

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Marvin Haynes,

Petitioner,

**AMENDED PETITION FOR
POST-CONVICTION RELIEF**

vs.

State of Minnesota,

D.C. File No. 27-CR-04-035635

Respondent.

TO THE DISTRICT COURT ABOVE-NAMED:

The undersigned represent and state:

I.

They are the attorneys for the petitioner, Marvin Haynes, who is imprisoned and restrained of his liberty in the Minnesota Correctional Facility – Stillwater.

II.

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

Mr. Haynes was found guilty on September 2, 2005, of first-degree murder and second-degree assault after a jury trial before the Honorable Robert A. Blaeser. On September 27, 2005, Mr. Haynes was sentenced to life imprisonment for the murder conviction and to a consecutive 36-month sentence for his conviction of second-degree assault.

III.

Mr. Haynes previously sought relief from his conviction through a direct appeal thereof, which asserted the following grounds for relief:

- (1) The District Court abused its discretion when it granted the jury's request during deliberations to replay witness Isiah Harper's taped statement;
- (2) The prosecutor's question to Anthony Todd as to whether he was afraid of Mr. Haynes, in violation of a court order, constituted prosecutorial misconduct justifying reversal;
- (3) The prosecutor's cross-examination of Mr. Haynes as to whether four people would have seen him sleeping on the couch at the time of the murder constituted improper comment on Defendant's failure to call witnesses; and
- (4) The District Court abused its discretion in allowing for cross-examination of Mr. Haynes concerning his lies to police on two prior occasions.

On January 4, 2007, the Supreme Court of Minnesota affirmed Mr. Haynes' conviction and rejected all of these arguments for reversal.

This petition amends the petition for post-conviction relief filed in this matter on June 29, 2023, solely as to the second ground for relief set forth in Part VI below.

IV.

Mr. Haynes requests relief as follows:

That the judgment of conviction of the Hennepin County District Court dated September 2, 2005, and the resulting sentence be vacated.

V.

The facts upon which this petition is based include the following:

Mr. Haynes is presently serving a life sentence arising out of false allegations that he shot and killed Harry Sherer at a flower shop in North Minneapolis on May 16, 2004, when Mr. Haynes was sixteen years old.

The only eyewitness to the shooting itself was Sherer's sister, Cynthia McDermid, who was working with him at the flower shop at the time. Following the shooting, McDermid called 911 from a neighbor's house and provided the first of three descriptions of the culprit. With these three descriptions, McDermid described a Black male between 19 and 22 years old, 5'10" to 5'11", about 180 pounds, with medium to dark complexion, short-cropped hair (but not bald), no facial hair, and an educated manner of speaking. This description did not match Mr. Haynes who, at the time, was wearing his hair in a long afro, had some amount of facial hair, was 16 years old (3–6 years younger than the description), 5'7" (3–4 inches shorter than the description), 130 pounds (50 pounds less than the description), and did not speak in an educated manner.

Over the course of the next four days, McDermid participated in four separate identification procedures. First, she was shown a photo lineup in which Mr. Haynes was not present, wherein she indicated that a filler (someone who was not a suspect) looked familiar. The next day, when shown that same photo lineup, McDermid identified that same filler with 75–80% confidence. McDermid was shown yet another photo lineup two days later, at which point she identified Mr. Haynes. The following

day, she participated in a live lineup procedure in which she identified Mr. Haynes again, but noted feeling traumatized and having difficulty concentrating on the faces of the individuals in the lineup. Despite indicating doubt during her initial identifications, McDermid identified Mr. Haynes at trial.

The only other eyewitness was Ravi Seeley, a fourteen-year-old high school student from St. Louis Park who attended a church in the neighborhood. He claimed he was walking by the flower shop when he heard a gunshot and saw a person, presumably the perpetrator, running from the scene. Two days later, Seeley spoke with a school resource officer from the St. Louis Park Police Department and told him that he had information about a murder in Minneapolis. Seeley then met with the Minneapolis Police Department and described the perpetrator as “a slender black male [with] a natural haircut possibly faded on the sides and some sort of a light blue (possibly zip up) sweatshirt.” The same day, Seeley was shown a photo lineup and identified Mr. Haynes. A day later, he participated in the same live lineup procedure as McDermid, and again identified Mr. Haynes. At trial, Seeley identified Mr. Haynes but testified that he expressed uncertainty to the officer next to him during the live lineup, which was not documented in any police reports.

Mr. Haynes was tried before Judge Robert Blaeser in Hennepin County in a weeklong trial that concluded on September 2, 2004. In addition to McDermid and Seeley’s identification testimony, the state introduced evidence from certain individuals who claimed to have heard Mr. Haynes make incriminating statements.

The most central of these witnesses was Mr. Haynes' cousin, Isiah Harper, who claimed to have been with Mr. Haynes prior to the murder. He claimed that Mr. Haynes stated he wanted to "hit a lick." At trial, Harper attempted to recant on the stand, saying that he "just made that up because they threatened me with 15 years." After taking a break and speaking with his lawyers and the prosecuting attorney, Harper reversed himself again and reaffirmed his original statement. Another witness, Anthony Todd, testified that he was with Mr. Haynes on the morning of the shooting and that Mr. Haynes said he was going to "hit a lick."

In the end, the jury found Mr. Haynes guilty of murder in the first degree and assault in the second degree. On September 27, 2005, Mr. Haynes was sentenced to life in prison. Mr. Haynes unsuccessfully appealed to the Minnesota Supreme Court, and his conviction was affirmed on January 4, 2007.

Since then, new evidence has emerged that undermines the factual and legal basis for Mr. Haynes' conviction.

Ravi Seeley provided an affidavit dated October 11, 2022, in which he states that he never actually got a clear view of the perpetrator's face and has no confidence in his prior identifications (Ex. 3). (Seeley Aff. ¶¶ 6–7.) Seeley says that he felt pressure from the police to make an identification and stick with it to make sure they caught a dangerous person. (*Id.* ¶¶ 3, 6.) He was uncertain of his identifications during both the photo lineup and the live lineup, but he was worried about getting in trouble if he was not cooperative. (*Id.* ¶¶ 5–6.) It is his belief that, "as a young and impressionable teenager, the police officers pressured [him] into making potentially

inaccurate identifications and telling the officers what [he] believed they wanted to hear.” (*Id.* ¶ 7.)

Isiah Harper provided an affidavit dated September 28, 2022, in which he states that the police pressured him into making incriminating statements against Mr. Haynes (Ex. 6). (Harper Aff. ¶ 2.) The officers repeatedly threatened him with criminal charges if he did not cooperate and said he could get half of the prison time Mr. Haynes was facing if he did not cooperate. (*Id.* ¶ 2.) He states that, as a fourteen-year-old, he was scared and confused and felt that he had no choice but to tell the officers what they wanted to hear, so he gave them false statements about Mr. Haynes. (*Id.* ¶ 3.) Harper states in his affidavit that his attempted recantation at trial was authentic, but during a break in his testimony he was pressured into reversing again because he was threatened with criminal charges. (*Id.* ¶ 5.) He never heard Mr. Haynes make any incriminating statements before or after the murder of Harry Sherer. (*Id.* ¶ 6.)

Anthony Todd has recanted his trial testimony against Mr. Haynes, as described in the affidavit of Mr. Haynes’ attorney, Andrew Markquart, dated October 10, 2022 (Ex. 7). Similar to Harper, Todd said that police threatened him with criminal charges if he refused to cooperate, and he eventually broke down and said that Mr. Haynes had told him he was going to “hit a lick,” a statement he repeated at trial. (Markquart Aff. ¶ 5.) Todd said that this was a lie and that he never heard Mr. Haynes make any such statement. (*Id.* ¶ 5.) Todd said that he was concerned about how cooperating in this case could affect him given his status on intensified

supervised release, and he ultimately declined to provide an affidavit based on the advice of counsel. (*Id.* ¶¶ 5–6.)

Ashley Toten provided an affidavit dated October 1, 2022, in which she states that she was interviewed by police in connection with the investigation of Mr. Haynes and that she felt they were pressuring her to make incriminating statements about Mr. Haynes despite her lack of knowledge (Ex. 8). (Toten Aff. ¶¶ 2–3.) Toten ultimately did not testify in Mr. Haynes’ trial. Her affidavit, however, corroborates those of Seeley, Harper, and Todd in that all of these witnesses provide consistent accounts of police applying heavy pressure on young witnesses in order to obtain incriminating evidence against Mr. Haynes.

Four of Mr. Haynes’ sisters provided affidavits accounting for Mr. Haynes’ whereabouts for much of the critical period on May 16, 2004, including the time during which Isiah Harper and Anthony Todd (in testimony that they both have now recanted) claimed they were with Mr. Haynes at a friend’s house and heard him make incriminating statements (10:00 a.m.). Marvin Haynes (Ex. 9), Sharita Harris (Ex. 10), Marquita Haynes (Ex. 11), and Cynthia Haynes (Ex. 12) all provide a consistent account in which Marvin came to their mother’s house around 10:00 a.m. on the date in question to confront Mr. Haynes about taking her Nike Air Jordan sneakers. After Marvin woke Mr. Haynes up and argued with him briefly, Mr. Haynes went back to sleep. Cynthia and Marquita left for church around 10:30 a.m., at which time Mr. Haynes was still home.

VI.

Mr. Haynes, through this petition, is seeking relief based on the following legal grounds:

1. Mr. Haynes' conviction is defective because it relied upon false evidence provided by Ravi Seeley, one of the two eyewitnesses who claimed to have seen Mr. Haynes at the scene of the crime. Through his affidavit, Seeley has made clear that, contrary to the identification he offered at trial, he did not actually get a clear view of the perpetrator and therefore had no ability to make an identification with any confidence.

2. Mr. Haynes was denied his right to due process of law under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 7 of the Minnesota Constitution because his conviction relied on constitutionally defective eyewitness identification evidence. The eyewitness testimony from Cynthia McDermid and Ravi Seeley served as the crux of the state's case against Mr. Haynes. That testimony should have been suppressed because it was the result of highly suggestive identification techniques and was wholly unreliable.

3. Mr. Haynes' conviction is defective because it relied on false evidence provided by Isiah Harper, a witness who provided inculpatory evidence against Mr. Haynes. Mr. Harper has provided an affidavit recanting his trial testimony and stating that he never heard Mr. Haynes make any statement indicating that he played any role in the killing of Harry Sherer.

4. Mr. Haynes' conviction is defective because it relied on false evidence provided by Anthony Todd, a witness who provided inculpatory evidence against Mr. Haynes. Mr. Todd has recanted his trial testimony in a conversation with counsel for Mr. Haynes and stated that he never heard Mr. Haynes make any statement indicating that he played any role in the killing of Harry Sherer.

VII.

Mr. Haynes respectfully requests an evidentiary hearing.

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Dated: October 4, 2023

GREAT NORTH INNOCENCE PROJECT



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CERTIFICATE OF SERVICE

I hereby certify as counsel for Petitioner Marvin Haynes that I caused this Amended Petition for Post-Conviction Relief to be served upon the Hennepin County Attorney's Office by virtue of electronic filing on October 4, 2023.



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