**STATE OF MINNESOTA**

**IN SUPREME COURT**

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**Jack Willis Nissalke,**

**Appellant,**

**VS.** **APPELLANTS BRIEF**

**State of Minnesota,**

**Respondent,**

District Court Case No. 85-CR-08-1884

Supreme Court Case No. A18-0337

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**TO**: The Minnesota Supreme Court, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, MN. 55155, Minnesota Attorney General / Lori Swanson 1400 Bremer Tower 445 Minnesota Street, St. Paul, MN. 55101-2131, and Winona County Attorney Karin Sonneman, 171 West Third Street, Winona, MN. 55987

The above named petitioner Jack Willis Nissalke respectfully seeks appellate review from the supervisory power of the Minnesota Supreme Court, following the order of summary denial of appellant's post-conviction relief, dated December 26, 2017 by The Honorable Joseph Bueltel Steele County District Court, Third Judicial District.

## LEGAL ISSUES

**1). Whether the post-conviction courts 590.04 Subd. 1, summary denial of appellant's post-conviction petition without a hearing was proper?**

Decision of the District Court;

The District Court summary denied appellant's petition for post-conviction relief, stating that

All claims by Appellant are either time barred or do not meet any of the exceptions in the Minn. Stat § 590.01. And that the petition, files, and records conclusively show Appellant is entitled to no relief.

The issues were preserved for appeal when Appellant filed a notice of appeal on February 23, 2018.

Apposite Authority

Minnesota Rules of Civil Appellate Procedure 110.01 Composition of the record on appeal

Minnesota Rules of Criminal Procedure 9.03 Subd. 4

Minnesota Statue 590.01, 590.01 Subd. 1 (1), 590.01 Subd. 2, 590.01 Subd. 4 (a), (b), (2) , (5), and (c).

Colbert v. State, 870 N.W. 2d 616 (Minn. 2015)

Rickert v. State, 795 N.W. 2d 236 (Minn. 2011)

Spears v State, 725 N.W. 2d 696,701 (Minn. 2006)

Davis v. State, 735 N.W. 2d 681, 682 (Minn. 2007)

Mesarosh v. United States, 352, U.S. 1 Led. 2d 1, 77 S. Ct. (1956)

Buck v. Davis, U.S. S. Ct. 137 S. Ct.759 (2017)

**2). Whether the 590 statue and the Knaffla-Bar limitations are unconstitutional, when it bars the convicted person from access to relief, and cures from violations of Constitutional issues and or rights?**

Apposite Authority

This issue has yet to be ruled on.

## PROCEDURAL HISTORY

1. Appellant was arrested May 22, 2008, in connection with a search warrant for additional DNA evidence needed in the murder investigation of Ada Senenfelder.

2. June 9, 2008 Appellant was charged with, Count 1, first-degree premeditated murder, Count 2, aiding and abetting first degree murder, Count 3, second degree murder, Count 4, adding and abetting second degree murder.

3. Appellant had his first appearance on June 11, 2008; The Honorable Robert R. Benson set bail at five million dollars.

4. June 23, 2008, Appellant had his initial appearance/rule 8 hearing, a contested omnibus hearing and speedy trial was requested.

5. July 1, 2008, Appellant was formally indicted by a Winona County Grand Jury, Count 1, first degree premeditated murder, Count 2, Aiding and abetting first degree premeditated murder, Count 3, first degree premeditated murder while witness tampering, Count 4, Aiding and abetting first degree premeditated murder while witness tampering. An arraignment was held, the initial charges were amended, and the five million dollar bail was continued.

6. February 23, 2009, a contested omnibus hearing was held, Defense Counsel requested additional discovery that was being withheld by the state, through Counsel, Appellant entered a not guilty plea.

7. April 13, 2009, a hearing was held to request Grand Jury transcripts.

8. April 27, 2009, a pre-trial hearing was held, Defense Counsel requested a change of venue.

9. May 12, 2009, a fact finding hearing was held, to determine if Defense Counsel had entered into a book and movie rights deal with Appellant.

10. May 18, to July 6, 2009, a jury trial was held in Fillmore County before the Honorable Robert R. Benson. The jury found Appellant guilty on all counts.

11. July 8, 2008, Appellant was sentenced to life in prison as defined in 1985.

12. July 25, 2009, a Schwartz hearing was held in Fillmore County, when allegations of juror misconduct surfaced.

13. October 8, 2009, the State Public Defender's office filed a notice of appeal on behalf of appellant.

14. November 2, 2010, oral arguments were heard in the Minnesota Supreme Court.

15. July 13, 2011, Minnesota Supreme Court affirmed appellant's conviction, (four to three).

16. August 13, 2011, final judgment was entered.

17. July 1, 2013, appellant filed a petition for post-conviction relief.

18. July 29, 2013, appellant filed a motion in opposition to the states untimely request for additional time to reply.

19. October 11, 2013, appellant filed a motion in opposition to the states untimely reply.

20. January 17, 2014, a judicial order was issued denying appellants post-conviction petition, with the exception of Ground H relating to a miscalculation of jail days credited.

21. March 17, 2014, Appellant appealed the denial of his first post-conviction to the Minnesota Supreme Court.

22. March 18, 2015 the Supreme Court affirmed the denial, *see State v. Nissalke, 861 N.W. 2d 88 (Minn. 2015).*

23. October 20, 2017, Appellant filed his second petition for post-conviction relief.

**STATEMENT OF THE CASE – TRIAL TESTIMONY**

Appellant was charged with first degree premeditated murder, relating to a stabbing that occurred on June 5th or 6th, 1985. Appellant was tried in the State of Minnesota, County of Fillmore, Third Judicial District, after a change of venue from Winona County, before the Honorable Robert R. Benson. After a jury trial, appellant was convicted and sentenced to life in prison under 1985 legislation, on July 8, 2009.

On June 6, 1985, at approximately 10:46 a.m. Winona police officers were dispatched to the Ada Senenfelder residence, for a possible homicide. (T. 3016-17), (Trial transcript hereafter referred to as T), Investigators arrived at approximately 11:30 am. Investigators found the deceased body of Ada Senenfelder on a cot, (T. 3039, 30543). Investigators arrived at about 11:30 a.m. and entered the home; a crime scene team from the Minnesota Bureau of Criminal Apprehension arrived between 2:00 and 3:00 p.m. (T. 3037). Inside the home investigators found the deceased body of Ms. Senenfelder lying on a bed. (T. 3039, 3054). A drape was entangled in her body, her body was tight against the wall, and there was a large knife directly adjacent to her. (T. 3054).

After the crime scene team had completed their work, the body was released to the medical examiner for autopsy. (T. 3135). The autopsy findings included six stab wounds, and 27 puncture wounds. (T. 3139-54, 3196). The six stab wounds included one to her right cheek, one beneath her right mandible, one to the left side of her neck, one to the left the midline of her chest, one to the right clavicle, and one to her upper left arm. (T. 3197). The stab wound near the midline of her chest entered her heart. (T. 3200). Ms. Senenfelder bled to death as a result of the wound to her heart. (T. 3206).

Ada Senenfelder was the mother of five children, and lived at 566 East Fourth Street in Winona. (T.2088, 2093). At times she had struggles caring for her children. (T. 2089). There were times her children were placed in foster care. (T. 2090). In 1984, Winona County filed a neglect petition to address concerns about her ability to parent the children. (T. 2108). During the first week of June, 1985, the children were in foster care, and the court had scheduled a hearing to review progress in addressing those concerns. (T. 2112-13). The hearing was scheduled for June 6, 1985. (T.2112). Ms. Senenfelder did not show up for the hearing. (T. 2114).

Many years earlier Ms. Senenfelder had been a bartender. (T. 2876). She had come to know Adeline and Julius Bolstad. (T. 2565, 2876). She also came to know their children: Thelma, James, Albert, Edward, Roger, Donna, And June. (T. 2565, 2872). At times Donna and June would babysit Ms. Senenfelder's children. (T. 2581, 4093). In 1985, Ms. Senenfelder bought liquor for parties she attended with the Bolstad's. (T. 2880). She also did chores, including cleaning and making meals for, James Bolstad. (T. 2213). In May and June of 1985, a group of people spent time together partying. (T. 2873). Some members of that group included: James Bolstad, Edward Bolstad, Roger Bolstad, June Bolstad, Linda Erickson, James Bolstad's children, Raymond Bolstad, Danny Bolstad, Lori Bolstad, and Randy Bolstad, Rena Bambenek, Appellant, and Appellant's sister Laurie Nissalke. (T. 2873-74). At that time James Bolstad was dating Linda Erickson, and Roger Bolstad was dating Laurie Nissalke. (T. 2576, 2874). Rena Bambenek was James Bolstad's neighbor. (T. 2888-89).

James Bolstad had been convicted of check forgery in June of 1982, and was placed on probation for five years. (T. 2197). Mr. Bolstad's probation agent, William Hammes, detained Mr. Bolstad in the LaCrosse county jail on May 21, 1985 while Hammes investigated allegations against Mr. Bolstad. (T. 2198). Those allegations related to James Bolstad having sex with Helen Flak, Ms. Senenfelder's daughter. (T. 4716-17). When James Bolstad was jailed, Linda Erickson was "pissed off". (T. 2576). Other members of the group were also mad about James being in jail. (T. 2577). While in jail James Bolstad asked Linda Erickson and his sister June to talk to Ms. Senenfelder to see if Ms.



Howe also ... Raymond ... Bolstad,

Senenfelder would recant her statement to Mr. Hammes. (T. 2631). Linda Erickson said that Ms. Senenfelder should sign a statement saying that James Bolstad "didn't do it," and have the statement notarized. (T. 2634).

On June 3, 1985, at Rena Bambenek's apartment, Edward Bolstad held a Knife close Ms. Senenfelder's throat and told her she needed to change her statement against James or he would kill her if she didn't. (T. 2919, 2922). Appellant and others yelled at Ms. Senenfelder and told her she needed to change her statement. (T. 2919). On one occasion appellant, Linda Erickson, and Shelly Stoeckly went to Ms. Senenfelder's home to talk to her about dropping the charges against James Bolstad. (T. 2214). They knocked, but after looking at them through the window, Ms. Senenfelder would not answer the door. (T. 2215, 4582). Ms. Stoeckly acting on her own direction broke into Ms. Senenfelder's home. (T. 2215). Ms. Senenfelder was sitting on her couch while appellant and Ms. Erickson spoke to her, they were angry at her, Ms. Senenfelder appeared to be scared. (T. 2215-17). Testimony revealed that Appellant and Roger Bolstad visited an acquaintance in the Winona County jail. (T. 4123). Appellant told that acquaintance that James Bolstad was in jail, and that they needed Ms. Senenfelder to change her statement against James Bolstad. (T. 4125).

As part of the investigation that led to James Bolstad's probation violation, Mr. Hammes met with Ms. Senenfelder on June 5, 1985. (T. 2199). That meeting took place around 10 am. At Ms. Senenfelder's home. (T. 2200). June Bolstad and Appellant were present at Ms. Senenfelder's home for that meeting. (T. 2200). They were there to make sure that Ms. Senenfelder told Mr. Hammes "what she was supposed to tell him." (T. 2642). Edward Bolstad told Ms. Senenfelder that she "better not fuck up" her meeting with Mr. Hammes. (T. 4588). Appellant and June Bolstad recorded the meeting. (T. 2645). During the meeting Ms. Senenfelder gave Mr. Hammes the document she signed and notarized on June 4, 1985. (T.2200-01). The document purported to recant the allegations Ms. Senenfelder made against James Bolstad, Mr. Hammes questioned Ms. Senenfelder about the document. (T. 2202).

After the meeting June Bolstad and appellant went to Ms. Erickson's apartment. (T. 2654). They reported to Ms. Erickson about the meeting and played the tape recording for her. (T. 2655). Ms. Erickson planed a party for that evening at her apartment. (T. 2659-60.) There was alcohol at that party. (T. 2662). Appellant, Linda Erickson, June Bolstad, Edward Bolstad, Roger Bolstad, Raymond Bolstad, Danny Bolstad, and Laurie Nissalke attended the party. (T. 2661-62). Three of Raymond and Danny Bolstad's friends, Dennis Mickelson, Bruce Howe and Brenda Howe also attended the party. (T. 2662, 2900, 2974).

During the party, at around 8:00 or 9:00 p.m., Ms. Erickson received a phone call. (T. 2663). When the call came in, Ms. Erickson went into the bedroom. (T. 2663). After the call ended Ms. Erickson was "pissed off." (T. 2663). She said in a loud voice, that "it didn't work and [James Bolstad] wasn't getting out of jail." (T. 2664-65). After Mr. Hammes had his conversation with Ms. Senenfelder about the document she had given him, he decided to proceed with the revocation of James Bolstad's probation. (T. 2202).

Ms. Erickson continued, "it didn't fucking work, the fucking bitch has got to have something done." (T. 2666). Everyone at the party was in the room when Ms. Erickson made that statement. (T. 2666). Ms. Erickson said she would pay someone to "kill the fucking bitch." (T.2675). Appellant said, "The bitch could be killed easy," "the bitch has to go." (T. 2674). Appellant asked Ms. Erickson what she was willing to pay to have Ms. Senenfelder done in. (T. 2670). Appellant, Ms. Erickson, Edward Bolstad, Danny Bolstad, Raymond Bolstad, Dennis Mickelson, Bruce Howe, and Brenda Howe all ran out the door yelling "kill the bitch," (T. 2677). June Bolstad, Roger Bolstad, and Laurie Nissalke stayed at the apartment. (T. 2677).

At around midnight, Dennis Mickelson showed up at Rena Bambenek's apartment. (T. 3474). Mr. Mickelson was all sweaty, and was out of breath. (T. 3475). He said he had just run all the way from Linda Erickson's apartment, and felt like throwing up. (T. 3476). At about 12: 36 am. Winona police officers were dispatched to Linda Erickson's apartment in response to a report of aloud party. (T. 2315). The officers were familiar with the Bolstad family. (T. 2317). When officers reached the apartment there was no loud music, when they knocked on the door Roger Bolstad answered the door. (T. 2316-17). As officers were leaving they seen a vehicle they recognized as Edward Bolstad's gray Camaro. (T. 2319). The car pulled into the parking lot, left the parking lot and drove away. (T. 2319). Around 1:00 pm. On June 6, 1985 Edward Bolstad was awakened by Roger Bolstad and informed that Ms. Senenfelder was dead. (T. 2890).

**TRIAL WITNESS TESTIMONY**

**Shelly Stoeckly**

Ms. Stoeckly met Ms. Ada Senenfelder at the home of James Bolstad; Ms. Senenfelder told her that she was James Bolstad's maid, (T.2213).Ms. Stoeckly drank and smoked marijuana a lot, (T. 2210). Ms. Stoeckly remembers she broke the lock on Ms. Senenfelder's front door, (T. 2215), that is the one thing she can be positive about, (T. 2219). After Ms. Stoeckly and Appellant split up the next time she

seen Appellant was at least a year later at a bar in La Crosse Wisconsin, Appellant was with another person, she invited them back to her apartment. (T. 2221-22). Ms. Stoeckly's 1985 interviews with detectives say that she told them we only went to talk to Ms. Senenfelder, and to ask her why she made a statement against James Bolstad. (T. 2830-31). Parts of Ms. Stoeckly's memory seem like a dream, or like she is living in a fog. (T. 2835). Ms. Stoeckly has heard rumors, read newspapers and talked with police about the events surrounding the death of Ms. Senenfelder numerous times. (T. 2835-36). Over the course of her contact with investigators they have told her things they believe happened. (T. 2836). Ms. Stoeckly testified that she has had nightmares about this case, and sometimes wonders if she dreamt things, "a lot of it seems like a dream, and she don't know what is true and what is not true". (T. 2836).

**Roger Bolstad**

Mr. Bolstad started dating Appellant's sister around the time of Ms. Senenfelder's murder. (T.2876-77). Drinking alcohol was a daily occurrence for Mr. Bolstad and his associates. (T. 2881, 2890). Mr. Bolstad was present at a party at Linda Erickson's apartment the night of June 5, 1985, nothing unusual happened that night and at no time did a large group of people rush out to go to Ms. Senenfelder's house. (T. 2899, 2900). Appellant was present at the party when police came for a loud noise complaint, and as far as he remembers Appellant never left the party that night. (T. 2900-01). Mr. Bolstad was aware that around the time of Ms. Senenfelder's death there were several people angry with her, for implicating them in various crimes. (T. 2903-06), one person implicated, Bobby Fort called Ms. Senenfelder a "rat". (T. 2907). There was never a plot or push for people to get their stories straight. (T. 2909).

**Bruce Howe**

Bruce's memory for events in 1985 not so good, (T. 4078). Not sure what he actually remembers and what he was told by detectives over the five years prior to trial. (T. 4083). Mr. Howe had no reason to be anything but truthful when speaking to detectives. (T. 4084-85). His memory was better in 1985, and Ms. Senenfelder's murder was not really a big thing to him as he had nothing to do with it, and is not really sure why he is at this trial. (T. 4087). Mr. Howe does not remember appellant ever leaving the party at Ms. Erickson's the night of June 5, 1985, (T. 4087-88). At no time did anyone ever threaten Mr. Howe or tell him what to say to investigators. (T. 4089).

***Brenda Howe***

Ms. Howe did not remember many things until investigators and prosecutors told her of them, (T. 2975). Ms. Howe spoke with investigators for the first time on the morning of June 6, 1985. (T. 2980). She has spoken with investigators numerous times over the past 24 years, and was always truthful. (T. 2986-87). Ms. Howe has no memory of appellant leaving the party at Ms. Erickson's the night of June 5, 1985. (T. 2985). She is not sure if it is stuff she actually remembers, or if it is stuff she has been told by investigators that she is remembering now. (T. 2987-88)

**Donna Campbell**

Ms. Campbell testified that every time the investigation was opened, officers came to talk to her, and she was always truthful with them. (T. 4095). Ms. Campbell says over the years there was a lot of news and rumors surrounding Ms. Senenfelder's death, some of them were very hurtful, and some people made very crude off color jokes about Ms. Senenfelder's death. (T. 4108-09). For the first time in 1992, while speaking with investigators Ms. Campbell told them that Appellant said something like, "I'll get you like I got Ada, once through the heart". (T. 4102, 04, and 05). Ms. Campbell testified that she did not see Rena Bambenek or Appellant on June 6, 1985. (T. 4108-09)

**Kevin Bakewell**

Mr. Bakewell was employed by ITT financial services from 1983 to 1987. (T. 4151-52). Appellant secured a loan with Ms. Erickson as co-signer through Mr. Bakewell's company. (T. 4153-54), the loan was in default during the middle of 1986, and Mr. Bakewell was engaged in collection efforts. (T. 4155). During one collection attempt, Mr. Bakewell says that Appellant was extremely intoxicated, with slurred speech, and told him "I fucking offed Ada Senenfelder". (T. 4160-62), Appellant also made a stabbing motion (T. 4162-63). Mr. Bakewell says he made notes of this incident, and reported it to an officer. (T. 4164-65) Mr. Bakewell was unable to find any such notes when speaking with investigators. (T. 4164-65). Mr. Bakewell's ex brother in law, Scott Bestul is an investigator at the Winona County Law Enforcement Center. (T. 4146). Mr. Bakewell has no idea where the incident with Appellant telling him he offed Ms. Senenfelder took place. (T. 4172). Mr. Bakewell says his memory for events was better in 1986, yet he never told officers such a statement then, only thinks he did. (T. 4169).

**Mark Dooney**

Mr. Dooney's memory for events was better in 1985, (T. 4120). Sometime during the spring of 1985 Mr. Dooney went to jail for theft. (T. 4122). Mr. Dooney testified that Roger Bolstad and Appellant

helped him look for a bail bondsman, and that the pair visited him in jail. (T. 4123). Mr. Dooney also testified that Appellant and Roger Bolstad came to visit him in jail the day before Ms. Senenfelder was murdered. (T. 4130). And that on the afternoon of the 5th of June 1985 Appellant came to visit him at the jail. (T. 4135). He is familiar with the jails visiting procedures and jail logs. (T. 4132-33).

**Pam Cox**

For several decades before appellant's trial, Ms. Cox partied a lot, drinking and doing drugs, these activities would often get her into trouble. (T. 2913). Her memory for events back in 1985 is pretty clear but some parts a fuzzy. (T. 2913-14). days before Ms. Senenfelder was murdered, there was a party at Rena Bambenek's apartment, at that party Edward Bolstad threatened Ms. Senenfelder with a knife, telling her he would kill her if she did not change her story. (T. 2918-22). Ms. Cox testified that investigator Al Mueller showed up to talk to her the same day Ms. Senenfelder's body was found. (T.2922-24). she also contends that just minutes after investigators left Ms. Erickson and Appellant showed up at her house wanting her to come clean Ms. Erickson's apartment. (T.2923-24). she says that Appellant and Ms. Erickson argued over Ms. Cox not cleaning the bathroom well enough. (T. 2925). That she used bleach and ammonia to clean with, (T. 2925). She was also asked to clean Ms. Erickson's truck that day, (T. 2926). She says she was asked to look for a lost knife that day, she is not sure what type of knife but thinks it was a buck knife. (T. 29 27-28). Her cleaning project took approximately four hour. (T. 2928). Eight gallons of bleach and ammonia were not enough to complete the cleaning, Ms. Erickson went and got more, the fumes were overcoming, and the smell was strong. (T. 2931). Ms. Cox wants to help the prosecution solve this case and has testified in another murder case for the state. (T. 2933). In a march 2008 interview was the first time Ms. Cox told investigators of cleaning with bleach and ammonia, or looking for a lost knife. (T. 2933-34). On cross exam Ms. Cox states that she is now not sure what day she cleaned Ms. Erickson's apartment only that she was paid well for her services, and that it was some time during the summer of 1985. (T. 2936). Ms. Cox agrees that her memory was better in 1985 than it is at trial in 2009. (T. 2938). in a July 16, 1985 interview with BCA agent Dennis Fier Ms. Cox told him that Edward Bolstad was living with MS. Senenfelder at the time of her murder, and that Rena Bambenek was angry about it. (T. 2941). Ms. Cox admits to lying to police over the years, and it is not until the fifty thousand dollar reward comes out that she decides to tell the truth. (T. 2940-45). Ms. Cox says she sometimes has a problem with her memory. (T. 2947). It is not until June of 2008 that she comes forward with all the new information she says is the truth. (T. 2957-58). And that the first time she told the truth was to prosecutors Tom Gort and Charles MacLean, then changes to say it was Officer

Tom Williams and another officer. (T. 2962). Ms. Cox testified to drinking on at least two separate occasions with Ms. Bambenek at her home in Lewiston in 2006 and 2007. (T. 2961).

**Lori Bolstad**

Ms. Bolstad testified that she has learned things about this case through newspapers, rumors, and from investigators telling her things, along with wild speculation. (T.2856).

**Allan Mueller – Winona Police Department Detective – 1985**

Detective Mueller in the days immediately following the discovery of Ms. Senenfelder's body conducted a search warrant, where Edward Bolstad's fingernails were clipped, also documented were cuts and scratches on Mr. Bolstad's hands and arms. (T. 4326-27). Detective Mueller stated it was a good practice for officers to look at suspect's hands and arms for cuts, no one other than Edward Bolstad was noted for any such wounds. (T. 4336). Ms. Erickson provided pictures that were taken at the party at her apartment the night of June 5, 1985 as well as pictures from several other parties; she was very cooperative, (T. 4640-41).

**Chief Deputy Thomas Williams**

Officer Williams was the first officer to offer Rena Bambenek the $50,000.00 dollar reward, (T. 4206). during that contact he feels he may have damaged their rapport, by being too aggressive and threatening her with charges, (T. 4202, 4206-07). Officer Williams seen no risk in telling Ms. Bambenek things she never said before, that he did it to refresh her memory. (T. 4202). Officer Williams also interviewed Ms. Stoeckly; (T. 4205). Officer Williams has had contact with Rena Bambenek prior to their initial interview in this case, (t.t. 4197).

**Dennis Fier – Bureau of Criminal Apprehension**

Agent Fier worked for the BCA for 37 years, before retiring in 2006, (T. 4339). Agent Fier worked the case with lead investigator Thomas Nyseth of the Winona Police Department in 1985, (T. 4349). The initial investigation lasted over a year, (T. 4354). The investigation took two directions, (T. 4353). two groups of people were identified as having possible motive, the Fort group and the Bolstad group, (T. 4363-65). Agent Fier's investigation revealed that Ms. Bambenek was jealous of Edward Bolstad and Ms. Senenfelder's relationship. (T. 4367). Agent Fier interviewed Appellant a at the Winona County Jail on August 4, 1986, the purpose of this interview was to set a line of questioning for a polygraph test

appellant was willing to take. (T.4616-20). August 8, 1986 Agent Iler spoke with Kevin Bakewell, in connection with the Ada Senenfelder murder. (T. 4622).

**BCA Agent Susan Linkenmeyer**

Agent Linkenmeyer testified that a reward is a tool used when there is nothing to lose. (T.4234). Agent Linkenmeyer said she took the soft approach when speaking with Ms. Bambenek, by telling her repeatedly that Appellant was someone to be afraid of, (T. 4251). She knew there was more to be had from Ms. Bambenek following Officer Williams's interview that went bad, so she developed a new strategy. (T. 4249-50). Agent Linkenmeyer does not like the term feeding information prefers divulged information, which she admits she did with Ms. Bambenek. (T. 4260). Agent Linkenmeyer says she uses encouragements such as body language, facial expressions, and hand gestures to help a person open up during interviews. (T. 4267). Agent Linkenmeyer told Ms. Bambenek that Appellant was at her house the night of the murder, that there was bloody clothes, and a bloody rag, and that this is all crucial information. (T. 4286).

**BCA Agent Richard Gregory**

Agent Gregory conducted a 1992 interview with Rena Bambenek, during this interview Ms. Bambenek says she never went into Ms. Senenfelder's home, when giving Lori Bolstad and Dennis Mickelson a ride there to pick up leftover chicken on June 5, 1985, (T. 4299). Ms. Bambenek tells agent Gregory she is afraid of the Bolstad family in 1992, but never mentions Appellant. (T. 4304). during the 1992 interview she also tells how Linda Erickson threatened Ms. Senenfelder, not Appellant, also never mentions seeing Appellant asking for a flashlight or having a blood soaked rag on his hand the night of June 5th, 1985,(T. 4312).

**BCA Agent Terry Labar, Blood Splatter expert**

Agent Labar testified that the crime scene did not provide information as to the size, height, or number of attackers that murdered Ms. Senenfelder. (T. 3275).

**BCA Agent Dan Bergman**

Agent Bergman was the team leader in 1985 at the scene, all evidence was brought to him, he then took it back to the lab, and sent it to the different departments. (T. 3293-94). The chain of custody shows who had and done what, a chain of custody is maintained by all crime scene labs. (T.3285-86). the chain of custody logs show, item, time and date, where it came from and who it went to. (T. 3301). Court exhibit "S" is his crime scene evidence log, (T. 3303). Several items of evidence have mysteriously disappeared, all the missing evidence has Agent Bergman's name on them as being collected. (T. 3304-6).

**June Bolstad**

Ms. Bolstad testified that her memory was better in 1985 than it was at trial in2009, (T. 2650).Ms. Bolstad describes the party at Ms. Erickson's apartment on the night of June 5, 1095 as a typical alcoholic party, (T. 2662). Ms. Bolstad was Appellant's girlfriend at the time, she noticed no significant cuts on Appellant's hands the next day, and thinks this would be something significant that she would remember if it were true. (T. 2687-88). During an interview with Officer Jared Rasmussen, (Transcript T-80). Officer Rasmussen tells Ms. Bolstad much of the information she now testifies to as the truth. (T 2698-2704), Ms. Bolstad never before told investigators of anyone leaving the party in what is termed a mass exodus. (T. 2714-18). In 1985 she never told investigators this because it never actually happened, and she only told the truth when speaking to investigators. (T. 2720-21). Appellant had no cuts or a bandage on his hands around the time immediately after the murder of MS. Senenfelder was discovered. (T. 2721-22). Ms. Bolstad only heard rumors that Linda Erickson paid Appellant to murder Ms. Senenfelder, (T.2723). In 1985 while speaking to investigator Nyseth, Ms. Bolstad told the truth and that was that no one left the apartment the night of June 5, 1985 while she was awake, (T. 2725-26). It is true that Appellant only told Ms. Bolstad that she better behave or she would get what Ada got, (T. 2726). It is also true that Appellant was only joking when he said that statement to her, (T. 2727-28), In a 2006 interview officers told her that there was a "get your story straight" party the next day, (T. 2740-41). In an interview with Officer Rasmussen two weeks before Ms. Bolstad's grand jury testimony, Officer Rasmussen tells Ms. Bolstad his fabricated tale of events that he believed happened. (Investigation Interview T-80), at her Grand Jury testimony Ms. Bolstad parrots Officer Rasmussen's beliefs. (T. 2771).

**Rena Bambenek – "State called her their Star Witness"**

Ms. Bambenek testified that Appellant showed up at her apartment the night of June 5, 1985, Knocked on her door and asked for a flashlight, as Appellant needed to look for a lost knife. (T. 3480). Appellant had a cut on his hand and a torn t-shirt. (T. 3485). The cut was severe enough that Ms. Bambenek thought Appellant should get stitches. (T. 3486). Ms. Bambenek's neighbor was Vicki Wicka, Ms. Wicka had a boyfriend living with her Steve Pagel, Ms. Bambenek testified that Appellant received a flashlight from Mr. Pagel when she told Appellant she did not have one. (T. 3486-87). Ms. Bambenek testified that Appellant had not been drinking the night of June 5, 1985. (T. 3493). Ms. Bambenek testified that Appellant and Ms. Erickson picked her up and drove over to see if it was Ms. Senenfelder's home the local radio news station was reporting about, and that upon arrival Ms. Bambenek and Ms. Erickson walk down the middle of the street while Appellant walks in a zig zaggy path looking for something on the ground, and that the trio walked directly up to the front of Ms. Senenfelder's house. (T. 3519-20). Ms. Bambenek testifies that Linda Erickson calls her the afternoon of June 6, 1985 to say there is going to be a get your story straight party. (T. 3526). Appellant was always joking around at parties, said "you'll get the same thing Ada got" (T. 3538-39). Ms. Bambenek says she lied to Investigators because she was afraid they would charge her with something. (T. 3544-46). Ms. Bambenek says she seen Appellant with money after Ms. Senenfelder's death. (T. 3544-46). Ms. Bambenek's interviews are all consistent from 1985 to 2006, her story changed after investigators tell her she is a suspect, and the present her with the $ 50, 000.00 dollar reward flyer, Ms. Bambenek failed a polygraph. (T. 3549-50). Ms. Bambenek says that her confidence combined with what investigators have told her along with being told she will not get in trouble has brought her memory to what it is today. (T. 3569-70). Ms. Bambenek now says she only selectively lied to police in 1985. (T. 3594). Investigators told her if she did not come up with information she would be a suspect. (T. 3599). In a June 17, 1985 interview Ms. Bambenek told investigators she was afraid of Edward Bolstad, but not Appellant. (T. 3603-05). In that same June 17, 1985 interview Ms. Bambenek tells how she drove to Ms. Senenfelder's the evening of June 5, 1985 to pick up leftover chicken, and that she stayed in the car for about 10 to 15 minutes while Dennis Mickelson and Lori Bolstad went in. (T. 3670). Ms. Bambenek knew details of the things on Ms. Senenfelder's kitchen table, (ham and buns, left out to thaw) (T. 3671-72). Now it is Appellant and Bruce Howe who picked Ms. Bambenek up to check out the news reported on the radio. (T. 3690). Investigator Dorothy Haner questions Appellant almost immediately upon arrival at the scene. (T. 3692). In a September 29, 2006 interview Ms. Bambenek again states that Appellant was always joking around, when saying "you'll get what Ada got". (T. 3735). Investigators tell Ms. Bambenek, "We really hope you did not have a part in this, as we really need information from you, we don't want

to hear from you that you don't remember anything, because she is neck deep in it". (T. 3749-50). Ms. Bambenek asked her neighbor to provide an alibi for her in 1985. (t. 3751-52). Investigators tell Ms. Bambenek she needs to think about herself, and get out from behind anything she might be getting, because others are saying things. (T. 3753). Investigators tell Ms. Bambenek that Appellant and Linda Erickson came and picked her up and went to MS. Senenfelder's house to check out the scene, and afterwards went to Donna and Lee Campbell's house. (T. 3755). Another Officer tells Ms. Bambenek the previous Officer just laid out the exact movements, and that they want a get our story straight party on June 6th, 1985. (T. 3756). Investigators threatened Ms. Bambenek saying "we are looking to do anything to prosecute someone in this case. (T. 3788). Ms. Bambenek says that now that police gave her their theory she has something to focus on. (T. 3808). Investigators tell Ms. Bambenek she needs to be afraid of Appellant, and that I am the focus. (T. 3829-31). Agent Fier tells Ms. Bambenek that I came to her house, this information is crucial and she needs to think very hard because this is important. (T. 3842-43). Agent Linkenmeyer tells Ms. Bambenek they are so sure things happened the way they have told her, and once Ms. Bambenek starts remembering she will be able to add some Ed and Jack did this to the story. (T. 3846-47). Investigators tell Ms. Bambenek she is going to be their star witness. (T. 3856). They also tell her that Jack Nissalke is the piece they are looking for. (T. 3858). And somehow they need to get Ms. Bambenek there because they are sure of what they know. (T. 3859). Investigators lie to Ms. Bambenek and tell her that more than one or two people are saying that she seen Appellant and Edward Bolstad with bloody clothing the night of June 5, 1985. (T. 3879-80). Ms. Bambenek tells investigators it is not her place to put things together and asks if she has to do this, investigators tell her she just has to make a statement. (T. 3889). Agent Linkenmeyer tells Ms. Bambenek, that they know from other cases people get together afterwards, they tell Ms. Bambenek they know there was a meeting the next day and that Linda Erickson called it a get your story straight party. (T. 3898-99). Investigators tell Ms. Bambenek that Appellant is threatening her, and it is because he stopped and cleaned up at her apartment. (T. 3912). Investigators now tell Ms. Bambenek they need her to see Appellant with blood on him and his clothes. (T. 3935). when confronted with her previous statements Ms. Bambenek now says she don't know who took a car the night of June 5th, 1985 or even if it happened. (T. 3944). Ms. Bambenek knows nothing about the loud party complaint at Ms. Erickson's apartment the night of June 5, 1985 or the police coming there to investigate it. (T. 3944). Ms. Bambenek says she does not know why she never before told any of the stuff relating to Appellant. (T. 3962-63). Agent Fier tells Ms. Bambenek she is now verifying information they gave her, and this fits with their picture, but they need just a little bit more. (T. 3964-65). Investigators tell Ms. Bambenek Appellant came to her apartment

right after he stabbed Ms. Senenfelder, she is telling them about Edward Bolstad's bloody clothing, why not Appellant's? (T. 3788). Ms. Bambenek wants to help very badly , just don't know what it is they are wanting, if they give her a little bit more she is sure it will come. (T 3989-90). Ms. Bambenek don't know why she never told any of this before, must have been because she was scared. (T. 3993). Investigator tell Ms. Bambenek they will be back to follow up on their interview and she knows what they will be looking for. (T. 4026).

**Vicki Wicka**

Ms. Wicka was a Neighbor to Rena Bambenek and James Bolstad. (T. 2357-58). Ms. Wicka dated Steve Pagel in 1985. (T. 2362). On the night of June 5, 1985 Ms. Wicka was home doing laundry with her boyfriend Steve. (T.2361-62). Ms. Wicka's dryer was broken so Steve asked to borrow the dryer in James Bolstad's apartment. (T. 2361-62). Sometime around 11 or 12 pm. Edward Bolstad showed up at Ms. Wicka's apartment and spoke with Mr. Pagel. (T. 2368-69). After Edward Bolstad was there a mysterious shirt was found in Ms. Wicka's laundry. (T. 2363). Ms. Wicka does not remember Ms. Bambenek being home the night of June 5, 1985, and that most likely she was babysitting Ms. Bambenek's child. (T. 2374). Ms. Wicka went to bed around 1 am. (T. 2364-65)

**Steve Pagel**

Mr. Pagel lived with Vicki Wicka in 1985 next door to James Bolstad. (T. 4861). Sometime between 11 pm. And midnight Edward Bolstad showed up wanting to use Ms. Wicka's Washer to wash a shirt. (T. 4863). Mr. Pagel remembers it being a really hot night, around 80 degrees. (T. 4863). Mr. Pagel remembers the next morning seeing police looking in dumpsters around the apartment complex, eventually the officers came to speak with him. (T. 4863-64). Besides Edward Bolstad, Rena Bambenek is the only other person Mr. Pagel seen the night of June 5, 1985. (T. 4864). Mr. Pagel never seen Appellant in the area of the apartment complex the night of June 5, 1985. (T. 4866-68). Appellant has never asked Mr. Pagel for a flashlight ever. (T. 4868). Mr. Pagel is very sure he never seen appellant on the night in question and that Appellant never asked him for a flashlight on the night in question. (T. 4875-76).

## Argument

**The District Court abused its discretion in summarily denying Appellant's petition for post-conviction relief.**

**Standard of Law**. The decision in a post-conviction proceeding is reviewed for abuse of discretion. *Lussier v. State, 821 N.W. 2d 581, 588 (Minn. 2012)* Legal issues are reviewed de novo. *Matakis v. State, 862 N.W. 2d 33, 36 (Minn. 2015).* Factual determinations will not be overturned if

there is sufficient evidence in the record to support the finding. Id. Post-conviction courts are supposed to "liberally construe" petitions, and waive any irregularities or defects in form. ***Minn. Stat. § 590.03***. *Wallace V. State, 820 N.W. 2d 843 (Minn. 2012).* Minnesota appears to have adopted a framework that for many circumvents the appellate process by imposing an insurmountable ruling established decades ago, known as the *Knaffla-rule. Knaffla v. State 309, Minn. 246, 252, 243 N.W. 2d 737, 741 (1976).*

This court has recognized two exceptions to the *Knaffla-rule*, (1) if a claim is known to a defendant at the time of direct appeal, but is not raised, it will not be barred by the Knaffla-rule if its novelty was so great that its legal basis was not reasonably available when direct appeal was taken. (2) Even if the claims legal basis was sufficiently available, **substantial review may be allowed when fairness and the interests of justice so requires**, and when the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal. Under the interests of justice exception to the *Knaffla-rule*, the court **may** review a claim as fairness requires, when the claim has substantive merit and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal, or a previous petition for post-conviction relief. *Colbert v, State, 870 N.W. 2d 616 (Minn. 2015).*

The threshold of requirement for petitions to meet the non-frivolous standard is not a high one, a petition is considered frivolous if it is perfectly apparent without argument that the petition is without merit. A petitioner need only show that there is a good faith basis for the claim, not necessarily that it would succeed on the merits. *Rickert v. State, 795 N.W. 2d 236 (Minn. 2011). See also Wright v. State, 765, N.W. 2d 85 (Minn. 2009),* where the court ruled that to be reviewed under the interests of justice exception, a claim must have substantive merit and be asserted without deliberate or inexcusable delay.

**The District Court erred in denying Appellant's claims without conducting an evidentiary hearing.**

**Standard of law.** "The showing required for a petitioner to receive an evidentiary hearing is lower than that required to receive a new trial." *Opsahl v. State, 677 N.W. 2d414, 423 (Minn. 2004) (quoting Ferguson V. State, 645 N.W. 2d 437, 442 (Minn. 2002)).* The petitioner must only allege facts, supported by "more than argumentative assertions without factual support," that, if proven by preponderance, would entitle him to relief for a hearing. *Ferguson, 645 N.W. 2d at 446 (Minn. 2002).* An evidentiary hearing must be held "whenever material facts are in dispute that must be resolved in order to determine the issue raised on the merits." *Minn. Stat. § 590.04, subd. 1.* If there is any doubt if material facts are in dispute, an evidentiary hearing should be held to resolve the issues. *Opsahl, 677 N.W. 2d at 423.* Concluding newly discovered evidence is unreliable without first evaluating the credibility of the witness at an evidentiary hearing is a misapplication of *Minn. Stat. § 590.04* and an abuse of discretion. *Martin v. State, 825, N.W. 2d 734, 742 (Minn. 2013).* Even in case where this court doesn't believe the petitioner can meet his burden to obtain a new trial, it has remanded where the petition has been denied without a hearing. *See Wilson v. State, 726 N.W. 2d 103 (Minn. 2007).* An evidentiary hearing is "particularly important" where evidence in a circumstantial case is attacked and where there are conflicting statements the court must hold an evidentiary hearing prior to making credibility determinations. *Id.; Opsahl at 423 (citing State v. Rhodes, 627 N.W. 2d 74, 88 (Minn. 2001).*

***Evidence presented***

Appellant presented 55 exhibits in his first post-conviction petition; many of these exhibits show that the testimony elicited by the state was in fact false. The record also shows that Appellant brought forth the first petition for post-conviction relief with a limited amount of discovery available to him at the time of filing.

The court there relied heavily on the Minnesota Supreme Court's ruling from Appellants direct appeal. *See State v. Nissalke, 801 N.W. 2d 82 (Minn. 2011).* Appellant finds this disturbing as much of the information in the first post-conviction petition shows that a substantial portion of the testimony during Appellant's trial was false.

In the current petition Appellant has provided a Transcript of the guilty plea hearing of Ms. Erickson/Parrish. This transcript was first transcribed, and certified by the original recorder, Dale Meyer on March 9, 2017. This transcript shows that the state has elicited and accepted a completely different set of facts compared to those used by the state at Appellant's jury trial.

**The District Court denied appellant's claim after improperly making credibility determinations.**

The district court determined that all the issues were either time barred, procedurally barred or both. The district court made these determinations based on the issues lacking merit for various reasons. The district court impugned the credibility of evidence stating that, if true it is unfortunate, there by concluding that the evidence means nothing when it is clear that the state elicited false testimony. It's an abuse of discretion to discredit a witness's testimony at this stage of the proceeding.

Here the district court concluded the claims were procedurally barred or time barred, to do so it engaged in impermissible evidence construction to reach those conclusions. The state has further engaged in improper credibility determinations by dismissing the importance of the false testimony in gaining Appellants conviction. In a case such as this without a confirmed murder weapon connected to Appellant, inconclusive weapon dimensions, no eye witnesses, no actual DNA, a fragile time line, and testimony appellant has shown was fabricated, coupled with Appellant having absolutely no motive, this is exactly the type of case that requires, at minimum a hearing.

Throughout the appellate process with every piece of evidence appellant has presented, the courts have disregarded the new evidence by discrediting the evidence or by giving the evidence the smallest impact possible, if true. In order to do so they have viewed each item of evidence separately and without context. Often time's Appellant was able to find additional evidence from the record or discovery to help corroborate the claim.

Multiple times throughout Appellant's jury trial the state has referred to this case as a circumstantial evidence case, considering that when reviewing the evidence in a circumstantial evidence case you are to look at the evidence as a whole, by viewing each piece of evidence in isolation to diminish the impact is an abuse of discretion. Appellant has provided substantial factual support for every claim.

Every decision to date ignores the most glaring and obvious issue, which is that the prosecution had all the evidence in this case for 24 years nothing has changed but the addition of $ 50,000.00 dollars and the fabricated tale of events concocted by the latest round of investigators looking to make a name for themselves by solving Winona County's only unsolved murder. Testimony revealed that one of this latest round of investigator's, Jared Rasmussen finds it appropriate to ignore the rules during an interview. (T. 4660). Yet another Officer Tommy Williams feels that it is appropriate to lay out facts to a witness/suspect, (T. 4194), threaten the witness/suspect, (T. 4202, 4206-07), and sees no risk in telling Witness/ suspect things that have never before been said in order to refresh their memory. (T. 4202).

The state has engaged in willful deception of the Appellate courts by choosing to argue evidence which they knew to be false, in an effort to retain this conviction, specifically but not limited to Linda Erickson's testimony from her plea hearing. The state who possessed this knowledge has never disclosed to petitioner or petitioner's appellate attorney, this newly obtained exculpatory evidence Exculpatory and impeaching evidence are the same for disclosure purposes. *United States v. Bagley, 473 U.S. 667, 683 (1985).*

**Trial and Appellate Counsel Ineffectiveness**

The fact that investigation of a case might be trial strategy does not render the decision not to investigate beyond review: It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty. *1 ABA Standards for Criminal Justice 4-4.1 (2d ed. 1982 Supp.)*

*Rompilla v. Beard, 545 U.S. 374, 387 (2005).* An attorney's strategic decisions receive deference if they are reasonable under the circumstances, however, strategic decisions made after a less than complete investigation are reasonable only to the extent the limitations of the investigation were reasonable. *Wiggins, 539 U.S. at 533.*

In this case, the lack of investigation alleged by appellant and the evidence now shown by what he has discovered when he conducted his own investigation, shows conclusively that trial counsel's lack of investigation was both unreasonable and unprofessional.

Appellant's investigation and petitions have also shown that counsel for the state has also acted in a most unprofessional manor, by not correcting testimony that was false at Appellant's jury trial, by making false representations to the trial court to gain favorable rulings, and by continuing to argue the false testimony to the Appellate Courts after they knew it to be false. And perhaps most disturbing of all is that once counsel was put on notice of the circumstances outlined above, their answer is "that's unfortunate but he should have known about this before and now it's too late".

**The District Court abused its discretion in denying Appellant's petition as untimely and procedurally barred, when all of Appellant's claims satisfy the exceptions set forth in the 590 statue.**

The district court concluded that Appellant's petition was or should be time barred.

A two year time bar to seek post-conviction relief is imposed by *Minn. Stat. § 590.01 Subd. 4.* One exception to this bar is for newly discovered evidence where certain conditions are met. *Minn. Stat. § 590, 01, Subd. 4(b)(2).* The conditions are: the evidence is newly discovered, it couldn't have been ascertained by the exercise of due diligence, it isn't cumulative of evidence presented at trial, it isn't for impeachment, and it must establish innocence by clear and convincing evidence. *Riley v. State, 819 N.W. 2d 162, 168 (Minn. 2012); Minn. Stat. § 590.01, Subd. 4(b)(2).* The requirement is to allege the existence of newly discovered evidence that would prove innocence by clear and convincing evidence in order to be "entitled to consideration of the petitions under the newly discovered evidence exception to *Minn. Stat. 590,01, Subd. 4 (b)(2)." Miles, 800 N.W. 2d at 783 (citing Gassler v. State, 787 N.W. 2d 575, 583 (Minn. 2010); Scott v. State, 788 N.W. 2d 497, 502 (Minn. 2010)).* In analyzing whether a petitioner has made sufficient showing to satisfy the newly discovered evidence exception to have his claims addressed on the merits, the district court must accept the presented evidence at face value. *Miles v State, 800 N.W. 2d at 783 (Minn. 2011).*

There should be no question that the evidence appellant presented relating to a substantial portion of the testimony from Pam Cox, Rena Bambenek, Kevin Bakewell, Shelly Stoeckly, Mark Dooney, and June Bolstad is false. To conclude this evidence could have been or should have been obtained at an earlier time only supports appellant's claims of ineffective assistance of trial and appellate counsel's and their unreasonable investigations. The court should also not ignore the fact that the state had this information for 20 plus years, and deliberately and willfully chose to manipulate it in such a way in order to gain a conviction, regardless of the truth.

**This case presents the exceptional circumstances to satisfy the interests of justice exceptions to the 590 time bar.**

The interest of justice exception to the two year time limit applies where the petitioner establishes to the satisfaction of the court that the petition isn't frivolous and is in the interests of justice.*§ 590.01 Subd. 4(b) (5).* To be timely, a claim in the interests of justice must simply be filed within two years of when the claim arises. *Minn. Stat. § 590.01, Subd. 4(c).* There are five non- exclusive factors to consider: (1) Whether the claim has substantive merit; (2) Whether the defendant deliberately and inexcusably failed to raise the issue on direct appeal; (3) Whether the party alleging error is at fault for that error and the degree of fault assigned to the party defending the alleged error; (4) Whether some fundamental unfairness to the defendant needs to be addressed; and (5) Whether application of the interests of justice analysis is necessary to protect fairness, integrity, or public reputation of judicial proceedings. *Gassler, 787 N.W. 2d at 586-87.* The issue of fundamental fairness is also triggered; Appellant did not get to see the complete discovery. Witnesses were tampered with, to prevent them from testifying truthfully. Prosecutors misrepresented material evidence to the court, to gain favorable rulings from the court. The trial judge on multiple occasions' states on the record that it appears defense

counsel is unprepared for trial issues. When appellant did finally have access to discovery files, the prison did not allow for possession of such a substantial amount of documents. Appellant encountered multiple issues dealing with prison policy regarding court type documents with another person's name on them (specifically witness interviews, transcripts, and police reports). These unusual circumstances raise questions related to fundamental fairness and of whether the defendant should be held to serve a life sentence. With the evidence Appellant has presented previously and the claims he now makes, warrants addressing this case on the merits.

Finally, review is necessary to protect the judicial system. This court should note the unique and unusual circumstances of this case. What sets appellant's interests of justice claim apart from many others is how he struggled to obtain and review the evidence against him. Appellant has proved this fact, in his previous petition for post-conviction relief, even noting in that petition that the petition was brought forth, based upon limited review of discovery. Here, the claims are brought forth out of appellant's additional review of discovery, and discovery that was never before available, as it did not exist. Appellant doing his due diligence in trying to find justice ordered the transcribing of the transcript, of Linda Erickson's plea agreement hearing, which was first obtained in March of 2017. Meaning that the trigger for these claims should not be viewed as untimely, as they are genuinely based off claims that are within the two years of when the claim arose. Even if appellant would have made these accusations previously, the factual support was not there to support them therefore making them argumentative assertions without factual support which is not allowed.

The court should also identify the unique and unusual circumstances this case presents, in that it does not come to bar until over twenty years after the fact. Ironically in this case the state has argued that the length of time has little to no effect on witness memories, yet the state regularly argues that the delay of as little as ten years is prejudicial to the state in cases of retrying an individual because of how people's memories affected. *See Hoaglund v. State, 518, N.W. 2d 531,535 (Minn. 1994).* Under this view, with the unusual circumstances of this case, appellant's claims should be considered timely and raised within two years of when the claim arose under the interests of justice.

The court should also consider that every witness testified that their memories of the events were better at the time this crime occurred in 1985 verses 2009 when the trial occurred, and that these same witnesses also testified that what they told investigators in 1985 was the truth. The fact that the change in their testimony now conforms to that of the fabrications concocted by investigators out of frustration screams unusual circumstances that warrant additional review in the interests of justice. The Court should also keep in mind the effects of drugs and alcohol on memories, considering that the witnesses for the state, admitted to battling addictions to one or both substance for decades before this case came to trial

**Appellants has met the threshold for relief**

*Based upon discovery alone, appellant has met the threshold needed for a new trial, or an evidentiary hearing, because Appellant has attacked important evidence in this circumstantial case, and because the interests of justice and fundamental fairness are also triggered in a case such as this where*

there is such an extreme amount of time that has passed from the time the crime occurred to when the crime was charged and now is appealed. The evidence Appellant has attacked in this petition, should not be looked at in isolation, but rather should be looked at as a whole, combined with all previous appeals, to place this newest evidence in context.

**False testimony was given at appellant's trial**

There should be no doubt that false testimony was given at appellant's trial by numerous witnesses. Contrary to the ruling in Appellant's direct appeal, there is no definitive evidence that connects Appellant to this crime. The positive DNA linked to Appellant on two cigarette butts in a separate room from where the crime occurred surely does not a murderer make. By that logic June Bolstad, Appellant's girlfriend at the time, Lenny Huwald, and Lori Bolstad would also be murderers as their cigarette butts were also found in the same ashtray. Considering that Ms. Senenfelder was seen alive by many people after the meeting with probation agent William Hammes on the morning of June 5, 1985 which Appellant and June Bolstad were present for, a rational conclusion is that the two cigarette butts left from each Appellant and June Bolstad were left during that morning meeting with Mr. Hammes. The state had to use testimony that was manufactured by falsely implanting it into witness's memories. Just as this court during appellant's direct appeal, the jury had to make inferences from the false testimony given at trial, which should be now in light of all the evidence presented in direct appeal and both petitions for post-conviction relief, be satisfactorily shown to be in fact false.

When false testimony or perjured testimony is given at trial, the *Larrison* test applies, see *Caldwell v. state, 332 N.W. 2d 574, 584-85 (Minn. 1982); Opsahl v. state. 677 N.W. 2d 414, 422-425 (Minn. 2004).* In *Caldwell* this court in determining whether to grant a new trial based on witness recantations, or where discovery is made regarding the falsity of testimony, the petitioner must establish the following three prongs by fair preponderance of the evidence. 1) The court must be reasonably satisfied that the testimony in question was false; 2) without the testimony the jury might have reached a different conclusion, 3) the petitioner was taken by surprise at trial or did not know of its falsity until after trial. *Id. At 422-425.*

As for the first part of the test there should be no doubt that the testimony given was false, Appellant has provided multiple documents that show this conclusively. The state even acknowledges this evidence would have been helpful and made a difference in Appellant's previous petition for post-conviction relief. Second, there should be no doubt that the false testimony played a substantial role in Appellant's conviction. Without the false testimony appellant's actions become in many cases non-existent, and certainly not criminal. The third part certainly extends to lack of effectiveness on behalf of trial and appellate counsel. This third part is relevant but not an absolute condition precedent to granting relief.

**District Courts Rulings**

**1**. Petitioner is time barred from post-conviction relief under Minn. Stat. § 590.01, subd. 4(a)1 *unless one of petitioner's proposed grounds for relief meets an exception under Minn. Stat, 590.01 subd. 4(b).*

Appellant filed for post-conviction relief on October 20, 2017, this filing was based off evidence that was undisclosed by the state and unavailable until March 9, 2017 when Appellant was able to finally obtain this information. Therefore this evidence is squarely within the 590.01 subd 4 (b), (2),(5), (c) exceptions.

The District Court quotes the decision *in Reynolds v. State, 888, N.W. 2d 125 (Minn. 2016)* in its denial, Stating that, "while Minnesota's Constitution grants inherent authority over procedures within Minnesota's courts, this authority does not extend to the power to determine when a person may bring an action to Minnesota's courts. As reflected in Minnesota case law, that determination is for the legislature". *State v. Losh, 721 N.W. 2d at 891 (Minn. 1994)*. The District court goes on to say that Reynolds did not challenge his conviction, only his sentence, and that Appellant is challenging his conviction and not his sentence therefore *Reynolds* does not apply.

In the past like now, the reviewing courts seems to have a hard time moving past the words "newly discovered evidence". With regards to Appellant's first ground for relief, the court seems to get hung up on the words "newly discovered evidence", and fail to follow them with "of false or perjured testimony at trial". Minnesota case law states that, the *"Larrison test"* applies to recantations and more generally when a court reviews allegations that false testimony was given at trial. Under *the Larrison test a* petitioner is entitled to a new trial based on false trial testimony if: (1) the court is reasonably well satisfied that the testimony given be a material witness is false, (2) without the false testimony, the jury might have reached a different conclusion: and (3) the petitioner was taken by surprise when false testimony was given and was unable to meet it or did not know the testimony was false until after trial. The first two prongs are compulsory, the third prong id relevant but is not an absolute condition precedent to granting relief. *Caldwell v. State, 322 N.W. 2d 574 (Minn. 1982).*

While the grounds for relief in this petition like the previous one are based off what is termed "newly discovered evidence" <u>it all centers off false testimony given at trial.</u> The states ruling, which relies on the ruling in *Rainer v. State*, does not support its self, under the standards set forth in the *Rainer test*. The *Rainer test* states (1) that the evidence was not known to the defendant or his/her counsel at the time of trial: (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or more favorable result. *Rainer v. State, 655 N.W. 2d 692, 695 (Minn. 1997).* The ruling states that Appellant fails the second, third and fourth part of *Rainer*. The District court confuses the issue here, part one is satisfied as the evidence in question did not come into existence until after Appellants trial. Part two is satisfied also under conditions in part one, part three gets complicated in that the evidence can be seen both ways under the conditions set forth, but at this juncture Appellant need not prove that he would prevail on the merits only that there is a good faith basis for the ground. And part four is surely reachable as without the false testimonies in question it distances Appellant from the crime to an unreachable point.

The District goes on to say that in regard to the remainder of the claims centered around witnesses at trial, these claims were either know to Appellant at direct appeal or should have been

known at direct appeal. The Court goes on to say, that to the extent that these claims are procedurally barred they note no exception that applies.

Again this statement contradicts the rules of Civil Appellate Procedure, **Rule 110.01 Composition of the record on Appeal**. The papers filed in the trial court, the exhibits, and transcripts of the proceedings, if any constitute the record on appeal. Appellant has acted within the confines of this rule throughout his appellate processes. While some of the issues raised in direct appeal and Appellant's post-conviction petitions deal indirectly with issues raised at trial, the specific post-conviction discovery related to these issues is not and has not been brought forth until post-conviction. This is due largely to the rules in place at the time of Appellant's trial and direct appeal.

**Minn. R. of Crim. P. Rule 9.03, subd. 4 – Custody of materials, materials furnished.**

Any materials furnished to an attorney under discovery rules or orders shall remain in the custody of and be used by the attorney only for the purposes of conducting that attorney's side of the case, and shall be subject to such terms and conditions as the court may prescribe.

Every ruling to date suggests that Appellant was to somehow circumvent these rules. Appling the *Knaffla rule* under these circumstances places all appellant's in a conundrum, as they are being denied under rules that they would be in violation of had they tried to apply them.

**2. All other grounds for relief proposed by Appellant in Appellant's second petition for Post-conviction relief are barred from review under *Knaffla.***

"[D]efendant is entitled to at least one right of review by an appellate or post-conviction court." *State v. Knaffla, 243 N.W. 2d 737, 741 (Minn. 1976).* "Post-conviction remedies exist to try fundamental *issues that have not been tried before." Id., citing A.B.A. Standards for Criminal Justice, Standards relating to Post –Conviction Remedies (Approved Draft1968)) s 6.1.* "[W]here direct appeal has been once been taken, all matters raised herein, and all claims known but not raised, will not be considered upon subsequent petition for post-conviction relief." *Id.* This includes all claims that were known or should have been known. *Anderson v. State, 811 N.W. 2d 632, 634 (Minn. 2012).* "The *Knaffla rule* allows for relief despite the fact that the claims could have been raised on direct appeal: (1) where a novel legal issue is presented; or (2) where the interests of fairness and justice require relief" *quoting Powers v. State, 688 N.W. 2d 559,561 (Minn. 2004).*

**Minnesota Statue 590.01 subd. 1 – Petition-** Except at a time when direct appellate relief is available, a person convicted of a crime who claims that: (1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the State; or (2) scientific evidence not available at trial, obtained pursuant to a motion granted under subdivision 1a, establishes the petitioner's innocence.

Appellant brought forth this and his previous petition for post-conviction relief, as his conviction and therefore sentence are in direct violation of his rights under the Constitutions of the United States and the State of Minnesota.

***Minnesota Statue 590.01 subd. 2,- Remedy -*** This remedy takes the place of any common law, statutory or other remedies which may have been available for challenging the validity of a conviction, sentence, or other disposition and must be used exclusively in place of them **unless it is inadequate or ineffective to test the legality of the conviction, sentence, or other disposition.**

**Minnesota Rules of Civil Appellate Procedure – Rule 103.04,**

This rule grants the Appellate courts authority to reverse, affirm, or modify a judgment or order appealed from, or take other action as the interests of justice may require.

Appellant's petition is brought forth under **Minn.R. of Civ. App. P.** 103.04, and **Minn. Stat. § 590.01**. *(See page one of petition for post-conviction relief).*

This court has already ruled that claims that cannot be decided solely on the District court record, because they require information outside the trial record, are therefore not Knaffla-*barred. White v. State, 711 N.W. 2d 106 (Minn. 2006), see also Anderson v. State, 830 N.W. 2d 1 (Minn. 2015); evidence outside the trial record is not Knaffla-barred.*

**Ineffective Assistance of Counsel / Prosecutor Misconduct**

Appellant has continued to bring forth certain issues, such as ineffective assistance of trial and appellate counsel, as well as prosecutor misconduct. This is largely due to additional evidence from outside the trial record surfacing. In the landmark case *Strickland v Washington, 466 U.S. 668 (1984),* the United States court declared that there was a two part test which appellants must prove in order to show ineffective assistance of counsel. (1) You must show that reasonably competent counsel would not have acted, or not acted the way your counsel did and, (2) That there is a reasonable probability that but for your counsels unprofessional error[s], the result of the proceeding would have been different, e.g. you would not have been convicted. Recently in *Buck v. Davis, 137 S. Ct. 759 (2017)* the United States Supreme Court reaffirmed the definition of prejudice, "If it is reasonably probable that", "at least one juror would have harbored reasonable doubt", then you have proven prejudice sufficient for a claim of ineffective assistance. It is important to remember that the "reasonable probability" standard is even less demanding than the preponderance of the evidence standard, *(Strickland*) made clear that the error merely needs to "undermine confidence in the outcome". In other words if an appellant can manage to show deficient performance, " things that make you go hmmm...", should be sufficient to get past the *Strickland* test for prejudice. Appellant has more than met the conditions set forth in *Strickland* for ineffective assistance of counsel.

The prosecutions misconduct when viewed in light of the complete record shows that they have not come close to conforming to their expected professional standards. The Prosecutor is an Officer of the court, charged with an affirmative obligation to achieve **justice** and **fair adjudication**, not merely convictions. A prosecutor commits misconduct when he/she engages in conduct that undermines the fairness of or violates the established standards of conduct. A prosecutor's misconduct affects substantial rights if there is a reasonable likelihood that that the absence of the misconduct would have significant effect on the jury's verdict. *Davis v State, 735 N.W. 2d 681-82 (Minn. 2007). In Mesarosh v*

*United States, 352 U.S. 1 Led. 2d 1, 77 S. Ct. (1956),* truthfulness of testimony... the court stated, "the dignity of the United States Government will not permit the conviction of any person on tainted testimony". It is axiomatic that a fair trial, in a fair tribunal is a basic requirement of due process.

This court has ruled that weight and credibility of individual witnesses is for the jury to determine. Bliss v. State, 457 N.W. 2d 385, 390 (Minn. 1990). And that the state may not deprive any person of life, liberty, or property without due process of law. *State v Beecroft, 813 N/.W. 2d 814, 836 (Minn. 2012). United States Constitution Amendment XIV § 1; See also Minnesota Constitution Article 1 § 7.*

If when all is said and done, the [courts] conviction is sure that the error[s] did not influence the jury, or had but very slight effect, the verdict and judgment should stand... but if one cannot say with fair assurance, after pondering all that has happened, with stripping the erroneous action[s] from the whole, that the judgment was not substantially swayed by the error[s], it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support results, apart from the phase effected by the error[s]. It is rather whether the error[s] its self-had substantial influence. If so or if one is left in "grave doubt" the conviction cannot stand. This case is far from ordinary, with a mountain of error[s] scattered throughout it.

It may also interest the court to know that shortly after Appellant's conviction; an investigation of the Winona County Attorney's office was launched. One District Court Judge wrote that he feared the office would disintegrate. The investigation revealed, no illegal behavior, but several employees considered it to be a hostile work environment, also interesting is that after the investigation was launched both prosecutor's in this case resigned their positions.

**Extraordinary and unusual circumstances**

**This Court has the authority to review cases such as this under the provisions provided for by the Legislation when the 590 Statue was enacted, along with the exceptions provided for in the Knaffla ruling.**

This case is far from the ordinary, it brings with it a complex and confusing nature, this is evident when the direct appeal opinion of Chief Justice Gildea is looked at in context. Justice Gildea concludes from the appeal that Appellant and Linda Erickson worked together to get Ms. Senenfelder to recant her statement. The testimony and evidence actually showed there was a plethora of individuals involved in this activity, not just Appellant and Linda Erickson. The opinion goes on to state that Appellant threatened Ms. Senenfelder with death, the evidence actually showed that Edward Bolstad was the person who threatened to kill Ms. Senenfelder if she did not recant her statement against his brother James Bolstad. (T. 2919-20).

The state also elicited extensive testimony, that Linda Erickson on the night of June 5, 1985 after receiving a phone call found out that the notarized statement Ms. Senenfelder had provided William Hammes James Bolstad's probation agent did not work, and was pissed off. When looked at in context, the meeting between Mr. Hammes was observed and recorded by Appellant and June Bolstad, as part of

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that meeting Mr. Hammes told Ms. Senenfelder that he did not need her statement to go forward with the revocation of James Bolstad, that the state could pursue this regardless, which is what his intentions were. The state projected an image that Ms. Erickson was happy that James Bolstad would be getting out of jail, so happy in fact that she immediately planned a celebration party. (T. 2655-60). This is completely false, as Agent Hammes had already stated at the meeting that morning he was going to pursue revocation of James Bolstad's probation, and party was what the particular group of people did everyday regardless. One Officer even comments during an interview of Rena Bambenek that it sounds like these people drank and partied every night. (T. 3773)

The opinion goes on to state that [witnesses] testified that Appellant wanted to know how much Ms. Erickson would be willing to pay to have Ms. Senenfelder killed. In reality there was one [witness], June Bolstad, who testified that Ms. Erickson offered to pay Appellant. Ms. Bolstad also testified that when Appellant made the statement about how much would Ms. Erickson pay it was in front of and loud enough for all the people at the party to hear.(T. 2671). Ms. Bolstad also testified that in 1985 whenever she spoke with investigators about this case she only told the truth, and that her memory was better back then that it is at trial 24 years later. (T. 2650), She also testified that she actually only heard rumors that Ms. Erickson paid me to kill Ms. Senenfelder. (T. 2723), and that Appellant never asked Ms. Erickson how much she would pay to have Ms. Senenfelder killed. (T. 2734). The strikingly odd thing here is that not one other witness testified to anything remotely close to this happening, nor does the state ever ask any of the other party attendee's under oath or elsewise.

The direct appeal opinion says that Appellant and Linda Erickson left the party saying, "kill the bitch". Again this testimony comes from a single source, June Bolstad. In 1985 while speaking truthfully with Investigator Tom Nyseth, on June 6, at 3:25 pm Ms. Bolstad told Investigator Nyseth everyone who had left the party the night before, and Appellant and Ms. Erickson was not included in the group of people who left the party that night. (T. 2725-26, 2733). Ms. Bolstad testified that this would have been important information, and she would have told it in 1985, but never did because it never happened. (T. 2735). Justice Gildea's opinion states that Appellant admitted that Ms. Erickson paid him to kill Ms. Senenfelder. The testimony was that Ms. Bolstad only heard rumors Ms. Erickson paid Appellant. (T. 2723). The opinion also concludes that Appellant had money after the murder of Ms. Senenfelder. The testimony was that while none of us worked actual 9 to 5 jobs we all seemed to always have money. (T. 2574).

The states self-called star witness, Rena Bambenek testified that Appellant had a large cut on his hand. (T. 3485-86). Appellant's girlfriend at the time June Bolstad testified that Appellant had no cuts or bandages on his hands right after the murder. (T. 2721-22). Investigator Allan Mueller testified that in stabbing cases it is good practice for officers to look at witnesses and suspects hands for signs of cuts, scrapes, and scratches. (T. 4336). Edward Bolstad was the only person of interest that had signs of cuts, scrapes, or scratches, Officer Mueller video documented the cuts, scrapes, and scratches on Edward Bolstad's hands and arms. (T. 4326-27, 4336).

Two witnesses testified that Appellant was looking for a lost knife. The states star witness Rena Bambenek testified that Appellant had pulled up in front of her apartment in the Bolstad Brown

mercury, and came to her door asking for a flashlight, to look for a knife under the car that Appellant had supposedly lost. (T. 2928). Ms. Bambenek also testified that the next day Appellant and Linda Erickson picked her up to drive over to the area and see if it was in fact Ms. Senenfelder's house she had heard about on the radio. This is information Ms. Bambenek repeats after being told it by an Officer during an interview. (T. 3255). Ms. Bambenek testified that upon arrival the three of them had gotten out of the car and together walked down the middle of the road while Appellant walked in a zig zaggy fashion, looking for something on the ground, and that together we walked directly up to the front on Ms. Senenfelder's house. (T. 3519-20). This testimony is actually false, and was planted in Ms. Bambenek's memory to conform to the investigators theory of what happened. It was Appellant and Bruce Howe who drove to the area with Ms. Bambenek, and upon arrival investigator Dorothy Haner approached Appellant almost immediately, and took down our names as neighbors had said they seen us at Ms. Senenfelder's house in the recent past. (T. 3523), (see also exhibit 6, from Appellants first petition for post-conviction relief). Furthermore, law enforcement had set up a barrier which the crowd was kept well beyond. (T. 3119), (see first post-conviction exhibits 7 and 8). Pam Cox was the next witness to testify regarding the loss of a knife, Ms. Cox says she was asked to look for a knife while she was cleaning. (T. 2928), she has no idea what type of knife it was she was to be looking for, but thinks it was a buck knife. (T. 2928).

State prosecutor Charles MacLean, at a hearing regarding the relevance and admissibility of Appellants knife, misrepresented facts to the court, to gain favorable ruling on the admission of evidence regarding Appellants knife, specifically Prosecutor MacLean represented to the court that Appellant's knife had never been recovered. (T 2628). Exhibit number 23 from Appellants first post-conviction petition, shows that Appellant surrendered his knife for examination. The State also presented photo exhibit 18 at Appellants trial, this photo shows Appellant with his knife, on the night of June 5, 1985 at the party at Ms. Erickson's apartment. Considering that the investigators had photos of Appellant's knife it is reasonable that the knife surrendered was the same one in the photos, Appellant's knife was returned, after being examined. Medical examiner McGee was never given this information, nor was the jury.

Justice Gildea's opinion states that Appellant worked with others to clean up Linda Erickson's apartment the day the body was discovered, and that bags of clothing were thrown away. The testimony leading to this conclusion defies logic. Pam Cox testified that Appellant and Linda Erickson came to her house minutes after the detectives had left her house, to recruit her to help clean Ms. Erickson's Apartment. (T. 2924). It is a little unreasonable that detectives would be questioning Ms. Cox about the murder of MS. Senenfelder, within minutes of the body being discovered, as she had not yet been considered a person of interest. Then there is the testimony provided by Ms. Cox that gallons and gallons of bleach and ammonia were the cleaning product she used, Exhibit 18 and 19 of Appellant's first post-conviction petition show this is not possible as it is a combination that produces a potentially toxic fume, especially when used in this quantity. Exhibit 16 from the first post-conviction shows that the first time investigators spoke with Ms. Cox was on June 18, 1985, nearly two weeks after the murder of Ms. Senenfelder.

The opinion states that there was a "get your story straight" party held by Ms. Erickson the day after the murder. There was considerable testimony about things that were said at this gathering, Both Rena Bambenek and June Bolstad testified that Appellant and Linda Erickson instructed people what to say to investigators. This conclusion and testimony defy logic, as testimony revealed that all the party attendees had already been interviewed by investigators at least once and in some cases spoken to twice by the time the allege "get your story straight party" happens. To instruct people to say no one left at that point would be ludicrous. Ms. Bolstad even testified that Appellant, threatened to stab her if she told the truth at this gathering. Again this defies logic, Appellant surrounded by Ms. Bolstad's family and friends, who are well known for their acts of violence against anyone who threatens them, openly threatens the youngest daughter of the family, not a very logical conclusion.

Next Justice Gildea concludes that Appellant confessed to the murder to several witnesses on multiple occasions. Appellant has never denied that he made comments that were, in hindsight not so smart, Appellant's comments were open ended, such as "you better watch it or you could end up like Ada", or "you better behave or you'll get the same thing Ada got". These comments are a far cry from "I'll stab you like I did Ada". Mr. Kevin Bakewell testified that Appellant while drunk allegedly told him, "I fucking offed Ada", being that there is no discovery or interview that discloses this, and this was first brought forward at trial, placing it in context gives it a completely different view. The comment was made while Mr. Bakewell was trying to collect a debt, Appellant was intoxicated and actually told him, " get the fuck out, I (appellant) got more important shit to worry about than his money, the cops think I "fucking offed Ada Senenfelder". Four simple words,(the cops think I), placed into context, give that statement a totally different view.

Justice Gildea concludes that the state presented physical and forensic evidence that ties Appellant to the murder. Two cigarette butts found in an ashtray in a separate room belonged to Appellant, in the same ashtray were cigarette butts belonging to June Bolstad, Lenny Huwald, Roger Bolstad and Lori Bolstad. By this logic they would also be murderers, would they not? YSTR-DNA that Appellant cannot be excluded from on a few items found in Ms. Senenfelder's bedroom surely does not a murderer make. First and foremost the conclusions that do not exclude Appellant also do not possess any positive identifying characteristics linked to Appellant. Also all but one item cannot be excluded when compared to just the known members of the BCA's crime scene personnel. There is an extensive list of people that were not tested in connection to this determination, including the male children of Ms. Senenfelder. There is a great distinction between can and cannot be excluded verses match and would only be expected to be found once in the world's population.

Finally Justice Gildea concludes that the type of knife Appellant carried could have caused some of the wounds. Here again Appellants knife was surrendered to investigators in 1985, the knife was examined and returned to Appellant. (See exhibit 23 from Appellant's first post-conviction petition). The state withheld this information from the court, jury, and the medical examiner that testified regarding Appellant's knife. It is not logical given this new information, that (1) investigators would have returned Appellant's knife if there was any evidence found on it, (2) that investigators would have returned the knife if there was even a chance it could have been used in the commission of the crime. (3) Being that there was photographic evidence of the knife Appellant possessed on the night Ms. Senenfelder was

murdered, there should be no question that the knife surrendered and examined was not a knife that could have caused the death or wounds Ms. Senenfelder had suffered.

**Passage of Time**

The passage of time has played a critical role in the ability to gain this conviction. It is proven that time has an effect on people's ability to remember details for events. Appellant presented exhibits 38 and 39 in his first petition for post-conviction relief; those exhibits detail the many factors that can alter people's memories. The amount of time that has passed from when this crime occurred to when the state chose to charge Appellant is prejudicial in its own right. The state regularly argues that the passage of time is prejudicial to them, as people's memories fade over time, and this hinders their ability to retry individuals. *See Hoagland v State, 518 N.W. 2d 531, 535 (Minn. 1994)*

There is no new evidence in this case; the only thing that has changed is the investigators involved in the reopening of the cold case, and their fabricated theory. Every witness testified that their memory for things pertaining to this case was better it 1985, and that when talking with investigators back then they told the truth. Every conflict it their testimony from what they said in 1985 to what they say in 2009 has been told to them by investigators desperate to solve an unsolved case. When confronted with some of these differences the witnesses continue to stand by their 1985 statements to law enforcements. The trial record shows the investigators exposing the witnesses to what they the investigators believe happened. The witnesses in this case are not highly intelligent people, the majority are dependent on various substances, and have been for many years of their lives. The trial record also shows that when these witnesses, did not change their statements to conform to the fabricated theory of investigators they were threatened with being charged in connection with this crime.

Appellant has shown that the testimony of the state's star witness Rena Bambenek is filled with false testimony. Exhibit 4 and 5 from the first post-conviction shows that it was not appellant and Linda Erickson who drove to the area of Ms. Senenfelder's house on the morning the murder was discovered, it was Appellant and Bruce Howe. This Exhibit also shows that Appellant did nothing unusual upon arrival to the area. Exhibit 6 from that petition shows that was spoken to by investigators at the scene that day. Exhibits 7 and 8 of that petition show that the trial testimony of Ms. Bambenek is false about appellant walking down the street in a zig zaggy fashion looking for something (lost knife) is false.

Time has also played a part in Mr. Dooney's ability to remember events, Appellant has shown that the testimony that Appellant and Roger Bolstad coming to visit Mr. Dooney in jail was in fact false. Exhibits 11, 12, 13, and 14 of the first post-conviction show this trial testimony of Mr. Dooney is false.

Shelly Stoeckly testified that the one thing she is sure of is that she broke into Ms. Senenfelder's home, when she would not answer her door, and that she did this under her own direction. Somehow this has progressed to Appellant and Linda Erickson broke into Ms. Senenfelder's during the opinion in Appellant's direct appeal.

Pam Cox there is little doubt that the trial testimony of Ms. Cox is false. Ms. Cox testified that Appellant and Linda Erickson came to her house and asked her to come clean Ms. Erickson's apartment

Appellant has shown that the state has failed to provide discovery in violation of Brady. Exhibit 33 of the first post-convection shows that there is a reference to Ms. Bambenek speaking with someone named Dave, who has what appears to have made some assurances to Ms. Bambenek. It is not simply whether or not there was an under the table deal made with Ms. Bambenek, it is a matter that a witness for the state has spoken with someone named Dave who could have been the Sherriff, or the chief of police for the town Ms. Bambenek lived in who's name also happened to be Dave at that time, and that some assurances were made, without disclosure of this discovery it is pure speculation on the part of everyone, and given the history of deception in this case by the state it is only logical that there in something to be hidden. The trial judge states that, "there is a question in his mind, of how much the state had that did not get transferred to the defense" T. 4855, And "that there is a decent argument that had the defense had this information, it may have helped them" T. 4856, see also pages 64 and 65 of the first post-conviction petition.

Throughout Appellant's trial and appeal process the state has consistently argued that Appellant and Linda Erickson work together to murder Ms. Senenfelder, this is also evident in the decisions from the appellate courts. The state has changed their theory in the case of Ms. Erickson, for the purpose of Ms. Erickson's plea hearing the state has chosen to accept as fact that Ms. Erickson never asked or offered to pay Appellant to murder Ms. Senenfelder. In direct conflict to testimony at Appellant's trial the state has chosen to accept that Ms. Erickson did not leave the party saying "kill the bitch", and "the bitch has to go". In Ms. Erickson's plea hearing the state has chosen to accept that Dennis Mickelson left the party when police arrived for the loud party complaint, and that Edward, Roger, and Danny Bolstad along with Laurie Nissalke were the only ones who positively left the party the night of June 5, 1985.

The state also focused extensive testimony from several witnesses that there was this "get your story straight party" that occurred on June 6, 1985. The discovery police reports show that this testimony lacks factual support, as not only did the majority of people already speak to investigators before this allege meeting took place but in fact several had spoken to investigators multiple times, let alone the fact that at the time this meeting is allegedly taking place discovery shows that one person, Linda Erickson is being interviewed in the place and at the time this meeting is allegedly taking place. (see exhibit 3). Also exhibit 15 from the first post-conviction shows that even later in the evening the people said to be in attendance for the "get your story straight party" are not at the place the party is said to have taken place.

Even the evidence the state presented saying that Appellant confessed to the murder is not new evidence, Appellant provided the investigators with this information in 1985, (see exhibit 4) in which Appellant admits to saying things like "you better watch it or you'll end up like Ada", this is a far from the statement "you better watch it or I'll stab you like I did Ada". This can also be seen in the testimony given by Linda Peterson, as well as many witnesses who testified that Appellant was only joking when he said these statements, and the exact words used were questionable.

This case has multiple violations throughout it, some have been recognized by the courts, and others have not. Chapter 590 post-conviction relief, **Availability and Conditions**, subdivision 1 states, except at a time when direct appellate relief is available, a person convicted of a crime who claims that:

(1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state. Subdivision 2. **Remedy**. This remedy takes the place of any other common law, statutory or other remedies which may have been available for challenging the validity of a conviction, sentence, or other disposition and must be used exclusively in place of them **unless it is inadequate or ineffective to test the legality of the conviction, sentence or other disposition.**

As the chapter reads there are several ways that this can be interpreted, the courts seem to have separated conviction, sentence, or other disposition, yet as this reads it could be considered all inclusive. In a recent ruling the appellate courts have deemed that, a post-conviction court must accept facts alleged in a petition as true when deciding whether a post-conviction petition may be denied without a hearing. *see Henderson v State, A17-0124 Lexis 15 2018*. In this case Judge Bueltel appears to have ignored this standard, his statement, "may be true and unfortunate", fails to follow this standard.

Interpreting the 590 statue consistent with the United States Constitution does not include conviction people in violation of their Constitutional rights. Judge Bueltel argues that this case is barred not only by statue or *Knaffla* but also by a recent case law, *Hannon v. State, 889 N.W. 2d 789 (Minn. 2017) (denying post-conviction relief when the state allegedly coaxed false testimony and petitioner did not prove, given the overwhelming evidence against him, the testimony could have changed the jury's verdict)*. Comparing this case and the evidence Appellant has brought forth with that statement is asinine. By making such a statement, it is saying that the investigators throughout the early years of this case are all liars, and have filed false police reports. The written word of investigators on the scene and throughout the days after the murder surely carries with it a degree of credibility over that of the memory of confessed alcohol and drug abusers twenty plus years after the fact.

If after reading the complete record pertaining to this case, you are not left with serious doubt and or outright disgust over how the system has been manipulated in order to gain and maintain this conviction, then you have not read this case at all. Appellants Constitutional rights have been violated there is just no getting around that, and a system that does not recognize that is no system of justice by American standards, this petition is not frivolous, and is in the interests of justice to be heard.

## CONCLUSION

When looked at in context, the evidence Appellant has presented in both post-conviction proceedings does not support the conviction no matter how you spin it. The plain and simple fact is Appellant's rights have been violated as a direct result of the negligent misconduct carried out by the prosecution. Allowing this type of conduct to be carried out and enforced creates a nonexistent system of justice.

Dated:

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