

CHERI HAYDEN

NO. 22-KH-244

VERSUS

FIFTH CIRCUIT

FREDERICK BOUTTE, WARDEN

COURT OF APPEAL

STATE OF LOUISIANA

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE
TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 08-1709, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

July 02, 2025

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Jude G. Gravois

**CONVICTION AND SENTENCE VACATED; REMANDED FOR NEW
TRIAL**

FHW

SMC

JGG

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Linda Tran
First Deputy, Clerk of Court

COUNSEL FOR PLAINTIFF/RELATOR,
CHERI HAYDEN

Charell D. Arnold

Jee Y. Park

COUNSEL FOR DEFENDANT/RESPONDENT,
FREDERICK BOUTTE, WARDEN

Honorable Paul D. Connick, Jr.

Thomas J. Butler

Anne M. Wallis

WICKER, J.

ON REMAND FROM THE LOUISIANA SUPREME COURT

This case is before this Court pursuant to an order of remand from the Louisiana Supreme Court. *See State v. Hayden*, 23-864 (La. 10/25/24), 395 So.3d 835. In its decision, the Louisiana Supreme Court reversed this Court’s 2023 opinion in *State v. Hayden*, 22-244 (La. App. 5 Cir. 4/26/23), 369 So.3d 844, *as clarified on rehearing* (5/23/23), which had granted defendant a new trial based on ineffective assistance of counsel, and remanded to this Court with instructions to consider the issues we had pretermitted. Having thoroughly considered and analyzed these issues, we find defendant has met her burden of proving that she was deprived of a fair trial in violation of her constitutional rights. We find that defendant has proven that a *Napue* violation, cumulative errors, and factual innocence each mandate a new trial in this matter. Accordingly, for the following reasons, we grant the writ application, vacate Cheri Hayden’s conviction and sentence, and remand this matter to the district court for a new trial.

PROCEDURAL HISTORY

On July 15, 2009, after a trial that included questionable eyewitness testimony and false statements, with no physical evidence linking her to the crime, a jury found relator, Cheri Hayden, guilty of the second degree murder of Patricia Landry, in violation of La. R.S. 14:30.1. The trial court sentenced relator to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. Thereafter, this Court affirmed relator’s conviction and sentence, and the Louisiana Supreme Court denied relator’s writ application. *State v. Hayden*, 09-954 (La. App. 5 Cir. 5/11/10), 41 So.3d 538, *writ denied*, 10-1382 (La. 1/14/11), 52 So.3d 899.

On August 28, 2018, Ms. Hayden filed a counseled application for post-conviction relief (“APCR”) in which she raised the following claims: 1) the State

withheld favorable evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); 2) the jury heard false testimony in violation of *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); 3) ineffective assistance of counsel; 4) cumulative errors; and 5) actual innocence. On January 14, 2019, the district court denied her APCR on procedural grounds. On review, this Court denied relator's writ application. *Hayden v. Boutte*, 19-54 (La. App. 5 Cir. 5/14/19) (unpublished writ disposition). On June 12, 2019, relator filed a writ application with the Louisiana Supreme Court seeking review of this Court's denial of her APCR.

While her application was still pending in the Supreme Court, on January 15, 2021, Ms. Hayden filed an APCR with the district court based on additional new evidence related to her claim of factual innocence, which was later converted to a supplement to her 2018 application. Cheri Hayden also filed a second supplemental application to address La. C.Cr.P. art. 962.2, as it relates to her actual/factual innocence claim, which was enacted while her application was pending.¹

On April 13, 2021, the Supreme Court granted Cheri Hayden's writ of certiorari, finding she had made a sufficient showing under the particular circumstances of her case that her constitutional claims rest on facts not known to her or her prior attorney at the time of trial, and that she exercised diligence in attempting to discover those claims. The Court further directed the district court to conduct an evidentiary hearing and consider the merits of the post-conviction application in light of all of the evidence, pursuant to La. C.Cr.P. art. 930. *Hayden v. Boutte*, 19-968 (La. 4/13/21), 313 So.3d 971.

¹ La. C.Cr.P. art. 926.2, effective date, August 1, 2021, provides for a freestanding claim of factual innocence not based on DNA evidence. See *State ex rel. Stevenson v. State*, 22-299 (La. App. 5 Cir. 7/29/22) (unpublished writ disposition), where this Court found that "the exclusive grounds to raise a factual/actual innocence claim not based on DNA evidence is pursuant to La. C.Cr.P. art. 926.2."

On February 16-17, 2022, the district court conducted an evidentiary hearing, in accordance with the Supreme Court’s order, during which Ms. Hayden presented evidence in support of each of her post-conviction claims.

On March 24, 2022, the district court denied all of the claims in Cheri Hayden’s APCR. On June 1, 2022, Ms. Hayden filed a writ application seeking review with this Court, in which she re-urged her post-conviction claims raised in the district court. On August 4, 2022, the State filed its opposition with this Court, asserting that defendant’s claims of ineffective assistance of counsel, *Brady* violation, perjured testimony, and cumulative error were without merit, and that defendant’s claim of factual innocence failed to meet the requirements of La. C.Cr.P. art. 926.2.

On April 26, 2023, this Court granted Ms. Hayden’s writ application, vacated her conviction and sentence, and remanded for a new trial. *Hayden*, 369 So.3d at 875. This Court found Ms. Hayden did not receive a fair trial due to ineffective assistance of trial counsel, stating, “the gravity and cumulative impact of trial counsel’s pre-trial investigative failures constitute ineffective assistance of counsel, which violated Cheri Hayden’s constitutional rights and warrants granting her a new trial.” This Court further found that, but for counsel’s ineffective assistance, there is a reasonable probability that the outcome of the case would have been different. Due to our ruling granting a new trial, this Court pretermitted discussion of Ms. Hayden’s remaining claims for post-conviction relief. *Id.*

The State filed an application for supervisory review with the Louisiana Supreme Court, and the Supreme Court granted writs for briefing and oral argument. *Hayden v. Boutte*, 23-864 (La. 4/23/24), 383 So.3d 574. Thereafter, on October 25, 2024, the Louisiana Supreme Court reversed this Court’s ruling, reinstated the district court’s ruling denying Ms. Hayden’s claim of ineffective assistance of counsel, and remanded the case back to this Court to consider the

post-conviction claims that we had pretermitted. *Hayden*, 395 So.3d at 843. In its opinion, the Supreme Court agreed that trial counsel’s performance was deficient in some respects, but ultimately found that Ms. Hayden failed to show prejudice under the *Strickland* standard.² *Id.* at 842-43.

FACTS

Cheri Hayden has always maintained that she is innocent of this crime. She has set forth evidence showing she had an alibi and also supporting her claim that another individual, Jessica Billiot, committed the murder of Ms. Landry. In this Court’s opinion on post-conviction relief, *Hayden*, 369 So.3d at 848-853, we set forth a detailed recitation of the facts. Here, we find it crucial to reiterate these facts in their entirety, as presented in our prior opinion.

The Events of February 23, 2008

On February 23, 2008, around 1:30 p.m., Patricia Landry was run over and killed by a person driving a red pick-up truck in the Laborie’s Grocery Store parking lot, in Marrero, Louisiana. A woman was seen driving the truck with a man in the front passenger seat and another man in the back seat. Before Ms. Landry was run over, the truck’s front seat passenger reached out of the truck, grabbed Ms. Landry’s purse, and began to struggle with her over possession of the purse. Ms. Landry was heard yelling for help as she fought for her purse. The truck’s male passenger continued to tug on the purse while Ms. Landry held onto its strap. At some point during the struggle, the strap of Ms. Landry’s purse broke and Ms. Landry slipped underneath the truck. The truck’s back tire rolled over Ms. Landry’s back, crushing her.³ The truck then left the grocery store parking lot.

A short distance away, and soon after leaving the grocery store parking lot, the red pick-up truck was involved in a hit and run accident. Connie Dutriel was driving her vehicle when the truck suddenly pulled in front of her, crossing her lane of oncoming traffic. The two vehicles collided, but the truck raced away. Ms. Dutriel pursued the truck until it intentionally reversed into her, resulting in significant damage to her vehicle.

Investigation and Arrest of Cheri Hayden

² *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), adopted by the Louisiana Supreme Court in *State v. Washington*, 491 So.2d 1337, 1339 (La. 1986).

³ The autopsy report indicated that Ms. Landry was pronounced dead at 2:12 p.m. and died as the result of multiple blunt force injuries, including rib fractures, a spinal fracture, and collapsed lungs.

The Jefferson Parish Sheriff's Office ("JPSO") identified three witnesses who saw the truck's female driver: Tabitha Chaisson and Warren Pitre stated they witnessed the crime in the Laborie's parking lot; and Ms. Dutriel claimed she caught a glimpse of the driver during the hit and run accident. In their initial accounts to JPSO, all three witnesses provided a similar description of the white female driver as having blonde hair and appearing to be in her 20s or early to mid-30s.

At 4:45 p.m. on the day of the crime, Ms. Chaisson gave a recorded statement to the lead JPSO investigator, Lieutenant Donald Meunier. Ms. Chaisson provided an account of what she witnessed that afternoon in the grocery store parking lot. She described the female driver as a "skinny," "very pale" white woman with "strawberry blonde hair," "bluish green eyes," and in her "mid-thirties." She also described the front seat male passenger who was trying to steal the victim's purse and recounted how she tried to help the victim.

At 5:00 p.m. on the same day, Ms. Dutriel also provided JPSO a recorded statement. She stated that the driver was a "young girl about in her twenty's," "maybe her middle-late twenty's [sic] early thirties" with "light-colored" "blonde...brown hair," and that she was wearing sunglasses at the time.

JPSO also located a witness shortly after the crime in the grocery store parking lot who recognized the male front seat passenger as a distant acquaintance. Bonnie Gras, who operated a shrimp stand in the Laborie's parking lot, saw the truck leave the parking lot and was able to identify Michael Coe as the front seat passenger of the truck. She made her identification at 12:38 a.m. on February 24, 2008.

At this stage of the investigation, JPSO did not have any leads as to the location of the truck, the owner of the truck, or the male occupant observed in the truck's backseat.

Nevertheless, based on the identification of Michael Coe, investigators conducted a computer database search to identify any white female associates of Mr. Coe who could have been with him during the crime. Investigators learned that eight days prior, on February 15, 2008, JPSO had stopped Mr. Coe and Cheri Hayden for a traffic violation. Because Cheri Hayden was a white woman with blonde hair, who had some affiliation with Mr. Coe, officers decided to compile a photo line-up that included Cheri Hayden. At the time of the crime, Cheri Hayden was 45 years old, with deep facial lines.

Between 12:38 a.m. and 1:51 a.m., JPSO developed a photo array of six women who "generally fit the same physical descriptions" as Cheri Hayden. JPSO specifically focused on white females "with certain length hair and certain color hair; blond [sic] hair." Lieutenant Meunier testified at trial that they "opted to go with black and white" photos because Cheri Hayden's photo "seemed distinctive." He added that he "thought it would be prudent to use the black and white because of the hair color...there were dramatically different shades; and the eye color too."

Shortly after compiling the photo line-up, multiple JPSO officers arrived at Ms. Chaisson's residence, sometime in the 1:00 a.m. hour, to conduct an identification procedure. Lieutenant Meunier administered the photo identification. At approximately 1:51 a.m., Ms. Chaisson positively identified Cheri Hayden as the driver of the red pick-up truck. Ms. Chaisson also identified Mr. Coe as the front seat passenger who grabbed the victim's purse.

Based on Ms. Chaisson's identification, JPSO obtained an arrest warrant for Cheri Hayden. At approximately 7:30 a.m., investigators effected the arrest of Cheri Hayden at her family's trailer home. The officers also conducted a search of the home; however, the search yielded no evidence connecting Cheri Hayden to the crime. At the time of Cheri Hayden's arrest, less than 24 hours after the crime, JPSO had yet to locate the truck used to commit the crime, did not know who owned the truck, and did not know the identity of the back seat passenger in the truck or his relationship to the other occupants.

After her arrest, Cheri Hayden agreed to speak with investigators and offered a detailed account of her whereabouts throughout the day in question. She explained that on February 23, 2008, she was at her father's residence sometime after 12:00 p.m., where she "bathed and begun preparing food for a barbeque and birthday party for her granddaughter." She told investigators that she remained at the party from around 3:00 p.m. until around 8:00 p.m., leaving only briefly to purchase additional party supplies sometime between 4:00 p.m. and 5:00 p.m. Cheri Hayden acknowledged knowing Mr. Coe for 35 years, but denied any knowledge or involvement in the crime. Investigators also interviewed two individuals Cheri Hayden stated she was with on the day of the crime. Both individuals corroborated her statement to investigators that Cheri Hayden was preparing for and attending her granddaughter's birthday party on the day of the crime.

JPSO subsequently received an anonymous tip that Matthew Vinet was potentially involved in the homicide. JPSO discovered that Mr. Vinet owned the red pick-up truck and after inquiring about its whereabouts, Mr. Vinet led officers to the truck, which officers observed being cleaned with bleach. Mr. Vinet initially denied any involvement in the crime. However, after being presented with "certain investigative suspicions," Mr. Vinet admitted he was in the backseat of the truck during the purse snatching and had relocated the truck as a result. Mr. Vinet gave JPSO his account of the events of February 23, 2008, which implicated Cheri Hayden. Mr. Vinet was arrested for accessory after the fact to second-degree murder.

After Cheri Hayden's arrest, JPSO called Ms. Dutriel to the detective's bureau for an identification procedure. The day before, Ms. Dutriel had described the driver as a "young girl about in her twenties." Nevertheless, JPSO showed Ms. Dutriel a photo array of women visibly older than the description she gave to police. Ms. Dutriel identified Cheri Hayden from the lineup.

Prosecution of Cheri Hayden

The State's case relied on eyewitness testimony, offering no physical evidence connecting Cheri Hayden to the crime. The State's key witness was Ms. Chaisson, who identified Cheri Hayden as the driver of the truck that ran over and killed the victim. Ms. Chaisson testified at trial that she heard someone yelling for help in the parking lot of Laborie's Grocery Store in Marrero. She ran towards the yelling and observed a male leaning out of the passenger-side of a truck trying to steal a woman's purse. The woman, who was later identified as Patricia Landry, was still holding onto the purse's strap while the male passenger continued to tug on the purse. Ms. Chaisson testified that it appeared the truck was being used as leverage, as the driver was starting and stopping it. Ms. Chaisson testified that she was fearful that the victim would be run over by the truck, so she tried to pull Ms. Landry back, and at the same time tried to push the male passenger away, and yelled for them to let go. According to Ms. Chaisson, the driver then cut the wheel to leave, resulting in Ms. Landry falling underneath the truck and being run over as the truck drove away.

The State also called Ms. Dutriel at trial, who testified that she was in a car accident with a red pick-up truck. She stated that she saw the driver who collided with her vehicle. Ms. Dutriel described the female driver as wearing sunglasses and having "two-toned" hair, which she further described as a mix of brown and blonde with the lighter shade on the bottom. Ms. Dutriel was also questioned about the age of the driver, and she testified that the driver was "in between her twenties and thirties."

Matthew Vinet, the truck's back seat passenger at the time of the crime, also testified for the State and against Cheri Hayden. Mr. Vinet testified that at that point in time, he was living with his long-time girlfriend, Jessica Billiot, and a friend named "Will." On the morning of the crime, he was driving his red pick-up truck when he saw Mr. Coe and Cheri Hayden on the side of the road and decided to stop. Mr. Vinet admitted that on that day, he was drinking heavily and was high at the time. After stopping, Mr. Vinet climbed into the back passenger seat, Mr. Coe sat in the front passenger seat, and Cheri Hayden began driving the truck. He testified that they rode around smoking crack cocaine prior to the crime. Mr. Vinet described the purse snatching incident and the subsequent hit and run. He indicated that when he left the house earlier that day and later encountered Mr. Coe and Cheri Hayden, his girlfriend and their roommate, Will, had gone to Walmart with Will's mother. Mr. Vinet denied Jessica Billiot ever having blonde hair and testified she was not in the truck at any point on the day of the crime.

Additionally, Lieutenant Meunier testified at trial that he conducted the identification procedure with Ms. Chaisson and also obtained Mr. Vinet's identifications of Mr. Coe and Cheri Hayden. At trial, the results of DNA testing performed on cigarettes found in Mr. Vinet's pick-up truck were introduced into evidence. The DNA found on the cigarettes matched the DNA of Mr. Vinet and his girlfriend, Jessica Billiot. Lieutenant Meunier explained that he was not surprised

that DNA found in the truck was linked to Mr. Vinet, as he was the owner of the truck. The lieutenant similarly testified that he was not surprised that Jessica Billiot's DNA was found in the truck because she told the police she used Mr. Vinet's truck. At trial, Lieutenant Meunier was asked if Jessica Billiot "was ever a suspect or was she ever identified by anyone as a suspect in this murder investigation." Lieutenant Meunier replied, "[n]o, she was not." The lieutenant was then asked to describe Jessica Billiot and identify photographs of her. Lieutenant Meunier described Jessica Billiot as a white female, with brunette hair, and in her twenties. He further testified that Jessica Billiot did not resemble Cheri Hayden in any way.

Cheri Hayden's Defense at Trial

In addition to testifying herself at trial, Cheri Hayden presented the testimony of three alibi witnesses: her father, her father's wife, and her daughter. Although their testimony varied as to the precise time the events of the day took place, they each consistently testified and corroborated Cheri Hayden's testimony that she was preparing for and helping to set up her granddaughter's birthday party on the day in question.

Cheri Hayden's father, Walter Breaux, testified that on February 23, 2008, his daughter was at his home taking a bath around 1:00 p.m. and making potato salad before leaving for the birthday party. Cheri Hayden's father also testified that he recalled Cheri Hayden sleeping at his home the night before the party.

Mr. Breaux's wife, Judith, testified that she had attended church and gone to the store to buy birthday presents on February 23, 2008. When she returned from church at 1:30 p.m., Cheri Hayden was in the bathroom, and Mr. Breaux was making potato salad. She stated that Cheri Hayden left for the party with the potato salad shortly before 2:00 p.m. The party was scheduled for 3:00 p.m., so Ms. Breaux arrived at the party around 2:50 p.m., but Cheri Hayden was running errands at that time. She indicated that Cheri Hayden was running errands for the party because when it came to party planning, they could not depend on Cheri Hayden's daughter.

Cheri Hayden's daughter, Amy Hayden, stated that on February 23, 2008, she was hosting a birthday party for her daughter. The party was originally scheduled for 2:00 p.m. but because things were not ready, she moved the party to 3:00 p.m. Cheri Hayden arrived at Amy Hayden's house a little before 2:00 p.m. and stayed with the children while Amy Hayden ran errands for the party. Amy Hayden testified that while her mother stayed with the children, she went to pick up the cake at Laborie's and "heard an old lady had gotten hurt," but that she did not notice any police cars. Amy Hayden further testified that at around 3:00 p.m., her mother started the barbeque, and after they ran out of ice cream, her mother, Cheri Hayden went to Laborie's for more ice cream sometime around 4:00 p.m.

Cheri Hayden testified in her own defense. She stated that the

night before the party, she stayed at her friend Jill Perez's house, and on the next day returned to her father's trailer sometime between 12:30 p.m. and 12:45 p.m. She explained that she began making potato salad for the party. While the potatoes were boiling, she showered, and by 1:30 p.m., her father's wife returned from church. Cheri Hayden testified that she left her father's place at around 2:30 p.m., stopped to pick up party hats at a video store, and arrived at the party at around 2:45 p.m. At trial, the State confronted her with alleged discrepancies between her trial testimony and her statement given to the police on the day after the crime. Cheri Hayden's statement to police indicated that she went to Laborie's between 4:00 p.m. and 5:00 p.m. and that "[e]verybody was talking about what happened in the parking lot."

The last witness called was Jessica Billiot. She testified that on February 23, 2008, she was with Mr. Vinet in the morning, but that she was not with him in the afternoon. She testified that she had been in Mr. Vinet's truck that morning, but not between the hours of 1:00 p.m. and 3:00 p.m. Jessica Billiot was also questioned about where she went that day. Cheri Hayden's trial counsel asked Jessica Billiot, "Let me ask you this. Were you shopping with your Mother that day?" Jessica Billiot replied, "[n]o; with William's mother." Moreover, she told the jury that she had never had blonde hair.

Evidentiary Hearing on Post-Conviction Relief

Warren Pitre's Testimony

JPSO identified Warren Pitre as an eyewitness to the crime in the Laborie's parking lot. He testified at the evidentiary hearing that, following the crime, he spoke with officers on the scene; he recalled that there was a male in the passenger seat and "a young lady driving the truck;" he testified that the woman driving the truck was "a blonde-headed young girl;" he stated that she was driving and yelling at the male in the front seat to "hurry up." He further testified that the female driver was in her twenties. Mr. Pitre indicated that he actually provided a description of the woman's age to two different officers. Mr. Pitre stated that he did not have a direct view of the driver's face, but explained that he saw the side profile of her face.

Additionally, Mr. Pitre testified that he did not see Tabitha Chaisson helping the victim in the parking lot, as Ms. Chaisson had claimed. He testified that he was called to testify at the pre-trial suppression hearing. He testified that while waiting to testify at the motion hearing, he overheard Ms. Chaisson's account of the crime. He testified that at that point, he alerted the woman who was coordinating the State's witnesses that Ms. Chaisson was not present on the scene acting as he overheard her describe, and that he never saw Ms. Chaisson on the scene. He testified at the evidentiary hearing that after expressing his concerns regarding the truth of Ms.

Chaisson's account of events to the State's witness coordinator, the witness coordinator did nothing.

The record also reveals that months after the February 28, 2008 murder, on October 13, 2008, Mr. Pitre provided Lieutenant Meunier with a recorded statement in which he detailed what he witnessed in the grocery store parking lot. While Mr. Pitre described the female driver as having blonde hair, Lieutenant Meunier did not ask Mr. Pitre what the approximate age of the driver was. Mr. Pitre was then asked to identify the male front seat passenger from a six-person photo array. He positively identified Michael Coe. However, Lieutenant Meunier did not ask Mr. Pitre to make a similar identification of the female driver. Mr. Pitre was not called to testify at trial. [Footnote omitted.]

Tabitha Chaisson's Testimony

After being advised of her Fifth Amendment rights at the evidentiary hearing, Ms. Chaisson testified regarding the circumstances surrounding her identification of Cheri Hayden. She testified that JPSO officers arrived at her home in the middle of the night, less than 12 hours after the crime, to conduct an identification procedure. Ms. Chaisson testified that when the officers showed up at her house, they appeared "eager," and that "[t]hey wanted to put these people in jail." She stated that when she was initially shown the photo array of women to choose from, she "didn't honestly feel like they were the right age." She recalled that "the majority of them looked...too old." Ms. Chaisson testified that the women in the photo array appeared in "their 50s plus." She told the officers "she couldn't pick anybody on the dot." Ms. Chaisson testified that she got the sense the police wanted her to identify someone. She recalled "[o]ne cop...had his thumb right beside the one picture," and she "got the feeling that that was who they wanted...like, they knew something that I didn't."

Ms. Chaisson admitted that the police did not tell her she had to identify someone; however, she testified that with the officer's thumb next to the photo, she believed that was the person they wanted her to select, and she did. She testified that the identification procedure was "very odd" and that "there seemed to be a lot more people in [her] house than should have been." Ms. Chaisson admitted that she lied at trial. She explained that because of the circumstances of the identification procedure, the officers arriving in the middle of the night, appearing eager to apprehend the perpetrators, the officer placing his thumb next to one of the pictures, and her desire to help with the investigation, she convinced herself that she identified the correct person. Ms. Chaisson testified, however, that she knew "in [her] gut, that [she had] known this since it happened" that "it was not Cheri Hayden."

Lieutenant Donald Meunier's Testimony

Lieutenant Meunier testified that he conducted the photo identification with Ms. Chaisson. He testified that Ms. Chaisson did not indicate that the women in the photos were older or that she could not identify the female perpetrator. He stated that he never placed his thumb on a photo of Cheri Hayden, nor asked Ms. Chaisson if she was sure she could not make an identification. Lieutenant Meunier also testified to his process for creating the six-person photo array that included Cheri Hayden's photo. He testified that the six-person photo array was designed around Cheri Hayden. He stated that the array was based off of Cheri Hayden's photograph and inclusion of five people with similar characteristics "would be the goal." Lieutenant Meunier testified that the photo array was not based on the descriptions given by the eyewitnesses. The lieutenant indicated that he and another investigating officer conducted the identification procedures. Lieutenant Meunier admitted that practices implemented to ensure more reliable identifications were not used in this case; he did not conduct a blind identification procedure; and he did not record the initial identification.

Lieutenant Meunier also testified that months after the crime, on October 13, 2008, he spoke with Mr. Pitre about what he witnessed and took his recorded statement. He recalled that Mr. Pitre did not indicate to him that the driver was young. Lieutenant Meunier testified that Mr. Pitre spoke with officers at the scene in February 2008. He further admitted that in February 2008, JPSO did not realize that the patrol division officers had spoken with Mr. Pitre due to "communication breakdowns."

Further, Lieutenant Meunier admitted that he received an anonymous tip about an individual named "BJ," later identified as Barbara Jean Williams,⁴ having information about the crime. He testified that his source conveyed rumors that Jessica Billiot was the driver and that, in fact, Jessica Billiot had confessed to Barbara Williams that she was the driver. Lieutenant Meunier stated that officers investigated the tip and interviewed Barbara Williams, but that she denied Jessica Billiot had ever confessed to any involvement in the crime to her. Lieutenant Meunier testified that Jessica Billiot was never considered a suspect. He also admitted, however, that Jessica Billiot was advised of her *Miranda* rights and signed a JPSO arrestee/suspect waiver of rights form.

IPNO Investigator Devon Geylin's Testimony

Devon Geylin, an investigator for IPNO, testified at the evidentiary hearing that she was responsible for investigating Cheri Hayden's alibi. She testified that she spoke with the State's witnesses, including Connie Dutriel, the victim of the subsequent hit and run accident. In her affidavit, Investigator Geylin attested that she learned that Ms. Dutriel was instructed to report to the JPSO Detective's Bureau for an identification procedure because the police had "found the suspects." At the evidentiary hearing, Investigator Geylin testified that she learned that, "although [Ms. Dutriel] had

⁴ Barbara Williams is a close maternal friend of Jessica Billiot.

initially described the driver of the truck as a woman in her 20s or early 30s, when she saw the lineup presented by the police, she knew that the driver was actually an older woman because all the women shown in the lineup were older than that age.” Ms. Dutriel thought that Cheri Hayden looked older than the driver she described as “young,” in between her 20s and 30s; Ms. Dutriel thought Cheri Hayden looked like she was in her 50s or 60s. Ms. Dutriel selected Cheri Hayden’s photograph from the line-up. Ms. Dutriel also told Investigator Geylin that she rationalized that the driver must have been older than the description she had given to police.

Linda Gordon Billiot’s Testimony

Linda Gordon testified that she did not know Jessica Billiot and, despite having the same last name, they were not related.⁵ She testified that she had known Mr. Vinet and his family since childhood; that she considered him to be a “vile person;” and that she was aware that he treated women poorly. Ms. Gordon recalled that in 2008, Mr. Vinet had a girlfriend, and though she did not know her by name, she had seen her a few times and recognized Jessica Billiot as Mr. Vinet’s girlfriend. She testified that sometime after the crime, she was visiting Barbara Williams (“BJ”) at her house, and Jessica Billiot was there. Ms. Gordon described Jessica Billiot as a “nervous wreck” and “terrified.” Ms. Gordon testified that Jessica Billiot was dyeing her hair and explained to her and Barbara Williams that she had to dye her hair, because “her hair was similar to Cheri Hayden’s hair color.” Ms. Gordon testified that Jessica Billiot spoke about the crime and admitted that “she was in the vehicle.” Jessica Billiot told the ladies that the police were looking for a girl with strawberry blond hair, so she was trying to dye her hair so it did not look like Cheri Hayden’s. Ms. Gordon testified that at the time, Jessica Billiot had “strawberry blond,” “reddish orange” hair, and she was trying to “dye her hair dark.”

Ms. Gordon stated that she “was trying to put two and two together when [she] was sitting there. And then when [she] realized what everything was doing [sic] ... [she] got out of there.” Ms. Gordon further testified that she did not go to the police with this information because she was a “single woman with two kids” and “[t]hese are dangerous people.” Ms. Gordon testified that when Jessica Billiot admitted to being involved, she was scared for herself and her children. She stated that “[she] wanted to get out of there and go home and pretend like it never happened.”

Additionally, Ms. Gordon testified that earlier in the same week that the crime took place, she happened to see Cheri Hayden. She knew Cheri Hayden from their time in school together. She testified that they spoke briefly and that Cheri Hayden mentioned she was staying with Jill Perez, a couple of trailers down from Ms. Gordon’s property.

⁵ For ease of discussion, we refer to Linda Gordon Billiot as Linda Gordon throughout the instant opinion.

Sometime after Jessica Billiot confessed to her and Barbara Williams, Ms. Gordon was doing repair work to her trailer when she ran into Jill Perez. She was aware that Jill Perez had been talking with the District Attorney's office in connection with Cheri Hayden's case. Ms. Gordon testified that she "told [Jill Perez] what happened and said if they need to speak to me, I'm right here at the trailer." Ms. Gordon testified that before IPNO contacted her, no one representing Cheri Hayden ever spoke to her about this case. She testified that "[i]f anybody would have talked to me, I would have told them."

Reina Rodriguez's Testimony

Jessica Billiot's cousin, Reina Rodriguez, also testified at the evidentiary hearing. She testified that Jessica Billiot dyes her hair a lot and that Jessica Billiot's boyfriend at the time was "always aggressive" and "abusive to [Jessica Billiot]." Ms. Rodriguez testified that in 2008, while visiting her aunt and Jessica Billiot's mother, Betty Billiot, Jessica Billiot "came in packing a bag" and saying "I gotta go, I gotta go, I can't tell you." Ms. Rodriguez asked Jessica Billiot what was wrong, and she responded "I don't know, we hit something." Ms. Rodriguez stated that she did not know who "we" referred to, but she knew that Jessica Billiot usually drove with her boyfriend in his truck. Ms. Rodriguez testified that Jessica Billiot told her they "ripped somebody off," and "they took her purse." Ms. Rodriguez described Jessica Billiot as appearing "really nervous" and "edgy." She further stated that Jessica Billiot was "out the door so quick."

Patricia Pavia's Affidavit

Cheri Hayden also introduced the sworn affidavit of Patricia Pavia, Reina Rodriguez's mother and Jessica Billiot's aunt.⁶ In her affidavit, Ms. Pavia stated that "between three to six months after the crime," she learned from her daughter, Reina Rodriguez that Jessica Billiot confessed to her involvement in the crime in the Laborie's parking lot. She also attested that "[a]t some point after Reina told me this about Jessica, a girl I did not know came to see me at my house [and] told me that her mom had been arrested for the crime...I told this girl what I knew. I told the girl who came to my house that Jessica had committed the crime. This girl never came to my house again."

Ms. Pavia attested that she then reported this information to the "Westwego Police Department on Avenue A"; she spoke to a uniformed police officer she described as a "stocky white man with glasses and dark hair;" Ms. Pavia attested that she reported the information to the police officer, but he did not take notes or record her statement; he simply stated that "they had it taken care of." Although Ms. Pavia could not recall the exact day she reported this information to the police, she attested that it was "before the trial of

⁶ Ms. Pavia died in the years between the filing of Cheri Hayden's 2018 application and the evidentiary hearing.

the people that were arrested for the Laborie's crime." Ms. Pavia also stated that no one other than Cheri Hayden's daughter in 2008, and IPNO Investigator Geylin in July 2018, ever contacted her in regards to the crime. She attested that "[i]f someone else had come to talk to [her], [she couldn't] think of a reason why [she] wouldn't have said the same things [contained in her affidavit]."

Joseph Billiot's Testimony

Joseph Billiot, Jessica Billiot's father, testified at the evidentiary hearing. In 2008, his daughter and Mr. Vinet were always together. When he first learned that Mr. Vinet's truck was used in the crime at Laborie's grocery store, he testified that he was worried his daughter was involved. He testified that the morning after the crime, he "went to check on Jessie." He tried to find out from his daughter if she was involved in the crime, but "she didn't really want to talk to [him] about nothing," which he found unusual because "Jessie normally came to [him], told [him] pretty much everything." Mr. Billiot testified that at the time the crime took place, Jessica Billiot was not with him or his wife; that he was never questioned by or gave a recorded statement to the police; and that Jessica Billiot often dyed her hair.

Hope Comeaux Verbois' Testimony

Hope Comeaux Verbois is the mother of William Thompson, Jessica Billiot's roommate in February 2008. Ms. Verbois testified at the evidentiary hearing that her son lived with Jessica Billiot and her boyfriend, Mr. Vinet, and that she recalled Jessica Billiot having blond hair at the time. She testified that in 2008, she learned of the crime on television and became worried because the truck involved in the crime belonged to Mr. Vinet. She worried that her son was somehow involved because Mr. Vinet was living with William. She testified that she later figured out that her son was not involved, and she "kn[e]w positively" that he was not involved because at the time of the incident, William had hit the gas meter at his house. Ms. Verbois testified that she was at his house when he did it, and, in order to avoid having to interact with the police, William left the house and she stayed, called the gas company, and waited for them to send someone to fix the gas meter. Ms. Verbois testified that Jessica Billiot and Mr. Vinet were not present at the house when she was there that day and also testified that she and Jessica Billiot did not go shopping together that day. In addition, Ms. Verbois stated that the police never spoke with her or asked if she had been with Jessica Billiot on the day of the crime.

Anita Pontiff's Testimony

Anita Pontiff testified that in 2008, she was exiting her car in the driveway of her home, when her next door neighbor approached the fence that divided their properties. The neighbor asked Ms. Pontiff "if [she] had heard about the incident that happened the night before." Ms. Pontiff testified that the neighbor then "just blurted out

that her daughter was responsible for it. She said her daughter was driving at the time....” Ms. Pontiff testified that she did not know the neighbor very well; that the neighbor had lived next door to her for approximately eight months to one year prior to her making the statement to her; and that she did not know her name.

Additionally, Ms. Pontiff admitted later in 2008, she was arrested on a charge in Jefferson Parish and spent some time in jail before the charge was eventually dismissed. Ms. Pontiff testified that while she was in jail, she met Cheri Hayden, who told Ms. Pontiff that the State had charged her with running over the victim at Laborie’s and insisted that she did not do it. Ms. Pontiff testified that she shared with Cheri Hayden what her next door neighbor had previously told her. When asked if Cheri Hayden’s attorney ever came to speak with her, Ms. Pontiff replied, “[n]o. I don’t remember him coming to see me. ...[W]hen I got released, I call [sic] the Innocence Project and told them what I had heard because I thought somebody should at least look into it, you know.”

Jessica Billiot’s Testimony

Cheri Hayden also called Jessica Billiot as a witness at the evidentiary hearing; however, Jessica Billiot invoked her Fifth Amendment rights against self-incrimination and refused to answer any questions.

Ashly Uhlig’s Testimony

Ashly Uhlig testified that she was a guest in attendance at the birthday party for Cheri Hayden’s granddaughter in February 2008. Ms. Uhlig explained that her then boyfriend, now her ex-husband, Raymond Philip Hayden, is Cheri Hayden’s nephew. She testified that she and Raymond arrived at the party at around 1:00 p.m. She recalled most of the people she saw at the party, including Cheri Hayden. She testified that Cheri Hayden “was kind of like the host of the party doing everything.” Cheri Hayden was “making sure everyone said happy birthday and had food, presents, that kind of thing.” Ms. Uhlig testified that Cheri Hayden “was acting completely normal, taking care of everything, making sure everyone had what they needed...cleaning up after everyone, pretty much how she usually is.” Ms. Uhlig testified that until IPNO contacted her, no one representing Cheri Hayden had contacted her or asked her any questions regarding this case. Ms. Uhlig testified that had she been contacted before Cheri Hayden’s trial, she would have provided the same information stating, “I feel like it’s an obligation...to just say what happened.”

Amy Hayden’s Testimony

Cheri Hayden’s daughter, Amy Hayden, also testified at the evidentiary hearing. She testified that in 2008, her mother was a heavy smoker, smoking a pack of cigarettes or more a day. On the day of the crime, Amy Hayden was throwing a birthday party for her daughter. Amy Hayden stated that her mom, her boyfriend at the

time, her children, some of her family, including Ashly Uhlig, and “a lot of [her boyfriend’s] family,” were present at the party. She testified that her mother helped her throw the party. Amy Hayden testified that after her mother was arrested in 2008, she spoke to her mother’s attorney, William Doyle; that she told him “everything that had happened...during the party and anything that I knew to help with the case;” and that she told Mr. Doyle who was at the party. Amy Hayden also testified that her mother told her about a woman she had met in jail who knew something about the crime. Based on the information her mother shared, Amy Hayden tried to “find out what the person knew;” she located the address where the person lived; and that she believed the person that lived there was Jessica Billiot’s mother. Amy Hayden testified that she shared this information with her mother’s attorney, William Doyle.

William Doyle’s Testimony

Cheri Hayden’s court-appointed trial attorney, William Doyle, testified as follows: he worked for the Jefferson Parish Public Defender’s office in 2008 and 2009; he remembered representing Cheri Hayden, but did not have any case notes related to the matter. Mr. Doyle testified that after enrolling as counsel, he reviewed the case file and received open-file discovery; he acknowledged that it is the “defense attorney’s responsibility to go over [the case file].” Mr. Doyle testified that “the policy of [the] office” was that once a case was assigned, the attorneys “were given a lot of latitude.” He stated that although the office provided investigators to assist in a case, it was required that a special request be made in order for an investigator to be assigned, but the requests were “generally approved.”

With respect to Cheri Hayden’s case, Mr. Doyle did not request an investigator; as a matter of practice, “[he] would do a lot of [the investigating him]self.” Mr. Doyle testified that he believed that because the State had eyewitnesses, the State’s case against Cheri Hayden was strong. Prior to trial, Mr. Doyle stated that he did not talk to any of the State’s witnesses; he relied on their statements on the witness stand because he “[could]n’t cross-examine a piece of paper”; he found in his experience that State witnesses do not want to talk to the defense; and he would have his “bite at the apple when they would take the witness stand.” While he remembered that he presented an alibi defense at trial, Mr. Doyle “did not remember a lot about this case.” Mr. Doyle did not recall Amy Hayden or any other members of Cheri Hayden’s family, and he did not remember if Amy Hayden provided him with any information helpful to her mother’s case. Mr. Doyle recalled Jessica Billiot’s statement to police that she was with her father on the day of the crime, but he could not recall if he interviewed Jessica Billiot’s father; he could not remember if he investigated any of Jessica Billiot’s family members; and he could not recall if he interviewed Ms. Verbois, the woman Jessica Billiot claimed she was shopping with at the time of the crime, or Barbara Williams, Jessica Billiot’s friend to whom she confessed and who the police interviewed after receiving a tip.

Regarding Cheri Hayden's alibi defense, Mr. Doyle recalled that "most" of the people at the birthday party "were not forthcoming" and "hesitant." He stated that in his experience, "a lot of time witnesses don't want to talk to you." Mr. Doyle testified that he called the witnesses who were "cooperative" and that he believed could corroborate Cheri Hayden's alibi. He recalled that he gave the court date to every alibi witness he spoke to and told them to come to court if they wanted to testify. He testified that some individuals were hesitant "because the store was close to their house and they could not verify that she was [at the party] the whole time." He also testified that it was his "own individual theory" not to subpoena defense witnesses because "they're not going to give you what you want...they may not show, they may change their stories."

Arguments at Evidentiary Hearing

[Cheri Hayden] also argued that the State failed to disclose material evidence in violation of *Brady*, which included: Mr. Pitre's description to officers on the scene that the female driver was young and in her twenties; Ms. Pavia's attempt to report what she knew first-hand, as well as what her daughter shared with her about the crime and Jessica Billiot's involvement; and the circumstances surrounding Ms. Chiasson's identification of Cheri Hayden. She alleged that the undisclosed evidence is favorable and material because it either directly implicates an alternative suspect or could have been used to impeach the credibility of the State's witnesses. Cheri Hayden argued that the cumulative impact of her trial counsel's ineffective representation, and the State's withholding of favorable evidence, entitles her to a new trial.

Cheri Hayden further argued that in violation of *Napue*,⁷ the State presented and failed to correct the false testimony of Lieutenant Meunier, who testified at trial that Mr. Billiot was never considered a suspect or identified by anyone as a suspect. Cheri Hayden argued that the State knew this was false because the investigative report reveals that officers investigated the tip they received regarding Jessica Billiot's involvement and, as a result, Jessica Billiot was informed that she was under investigation, mirandized, and signed an arrestee/suspect waiver of rights form.

Moreover, Cheri Hayden claimed that she is factually innocent under La. C.Cr.P. art. 926.2. She argued that the testimonies and affidavits of Joseph Billiot, Hope Verbois, Anita Pontiff, Reina Rodriguez, Linda Gordon, Jessica Billiot, Sherry Arwood, Amy Hayden, Ashly Uhlig, and Tabitha Chaisson is new, reliable, and noncumulative evidence, which is corroborated with scientific, forensic, and physical evidence, consisting of: the DNA testing results of the cigarettes matched to Jessica Billiot and found in the truck; the coroner's report showing the victim died in the same manner as Jessica Billiot confessed to Linda Gordon and Barbara Williams as

⁷ *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959).

having committed, by running over the victim; the victim's discarded purse corroborating the details of eyewitness accounts and Jessica Billiot's confession; and Dr. Nancy Franklin's proffered expert report on memory and eyewitness identification providing valid scientific research to explain why and how the State's witnesses misidentified Cheri Hayden.

In opposition, the State argued as follows: that Cheri Hayden failed to establish credible evidence in support of her claims; that the evidence submitted is not corroborated by evidence in the record or presented at trial; that the testimony and affidavits produced at the hearing are based on hearsay or double hearsay; that it is mere speculation that any of the affiants and witnesses presented at the hearing would have testified at trial; and that Cheri Hayden's trial counsel made a strategic decision to present only an alibi defense because the evidence Cheri Hayden relies on "would have left the jury with only suggestions of [Jessica Billiot's] participation." The State further opposed Cheri Hayden's application, arguing that the testimonial evidence in support of Cheri Hayden's factual innocence claim is unreliable and based on hearsay and thus, inadmissible. The State argued that La. C.Cr.P. art. 926.2 requires that testimonial evidence be corroborated by *new* scientific, forensic, physical, or nontestimonial documentary evidence. The State argued that because the trial court excluded Cheri Hayden's expert report, and the DNA testing results and the coroner's report were admitted at trial, the evidence was not new. Therefore, the State argued that Cheri Hayden failed to carry her burden to prove her factual innocence claim.

LAW AND DISCUSSION

In her claims on post-conviction relief, Ms. Hayden alleges that newly discovered evidence raises doubts about the sufficiency of the JPSO's investigation, the credibility of the State's star witness, Tabitha Chaisson, and the reliability of Ms. Chaisson's identification of Cheri Hayden as the perpetrator of the crime. She sets forth claims that the State withheld *Brady* information from the defense, false testimony was present in violation of *Napue, supra*, cumulative errors tainted the entire trial, and she is factually innocent of this crime. As ordered by the Louisiana Supreme Court, we will address each of these pretermitted claims in turn.

Brady violation

In her first claim, Ms. Hayden argues that the State withheld favorable evidence from the defense, which either impeached the credibility of the State's

witnesses or directly implicated an alternative suspect, Jessica Billiot, who was co-defendant Vinet's girlfriend at the time of instant offense. Specifically, Ms. Hayden maintains that the State failed to disclose that: (1) Patricia Pavia informed the Westwego Police about Jessica Billiot's involvement in the crime; (2) Warren Pitre, an eyewitness, described the driver to the police as young and in her twenties and also advised the State after a pretrial motion hearing that another eyewitness, Ms. Chiasson, was not at the crime scene; and (3) the circumstances of Ms. Chiasson's identification of defendant were suggestive. She alleges that the undisclosed evidence was favorable to the defense and material, because it directly implicates an alternative suspect and could have been used to impeach the credibility of the State's witnesses.

In its ruling on post-conviction relief, the district court found Cheri Hayden failed to demonstrate that the State withheld *Brady* evidence as it relates to the State's witnesses, finding all of the testimony and/or affidavits presented at the evidentiary hearing by Ms. Pavia, her daughter Reina Rodriguez, Mr. Pitre, and Ms. Chiasson lacked credibility.

In *Brady, supra*, the United States Supreme Court held that the suppression by the State of evidence favorable to the accused violates a defendant's due process rights where the evidence is material to either guilt or punishment, without regard to the good or bad faith of the prosecutors. *State v. Kemp*, 00-2228 (La. 10/15/02), 828 So.2d 540, 545; *State v. Bright*, 02-2793 (La. 5/25/04), 875 So.2d 37, 41. The duty to disclose is applicable even where there has been no request by the accused. *United States v. Agurs*, 427 U.S. 97, 107, 96 S.Ct. 2392, 2399, 49 L.Ed.2d 342 (1976). The State's due process duty to disclose applies to both exculpatory and impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); *Kemp*, 828 So.2d at 545.

In *Kyles v. Whitley*, 514 U.S. 419, 437-38, 115 S.Ct. 155, 1567-68, 131 L.Ed.2d 490 (1995), the Supreme Court addressed the State's duty to disclose known, favorable evidence:

On the one side, showing that the prosecution knew of an item of favorable evidence unknown to the defense does not amount to a *Brady* violation, without more. But the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of "reasonable probability" is reached. This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable. (Citation omitted.)

In *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999), the United States Supreme Court explained that the three elements of a true *Brady* violation are: 1) the evidence must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice must have ensued. *State v. Louviere*, 00-2085 (La. 9/4/02), 833 So.2d 885, 896, *cert. denied*, 540 U.S. 828, 124 S.Ct.56, 157 L.Ed.2d 52 (2003).

Patricia Pavia

At the evidentiary hearing, defendant presented an affidavit, dated July 12, 2018, signed by Jessica Billiot's aunt, Patricia Pavia, who was deceased at the time of the hearing. In it, Ms. Pavia stated that three to six months after the instant offense, her daughter, Reina Rodriguez, told her that Ms. Billiot "had committed the crime at the Laborie's." Ms. Pavia further stated that her daughter told her that she had seen Ms. Billiot shortly after the instant offense and she was "scared and panicked" and "packing stuff into suitcases." According to her daughter, Ms. Billiot said that she "had killed the lady in the parking lot" and she had to leave

town. Ms. Pavia stated that “at some point” after her daughter told her about Ms. Billiot, “a girl I did not know came to see me at my house” and told her that her mother had been arrested for the instant offense, but the girl did not think her mother had committed the crime. Ms. Pavia stated that she told this girl what she knew and “this girl never came to my house again.”

Based on that conversation, Ms. Pavia went to the Westwego Police Department and spoke to an unnamed officer, who did not take any notes while she informed him of her daughter’s account of Ms. Billiot’s confession. According to Ms. Pavia, the officer stated, “that they had it taken care of.” In Ms. Pavia’s view, the officer did not appear to take her seriously “because he didn’t even write down what [she] told him.” Ms. Pavia indicated that she went to the police station before the trial, but she was unsure of the exact date.

Ms. Hayden argues that the State violated *Brady, supra*, by failing to inform the defense of Ms. Pavia’s report to law enforcement, which implicated Ms. Billiot in the murder. She argues that this evidence of non-disclosure of another suspect’s confession to the crime is a material *Brady* violation. Ms. Hayden asserts that although the district court found that suppression of this evidence does not undermine confidence in the outcome of the trial, “[n]obody can be confident that the outcome of the trial would have been the same if the jury had heard about Ms. Billiot’s incriminating words and acts in the aftermath of the crime.”

The State responds that the district court found neither Ms. Pavia nor Ms. Rodriguez to be credible, citing inconsistencies between Ms. Rodriguez’s testimony and Ms. Pavia’s affidavit. The State further argues there is no credible evidence that Ms. Pavia actually made a report to the Westwego police, but even if she had, the Westwego police were not involved in this case at all or a part of the prosecution team. Therefore, there is insufficient evidence to show the State suppressed this evidence in violation of *Brady*.

The district court found no credibility in the testimony or affidavits of Ms. Rodriguez and Ms. Pavia. The court stated that Ms. Pavia's affidavit contained conflicting information when compared to the testimony of her daughter, Ms. Rodriguez. It also considered that at the evidentiary hearing, Ms. Rodriguez acknowledged errors in her own affidavit.⁸

In the present case, it is clear that the evidence at issue was favorable to the defense. The information provided by Ms. Pavia involves a confession by Ms. Billiot to committing the crime of which Ms. Hayden stands convicted.

However, as to whether the State suppressed this favorable evidence, the record does not show that the prosecution team knew of Ms. Pavia's report to Westwego police and failed to comply with its duty to disclose this information. The jurisprudence provides that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." *Kyles*, 514 U.S. at 437, 115 S.Ct. 1555; *State v. Chester*, 19-363 (La. App. 5 Cir. 2/3/21), 314 So.3d 914, 969, *writ denied*, 21-350 (La. 6/8/21), 317 So.3d 321.

Here, the district court found no credibility as to Ms. Pavia's affidavit in which she claimed to have reported Ms. Billiot's confession to the Westwego police. Also, the record does not show the Westwego police were involved in the investigation or otherwise acted on behalf of the prosecution team. Although Westwego is in Jefferson Parish and its cases are prosecuted by the Jefferson Parish Attorney's Office, this crime did not occur in Westwego. Further, by Ms. Pavia's own statement, the information she shared with the unnamed officer on an uncertain date was not written down or recorded in her presence or taken seriously.

⁸ According to Ms. Rodriguez, Ms. Billiot did not use the word "killed," as indicated in her affidavit, but rather she stated, "they hit something." With respect to her mother, Ms. Rodriguez indicated that she was not sure when she had spoken to her mother about Ms. Billiot and then indicated that she thought her aunt was actually the person who talked to her mother about Ms. Billiot. However, on re-direct examination by defendant's counsel, she stated that "at some point" she had told her mother about Ms. Billiot, but was not sure if her mother remembered.

Thus, it is speculative as to whether this information was ever relayed to the investigating officers assigned to Ms. Hayden's case or the prosecution team.

La. C.Cr.P. art. 930.2 states: "The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted."

After review, we find that Ms. Hayden has not met her post-conviction burden of proving that a *Brady* violation occurred in this instance.

Warren Pitre

Ms. Hayden asserts that the State committed a *Brady* violation by failing to disclose to the defense that Mr. Pitre spoke to the police at the scene of the crime and provided a description of the driver as a young, blond girl. She further argues that the State violated *Brady* by failing to inform the defense that Mr. Pitre had indicated to the State that Ms. Chiasson's eyewitness account included false information.

In Mr. Pitre's affidavit, dated June 7, 2018, he stated that the driver was "definitely young-looking—a little blonde girl," between 20-23 years old. At the evidentiary hearing, Mr. Pitre testified that at the scene of the crime, he described the driver to officers as "young." In Ms. Hayden's view, Mr. Pitre's description of the driver's age, which was not disclosed to the defense, is exculpatory because the age matched Ms. Billiot, who was 23 years old at the time of the offense, rather than Ms. Hayden, who was 45 years old.

Mr. Pitre identified co-defendant Coe from a photographic line-up, and during the motion to suppress hearing, as the man who grabbed the victim's purse. However, Mr. Pitre did not make any other identifications and was not called by either side as a witness at trial. In addition, Mr. Pitre's description of the driver's age does not appear in the police reports.

At the evidentiary hearing, Lieutenant Meunier testified that he did not speak with Mr. Pitre at the scene, but he learned of Mr. Pitre as a witness a few

months later, when he was informed by the State of the witness. Lieutenant Meunier denied that Mr. Pitre described the driver's age to him when he took Mr. Pitre's taped statement. The record shows Mr. Pitre did not mention the driver's age in his taped statement or in his testimony at the pre-trial suppression hearing. During Mr. Pitre's taped statement on October 13, 2008, Lieutenant Meunier asked Mr. Pitre if he could "describe the woman at all?" Mr. Pitre replied, "Just the blonde hair" and that she was a "white woman." Mr. Pitre further stated that he "got kind of a glimpse of her." At the motion to suppress hearing, Mr. Pitre testified that there was a woman with long blonde hair in the truck, but he was not sure if she was the driver. He further testified that he could not see the driver's face. At the evidentiary hearing, he also stated that he could not see the driver's face—just her profile.

In his June 7, 2018 affidavit and in his evidentiary hearing testimony, Mr. Pitre stated that he overheard Ms. Chiasson describe her eyewitness account while they were waiting to testify at the motion to suppress hearing, which, in his view, "didn't add up" because he did not see her at the scene. Mr. Pitre further stated in his affidavit that he informed an employee of the District Attorney's Office that he was "suspicious of this woman" because he "had been there [him]self, and never saw this woman before." At the evidentiary hearing, Mr. Pitre testified that he informed the woman who "organized us" at the motion to suppress hearing, but the woman did nothing. He asserts that after making this report, no one ever contacted him to testify at trial.

In its ruling, the district court pointed out that Mr. Pitre testified at the motion to suppress hearing that he did not notice anyone near the victim or attempting to help her at the scene. Therefore, the defense knew of this discrepancy with Ms. Chiasson's testimony indicating that she attempted to help the victim during the struggle. Moreover, Mr. Pitre's testimony at the evidentiary

hearing was cut short after the district court raised concerns about his competency to testify when the witness exhibited confusion over whom he met with during the investigation. In the district court's March 24, 2022 ruling, it indicated that during the evidentiary hearing, it "dismissed Mr. Pitre, finding him confused to the point of being incompetent to testify." In its opinion in *Hayden*, 395 So.3d at 842, the Louisiana Supreme Court found the record supported the district court's decision to find Mr. Pitre incompetent to testify at the evidentiary hearing due to lapses in memory at the age of 81.

Considering the finding that Mr. Pitre was not competent to testify at the evidentiary hearing, as well as the record before us, we find defendant has not shown a *Brady* violation occurred in either claim involving Mr. Pitre.

In Ms. Hayden's final claim of a *Brady* violation, she contends the State withheld the suggestive circumstances of Ms. Chiasson's identification of defendant from a photographic lineup. At the evidentiary hearing, Ms. Chiasson testified that when she was shown the photographic lineup, she "felt like she told" the officers that the women were "too old." She also stated she told the officer that none of the women looked familiar, but she qualified that statement, indicating she could not remember the exact words that she used. According to Ms. Chiasson, one of the officers placed his thumb by a photograph as if he was suggesting that she should select that woman's photograph, which happened to be defendant's photograph.

However, at the evidentiary hearing, Lieutenant Meunier testified that Ms. Chiasson never stated that she could not make an identification nor did she comment that the women in the photographic lineup were older than the woman she saw driving the truck. Lieutenant Meunier also denied that anyone placed a finger or thumb near defendant's photograph. The district court found Lieutenant

Meunier's testimony to be more credible than Ms. Chiasson's and found no *Brady* violation occurred.

Under these circumstances, and giving due deference to the district court's credibility determinations, Ms. Hayden has failed to meet her burden of showing a *Brady* violation occurred with regard to Ms. Chiasson's claims of suggestiveness of the identification procedure.

After careful review of the record, we cannot say the trial court erred in determining that defendant failed to establish any *Brady* violations.

Napue violation

Next, Ms. Hayden asserts that the State elicited false testimony at trial, in violation of *Napue v. Illinois, supra*, when Lieutenant Meunier testified that Ms. Billiot was not a suspect, despite the fact that she was read her *Miranda* rights and signed an arrestee/suspect form waiving her rights before her interview with the police. The district court found Ms. Hayden's claim that the State presented false testimony to be without merit, because Lieutenant Meunier testified that after investigating the tip regarding Jessica Billiot, he learned she was not the driver, and he consistently testified that he never considered her to be a suspect.

In *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177, the United States Supreme Court held that where a prosecutor allows a state witness to give false testimony without correction, a reviewing court must reverse the conviction if the witness's testimony reasonably could have affected the jury's verdict, even if the testimony goes only to the credibility of the witness. To prove a *Napue* claim, the defendant must show that the prosecutor acted in collusion with the witness to facilitate false testimony. *State v. Broadway*, 96-2659 (La. 10/19/99), 753 So.2d 801, 814, *cert. denied*, 529 U.S. 1056, 120 S.Ct. 1562, 146 L.Ed.2d 466 (2000). Furthermore, fundamental fairness and due process are offended "when the State, although not

soliciting false evidence, allows it to go uncorrected when it appears.” *Id.*; *Napue*, 360 U.S. at 269, 79 S.Ct. at 1173.

When false testimony has been given under such circumstances, the defendant is entitled to a new trial unless there is no reasonable likelihood that the alleged false testimony could have affected the outcome of the trial. *Chester*, 314 So.3d at 998; *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). However, the grant of a new trial based upon a *Napue* violation is proper only 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. *Chester*, 314 So.3d at 998; *United States v. O’Keefe*, 128 F.3d 885, 893 (5th Cir. 1997), *cert. denied*, 523 U.S. 1078, 118 S.Ct. 1525, 140 L.Ed.2d 676 (1998).

Jessica Billiot was interviewed twice by the officers investigating the instant offense. First, on February 24, 2008, the day after the murder, Ms. Billiot was questioned about co-defendant Vinet’s truck and her whereabouts on the day of the instant offense. Next, she was interviewed on May 4, 2009, after the police received a tip indicating that Ms. Billiot told Barbara Jean Williams that she was the driver of the truck. At trial, during the State’s direct examination of Lieutenant Meunier, the prosecutor asked, “Was Jessica Billiot, was she ever a suspect or was she ever identified by anyone as a suspect in this murder investigation?” Lieutenant Meunier replied, “No, she was not.”

At the evidentiary hearing, Lieutenant Meunier admitted that prior to trial, he received an anonymous tip about an individual named “BJ,” later identified as Barbara Jean Williams, having information about the crime. He testified that his source conveyed rumors that Jessica Billiot was the driver and that, in fact, Ms. Billiot had confessed to Ms. Williams that she was the driver. Lieutenant Meunier stated that officers investigated the tip and interviewed Ms. Williams, but she

denied Jessica Billiot had confessed to any involvement in the crime to her. Lieutenant Meunier explained that Ms. Billiot was not a suspect, but rather a person that the police wanted to interview as part of their investigation. He admitted, however, that Jessica Billiot was advised of her *Miranda* rights and signed a JPSO arrestee/suspect waiver of rights form before questioning began. The transcript of the May 2009 interview reflects that the officer stated, “we filled this form out indicating you are under investigation in connection with this matter.”

To determine if a new trial is warranted, we now consider whether there is any reasonable likelihood that this false testimony could have affected the outcome of the trial. The issue in this case was the identity of the perpetrator, and there was evidence potentially linking Ms. Billiot to the crime. Ms. Billiot was the girlfriend of Mr. Vinet, who owned the truck and was in it at the time of the murder. Ms. Billiot’s DNA was found in the truck, but Ms. Hayden’s was not. In fact, there was no physical evidence linking defendant to the truck or the crime. The prosecutor asked Lieutenant Meunier to describe Ms. Billiot in an apparent effort to distinguish Ms. Billiot’s appearance, particularly her brunette hair color, from Ms. Hayden who had blonde hair—the same hair color of the driver as described by the eyewitnesses. However, witnesses indicated that until she dyed her hair after the crime, Ms. Billiot fit the description of the perpetrator.

To counter the evidence suggesting Ms. Billiot may have committed the crime, the prosecutor asked if Ms. Billiot had “ever been identified by anyone as a suspect.” In response, Lieutenant Meunier falsely denied that anyone had ever identified Ms. Billiot as a suspect, though Barbara Williams had reported her as a suspect to the police and the police had interviewed Ms. Billiot and had her sign an arrestee/suspect waiver of rights form. The State was aware that Ms. Billiot was Mr. Vinet’s girlfriend and that he owned the truck and was in it when the murder

occurred. There was no reason for the prosecutor to ask Lieutenant Meunier if Ms. Billiot had *ever* been identified *by anyone* as a suspect other than to bolster the State's case against Ms. Hayden by persuading the jury that there was no basis to consider Ms. Billiot to be the perpetrator.

When Lieutenant Meunier indicated that no one had identified Ms. Billiot as a suspect, this was false, misleading, and unfair. Due process imposes the responsibility and duty to correct false testimony on representatives of the State, not defense counsel. *Glossip v. Oklahoma*, 604 U.S. ---, 145 S.Ct. 612, 630, 221 L.Ed.2d 90 (2025). In this case, the State not only failed to correct it, but also knowingly elicited this false testimony, in violation of *Napue, supra*.

Pursuant to *Napue*, a reviewing court must reverse the conviction if the witness' false testimony reasonably could have affected the jury's verdict. *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177. In the present case, there is a reasonable probability that Lieutenant's Meunier's false testimony, indicating no one had ever identified Ms. Billiot as a suspect, could have affected the jury's verdict by suggesting there was no basis for the jury to consider this alternative suspect. Under *Napue*, a conviction obtained through the knowing use of false evidence violates the Fourteenth Amendment's Due Process Clause. Accordingly, because the false testimony in this case was material, misleading, could reasonably have affected the jury's verdict, and violated the Due Process Clause, we find that a *Napue* violation occurred and that defendant is entitled to a new trial.⁹

Cumulative errors

Ms. Hayden argues that the cumulative errors committed during her trial, considered together, warrant a new trial, because they rendered her trial

⁹ Ms. Hayden argues there was also a second *Napue* violation when the State allowed Ms. Chiasson to testify that she tried to assist the victim, because Mr. Pitre testified that he did not see Ms. Chiasson attempt to assist the victim. However, we find this claim to be without merit, where Mr. Pitre was found to be incompetent to testify at the evidentiary hearing and where Ms. Chiasson's assertion was not shown to be false.

fundamentally unfair. She points out that in the Louisiana Supreme Court's opinion in *Hayden*, it found several deficiencies in trial counsel's representation of Ms. Hayden, but ultimately found she was not prejudiced by these deficiencies and thus, was not entitled to a new trial. Ms. Hayden argues that considering trial counsel's deficient performance, along with other errors in the case, her due process guarantee of fundamental fairness was violated.

The State responds that where none of the defendant's claims constitute reversible error on their own, as in this case, there is no basis for reversal in this case because "twenty times zero equals zero," citing *Mullen v. Blackburn*, 808 F.2d 1143, 1147 (5th Cir. 1987) and *State v. Reeves*, 18-270 (La. 10/15/18), 254 So.3d 665, 677.

Although the cumulative error doctrine has lost favor in Louisiana and courts have typically rejected such claims, this doctrine has not been abolished or precluded from consideration in all circumstances. In *U.S. v. Lara*, 23 F.4th 459, 484 (5th Cir. 2022), *cert. denied*, --- U.S. ---, 142 S.Ct. 2790, 213 L.Ed.2d 1022 (2022), the Court stated that the cumulative error doctrine is applied only in rare circumstances, where the errors fatally infected the trial and violated the trial's fundamental fairness. The Court further stated that cumulative error "justifies reversal only in the unusual case in which synergistic or repetitive error violated the defendant's constitutional right to a fair trial." *Id.*; *See also* Justice Weimer's dissent in *State v. Santiago*, 23-501 (La. 5/10/24), 384 So.3d 879, 883, in which he stated that, as a general rule, multiple harmless errors do not result in reversal and the doctrine of cumulative error should only be applied in rare circumstances. However, "where otherwise non-reversible errors aggregate in such a way as to result in a denial of the right to a fair trial, cumulative error doctrine justifies reversal." *Id.*

An error is harmless if the verdict is “surely unattributable” to the error. *State v. Holliday*, 17-01921 (La. 1/29/20), 340 So.3d 648, 697, *cert. denied*, --- U.S. ---, 141 S.Ct. 1271, 209 L.Ed.2d 10 (2021); *State v. Johnson*, 94-1379 (La. 11/27/95), 664 So.2d 94, 100; *Sullivan v. Louisiana*, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993). In certain circumstances, “multiple harmless errors” is a misnomer where the cumulative effect contributed to or resulted in the defendant’s conviction and were clearly not harmless. Although “twenty times zero equals zero,” not all errors that fail to reach the level of prejudice alone are worthless or equivalent to “zero,” and the cumulation of such errors, albeit in rare circumstances, deprives a defendant of a fair trial.

Based on the record before us, we find that Ms. Hayden’s case is one of the rare circumstances where the cumulative error doctrine must be applied. At Ms. Hayden’s trial, there were too many errors of material value to have confidence in the outcome or to consider them, collectively, to be harmless.

In its prior opinion in this matter, *Hayden*, 395 So.3d at 841-842, the Louisiana Supreme Court acknowledged numerous deficiencies in defendant’s trial counsel’s performance, but ultimately found Ms. Hayden did not suffer prejudice as a result. Some of the errors or deficiencies found were identified by the Court as follows:

- 1) The trial transcript reflects that counsel was unprepared to question Billiot, as he failed to challenge her when she provided an alibi at trial inconsistent with her police statements. He also elicited testimony from Billiot denying that she was in the truck at the time of the crime and that she ever had blond hair, which also went unchallenged. Counsel’s decision to call Billiot without adequate preparation therefore likely hurt rather than helped defendant’s case.
- 2) Likewise, trial counsel arguably erred in failing to interview individuals Billiot claimed to have been with on the day of the crime, both of whom testified at the evidentiary hearing that she was not with them that day. Prevailing professional norms would likely require an attorney to investigate any individual who had a close tie to one of the perpetrators and who told the police that

she had been with him prior to the crime, especially, as was the case here, when an anonymous tip was made regarding her possible involvement in the crime. Counsel's decision not to do so was arguably unreasonable, particularly where defendant's own alibi was thin and only verifiable by biased witnesses—specifically, her father and stepmother—who claimed to have been with defendant at their home at the time of the crime.

- 3) Trial counsel's decision not to interview Pitre was also arguably unreasonable, as his testimony could have been used to discredit Chiasson's version of events.
- 4) Trial counsel's decision not to interview Chiasson and Dutreil prior to trial was also arguably unreasonable. In particular, the gap between Dutreil's initial age description and the age of defendant, who appeared older than her age of 45 at the time, was arguably large enough to have prompted counsel to interview them regarding their identifications.

The errors and unreasonable conduct identified by the Louisiana Supreme Court include findings that defense counsel was unprepared to question Ms. Billiot, failed to interview the people Ms. Billiot purported to be with at the time of the crime, failed to interview Mr. Pitre who challenges the veracity of Ms. Chiasson's version of the events, and failed to interview Ms. Chiasson or Dutreil prior to trial regarding their identifications of Ms. Hayden as the perpetrator. *See Hayden*, 395 So.3d 835.

In addition to these errors, the State presented false testimony indicating that Ms. Billiot was never considered by anyone as a suspect. In the present case, we find the number of incidences of deficient or unreasonable conduct during representation, along with the false testimony that Ms. Billiot was never identified as a suspect, create exceptional circumstances warranting the application of the cumulative error doctrine in this case. Accordingly, we find that Ms. Hayden is entitled to a new trial based on the cumulative errors that undermined any confidence in the jury's determination that Ms. Hayden was the driver of the truck and was thus, guilty of second degree murder.

Factual innocence

In her final claim, defendant asserts that she is factually innocent of this crime. Adopting the State’s interpretation of La. C.Cr.P. art. 926.2, the district court found that Cheri Hayden was required to present “new, reliable, and non-cumulative” scientific evidence to corroborate the “new, reliable, and non-cumulative” testimonial evidence provided in support of her factual innocence claim. In that her corroborating evidence was not new evidence, the district court determined that she failed to prove her factual innocence claim. This was error, where La. C.Cr.P. art. 926.2 does not require the corroborating scientific evidence to be new.

La. C.Cr.P. art. 926.2 provides in pertinent part:

- A. A petitioner who has been convicted of an offense may seek post conviction relief on the grounds that he is factually innocent of the offense for which he was convicted. A petitioner’s first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict. This exception to Articles 930.4 and 930.8 shall apply only to the claim of factual innocence brought under this Article and shall not apply to any other claims raised by the petitioner.
- B. (1)(a) To assert a claim of factual innocence under this Article, a petitioner shall present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial and that is either:
 - (i) Scientific, forensic, physical, or nontestimonial documentary evidence.
 - (ii) Testimonial evidence that is corroborated by evidence of the type described in Item (i) of this Subsubparagraph.
- (b) To prove entitlement to relief under this Article, the petitioner shall present evidence that satisfies all of the criteria in Subsubparagraph (a) of this Subparagraph and that, when viewed in light of all of the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the state in any response that it files or at any evidentiary hearing, proves by clear and convincing evidence that, had the new

evidence been presented at trial, no rational juror would have found the petitioner guilty beyond a reasonable doubt of either the offense of conviction or of any felony offense that was a responsive verdict to the offense of conviction at the time of the conviction.

At the time of trial, the defense was aware that Jessica Billiot had provided conflicting information regarding her whereabouts at the time of the murder. The crime was estimated to have happened at approximately 1:30 p.m. on February 23, 2008. In her first statement to police, Ms. Billiot indicated that on the day of the murder, she had visited her father in the morning around 11:00 a.m. and then was with her boyfriend, Mr. Vinet, until around 2:00 p.m. In her second statement to police, she stated that she was at home all day on February 23, 2008, with her roommate and his mother and was not in Mr. Vinet's truck at all that day. She added that she went to Walmart with her roommate's mother, Hope Verbois, on the day after the murder. At trial, Ms. Billiot testified that she was shopping with her roommate's mother, Hope Comeaux Verbois, at the time of the offense. She also denied that she was in Mr. Vinet's truck between 1:00 and 3:00 p.m., but had been in it earlier in the day. Ms. Billiot also testified that she never had blond hair, knowing that witnesses identified the perpetrator as having blond hair.

In support of her claim under La. C.Cr.P. art. 926.2(B)(1)(a)(ii), defendant submitted new, testimonial evidence pertaining to the culpability of Jessica Billiot in the form of sworn testimony and affidavits from several witnesses: Joseph Billiot, Hope Comeaux Verbois, Linda Gordon Billiot, Patricia Pavia, and Reina Rodriguez.¹⁰

At the evidentiary hearing on post-conviction relief, Joseph Billiot, who is Jessica Billiot's father and indicated he had never been questioned or interviewed

¹⁰ Ms. Hayden, who was "convicted after a trial completed to verdict" and filed her APCR on August 28, 2018, meets the initial requirement of La. C.Cr.P. art. 926.2(A) allowing her to raise her first claim of factual innocence pursuant to La. C.Cr.P. art. 926.2, which would otherwise be barred by the time limits in La. C.Cr.P. art. 930.8 or the repetitive application defaults set out in La. C.Cr.P. art. 930.4.

by the police, testified that Ms. Billiot was not with him or his wife at the time of the murder,¹¹ that he was worried Ms. Billiot was involved in the crime because she was always with Mr. Vinet whose truck was used in the perpetration of the crime, and they were “inseparable.” He also testified that when he went to check on her the day after the murder, she did not want to talk about what happened, which was unusual for her since she typically told him “everything.” Finally, he indicated that Ms. Billiot often dyed her hair.

Hope Comeaux Verbois, the mother of Ms. Billiot and Mr. Vinet’s roommate at the time of the murder, William Thompson, testified that on the day of the murder, William had hit a gas meter at his house and, at the time of the murder, she was at the house waiting for someone to fix the gas meter.¹² She further testified that neither Ms. Billiot nor Mr. Vinet was present at the house and that she did not go shopping with Ms. Billiot that day. She also stated she thought Ms. Billiot had blonde hair at the time.

Linda Gordon testified at the evidentiary hearing that not long after the crime, she was at the home of Barbara Jean Williams and Ms. Billiot was there as well. She indicated that she saw Ms. Billiot dyeing her strawberry blond hair to a darker color at Ms. Williams’ home, and she was “a nervous wreck” and appeared terrified. According to Ms. Gordon, while she was dyeing her hair, Jessica Billiot indicated that she was in the truck at the time of the murder, but was lucky the police arrested Ms. Hayden instead. She also stated that she was dyeing her hair because it was too close to Ms. Hayden’s hair color.

Jessica Billiot’s cousin, Reina Rodriguez, testified at the evidentiary hearing that in 2008, while visiting her aunt who is Jessica Billiot’s mother, Ms. Billiot

¹¹ In Mr. Billiot’s affidavit dated July 26, 2018, he stated that he did not see his daughter on the day of the instant offense. Although the district court granted the State’s objection to entering the affidavit into evidence on the basis that it was cumulative of Mr. Billiot’s evidentiary hearing testimony, it was proffered for the record.

¹² According to Ms. Verbois, she owned the house that her son, Ms. Billiot, and Mr. Vinet lived in, though she did not reside there.

“came in packing a bag” and saying “I gotta go, I gotta go, I can’t tell you.” When Ms. Rodriguez asked her what was wrong, Ms. Billiot responded, “I don’t know. We hit something,” while looking “really nervous” and “edgy.” Ms. Billiot also told her that she was in Mr. Vinet’s truck and they “ripped somebody off” and “took her purse.” Ms. Rodriguez also testified that Ms. Billiot dyed her hair often.¹³

In addition to the new evidence presented at the evidentiary hearing regarding Ms. Billiot’s culpability, Ms. Hayden presented evidence casting doubt on the reliability of Ms. Chiasson’s identification of Ms. Hayden as the driver/perpetrator. At trial, Ms. Chiasson testified that she was confident that Ms. Hayden was the driver of the truck and that the police did not suggest who to pick out on the photographic lineup. However, at the evidentiary hearing, Ms. Chiasson testified that she had lied at trial and that she did not believe Ms. Hayden was driving the truck. Ms. Chiasson explained that the women shown in the photographic lineup looked too old to have been the driver of the truck that she saw, but she “convinced herself that she identified the correct person” due to “the circumstances of the identification procedure, the officers arriving in the middle of the night, appearing eager to apprehend the perpetrators, the officer placing his thumb next to one of the pictures, and her desire to help with the investigation.” The evidence pertaining to Ms. Billiot’s culpability and to Ms. Chiasson’s misidentification of Ms. Hayden as the perpetrator was not known to the defense prior to trial and thus, was new, non-cumulative, testimonial evidence.

As pointed out by the State, recantations of trial testimony should be looked upon with utmost suspicion, and except in rare exceptions, a new trial should not be granted on the basis of a recantation because it is tantamount to perjury so as to

¹³ Although the district court found Ms. Rodriguez was not credible due to discrepancies between her affidavit, particularly the wording used, Ms. Rodriguez indicated during her testimony that she did not prepare the affidavit and she corrected such discrepancies in her testimony.

discredit the witness at a later trial. *See State v. Prudholm*, 446 So.2d 729, 735 (La. 1984); *State v. McClain*, 04-98 (La. App. 5 Cir. 6/29/04), 877 So.2d 1135, 1142-43, *writ denied*, 04-1929 (La. 12/10/04), 888 So.2d 835. However, we find that the circumstances of this case are indeed rare, where Ms. Chiasson's recantation aligns with testimony from several other witnesses, including some of Ms. Billiot's family members, indicating that Ms. Billiot admitted to committing the crime.

At trial, Ms. Hayden presented alibi witnesses—her father, her daughter, and her stepmother—indicating she was home at the time of the murder getting ready for her granddaughter's birthday party, preparing food, and then went to the party. This would certainly be an inopportune time to ride around with others and choose to commit a crime. The testimony of these alibi witnesses may have been dismissed as unreliable due to the relationships between defendant and these witnesses. However, Ms. Billiot's own relatives have testified that she admitted to committing the crime, yet the district court found these witnesses were not reliable. There is no basis to find that the witnesses in Ms. Billiot's family, such as Ms. Rodriguez and Ms. Pavia, or the non-relative witnesses, such as Ms. Williams and Ms. Gordon, had any reason to help Ms. Hayden at the expense of Ms. Billiot. Likewise, there is no evidence that Ms. Chiasson had any reason to lie in order to help Ms. Hayden, particularly when her testimony exposed her to potential criminal liability for misidentifying Ms. Hayden as the driver of the truck at trial and she acknowledged having "everything to lose" by testifying at the evidentiary hearing.

Because her claim of factual innocence rests on testimonial evidence, defendant submitted the following "[s]cientific, forensic, physical, or nontestimonial documentary evidence" as required by La. C.Cr.P. art. 926.2(B)(1)(a)(i) for corroboration: the DNA testing results from the cigarette butts

found in co-defendant Vinet's truck matching Ms. Billiot and the coroner's opinion on the cause of death, which were both presented at defendant's trial. She also submitted a report from Dr. Nancy Franklin, an expert in eyewitness testimony and memory, in which she explained why eyewitness identifications are often unreliable.

The State argues that this evidence must be "new," but that requirement is not included in the plain wording of La. C.Cr.P. art. 926.2(B)(1)(a)(i). Rather, only the testimonial evidence must be new and Ms. Hayden has satisfied this requirement.

The State contends that Ms. Billiot's DNA, which was found in the truck, and the absence of Ms. Hayden's DNA in the truck, does not satisfy the requirement of corroborating evidence that is "scientific, forensic, physical, or nontestimonial documentary." It further argues that the coroner's report does not satisfy this requirement, as the coroner's findings are undisputed and do not support a finding that Ms. Hayden or Ms. Billiot committed the crime in this case. The State also argues that Dr. Franklin's report does not satisfy these requirements.

We agree with the State that neither the evidence of Ms. Billiot's DNA in the truck nor the coroner's report is sufficient to corroborate Ms. Hayden's testimonial evidence presented in support of her factual innocence claim. However, we find that Dr. Franklin's report is based on scientific studies, corroborates the testimony of Ms. Chiasson explaining why she misidentified Ms. Hayden as the driver of the truck, and satisfies the requirements of La. C.Cr.P. art. 926.2(B)(1)(a).¹⁴

Prior to the evidentiary hearing, the district court ruled that Dr. Franklin's proposed testimony and report were inadmissible following a motion *in limine*

¹⁴ While not all of the new, testimonial evidence was corroborated by this scientific evidence, Dr. Franklin's testimony corroborated sufficient evidence to meet the requirements of La. C.Cr.P. art.926.2(B)(1)(a).

hearing, noting that the court was aware of “the arguments with regard to eyewitness identification” and finding that the expert would be unable to “opine on the ultimate identification.”

La. C.E. art. 702(B) specifically provides for the admissibility of expert witness testimony on the issue of memory and eyewitness identification, generally, while prohibiting an expert from offering an opinion as to the accuracy of an eyewitness’s identification in a particular case. Thus, while the district court correctly excluded Dr. Franklin’s report as to her finding that the identifications of Ms. Hayden by Ms. Chiasson and Ms. Dutriel were unreliable, the court erred by excluding the report in its entirety where Dr. Franklin’s general testimony about memory and eyewitness identification should have been considered in accordance with La. C.E. art. 702(B).¹⁵

In her report, Dr. Franklin explained several factors that create a risk of misidentification and show the vulnerability of memory, including event stress, opportunity to view, distinctive features, characteristics of the description, exposure effects, face identification as a function of familiarity, partial disguise, multiple perpetrators, identification administrators’ knowledge of who the suspect is, and more. Dr. Franklin indicates in her report that in discussing these factors, she relied on peer-reviewed research and applied expert consensus as to her findings. She also indicated that most of the findings in her report have emerged from controlled laboratory experiments. We find that this report satisfies the requirement of scientific evidence corroborating the new, testimonial evidence provided in this matter.

¹⁵ La. C.E. art. 702(B) provides that a memory and identification expert’s testimony may not be admitted if there is physical or scientific evidence that corroborates the eyewitness’ identification of the defendant. However, as previously noted, there was no physical or scientific evidence linking Ms. Hayden to this crime.

The testimonial evidence presented by defendant was “new” and “noncumulative” as required by La. C.Cr.P. art. 926.2(B)(1)(a). As part of her factual innocence claim, defendant relies on Ms. Chiasson’s recantation testimony at the evidentiary hearing in which she claimed that she wrongly identified relator from the photographic line-up and at defendant’s trial and was pressured to do so by the police. This evidence was supported by scientific evidence, as required by La. C.Cr.P. art 926.2(B)(1)(a)(i) and (ii).¹⁶ La. C.Cr.P. art. 926.2(B)(1)(b) provides that in order to prove a claim of factual innocence, the petitioner must also show that the new, testimonial evidence corroborated by scientific evidence,

when viewed in light of all of the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the state in any response that it files or at any evidentiary hearing, proves by clear and convincing evidence that, had the new evidence been presented at trial, no rational juror would have found the petitioner guilty beyond a reasonable doubt...

Based on the evidence presented, we find Ms. Hayden has met her burden of proving by clear and convincing evidence that no rational juror would have found her guilty if the new evidence had been presented at trial. As we stated in our prior opinion,

[New] evidence presented highlights the many weaknesses of the State’s case. While there was no physical evidence linking Cheri Hayden to Mr. Vinet’s truck, physical evidence linked Jessica Billiot, Mr. Vinet’s girlfriend, to his truck...[Jessica Billiot] fit the description given by eyewitnesses; she dyed her hair frequently; witnesses recalled Jessica Billiot having blond hair in February 2008 and dyeing her hair shortly after the crime; witnesses testified that Jessica Billiot was always with Mr. Vinet and that they used drugs together; she gave the police multiple alibis, which they never confirmed; Jessica Billiot admitted that she lied under oath at trial about her alibi; police considered her a suspect; Jessica Billiot’s mother told her neighbor, Ms. Pavia, that her daughter had committed the crime; Jessica Billiot’s father suspected his daughter’s involvement in the crime because of her relationship with Mr. Vinet and because she avoided his questions about it; witnesses noticed Jessica Billiot was acting nervous and

¹⁶ While not all of the new, testimonial evidence was corroborated by scientific evidence, Ms. Hayden has provided sufficient evidence to satisfy the requirements of La. C.Cr.P. art. 926.2(B)(1)(a).

terrified; she was seen frantically packing her bags shortly after the crime took place; and Jessica Billiot confessed to multiple people that she had committed the crime, including her cousin, Ms. Rodriguez.

Although the murder of Ms. Landry was tragic and horrific, justice is not served by the lifelong imprisonment of a person who did not commit the crime. Ms. Hayden was initially considered a suspect due solely to her association with Mr. Coe, who was identified by an eyewitness, Bonnie Gras, and her hair color, with no physical or other evidence linking her to the crime. Ms. Hayden was 45 years old and had deep facial lines, but Ms. Dutriel identified the perpetrator as a “young girl about in her twenty’s,” “maybe her middle-late twenty’s [sic] early thirties,” with “light-colored” “blonde...brown hair.” She was identified by Ms. Chiasson in a photographic lineup, but Ms. Chiasson has since recanted and indicated that she believed the women in the photo lineup appeared too old. Ms. Chiasson expressed that she chose Ms. Hayden’s photograph and convinced herself that she was the perpetrator due to her desire to help with the investigation and the suggestion of the police when the officer placed his thumb next to one of the pictures suggesting this was the photograph he wanted her to select.

Due to Ms. Chiasson’s recantation, the lack of any physical evidence linking Ms. Hayden to the crime, the testimony of several witnesses that Ms. Billiot had confessed, the inconsistencies in Ms. Billiot’s alibis and the testimony of her hair color, Ms. Hayden’s alibi witnesses, as well as considering defense counsel’s lack of preparation for trial and unreasonable conduct, it appears that the evidence that is left to support Ms. Hayden’s conviction is primarily the testimony of Connie Dutriel, who maintains that Ms. Hayden was the driver of the truck. However, it is important to point out that on the day of the murder, after the accident between her car and Mr. Vinet’s, Ms. Dutriel reported that the driver was a “young girl” in her twenties. She also indicated that the driver was wearing sunglasses. An

investigator for the Innocence Project, Devin Gueylin, testified at the evidentiary hearing that she spoke with Ms. Dutriel during the investigation and learned that Ms. Dutriel was instructed to report to the JPSO Detective Bureau for an identification procedure, because the police had “found the suspects.” She also stated that Ms. Dutriel indicated that when she saw the photo lineup, she knew the driver had to be older than her description because all the women in the photo lineup were older.

John Adams once stated:¹⁷

It is more important that innocence be protected than it is that guilt be punished, for guilt and crimes are so frequent in this world that they cannot all be punished. But if innocence itself is brought to the bar and condemned, perhaps to die, then the citizen will say, ‘whether I do good or whether I do evil is immaterial, for innocence itself is no protection,’ and if such an idea as that were to take hold in the mind of the citizen that would be the end of security whatsoever.”

In the present case, Ms. Hayden was sentenced to life in prison after a trial at which her attorney failed to adequately investigate, interview pertinent witnesses, or properly prepare for trial, the State presented false testimony, and the cumulation of errors deprived her of fundamental fairness and due process. Additionally, the evidence presented at the evidentiary hearing on post-conviction established that Ms. Hayden is factually innocent of the crime for which she stands convicted. Her conviction cannot stand under these circumstances. Accordingly, we find that defendant is entitled to a new trial.

DECREE

For the foregoing reasons, we vacate Ms. Hayden’s conviction and sentence, and we remand to the district court for a new trial.

CONVICTION AND SENTENCE VACATED; REMANDED FOR NEW TRIAL

¹⁷ See “Finality, Fairness, and the Problem of Innocence in Maryland,” Michele Nethercott, 52 U. Bal. L. Rev. 33 (2022), citing John Adams, Adams Argument for the Defense: 3-4 December 1770, Founders Online, <https://founders.archives.gov/documents/Adams/05-03-02-0001-004-0016> [https://perma.co/QBE3-SWDD] (paraphrased for clarity).

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JULY 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

22-KH-244

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)		
HONORABLE STEPHEN D. ENRIGHT, JR. (DISTRICT JUDGE)		
CHARELL D. ARNOLD (RELATOR)	ANNE M. WALLIS (RESPONDENT)	THOMAS J. BUTLER (RESPONDENT)

MAILED

JEE Y. PARK (RELATOR)	HONORABLE PAUL D. CONNICK, JR.
ATTORNEY AT LAW	(RESPONDENT)
INNOCENCE PROJECT NEW ORLEANS	DISTRICT ATTORNEY
4051 ULLOA STREET	TWENTY-FOURTH JUDICIAL DISTRICT
NEW ORLEANS, LA 70119	200 DERBIGNY STREET
	GRETNA, LA 70053