

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Marvin Haynes,
Petitioner,

**STIPULATION AND ~~(PROPOSED)~~
ORDER TO VACATE CONVICTION**

v.

State of Minnesota,
Respondent.

27-CR-04-035635

WHEREAS, on September 2, 2005, Petitioner Marvin Haynes was convicted of first-degree murder and second-degree assault following a jury trial;

WHEREAS, on January 4, 2007, the Supreme Court of Minnesota affirmed Petitioner's conviction on direct appeal;

WHEREAS, on June 29, 2023, Petitioner filed a Petition for Post-Conviction Relief asserting certain claims for relief and seeking to have his conviction vacated;

WHEREAS, on July 19, 2023, the State filed a Preliminary Postconviction Response in which it agreed to waive the statutory time bar available under Minnesota Statute § 590.01, subdivision 4;

WHEREAS, on October 4, 2023, Petitioner filed an Amended Petition for Post-Conviction Relief asserting, along with three other claims for relief, a claim that Petitioner was denied his right to due process of law under the Fourteenth Amendment of the United States Constitution and Article I, Section 7, of the Minnesota Constitution because his conviction relied on constitutionally defective eyewitness identification evidence (the "Due Process Claim");

WHEREAS, on October 9, 2023, during a preliminary hearing in this matter, the State indicated that, as to the Due Process Claim, it would waive the application of the statutory procedural bar in Minnesota Statute § 590.01, subdivision 1 (the “statutory bar”), and the procedural bar set forth in *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976) (the “*Knaffla* bar”);

WHEREAS, on November 27 and 28, 2023, the first two days of a postconviction evidentiary hearing were held in this matter, which included testimony from witnesses for the Petitioner directed toward proving the Due Process Claim;

WHEREAS, the parties agree that Petitioner presented sufficient evidence to satisfy his burden of proof on the Due Process Claim by a fair preponderance of the evidence as required by Minnesota Statute § 590.04, subdivision 3;

WHEREAS, Petitioner agrees to dismiss the other claims in his Amended Petition for Post-Conviction Relief in exchange for the State agreeing that Petitioner has satisfied his burden of proof on the Due Process Claim and that his conviction should therefore be vacated; and

WHEREAS, the State agrees the interests of justice would be served by dismissing with prejudice all charges against Petitioner in this matter;

THEREFORE, IT IS STIPULATED AND AGREED that Petitioner has presented sufficient evidence to satisfy his burden of proof concerning the Due Process Claim by a fair preponderance of the evidence and is therefore entitled to have his conviction vacated under Minnesota Statute §§ 590.01, subdivision 1(1) and 590.04, subdivision 1;

IT IS FURTHER STIPULATED AND AGREED that the remaining three claims for relief in Petitioner’s Amended Petition for Post-Conviction Relief shall be dismissed with prejudice; it being

understood and agreed that such dismissal is contingent upon the Court's entry of the proposed order below; and

IT IS FURTHER STIPULATED AND AGREED that all criminal charges against Petitioner in this matter are to be dismissed with prejudice.

FINDINGS

Based on the foregoing stipulations, the trial transcript, the evidence presented at the postconviction hearing, and relevant caselaw, the Court finds:

The State may affirmatively waive both the protection of the statute of limitations under Minnesota Statute Chapter 590, as well as the procedural protection of the *Knaffla* bar. The State's express waivers of those time and procedural bars in this matter are therefore effective.

Under certain circumstances, the introduction of eyewitness identification evidence at trial may deprive a criminal defendant of his right to due process of law and undermine the fundamental fairness of the proceedings. Minnesota courts apply a two-part test to determine whether pretrial eyewitness identification testimony must be suppressed. *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995) (applying test from *Manson v. Brathwaite*, 432 U.S. 98 (1977)). The first question is whether the pretrial identification procedure was unnecessarily suggestive. *Id.* If the procedure is found to be unnecessarily suggestive, the identification evidence may still be admissible only if "the totality of the circumstances establishes that the evidence was reliable." *Id.* In examining this second question, courts consider a non-exhaustive list of factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972). Those factors are the "opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior

description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.” *Biggers*, 409 U.S. at 199–200.

In this case, Petitioner has presented sufficient evidence, including through the testimony of Dr. Nancy Steblay and retired Lieutenant Michael Keefe, to satisfy both elements for the suppression of eyewitness identification evidence.

First, Petitioner has presented sufficient evidence to show that the identification procedures were contrary to then-operative policy governing such identification procedures and were unnecessarily suggestive. This evidence included: (1) the two eyewitnesses (Cynthia McDermid and Ravi Seeley) were exposed to Petitioner multiple times in the course of the pretrial identification procedures; (2) not all of the lineup procedures were “blind” presentations by officers not involved in the investigation; and (3) the lineups were constructed so they included, at different points: (a) an old photograph of Petitioner that did not match his appearance at the time of his arrest within days of the offense, (b) multiple suspects in a single lineup, and (c) fillers who did not match Petitioner’s physical appearance.

Second, Petitioner has presented sufficient evidence to show, based on the totality of the circumstances, that the identification evidence was not reliable, including that Petitioner did not match—significantly—the physical description and characteristics provided by the primary eyewitness (Ms. McDermid) immediately or shortly after the murder. Specifically, Petitioner was significantly younger than the described assailant, Petitioner was some 50 pounds lighter in weight than the described assailant, Petitioner was significantly shorter than the described assailant (largely the same height as the eyewitness, and not several inches taller), Petitioner had much longer hair than the described assailant, and Petitioner’s manner of speech was not similar to the

described assailant. Still further, the eyewitness's identification was not reliable in that she originally identified an individual in the first photo lineup as the assailant, stating she was 75-80% sure, even though that individual was in another state at the time of the murder. It was only later, during a third lineup and in subsequent trial testimony, that the eyewitness identified the Petitioner. The eyewitness acted in good faith, genuinely trying to identify the correct person, but her identification was unreliable due to the problems with the identification procedures used in this case.

Therefore, the Court holds that Petitioner's due-process rights were violated through the introduction at trial of the eyewitness identification evidence in question and that Petitioner has satisfied his burden of proof concerning the Due Process Claim by a fair preponderance of the evidence.

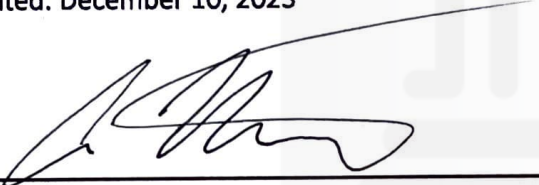
The Court further holds that absent introduction of the unconstitutional eyewitness identification evidence, it is doubtful there would have been sufficient evidence to sustain a conviction. There was no physical evidence linking Petitioner to the crime scene: there was no DNA evidence, fingerprint evidence, physical evidence, surveillance evidence, or other forensic evidence. Additionally, other evidence presented by certain then-juvenile witnesses was internally equivocal at best and inherently contradictory at worst. The eyewitness evidence was the strongest, most compelling evidence linking Petitioner to the crime. And it was constitutionally improper.

ORDER

The Court therefore orders, pursuant to Minnesota Statutes §§ 590.01, subdivision 1(1) and 590.04, subdivision 1:

1. Petitioner's convictions for first-degree murder and second-degree assault are vacated;
2. All criminal charges against Petitioner in connection with this matter are dismissed with prejudice; and
3. Petitioner is to be promptly released from the custody of the Minnesota Department of Corrections.

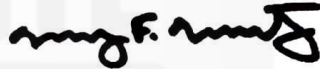
Dated: December 10, 2023



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IT IS SO ORDERED:

William H. Koch
Judge of District Court
Dated: December 11, 2023