

IN THE MISSOURI SUPREME COURT

IN RE: RODNEY L. LINCOLN,)	
Petitioner,)	
v.)	Case No. SC96083
)	
JAY CASSADY, Superintendent,)	
Jefferson City Correctional Center)	Pursuant to Mo. Sup. Ct. R. 84.05(f),
Respondent.)	with consent of all parties

SUGGESTIONS IN SUPPORT OF PETITIONER’S APPLICATION FOR TRANSFER

BY *AMICUS CURIAE* HEALING JUSTICE PROJECT

THE INTEREST OF THE *AMICUS*

M.D., survivor of a violent home invasion in which she was stabbed and her mother was killed, now agrees with Rodney Lincoln, who has spent 33 years behind bars for the crimes: “I had to tell you guys Rodney did not do it,” M.D. told authorities in December 2015. “He was not in my house. Never. Never.” The *amicus*, Healing Justice Project, recognizes that exonerations of the wrongfully convicted help ensure justice for crime victims. No one benefits when the wrong person is accused and convicted, certainly not the victim, who may suffer further victimization. Healing Justice Project was founded by Jennifer Thompson, a co-author of *Picking Cotton* with Ronald Cotton, against whom she had testified as a victim in Cotton’s wrongful conviction of rape. DNA evidence prompted the real rapist to confess and freed Cotton from a life sentence. The organization seeks healing justice for M.D.

SUMMARY OF ARGUMENT

This Court should accept transfer of Rodney Lincoln’s habeas corpus petition because only his exoneration can bring justice to M.D. A viable criminal justice system

must take care to convict only the guilty, heed the rights of victims, and seek the truth. As a seven-year-old victim of and witness to horrific violent crimes, M.D. was impeded from testifying truthfully at trial regarding her mother's murderer and was coerced into telling a false story constructed by investigators, and adopting it as her own "eyewitness" story.

FACTS

Joanne Tate's brother Daniel was present when the Petitioner introduced himself as "Rodney Lincoln" to Joanne at a bar. They dated briefly, and Joanne wrote about "Rod" in her diary. Joanne and two daughters visited his home once when daughter M.D. was 6.

Before dawn on April 27, 1982, a man stabbed Joanne Tate to death in her apartment and injured her two daughters, M.D., age 7, and R.T., age 4. When help arrived, M.D. told her mom's fiancé three times: "Bill did it." She told her Uncle Nathaniel: "The man who worked on Mama's car. Bill did it." Following surgery, M.D. agreed with speculation that "Gary" did it, but told investigators it was "Bill." Unknown to the jury, for several months, M.D. pointed out virtually every man of medium build whom she saw in person as the "bad man," including Prosecutor Joseph Bauer. She pointed out a black pedestrian as the "bad man." An Asian restaurant employee was also the "bad man."

During M.D.'s initial recovery, however, the bad man did not appear in any of 47 photographs shown her, the jury heard. So a detective sketched a man with short, dark hair, guided by M.D.'s descriptions and a photo of a neighbor. Joanne's brother told police the sketch looked like "Rod." Viewing a two-photo lineup, M.D. selected a 1977 black-and-white mugshot of Lincoln instead of a color Polaroid of a man related to M.D.'s teenaged sister. The same day, held high by a detective and looking for the "bad man" through the

one-way window of a “magic door” at police headquarters, M.D. viewed and selected the short-haired Lincoln from a four-man line-up that included three men with long hair. In December 2015, at age 41, she recanted her identification of Rodney Lincoln.

ARGUMENT

I. Lincoln’s Wrongful Incarceration Mocks Expectations of Criminal Justice

A wrongful conviction disturbs the fundamental purpose of a criminal justice system. Justice rebalances the losses of victims against the rights of perpetrators. It is manifestly unjust to crime victims for the wrong individual to lose his rights while the perpetrator remains free to victimize others. Our criminal justice system reveres victims’ rights: All 50 states and Congress have passed laws with explicit descriptions of governments’ duties to victims. These laws reflect citizenry’s values as expressed in their political choices. Successful politicians often speak of dispensing governmental “justice” upon victims, but such “justice” is more than a jury verdict in favor of a victim’s testimony.

Here, “M.D.’s testimony was the key.” *Lincoln v. State*, 457 S.W.3d 800 (Mo. App. E.D. 2014). DNA has shown that Lincoln was not the source of a hair introduced against him at trial. M.D.’s recantation leaves *no* evidence that Lincoln committed the crime, and he didn’t. Fairness requires this Court to review the overwhelming evidence of Lincoln’s innocence, including M.D.’s mature reassessment of her testimony.

II. Wrongful Conviction Torments M.D., Who Was Compelled to Testify Falsely

Exoneration of Rodney Lincoln would free M.D. from the burden of her incorrect, eyewitness testimony, which resulted from the mishandling of her as a traumatized child

witness. Overwhelming evidence now shows M.D.’s testimony was not the product of her observations but was the result of investigators’ manipulation. M.D. stated when she recanted:

I don’t know how Rodney ‘got there,’ because when this all happened, I told police that the man had worked on my mom’s car, that he said his name was Bill, that he was from Hollywood, that he had a yellow Volkswagen. I told them all of that. So I don’t know why Rodney is ‘there,’ but he was never there. He didn’t do this.

Rodney “got there” through a predictable route: The State’s manipulation of an eyewitness’s memory. Eyewitness misidentifications are the leading cause of wrongful convictions in the United States, “responsible for more wrongful convictions than all other causes combined.” *State v. Dubose*, 2005 WI 126, ¶30, 285 Wis. 2d 143, 699 N.W.2d 582. The hallmarks of manipulated eyewitness testimony include:

Stress: M.E. was under intense, distracting stress as she witnessed her mother’s bloodied body and her attacker’s vicious actions. High levels of stress strongly affect the ability to accurately identify a person. Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 51 (2011).

Multiple ID attempts of Rodney Lincoln: M.D. identified Lincoln in a live line-up while held in the arms of a detective and looking through the one-way window of a “magic door” at police offices. But she had already picked his picture earlier the same day – when the detective showed her a 1977 mugshot. “[O]nce an eyewitness has mistakenly identified someone, that person ‘becomes’ the witness’s memory, and the error will simply

repeat itself.” Gary L. Wells and Deah S. Quinlivan, *Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later*, 33 *Law Hum Behav* 1, 7 (2009).

Stacked line-up: After guiding a technician to sketch a short-haired man, M.D. twice selected Lincoln from stacked line-ups. First was the two-photo line-up featuring a relatively short-haired Lincoln and a long-haired relative of M.D.’s teenaged sister. Hours later came *a four-man line-up that included three men with long hair* and Lincoln with much shorter hair. Both were stacked lineups, constructed so that the suspect stood out. Garrett, *supra*, at 58.

CONCLUSION

M.D. stated a year ago:

And the man who stabbed me? He sat on top of me and used this hand to stab me [gesturing with right hand]. And I told the cops that. Rodney Lincoln is left-handed. I just feel like they had so many opportunities to fix this and they just did the worst police work. And that makes me sad. Because I did my job. I did.

M.D. has again done her job. Her brave act of revisiting and correcting her story decades later deserves this Court’s recognition, and the Court should accept transfer of Rodney Lincoln’s *habeas corpus* petition. Justice for survivor M.D. requires nothing less.

Respectfully submitted,

/s/ Cheryl A. Pilate

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Certificate of Service

I hereby certify that on December 8, 2016, I electronically filed the foregoing with the Clerk of the Court and all parties using the Case.net electronic filing system.

/s/ Mark Kind

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