus concluded the blood on the jeans came from the autopsy samples, not from Mrs. Muncey's live (or recently killed) body." *House v. Bell*, 547 U.S. 518, at 543.

Since Hicks' shoes were fabric, T.T. 758, 20-21; T.T. 761, 3-4, and if J.R.'s blood had gotten on his shoes from her "live (or recently killed) body," the "deterioration [of the blood] would not have occurred," and it would have been there

intact for DNA analysis. Combine this with the fact that, if Hicks killed J.R. and her blood got on the mattress and his shoes around the same time, a DNA result would have been possible on the shoes because DNA was rendered from the mattress top cutting which is also fabric. All the inhibitions Deters claimed were interfering with her "results" could have been removed and a DNA result obtained from the "blood." The Court must pay close attention to Deters' language during her testimony because she never confirms any specific methods or tests. Deters generally refers to something "that [she could] think of" T.T. 797, 23-25, as the "*possibility*," T.T. 798, 18-25, (Emphasis added) of "inhibitors" and "degradation" when, if they were actually there, she could have definitely *found* these factors.

"[W]hen the Innocence Project's Barry Scheck and Peter Neufeld examined 62 of the first 67 DNA exonerations, they concluded that a third of them involved 'tainted or fraudulent science.' When Professor Saks and his colleague Jonathan J. Koehler reviewed these and other DNA exonerations, 63 percent involved forensic science testing errors and 27 percent involved false or misleading testimony by forensic experts. [] Moreover, of the 340 (DNA and non-DNA) exonerations that Professor Samuel Gross and his University of Michigan colleagues examined, 24 involved forensic scientists who committed perjury." *Increasing Forensic Evidence's Reliability and Minimizing Wrongful Conviction: Applying* ***Daubert*** *Isn't the only Problem*, Craig M. Cooley & Gabriel S. Oberfield, 43 Tulsa L. Rev. 285 (2007).

Ground E. Mattress

In 2008 an Anoka County district court judge made a legal declaration of death, which was issued before discovery of J.R.'s body. T.T. 367, 18-25; 368, 1-15; S.E. 10. The court made findings, *ipse dixit*, of fact upon the examination and determination of, at the time, Anoka County medical examiner Dr. Janice Amatuzio who, after examining J.R.'s mattress, that there was no way J.R. could have survived, due to her size and the amount of "blood loss that was on the mattress." "Forensic ipse dixit certificates can prove the results of DNA tests, microscopic hair analyses, fingerprint identifications, coroners' reports, ballistics tests, and a wide range of other tests conducted by a crime laboratory. [T]hese statutes enable the prosecution to prove, through hearsay forensic report, both the chain of custody and the 'truth' of the forensic tester's conclusions." *Cheating the Constitution*, 59 Vand. L. Rev. 475, Pamela R. Metzger (2006).

After Dr. Amatuzio's determination and testimony, the mattress was discarded by the State precluding any further examination or testing. Again, due to the *Locard Exchange Principle,* which establishes that in a homicide crime scene there will be an exchange of physical evidence between the victim and perpetrator and vice versa, and the amount of biological evidence on the mattress, see S.E. 70-81, the destruction of the mattress violated Hicks Constitutional right to Due Process. Hicks was never afforded the opportunity to either store the evidence or challenge Dr. Amatuzio's findings. Amatuzio's conclusions were central to the state's case because not only did they [findings] establish death, *ipse dixit*, they also

provided the venue of the homicide. Since J.R.'s remains were discovered in another city in another county, it was Hicks' constitutional right to challenge the validity of Dr. Amatuzio's findings.

In *Youngblood*, "who, as it turn[s] out, was exonerated in 2000," *Legally Blind: Hyperadversarialism, Brady Violations, and the Prosecutorial Organizational Culture*, St. Johns Law Review, Vol. 87, Issue 1 (Winter 2013), Justice Stevens, concurring in judgment, without joining the opinion, reasoned "there may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair." *Arizona v. Youngblood*, 488 U.S. 51, 61.

This is the situation in the present case. In *Cal. v. Trombetta*, 467 U.S. 479, 485, the Court stated in regards to evidence and the *Due Process Clause* of the *Fourteenth Amendment*, "We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense."

The *Youngblood* Court, citing *Trombetta*, at 486, reasoned that "[w]henever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often disputed." *id.* at 58. With the science at the time that decision made sense but in the 23 intervening years forensic science has now made evidence that would have

defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.'" *Brady v. Maryland*, 373 U.S. 83, at 86.

"[T]ypified by *Mooney v. Holohan*, 294, U.S. 103, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury. In a series of subsequent cases, the Court had consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. It is this line of cases in which the Court of Appeals placed primary reliance. In those cases the Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process. *Agurs*, citing *Holohan*.

Not only was D.T.'s testimony perjury, it completely and literally contradicted all the physical evidence at the crime scene. T.T 271, 17-25; 272, 1-6; 1300-1302. Also, in his letter he detailed information he couldn't have known unless he was collaborating with the prosecution, and the detective, i.e., the second informant, D.F., failing a polygraph test, all this information is laid out in D.T.'s recantation which is completely in line, or comparable, to an "excited utterance." *Michigan v. Bryant*, 562 U.S. 344 (2011)

"This logic is not unlike that justifying the excited utterance exception in hearsay law. Statements 'relating to a startling event or condition made while the

declarant was under the stress of excitement caused by the event or condition,' *Fed. Rule Evid.* 803 (2); [] are considered reliable because the declarant, in the excitement, presumably cannot form a falsehood. See *Idaho v. Wright*, 497 U.S. 805 (1990) ('The basis for the 'excited utterance' exception ... is that such statements are given under circumstances that eliminate the possibility of fabrication, coaching, or confabulation ... '); 5 *J. Weinstein & M. Berger*, *Weinstein's Federal Evidence* §803.04 [1] (*J. McLaughlin ed.*, 2d ed. 2010) (same); *Advisory Committee's Notes on Fed. Rule Evid.* 803(2), 28 U.S.C. App., p. 371 (same). An ongoing emergency has a similar effect focusing an individual's attention on responding to the emergency." *id.*

D.T. gives an absolutely trustworthy declaration because he, in longhand, details all the authority dealing directly with perjury and actual innocence. He does all this of his own volition giving great weight to his statements because he understands the impact of his perjury. D.T. is trying to get out of his "emergency" (his incarceration) and he's being honest "because an emergency focuses the participants on something other than 'prov[ing] past events potentially relevant to later criminal prosecution.' *Davis*, 547 U.S., at 822. Rather, it focuses them on "end[ing] a threatening situation." *id.*, at 832.

'Implicit in *Davis* is the idea that because the prospect of fabrication in statements given for the primary purpose of resolving that emergency is presumably significantly diminished, the *Confrontation Clause* does not require such statements to be subject to the crucible of cross-examination.'" *Bryant*, citing *Davis*. D.T. is trying to "resolv[e his] emergency," which is his, at the time,

incarceration after having been duped by the assistant Anoka County attorney. Not only that, another point is that in the first dated letter to the Anoka County attorney D.T. writes "final warning." Common sense dictates that one doesn't get a final warning on the *first* letter. What this indicates is that there is at least one more letter prior to the first one and the Anoka County attorney has withheld it.

"According to the Northwestern University Law School's Center on Wrongful Convictions, 45.9 percent of documented wrongful convictions in capital cases involved testimony by jailhouse informants or by 'killers with incentives to case suspicion away from themselves,' making 'snitches the leading cause of wrongful convictions in U.S. capital cases.'" *Abolishing Jailhouse Snitch Testimony*, Covey D. Russell, 49 Wake Forest L. Rev. 1375 (2014).

Ground G. Other Suspect

In the early stages of the investigation police obtained video footage of a person of interest. T.T. 697-698. This person turned out to be L.M. T.T. 698, 1-16. However, at trial, after an unidentified and unexplained investigation, the state's investigator chalked this up to coincidence. T.T. 699, 11-17. An examination of the record shows investigators did not search his car, which was no longer in his possession, they did not search his home or obtain DNA samples from him to compare to *anything*.

Ground H. Circumstantial Evidence

The State relied on several circumstances as indications of Hicks' guilt. One was Hicks' "story change" T.T. 436, 18-25, though this is highly suspicious Hicks' changed story matched what initial officers saw as they entered the crime scene. Compare, T.T. 449, 1-25; 450, 1-25; 451, 1-25, to T.T. 184, 3-9; 185, 7-19. Hicks then went on to explain why he initially lied. T.T. 454, 1-9. Hicks was "afraid of being falsely accused [] and [wanted] to avoid a dangerous [] situation." *Toward a Critical Race Theory of Evidence*, Jasmine B. Gonzales, 101 Minn. L. Rev. 2243 (2017). "[I]t is a matter of common knowledge that men who are entirely innocent do sometimes fly from the scene of a crime through fear of being apprehended as the guilty parties, or from an unwillingness to appear as witnesses." *Alberty v. United States*, 162 U.S. 499, 511 (1896). *Id.* at note 149.

The State also relied on a voicemail recording left on R.R.'s answering machine, T.T. 689, 2. The message said, "If this is Judy Rush's sister, I just caught up with her; you might want to check on her." S.E. 7; F.F. 7. The States investigators twisted this into a "murder confession" when it was in fact a half-hearted attempt to try and get help for J.R. while trying to remain anonymous. *Hicks* Aff.[7] The State's investigators got it half right, T.T. 498, 8-9, in that claim, Hicks wanted J.R. found, Hicks didn't murder J.R. *Hicks* Aff. The State also pointed to instances of Hicks discarding, what they call, evidence when in fact it was what Hicks said it was. T.T. 514, 17-25; 515, 1-7.

[7]Hicks' Affidavit of Truth in appendix E.

The State's agents targeted Hicks and created their own story, 456, 1-25; 458, 7-11; 502, 16-19, to make circumstantial evidence, *arguendo*, that was false or mischaracterized, fit to be tied. "[O]nce the prosecutor has decided to prosecute (i.e., once he has determined that the defendant is guilty), he will gather evidence for trial .... It becomes easy for the prosecutor to overlook and ignore evidence that does not fit his conception of the proper outcome. The natural inclination is not to see inconsistent or contradictory evidence for what it is, but to categorize it as irrelevant or a petty incongruity." *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U. L. Rev. 125, 142. Daniel S. Medwed (2004).

"[P]olice officers take the easy way out. Once they come to suspect someone as the culprit, and this often occurs early within the investigation and is based on rather flimsy circumstantial information, then the investigation blindly focuses in on that adopted "target." Crucial pieces of evidence are overlooked and disregarded... Before too long, momentum has gathered, and the "project" now is to put it on the suspect. Any information that points to the suspect, no matter how spuriously secured, is somehow obtained; and anything that points away from him is ridiculed and twisted into nothingness." *Convicting the Innocent*, James McCloskey, 8 Crim. Just. Ethics 2, 56 (1989).

This is what the State, through their agents, did to Hicks.

CONCLUSION

I was convicted upon a host of mischaracterized scientific evidence, a lying, recanting jailhouse informant, and egregious State misconduct. I have now languished in prison for 8½ years. Upon good character, conscious, and morals, I pray this Court grant relief in order to correct these *substantial* and *injurious* Constitutional violations in order to protect against a *Miscarriage* of *Justice*. In doing this, the Court will be protecting Fundamental Constitutional Rights of Plaintiff *and* the People.

WHEREFORE, Hicks asks the Court grant the following relief: Issue a Writ of Habeas Corpus directing the State of Minnesota immediately release the Body of Mo Savoy Hicks. "[T]he rights of individuals and the justice due to them, are as dear and precious as those of the states. Indeed the latter are founded upon the former; and the great end and object of them must be to secure and support the rights of individuals, or else vain is government." *Chisholm v. Georgia*, 2 U.S. 419, 468 (1793).

Respectfully Submitted, 12·30·19

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