No. 21-7982

In the
Supreme Court of the United States

In re Mo Savoy Hicks,

Petitioner,

v.

Tony Palumbo, State of Minnesota, Anoka County Attorney,

Respondent.

28 U. S. C. § 2254

PETITION FOR WRIT OF HABEAS CORPUS

Mo Savoy Hicks
#201228
Petitioner/*Pro Se*
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Stillwater
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CLAIMS PRESENTED

1. Does the novel issue, *Forensic Exposition*, demonstrate deceptive testimony and establish actual innocence?
2. Does the novel issue, *Excited Utterance-Recantation*, demonstrate recanted perjury and establish actual innocence?
3. Does a *Fourth Amendment* claim solve actual innocence?

PARTIES TO THE PROCEEDING

Petitioner is, Mo Savoy Hicks, Pro Se, Counsel of Record, who is Constrained at the Minnesota Correctional Facility Stillwater.

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

PROCEEDINGS IN STATE AND APPELLATE COURTS

1. Anoka County District Court, Case File No.: 02-CR-11-3045,
   State of Minnesota v. Mo Savoy Hicks; Convicted: February 10, 2012

2. Minnesota Court of Appeals, Case File No.: A12-1107,
   State v. Hicks, 837 N.W.2d 51 (2013) Affirmed: September 3, 2013

3. Minnesota Supreme Court, Case File No.: A12-1107,
   State v. Hicks, 864 N.W.2d 153 (2015) Affirmed: June 3, 2015

4. Minnesota Federal District Court, Case File No.: 16-cv-1861(JRT/HB),
   Hicks v. Hammer, 2017 U.S. Dist. LEXIS 49897(D. Minn. 2017)
   Affirmed: January 19, 2017

5. Eighth Circuit Court of Appeals, Case File No.: 16-cv-1861,
   Mo Savoy Hicks v. Hammer, U.S. App. LEXIS 22845 (8th Cir. Minn. 2017)
   Review Denied: September 28, 2017

6. United States Supreme Court, Case File No.: 19-7312,
   In re Mo Savoy Hicks v. Tony Palumbo, S. Ct. 19-7312 (2019)
   Review Denied: February 21, 2020

7. Anoka County District Court, Case File No.: 02-CR-11-3045,
   Mo Savoy Hicks v. State of Minnesota
   Postconviction Denied: April 28, 2020

8. Anoka County District Court, Case File No.: 02-CR-11-3045,
   Mo Savoy Hicks v. State of Minnesota
   Postconviction Denied: March 30,2021

9. Minnesota Court of Appeals, Case File No.: A21-0749,
   Mo Savoy Hicks v. State, Minn. App. Unpub. LEXIS 938 (2021)
   Postconviction Denial Affirmed: December 6, 2021

10. Minnesota Supreme Court, Case File No.: A21-0749,
    Mo Savoy Hicks v. State, Minn. LEXIS 67 (2022)
    Petition for Review Denied: February 23, 2022

11. United States Supreme Court : 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Rules & Statutes

Other Authorities

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). On March 26, 2020, Hicks filed a postconviction in the Anoka county district court claiming actual innocence upon new evidence published forensic material and letters from the jailhouse-informant. The district court denied this petition on procedural grounds on April 28, 2020. Hicks did not appeal.

One year later Hicks filed another postconviction petition on March 17, 2021, raising two novel issues. The district court denied the petition as procedurally barred on March 30, 2021. Hicks appealed to the Minnesota Court of Appeals of June 1, 2021. The Appeals court denied the appeal as procedurally barred on December 6, 2021. Hicks petitioned the Minnesota Supreme Court for review, the Minnesota Supreme Court declined review on February 23, 2022.

JURISDICTION

The Anoka County District Court denied Hicks' postconviction petition on April 28, 2020. The same Court denied Hicks' second petition on new evidence and the issues herein on March 30, 2021. The Minnesota Court of Appeals denied Hicks' appeal on December 6, 2021. The Minnesota Supreme Court denied Hicks' Petition for Review on the issues herein on February 23, 2022. Hicks has exhausted all state remedies. This Court has jurisdiction under *28 U.S.C.* § 2254(b)(A).

CONSTITUTIONAL PROVISIONS

The *Fourth, Fifth, Fourteenth Amendment Sec. 1 are* reproduced in the appendix.

STATEMENT OF THE CASE

Hicks was convicted in the State of Minnesota, County of Anoka, of Second Degree murder (Unintentional) *Minn. Stat.* 609.19 Subd. (2). Hicks filed a postconviction petition (collateral attack) in the Anoka County District Court, one in 2020 and another in 2021 after discovering new evidence in both instances, claiming Actual Innocence using the Miscarriage of Justice standard and novel issues as exception to procedural bar, because Hicks is procedurally defaulted.

The district court denied both petitions[1] as procedurally defaulted. Hicks consolidated both petitions and appealed to the Minnesota Court of Appeals[2] who affirmed denial of Hicks' claims on procedural grounds. Hicks petitioned the Minnesota Supreme Court[3] for review on the issues herein and was denied review. This case is before the United States Supreme Court as a Habeas appeal after exhausting all available state remedies on the issues below.

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[1] Both of the District Courts Findings of Fact and Conclusions of Law are reproduced in the appendix.
[2] The opinion of the Minnesota Court of Appeals is reproduced in the appendix.
[3] The Minnesota Supreme Court denial of review is reproduced in the appendix.

STATEMENT OF THE FACTS

On the morning of August 4, 2007, R.R. received two phone calls at her residence with one call leaving a verbal message. The call concerned her because it said she should check up on J.R., her sister. Wondering what may have happened to J.R., *T.* 665, she decided to call the police, *T.* 666[4], because she doesn't have a sister named J.R. nor did she know J.R. *T.* 664.

Friends and family hadn't heard from J.R. for several days and had become concerned for her well-being. The owner and caretaker of the apartment building where J.R. lived went into her apartment and discovered blood. *T.* 496. J.R.'s sister R.G. called the police and reported her missing. *F.* 20.[5] Columbia Height's police entered J.R.'s apartment discovered blood in the bedroom, left and notified Anoka County investigators. *T.* 181. Anoka investigators learned through former co-workers that J.R. knew someone named "Mo," who later turned out to be Petitioner, Mo Savoy Hicks. *T.* 325.

Hicks was not the man seen on surveillance cameras where two phone calls were made, *T.*690, but investigators said it was more than coincidence that the man was at these locations when the phone calls were made. *App.* Q, *Pioneer Press*, p. 10.[6] That man turned out to be L.M. *T.* 718, who had lived and worked in the Brooklyn Center and Brooklyn Park area for over twenty years. *T.* 721. He was located and

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[4] T. refers to the trial transcript.
[5] F. refers to the original trial Findings of Fact, Verdict and Order.
[6] App. refers to the Appendix.

asked several questions about J.R., he denied any knowledge of her or anything that happened to her. *Ibid.*

Hicks was located, his car impounded, and after talking willingly with investigators over several interviews, where Hicks changed his story, *T.* 436, about his whereabouts and was repeatedly accused of murdering J.R. *T.* 91-132; 414-550.[7] Police said they had discovered blood on his shoes, *T.* 90, the one's Hicks pointed to as the one's he wore the night of August 3rd going into the morning of August 4th 2007, *T.* 43, and that there were "bloody shoe impressions matching Hicks' shoe prints on the floor in J.R.'s hallway. *T.* 90. Investigators accused Hicks of walking through J.R.'s "warm" blood, *T.* 466, because blood dries very "quickly." *T.* 124. The problem with this claim is the "assumed bloody shoe impressions," *T.* 1372, are "ten feet away" from the blood stain in the bedroom. *T.* 275.

On July 21, 2008 after hearing testimony from Dr. Janice Amatuzio, who did an examination of J.R.'s mattress and the bloodstains on it, Anoka Judge Thomas D. Hayes issued a legal declaration of death, *T.* 368, after believing Dr. Amatuzio. This declaration established the venue of J.R.'s death which gave Anoka county jurisdiction. Hicks' novel issue of forensic exposition credibly calls Amatuzio's examination into question since the state destroyed the mattress in October of 2011, *T.* 1542; 1543, 5-9, and there is a major discrepancy between the initial investigation

[7] The trial transcript is disjointed and mis-numbered. The two referenced sections are several volumes apart with the first non-labeled volume not being the beginning of the trial but several days in.

report and trial testimony. *App.* N; *T.* 309. This is an important fact because the case stayed cold for three more years.

On April 8, 2011, a group of high school students on a hike found skeletal remains in Brookdale Park, Brooklyn Center, Minnesota. *F.* 72;73. Subsequent DNA testing on the bone revealed the remains were those of J.R. Hicks was arrested on April 25, 2011 for J.R.'s murder. *F.* 81, without an indictment.

During Hicks' incarceration he had an issue with his court appointed attorneys not challenging evidence from J.R.'s apartment. *T.* 1372-1374. In August of 2011 Hicks discharged his attorneys and was allowed to represent himself. *F.* p. 2. Hicks took the same tac his former attorneys were going to take since he had no legal experience, *App.* I, when attacking a voicemail message left to R.R. *T.* 663.

At a contested omnibus hearing in November of 2011, *T.* 64, Hicks challenged probable cause and the state provided a disk with "discovery and police reports," *T.* 70. Unbeknownst to Hicks at the time, *T.* 71, the state secured two jailhouse informants. These informants came forward more than five months after Hicks' incarceration on October 11, 2011 for D.T., *T.* 1114, and November 17, 2011 for D.F., *T.* 1011. Both informants' testimony contradicted each other and the physical evidence. *T.* 995-999; 1026-1033.

For the biological evidence the state relied entirely on Minnesota Bureau of Criminal Apprehension's lead scientist Kristine Deters. *T.* 773. She testified to DNA results obtained and "possibilities" why there weren't. *T.* 797. Where the physical

evidence was in conflict lead investigator Det. Michael Lapham said it could be resolved using "common sense". *T.* 1319; 1372.

Crime scene analyst Dep. Bruce Hatton documented the evidence in J.R.'s apartment. *T.* 190. He made measurements of the "assumed bloodstains" as well as doing presumptive tests on the stains. Hatton also concluded there was no forced entry into the apartment because there were no "artifacts" found on the floor. *T.* 202. This contradicts what the search warrant said and what had been reported in the media for years. *App.* Q.

Hicks was acquitted of one count murder in the second-degree (intentional), and convicted of one count second-degree murder (unintentional). *F.* 100. Hicks appealed his conviction and sentence and both were affirmed.[8]

In November of 2013 Hicks received copies of letters sent to Anoka county attorneys showing D.T., the main informant for the state, had committed perjury and had enlisted D.F. to do the same. *App.* O,P. Hicks had been studying the law and knew the letters were useless because they weren't sworn affidavits. *App.* I. For years Hicks studied the law and in 2019 discovered a book, *Forensic Biology*, by Richard C. Li, published in 2015. Hicks attempted to use the letters and book in a 2019 Habeas to the United States Supreme Court and was denied without more.[9]

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[8] State v. Hicks, 837 N.W.2d 51 (2013); State v. Hicks, 864 N.W.2d 153 (2015)
[9] *In re Mo Savoy Hicks*, S. Ct. 19-7312.

Hicks then tried to use this information as novel issues in a post-conviction in the state District Court in March 2020 but was denied. *App.* B. In January 2021 Hicks found another book, published in 2008, *Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction*, by Tom Bevel and Ross Gardner. This book speaks to the fact the blood stains on J.R.'s mattress do not demonstrate a person having bled out.

Hicks filed another post-conviction again using his novel issue and rearguing the previous petition and was again denied on procedural grounds not only by the District Court also the Minnesota Court of Appeals and the Minnesota Supreme Court. *App.* D,E. This Writ of Habeas Corpus now follows after having exhausted all state court remedies. Hicks is procedurally defaulted and herein invokes the Miscarriage of Justice standard because he is innocent and his novel issues prove his absolute innocence.

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 appeal from a Minnesota state court conviction that was appealed and denied relief in the state courts.

Exceptional Circumstances Warrant the Exercise of the Court's Discretionary Powers

Hicks' novel issues "'raise[] sufficient doubt about [Hicks'] guilt to undermine confidence in the result of the trial without the assurance that the trial was untainted by Constitutional error' hence, 'a review of the merits of the Constitutional claims' is warranted.'" *Schlup*, 513 U.S., at 317.[10] Hicks' evidence shows "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt[, insuring] petitioner's case is truly 'extraordinary[.]'" *Schlup* at, 327, quoting, *McCleskey v. Zant*, 111 S. Ct. 1454 (1991).

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

"[A] Constitutional concept may ultimately enjoy general acceptance, [but] when the concept is in its embryonic stage, it will, by hypothesis, be rejected by most courts. [I]t is far more likely that [courts] will fail to appreciate the claim and reject it out of hand." *Reed v. Ross*, 468 US 1, 15 (1984). This is what has happened with Hicks' novel issues. A lodestar must be set by this Court to guide all others.

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

Hicks is in custody in violation of his United States Constitutional rights. Hicks' claims arise from a state court conviction and Hicks is taking the most expeditious route to secure relief without having to languish in prison for a crime he

[10] *Schlup v. Delo*, 513 U.S. 298 (1995).

didn't commit after exhausting his state remedies since federal law allows such an action. See *28 U.S.C.* § 2254(b)(A).

REASONS FOR GRANTING HABEAS CORPUS

The State of Minnesota, County of Anoka, through their agents, knowingly, presented deceptive and perjured testimony of well-established forensic science and through informants, to the District Court to secure the conviction of an innocent man. Minnesota BCA scientists misrepresented the "methods and procedures of science" *Daubert*[11], at 2795, to conceal the true nature of the state's questionable evidence.

Evidence so spurious prosecutors enlisted the help of two jail-house informants to bolster their claims. Where contradictions in the evidence couldn't or wouldn't be explained, the state rested their conclusions on "common sense". *T.* 1372. The state in this sense relied on "which theory of the case provides the more plausible and morally satisfying account," where, as *Feigenson* describes, "are those [cases] in which there is the most space between the notes· where what everyone knows has the most room to circulate before bumping up against legal or technical expertise."[12] The discrepancies in physical evidence and testimony seeming minor and inconsequential, the true nature of the central-material facts laid bare by Hicks' novel issues, now become paramount under analysis.

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[11] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed. 2d 469 (1993).
[12] Neal Feigenson, *Law's Common Senses*, 30 Quinnipiac, L. Rev. 459, 460 (2012).

Miscarriage of Justice

"[T]he gravamen of [Hicks'] complaint is that his continued incarceration for [not] 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 invokes the Miscarriage of Justice standard. 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." *Murray v. Carrier*, 477 U.S. 478, 496 (1986).

The Miscarriage of Justice standard "balance[s] 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). "'[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 v. Isaac*, 456 U.S. 107, 130, 71 L. Ed. 2d 783, 102 S. Ct. 1558 (1982), at 135, 102 S. Ct. 1558, 71 L. Ed. 2d 783).

Hicks had "cause" for failure to raise his claims in the normal course of criminal procedure, considering "cause and actual prejudice," *Engle v. Isaac*, 456 US 107, 129 (1982), and "the novelty of [the] constitutional question[s]," *Reed, infra*, at 15, because there was, "no reasonable basis upon which to formulate a constitutional question, [...] it is safe to assume that [Hicks was] sufficiently unaware of the question's latent existence [.]" *Reed v. Ross*, 468 US 1, 14-15 (1984).

Phone Call

The state tried to twist Hicks' half-hearted attempt to get J.R. help by leaving a voicemail, into an admission of guilt or involvement, it's not clear, in her disappearance and murder. The State's investigators got it half right, in their claim, Hicks wanted J.R. found, and "wanted her to be checked out." *T.* 498. The state tried to cast further negative connotation on the voicemail through their informants D.T. and D.F., *T.* 1017; 985, with both of them stating Hicks had "made a mistake or messed up" (paraphrasing) leaving the voicemail. The Court didn't buy into this logic because common sense dictates it was a welfare check call. The Court simply concluded when it came to the voicemail, *F.* 19, that "[t]he Court recognizes the voice of the defendant,"...So what?

When the Court made his findings on other pieces of evidence that needed a conclusion drawn between them, he did it logically. *E.g.*, When the Court had to determine the identification of the blood in J.R.'s apartment he found that:

> "The known sample of J.R.'s DNA, collected from the combs located in J.R.'s purse, matched the DNA profile created from the blood on the mattress cutting from J.R.'s apartment. The Court finds that the blood collected in J.R.'s apartment on August 23, 2007 was the blood of J.R." *F.* 63.

The District Court also concluded:

> "The Court finds that the fitted sheet observed by Ms. Hicks and the pillowcase observed by Ms. Ewing are the same ones missing from J.R.'s bedroom as observed by Deputy Hatton." (State's Exhibits 56, 57 and 59). *F.* 70.

The Court didn't do this for the voicemail by making a finding *i.e.*, "The Court recognizes the voice of the Defendant on the voicemail and finds he is confessing to the murder of J.R." This finding would have been anathema to common sense.

Investigators obtained video of a man from the locations where the calls were placed from and he turned out to be L.M. who worked and raised his children in the Brooklyn Center area for over twenty years. *T.* 721. Prosecutors played the voicemail for L.M. and his response wasn't near R.R.'s "first inclination [] what happened to her," *T.* 665, his is "sounded like somebody come out there, cut somebody up or something[.]" *T.* 724. What does he mean "come out there" and "cut somebody up."? This Freudian slip isn't surprising considering investigators repeatedly accused Hicks of stabbing J.R. *T.* 473; 482.

This clearly demonstrates L.M. knew something about the situation. Hicks knew something happened to J.R. but since he'd been out doing drugs and drinking he "acted irrationally," *App.* I, and was "afraid of being falsely accused [] and [wanted] to avoid a dangerous [] situation." *Gonzales,*[13] at 2270. Hicks' "less-than-innocent [] explanation [of the circumstances surrounding his] 'flight,'" *Gonzales*, at 2270-71, were in fact innocent. "[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." *Gonzales*, at footnote 149, citing, *Alberty v. United States*, 162 U.S. 499, 511 (1896).

Story Change

The State will point to Hicks' story change as one piece of circumstantial evidence of his guilt. *T.* 436. Hicks concedes his credibility is greatly diminished

[13] Jasmine B. Gonzales, *Toward a Critical Race Theory of Evidence*, 101 Minn. L. Rev. 2243 (2017)

because of his initial dishonesty with investigators and his now asserted truth of the circumstances surrounding August 3rd and 4th of 2007. *App.* I. We need only look at the evidence to establish Hicks whereabouts. Investigators knew when calls were placed, that's how they established Hicks had been out making calls at "4:30 in the morning." *T.* 429. The state tried to artificially create a larger window of opportunity using "pacific time," *T.* 605, 5-16, but Minnesota is central time zone.

Investigators knew Hicks' phone was off for five days starting on August 4, 2007. *T.* 482. Investigators knew this because they "got [Hicks'] cell phone records and discover [he] shut [his] cell phone off on August 4th, and didn't use it for five days." *T.* 497, 7-10. The only way they could have known this is through the CSLI (Cell-Site Location Information) data because cellphones "tap into the wireless network several times a minute whenever their signal is *on* [.]" *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (emphasis added).

This is important, common sense dictates that's why investigators never used the CSLI data against Hicks because it proved his whereabouts from July 31st through August 4th 2007. *T.* 70-74; 436-448. This is why investigators didn't doubt Hicks' "dates and times are accurate. Right up to the time." *T.* 94; 448, 19-22. At 11:26 am (central time) on August 4, 2007, R.R. gets a telephone message, so we know whatever happened to J.R. has happened. The CSLI data on either side of the five days Hicks' phone was off prove his whereabouts and common sense dictates his story is accurate. This makes it literally impossible for Hicks to have murdered J.R. "on or about August 3rd." *F.* 97.

Forensic Exposition

This novel issue will prove deceptive forensic testimony. Hicks uses two publications as evidence to support his claim. *Forensic Biology*, written by Dr. Richard Li an expert in forensic biology and *Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction*, written by Tom Bevel and Ross Gardner both experts in bloodstains and crime scenes. *App.* J-M. The state could argue that, "[publication (which is but one element of peer review) is not a *sine qua non* of admissibility; it does not necessarily correlate with reliability[.]" *Daubert*, at 2797, citing S. Jasanoff, *The Fifth Branch: Science Advisors as Policymakers* 61-76 (1990). (Emphasis original). Both publications are well-established science that are universally accepted and have been for years.

Forensic exposition would be established along the following grounds. 1. A petitioner must have been self-represented. This insures petitioner didn't have an attorney with previous experience cross-examining expert witnesses. 2. Petitioner must have been in-custody. This insures petitioner didn't have access to the world of information available to the public through libraries, universities, and the internet. 3. Petitioner must not have had an education or experience in the scientific field of forensics, or knowledge or access to the material. Hicks meets these prongs.

The state claims Hicks' evidence is his "own interpretation of the scientific treatise." *App.* F, at 3. To make an ordinary chocolate cake, the instructions on the box say add: 3 cups water, 1-pound baking mix, 2 cups sugar, and 1 quarter pound of

chocolate with a cup of milk, mix and bake for 45 minutes at 350° then this is how you make an ordinary chocolate cake. Any divergence from this is one's own interpretation. A state "expert" testifies to a deviated version of this recipe using deceptive language removing or switching ingredients or describing how to make a fudge cake, sure there's chocolate but it's not an ordinary chocolate cake nor does it use the same recipe. A book is later found that has ordinary chocolate cake recipes, same as the instructions on the box, and this information is presented exactly without divergence, then the uninterpreted truth has been demonstrated.

The states witness's cross-confirm the methods and procedures of each other's disciplines. Hicks, questioning lead BCA[14] scientist Kristine Deters first claims she's "not an expert in blood spatter analysis with regard to drying times." *T.* 1385, 5-7. Hicks calls her on it, *T. ibid*, at 12-14, and Deters completely contradicts herself and becomes evasive claiming she does have training but she can't "recall today." *T.* 1385, 15-25. What she does confirm is that if blood is pooled "potentially it's going to take a little bit longer to dry," *T.* 1386, 5-16, but she didn't "do that type analysis [sic]." *Id.* Bevel laid out in his book that "[d]rying time of volume accumulations (e.g. large pools) also requires experimental effort." *Bevel*, at 258.

Likewise, Hicks pressed Hatton, *infra*, on the blood evidence he stated "if it was to be verified, it would be submitted to a forensic lab." *T.* 272, 21-24. Their testimony confirms the information in the published material. It also shows Deters

[14] Minnesota Bureau of Criminal Apprehension.

committed perjury on drying times. *T.* 1384, 24. Bevel's book details that "[d]epending upon environmental factors and the surface on which we find the blood, a single drop may take between 20 to 90 min to dry completely." *Bevel,* at 257. Taking into consideration the factors that impact drying time, surface temperature, how spread out the blood is, and the most significant factor, air flow which greatly decreases drying time "from as much as 90 min to as little as 20 min," *id,* 257, we know J.R.'s apartment was sealed, it would have taken at minimum 20 mins for the "blood" in J.R.'s apartment to dry. This scientific fact contradicts all the state's claims on blood drying quick, within "3 minutes." *T.* 123.

Bloody Shoes

Hicks' black K-Swiss, *F.* 50; *S.E.*[15] 8; *T.* 758, 3, were central to the states case. The state claimed Hicks "side step[ped]" carrying J.R.'s body, *T.* 157, down a narrow hallway leaving shoe prints in blood on the tiles that matched his shoes. *T.* 90, 12-15. All this blood was and is only presumed to be blood, never confirmed as blood. *T.* 161, 17; 1384, 18; 272, 13-14. Hicks already established through the state's witness that presumptive tests can have false positives, *T.* 272, 18-19, and would need to be verified by a forensic lab. *T.* 272, 23-24.

The state admitted "the only thing we have to connect it [murder] to the defendant is, of course, the shoes[.]" *T.* 1144, 22-23. According to the state, Hicks' shoes were covered in J.R.'s blood. *T.* 761, but there were no confirmatory assays done

[15] S.E. is state's exhibit.

to verify this. *Forensic Biology*, p. 239-241. Confirmatory assays for identification of blood include microcrystal assays specifically hemochromagen crystal assays and hematin crystal assays, all of which apply chemicals to treat bloodstains, forming crystals of heme molecules.

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. (emphasis added). 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 confirm if the presumed blood was actually blood or a false positive. The state's serologist Angela Blaalid did the "two-step catalytic assay" but she lied to the Court and said it was a three-step test. *T.* 750-751.

Blaalid claimed the test uses ethanol, phenolphthalein (substrate), and hydrogen peroxide. Ethanol is an oxidant that causes false positives. *Oxide*: a binary compound of oxygen with some other element or with a radical.; *Ethanol*: Alcohol (sense 1); *Alcohol*: 1. [] C_2H_5OH:also called ethyl alcohol. 4. a class of organic compounds, including ethyl or methyl alcohol, that contain one or more hydroxyl groups (OH). *Hydroxyl*: the monovalent radical OH, present in all hydroxides. *Ethyl*: the monovalent radical C_2H_5, which forms the base of many compounds as ethyl

alcohol and ether.[16] This chain demonstrates any compound with oxygen and a radical are oxidants.

Blaalid was intentionally putting an oxidant (ethanol) into the two-step process. There was no blood on Hicks' shoes, there were only false positives due to the "black dye itself," *T.* 798, *Forensic Biology*, p. 149, 7.5.2., and ethanol in Blaalid's false tests.

Mattress

Dr. Janice Amatuzio concluded that an "individual with the physical characteristics of J.R. could not lose that amount of blood and continue to live." *F.* 52. Amatuzio testified to this three years prior, *F.* 71; *S.E.* 10, to Hicks' trial with the mattress having been destroyed eight months prior to that. This "enable[d] the prosecution to prove, through hearsay forensic report, both the chain of custody and the 'truth' of the forensic tester's conclusions."[17] 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. "[T]here 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 (1988).

[16] Webster's New World College Dictionary, Fifth Edition, 2018.
[17] Pamela R. Metzger, *Cheating the Constitution*, 59 Vand. L. Rev. 475, (2006).

The *Youngblood* Court, citing *Trombetta*[18], 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 seemed disputable, indisputable. "In the present case, the likelihood that the preserved materials would have enabled the defendant to exonerate himself appears to be greater than it was in *Trombetta* but here, unlike in *Trombetta*, the State did not attempt to make any use of the materials in its own case in chief." *id.* at 56. However, here, like *Trombetta* and unlike *Youngblood,* the state *did* use the destroyed evidence in their case in chief due to its materiality.

The other issue here is the major discrepancy between Amatuzio's examination and Dep. Hatton's initial investigative report. *App.* N. Hatton's examination of the bottom of the mattress revealed "no defects were noted, and no blood stains were observed." *App.* N, at 7. Five days later when Dep. Mark Peterson and Amatuzio examined the mattress they said "[t]he blood penetrated through the top layers of the padding material and then dripped through the spring, impacting the visible surface of the underside of the mattress." *T.* 309. How does dry blood do that?

Also, Hicks' novel forensic exposition evidence reliably demonstrates there's no "void present." *Bevel,* 256. "[R]esulting voids in the blood show two distinct things:

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[18] *California v. Trombetta*, 467 U.S. 479, 488 (1984).

(1) The position of the victim [] when left, and (2) the victim was present for an extended period after blood loss, producing [] thickened and demarcated outlines." *Id.* Not only does this disprove Amatuzio's examination and the stains left behind, it also nullifies informant D.T.'s story, if J.R. laid in her bed for "hours," *T.* 1029, 22-24, bleeding out and dying, there would have been a "void" and/or thick and demarcated outline in blood after J.R. was removed.

DNA

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.* 795, 16-25; 796, 1, as well as the DNA testing process itself. *T.* 786, 18-25; 787, 16-25; 788, 1-6; 796-802. In the first part of her DNA testing process testimony, *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.* 782, 8-21, where DNA fragments are separated by size and identified. *Forensic Biology*, p. 159.

Deters was unable to obtain DNA results from any of the samples, *T.* 796, except for the comb and mattress cutting. *F.* 63. 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.* 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.* 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 claims she "did multiple things to try and overcome this inhibition, but sometimes we're just not able to get a result." *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.* 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 were 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.* 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.* 799, 10-16; 800, 24-25; 801, 1-7. Deters claimed "the testing chemicals target human DNA specifically." *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. But this can only be done *after* you have a DNA result. Deters say's "*potentially* the blood *could* have been human." *T.* 799, 15. (emphasis added).

Deters said, "There's kind of two different levels of negatives, if you will. Sometimes we get no DNA times at all, just a blank profile. [] And I would call that as DNA profiling results were not obtained[.]" *T.* 796, 16-21. She went on, "if there's not human DNA there, I would get a negative -- a zero result[.] *T.* 801, 4-5. But then she claimed, "getting a zero result doesn't always indicate that there's not human DNA there." *T.* 802, 1-2. Deters testimony is her talking in circles.

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.

"During House's habeas proceedings, Dr. Cleland Blake, an Assistant Chief Medical Examiner for [] 22 years, testified that, if blood is preserved on cloth, "it will stay there for years[.]" The blood on House's pants, judging by Agent Bigbee's tests, showed "deterioration, breakdown." *House, infra*, at 543. "[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.* Dr. Blake thus concluded the blood didn't come from "Mrs. Muncey's live (or recently killed) body." *House v. Bell*, 547 U.S. 518, at 543. Since Hicks' shoes were fabric, *T.* 758, 20-21; *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.

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.* 185, 22-24. They entered the apartment around dusk when it was dark enough for them to need their flashlights. *T.* 184, 4-5. As they entered the apartment they noticed several items as they walked through trying to locate J.R. *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.* 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.* 189, 7-11. They never saw any "bloody shoeprints" in the hallway. *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.* 1246, 14-

17. If there were no lights on when the officers entered the 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.* 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.* 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." They didn't see blood in the hallway as the Court stated. *F.* 21. Combine this with the fact that the "[c]aretaker had gone into the apartment and found the blood, and they found what's called 'blood spatter' on the bed next to the wall. *T.* 496, 15-17.

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.* 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.* 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.* 274, 16-18. If that's true, 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.

Hatton even said there was nothing between the "blood" on the floor in the bedroom and the "bloody show impressions" in the hallway. *T.* 276. The "bloody shoe impressions" with no DNA, in context with the facts and the record are literally miraculous. 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.

Hatton examined the doorframe of J.R.'s apartment and said there was no forced entry. *T.* 203. Hatton concluded this since there weren't "artifacts," *T.* 202, but common-sense dictates that in the nineteen days before investigators got there the caretaker cleaned up the hallway. Also, this contradicts the search warrant and media reports. *T.* 1128-1129, *App.* Q, Pioneer Press section, p. 7, "Authorities suspected someone forced his or her way into the home," *ibid*, p. 9, 10, 11. "It appeared someone had used force to enter her apartment, the warrant said." *Id.* See also, Star Tribune section. The local Minnesota media assisted the state by fabricating information, which informant D.T. used, by claiming J.R. was Hicks' "girlfriend." *App.* Q, Star Tribune Sec., p. 2,3.

This claim exists only in the media reports and nowhere else. See also, wcco.com, kstp.com, Fox9.com, kare11.com. Investigators knew there was forced entry. From the forced entry, unconfirmed "bloody shoe impressions," that are out of context in the scene with no DNA that miraculously point to Hicks, that the state planted and misrepresented this evidence.

Excited Utterance-Recantation

This novel issue will prove a witness recanted by excited utterance, one of the exceptions to the hearsay rule. See, *USCS Fed. Rules Evid. R.* 803. Recantation is governed by *United States v. Mitrione*, 357 F.3d 712, 718 (2004), and is usually done by testimony or sworn affidavit. Here, it will be proved through third party means either verbally or printed whereby a trial witness unintentionally expresses their trial testimony was false, making the revelation more trustworthy. The veracity ultimately proved by the entirety of the circumstances, record, and the weight of the recantation.

Excited utterance-recantation will be established along the following grounds. 1. The evidence must be oral (witness or recorded) or print and demonstrate the witness's trial testimony was false. 2. The evidence must have been unsolicited with no coercion or influence and of the witness's own volition in the heat of the moment. 3. The excited utterance-recantation must be supported by the entire trial record. Hicks' evidence meets all these prongs.

Informants

The Due Process Clause of the *Fourteenth Amendment* forbids the knowing use by the State of perjured testimony. *Giglio v. U.S.* 150, 153, 92 S. Ct. 763, 766, 31 L. Ed. 2d 104 (1972). Generally, to obtain relief on a claim that the State introduced "false evidence," petitioner has the burden of demonstrating: (1) that a witness testified falsely, (2) that the false testimony was material, and (3) that the

prosecution offered the testimony knowing it to be false. *Giglio,* 405 U.S. at 153-54.). It is clear from the letters the informant sent to the prosecution that it was not only the prosecutor but also the states' investigators involved.

The State cultivated and relied upon perjured testimony of two jailhouse informants, D.T. and D.F., to falsely implicate Hicks in the murder of J.R. Both informants were federal inmates held in the Anoka County with Hicks. Both testified to information that was available in the media and some information that wasn't available in the media. The main informant, D.T., was Hicks' cell mate in the Anoka County jail who was still his cell mate when his former attorney Kirsten Kopp delivered to Hicks critical evidentiary photos and reports which contained most of the information that D.T. testified to at trial. D.T. then put the other federal inmate on Hicks case and gave to him some information with which to testify. *App.* O.

Hicks called K.F. to testify about both informants D.T. and D.F. *T.* 1169. K.F. testified that D.F. told him he was going to "make it look like you were the bad person in the situation, like you did it." *T.* 1172, 1-3. K.F. also testified that D.F. said "he was going to put some of his own words in it to make him look like he's doing something so he can get something out of it. [] he is a federal case, so he's trying to get time knocked off his sentence when he gets sentenced. *T.* 1173, 1-32. K.F. testified he saw D.F. and D.T. become friends all of a sudden and hang out for hours after initially never even looking at each other. *T.* 1173-1175. Federal inmates can receive downward departures when they assist government officials. See, 28 *USCS* § 994 (n), 18 *USCS Appx* § 5K1.1, 18 *USCS* § 3553 (e).

D.T.[19] recanted and attempted to force the state to uphold its part of some bargain that was struck between the two. *App.* F,H,O,P. D.T.'s recantations "do set forth allegations that [Hicks'] imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, [...]. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody." *Mooney* v. *Holohan*, 294 U.S. 103."

With perjury 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.* 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 second informant, D.F., like his 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)

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

[19]App.: Appendix O & P are the informant D.T.'s "recantations/excited utterances."

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." *ibid.*, at 832.

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. Hicks pressed lead investigator Michael Lapham on D.T.'s inconsistencies like J.R. being "pulled [] out to the living area," *T.* 1039, would have smeared the "bloody shoe" prints and Lapham said "there is no evidence [] there was something dragged." *T.* 1301. Lapham goes on to say "[i]t would mean a portion of the exact facts would not exactly match that piece of evidence." *T.* 1302.

But there were several other pieces of facts that didn't match evidence. One was the alleged clean up. Both D.T. and D.F. claim Hicks cleaned up some blood. *T.* 999; 1030. This contradicts where Dep. Hatton said there's no sign of clean up and details the signs of possible clean up. *T.* 271-272. Another piece was the murder weapon, the hammer, *T.* 1027, and its disposal. *T.* 1031. The problem here is there was a hammer found in J.R.'s "kitchen drawer," *T.* 1407, and it was submitted to the BCA for DNA testing on May 12, 2011. *T.* 1409. Common sense dictates nothing came of this evidence which contradicts D.T.'s story. D.T. comes forward with a story that includes a hammer five months after a hammer was submitted to the BCA. The

informants didn't offer any information investigators didn't already know. Their information was used to support the uncorroborated portions of their testimony. The state made it a point to show there were no "promises" made to D.T. for his testimony. *T.* 1035-1036. The state responding to Hicks' collateral attack conceded there was "a testimony agreement". *App.* F; H, at footnotes 8 & 9 respectively. With the totality of the contradictions and circumstances, the letters from D.T. credibly demonstrate D.T. and D.F.'s entire testimony was false.

Actual Innocence

A credible claim of actual innocence arising from newly discovered evidence must be based on reliable evidence which was not presented at trial. *Calderon v. Thompson*, 523 U.S. 538 (1998). Starting along these lines, Hicks will ultimately sue the *Fourth Amendment* to prove actual innocence. To do this, several issues must be reconciled.

First, federal courts, bound by *Holland v. United States,* 348 U.S. 121, 139-40 (1954), abandoned the rational hypothesis review standard. See, *United States v. Francisco*, 410 F.2d 1283, 1286 (8th Cir. 1969). Hicks asks this Court, under this claim, to retain the rational hypothesis review standard since Minnesota courts have done so. See, *State v. McArthur*, 730 N.W.2d 44, 49 (Minn. 2007). Hicks asks this to insure the state's theory and evidence "correctly points to guilt," *Tscheu,* at 858, footnote 8, and does "more than give rise to suspicion of guilt," and "point unerringly to the accused's guilt." *Tscheu*, at 869, citing, *McArthur*, at 49. Second, we must

quantify the presumption of innocence. Courts hold, " it is error for a defendant to 'equate [] his acquittal with innocence,' instead, 'an acquittal only establishes there was a reasonable doubt in the jury's mind, [] not that the defendant is innocent." Michael D. Cicchini, *The Battle over the Burden of Proof: A Report form the Trenches*, 79 U. Pitt. L. Rev. 61, 102 (2017). Agreeing, we can set a mark and say at trial the accused is *reasonably* innocent in conjunction with the presumption of innocence and the burden of proof. In other words, the state and the defense have a fair and reasonable 50/50 chance of success in accordance with *Due Process*.

Where does reasonable innocence begin? At probable cause because a citizen, even one surrounded by suspicion, has "absolute innocence," *Osborne*, 557 U.S. 52, at 98, absent a founded evidentiary probability of guilt. This insures the "*Fourteenth Amendment* [] furnish[es] meaningful protection from unfounded interference with liberty." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). The probable cause in this case has been nullified by Hicks' novel issues and arguments, upon the examination of the entirety of the record and evidence presented, proofed against the factors in the "Statement of Probable Cause," *App.* R. Also, lavender, *T.* 651, "a pale purple," *Webster's New World Dictionary, Fifth Edition*, and magenta, *T.* 615, "a purplish *red*, *id*, (emphasis added), are two different colors. The State of Minnesota, without probable cause, unreasonably seized the Body of Mo Savoy Hicks.

Relief

"[T]he Constitution requires that, even if a jury believed an allegation was probably true, it is still obligated to find the defendant not guilty," *Cicchini*, at 98, if the state has not bourn its burden. Since the State of Minnesota violated Hicks' *Fourth Amendment* rights with perjury and deception, with the "record barren of any evidence" of guilt or wrongdoing, with any further proceedings unfair and prejudicial without any actual evidence, this Court, in line with *S. Ct. R.* 45[20], needs to "reverse the judgement of conviction [of Mo Savoy Hicks] outright." *Drennon v. United States*, 393 F.2d 342, 344 (1968).

CONCLUSION

The state of Minnesota, unreasonably seized the Body of Mo Savoy Hicks without probable cause, securing the conviction of an innocent man.

WHEREFORE, Hicks asks this Court to grant this *Writ of Habeas Corpus* and reverse his conviction "outright" and Order the Anoka County District Court of Minnesota, upon the exhaustion of *S. Ct. R.* 45, to immediately release the Body of Mo Savoy Hicks from the Commissioner of Corrections.

Respectfully Submitted, Date: 5.17.22

Mo Savoy Hicks
MCF-STW
970 Pickett St. N.
Bayport, MN 55003

[20] This would give a petitioner time to prepare for release should the writ be granted.