12TH JUDICIAL DISTRICT COURT

PARISH OF AVOYELLES
STATE OF LOUISIANA

VINCENT SIMMONS
Petitioner

CASE No. 37,596

Versus

DARREL VANNOY, Warden
Louisiana State Penitentiary

FILED:_____ _____
DEPUTY CLERK

MEMORANDUM IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF

NOW INTO COURT, through undersigned counsel, comes Petitioner Vincent Simmons, DOC #85188, respectfully submitting this Memorandum in Support of Application for Post-Conviction Relief.

> We have had a peaceful type of community here. Uh, basically speaking the negroes had their own little area of communities which we call along the - the old river, to the east of Marksville, and the whites uh more or less lived within the corporate limits of the city. Therefore, there was a separation. But not a separation when it came to being peaceful together. They knew their place, of course you know the standard things. They couldn't go everywhere the whites could go, and they couldn't do everything the whites could do. But they accepted that and there was never - never a confrontation of any sort.

Eleanor Gremillion, former Secretary of Chamber of Commerce, Shadows of Doubt: State v. 85188 Vincent Simmons (1999).

> I've got to live with my own conscience. You know, I don't want to try anybody and convict anybody who is not guilty of a crime. And to be quite frank with you, I agree with the thought that, I would prefer having 10 persons who are guilty to get away with it then to convict one innocent person.

Eddie Knoll, former District Attorney of Avoyelles Parish, Shadows of Doubt: State v. 85188 Vincent Simmons (1999).

> Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution.

Olmstead v. United States, 277 U.S. 438, 468 (1928) (Brandeis, J., dissenting).

> [N]o court, state or federal, has ever conducted a hearing to assess the reliability of the

> score of postconviction affidavits that, if reliable, would satisfy the threshold showing for a truly persuasive demonstration of actual innocence.

In re Davis, 557 U.S. 952 (2009) (Stevens, J., concurring).

> The defendant in this case has remained behind bars for more than [four] decades for a crime that he has consistently maintained he did not commit…While the issues implicated by this case represent some of the most pressing and contentious matters facing the criminal justice system today, the [State and the Courts that have heard this case before have] chosen to focus their [oppositions and rejection of Mr. Simmons' claims] on an array of procedural and evidentiary arguments, largely ignoring the major underlying issues at stake. But these rules of procedure and evidence are not to be invoked for their own sake. They do not exist solely as an arsenal to be ranged against the accused or the imprisoned. They exist so that truth may emerge from their considered application. Indeed, it requires no earth-shattering pronouncement to state simply what centuries of jurisprudence make clear: that justice is the whole of the law. And although our institutions of law enforcement are the bedrock of our system of justice, they do not deserve our blind faith or allegiance. When we succumb to that temptation we abdicate our duty to ensure that justice is done in every case and under every circumstance. Society's allegiance and faith must be earned through our labors and consistently reaffirmed by our decisions. Recognition of our errors does not make our system weak, it makes it resilient. When we ignore our errors or seek to avoid confronting them, we imperil the very foundations of our legitimacy.

People v. Hargrove, 162 A.D.3d 25 (N.Y.App.Div. 2d Dept. 2018) (Hargrove specifically addressed, before anything, the use of procedural bars to deny a defendant his day in court. Vincent Simmons, for over the last 20 years, has been denied the opportunity to present evidence that would have exculpated him without so much as an evidentiary hearing. Interestingly, the Hargrove decision stressed the importance of a new trial after new evidence came to light. The 2nd Department Appellate Division was clear – when claims of innocence are viable and new evidence is now available, a new trial must be ordered).

PRELIMINARY STATEMENT

This case is a four-decade story of justice denied. Vincent Simmons was accused of a 1977 "rape" that he did not commit and that, in all likelihood, never happened. He was identified in a farce of a lineup, convicted after a travesty of a trial, and given a savage 100-year sentence. And he remains in prison to this day, despite a litany of evidence obtained since trial showing that Simmons is innocent and that he is the victim of a biased jury, a corrupt judicial system, and the legacy of a dark past that Avoyelles Parish has hopefully now overcome.

The story told at trial was that on May 9, 1977, identical twins Sharon and Karen Sanders[1] agreed to come over and help clean the house of their first cousin Keith Laborde. Allegedly, Simmons asked Laborde for a ride home and Laborde agreed. About six miles out of Marksville on a deserted stretch of Little California Road, or so the story goes, Simmons produced a gun, locked Laborde in the trunk while he raped Karen, and then locked Karen in the trunk while he raped Sharon. Ultimately, after threatening them, he let them go.

[1] In various parts of the judicial records, Sharon Sanders is referred to as "SHARON" and Karen Sanders as "KAREN" The identities of both are now well known and the State has referred to them by their full names in the prior post-conviction proceedings, and they will accordingly be called by their full names here.

The accusation stunk from the beginning. Laborde, as was well known at the time, was a racist who would never talk familiarly with or give a ride to a black man like Simmons, and Little California Road in the 1970s was the heart of Klan country where no black man would venture to go for fear of being killed. Sharon and Karen, when they got home on the night in question, said nothing about being raped – both that and the detail that they heard the name "Simmons" were later inventions coaxed from them by the police. When they did cry rape, their stories were suspiciously identical and obviously rehearsed, with both of them claiming they were raped the same way right down to the position of their bodies and Karen actually claiming that she could witness the rape of Sharon from the trunk. They identified Simmons from a "lineup" in which he appeared in handcuffs and one of the fillers was white. After a trial at which exculpatory and inconsistent statements made by the Sanders twins and Laborde were withheld, the one black juror, Diane Prater, was intimidated and berated into voting to convict. Only the "rape myth" – as described below, the deep-rooted fear of black men as sexual predators, which overwhelms all reasoned consideration of the proof – ensured that the trial would end in a verdict of guilty.[2]

---

[2] Vincent Simmons was not the first or the last black man that was accused of a crime by a white person (ironically, white women that falsely accuse black men of crimes are called "Karen"). The following cases are a short list of the many times white people have falsely accused black men of crimes:

1. The Scottsboro Boys: 9 black teenagers were falsely accused of raping two white women on a train in 1931. It took years to untangle the legal mess caused by these two white women *and* the stubbornness of the local criminal justice system. Continually, the prosecution and law enforcement in Alabama *refused* to correct this injustice. See https://www.history.com/topics/great-depression/scottsboro-boys.
2. Groveland 4: In 1949, four black men were accused of raping a white woman. Three were convicted and served jail sentences, but not before they were beaten by law enforcement. The fourth, Ernest Thomas, was hunted down in the woods and shot and killed by a group of men. The victim still maintains their guilt, yet Florida Governor Rick DiSantis, who posthumously pardoned the men, appeared convinced that the men had been wrongly convicted. "I don't know that there's any way you can look at this case and think that those ideals of justice were satisfied," Mr. DeSantis said. "Indeed, they were perverted, time and time again." See https://www.nytimes.com/2019/01/11/us/groveland-four-pardon-desantis.html.
3. In 1955, Emmitt Till was *murdered* for talking to a white woman. Till's murder fits right in with the "rape myth" narrative wherein white men are deadset on protecting the "purity" of white women. See Exhibit L – Professor Lisa Dorr's expert report on "rape myth". A jury acquitted the white men accused of murdering Till. Those men later *confessed* to the murder in a magazine interview. See https://www.npca.org/articles/2020-mississippi-reckoning?s_src=g_grants_ads&gclid=CjwKCAjwlID8BRAFEiwAnUoK1XdBJQYtE39hxp8JNcU_YDY0c9DymL9Q3tNqtK4Ar7prp-TeDJjE2hoCBgQQAvD_BwE.
4. On October 23, 1989, Charles Stuart blamed a black man for shooting both he and his wife in a Boston suburb. This kicked off a manhunt where lawmakers called to bring the death penalty back for the person that perpetrated this crime. This led to the arrest of several innocent black men. Not long after these men were arrested, Charles' brother Matthew, told law enforcement that Charles was the shooter/killer. Stuart killed himself before he could be charged with any crimes – but not before law enforcement in Massachusetts recklessly hunted black men. See https://www.boston.com/news/local-news/2014/10/22/the-charles-stuart-murders-and-the-racist-branding-boston-just-cant-seem-to-shake.
5. In South Carolina, on October 25, 1994, Susan Smith claimed to have been carjacked by an African American man, with her boys in the car. She later confessed to drowning them and was sentenced to life. See https://www.biography.com/crime-figure/susan-smith.
6. In May of 2020, Patricia Ripley came up with an elaborate lie, blaming two black men for the death of her son. She was caught on video pushing him into the canal where he was found. See https://abcnews.go.com/US/florida-mom-charged-murder-son-autism/story?id=70848791.

Since then, the case against Simmons has only become weaker. The initial statements made by the "victims," which said nothing about either a rape or Simmons, have come to light. Medical evidence undisclosed at trial shows that no penetration occurred and, therefore, that the rape testified to by the Sanders sisters could not have happened. Evidence has emerged to corroborate that Simmons was never at the scene. New witnesses have come forward to attest that the sisters never mentioned a rape that night and that if any crime was committed, the culprit was not Simmons but Laborde. Advances in psychology and neuroscience have shown that the sisters' and Laborde's "identification" of Simmons was so unreliable as to be worthless. This and more, as described in detail below, makes crystal clear what should have been obvious from the beginning: that Vincent Simmons is an innocent man.

Then why, after 43 years, is he still in prison? The answer lies in a judicial system that has never fairly heard his petitions. Every time Simmons has come before the courts with evidence of his innocence, the courts have refused to hear it – finding, for instance, that the evidence in question was available to him at trial even though the prosecuting attorney admitted it wasn't, or that his claims were repetitive when in fact they were being presented for the first time. The judge who heard Simmons' 2004 post-conviction petition, Hon. Mark Jeansonne, has made shocking admissions showing he was biased against Simmons and never gave the petition a fair shake – and the judge who reviewed Simmons' case in 2014, Hon. Kerry Spruill, was a former associate of the very attorney who prosecuted him.

The State will no doubt argue that this Court should do the same – that it should reject this petition out of hand as repetitive and/or out of time and that it should deny relief without ever considering Simmons' evidence on its merits. But this petition is not repetitive within the meaning of La.C.Cr.P. § 930.4 – no freestanding actual innocence claim was raised in any previous petition (nor could one have been, given the state of the law at that time), much of the evidence submitted in support of the newly discovered evidence claim herein was not known or presented previously, and the evidence regarding the bias of Judge Jeansonne and the intimidation of Juror Prater was only recently learned. And for the same reasons, the petition is not out of time pursuant to La.C.Cr.P. § 930.8, because much of the evidence presented to this Court was discovered only within the past two years as a result of painstaking investigation. Nor could this evidence have been obtained earlier through due diligence, both because diligence

takes into account the resources available to the accused and because evidence of this character only *could* come to light once enough time had passed and enough reckoning with the past had occurred that the words could be said and the affidavits could be given without fear of retaliation.

But there are even more reasons why this petition should be heard. The courts today are much more aware of wrongful convictions than they were in 1994 or 2004, and it has become an increasing judicial consensus that procedural bars should not prevent an actually innocent defendant from having his day in court. In McQuiggin v. Perkins, 569 U.S. 383 (2013), the Supreme Court held that a persuasive showing of actual innocence should take precedence over time limitations and procedural bars, and though this holding does not directly govern Louisiana post-conviction petitions, it is submitted that this Court should find its reasoning persuasive. Likewise, in In re Davis, 557 U.S. 952 (2009), the Supreme Court directed the Georgia state courts to take evidence concerning the defendant's actual innocence and to hear from the witnesses who had previously been denied a hearing on procedural grounds. Doing so in this case would comport with the core function of the criminal justice system – convicting only the guilty and exonerating the innocent – and would recognize that allowing an innocent man to rot in prison on technical grounds is even more abhorrent than allowing a guilty person to evade justice for such reasons.

In sum, this Court should do what the previous courts of this parish have refused to do, hear the witnesses who have never been heard, and recognize that Vincent Simmons' imprisonment is an injustice that cries out to be remedied. This Court has an opportunity to show how far Avoyelles Parish has come from the dark, racist past of the 1970s, and to put an end to the damage that the "rape myth" has caused to Simmons. It should take that opportunity and hold the hearing for which Simmons has been fighting for forty-three years, a hearing at which Simmons is finally allowed to prove his innocence.

STATEMENT OF FACTS: A TRAGEDY IN THREE ACTS

ACT I: THE ACCUSATION

On May 23, 1977, Vincent Simmons was arrested on Waddell Street in Marksville at 9:20AM. See Exhibit AA – May 23, 1977 arrest report by Robert Laborde.[3] Significantly,

[3] Robert Laborde appears to be a relative of Keith Laborde. Yet, Laborde was able to arrest Vincent Simmons and then take part in his processing wherein he shot Simmons when Simmons failed to "confess." The "official" version of events was the shooting was the result of Simmons's attempt to take and fire another officer's weapon. However, Simmons was never charged with that crime.

Simmons was arrested "on view" and not as a result of probable cause or an arrest warrant. See Exhibit AA.

At approximately 9:05 a.m. on May 23, 1977, Sheriff "Potch" Didier sent deputies for the twins. Both girls were picked up from school and told that they were going to view a line-up with the perpetrator. See Exhibit T – Excerpts from Karen Sanders' book, Raped Beyond a Shadow of a Doubt. Keith Laborde was picked up from work and brought to the Police Station. While they were en-route, Sheriff Didier instructed Capt. Melvin Villemerette to select seven males from the jail for a line-up. The suspect's name was written on the opposite side of the card. A card was pinned to the suspect's shirt in the following order: #1. Joseph Sampson, #2 Charles Hubbard, #3 Malone Alexander, #4 Vincent Simmons, #5 Steve Williams, #6 Peter Johnson, #7 Melvin Eldridge, and #8 Raymond Gauther, the only white suspect.

A photograph of the lineup was taken with Vincent Simmons in the middle. See Exhibit U – Barbara DeCuir report dated May 25, 1977, page 5; see also Exhibit DD – May 25, 1977 report of Robert Laborde. Vincent Simmons was the only person in the line-up wearing handcuffs and a large ring. See Exhibit U; see Exhibit V – Photograph of the lineup.[4] All three witnesses were in the room together and viewed the line up at the same time and selected Simmons. See Exhibit T.

Neither the photograph nor the police sponsored identification procedures that produced the pretrial identifications were ever disclosed to the defense. This issue *was never litigated at all*.

A true bill was returned by the grand jury on June 10, 1977 for violation of La.R.S. 14-42, Aggravated Rape. See Exhibit S – Indictment. On July 14, 1977, Jeannette Knoll, Assistant District Attorney, filed a motion to Amend Indictment stating that based on the U.S. Supreme Court ruling of June 28, 1977, which found the Louisiana Aggravated Rape law to be unconstitutional because it provided for the death penalty, she requested that the original indictment of two counts of Aggravated Rape be amended to two counts of Attempted

---

[4] This fact was also confirmed by Peter Johnson, who was in the line-up with Simmons on May 23, 1977. See Exhibit W – Affidavit from Forest Martin; Exhibit X – Affidavit from Delores Prevot; Exhibit Y – Certification of a videotaped interview transcript of Peter Johnson. Johnson unequivocally stated that Simmons was in cuffs. There is now, and never really was, any dispute that Simmons was in the line-up with handcuffs. It was only after the ridiculousness of the photograph was pointed out that officers from the Avoyelles Parish Sheriff's department began to rewrite history. The problem with their revisions is that there is no evidence to back up their statements. Decuir and Johnson were both clear – the photograph now before the Court is what the witnesses were exposed to in the police identification procedure.

Aggravated Rape, La.R.S. 14- (27)42. See Court file.[5] The motion was signed by Judge Earl Edwards on July 14, 1977. This motion is not in the form of a Bill of Information, which would be the appropriate legal document. Furthermore, the Grand Jury indictment for aggravated rape was not amended on its face to the lesser Attempted Aggravated Rape by the prosecutor, who is required to sign and date that change in the crime charged.

While Simmons was arraigned on the Aggravated Rape Charges on June 16, 1977, and pled guilty, there is no evidence that he was arraigned on the Attempted Aggravated Rape Charges. See Court File. In fact, on Trial Transcript Page 57, when Madame Clerk read to the jury the indictment, not a bill of information, she used the date of filing by the Grand Jury on June 10, 1977, and stated to the jury that the Grand Jury charged Vincent at that time with Attempted Aggravated Rape. Vincent Simmons never was arraigned or entered a plea to the charges he was convicted of. See Court file.

On July 11, 1977, the Court conducted a preliminary hearing.[6] SHARON and KAREN testified, but not Keith Laborde. See Exhibit Z – Copy of the preliminary hearing transcript. SHARON testified on direct examine that she lived in Alexandria, LA and her identical twin is her sister, KAREN PT: 4-5.[7] SHARON testified on May 9, 1977, she was in Avoyelles Parish, Marksville. PT: 5. They were with their cousin Keith Laborde. PT: 5. The twins were staying with their grandparents in Brouillette; Keith lived in 5th Ward. PT: 5-6. Both KAREN and SHARON were 14 years old at the time. PT: 6. Keith asked KAREN and SHARON to come to his house and clean on May 9, 1977. PT: 7.[8]

They finished at 9PM and Laborde stopped at the 7-11 in his 1968 Malibu to get gas on Tunica Drive and Main Street. PT: 7-8. At the gas station, SHARON noticed a dark black man[9] who was short and husky. PT: 9. SHARON is asked three consecutive times to identify the man who she saw on May 9, 1977 at the gas station, before the Court stepped in and she finally did.

---

[5] While this may have been the State's position to the Court, the evidence in the State's discovery file suggested otherwise. The State was fully aware that, at least with SHARON, there was no rape at all. The indictment had to be somehow amended without drawing attention to the falsity of SHARON's false grand jury testimony.

[6] The entire preliminary hearing was filled with leading questions. On numerous occasions, SHARON did not remember or know answers to questions until the prosecutor asked a highly leading question providing the answer.

[7] The preliminary hearing transcript will be delineated by "PT" followed by a page number.

[8] Interestingly enough, during SHARON's statemenets to police, she *never* mentioned May 9, 1977 as a date that the events in question occurred. See Exhibit C.

[9] SHARON's description of the perpetrator's skin tone was at odds with KAREN's description.

PT: 9.[10] After a brief exchange, Laborde decided to give the man a ride to his house. PT: 10-12. For the first time ever, SHARON stated that the man said his name was "Simmons". PT: 12.

The man's attitude changed when Laborde turned down Little California Road. PT: 13. SHARON testified that the first time Laborde stopped was in front of an old barn on Little California Road. PT: 14. Keith then kept driving and stopped at a lake on Little California Road. PT: 16. The man put Laborde in the trunk of the car. PT: 16. He then put KAREN in the trunk. PT: 17. The perpetrator put SHARON in the back seat and preceded to vaginally rape her until he climaxed.[11] PT: 18-19. The perpetrator then put SHARON in the trunk but SHARON put her knees up so that he could not close it. He slammed the trunk on her knees several times until the trunk closed. PT: 20. All three were in the trunk as the perpetrator drove down the road. As he drove, dust filled the trunk. PT: 20-1.

Then the perpetrator removed KAREN from the trunk. PT: 22. SHARON heard KAREN moaning and crying when she was in the trunk. Specifically, SHARON heard KAREN tell the perpetrator that "it would hurt; and she didn't know which way she like it best, in front or through the back, because it hurt." PT: 22. The perpetrator took them to St. Joseph's graveyard in Marksville. PT: 23. At the cemetery, the perpetrator let everyone out of the car so he could be taken home. PT: 25. They drove the perpetrator in the vicinity of the bus station. PT: 26. Then, Keith, SHARON and KAREN went back to their grandparents' house in Brouillette. PT: 26.

On cross examination, SHARON admitted that she, Laborde and KAREN waited 2 weeks to report this. PT: 33. When they arrived at their grandparents' house, the grandparents were driving up the driveway. Id.

KAREN testified next. PT: 37.[12] KAREN's testimony was *almost exactly* the same as SHARON. KAREN, while she was in the trunk, specifically testified that she heard the perpetrator rape SHARON – stating that she heard SHARON crying and moaning. PT: 48. Significantly, KAREN described being raped almost identically to the way SHARON testified about being raped (One leg over the front seat and one leg on the back windshield). PT: 19, 49.

---

[10] Frankly, she was completely prompted to identify Vincent by both the Court and the prosecutor on page 10.

[11] SHARON was clear in her testimony that the perpetrator penetrated her vagina.

[12] Interestingly, KAREN slightly pauses during her identification of Simmons as the perpetrator – but, she picked him out much faster than SHARON

KAREN detailed a painful rape both vaginally, orally and anally.[13] PT: 49-50, 54-57.

In a blockbuster moment towards the end of KAREN's preliminary hearing testimony, she testified that "we (KAREN, SHARON and Laborde) couldn't go to the cops, because we didn't know his name." PT: 57. Interestingly, both SHARON and KAREN previously testified in the hearing that *they did in fact know the "black man" as Simmons because he gave the name to Laborde*.

ACT II: THE TRIAL

The prosecution opened in this case that there was a violent rape both anally, orally and vaginally of KAREN and a vaginal rape of SHARON

State's Case

Testimony of Keith Laborde TT: 28-88.[14]

At the time, Laborde lived in the 5th Ward of Avoyelles Parish. He was 18 years old and married to Gayle Lamartiniere Laborde. At the time of his testimony he had a one month old child. His first cousins are Sharon and Karen Sanders.

On May 9, 1977, he asked his cousins to come clean his house to get it ready for his wife to come home the next day, as she was coming home from the hospital – she was pregnant at the time. He picked his cousins up from his grandparents house who lived in Brouillette. He drove a four-door 1969 Chevy Malibu, blue with a white top.

The girls finished cleaning the house at around 9PM. Laborde was going to take the girls back to his grandparents' house in Brouillette; he was going to spend the night there. On the way, he stopped to get gas at a 7-11. When he stopped, he sent KAREN to have the gas pump turned on. He had an exchange with a black man.

In court and for the first time ever, Keith Laborde identified Vincent Simmons as the man he had this exchange with. Laborde testified that, even after a contentious exchange, during which the black man said his name was "Simmons", Laborde decided to give the man a ride home. Laborde testified that he had never met Simmons before and did not know him.

KAREN and SHARON got into the front passenger seats, while the man got into the back seat. They drove down Hessmer Highway and the man told Keith to turn down Little California Road. The man told Keith to kill the ignition – Keith didn't turn it off, but opened the door to get

[13] Incredibly, KAREN actually testified that SHARON and Laborde could witness the rape from *inside the trunk!* PT: 54.

[14] The trial transcripts with be delineated by "TT:" followed by page numbers.

some light and looked in the back and asked the man what he wanted, to leave them alone and that they didn't do anything. At that point, the man reached behind with his left hand and started to pull out a gun. Laborde testified that he saw a handle and closed the door; he became scared.

The man told Keith to drive further down the road. At some, Laborde stopped the car and the man put him in the trunk. Laborde testified that the man had a gun and was waiving it at that point. At this point, Laborde testified that he heard the man say to the girls that if they reached for the gun in the glove compartment, he would kill them. Laborde heard the man tell SHARON to take her clothes off.

The man then put KAREN in the trunk and raped SHARON. Laborde testified that he heard SHARON say that "it hurts". After this, the man put SHARON in the trunk.

After the man drove the car for a while, he took KAREN out of the trunk and raped her. This was the first time that he raped her, by Laborde's testimony. Laborde testified that KAREN begged him not to kill them and gave the man some money. After several exchanges, wherein the man opened the trunk and KAREN saying that it hurts and leave them alone, the man drove to St. Joseph's cemetery.

At this point, the man took Laborde and SHARON out of the trunk. The man then had Laborde drive around to Canal Station to steal a tire. At some point, the man got out of the car to use a payphone, presumably. The man never came back to the car and went home.

Laborde testified that he and KAREN told each they love each other.[15] They went straight to their grandparents' house. Their grandparents were pulling out of the driveway as they were pulling in at around midnight.

On cross, defense counsel asked the same questions that Laborde was asked on direct.

Testimony of SHARON TT: 88-123.

On direct examination, SHARON testified that she was 14 years old and that her mother and Keith Laborde's mother are sisters. SHARON testified that on the way from Keith's, after cleaning his house, they stopped at the 7-11 on Tunica Drive and Main Street in Marksville for gas. KAREN went into the store to pay for the gas and Keith had an exchange with a black man named "Simmons."[16] She did not know the defendant before and had never seen him.

Laborde agreed to take the man home. SHARON and KAREN sat in front seat with

[15] Perhaps one of the greatest *Freudian slips* in this case other than KAREN's admission that she, SHARON and Laborde did not know the perpetrator's name before the lineup.
[16] SHARON noted that Laborde was calling the man that name.

Keith. They turned on Little California Road. At some point the perpetrator's tone became rough and violent. The perpetrator told Keith to give him the keys to the car, but told Laborde to drive further down the road.

Laborde then stopped the car and gave the perpetrator the keys. The perpetrator told them that if they reached for a gun in the glove compartment, that he too had one and he could shoot them. SHARON testified that she was afraid and thought he had a gun.

The perpetrator put Laborde in the trunk. He told KAREN and SHARON to get undressed. KAREN attempted to run, but he put her in the trunk also. The perpetrator told SHARON to finish undressing. The perpetrator told her to lay down in the back seat. SHARON testified that "[h]e had one leg on the back windshield and the other on the back of the front seat. He raped [her] to the front [vaginally]." The prosecutor asked "was he having trouble raping you?" Answer, "yes ma'am, because it wouldn't go in, all the way in. He kept cursing because he was mad, it wouldn't go in all the way." The prosecutor then asked, "did his penis penetrate your vagina at all?" SHARON responded, "yes, ma'am." SHARON testified that the perpetrator climaxed.

After the perpetrator finished raping SHARON , he put her in the trunk with KAREN and Laborde. It was hard for the perpetrator to close the trunk because SHARON kept her knees up. He sat on the trunk and banged on it until it was closed. The perpetrator began to drive the car with all three in the trunk. SHARON testified that it was hard to breath because of all of the dust coming into the trunk.

At the next stop, the perpetrator took KAREN out of the trunk. SHARON heard KAREN moaning and saying that "she didn't know which way she liked it best, through the front or through the back." At some point, SHARON noticed they had a flat tire. They stopped at a cemetery and the perpetrator let SHARON and Laborde out.

They drove the perpetrator around, looking for a tire to steal. The perpetrator got out of the car and said that he had to go home to make some phone calls. They drove back to their grandparents' home when they saw their grandparents looking coming to look for them.

On cross, many of the same questions were asked. But, SHARON did state that she and KAREN left Alexandria because they were having trouble in school. SHARON was suspended from school. After the night that she and her sister were allegedly rape, she went to school. KAREN told some one almost two weeks after the incident.

Testimony of KAREN TT: 123-160.

KAREN testifies to the same preliminary information as SHARON and Laborde. She stated that she heard Laborde call the name "Simmons" while at the 7-11 store. At the first and second sites, the car was stopped and the keys were given to perpetrator. He told the girls to undress as he put Keith in the trunk. Then he put KAREN in the trunk.

While in the trunk, KAREN testified that she heard SHARON crying and begging him to leave them alone. She heard SHARON say that SHARON couldn't breath and that it hurt. Then SHARON was put in the trunk. After the perpetrator stopped the car, he took KAREN out of the trunk.

The perpetrator told her to get in the back seat, made her undress, put one leg on the front seat head-rest area and other one on the back-seat window area. The perpetrator's penis entered her vagina and he climaxed inside of her.

During the third stop, KAREN was in the front seat with the perpetrator. He made her get undressed again and get on her knees on the passenger side holding onto the door. He stuck his penis in her rectum. KAREN testified that it was painful, so painful that she screamed: "I told him it hurt, that if he was going to do it, to do it in front, I mean in the back, because it hurt too much in the front." TT: 141. KAREN stated that he continued to rape her anally until he climaxed. TT: 142. KAREN testified that the perpetrator then raped her orally.

Then, the perpetrator drove down the road a little further. He asked her to write their names down. Down the road, the perpetrator got out of the car to make a phone call. Laborde, SHARON and KAREN left and went to their grandparents' house. KAREN told her cousin two weeks later. KAREN testified that she had been suspended from school as well.

Defense Case

Simmons presented three alibi witnesses who all stated that he was at they were all at John "B-Bean" Mose's bar on May 9, 1977. Simmons also testified that he was at the bar.[17]

Rebuttal

The State called officer Julius Guillot, who testified that he was called to John Mose's bar on May 8, 1977, not May 9th. Notably, the prosecutor raised the date of May 8th first, not the officer. There was no police report generated to substantiate or corroborate the officer's version

[17] Simmons filed a motion for post-conviction relief in 2014, wherein he presented an affidavit from Pam Jones. She specifically testified that she remembered the date of Simmon's being at Mose's bar because it was the day after Mother's Day.

of events.[18]

The State also produced two jailhouse informants who stated that Simmons was wearing maroon pants and a black shirt.

At the conclusion of trial, the jury of eleven white people and one black woman convicted Simmons of all counts, and he was thereafter sentenced to 100 years in prison, which he continues to serve.

ACT III: JUSTICE IS BLIND

Vincent Simmons was charged with a crime that did not happen. All of his court proceedings have been a mockery of justice, including the farce that the criminal justice system within Avoyelles Parish considered a "trial". Vincent Simmons was subjected to a swift and unjust legal lynching. The evidence discovered since trial, which is summarized below, shows both that the alleged rape was a fabrication from day one and that the jury and the courts, due to admitted bias and a legacy of racism, have never given Simmons a fair hearing.

A. There Was Never A Rape.

The medical evidence in this case, which was extremely critical with respect to the claims of the accusers but was not disclosed to defense counsel at all, did not support that either KAREN or SHARON suffered a rape. See Exhibit A – Dr. Mark Taff's expert report. Dr. Taff concluded:

> In summary, the two complainants' allegations of sex abuse can neither be confirmed nor negated by the medical physical examinations. Physical/anatomical evidence is lacking and does not support a definitive medical diagnosis of recent penetrating sexual abuse associated with physical bodily injuries. In fact, SS' hymen was reportedly intact when she was examined 2 weeks after alleged penile penetration. If penetration was forceful and repetitive, one might expect to see some anatomical evidence of injury to SS' hymen. There are no laboratory test results (drugs, microbiological, fingerprints, DNA, saliva, semen, hairs, fibers, etc.) scientifically linking the 3 actors together as a result of intimate sexual contact.

Vincent Simmons, even after allegedly violently raping these two adolescent girls, left *no*

[18] Eddie Knoll, 20 years after Vincent Simmons' trial, could not help himself when he attempted to bolster the uncorroborated testimony of officer Julius Guillot, who testified that he showed up at Mose's bar on May 8th not May 9th, in the documentary Shadows of Doubt by presenting what appears to be a fake police report. See Exhibit EE – Expert report of Donald Frangipani. As the Court knows, Guillot specifically testified that he did not write a report, yet Knoll produced one 22 years later in the documentary. Frangipani's report shows that, minimally, two different typewriters were used to create the reports that were generated as a part of Vincent's Discovery file and the police report that Knoll showed on Shadows of Doubt.

Eddie Knoll knew that Guillot had no way of knowing what day that he went to Mose's bar, so Knoll led Guillot and told him in his direct examination what date that he wanted Guillot to say that the fight with Vincent occurred at the bar. Knoll knew that the jury would believe the testimony of a police officer over 3 black men from the community that provided corroborated testimony that Vincent could not have raped those girls on May 9th.

evidence that he was ever in Keith Laborde's car or had any contact with SHARON or KAREN[19] See Exhibit A. The laws of contradiction prove a negative in this case:[20] there was no crime other than Keith Laborde's consensual statutory rape and incestual relationship with KAREN. The jury never heard from a medical expert such as Dr. Taff nor did Simmons' trial attorney consult with one.

The Court must note that all three witnesses, Keith Laborde, KAREN and SHARON, testified that Simmons violently raped SHARON vaginally and KAREN vaginally and anally over the course of 3 hours. *Ipso facto*, the State conceded to the falsity of KAREN and SHARON's grand jury and preliminary hearing testimony when the State amended the indictment from an aggravated rape to attempted aggravated rape.[21] The State did this because it had the explosive and exculpatory medical reports of Dr. F.P. Bordelon, which definitively showed that neither girl suffered an injury and materially contradicted *all of Sharon's testimony that she was raped – because her hymen was intact.*[22] See Exhibit B – F.P. Bordelon's June 10, 1977 report on KAREN and SHARON. Eddie Knoll, during his time on the documentary Shadows of Doubt, confidently stated that the State only had to prove that the tip of the penis touched the vagina, even though both girls testified to prolonged and violent penetration.[23] By the law of contradiction, we now know that both girls and Keith testified falsely. While KAREN may have had consensual sex with her cousin Keith, SHARON was not raped and *did not have sex at all.*

---

[19] To add one more significant investigative blunder or dismissal, the investigators in this case failed to conduct any search in Keith's car even after it became evident that no evidence of a rape existed on Little California Road. The police destroyed any evidence that may have been in that vehicle when they did not secure it. This Court must remember that Karen Sanders testified that she left her underwear at the scene, yet, even after police returned to the scene, no underwear was found.

[20] "[A] principle in logic: a thing cannot at the same time both be and not be of a specified kind (as a table and not a table) or in a specified manner (as red or not red)." https://www.merriam-webster.com/dictionary/law%20of%20contradiction
An example of this is: "[A]ny claim can be expressed as a negative, thanks to the rule of double negation. This rule states that any proposition P is logically equivalent to not-not-P. So pick anything you think you can prove. Think you can prove your own existence? At least to your own satisfaction? Then, using the exact same reasoning, plus the little step of double negation, you can prove that you aren't nonexistent." Steve D. Hales, Thinking Tools:You *Can* Prove a Negative.

[21] While the State would have the Court believe that it amended the Indictment on the basis of the Supreme Court Case Coker v Georgia, 433 U.S. 584 (1977) which caused the death penalty to be unlawful in rape cases, the amended indictment just was the State's way of avoiding a calamity if the defense got its hands on the coroner's report.

[22] In fact, in SHARON's first statement to police, she detailed bleeding in the car due to penetration. See Exhibit C – SHARON's May 22, 1977 transcript of her statement to police (page 16 of the exhibit).

[23] This also explains why the State withheld the explosive and exculpatory medical report issued by Dr. F.P. Bordelon.

The medical evidence in this case dovetails with the blockbuster affidavit of Dana Brouillette, the cousin of Keith Laborde, KAREN and SHARON Dana details both the events right after Keith's altercation with a black man *and* also Keith's statement against penal interest where he detailed lying about Vincent Simmons and admitting that he had a consensual sexual relationship with KAREN and threw SHARON in the trunk after he tried to rape her (See Exhibit D – affidavit of Dana Brouillette):[24]

1. I am a witness to the events of the above-captioned matter.
2. I am the first cousin of Keith Laborde, Karen Sanders, and Sharon Chism (Sanders).
3. One night, Keith, Sharon and Karen came to my mother's house. My mother's name is Gloria Brouillette. My sisters, Tammy Brouillette and Johnna Brouillette, were also in the house at the time.
4. This incident was not on May 9, 1977. The reason I know that is because May 9th is my Mom's birthday.
5. Keith had scratches on his neck. We asked him what happened. He told us that he drove a black man home. During the ride, he got into a fight with the black man and was thrown in the trunk of his car. I found this interesting because Keith was a known racist and had a gun in his possession that night. Keith never mentioned the name of the black man.
6. At that point Sharon and Karen started to cry. Before Keith told his story, the girls did not act like there was anything wrong. Neither girl told us that she was sexually assaulted or raped that night.
7. My mother told Keith to report it to the police. Keith refused.
8. After Keith, Sharon and Karen left my mother's house, they went to Susan Laborde's house.
9. Sharon and Karen Sanders never dressed alike at that point.
10. Long after the trial, Keith admitted to me that Vincent Simmons did not rape Sharon and Karen and did not put him in the trunk of his car. He told me that he had consensual sex with one of the girls and locked the other in the trunk while he was on Little California Road.
11. I am afraid of Keith Laborde. My mother was afraid of Keith as well. He tried to rape me and my mother.
12. On October 11, 2020, I spoke to Karen Sanders via Facebook messenger. Karen admitted to me that Keith raped her.
13. I make this statement of my own freewill and certify subject to the penalty of perjury that this statement is true and correct.

Ms. Brouillette's affidavit eviscerates a crime here, other than Keith's commission of statutory rape, Keith and K.S's commission of incest, Keith's attempted rape, statutory rape and incest of SHARON. LA Rev. Stat. § 14:78; La. Rev. Stat. § 14:42 et sequential. Make no mistake about it: KAREN and Keith Laborde had a real reason to lie.

B. Laborde's and the Sanders Sisters' Inconsistent Statements Accentuate The Falsity Of The Accusation.

Additional statements, never disclosed at trial, show how the lie took shape. On May 22, 1977, Mr. John Laborde, the assessor of Avoyelles Parish, called the Avoyelles Parish Sheriff's Department to report the alleged rapes of his two nieces, Karen Sanders and Sharon Sanders of

[24] Potch Didier must have been clairvoyant because he flat-out asked KAREN whether she had sex with her cousin Keith at the end of her interview with the police on May 22, 1977. See Exhibit E – KAREN May 22, 1977 audio taped transcript with the Sheriff's Department.

Alexandria, La. See Exhibit E. On May 23, 1977, Captain Floyd Jeneau requested and received an arrest warrant for no particular person for the rape of Sharon and Karen Sanders, which was signed by Judge Earl Edwards. Simmons was arrested at approximately 9:20AM on the 23rd. See Exhibit AA.

Laborde's statement (herein Exhibit I) taken on May 23, 1977 makes no mention of a "Simmons", which is not surprising as KAREN testified at the preliminary hearing that the complainants did not go to the police because they did not know the perpetrator's name. Laborde referred to the perpetrator as the black male. This man went and told the lady in the 7-11 to give them $2 of gas because they had not pumped it yet.

The "subject" asked them if they smoked pot and they said sometimes. He asked if they had any and KAREN said yes. KAREN had two small roaches. Laborde took the tobacco out of a cigarette paper and put the pot in it. It wasn't even enough to light. They didn't smoke.

Laborde told the police that KAREN told Laborde's sister on May 22, 1977. Laborde didn't report that the subject had cause the flat tire, but did report that the tire on the car was flat.

KAREN (Embodied in Exhibit E and Exhibit BB – the May 23, 1977 typed report)

In an interview with several members of the Avoyelles Parish Sheriff's Department, KAREN's statement differs from her trial and preliminary hearing testimony in several regards. First, she never mentioned the name "Simmons" to police.

KAREN stated that the "black man" went into the store with her to tell the clerk they had not gotten gas yet, and then pumped $2 more of gas. The perpetrator then asked if he could sit in the car or something. KAREN also stated they knew he had a gun and a knife at the 7-11 before driving off with him.

KAREN stated that she did not know what the man's name was. He wore a black hat, a shirt with red and green and a picture of some sort. She said the man was short, and had a tattoo, but could not describe which arm.

The black man asked if they had pot, and KAREN produced two roaches from her brassiere, but stated that they did not smoke them, she didn't know what happened to them.

KAREN stated that everything would have been OK, but that her family drew her into reporting the incident.

She stated that she was raped vaginally, rectally and then orally twice.

SHARON (Embodied in Exhibit C and Exhibit CC – the May 23, 1977 typed report)

SHARON stated that the black man, who she also referred to as "nigger", went into the 7-11 and told the cashier that they didn't get the $2 of gas, so they put $2 more in the tank. She did not mention anyone going into the store with the man.

SHARON never mentioned in her statements that the man gave his name as "Simmons". She stated that he told her he had a gun.

SHARON stated that the "affair" with the man lasted for 30 minutes. Later in her statement, she stated that he got on top of her and stayed there for about 30 minutes. She stated that she bled, was sore for three days and could hardly walk. SHARON testified that when she got home, her underwear had blood on it, and they were washed the next day.

SHARON described the man as short, husky, with a dark black color. He had a diamond ring and a cross on his neck. His voice was between soft and loud and his hair was close cut. He wore maroon pants and a different colored silk shirt. He had on a black hat. In further attempting to describe the man, she stated that "all blacks look alike…"

In her taped statement, she stated that they spoke to the man for a long time at the 7-11. SHARON did not mention marijuana.

SHARON stated in the taped statement that the man was about 19-20 years old. He did not threaten her in any kind of way. SHARON stated that she didn't see a weapon but KAREN did.

C. Vincent Simmons Was Not Even At The Scene.

Even more chilling is that Vincent Simmons had an alibi on May 9, 1977[25]. Well, from Dana's affidavit, we now know that KAREN, SHARON and Keith Laborde could not even provide a correct date for the "incident". This is corroborated when one looks at the police reports: neither Keith nor SHARON provide a date. See Exhibits C & I. KAREN is the only one of the teenagers that provided a date – a date that was prompted and provided by police: (See Exhibit E)

Sheriff: Okay. Now, we understand that a couple of weeks ago that ya'll went to a certain place in Marksville and ya'll met up with a dude. I want you to try to remember what date was that on?
KAREN: I don't know, it was two weeks ago. Ah, I don't know which date it was.
Sheriff: It doesn't matter. What two weeks…
KAREN: It was Monday, I know that. Two weeks ago.

[25] This alibi was refuted by a police officer that stated that the altercation at B.Bean Mose's bar happened on May 8, 1977, not May 9th. This officer provided no police report to substantiate his claims. He showed up as a rebuttal witness to Vincent's multiple alibi witnesses. Moveover, Pam Jones came forward in 2014 and provided more evidence that May 9th was the day that Vincent was at the bar, *because she remembered that fight Vincent had was the day after Mother's Day*.

Sheriff: It was on a Monday two weeks ago. Today is the 22nd if it was two weeks ago. That would be on Monday, May the 9th? That could be right? But it was on a Monday night?

KAREN: Yes.

Sheriff: And it wasn't the past Monday, right? It wasn't the 16th which was last Monday, was it? It was the Monday before that. That would be May the 9th…

This is exactly the type of leading and suggestive interview that was done with both girls, KAREN and SHARON.[26] Roberts, K. & Lamb, M. Legal & Criminological Psychology, 1999 Feb. Vol. 4 (Part 1) 23-31. As it turns out, even the date provided by KAREN was wrong – the night that KAREN, SHARON and Keith Laborde were together with this alleged "black man" was not on the 9th. But we now know whatever happened between the three, did not occur on the 9th.[27] As God sheds light on the truth, it is apparent that this "crime" did not happen. This entire fabrication was the result of tunnel vision by the police, an evisceration of Vincent Simmons' right to due process and lies by these three teens. Final Report of the New York State Bar Association's Task Force on Wrongful Convictions, Pg. 43-44 (April 4, 2009) (Early focus or "tunnel vision" occurs when the police make a determination before evidence has been reviewed and witnesses have been interviewed. In the case at bar, Vincent Simmons was picked up off the street with no probable cause. He was placed in a line-up with hand cuffs, the only member of that line up with a big ring on and picked out by three witnesses that viewed the lineup at the same time. Simmons had no shot at remotely anything fair in this case. It is an abomination of justice).

But the cracks in the concrete don't stop there. KAREN was interviewed by licensed private investigator Brian Andrews of Lasalle Investigations. KAREN admitted that if SHARON has to testify again or KAREN and SHARON's mother has to testify, then KAREN will request that the Court release Simmons immediately. See Exhibit F – Andrews Affidavit. KAREN also *admitted* that she may have made a mistake in her identification of Simmons. Id. KAREN's statement is nothing short of profound, newly discovered and clearly a statement against penal interest, as she perjured herself at trial.

D. The Identification of Vincent Simmons Was Completely Tainted and Wholly Unreliable

Both KAREN's and Dana Brouillette's revelations streamline right with the girls and Laborde's inability to provide any description of the "black", "black man" or "nigger", as

[26] Apparently, both girls were in the room when they gave their statements – KAREN actually answered a question for SHARON See Exhibit C, page 4.

[27] Interestingly enough, now, more than ever, KAREN is so sure of this date in documentaries and her book. Her memory is better now than ever.

referred to by Sharon Sanders, who allegedly raped the girls and kidnapped Laborde for 3 hours. Any testimony or statement that the man accused of rape gave them (KAREN, SHARON or Keith Laborde) the name "Simmons" is a lie and is belied by KAREN's testimony during the preliminary hearing on page 57 – *KAREN specifically stated that they did not know what the man's name was prior to their exposure to the line-up*. Instead, the girls and Keith Laborde were prompted to pick Vincent Simmons out of the line-up by members of the Avoyelles Parish Sheriff's Department. In fact, on May 23, 1977, both girls detail knowing who the suspect was *before they even picked him out of the line-up!*

> I Karen, looked at eight males, seven blacks, one white.) Each subject had a number. Wearing a number in the position that they line up after looking at the subject, I wrote down on a pad. The number I wrote down was number 4 as being the subject who raped me.

See Exhibit G – KAREN's May 23, 1977 statement regarding the line-up; see also SHARON statement which is substantively the same entitled Exhibit H.[28]

On July 30, 2020, Michael Leippe, an expert in eyewitness identification, provided an expert report that detailed his evaluation of Mr. Simmons's case. See Exhibit J – Dr. Leippe's July 30, 2020 expert report. Dr. Leippe found, based upon the following listed factors, that the eyewitness identification of Mr. Simmons was highly susceptible to a confident misidentification by Keith Laborde, SHARON and KAREN and, thus, there is considerable doubt as to its accuracy. Dr. Leippe concluded that a conviction *should not have hinged on the complainants' identification of Simmons alone*. Dr. Leippe listed the following factors (See Exhibit G) that specifically applied to this case:[29]

1. **It is highly likely that these identifications were stranger identifications; that is, the witnesses had never before seen the perpetrator.[30]** Had the perpetrator been someone they knew, they would very likely have reported this in their initial interviews with the police. None did. When they provide a description to the police, eyewitnesses normally indicate if they know the perpetrator or have previously seen the perpetrator. Accordingly, it is assumed here that these were, in fact, identifications of a once-seen, previously unfamiliar person. As noted in the preceding overview, recognition of unfamiliar, once-seen faces is

[28] Keith Laborde's alleged identification was no better. Laborde admitted in the only statement that he made that he knew that the subject was in the line-up and *never mentioned Vincent's name in the statement- he only referred to the alleged suspect as "the black"*. See Exhibit I – Keith Laborde's May 23, 1977 statement. But hey, Keith had a deep motive to lie: shame about being an adulterer (his wife was pregnant and in the hospital at the time), having an incestual relationship with his cousin, statutory rape and attempted rape of Sharon. Keith is a sexual predator and a criminal that members of Avoyelles Parish know well. Additionally, his father, John Laborde was the Parish Assessor at the time. The Labordes' had immense influence in the Parish, especially during this time period.

[29] The list to follow is not exhaustive but covers the most powerful factors in the case at bar.

[30] In fact, based upon KAREN's preliminary hearing testimony, we know for a fact that KAREN, SHARON and Laborde *did not know the alleged perpetrators name*. See Exhibit Z – Preliminary transcripts at page 57. This was entirely a stranger identification.

difficult and far more likely to be inaccurate than is the identification of familiar faces.

Witnesses K. and S. Sanders later imply that they knew the name of their assailant, but were too frightened to give that name. But S. Sanders later said that witness Laborde named the defendant as the assailant when he gave his statement the day after the Sanders gave theirs. No evidence of this can be found in the Laborde statement that I reviewed. S. Sanders also later asserted that Laborde gave a "full description" of the perpetrator to the police when he gave his statement. There is no such description in Laborde's statement.
Indeed, in the statement provided to me, Laborde not only provides no description, he also refers to the attacker only as "the black" or the "black suspect." Importantly, this statement was made AFTER his identification of Simmons from the lineup, and, about that identification he asserts only that "we all picked out the Black." So any fear of retaliation by the perpetrator would appear to be absent at this point. When you add to this the inconsistencies between the meager descriptions of the assailant by the other victim- witnesses in their statements and the actual appearance of Simmons in 1977 (see below), it seems more likely that none of the witnesses knew who the perpetrator was than that they just too frightened to say they knew.

2. The biggest problems with the eyewitness evidence in this case involve the lineup and its administrations. **First and foremost is the fact that the lineup itself is extremely biased and suggestive.** No effort was made to include fillers who matched whatever description of the suspect was provided. One of the fillers is White; others vary dramatically in height and physique. But the most egregiously suggestive and biasing quality of the lineup is that Simmons – and only Simmons – is handcuffed. The handcuffs clearly communicate that he is the suspect. For at least one witness, another suggestive feature is right beside the handcuffs. Simmons – and only Simmons – is shown wearing a shiny ring. K. Sanders reported that the assailant was wearing a diamond ring. The problem here is that none of the fillers is shown with a ring.

As noted previously, a good deal of research has found that anything that makes one member of a lineup stand out among the others increases the likelihood that that photo will be picked. In this case, not only do the aforementioned features make Simmons stand out uniquely, they also blatantly suggest that he is the culprit.

3. **Prior police suggestion compounded the "fatal flaw" of the handcuffs.** Victim- witness Karen reported in her book that, as the police drove her to the police station to view the lineup, they told her that "[W]e have picked up the man who we believe raped you and we need for you to identify him." Eyewitnesses, of course, naturally assume that there is a suspect when they are invited to view a lineup. This statement, however, goes well beyond that and is suggestive and pressuring. First, the police claim not only that there is a suspect, but also that they *explicitly believe* the suspect is in fact the perpetrator. This implies that the police have some other *evidence* against the suspect. When eyewitness believe there are other reasons – evidence – pointing to the suspect's guilt, their confidence in their identification increases, which makes it more likely they will choose the lineup member who best fits their memory *or* for any reason looks like a suspect. Second, the option of rejecting the lineup is taken away by a police statement like this. Lineup instructions that do not provide the option of "none of the above" and do not explicitly state that the guilty person "may or may not" be in the lineup are considered to be biased instructions. As indicated previously, extensive research has demonstrated that the rate of making a false identification reliably increases when biased instructions are employed.

4. **Numerous opportunities for suggestion were present in the setting in which the lineup was administered.** To begin with, the lineup administration was not "double- blind." That is, the police officers who administered the lineup knew which lineup member was the suspect and were in the room with the witnesses as they attempted their identifications. As discussed previously, the scientific evidence is clear that, if test administrators know which lineup member is the suspect, they can cue the eyewitness to the suspect. It was also the case that all three victim-witnesses were in the room as each was asked to make a lineup choice. Although they each wrote down their response rather than orally report it, it is possible (if not probable) that they could inadvertently or deliberately communicate their choice or inclination nonverbally, through body posture, nodding, facial expressions, and so on. Finally, all of the filler lineup members apparently knew which lineup member was the suspect, as news about the case and police suspicion was widespread in the community. This circumstance may have affected the behavior and facial expressions of at least a subset of the fillers (e.g., in terms of having a more relaxed and perhaps smug demeanor).

   The factors that reduce the likelihood of the accuracy of the eyewitness identifications of Simmons go beyond the critical issues involving the lineup and its administrations.

Continuing with the list, the following additional factors can be noted (emphasis added)

5. **Witnessing conditions were poor.** All of the eyewitnesses spent considerable time in the presence of their perpetrator, but there appears to have been little viewing that was direct and sustained. Moreover, the assaults occurred during a time interval (after 8:30 PM in May) when it was likely pretty dark. And, perhaps most important, exposure to the perpetrator occurred under extremely scary and stressful circumstances. The relevant scientific observations about these factors are:

   - **The two-week interval between the crime and the identification may negate the effects of the potential for long exposure.** As noted previously, a meta-analytic review of more than four dozen studies of eyewitness accuracy led to the estimate that, one week after 1.5 minutes of face-to-face conversation with a stranger, the rate of accurate lineup identifications would be about 50% (Deffenbacher et al., 2008).

   - **A high level of fear or stress may impair recognition memory even when there is long exposure.** For example, Morgan et al. (2004) conducted several studies in which military personnel completed a survival training course that ended with a low-stress and a high-stress interrogation lasting about 40 minutes. The high-stress interrogation included both verbal and physical confrontation and intimidation by the interrogator/instructor. One day later, the soldiers were asked to attempt to identify from a lineup their interrogator and a guard who had stood by. The rate of accuracy in identifying both the interrogator and the guard was significantly lower for the high (vs. low)-stress interrogation. In fact, only 30% of the soldiers correctly identified the high- stress interrogator, and 56% picked the wrong person.

   - **Poor lighting**. Given that the events occurred well after sunset, illumination was likely limited to that provided by starlight or moonlight. A couple of research findings are noteworthy about the negative impact of poor lighting on

eyewitness accuracy. Wagenaar and Van Der Schrier (1996) found that sustained attention to a stranger about 10 feet away for 12 seconds under illumination equivalent to "night with a full moon" (0.3 lux) was associated with a correct identification (from a lineup) rate immediately following exposure of 14%, with 9% filler identifications and more than three-fourths of the observers unable to even attempt an identification. Nyman et al. (2019) found that, under somewhat better, but still night-level, lighting (0.7 lux) and more time of sustained attention (30 seconds), but greater distance (about 19 feet), the likelihood of a correct identification was about 63%.

6. **Cross-racial identification**. The complainants are White, the accused is Black. As described previously, the "own-race bias" in recognition memory for human faces has been well-documented. People are less accurate at correctly recognizing faces of individuals of a different race or ethnicity relative to a face of someone of their own race/ethnicity (Brigham, Bennett, Meissner, & Mitchell, 2007; Meissner & Brigham, 2001). One eyewitness (S. Sanders) *actually admitted to being subject to the cross-race effect when, in her initial statement to the police, she invoked the "they all look alike" explanation for her inability to provide a reasonably detailed description of the assailant*. (emphasis added)

7. **Two-weeks intervened between retention between the crime and the lineup identification tests.** This is quite a long retention interval, and the forgetting associated with the long delay may be especially pronounced when the facial memory trace is weak to begin with (e.g., because of fear, poor viewing, and the cross-racial nature of the identification). As suggested in the eyewitness psychology overview section, most forgetting or decay of a facial memory trace occurs within days of its formation.

8. **The failure by any of the victim-witnesses to report to the police in an extensive interview that they remember that the perpetrator identified himself as "Simmons" casts considerable doubt on the veracity of any later memory that this self- identification by the perpetrator actually happened.** Similar to the point about familiarity noted in observation #1 above, eyewitnesses do not normally hide their knowledge of the identity of the perpetrator. Moreover, if, as the witnesses later reported, the name "Simmons" was mentioned multiple times, it is unlikely that this would be temporarily forgotten.

9. **The inability of the witnesses to describe the perpetrator in any detail suggests that the memory trace formed of the perpetrator was weak.**

10. **The meager description of one witness actually is at odds with the appearance of Simmons in the lineup.** In particular, at least one witness described the perpetrator as "husky" and, later, in a book about the case, as having arms as big as she was. These features do not seem to describe Simmons as he appears in the lineup. And, incidentally, if that was part of the description provided, the police should have constructed a lineup in which all members of the lineup fit that description.

11. **Confidence in this case is not indicative of accuracy. The eyewitnesses' post- identification confidence in the accuracy of their identification very likely was escalated by feedback and inter-witness communication.** The three witnesses had much opportunity to talk about the case and their memories both before and after their identifications of Simmons. Discovering any consistencies in their memories would predictably lead to increases in confidence. Feedback given by the police provided further evidence for the witnesses of the accuracy their identifications. The police told them they had all identified Simmons and that Simmons was later shot by the police during interrogation when he allegedly grabbed the gun of one of the police officers.

Both pieces of information would bolster confidence that Simmons was, indeed, the assailant. The confidence-escalating impact of confirmatory feedback is described in the previous overview of eyewitness psychology.

12. **In-court identifications and expressions of confidence are wholly undiagnostic of anything, and in fact useless.** There are several reasons for this. First, an in-court identification of the defendant is subject to prior-exposure bias. Are the eyewitnesses identifying Simmons based on their original memory of the perpetrator, or from the lineup? There is no way of knowing. Although individuals may assert that they can make the distinction, the psychological evidence suggests they cannot (e.g., Nisbett & Wilson, 1977). Second, the level of suggestiveness and the psychological pressure (to be consistent with past statements and to justify the consumption of court time) is extremely high in a courtroom. Third, regarding confidence, by the time eyewitnesses have reached a courtroom, their level of confidence has escalated to the point that in-court expressions of confidence are completely unrelated to eyewitness accuracy. There is robust evidence, as described previously, that confidence escalates over time because of feedback and other factors. And, as noted, in the Simmons case, the police gave highly suggestive feedback. Noncorrespondence between confidence and accuracy becomes the rule rather than the exception when eyewitnesses become aware that the police believe they "have the right guy," become aware of additional evidence for the suspect's guilt, are subjected to suggestive influences on their memory, and must justify to themselves and others an identification that may have dire consequences for the accused. Many studies, as noted in the overview, demonstrate that eyewitness identification confidence is highly "malleable" and that confidence escalation occurs outside of awareness and independently of any changes in recognition memory (which does not improve, it declines).

13. **Jurors would have been influenced by the escalated confidence expressed by the eyewitnesses.** As noted in the overview, a high level of confidence expressed by an eyewitness on the witness stand is a major determinant of jurors' belief in the eyewitness's credibility.

E. The Pervasive Racism in Avoyelles Parish Has Tainted this Entire Case

Avoyelles Parish has an ugly history of racism that exists to this day. See Exhibit K – 2009 Decision by the United States District Court of the Western District of Louisiana, Dock. No. 1:65-cv-12721-DDD. "This case in many ways reflects the persistence of the "Rape Myth" in the South, in which black men faced near-certain punishment when accused of sexual crimes by a white women, and white men in law enforcement and the courts manipulated the legal system to "protect" white women, and the larger white community, from supposedly dangerous black men." See Exhibit L – Expert report by Professor Lisa Lindquist Dorr. The position taken by Avoyelles Parish's law enforcement community and Keith Laborde, SHARON or KAREN is wholly embedded in "rape myth". But this phenomena engulfed the trial and jury as well. Juror Diane Prater provided a sworn affidavit stating that (1) she was the only black juror that

deliberated[31] and (b) all the white jurors immediately voted guilty and told her that her vote did not count. (See Exhibit M – Diane Prater's sworn affidavit). Ms. Prater stated:

1. I am a witness to the events of the above-captioned matter.
2. I was a juror on the case, State v. Vincent Simmons.
3. I was not aware of the medical evidence that the coroner reported. Had I heard that, at the very least, I would have acquitted Vincent of the (attempted) rape of Sharon Sanders.
4. I now believe that Vincent is innocent.
5. During deliberations, I had doubt, but I was harassed by the other white men that were in the jury. I was the only black person on the jury of 12 that deliberated.
6. I was told during deliberations that my vote did not count; that the jury only needed 10 to convict. The other 11 white men all voted guilty immediately.
7. At the time of this trial, Avoyelles Parish was very segregated and black people did not speak out at the time. I felt very intimidated and helpless, so I voted guilty.
8. The twins girls were dressed exactly alike. None of the jury members could tell them apart. In fact, it is possible that one of the twins testified twice.
9. After the trial, I was approached by the twins twice. Only one of the twins would speak when they approached me. I was also approached by male. Both times they asked me if I still believed that Vincent was innocent. I told them I still believed that he was innocent.

Professor Lisa Lindquist Dorr reviewed the case file here and averred to the following (See Exhibit L):

> First, Simmons was arrested the day after the complaining witnesses gave their statements to police. There was seemingly no effort to corroborate any of their statements with other evidence. At trial, the prosecution only presented testimony from the three complaining witnesses. Their combined narrative created an unmistakable picture of the Rape Myth's "lustful brute," or "black beast." To strengthen the alleged victims' stories, the prosecution also presented a photo re-enactment of the three witnesses in the trunk of the car and an opportunity for the jury to view the car itself, allowing the jurors to fully imagine the alleged crime the victim's described. The Rape Myth also reinforced the prosecution's efforts to have the jurors discount the alibi testimony presented by the defense by portraying those witnesses as black criminals. Thus, the jury convicted Simmons solely on the word of two white female teenagers and their white male companion, based on their description of a crime that fully embodied whites' worst fears. Historians like myself have shown that the juries in the South were conditioned by the Rape Myth to accept white women's account of assault by black men without question. Recall the lawyer's statement in 1912: "a woman tells a tale and men believe it. They believe because their passions and prejudices want them to believe and arouse them to act." This jury believed the women's tale despite the alibi evidence.
>
> Second, Simmons was convicted despite a profound lack of evidence connecting him to the crime. There was no testimony from anyone who might have confirmed aspects of the witnesses' testimony, such as the clerk at the 7-11 where the witnesses and Simmons allegedly first met. There was no testimony from any law enforcement officers about how they came to see Simmons as the primary suspect before his arrest. There was no evidence, such as fingerprints, hair or fiber that could prove that it was Simmons who committed the crime. There was no medical evidence presented to confirm that the two sisters had been raped or who could testify whether or not any such evidence would remain by the time the sisters brought their allegations to authorities. Consequently, the only evidence the jury had about the crime was provided by three complaining witnesses. Nevertheless, as juror Prater, the lone African American on the jury, recalled, during deliberations, whites on the jury insisted repeatedly that Simmons was guilty. She felt "shut down" whenever she tried to ask anything about the case or evidence. As

[31] Even worse, if one of the male white jurors did not get sick, Ms. Prater would not have deliberated. Vincent would have had an all-white jury in a Parish that is over 30% black.

numerous black men experienced when facing white juries in the past, "their mind was made up."[32] Like other black men before him, Vincent Simmons was convicted on the slimmest of evidence.

Third, Vincent Simmons was convicted by a legal process that closely paralleled the prosecutions of scores of black men accused of crimes by white women. Police conducted no investigation to speak of. Simmons has insisted there were efforts by police to coerce him to confess. One complaining witness told police that her uncle was very "upset" and talked about taking the law into his own hands. The other referred to black men as "niggers" and told police that all blacks looked the same to her.[33] The trial was held 51 days after the crime, and defense counsel had very little time to prepare his case. Simmons was convicted by a jury composed of 11 whites and 1 African American, and received an extremely severe sentence. His trial, for all practical purposes, was a "legal lynching."

Finally, aspects of the alleged crime suggest the possibility, especially absent any corroborating evidence, that the three complaining witnesses made a false allegation of rape to cover their own misbehavior. The three were out together in the late evening on a Monday night. The white man was married. They indicated in one statement that they should not stay out late or the girls' grandparents would be concerned. One 14-year old sister possessed marijuana.[34] The other was not a virgin. During questioning, the sheriff asked her if she was having an affair with her white male companion.[35] All of these factors suggest that even the sheriff believed it might be possible that the three complaining witnesses were engaged in illicit or illegal activities on the night of the alleged crime. It does not stretch the imagination too far to suggest that the three made their complaint of rape to cover activities—being out late, smoking pot, having sex, for Keith, engaging in an extramarital affair with his underaged cousins-- that they feared would otherwise get them into trouble. There was certainly no investigation by police to uncover evidence that would rule out this possibility.

Fears of black men as rapists remained deeply ingrained in the American psyche long after the successes of the Civil Rights Movement. Many white Americans were conditioned to imagine criminals as African Americans, giving Nixon's promises of law and order a barely hidden racial subtext. Political attacks ads, like the 1988 GOP ad about Willie Horton, played on on-going white fears that black men represented a threat to white women. White women's tendency to cross the street when approaching black men grows from the same seed. Despite all the advances made toward racial equality, old adages about the dangers white woman face from black men continue to propel whites to imagine that black men are criminals, that white women are vulnerable, and to believe white women's claims, whether or not there is evidence to support their allegations. I believe that those attitudes contributed to Vincent Simmons conviction despite the lack of evidence against him.

F. Vincent Has Never Had a Fair Review of the Evidence that Proves His Innocence

In continuing right along with this Parish's pervasive racism and protection of the "innocent white girls" in this case, in 2004, Judge Mark Jeansonne procedurally barred Mr. Simmons from judicial review of the State's almost 20-year delay in disclosing exculpatory and valuable impeachment material. See Exhibit N – Judge Jeansonne's 2004 Ruling. While Judge

[32] Interview with Juror Prater, August 14, 2020, which is attached as an addendum to this motion.

[33] Karen statement to police, p. 10-11; Sharon statement to police, p. II, III.

[34] Sharon statement to police, p. X. Karen was also asked about whether Keith, Sharon and Karen had pot, p. 11.

[35] Karen statement to police, p. 12

Jeansonne listed the fact that Simmons received the discovery file 10 years prior to Judge Laurie White's PCR filing, he has told several members of the local community a different basis for his decision.[36] Vincent Simmons has yet to receive a full and fair review since the mid-1990's disclosure of his discovery file, which included the initial statements of Keith Laborde, SHARON and KAREN, the supplemental police reports, picture of the line-up and the medical reports by Dr. Bordelon.[37]

Allen Holmes, a civil rights activist and well-known member of the Avoyelles community, spoke to his former attorney and presiding judge of Mr. Simmons' 2004 motion, the Honorable Mark Jeansonne. Judge Jeansonne conceded to Mr. Holmes that he made his decision after speaking to an unknown member of the Mansura community (See Exhibit P – Affidavit of Allen Holmes):

1. I am a witness to the events of the above-captioned matter.
   2. I was the intervenor in the United States v. Avoyelles Parish School Board. For over 30 years, a federal monitor was in place due to the Parish's consistent attempts to segregate the school system. The federal monitor lasted until 2017.
   3. The racial oppression persists within Avoyelles Parish to this day. The school system was only integrated by way of outside, federal intervention.
   4. I spoke to the Honorable Mark Jeansonne about his 2004 decision in the Vincent Simmons case.
   5. Judge Jeansonne admitted that he made a mistake in summarily denying Simmons' motion.
   6. Judge Jeansonne admitted to me that he spoke to an unknown member of the community from Mansura, Louisiana ex parte in order to render his decision. Judge Jeansonne admitted that he did not render his decision based solely upon the record that was submitted by the parties.
   7. I make this statement of my own freewill and certify subject to the penalty of perjury that this statement is true and correct.

Judge Jeansonne's brazen disregard for Mr. Simmons' rights did not stop there. Judge Jeansonne has further stated that he procedurally barred Mr. Simmons because Simmons had the police file at trial without any support for that position, and believed that his trial attorney, the late Honorable Harold Brouillette, was ineffective. Judge Jeansonne made these admissions to undersigned and Forest Martin. (See Exhibit Q – Sworn Affidavit of Forest Martin).[38] Mr.

---

[36] Disturbingly, Jeansonne completely failed to consider that Simmons was a pro se litigant in the 90's in complete contravention of the Louisiana post-conviction statutes that particularly refer to a defendant's circumstances and ability to litigate as an exception to prescription.

[37] This Court knows by the affidavit of retired Judge Harold Brouillette and the 2004 filing of Judge Laurie White that these files were not disclosed to Vincent prior to the mid-90's, at the earliest. See Exhibit O – Harold Brouillette's 1998 letter. Moreover, Vincent never even received an identification or probable cause hearing, which, even by 1977 was required. Manson v. Braithwaite, 432 U.S. 98 (1977) (This decision came down in June of '77. Knoll was so focused on railroading Vincent that he made sure the Court would not have the opportunity to conduct a hearing assessing the Braithwaite factors); Neil v. Biggers, 409 U.S. 188 (1972); United States v. Wade, 388 U.S. 218 (1967).

[38] Judge Jeansonne has no bones about expressing his opinion. In the comments section of a newspaper article, Judge Jeansonne admitted that he spoke to members of the Avoyelles Parish Sheriff's Department and a man

Martin provided a sworn affidavit that detailed the following:

1. I am a witness to the events of the above-captioned matter.
2. On Monday, August 24, 2020, between the hours of 3:50PM and 4:30PM, I accompanied Mr. Justin C. Bonus, Esq. to the office of Mr. Mark Jeansonne, former 12th Judicial District Judge, in Avoyelles Parish, Marksville, Louisiana.
3. The following paragraphs represent that which I remember of the topics and issues discussed, as well as answer, responses and reactions, by and between both Attorney Bonus and Mr. Jeansonne and provides the sum and substance of the conversation that was had in my presence to the best of my knowledge, recollection and beliefs.
4. In response to Mr. Bonus's remarks that the late former Judge Harold Brouillette did not receive the discovery file back in the year 1977, in which Judge Brouillette acknowledged in a letter to Vincent Simmons, Mark Jeansonne's reply to Mr. Bonus was that that letter was completely false. Judge Jeansonne shook his head giving no reason nor providing any basis for his conclusion that Judge Brouillette's letter to Vincent Simmons was false.
5. Mr. Bonus explained to Judge Jeansonne how that when he looked back at Vincent Simmons' trial and the cross-examination by Vincent Simmons' attorney, Mr. Bonus asked Judge Jeansonne why Judge Brouillette did not use the material in the discovery file that Vincent Simmons received 20 years after this trial, and Judge Jeansonne said there were all types of no good lawyers back then including half-assed divorce lawyers, and the lawyer for Vincent Simmons had all the discovery he needed to represent Vincent Simmons at his trial.
6. That Mr. Bonus informed Judge Jeansonne that he'd communicated with the DA Charles Riddle, who conveyed that the late Harold Brouillette did not receive the discovery file prior to Vincent Simmons' trial. Judge Jeansonne nodded in response repeatedly yelling – "Charles Riddle will tell you anything you want to hear. I promise you, he'll tell you anything you want to hear, Anthing!
7. That when Mr. Bonus confronted Judge Jeansonne with the coroner's report that indicated that neither of the girls were injured and how, amazing, Sharon Sanders' hymen was intact, contrary to the girl's statement to the police, Judge Jeansonne replied while shaking his head that he did not believe that the evidence in the coroner's report stated that.
8. That Mr. Bonus raised issues to Judge Jeansonne about (a) overwhelming amounts of impeachment material-documents; (b) why Harold Brouillette did not call the coroner to the witness stand to get medical evidence before the jury; (c) Harold Brouillette's failure to bring to light before the jury the alleged claims by the alleged rape victims, a thirty minute bloody vaginal rape and anal rape in the backseat of a car that was lost and never found by investigators. Judge Jeansonne replied in the negative shaking his head saying he did not believe that anybody had said that or made such statements like that.
9. That, at times, after Mr. Bonus questioned Judge Jeansonne about adverse particulars of the case in Vincent's favor, all judge Jeansonne would say while repeatedly shaking his head is "It didn't happen. It didn't happen." Or deny that it happened or didn't happen without providing the evidence or basis of his answers one way or the other.
10. That, on one occasion, after Mr. Bonus discussed with Judge Jeansonne the lack of evidence of Vincent Simmons committing crimes he was charged with, Judge Jeansonne, leaned towards Mr. Bonus and stated that there was a "guy", a "black guy" that came and talked to him and the "guy" told Judge Jeansonne that him and Vincent Simmons were at a girl's house and that while the guy remained in the car, Vincent Simmons went inside the house and raped the girl and that Vincent Simmons got out through a window and came back in the car and the guy fled the scene. Judge Jeansonne said Vincent Simmons was a bad guy or trouble.
11. That Mr. Bonus and Judge Jeansonne's discussion became very intense during their talk about the line-up photograph and identification procedures used by Avoyelles Parish Sheriff.

---

who alleged that Simmons raped a girl *prior to his ruling in 2004*. See Exhibit R – Comments section of http://iippi.org/forum. Only after the Admin of the website accused Judge Jeansonne of violating the Code of Judicial Conduct, Canon 2 and 3 did Judge Jeansonne state that he received this information after his 2004 decision. Judge Jeansonne is incredible and was completely biased against Simmons.

12. That Mr. Bonus plainly asked Judge Jeansonne that "So you're saying that Barbara Walker lied in her police report when she put in there that she took a photo of the line-up?
13. Judge Jeansonne answer in his reply while nodding his head, "she did".
14. That Judge Jeansonne then immediately added to his answer saying that he assumed she lied.
15. That Judge Jeansonne said that the two officers conducting the line-up, Robert Laborde and another one, both had a feeling that Vincent Simmons was going to do what he allegedly did which caused him to be shot.
16. Judge Jeansonne indicated that the photo of Vincent in the line-up and the only one with handcuffs on, is a photo that was taken out of sequence of the actual identification process after Vincent had been allegedly ID'd by the witnesses.
17. Judge Jeansonne said some unknown people came along one day and took a picture and placed that photo in the records and said, "This is Vincent Simmons' ID photo right here. He's the one with the handcuffs on. Judge Jeansonne shook his head saying it didn't happen that way here.
18. That Mr. Bonus informed Judge Jeansonne that it definitely happened here, and Barbara Walker tells you it happened because she said it in her police report. Judge Jeansonne disagreed with Mr. Bonus, saying Barbara did not say that shaking his head in the negative.
19. That Judge Jeansonne said he believed the two law enforcement officers' explanation of how the line-up was conducted because both officers told the same exact story and said the same thing. "Simmons was trouble, I mean, he was bad trouble."
20. Mr. Bonus replied, "Yes it did happen, May 23, 1977 – photograph of the actual line-up." Judge Jeansonne had nothing to say and no immediate reply, but asked Mr. Bonus "Why do you think Vincent Simmons got shot?" Mr. Bonus answered, that he believed Vincent Simmons got shot because he would not confess to the crime and they shot him. They thought he'd die, and it would be real easy-case closed.
21. Mr. Bonus asked Judge Jeansonne whether Harold Brouillette's failures as stated above by Mr. Bonus was the type of conduct that Strickland v. Washington applied to. Judge Jeansonne replied, "yeah, I do."
22. Judge Jeansonne offered and provided no basis for his conclusion that the photograph that was submitted by Judge Laurie White was not a photograph of the line-up as the witnesses saw it. Without stating any basis of proof, Judge Jeansonne said Barbara Walker never wrote in her report that the photo that was taken was a photo of the actual line-up.
23. When Mr. Bonus confronted Judge Jeansonne about Sharon Sanders' statement about black men, including her reference to black men as "niggers" and that they all look alike, Judge Jeansonne stated that black people were called "niggers" back then.
24. Judge Jeansonne consistently, throughout the conversation, stated that the issues raised by Judge Laurie White were litigated prior to her 2004 motion and that Harold Brouillette had the documents at trial. He provided no proof as to his position.
25. When Judge Jeansonne was asked whether Vincent should have received a competency hearing because he was shot in the chest not even two months before trial, Judge Jeansonne blamed Vincent's trial attorney as that was his responsibility.
26. I make this statement of my own freewill and certify subject to the penalty of perjury that this statement is true and correct.

In 2014, the Honorable Kerry Spruill was assigned to Mr. Simmons' post-conviction motion. In that motion, Simmons provided an alibi that, for the first time, detailed how Simmons' witnesses were aware of the date that they were with Simmons at a bar. Judge Spruill was the former law partner of Eddie Knoll, the prosecuting attorney of Mr. Simmons. Judge Spruill never revealed this relationship to Simmons or his attorney. As such, Simmons did not

receive a fair review of his 2014 filing either.

Vincent Simmons is actually innocent of the rape of SHARON and KAREN The crime did not happen; at least not with a black man. Here, newly discovered evidence has been presented and there are substantive due process violations, including Brady, Giglio, Jencks,[39] a fraud upon the court and ineffective assistance of counsel. No reasonable juror would have convicted Simmons had it heard this evidence. We ask both the Court *and* the Avoyelles Parish District Attorney's Office to recuse itself. Vincent Simmons, based upon the newly discovered evidence and due process violations, deserves a new trial, or, at the very least, a hearing to determine the veracity of his claims. In this Parish, it is clear that he will not receive a fair review of anything that he brings to the Court's attention. As such, we ask for a change of venue, a recusal of the District Attorney and to vacate Mr. Simmons' conviction or a new trial. At the very least, a hearing should be scheduled.

LIST OF THE EVIDENCE DISCOVERED SINCE TRIAL

Public Records Obtained by Mr. Simmons, Post-trial in 1993

There is no evidence that the following documents were disclosed to defense counsel prior to trial. The following were the subject of a motion filed by the Honorable Laurie White in 2004, which was summarily denied:[40]

1. Exhibit B – F.P. Bordelon's June 10, 1977 report on KAREN and SHARON
2. Exhibit E – KAREN May 22, 1977 audio taped transcript with the Sheriff's Department
3. Exhibit C – SHARON's May 22, 1977 transcript of her statement to police
4. Exhibit I – Keith Laborde's May 23, 1977 statement
5. Exhibit CC – the May 23, 1977 typed report of SHARON's statement
6. Exhibit BB – the May 23, 1977 typed report of KS.'s statement
7. Exhibit G – KAREN's May 23, 1977 statement regarding the line-up
8. Exhibit H - SHARON's May 23, 1977 statement regarding the line-up
9. Exhibit U – Barbara DeCuir report dated May 25, 1977 – documented the lineup as seen by witnesses
10. Exhibit DD – May 25, 1977 report of Robert Laborde – documented the lineup as seen by the witnesses
11. Exhibit V – Photograph of the lineup
12. Exhibit AA – May 23, 1977 arrest report by Robert Laborde

Evidence Discovered and Produced for the First Time in this Motion

1. Exhibit D – affidavit of Dana Brouillette
2. Exhibit A – Dr. Mark Taff's expert report
3. Exhibit J – Dr. Leippe's July 30, 2020 expert report
4. Exhibit L – Expert report by Professor Lisa Lindquist Dorr
5. Exhibit M – Diane Prater's sworn affidavit

---

[39] See also State v. Ates, 418 So. 2d 1326 (La.1982); State v. Sylvester, 388 So. 2d 1155 (La.1980)

[40] This is not an exhaustive list; just a list of the most pertinent documents that constitute Brady and Jencks material and were material to trial. Harold Brouillette's letter in 1998 detailed the he did not receive Bordelon's report. Judge White's motion focused on Keith Laborde's statements, supplemental reports KAREN and SHARON's audiotaped statements along with the coroner's reports.

6. Exhibit F – Brian Andrews Affidavit
7. Exhibit Q – Sworn Affidavit of Forest Martin regarding Judge Jeansonne's statements
8. Exhibit R – Comments of Mark Jeansonne in comments section of http://iippi.org/forum
9. Exhibit P – Affidavit of Allen Holmes
10. Exhibit W – Affidavit from Forest Martin regarding his interview of Peter Johnson
11. Exhibit X – Affidavit from Delores Prevot of Forest Martin's interview of Peter Johnson
12. Exhibit Y – Certification of a videotaped interview transcript of Peter Johnson; see also video attached.

ARGUMENT

POINT I: THIS PETITION SHOULD BE HEARD

Petitioner anticipates that, despite the truly compelling evidence set forth above, the State will seek to stop this Court's consideration of that evidence before it even begins. As it has done before, the State will no doubt rely upon the procedural bars and statute of limitations set forth in La.C.Cr.P. §§ 930.4 and 930.8 to argue that this petition is repetitive and/or out of time. This Court should reject that argument, both under the letter of the relevant statutes and because a persuasive showing of actual innocence, such as Simmons has made, should overcome any procedural bars.

As relevant here, La.C.Cr.P. § 930.4 states that a post-conviction petition is deemed repetitive where it "alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction," "fails to raise a new or different claim," and/or "raises a new or different claim that was inexcusably omitted from a prior application." See La.C.Cr.P. § 930.4(B), (D), (E). Likewise, La.C.Cr.P. § 930.8 requires post-conviction applications to be made within two years after the conviction and sentence have become final, unless "the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys" and that he has "exercised diligence in attempting to discover any post-conviction claims that may exist."

None of these provisions should bar the instant petition. To begin with, contrary to the inexplicable findings of Judge Jeansonne, Simmons *did not* have knowledge of the facts underlying this petition at or before the time of trial. The prosecuting attorney himself has acknowledged that the evidence upon which the 1994 and 2004 petitions were predicated was not disclosed at that time, and there was no evidence offered upon which Judge Jeansonne – or this Court – could permissibly find otherwise. And certainly, the evidence discovered *since* 2004 and presented for the first time in this motion – including Karen Sanders' book, the Brouilette affidavit, the Andrews' Report, the revelations of juror Prater, the affidavits regarding Judge Jeansonne and Peter Johnson, and the expert opinions – were not known to Simmons then.

This is also not a petition that "fails to raise a new or different claim." No free-standing actual innocence claim has been raised by Simmons before. His previous petitions did not include claims of newly discovered evidence and/or ineffective assistance of counsel *based on the full range of evidence known to him now.* He has not previously made a claim of cumulative error which includes these factors, nor has he raised the various procedural and Brady claims set forth below.

And by the same token, any failure to allege these claims in the prior petitions was not "inexcusable," nor are those claims untimely, because they are based in large part on evidence that has been recently acquired and that could not previously have been raised with the exercise of diligence. La.C.Cr.P. § 930.8(1) defines "diligence" as a "subjective inquiry that must take into account the circumstances of the petitioner," including "the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, *or whether the interests of justice will be served by the consideration of new evidence*" (emphasis added). Vincent Simmons is an indigent prisoner serving a 100-year sentence without the resources to hire investigators or to conduct the searches and interviews that the undersigned counsel has undertaken since becoming his attorney. His education is limited to what was available to black rural Louisianans in the 1950s and 60s, and was cut short by a number of juvenile remands. And certainly, the interests of justice militate powerfully in favor of considering new evidence – especially since much of that evidence could never have been obtained during the darker periods of Avoyelles Parish's history and could only have come to light when enough time had passed and enough of the history of racism had receded for the witnesses in question to be candid.

The courts of Louisiana have repeatedly held that, even where the State alleges a post-conviction petition to be repetitive and/or untimely, a hearing must be held where "[an] affiant stated that he had not previously revealed the information [in his or her affidavit] to any investigator or attorney representing relator," rendering it "reasonable to infer that trial counsel was unaware of the facts upon which the instant claim is based" and such facts "were not known to relator or his prior attorney [such that] the exception to the post-conviction limitations period applies." State v. Hurst, 209 So. 3d 701 (La. 2015); see also Alvarez v. State, ___ So. 3d ___, 2018 WL 4354727, *3 (La. App. 2018) (hearing required where there was reason to infer that facts were unknown to petitioner or his prior counsel, and where "defendant has argued

persuasively that the nature of the new evidence is not such that it should have been discovered by the exercise of due diligence"); State v. Kang, ___ So. 3d ___, 2019 WL 150635, *4-5 (La. App. 2019) (where affidavits of defense counsel and investigator stated that they had not previously seen documents obtained post-trial, the petition could not be dismissed on the pleadings and a hearing was required). Here, likewise, issues are presented that cannot be decided on the pleadings, and this Court must hear the witnesses on both the threshold issue of diligence and on the merits.

This is all the more so given that Simmons *did* attempt to bring exculpatory evidence to court before, only for that evidence to be unfairly rejected out of hand. As discussed above, the grounds upon which Judge Jeansonne refused to hear from Simmons' witnesses were simply false, Judge Jeansonne has made statements clearly indicating that he succumbed to community influence rather than reviewing the evidence as the law demanded, and Judge Spruill, who reviewed the same proof at a later date, labored under a serious conflict of interest that should have required his recusal. This is really less a successive petition than the first petition that Simmons never had, and when the courts' refusal to consider the evidence that Simmons diligently presented is combined with the compelling proof obtained *since* those courts ruled, the case for considering this petition non-repetitive and timely is overwhelming. As the Supreme Court has emphasized, a defendant is not treated fairly where "no court, state or federal, has ever conducted a hearing to assess the reliability of the score of postconviction affidavits that, if reliable, would satisfy the threshold showing for a truly persuasive demonstration of actual innocence," In re Davis, 577 U.S. 952 (2009) (Stevens, J., concurring), and Simmons, too, surely deserves that one day in court.

Moreover, as a separate and independent reason to overcome any procedural bars and/or timeliness objections, persuasive claims of actual innocence have been recognized as a gateway for a Court to review underlying constitutional errors and are not subject to procedural bars. Murray v. Carrier, 477 U.S. 478, 494 (1986).[41] Timeliness, too, must yield where actual innocence is shown. See McQuiggin v. Perkins, 569 U.S. 383 (2013). The Supreme Court has recognized that, in the extraordinary case, the principles of finality must yield "to the imperative of correcting [fundamental injustice]." House v. Bell, 547 U.S. 518, 536 (2006) (Schlup v. Delo,

[41] Indeed, at least one Federal court has held that a free-standing actual innocence claim was cognizable, although it found, after an evidentiary hearing, that the defendant had failed to sustain that claim. See In re Davis, 2010 U.S. Dist. LEXIS 87340 (S.D. Ga. 2010).

513 U.S. 298, 324 (1995); Carrier, 477 U.S. at 495 (citations omitted)); see also Herrera v. Collins, 506 U.S. 390, 404 (1993).

The Supreme Court has established a criteria for individuals to assert actual innocence: with the presentation of the evidence the petitioner is now submitting to the court, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." Schulp, 513 U.S. at 327; see also Bell, 547 U.S. at 537. This holds the petitioner to the standard of presenting a truly extraordinary case, "while still providing petitioner a meaningful avenue by which to avoid a manifest injustice." Schulp, 513 U.S. at 327(quoting McCleskey v. Zant, 499 U.S. 467, 494 (1991).

As elucidated by the Bell Court, a habeas court *must consider all of the evidence, whether old or new "without regard to whether it would be necessarily admitted under rules of admissibility that would govern at trial*.'" 547 U.S. at 537-38 (Schulp, 513 U.S. at 327-28 (quoting Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 160 (1970)(emphasis added)).

To be sure, these Supreme Court holdings do not directly govern proceedings in the state courts of Louisiana. However, petitioner submits that the reasoning of the above cases – that any and all technical considerations must yield to the interests of justice where a defendant alleges convincingly that he is innocent – are just as persuasive in the context of a Louisiana post-conviction proceeding as in the context of federal habeas corpus. And for the reasons detailed in Point II *infra*, petitioner submits that he has more than made a sufficient threshold showing,. As shown in the Statement of Facts and as listed in detail below, petitioner has presented evidence showing not only that he didn't commit the alleged rapes but that *there were no rapes*, and that the rape story was fabricated from the beginning in order to cover up the guilt of Keith Laborde. Simmons has shown that he is factually innocent and that he was convicted, not based on facts or evidence, but based on a discredited racial myth. The only way to undo the myth is to hear Mr. Simmons' petition now.

POINT II: VINCENT SIMMONS IS ACTUALLY INNOCENT

Turning to the merits, petitioner Simmons first submits that "all the evidence… old [and] new," House, 547 U.S. at 537-38, demonstrates clearly and convincingly that he is actually innocent of the crimes of which he was convicted. Although the Supreme Court of Louisiana has never explicitly held that a free-standing actual innocence claim is cognizable in a post-

conviction relief petition, see State v. Pierre, 125 So. 3d 403, 408 (La. 2013); State v. Conway, 816 So. 2d 290, 291 (La. 2002), it has *implicitly* recognized the existence of such a claim because it has remanded for evidentiary hearings thereon, see State v. Tyson, 267 So. 3d 584 (La. 2019); see also State v. Crawford, ___ So. 3d ___, 2017 WL 4161682 (La. App. 2017) (finding that district court erred in denying a hearing on newly discovered evidence and actual innocence). Certainly, if there were no such thing as a free-standing actual innocence claim, the courts of this State would have summarily dismissed such claims rather than requiring a hearing. Moreover, recognition of a free-standing actual innocence claim is consistent with the jurisprudence of other States which have recognized that the imprisonment of an innocent person, even absent a separate constitutional error, is abhorrent to our system of justice and that the courts should afford relief if a defendant can prove his innocence even at a late date. See, e.g., People v. Hamilton, 115 A.D.3d 12 (N.Y. App. Div. 2014); In re Bell, 170 P.3d 153 (Cal. 2007); Miller v. Comm'r of Corrections, 700 A.2d 1108 (Ct. 1997); People v. Washington, 665 N.E.2d 1330 (Ill. 1996); Montoya v. Ulibarri, 163 P.3d 476 (N.M. 2007); State ex. rel. Amrine v. Roper, 102 S.W.3d 541 (Mo. 2003); Ex parte Elizondo, 947 S.W.2d 202 (Tex. Cr. App. 1996); accord In re Davis, 2010 WL 3385081, *37-43 (S.D. Ga. 2010) (finding that a free-standing actual innocence claim exists under federal law). Petitioner submits that based on the guidance of Pierre, Conway and Tyson, and the reasoning of the sister-state and federal authorities cited above, this Court should find that an actually innocent defendant in Louisiana is entitled to post-conviction relief.

In Conway, supra, the Supreme Court of Louisiana stated that an actual innocence claim not based on DNA evidence (which unfortunately was not available in 1977 or at any time thereafter when testing would have been practical) "must involve new, material, noncumulative and conclusive evidence," which "meets [the] extraordinarily high standard" of "undermin[ing] the prosecution's entire case." Conway, 816 So. 2d at 291; Pierre, 125 So. 2d at 407. Merely positing an "alternative and inconsistent theory of defense" will not suffice. See Conway, 816 So. 2d at 291. "At a minimum… the Conway standard requires the petitioner to satisfy the test of actual innocence established by the United States Supreme Court [in McQuiggin, House and Schlup, supra] as a gateway… [by making a showing that] in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Pierre, 125

So. 2d at 409.[42]

"Under this standard, the newly presented evidence may indeed call into question the credibility of the witnesses presented at trial, [and] [i]n such a case, the habeas court may have to make some credibility assessments." Id. "A credible [actual innocence] claim nevertheless requires new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial." Id.; see also Jones v. State, ___ So. 3d ___, 2019 WL 5587085, *2 (La. App. 2019) (proof of actual innocence requires factual innocence to be proven by clear and convincing evidence); Burrell v. State, 184 So. 3d 246, 252-53 (La. App. 2016) (same). Such evidence may, in the proper case, include the recantation of one or more trial witnesses. See Crawford, 2017 WL 4161682, *2-3 (holding that although recantations are viewed with suspicion, they may require vacatur if sufficiently credible and corroborated), citing Hurst, supra.

This standard is admittedly a demanding one, but in this case, the totality of the evidence "old and new," including "exculpatory scientific evidence" and "trustworthy eyewitness accounts" which were not presented at trial, that standard is satisfied.

First, the affidavit of Dana Brouilette, which makes clear what really happened that fateful night in 1977, is the epitome of a "trustworthy witness account." Brouilette is related to the Sanders sisters and Laborde, and thus has a sound basis of knowledge concerning them. Moreover, she has no reason to lie for Vincent Simmons – if anything, her instinct would be to protect her family – and therefore, the damaging details she reveals about Laborde and the alleged victims can readily be trusted.

And those details are absolutely devastating to the prosecution's case, because they show that far from a rape being committed by *Vincent Simmons*, statutory rape was committed by *Keith Laborde*. Laborde had sex with underage Karen and attempted to do the same thing with Sharon but was rebuffed. In order to explain away the scratches on Laborde – evidently inflicted by Sharon – the three of them decided to make up a "fight with a black man," and ultimately a rape. And why wouldn't they? These were people to whom the life of a black man was nothing, with Laborde being a well-known racist and Sharon describing black men as "niggers" who all looked alike. It would be nothing at all to them to send a black man to prison for 100 years in

[42] Petitioner notes that the standard is whether a juror "acting reasonably" would have voted to convict, and therefore precludes this Court from denying the petition on the ground that jurors in 1977 might have voted to convict on *unreasonable* grounds such as racism. See further discussion *infra*.

order to cover up Laborde's guilt and save the family from embarrassment.

Petitioner notes that, although Karen came clean to Brouilette only recently, *there is reason to believe that Laborde was suspected even at the time*. When Potch Didier interviewed Karen, he asked whether Laborde was involved. There would be no reason to do this unless he had a suspicion against Laborde – and in a parish where all the white people knew each other, and where Laborde has been implicated in sexual conduct with several other underage girls including his own daughter – and this lends credence to the admission Karen made to Brouilette that Laborde, not Simmons, raped her.

There is more evidence just as devastating to the State's case. Dr. Taff's report, which was also not disclosed to the defense prior to trial, shows that *there never was a rape of Sharon Sanders, and that Sharon was still a virgin at the time she was examined.* Her hymen was intact and there were no injuries consistent with penetration. This means that the graphic testimony she gave about being positioned within the car and vaginally raped by a savage black man despite her pleas for mercy *was a lie from beginning to end*. Every word Sharon testified to at trial, including "a," "an" and "the," has now been shown to be false – and so has the testimony of Karen Sanders and Keith Laborde, both of whom claimed to have witnessed the nonexistent vaginal rape of Sharon *from the trunk of the car*.

Notably, none of this is impeachment evidence. To the contrary, it is directly exculpatory, in that it shows that one of the rapes Vincent Simmons was convicted of never happened and that the other one was committed not by him but by Keith Laborde. But even if this Court were to characterize it as impeachment, the fact remains that actual innocence can be proven in this way, see Pierre, supra, and if any evidence can be said to "completely undermine the prosecution's case," this evidence does.

But even that is not all. The science relating to identifications has advanced dramatically since 1977, and Dr. Leippe's analysis of the identifications in this case is also new and compelling proof that was not offered at trial. His report, as described in detail above, shows the many factors that detracted from the reliability of the identifications made by the Sanders sisters and Laborde. Most critically, the lineup was conducted with Simmons in handcuffs and the fillers (one white) looking nothing like him, making crystal clear which person the sisters and Laborde were supposed to pick – an extreme suggestiveness that was made even more extreme by the police *telling* them that the culprit was in the lineup. And there are many other factors

detracting not only from the lineup but from all subsequent in-court identifications, including the debilitating effect of weapon focus, the fact that these were stranger identifications, and the fact that the identifications were cross-racial.

It is known now, as it was not in 1977, that cross-racial identifications are particularly inaccurate and that the ability to concentrate on an assailant's appearance degrades even further where a weapon is produced because the natural instinct is to focus on the weapon rather than the assailant. And in this case, the cross-racial factor looms even larger in light of the statements Sharon openly made at the time, i.e., that all "niggers" look alike to her. A person who would casually use the N-word and claim that all black men looked the same simply cannot be trusted, in light of what is now known about cross-racial identifications, to correctly identify her assailant or even come close to it.

And the identifications are further cast in doubt by Karen's recent admission that, yes, she might have made a mistake. This admission was coupled with her other cryptic words about how she would prefer Simmons to go free if her sister or mother had to testify – words that can only be an admission that, if they took the stand, they would have to go through the humiliation of admitting that they lied.

Then there are the statements that the Sanders sisters and Laborde gave to the police at their initial interviews but were not disclosed to the petitioner prior to trial – statements in which they never mentioned the name "Simmons" or the date of May 9, and the subsequent series of statements in which they were asked leading questions again and again and spoon-fed the story by the police and the agents of the prosecution.

And since the actual innocence standard requires examination of "all the evidence… old and new," it is proper to consider how weak the evidence was in the first place. The testimony at trial was patently unbelievable – Keith Laborde, a virulent racist, giving a ride to a black man he had just met? The black man in question asking Laborde to take him to the heart of Klan country where, if seen, he might well be killed? The two alleged rapes being described in a completely identical manner, with the sequence of events being precisely the same right down to the body positions? Laborde and Karen being able to witness the "rape" of Sharon *from inside the trunk?* It is clear that no juror not addled by the "rape myth" could have believed these ridiculous accusations even for a minute.

In sum, any fair examination of all the evidence in this case, "old and new," shows

overwhelmingly that the prosecution's case *has* been completely undermined, that Vincent Simmons is innocent by any evidentiary standard one could ask for, and that no reasonable juror could possibly find him guilty beyond a reasonable doubt. And this Court should take note that the Conway standard, as elaborated in Pierre, speaks of *reasonable* jurors. In conducting the Conway/Pierre analysis, this Court must assume that the jurors are honest, neutral and unbiased, and *cannot* factor in the possibility or likelihood that such jurors might, due to racism and the rape myth, be inclined to believe any white woman who claims to have been raped by a black man. The purpose of actual innocence review is to correct wrongful convictions that are obtained through precisely this kind of myth and bias rather than to replicate the bias that led to the wrongful conviction in the first place.

Looking through the eyes of an *unbiased* reasonable juror as this Court must, it is impossible even to imagine, in light of what is now known, that Vincent Simmons is guilty of any crime. Far from being guilty beyond a reasonable doubt, he is innocent beyond a reasonable doubt. His 43 years of wrongful imprisonment must end, and they must end now. This Court should find that Simmons has met, and more than met, the Conway/Pierre standard and that he is entitled to vacatur of his conviction and dismissal of the charges.

POINT III: NEWLY DISCOVERED EVIDENCE WOULD HAVE PROBABLY CHANGED THE VERDICT HAD THE JURY HEARD WHAT IS NOW BEFORE THE COURT

This Court also can and should grant relief on the ground that the evidence discovered since the trial, even if not sufficient to constitute clear and convincing evidence of actual innocence (which it is), undermines the verdict. In Louisiana, "[a] defendant seeking a new trial based on newly discovered evidence must establish four elements: (1) that the new evidence was discovered after trial; (2) that failure to discover the evidence before trial was not attributable to his lack of diligence; (3) that the evidence is material to the issues at trial; and (4) that the evidence is of such a nature that it would probably produce a different verdict in the event of retrial." State v. Cavalier, 701 So. 2d 949, 951 (La. 1997). "In ruling on the motion, the trial judge's duty is not to weigh the evidence as though he were a jury determining guilt or innocence, rather his duty is the narrow one of ascertaining whether there is new material fit for a new jury's judgment." Id.,. quoting State v. Prudholm, 446 So. 2d 729, 736 (La. 1984).

A court weighing a newly discovered evidence motion cannot deny the motion simply on the basis that the evidence presented by the State was legally sufficient to convict; instead, in

weighing the newly discovered evidence against the proof at trial, it must determine whether the trial evidence "appears strong enough to support a conclusion that the newly discovered evidence probably would not have changed the verdict, when one considers the newly discovered evidence that would be presented at a new trial." Cavalier, 701 So. 2d at 752.

Here, these four elements are satisfied. First, evidence has been obtained since the trial. Trial counsel, the Honorable Harold Brouillette, in his 1998 letter, has admitted that the Sanders and Laborde statements, the medical report, and the lineup documentation and photographs were never disclosed prior to or at trial, and as detailed above, Judge Jeansonne's finding to the contrary was predetermined and based on willful refusal to face facts. Had that evidence been disclosed, it would certainly have been used in cross-examination at trial – no competent, or even *incompetent*, attorney would fail to make use of such explosive information – so the only possible conclusion is that it was not. And there is no dispute that the further evidence attached for the first time to *this* motion – including the Brouilette declaration, Karen's belated admission that she may have made a mistake, and the analysis of the "identifications" using advanced science that was not available in 1977 – were not, and could not have been, presented at trial.

Second, the evidence could not have been obtained prior to or during trial through the exercise of diligence. The statements, report, and lineup materials were in the sole possession of the State, and with the State suppressing this information, there was no reasonable way for petitioner to get it on his own. He, or his counsel, could not have been expected to break into Eddie Knoll's office and rifle through the files. Likewise, the Brouilette affidavit and Karen's admissions could not have been obtained earlier, given that it was entirely up to Karen when to develop a conscience and come clean, and there was no way for Simmons to force her to tell the truth at an earlier date. And Dr. Leippe's report could not have been produced at the time of trial because the knowledge possessed by Dr. Leippe about identifications, which is the result of many painstaking studies over a long period, *did not yet exist* at that time.

Third, the evidence is clearly material to the issues at trial. Notably, the standard of materiality in a newly discovered evidence claim is less demanding than in an actual innocence claim. See Alvarez, supra, 2018 WL 4354727, *3. And none of the evidence here could possibly be called anything other than material. The evidence casts direct light on the issues of (i) whether a rape or rapes ever happened in the first place; (ii) whether Karen was in fact the victim of a statutory rape by Keith Laborde, a known sexual predator, rather than a violent rape

by Vincent Simmons; (iii) whether the "identifications" of Simmons were accurate or fabricated; and (iv) whether the name Simmons, the date of May 9, 1977, and other critical details were fed to the complainants by the police. This is not mere collateral evidence. It goes directly to the central issues in the case and therefore to guilt or innocence.

Fourth and finally, the evidence is "of such a nature that it would probably produce a different verdict in the event of retrial." Cavalier, 701 So. 2d at 951. Point II supra explains in detail why the totality of this evidence completely devastates the prosecution's case, and rather than repeating the arguments of Point II in detail, petitioner refers this Court to those arguments as a showing of how the entire case, right down to whether a crime even happened in the first place, was built of lie upon lie. This was directly exculpatory evidence rather than mere impeachment, and again, even if this Court were to consider it the latter, "the court possesses the discretion to grant a new trial when the witness's testimony is essentially uncorroborated and dispositive of the question of guilt or innocence and it appears that had the impeaching evidence been introduced, it is likely that the jury would have reached a different result." Cavalier, 701 So. 2d at 951, quoting United States v. Davila, 428 F.2d 465, 466 (9th Cir. 1970). "In making this determination, the court may assume that the jury would have known that the witness had lied about the matter." Id. at 952. Here, the Sanders sisters' and Laborde's testimony were "corroborated" only by each other's lies and were hence well within the frame of being "essentially uncorroborated" – indeed, the medical report *negates* them – and their testimony, as the only proof against Simmons, was so "dispositive of the question of guilt or innocence" that a jury "know[ing] [they] had lied about the matter" would plainly have reached a different verdict.

And finally, to the extent relevant to this Court's analysis of the issue, the new evidence would be admissible at a retrial. It can hardly be disputed that the inconsistent statements made by the Sanders sisters and Laborde could be used to cross-examine them; there is no doubt that evidence about the conduct of a lineup can be offered to impeach the identification; and the medical report would be admissible as evidence in chief on the defense case to show that Sharon Sanders was never raped. Moreover, the Brouilette declaration is also admissible on whether the crime of which Simmons was accused – or, given the medical evidence that there was no rape, some kind of sexual assault of Karen and Sharon Sanders – was in fact committed by Keith Laborde, giving all of them a motivation to frame a black man in order to keep the guilt out of the family. In Holmes v. South Carolina, 547 U.S. 319 (2006), the Supreme Court held that the

constitution requires that criminal defendants be allowed to present evidence that points to a specific other person as the culprit, even if the evidence of third-party culpability is disputed or equivocal. The Holmes court held that it was error to deny admission of evidence that, *inter alia*, a party other than the accused made inculpatory statements to a person he knew, even though that party later denied making those statements. Here, likewise, Karen's statements to Brouilette about Keith Laborde's actions that night would be admissible under Holmes to show that the real rapist was Laborde.

Thus, petitioner has come before this Court with compelling evidence that satisfies all the elements of Cavalier – it is new, it could not have been presented at trial via the exercise of diligence, it is material to the issues on trial, and any jury hearing it would probably, and indeed surely, have returned a verdict of acquittal. This Court should vacate his conviction and dismiss the charges or order a new trial.

POINT IV: KAREN SANDERS, SHARON SANDERS AND KEITH LABORDE TESITIFIED FALSELY. AS SUCH, A FRAUD WAS PRESENTED TO THE COURT.

Separately and apart from the issue of newly discovered evidence, petitioner is also entitled to relief on the ground that the *old* evidence – the trial testimony of Keith Laborde and the Sanders sisters – was perjured and that the prosecutor knew or should have known that it was perjured. This constituted a fraud on the court and a due process violation under Napue v. Illinois, 360 U.S. 264, 269-71 (1959), and its progeny.

It is well settled under Napue and its progeny that prosecutors may not permissibly rely on false testimony to obtain a conviction, and in fact has an affirmative obligation to correct the record if its witnesses testify falsely. Notably, in order to obtain relief on a Napue claim, it is not necessary to prove that the State's notice of the falsehood was actual; instead, relief is mandated if the prosecuting attorney had constructive notice of the falsity of the testimony, e.g., through documents in its file. See Creel v. Johnston, 162 F.3d 385 (5th Cir. 1998); Graham v. Wilson, 828 F.2d 656 (10th Cir. 1987). "In order to establish knowing use of perjured testimony the petitioner may rely on circumstantial evidence, and need only show either actual or constructive knowledge." Smith v. Page, 1998 WL 25197 (N.D. Ill. 1998). Moreover, the State's knowing use of perjurious testimony in violation of Napue has been held to require "virtually automatic" reversal. United States v. Wallach, 935 F.2d 445, 456 (2d Cir.1991).

In sum, Napue and its progeny require a new trial if "(1) the statements at issue are shown to be actually false; (2) the prosecution knew they were false; and (3) the statements were

material." State v. Phillips, 61 So. 3d 130, 136 (La. App. 2011), citing United States v. O'Keefe, 128 F.3d 885, 893 (5th Cir. 1997).

Here, it is patent that the testimony of Keith Laborde and the Sanders sisters were false, and that such falsity was known to the prosecution through documents in its file. See Creel, supra. The State had the medical report showing there was no penetration and that the alleged rapes testified to by the Sanders sisters, which included graphic accounts of penetration, was false.[43] The State knew through contemporaneous statements that the name "Simmons" was nowhere mentioned by the alleged victims or Laborde until it was fed to them by the police.[44] And other testimony by Laborde and the Sanders sisters – such as that they were not merely able to hear the alleged rapes but to actually *view* them from the trunk of the car – was so obviously false that there is no way the prosecutor could not have recognized it as such.[45]

And there can be no doubt that the false testimony was material. Without the false testimony, there was no rape. The falsehoods told by Laborde and the Sanders sisters were the very heart of the case, and without them there *was* no case. Napue and its progeny thus require that Simmons' conviction at long last be set aside.

POINT V: THE STATE COMMITTED BOTH BRADY AND JENCKS ACT VIOLATIONS

Next, the State violated both Brady v. Maryland, 373 F.3d 83 (1963) and its progeny, and 18 U.S.C. § 3500 (the Jencks Act)[46] by its nondisclosure of (i) the written and recorded statements of Karen Sanders, Sharon Sanders and Keith Laborde; (ii) photographs and documentation of the "lineup" at which Simmons was "identified"; (iii) F.P. Bordelon's June 10, 1977 report on KAREN and SHARON, and (iv) the May 23, 1977 arrest report by Robert Laborde.

---

[43] See Exhibit A & B. Neither Karen nor Sharon hand any physical injuries. Specifically, Sharon's hymen was *intact*. Thus, all of Sharon's, Karen's and Keith's statements about Sharon's rape were *false*. Additionally, it can be inferred when the State amended the indictment right before trial that the prosecution *knew* about the medical reports and the falsity of the testimony of these three and, therefore, amended the indictment to attempted rape.

[44] In fact, during the preliminary hearing, on July 7, 1977, Karen Sanders specifically testified that she, Keith, and Sharon *did not go to the police because they did not know the perpetrator's name*. See Exhibit Z, Page 57. The State was clearly aware that these three, based upon the police reports and the preliminary hearing, were lying when they said they heard the name "Simmons" prior to being told by the police after the lineup.

[45] Indeed, it is arguable that the prosecutor kept Sharon off the stand, and had Karen testify twice, precisely because he knew Sharon's claim of a rape was patently false. While there is no hard proof of this, it is interesting to say the least that Karen and Sharon never dressed alike *except* when they testified. The identical nature of the testimony, and the farcical claim that each could see the rape of the other *from the trunk*, suggests that this was the same girl testifying twice and that this was orchestrated by the prosecutor to avoid Sharon testifying as atrociously as she did during the preliminary hearing. Petitioner submits that at any bearing of this petition, he should be permitted to explore whether Sharon ever actually took the stand at trial and if not, whether this was done at the prosecutor's instigation or with his knowledge.

[46] Although the Jencks Act is a federal statute, it has been adopted as the common law of Louisiana. See State v. Banks, 446 So. 2d 497, 501 (La. App. 1984), and further discussion *infra*.

Brady Standard: In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The Court observed that "[a] prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant." Id. at 87-88. "That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice," even if the suppression "is not the result of guile." Id. at 88.

In a series of subsequent decisions, the Court has refined both the scope of Brady disclosure and the meaning of the term "material to guilt or punishment." In Giglio v. United States, 405 U.S. 150 (1972), for instance, the Court held that the Brady obligation extends to evidence that would impeach the credibility of prosecution witnesses. "Where the reliability of a given witness may be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within [the] general [Brady] rule." Id. at 154. Thus, in a case where – as here – the government's proof "depended almost entirely" on the testimony of witnesses, the witnesses' credibility "was therefore an important issue in the case," and the jury was entitled to know of information bearing on it. Id. at 154-55.

The Giglio court also expanded upon the relevant standard of materiality, adopting the same metric as in Napue, supra, i.e., that reversal is required where the withheld evidence "could in any reasonable likelihood have affected the judgment of the jury." See Giglio, 405 U.S. at 154.

In United States v. Agurs, 427 U.S. 97, 111-12 (1976), the Court held that the Brady obligation existed regardless of whether or not a specific request for exculpatory evidence was made, but that where no such request was made, the standard of materiality was more than that required to overcome a claim of harmless error. Nevertheless, "the proper standard of materiality must reflect [an] overriding concern with the justice of the finding of guilt." Id. at 112. Since a finding of guilt is permissible only if proven beyond a reasonable doubt, "it necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed." Id. "This means that the omission must be evaluated in the context of the entire record," and that "*if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a*

reasonable doubt." Id. at 113 (emphasis added).

In United States v. Bagley, 478 U.S. 667 (1985), the Court reaffirmed that, as held in Giglio, supra, "[i]mpeachment evidence… as well as exculpatory evidence, falls within the Brady rule," because "[s]uch evidence is favorable to the accused, so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." Id. at 676. The Court "rejected any... distinction between impeachment evidence and exculpatory evidence" in terms of materiality. Id. The Bagley Court further found that the standard of materiality in all cases was reasonable probability, which it characterized, consistently with Agurs, as "a probability sufficient to undermine the outcome."

In Kyles v. Whitley, 514 U.S. 419, 434 (1995), the Court elaborated upon the meaning of "reasonable probability," noting that "[f]our aspects of materiality under Bagley bear emphasis." First, "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." Id. "[T]he adjective [reasonable] is important," and "the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Id.

"The second aspect of Bagley materiality bearing emphasis… is that it is not a sufficiency of the evidence test." Id. "A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." Id. at 434-35. "The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict," and thus, the required showing is "that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Id. at 435.

"Third, we note that, contrary to the assumption made by the Court of Appeals, once a reviewing court applying Bagley has found constitutional error there is no need for further harmless-error review," because Bagley materiality includes a finding of harmfulness. Id. (citation omitted). And fourth, in determining materiality, "suppressed evidence [is to be] considered collectively, not item by item." Id. at 436.

In Strickler v. Greene, 527 U.S. 263, 280-82 (1999), the Court summed up its Brady jurisprudence by opining that there are three "essential elements of a Brady violation," namely

(i) suppression, (ii) of favorable evidence, (iii) that is material to guilt or punishment. This formulation, as well as the Bagley/Kyles definition of materiality, has been reiterated in numerous subsequent Supreme Court decisions. See, e.g., Wearry v. Cain, 136 S. Ct. 1002, 1006-07 (2016) (finding Brady violation where prosecutor failed to disclose impeachment evidence concerning the witness who provided "the only evidence directly tying [Wearry] to [the] crime" of which he was convicted, even though other impeachment evidence was available); Smith v. Cain, 566 U.S. 73, 75-76 (2012) (Brady violation occurred where impeachment evidence was withheld concerning the only eyewitness to the crime); see generally Cone v. Bell, 556 U.S. 449, 469-70 (2009) (summarizing the Brady standard); Banks v. Dretke, 540 U.S. 668, 698-99 (2004) (same).

Jencks Act: Pursuant to 18 U.S.C. § 3500(b), the prosecution must produce, no later than the close of direct examination of any prosecution witness, ":any statement… of the witness in the possession of the [State] which relates to the subject matter at which the witness has testified." The term "statement" includes (i) written statements signed or otherwise adopted or approved by the witness; (ii) stenographic, mechanical, electric or other recordings, or transcriptions thereof, which are "substantially verbatim recital[s]" of oral statements made by the witness; and (iii) grand jury testimony however taken or recorded. See 18 U.S.C. § 3500(e).

Although the Jencks Act is a federal statute, the courts of Louisiana have cited and relied upon it in determining what statements are to be disclosed. See State v. Clark, 581 So. 2d 747, 754 (La. App. 1991); State v. Banks, 446 So. 2d 497, 501 (La. App. 1984); accord State v. Duncan, 648 So. 2d 1090, 1098 (4th Cir. 1994) (noting that "this court applied the standards of the Jencks Act" to determine what exculpatory statements must be disclosed).

The Jencks Act and Brady Were Violated: The withholding of exculpatory evidence in this case clearly violated both the Jencks Act and Brady. As to the Jencks Act, the statements of Laborde and the Sanders sisters were clearly "statements" within the meaning of the Act because they were either contemporaneous verbatim recordings or written statements that the witnesses signed or adopted. The Sanders sisters and Laborde were, of course, witnesses who testified for the State at trial. Consequently, the State was required to disclose their exculpatory statements no later than the conclusion of their direct testimony, and the failure to do so mandates vacatur.

Moreover, petitioner notes that the grand jury testimony in this case has *still* not been disclosed, 43 years later, despite the prosecutor's patent obligation to disclose it. For all these

reasons, the Jencks Act violation in this case was clear.

At least as much to the point, however, *all* the evidence at issue – the Laborde and Sanders statements, the medical examination, and the lineup documentation and photos – fall well within Brady, Giglio and their progeny. As discussed above, Brady material is evidence that is (i) suppressed, (ii) favorable to the accused, and (iii) material. Here, the prosecuting attorney has acknowledged that the evidence in question was in the possession of the State prior to trial but was not disclosed.[47] There also can be no dispute that it was favorable to the accused – contemporaneous statements by the alleged victims in which his name was nowhere mentioned and which were inconsistent with their trial testimony, documentation and photos showing that the "lineup" was a farce in which he was handcuffed and the fillers (one white) looked nothing like him, and medical documentation showing that *a rape never happened in the first place* would, if disclosed, have value to the defense so obvious that nothing more need be said.

As to materiality, this evidence, considered collectively (see Kyles, supra), would certainly have resulted in a reasonable probability of a different verdict. Not only is a reasonable probability less than a preponderance as Kyles makes clear, but it is fairly low threshold," see Riggs v. Fairman, 399 F.3d 1179, 1183 (9th Cir. 2005), which is satisfied whenever the chances of a different outcome are "better than negligible." See Ward v. Jenkins, 613 F.3d 692, 701 (7th Cir. 2010). Indeed, as the Agurs and Wearry Courts, supra, stated, even evidence of "relatively minor importance" will be sufficient to satisfy the outcome where, as here, the case was shaky to begin with.

And the withheld evidence here was far more than "minor." The lynchpin of the State's case at trial was the identification of Simmons as the culprit via the purported "lineup" and the recollection of his name. The combined effect of the contemporaneous statements and the lineup documentation would have destroyed both these forms of identification, by showing that the alleged victims *did not* initially mention the name Simmons to the police (as they certainly would have done if they had in fact heard that name) and that the lineup was almost comically suggestive. And to cap it all off, the medical report would have shown that there never was a rape and that every word the three witnesses used to describe the rape was a lie. Falsus in uno, falsus in omnibus.

[47] Brouillette specifically stated that he had not received the medical reports. Apparently, he did not receive the rest of the file either because none of it makes it to the record. There is no evidence at all that Knoll provided the rest of files to Brouillette. Moreover, in the documentary Shadows of Doubt, Knoll essentially all but admitted that he did not copy and turn over Vincent's discovery file.

In sum, this is as clear a case of Brady and Jencks Act violation that this Court could ever ask for. Favorable, exculpatory witness statements and other evidence was suppressed, and the likelihood that the outcome would have been different had this evidence been disclosed is not merely "reasonable" but overwhelming. And when the withheld Brady/Jencks Act material is considered in light of the further exculpatory evidence that has developed *since* the trial, including but by no means limited to the admissions now made by Karen Sanders and Keith Laborde, there can be no possible question that Simmons' conviction must be vacated.

POINT VI: TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO INVESTIGATE OR APPROPRIATELY CROSS-EXAMINE ALL OF THE WITNESSES DURING THE TRIAL

Sixth, Simmons received ineffective assistance at trial. If this Court finds – as it should not – that the witness statements, lineup documentation, and/or medical report *were* available to the defense at the time of trial, then this is a patent case of ineffective assistance of counsel. If such explosive evidence was in fact in the hands of defense counsel, *why did he not use it?* What possible strategy could excuse counsel's failure to conduct even the most elementary follow-up and investigation concerning this evidence, much less his failure to use it when cross-examining the State's witnesses? There is none that can be imagined.[48]

And if this Court finds – as it should – that the evidence in question was not disclosed, Simmons' attorney was still ineffective. Even without the Sanders and Laborde statements, the medical report, and the lineup documentation, Simmons' counsel could easily have investigated Keith Laborde's background and history as a racist, the extreme unlikelihood that he would have offered a ride to a black man, the even greater unlikelihood that a black man would have asked for a lift to Little California Road, and the many other improbabilities and discrepancies discussed in the Statement of Facts. For all these reasons, Simmons should have a new trial.

It is axiomatic that under the United States Constitution that criminal defendants are entitled to effective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 686 (1984). Under Strickland and its progeny, a defendant who claims that he was denied the effective assistance of counsel must meet a two-prong test: he must show both that his attorney fell below accepted professional standards and that he was prejudiced by his counsel's lapse. See id. The Strickland standard is applicable both federally and in the courts of Louisiana. See State

[48] Indeed, this evidence is so obviously favorable that the fact that it did not surface at trial is, along with the prosecutor's admissions, is compelling proof that it was never disclosed. But again, if this Court were to find otherwise, the failure to use it is patent evidence of ineffective assistance. One way or the other, Simmons was deprived of a fair trial.

v. Thomas, 124 So. 3d 1049, 1053 (La. 2013); State v. Washington, 491 So. 2d 1337, 1339 (La. 1986).

The first prong of the standard measures counsel's performance against professional norms existing at the time of the representation. See Strickland, 466 U.S. at 688-89. Although counsel's performance is viewed deferentially, see id., at 689-90, this deference does not extend to errors of omission for which counsel cannot provide any reasonable strategic or tactical justification. See Berryman v. Morton, 100 F.3d 1089, 1096-97 (3d Cir. 1996) (in Section 2254 habeas case, holding that even if the state court was correct in finding that the petitioner's counsel had a strategy, that strategy was unreasonable as a matter of law); see also Libberton v. Ryan, 583 F.3d 1147, 1169 (9th Cir. 2009) (finding that failure to pursue mitigating evidence could not be justified by any valid strategy); Sullivan v. Fairman, 819 F.2d 1382 (7th Cir.1987) (counsel "should not be allowed automatically to defend his omission simply by raising the shield of 'trial strategy and tactics'").

In order to demonstrate prejudice under the Strickland standard, the defendant must show a reasonable probability that his counsel's errors affected the outcome of the trial or on his direct appeal. See Strickland, 466 U.S. at 686. The reasonable probability standard is the same as discussed above for Brady material – i.e., it is not a sufficiency test, it does not require a preponderance, and is satisfied by any "better than negligible" chance that the outcome would have been different. See Kyles, supra; Ward, supra. Thus, a defendant need not show that he would have been acquitted or that he would have been entitled to judgment as a matter of law had his counsel not erred, but only that his counsel's performance undermines confidence in the outcome when considered as part of the whole case. Id. Moreover, this determination may be made with the benefit of hindsight. Lockhart v. Fretwell, 506 U.S. 364, 372 (1993).

The ineffective assistance standard does not contemplate "averaging out" counsel's performance, and a prejudicial error cannot be excused simply because the defense counsel's performance was adequate or even superior in other respects. See generally Rosario v. Ercole, 617 F.3d 683 (2d Cir. 2010); accord Henry v. Poole, 409 F.3d 48, 70-71 (2d Cir. 2005).

In this case, the strategy pursued by defense counsel was misidentification – that Simmons was in Mose's bar at the time the alleged rape occurred, and therefore, that if a rape was committed, it could not have been by him. The State opposed this misidentification defense with evidence that Simmons was identified contemporaneously by use of his name and

subsequently by being picked out of a "lineup." In that case, assuming *arguendo* that the statements in which Simmons' name was not mentioned, the documentation and photos showing that the "lineup" was conducted with Simmons in handcuffs and with farcically inadequate fillers, and the medical report showing that there was never in fact a rape, counsel's failure to follow up on and make use of that evidence was completely inexcusable. These items of evidence were gold, diamonds and rubies as far as a misidentification defense was concerned, and there is no conceivable strategy in which an attorney who possessed these items would not use them. "An attorney's failure to present available exculpatory evidence is *ordinarily* deficient, unless some cogent tactical or other consideration justified it," Eze v. Senkowski, 321 F.3d 110, 121 (2d Cir. 2003) (emphasis added), and here, no such tactical consideration, cogent or otherwise, existed.

And there is more. Even if this Court were to find, correctly, that the statements, medical report and lineup materials were withheld, there is much else that counsel could easily have investigated and presented in support of a misidentification defense. It would have been easy for counsel to ascertain Keith Laborde's well-known reputation in the community as a racist even by 1970s standards, and to establish – whether through cross-examination, presentation of defense witnesses, or otherwise – that Laborde would no more have given a ride to a black stranger than he would have invited one to dinner. Counsel could also have become familiar with the geography of the area and ascertained that no black man in 1977 would be caught dead asking for a ride to Little California Road lest he shortly thereafter be literally caught and literally dead. Counsel could have ascertained the lighting conditions on Little California Road on a dark night and put before the jury that Laborde and the Sanders sisters could not possibly have recognized their alleged assailant. And counsel could have brought out through cross-examination the extensive discrepancies discussed above in the Statement of Facts. Clearly, whether or not the statements and other materials from the prosecution file were disclosed (which they were not), counsel had at his disposal the tools to show that the accusation against Simmons stunk to high heaven. And again, had he done so, there is not merely a "better than negligible" but an overwhelming chance that the outcome of the trial would have been different. Petitioner has clearly demonstrated ineffective assistance of counsel and is entitled to vacatur on that basis in addition to the other reasons set forth above.

POINT VII: AT A MINIMUM, A HEARING MUST BE HELD TO DETERMINE THE VERACITY OF SIMMONS' CLAIMS

Petitioner submits that no hearing is necessary to grant this motion. As discussed in Point II *supra*, the proof newly submitted with this motion, combined with all the exculpatory evidence withheld before the trial – "all the evidence, old and new" – overwhelmingly proves his innocence. There is nothing left of the case against Simmons – not even a crime he could hypothetically have committed – and petitioner submits that, at this point, the State can no longer claim in good faith that he is guilty.

If the State does dispute Simmons' innocence, however, any such dispute is an issue of credibility that cannot be determined on the pleadings. If the witnesses whose affidavits and reports are annexed to this report are credited, then Simmons is innocent – no ifs, ands, or buts – and therefore, this Court cannot dismiss the petition without hearing from them and determining whether they *should* be credited. Where the resolution of a PCR petition hinges on factual disputes, the petition cannot be decided on the pleadings. See Hurst, supra; Alvarez, supra; Kang, supra. Therefore, at minimum, this Court should schedule an evidentiary hearing at which Simmons witnesses may be heard, see Davis, supra, and at which he may prove his innocence conclusively.

CONCLUSION

WHEREFORE, in light of the foregoing, this Court should issue an Order granting this petition or alternatively scheduling a hearing thereon, and granting such other and further relief to petitioner as it may deem just and proper.

Dated: October 16, 2020
Forest Hills, NY

Respectfully submitted,
JUSTIN C. BONUS, ESQ.
Attorney for Defendant
118-35 Queens Blvd, Suite 400
Forest Hills, NY 11375

By: /s/*Justin Bonus*
Justin C. Bonus, Esq.

Of Counsel: Jonathan I. Edelstein