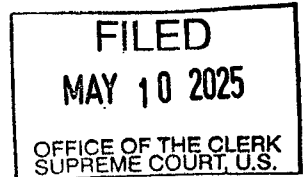


25-5874

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Bruce Myles — PETITIONER
(Your Name)

vs.

State Of New York — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

New York State Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bruce Myles
(Your Name)

Attica Correctional Facility , P.O. Box 149
(Address)

Attica , New York 14011
(City, State, Zip Code)

614-615-1277
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE COURT VIOLATED DUE PROCESS WHEN THE PROSECUTOR WAS ALLOWED TO ACT AS AN UNSWORN WITNESS?

ANSWER BELOW: the trial court did not consider this issue.

2. WHETHER COUNSEL WAS INEFFECTIVE IN VIOLATION OF SIXTH AMENDMENT WHEN HE FAILED TO INVESTIGATE AND OBJECT WHEN NECESSARY?

ANSWER BELOW: the trial court did not consider this issue.

3. WHETHER MR. MYLES'S RIGHT TO A FAIR TRIAL WAS VIOLATED WHEN THE COURT ALLOWED TM TO TESTIFY WHEN HE LACKED COMPETENCY?

ANSWER BELOW: the trial court permitted his sworn testimony.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at MARCH 17, 2025; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the trial court appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was Nov. 15, 2024.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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STATEMENT OF THE CASE

INITIAL PROCEEDINGS

On December 1, 2021, prior to indictment, the People supplied a certificate of compliance (A-11-39). The people indicated they provided defense counsel with discovery through an external hard drive and email correspondences (A-11). Concerning a witness list, the People named all individuals listed in discovery, and stated that "a more truncated list may be provided" (A-12). Since the certificate of compliance was provided prior to indictment, the grand jury minutes were not provided (A-12).

On or about February 10, 2022, the Onondaga County Grand Jury returned Indictment No. 2022-0091-1, charging Mr. Myles with the crimes of Murder in the First Degree, Murder in the Second Degree (2 counts), Burglary in the First Degree, Criminal Possession of a Weapon in the Second Degree, and Tampering with Physical Evidence (A-8-9). The Indictment alleged Mr. Myles unlawfully entered 159 Croly Street, Apartment 1, and shot Shabriah Gainey and Julian Mansaw causing their death (A-8-9). The Indictment further alleged that after the killings, Mr. Myles attempted to conceal the firearm used in the offense by discarding it into Onondaga Creek (A-9).

The trial court arraigned Mr Myles on Indictment No. 2022-0091-1 on February 22, 2022 (Arraignment of 2/22/22, pp. 2-5). Defense counsel entered a not guilty plea (Arraignment of 2/22/22, p.3).

Defense counsel submitted a motion on April 6, 2022 seeking inspection of the grand jury minutes (A-41-47). The People did not object to such review (A-48). The People moved for Mr. Myles's palm prints and saliva for testing (A-50-55).

During the proceedings of April 18, 2022, the trial court requested the People to provide it with the grand jury minutes for its review (Proceedings of 4/18/22, p.2). It also ordered the taking of a buccal swab from Mr. Myles for the purposes of developing his DNA profile (A-86; Proceedings 4/18/22,p.4). On May 5, 2022 and June 3, 2022, the trial court informed the parties that it was still reviewing the grand jury minutes (Proceedings of 5/5/2022, p. 2; Proceedings of 6/3/22, p. 2).

ATTACHMENT STATEMENT OF THE CASE

— In two pro se letters to the trial court seeking bail which was never granted Mr. Myles maintained his innocence of the crimes charged (A-87,89-91). He also denied having an intimate relationship with Shabriah Gainey, asserting instead they were close friends (A-89-91).

The trial court determined that the grand jury minutes were sufficient in all respects (A-88; Proceedings of 6/29/22, p. 2; Proceedings of 9/7/22, p. 2).

At proceedings of November 7, 2022, Mr. Myles contended that he never waived his right to a preliminary hearing or to testify at grand jury (Proceedings of 11/7/22, p. 5). Defense counsel declined to respond to Mr. Myles's claim, which the trial court noted for the record (Proceedings of 11/7/22, p. 5).

On December 6, 2022, defense counsel requested to limit the people's shell casing expert's testimony (A-92-147). Defense counsel suggested prohibiting the People from using language like "sufficient agreement" and "consistant with" and instead testifying that the "firearm cannot be ruled out as a source of the shell casings" (A-93).

During the proceedings of December 20, 2022, the trial court instructed the People to provide a reply to defense counsel's motion (Proceedings of 12/20/22, p. 3). Defense counsel sought police disciplinary records, which the People indicated they would provide (Proceedings of 12/20/22, p. 5).

The People, on January 4, 2023, denied that they would seek elicit testimony that the casings "match" the firearm, but an opinion that the casings are "consistent" with the firearm in question (A-148). On January 11, 2023 defense counsel maintained that the firearm examiner should be precluded from using the word "match" (Proceedings of 1/11/23, pp.7-10). The trial court denied the motion, reasoning that defense counsel could explore the issue on cross-examination (Proceedings of 1/11/23, p. 10).

The People supplied a supplemental certificate of compliance on February 21, 2023 (A-150-155). The People did not provide any explanation for the supplemental certificate (A-150-155). The certificate of compliance included a more specific list of witnesses (A-151-152). The People also revealed Giglio material concerning Detective Breen, Detective Montalto, Detective LaLonde, Detective Merola, and Detective Kilburn (A-154).

On March 6, 2023, the trial court confirmed that there will be no plea agreement (Proceedings of 3/6/23, p. 2). The People denied the need for Monileux or Sandoval hearings (Proceedings of 3/6/23 pp. 2-3). The parties scheduled further proceedings to determine whether TM, an 8-year old boy could be a sworn witness at trial (Proceedings of 3/6/23, pp. 14-16).

An examination of TM's competency to testify occurred on March 9, 2023 (Proceedings of 3/9/23, p. 2). TM spelled his first and last name; identified his age ---8 years; identified his birthday; indicated who he lived with---his aunt; and stated where he went to school (Proceedings of 3/9/23, p. 5).

TM stated that the truth was a "bad thing" but then said it was a "good thing" (Proceedings of 3/9/23, p. 6). He identified a lie as a "bad thing" (Proceedings of 3/9/23, p. 6). He reasoned that it would be good to tell the teacher the truth so he would not "get in trouble" (Proceedings of 3/9/23, p. 6). He understood that when he promised to do something he had to do it (Proceedings of 3/9/23, pp. 7-8). At first, he thought that keeping a promise was a "bad thing" but then stated it was a "good thing" (Proceedings 3/9/23 p. 8).

Following TM's testimony, the People asserted that TM should be a sworn witness (Proceedings of 3/9/23, pp. 17-18). Defense counsel countered that while TM may understand the difference between the truth and a lie, in his own life, he did not understand the importance of an oath and what happens if you lie in a courtroom (Proceedings of 3/9/23, p. 19). Defense counsel, therefore, contended TM should only be permitted to testify as an unsworn witness (Proceedings of 3/9/23, p.19). After a short adjournment, the trial court ruled that TM could testify as a sworn witness (Proceedings of 3/9/23, p. 20).

The People supplied the defense with a second supplemental certificate of compliance on March 12, 2023 (A-156-157). The People did not provide any explanation for the second supplemental certificate of compliance (A-156-157). The People added that Cherish Love may be called as a witness, and that she has two prior criminal convictions (A-157). A third supplemental certificate of compliance followed on March 13, 2023 (A-158-159). Again, the People did not provide an explanation for the need for the supplemental certificate of compliance (A-158-159). In this certificate of compliance, the People provided the defense with the curriculum vitae of latent print analyst David Tate (A-159).

II. The Trial

A. Pre-Testimony Proceedings.

The trial commenced on March 13, 2023 (Trial of 3/13/23, p. 13; hereinafter cited to by volume [I-II] and page number [#]).

Defense counsel confirmed that Mr. Myles waived his right to be present during bench conferences (I-16-17). The parties selected the jury (I-18-306). When voir dire commenced, the trial court indicated that "21 [jurors] were in the box" (I-28). Neither the trial court nor the clerk named the jurors or provided them with a number (I-28). Jurors were then identified sporadically by number, and/or last name, and/or first name (I-28-95). At the conclusion of the panel, the parties then exercised for cause and peremptory challenges based on number exclusively, rendering it impossible to ascertain the identity of the potential jurors discussed when exercising challenges (I-95-98). Defense counsel disagreed with the trial court's for cause denial of juror thirteen, and told the trial court, "[y]ou're forcing us to use all of our peremptories" (I-98). The trial court also only named the jurors excused, and not the jurors selected (I-99).

The trial court utilized the same procedure during the voir dire of the second panel (I-104-157). During this panel, only one juror, juror number 2, was identified by name and number (I-106). The rest of the jurors were only referred to by name (I-104-157). Nevertheless, when the for cause and peremptory challenges were announced, the attorneys exclusively used numbers (I-157-164). During this panel, the trial court denied two for cause challenges by the defense, but it was not possible to determine which juror was challenged (I-158-159).

The third panel's voir dire occurred in a similar fashion (I-171-198). When the parties exercised peremptory and for cause challenges, however, they used names as opposed to numbers, rendering review at least possible (I-199-201).

The clerk called the fourth panel by name and number (I-205-206). At the conclusion of jury selection, the trial court by first name and first letter of last name, listed the jurors (I-294-295).

The trial continued briefly on March 15, 2023 (I-301). The trial court announced that juror #7 tested positive for COVID (I-301). The trial court instructed the jurors to test and then return to court the following day if their results were negative (I-303).

The trial continued on March 16, 2023 (I-307). The parties agreed to replace juror #7 with alternate juror #1, due to juror #7's illness (I-307). The trial court supplied the jury with preliminary instructions (I-308-326). The prosecutor gave his opening statement (I-326-335). The prosecutor's opening statement began from the point of view of the then 6-year-old TM and his discovery of his mother, Shabriah Gainey and his "god dad" Julian Mansaw, dead and covered in blood (I-326-327). Defense counsel also provided an opening statement (I-335-349).

Prior to the March 20, 2023 trial proceedings, the trial court noted that juror #5 reported ill, and as a result, the second alternate juror replaced juror #5 (II-10, 16).

B. The People's Case

In September of 2021, Taykola Gainey's (People's Witness No. 3) sister, Shabriah Gainey's lived at 159 Croly Street with TM (People's Witness No. 2), her son (I-371). During that period of time, Shabriah dated Mr. Myles on and off (I-372). Cherish Love (People's Witness No. 6) shares two children with Mr. Myles (I-529). She stated that she met Shabriah Gainey through Mr. Myles on one occasion. (I-529-530).

In September of 2021, Mr. Myles, stayed with his mother or at a hotel (I-530). Mr. Myles was trying to find suitable housing because he just moved from Queens and was approved for an apartment starting in October of 2021 (I-537). Mr. Myles drove a white Toyota Camry (I-531).

On September 15, 2021, when TM was six years old, he heard loud noises that caused him to wake up (I-366-367). After hearing the noises, he left his bed, and hid in the bathroom (I-367). Eventually, he went into the livingroom, turned on the lights, and saw his mom Shabriah Gainey, his "god dad" Mansaw, and blood (I-368). As a result, he went outside and called for help, eventually finding a person he knew who called the police (I-369).

At 3:36 A.M., on September 15, 2021, Officer Miller (People's Witness No.1) responded to 159 Croly Street due to a report of a shooting (I-351). When he arrived at the address, which was an apartment building, he spoke to a man and TM (I-352). TM explained that his mother was shot, and the apartment door would be open (I-352). Miller and officer Lukaczik entered the apartment, observed the bodies, and three shell casings (A-162-173; I-353). He then cleared the apartment to make sure noone else was present (I-353). Miller observed that the main entrance door and back bedroom window were open (I-364).

Officers Demand (People's Witness No.4) and Szakalski (People's Witness No.8) responded to the scene as members of the crime scene unit (A-174; I-378, II-19). They collected evidence and took photographs of the scene (A-175-370; I-381-400, II-20). Evidence collected included clothes, projectiles, casings, and Mansaw's identification card (I-401-404). The casings were .40 calibur (I-402).

Szakalski dusted the scene for fingerprints and took DNA swabs (I-400, 414-415, 427, II-22). He did not recover any prints from the open window (II-23-24). Szakalski collected latent lifts from the common hallway and entry door (II-24). Demand took blood swabs from the interior hallway (I-423). Demand acknowledged that the DNA swabs were never sent to the crime lab for further testing (I-437).

Detective Breen (People's Witness No.5) spoke to the victim's families (I-443). As a result of such conversations, Mr. Myles became a suspect (I-443).

He learned Mr. Myles drove a 2004 Toyota Camry (I-444, 450). Breen conducted a video canvas of the area of the incident and Mr. Myles's mother residence to observe the movement of the suspect vehicle (I-445-450). He created a thirty minute video clip of Mr. Myles's vehicle from the day of the incident (A-370-567; I-451).

The video tracked Mr. Myles's vehicle traveling on September 14, 2021, around the city of Syracuse before stopping at his mother's residence at 12:07 P.M. (I-456-457). At 1:19 P.M., the vehicle then traveled down South Avenue on the south side of Syracuse before turning east on Brighton Avenue (I-458-459). After viewing the vehicle on several other city streets, the vehicle eventually backed into Mr. Myle's mothers residence around 2:20 P.M. (I-459-461). The vehicle left Mr. Myles's residence again, traveling north on South Avenue, and then returning south about 18 minutes later (I-462). The vehicle traveled on South Avenue again, until it stopped at a liquor store at 3:03 P.M. (I-462-464). According to Breen, the person who exited the vehicle and entered the store appeared to be Mr. Myles (I-464).

After the liquor store, the vehicle returned to Mr. Myles's mothers residence, before at 3:27 P.M., leaving the residence again (I-464). At this time, the vehicle traveled to Fastman Avenue, where Love lived (I-465). Love shares two children with Mr. Myles (I-465). At 4:47 P.M., Mr. Myles returns to his mother's residence (I-465).

The vehicle did not move again until 8:07 P.M., when it traveled down South Avenue (I-465). The vehicle was not picked up by video again until 8:45 P.M., on the east side of Syracuse at the Columbus Deli and Grocery (I-465). The vehicle, at 9:08 P.M., traveled back toward South Avenue, until returning to his residence at 9:12 P.M. (I-468).

At 10:53 P.M., the vehicle left Mr. Myles's mother residence and traveled south on South Ave before heading eastbound on Colvin Street (I-469). It was picked up again on South Ave and backed into Mr. Myles's mothers driveway at 11:30 P.M. (I-469).

At 12:30 A.M., on September 15, 2021, the vehicle left the residence traveling east, eventually traveling on Midland Avenue at 12:41 A.M. (I-469-470). The vehicle then sat at a barbershop on Midland Ave for about 18 minutes (I-470). The interior lights of the vehicle became illuminated, and one person was seen in the vehicle (I-471). The vehicle, at 1:03 A.M., stopped on Eastman Avenue where Cherish Love lived (I-471). Love explained that Mr. Myles returned their daughter to her because she kept Mr. Myles's mother awake (I-532). After Love discussed the matter with her significant other, she allowed Mr. Myles to take a shower at her residence (I-533). Mr. Myles text her around 3:30 A.M., thanking her for allowing him to use her shower (I-535). Love responded by sending Mr. Myles a picture of their daughter (I-545-546).

Around 2:00 A.M., the vehicle traveled east onto Brighton Avenue, before heading to 81 North and 690 east (I-471-472). The vehicle took the Teall Avenue exit at 2:13 A.M. (I-472). Eventually, it traveled south on Westmoreland before it could not be viewed, creating an inference it stopped somewhere around Croly, Dakin, and Wesmoreland streets (I-473).

Around 2:45 A.M., an unknown individual who the People speculate is the suspect can be seen walking from the area where the vehicle was last seen (I-474). At 2:51 A.M., the person is walking from the direction of the parkinglot area between 159 and 171 Croly Street (I-475). The individual wore a dark hooded sweatshirt, with the hood up (I-475). Then, at 2:57 A.M., a unknown individual is seen running back toward the area of Dakin and Wesmoreland (I-476). Detectives showed Love photographs of the suspect, but she thought the suspect appeared shorter than Mr. Myles (I-551).

The vehicle was next observed passing a Sunoco gas station on Teall and Frie Boulevard (I-478). It then entered 690 west, and eventually returned to Mr. Myles's mother's residence (I-479). At 3:30 A.M., the vehicle moved from Mr. Myles's mothers residence to a pass a bridge on South Avenue, and then did a U-turn by a grocery store north of Onondage Creek (I-480-482).

At 3:39 A.M., an individual is seen walking north on the east side of the sidewalk on South Avenue (I-482). The person appeared to walk toward the creek, and then returned to the view of the camera a brief time later (I-483). The individual was not seen on any other COPS cameras despite one being present nearby (I-488).

During the investigation, Detective Breen acknowledged that detectives did not look into Julian Mansaw's actions prior to going to Shabriah's residence at 9:48 P.M. (I-523). For example, Breen did not know what Mansaw did walking on Dakin Street around 10:10 P.M. (I-523). They also did not know why Mansaw parked his vehicle roughly three blocks away from 159 Croly Street (A-917-920, 949-956; I-500-505). Mansaw's cell phone was recovered from the scene, but Detective Breen did not know if the details of his calls and texts were reviewed by detectives (I-521-523). Lalonde claimed he tried to analyze Mansaw's phone but could not access it due to password issues (IV-9). Lalonde conceded that he did not obtain a call detail report from Mansaw's phone number (IV-13-15).

Detective Lund (People's Witness No.7) spoke to Mr Myles's mother, learning Mr. Myles's phone number---929-488-9405 (444,556,II-157). Officer Lalonde (People's Witness No.12) used that phone number and Shabriah Gainey's, 315-204-0033, to procure call detail records from only Mr. Myles's phone number for call details (II-158). Lalonde plotted the location of the cell phone using the Cell Hawk database (A-776-846; II-159).

Lalonde's plotting of the movement of Mr. Myles's phone was consistent with the video evidence although never places Mr. Myles at the scene of the crime (II-163-165). Between 1:04 A.M. and 1:38 A.M. there is call interaction where Mr. Myles made about nine calls to Shabriah Gainey (II-165-166, IV-8-9). Mr. Myles also called Cherish Love around this time period as he was actually sitting outside of Love's residence around this time period (IV-6).

Beginning at 2:12 A.M., there was a 54-minute activation period at the cell site located at 1460 Frie Boulevard East (II-166). Another data activation period began at 3:00 A.M. at the same cell location and around the same time video evidence displays Mr. Myles's vehicle driving toward the 690 onramp (II-167). The cell phone data, consistent with the video evidence, indicated Mr. Myles's vehicle then drove to his mothers residence, arriving at around 3:08 A.M. (II-168).

Lalonde believed the homicide occurred around 2:50 A.M. (II-169). Lund learned that Mr. Myles purchased a bus ticket two days later on September 17, 2021 to Columbus ,Ohio at the time there was no warrant issued for his arrest (I-557). Love explained that social media posts accused Mr. Myles of killing Shabriah and Julian (I-548). Certain comments on Facebook seemed to be threatening (I-548-549). Mr. Myles knew of such threats, and as a result, Mr. Myles moved back to his hometown Columbus,Ohio (I-549).

On September 17, 2021, Detectives Breen and Szakalski assisted in a search for Mr. Myles mother's home at 843 South Avenue (A-604-637; I-498, II-25). Mr. Myles's vehicle was towed to the processing bay during the search (II-29). Breen suggested that Lund and Lowville search under the South Avenue bridge for evidence (I-499). Photographs were taken of the area under the bridge (A-568-603; I-559). From the east side of the bridge, Lund recovered .40 Calibur magazines and loose ammunition (I-562-567, 574). Lund acknowledged also observing black plastic bags in the area but not collecting any of the evidence he admitted (I-562, 581-582).

Four days later, on September 21, 2021, Trooper Dovi (People's Witness No.9) and other dive members searched in the creek for a potential firearm (I-568, 576, II-65-66). Dovi discovered a Smith and Wesson SD-40 caliber pistol (A-758-775; II-67). Detective Halsey (People's Witness No.10) placed the firearm in a paint can filled with water to decrease possible corrosion (II-80). The firearm was not registered to Mr. Myles and was reported as stolen (IV-11).

At that time, Halsey collected six live rounds of 40-caliber ammunition, two dark colored plastic bags, and a cell phone (A-686-759; II-82-94). The dark plastic bags were located in the grassy area around the creek (II-104). Halsey denied knowing whether the bags had any evidentiary value but despite all of the other trash including other plastic bags laying around decided to collect them two (II-116). Another black bag was at the scene but not collected (A-988-989; II-117). Lund acknowledged that during that four-day period, neither he nor any other detective secured the scene (I-576).

On September 22, 2021, Szakalski and others searched Mr. Myles's vehicle (A-638-667; II-30). Personal items and mail inside of the vehicle belonged to Mr. Myles (II-33). When Mr. Myles returned to New York from Ohio, Szakalski searched inside of his luggage (I-568, II-36-37). His luggage contained a driver's license that listed Mr. Myles's height as 5 foot 11 inches (II-54, V-29).

In May of 2022, forensic examiner Fairchild (People's Witness No.11) recieved fired shell casings, two plastic bags, and a handgun with a magazine (II-127).

She did not conduct DNA analysis of the two plastic bags based on instructions of the People (II-128,146). She swabbed the fired shell casings but did not perform a DNA analysis of the swab considering the shell casings were very small and a smooth surface, rendering the procurement of DNA unlikely (II-129).

Fairchild swabbed the handgun and magazines (II-129). No DNA was detected on the handgun (II-130). A low level DNA profile was obtained from the magazine, but not suitable for comparison (II-131). The other gun magazines were swabbed, and another low level DNA profile was obtained, but again, it was not suitable for comparison (II-134,145). She did not receive a doorknob or chain lock to analyze (II-142).

Latent print examiner Kelly Kinder (People's Witness No.13) received Mr. Myle's known prints (IV-45). She compared such prints to several items and the only one that she could develop a print that matched Mr. Myles was a plastic bag from the unsecured scene at the creek (IV-49-56,72-74,103). She made the match by taking a photograph of the latent print and comparing the photograph to the known print of Mr. Myles (IV-75). Kinder admitted that there were missing details from the known print that were not present in the latent print (IV-97-99). She could not tell when the latent print was deposited on the bag (IV-101).

Kinder acknowledged that every time a person records their fingerprint it will not be exactly the same (IV-58). Kinder also conceded that two people can have very similar fingerprints (IV-59). Kinder agreed that her comparison was "somewhat subjective" (IV-62). Kinder admitted that a recent study indicated that false positives occur in one of every eighteen examinations on the high end, and one in twenty-four examinations on the low end (IV-68).

Medical Examiner Monday (People's Witness No.14), On September 16,2021, conducted the autopsy of Shabriah Gainey (IV-115). She determined Shabriah Gainey suffered five gun shot wounds, three to her back and two to her arm (A-849-856; IV-115-121). Monday's examination also included a toxicology report which indicated that Shabriah Gainey's BAC was .09 and THC was present in her system (IV-122). Monday concluded that Shabriah Gainey's cause of death was multiple gunshot wounds (IV-122).

Monday also examined Julian Mansaw (IV-122). She determined Julian Mansaw suffered gunshot wounds to the chest,abdomen,left arm, and left hand (A-855-864; IV-124-129). Julian Mansaw's toxicology report did not produce anything of significance (IV-130). She concluded that Mansaw received ten gunshot wounds and his death was caused by the multiple gunshot wounds (IV-130).

Firearms Examiner Harter (People's Witness No.15) recieved the firearm associated with the instant case (IV-139). The firearm and a magazine were contained in a paint can full of water (IV-139). Harter identified the firearm as a Smith and Wesson pistol (IV-140). The pistol contained a magazine with a fiftenn round capacity (IV-140). The firearm came to her in water to prevent corrosion (IV-141). Due to the concerns of corrosion, she did not attempt to lift any latent prints from the firearm (IV-142). Instead, she placed penetrating oil on the pistol to stop the corrosion process (IV-142). Upon further cleaning and drying, she determined the firearm was operable (IV-143-144).

Harter did a comparison examination of a test-fired bullet and a submitted bullet (IV-145,149). Her results were inconclusive as to whether the bullets were fired from the pistol (IV-149). She opined that the 12 fired cartridge cases were fired from the submitted firearm (IV-151-152,V-21).

Harter acknowledged that her conclusions were subjective and not based on a mathematical formula (IV-160). Harter maintained that her analysis was still based on objective principles (IV-160). Harter claimed that when she compared items in this case, she relied on the breech face marks even though there were different individual characteristics on the shell (IV-164).

She admitted that the PCAST (President's Counsel of Advisers on Science and Technology) report determined that firearms examinations lacked foundational validity (IV-173). She admitted that the PCAST report was critical of the AFTE theory of identification, which was the theory she utilized in the instant case (V-6). Harter asserted that other reports have discredited the PCAST report (V-12). She admitted, however, that the AFTE board recognized the existence of a cognitive bias in firearms examinations (V-14). Specifically, influence can arise when an examiner is aware of outside information or has knowledge of another examiner's determination (V-15).

C. The Adjournment.

On March 21, 2023, the trial court explained that a third juror had fallen ill (III-2). As a result, it would inquire whether the jurors were available the following week after a quarantine period to resume trial (III-2).

The parties agreed to a process by which the trial court would question the remaining jurors as to their ability to continue (III-5). During the inquiry, no jurors indicated a problem with adjourning the trial (III-6-38). The trial then recommenced on March 27, 2023 (IV-3).

D. Defense Counsel's Trial Order Of Dismissal.

Defense counsel requested a trial order of dismissal, asserting that the People failed to provide sufficient evidence of Mr. Myles's guilt of the crimes charged (V-31). The trial court recognized the circumstantial nature of the case but denied the motion (V-32).

E. The Defense.

Mr. Myles elected not to testify (V-33).

Paul Olszewski (Defense Witness No.1), a land surveyor, used high definition laser scanning to estimate the height of the unknown individual observed in the video walking on Croly Street (V-44).

Olszewski used measurements for a pole, signs, and the location of the recording device to determine that the person was between 5 feet and 6 inches and five feet and 8 inches tall (V-45, 50-52, 59-63, 76). Olszewski acknowledged that his estimation could be a "little bit" different if the individual were standing straight as opposed to walking (V-64). Olszewski denied any training in forensic videography (V-69). The parties stipulated that Mr. Myles is 5 feet 9 1/2 inches tall (V-29, 83).

F. Post-Defense Case Proceedings.

Defense counsel renewed their motion for a trial order of dismissal, asserting that Mr. Myles could not be the person on Croly because he is too tall (V-84). The trial court denied the motion (V-85).

The parties engaged in a charge conference (V-86-91). Defense counsel delivered a summation (V-95-130) followed by the People (V-131-167).

The parties engaged in a charge conference (V-86-91). Defense counsel delivered a summation (V-95-130) followed by the People (V-131-167). During the People's summation, the prosecutor used two different photographs on top of one another with his computer creating a merged image (A-1016; V-164,167). Defense counsel objected, asserting the prosecutor was conducting an untestified experiment (V-164). The trial court overruled the objection (V-164). Defense counsel maintained his objection and asserted that such an argument made the prosecutor a witness (V-168). The trial court maintained its ruling but ordered a screenshot of the merged document be part of the record (V-169).

On March 29, 2023, the trial court provided its instructions of law (VI-7-40).

During deliberation, defense counsel sought a mistrial due to the prosecutor's unsworn testimony during his summation and his creation of a new exhibit (A-1016; VI-47). Defense counsel maintained that the prosecutor's comments about the photographs constituted unsworn testimony that demanded cross-examination (VI-47-48). Defense counsel also emphasized the height of the unknown suspect to the defense (VI-50).

The prosecutor denied providing unsworn testimony and asserted that the use of the photographs was proper in summation (VI-51-54). The trial agreed, relying on its limited instruction prior to summations as instructing jurors how to view closing arguments (VI-55).

The jury found Mr. Myles guilty of the crimes of Murder in the First Degree, Burglery in the First Degree, Criminal Possession of a Weapon in the Second Degree, and Tampering with Physical Evidence (A-1022; VII-10-12).

III. Sentencing.

The trial court, on May 4, 2023, sentenced Mr. Myles (Sentencing of 5/4/23, pp. 2-21). Mr. Myles maintained his innocence and claimed that police planted evidence at the creek (Sentencing of 5/4/23, p.17). Mr. Myles further criticized the People for failing to test items of evidence for DNA and fingerprints and failing to process the victim's phones (Sentencing of 5/4/23, p. 17). The trial court sentenced Mr. Myles as previously indicated (A-5-6; Sentencing of 5/4/23, p. 21). Mr. Myles filed and served a notice of appeal on May 4, 2023 (A-3-4).

IV. Post Conviction.

Supreme Court, Appellate Division Fourth Department of New York Affirmed the direct appeal on November 15, 2024.

Court Appeals of New York denied leave to the Court of Appeals which was submitted on November 15, 2024 and was denied March 17, 2025.

REASONS FOR GRANTING THE PETITION

POINT 1; THE COURT VIOLATED DUE PROCESS WHEN THEY ALLOWED THE PROSECUTOR TO ACT AS AN UNSWORN WITNESS

A. The prosecutor's mission is not so much to convict as it is to achieve a just result (People v Bailey, 58 NY2d 272, 277 [1983]). It must be stressed that "[p]rosecutors play a distinctive role in the search for truth in criminal cases. As public officers they are charged not simply with seeking convictions but also with ensuring that justice is done" (People v Carlson, 184 AD3d 1139, 1142 [4th Dept 2020]).

Prosecutorial misconduct is "a prosecutor's improper or illegal act (or failure to act), esp. involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant or assess an unjustified punishment." The lower court's decision was erroneous and an abuse of discretion when the 4th Dept. appellate division denied the direct appeal due to what they state as a "harmless error" (People v Myles, 232 A.D.3d 1295). The prosecutor made an improper power point in closing summation that clearly prejudiced defendant due to the circumstantial nature of the case to secure a wrongful conviction. "It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case." (Herring v State Of New York, 95 S.Ct. 2550) The lower court makes a habit to get around violating substantive and procedural due process by using the term "harmless error." This has been the lower courts scapegoat in ignoring the Fourteenth Amendment Of Our Constitution Of The United States Of America. "New York State Court Of Appeals vacates a conviction and remand for new trial because the prosecutor's conduct at trial amounted to an egregious violation of the unsworn witness rule" (People v Moye, 52 A.D.3d 1). The prosecutors in criminal cases should not be treated as they are above the law. It is impossible to say that the evil influence upon the jury of these acts of misconduct was removed by such mild judicial action as it was taken. The prosecuting attorney's argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury (Berger v United States 55 S.Ct. 629).

ATTACHMENT POINT 1

The prosecution has a duty to act in good faith while giving his opening statement and continues throughout his summation (People v Alicea, 37 NY2d 601,604 [1975]). A prosecutor exceeds the bounds of legitimate advocacy where he or she improperly appeals to the fear and emotion of the jurors (People v Presha, 83 AD3d 1406,1408 [4th Dept 2011]) or acts as an unsworn witness by using his or her position and veracity to support their case (People v Lovello, 1 NY2d 436, 438-439 [1956]; People v Getman, 199 AD3d 1318,1321 [4th Dept 2021]). Above all, the prosecutor is barred from drawing irrelevant and inflammatory conclusions to prejudice the fact finder against the defendant (People v Fisher, 18 NY3d 964,966 [2012]).

Prosecutorial misconduct warrants reversal where the conduct has caused such substantial prejudice to the defendant that he has been denied due process of law (People v Almethoky, 9 AD3d 882,883 [4th Dept 2004]; People v Mott, 94 AD2d 415,419 [4th Dept 1983]). Even where a trial court provides curative instructions due to a prosecutor's conduct, the resulting prejudice can overwhelm a defendant's right to a fair trial (People v Griffin, 125 AD3d 1509,1512 [4th Dept 2015]). Where review of the record illustrates less than overwhelming evidence of defendant's guilt, prejudicial effect on the defendant may result from the slightest impropriety (see People v Brosnan, 32 NY2d 254,262 [1973]).

In summation, the prosecutor used a photograph of Mansaw and a photograph of the person they alleged was Mr. Myles leaving the scene of the crime to create a merged image that was never introduced as evidence (A-1016; V-164-165,167). Although the alleged suspect has never been identified the prosecutor then argued because the unknown person alleged to be Mr. Myles went to the brow line of Mansaw, that the person "could" be Mr. Myles (V-164-165). The prosecutor's creation of new evidence and unsworn claim that his evidence established that the suspect was the same height as Mr. Myles constituted an improper not testified experiment and made the prosecutor an unsworn witness (A-1016; V-165-167) (Lovello, 1 NY2d at 438-439; Getman, 199 AD3d at 1321). The claim was also imbued with the veracity and position of the District Attorney's Office, prejudicing Mr. Myles's right to a fair trial (A-1016; V-164-168) (id.).

ATTACHMENT POINT 1

B. Here, the prosecutor's opening statement needlessly began from the point of view of 6-year-old TM's discovery of his mother and a man he called his "god dad" dead and covered in blood (I-326-327). The prosecutor's portrayal of such evidence improperly appealed to the emotions of the jurors as opposed to providing the jury with the nature of the charges and the facts that supported such charges (Presha, 83 AD 1406,1408; see People v Kurtz, 51 NY2d 380,384 [1980]).

These instances of misconduct, especially where the evidence was less than overwhelming were so egregious and caused Mr. Myles such substantial prejudice that he was denied due process of law (A-1016; I-326-327; V-164-168) (Almethoky, 9 AD3d at 883; Mott, 94 AD2d at 419). Therefore, it is respectfully submitted that the judgement of conviction should be reversed, and a new trial granted (id.).

POINT 2: COUNCEL WAS INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT WHEN HE FAILED TO INVESTIGATE IN/OR OBJECT TO...

A. Defense council's aggregate errors deprived Mr. Myles of meaningful representation (People v Baldi, 54 NY2d 137,146 [1981]; see People v Oathout, 21 NY3d 127,128 [2013]). Due process is "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case".

In considering a claim of ineffective assistance of council, a Court must determine, without the benefit of hindsight, whether the evidence, law, and circumstances of the case, viewed in the totality, reveal that the attorney provided meaningful representation (Oathout, 21 NY3d at 128; People v Benevento, 91 NY2d 708,712 [1998]). The standard ineffective assistance "is ultimately concerned with the fairness of the process as a whole, rather than its particular impact on the outcome of the case" (Benevento, 91 NY2d at 712; see People v Wright, 25 NY3d 769,779 [2015]).

"The court agreed that the Sixth Amendment imposes on council a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options. The court observed that council's investigatory decisions must be assessed in light of the information known at the time of the decision, not in hindsight, and that [t]he amount of pretrial investigation that is reasonable defies precise measurement". (Strickland v Washington , 104 S.CT. 2052

If defense council fails to make a meritorious speedy trial claim, it constitutes ineffective assistance of council (People v Sweet, 79 AD3d 1772 [4th Dept, 2010]). The right to effective representation also includes the right to assistance by an attorney who has taken the time to review and prepare both the law and the facts relevant to the defense, and a reasonable investigation and preperation of defense witnesses (People v Oliveras, 21 NY3d 339,346-347 [2013]; People v Pottinger, 156 AD3d 1379,1380 [4th Dept 2017]). Moreover, while defense council's errors in a case individually may not constitute ineffective assistance, the cumulative effect of defense council's actions can deprive a defendant of meaningful representation (Oathout, 21 NY3d at 132).

ATTACHMENT POINT 2

Defense counsel failed to submit a motion alleging that the people's certificate of compliance was illusory or challenge whether Mr. Myles's speedy trial rights were violated by the failure to provide a valid certificate of compliance (A-11-39). The People's first certificate of compliance, which was provided prior to arraignment, lacked grand jury minutes, Giglio material, or a legitimate witness list (A-12). In response to the People's submission and its shortcomings, defense counsel made no request to invalidate the certificate of compliance or a request for the trial court to conduct a CPL 30.30 (5) inquiry (Arraignment of 2/22/22, pp.2-5).

Defense counsel continued to ignore the illusory nature of the certificate of compliance when, despite the People's obligation to provide such information, he was compelled to specifically request police disciplinary records (Proceedings of 12/20/22, p.5). Even though the people indicated they would provide such documents, and eventually did so two months later in a February 21, 2023 supplemental certificate of compliance, defense counsel should have made speedy trial arguments a year earlier when the People provided its original insufficient December 21, 2021 certificate of compliance, which very well could have resulted in dismissal of the indictment on speedy trial grounds (A-11-39) (CPL 30.30; Sweet, 79 AD3d at 1772).

Moreover, upon receipt of supplemental certificates of compliance on February 21, 2023, March 12, 2023, and March 13, 2023, defense counsel did not object to the People's failure to provide any explanation as to the need for such supplemental submissions (A-150-159) (CPL 245.50[1-a]). Defense counsel also never requested the trial court to conduct a CPL 30.30 (5) inquiry in the face of the original certificate of compliance's issues, or the supplemental certificates. Defense counsel's failures concerning Mr. Myles's speedy trial rights deprived him of meaningful assistance of counsel who understood the law related to the case and prevented his receipt of potentially important discovery material, impacting his ability to present a defense, and also denied him due process (A-11-39, 150-159; Proceedings of 12/20/22, p. 5) (Oliveras, 21 NY3d at 346-347; Pottinger, 156 AD3d at 1380).

ATTACHMENT POINT 2

- B. The petitioner argues that due process and right to a fair trial were violated in the act of ineffective assistance of counsel. The Sixth Amendment clearly states "the guarantee in criminal cases the right to a speedy trial and public trial, the right to be informed of the nature of the accusation, the right to confront witnesses, the right to counsel, and the right to compulsory process for obtaining favorable witnesses". Here in (U.S. v Cronin, 104 S.Ct. 2039) The Court Of Appeals reversed the conviction because it concluded that respondent did not "have the assistance of counsel for his defense" that is guaranteed by the Sixth Amendment Of The Constitution." More specifically, the right to the assistance of counsel has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary factfinding process that has been constitutionalized in the Sixth Amendments" (422 U.S., at 857, 95 S.Ct., at 2553). "Whether a man is innocent cannot be determined from a trial in which here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendants case was adequately presented". (Betts v Brady, 316 U.S. 455, 476, 62 S.Ct. 1252, 1263, 86 L.Ed. 1595 (1942)(Black, J., dissenting).

C. Defense counsel failed to preserve an appellate record of the first two waives of jury selection (I-28-95, 104-157). Eleven jurors were selected during these first two panels (I-28-95, 104-157). Neither the trial court nor the clerk named the prospective jurors or provided them with a number, rendering fair appellate review of jury selection for such waives impossible (I-28-95). At one point during the first waive of jury selection, defense counsel complained to the trial court, " [y]ou're forcing us to use all of our peremptories" (I-98). During the second waive, the trial court denied two for cause challenges by the defense, but it was impossible to determine which jurors were actually challenged (I-158-159). Nevertheless, defense counsel's failure to clearly identify the jurors foreclosed appellate review of such issues (I-98, 158-159).. Accordingly, defense counsel's lack of objection to the method of calling jurors had no legitimate strategy, deprived Mr. Myles of fair appellate review of the fairness of jury selection and constituted less than meaningful

ATTACHMENT POINT 2

representation (I-28-95, 104-157) (Benevento, 91 NY2d at 712; see Wright, 25 NY3d at 779).

D. It also should be noted that Mr. Myles respectfully maintains that communication issues with defense counsel deprived him of meaningful representation (A-87, 89-91, Proceedings of 11/7/22, p.5; Sentencing of 5/4/23, p.17). Mr Myles maintained his innocence of the crimes charged throughout the proceedings, denying having an intimate relationship with the female victim and asserting that defense counsel failed to adequately put fourth evidence at trial reflecting the actual relationship between the parties (A-87, 89-91). Mr. Myles also contended that he never waived his right to a preliminary hearing or to testify at grand jury, and that defense counsel's lack of response to such concerns deprived him of meaningful assistance (Proceedings of 11/7/22, p.5). Finally, at sentencing, Mr. Myles contended that police planted evidence at the creek and that police failed to test evidence for DNA and fingerprints, or process male victim or female victim's phones (Sentencing of 5/4/23, p.17). Mr. Myles's criticisms of the defense throughout the proceedings demonstrated the serious communication breakdown between the parties that necessitated further inquiry by the trial court (A-87, 89-91; Proceedings of 11/7/22, p. 5; Sentencing of 5/4/23, p.17). While Mr. Myles did not request replacement counsel, he contends he should recieve a new trial due to the trial court's failure to protect his Fourteenth Amendment and Sixth Amendment right to counsel and due to ineffective assistance of counsel (A-87, 89-91; Proceedings of 11/7/22, p. 5; Sentencing of 5/4/23, p. 17).

The cumulative errors of defense counsel deprived Mr. Myles a fair trial, and as such, the judgment of conviction should be reversed, and a new trial ordered (A-11-39, 87, 89-91, 150-159; Proceedings of 11/7/22, p. 5; Proceedings of 12/20/22, p. 5; I-28-95, 104-157; Sentencing of 5/4/23, p.17).(Oathout,21 NY3d at 132)

POINT 3: THE COURT VIOLATED MR. MYLES'S RIGHT TO A FAIR TRIAL WHEN THEY ALLOWED TM TO TESTIFY WHEN HE LACKED COMPETENCY

At a March 6, 2023 competency hearing, TM failed to demonstrate his ability to give sworn testimony (Proceedings of 3/9/23, pp. 2-14). The trial court's decision to permit such sworn testimony deprived Mr. Myles of a fair trial (proceedings of 3/9/23, p. 20).

CPL 60.20 establishes a rebuttable presumption that a child less than 9 years old is incapable of giving sworn testimony in a criminal proceeding (People v Morales, 80 NY2d 450,452-453 [1992]). The presumption is overcome, however, if the court is satisfied that the child "understand the nature of an oath" (CPL 60.20 [2]; People v Nisoff, 36 NY2d 560,566 [1975]; People v Merrill, 60 AD3d 1376 [4th Dept 2009]).

Before making a competency to testify determination the court is required to conduct a preliminary examination of the prospective witness, which typically involves several interrelated inquiries: "does the child know the difference between a lie and the truth; does the child know the meaning of an oath; does the child understand what can happen if he or she tells a lie; and does the child have the ability to recall and relate prior events" (Morales, 80 NY2d at 453; People v Ranum, 122 Ad3d 959,960 [2nd Dept 1986]).

Here, TM provided inconsistent confusing testimony that did not reflect he knew the difference between the truth and a lie (Proceedings of 3/9/23, pp. 2-14)(Ranum,122 AD3d at 960).

Tm originally asserted that the truth was a "bad thing" before switching his answer to a "good thing" (Proceedings of 3/9/23, p.8). Such inconsistencies created legitimate doubt as to his ability to understand the concept of the truth and a promise (Proceedings of 3/9/23, pp.6,8)(CPL 60.20; Morales,80 NY2d at 452-453).

"The incompetency to TM's answers making him incompetent to testify here is hardly unusual for a child his age" (see, Ohio v Clark, 135 S.Ct 2173).

ATTACHMENT POINT 3

___ In the instant case TM was used by the prosecutor to play on the jurors emotions rather than be a witness of actually evidence to convict a suspect. Along, with the circumstantial nature of the case "the understanding of truth and lies and comprehension of the oath must be accurate as in (People v MCCARTY 221 A.D. 3d 1360, 201 N.Y.S. 3d 524 2023 N.Y. slip op. 06173

Moreover, TM claimed that he lied before, but his example, telling his uncle that he ate noodles when he actually did not, was nonsensical (Proceedings of 3/9/23, p. 10). He claimed he lied about eating noodles because he thought he would get in trouble, but then, rightly denied knowing why he would get in trouble for such an innocuous act (Proceedings of 3/9/23, p. 10). While he claimed to understand that it would be wrong if he lied and "got away" with it, his original example of lying about eating noodles was too illogical to reflect his understanding of the concept of lying (Proceedings of 3/9/23, p. 10 (CPL 60.20; Morales, 80 NY2d at 452-453).

It also should be noted that the inquiry into TM's understanding of an oath, or the process of testifying did not adequately demonstrate his ability to appreciate the consequences of lying in a courtroom (Proceedings of 3/9/23, pp. 2-14)(CPL 60.20 [2]; Ranum, 122 AD3d at 960).

(People v Rose, 223 A.D. 2d 607, 637 N.Y.S. 2d 172) "It is important to be clear that a child under the age of presumptive competency to testify understands the nature of an oath in a criminal proceeding and possessed sufficient intelligence and capacity to justify the reception of unsworn testimony" (see, CPL 60.20 [2]; see, People v Rowell, supra; People v Kalicki, supra).

ATTACHMENT POINT 3

Considering such circumstances, and the importance of TM's testimony, which was emphasized by the prosecutor in his opening, the trial court's decision to permit TM to testify as a sworn witness was erroneous and so prejudicial that it deprived Mr. Myles of a fair trial (Proceedings of 3/9/23, pp. 2-20)(CPL 60.20). As such, the judgement of conviction should be reversed, and a new trial ordered (Proceedings of 3/9/23, pp. 2-20)(Ranum, 122 AD3d at 960).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MAY 10, 2025

CERTIFICATE OF COMPLIANCE

NO.

BRUCE MYLES

V.

STATE OF NEW YORK

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 8022 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty that the foregoing is true and correct.

MAY 25

Executed on _____, 20____



SWORN TO BEFORE ME ON THIS

10th DAY OF MAY, 2025



NOTARY PUBLIC

ANTHONY J. EHRENREICH
Notary Public, State of New York
Registration # 01EH0016932
Qualified in Erie County
Commission Expires 11/27/27