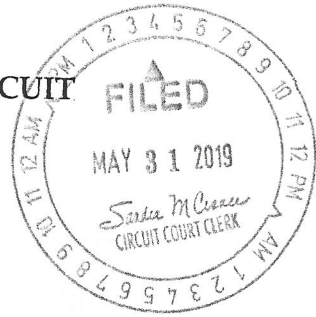
IN THE CIRCUIT COURT OF THE TWENTY FIRST JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS



PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
VS.	)	Case No. 99-CF-338
	)	
TERRANCE HAYNES,	)	
Defendant.	)	

STATE'S MOTION TO NOLLE PROSEQUI ALL CHARGES AGAINST DEFENDANT, TERRANCE HAYNES

"The duty of a public prosecutor ... is to seek justice, not merely to convict." Rule 3.8(a) of the *Illinois Rules of Professional Conduct*. In the instant case, the evidence as it exists today is not sufficient to charge or prove the Defendant guilty of murder beyond a reasonable doubt.

Following a jury trial in August of 2000, the Defendant was found guilty of the first-degree murder of Cezaire Murrell. The evidence presented at that trial relied in large part on the testimony of a ten-year-old eyewitness, M.H. M.H. testified that the victim did not have a gun in his possession at the time of his murder. Although other witnesses had come forward prior to trial that contradicted that testimony, neither the State nor Defendant presented said testimony at trial[1]. Following the jury's verdict, the Court sentenced the Defendant to 45 years in the Illinois Department of Corrections[2].

Thereafter, the Defendant filed three post-conviction petitions for relief. The Appellate Court first upheld and affirmed the Defendant's conviction and sentence in 2011. *People v. Haynes*, 2011 IL App (3rd) 090513-U (unpublished per Illinois Supreme Court Rule 23, cited here for historical case purposes only). The second such petition was dismissed on motion by the defendant in 2014. The third post-conviction petition alleged actual innocence based on newly discovered eyewitness testimony and a due process violation by the State's subornation of perjury by a key witness at trial, namely

[1] The Appellate Court previously ruled that the performance of Defendant's trial counsel was not deficient because he made a strategic decision not to call those witnesses. *See* People v. Haynes, 2011 IL App (3d) 090513-U, ¶ 16. The Appellate Court cited multiple reasons that supported Defendant's trial counsel's reasoning, and its ruling has not been disturbed in that regard.

[2] The Defendant had previously plead guilty to the offense of second degree murder in 94-cf-325.

M.H.. That petition was granted by the Appellate Court, which reversed and remanded the case. 2018 IL App (3d) 170050-U.

The Appellate Court had reconsidered the Defendant's conviction for two reasons: (1) the sworn statement of M.H. now claiming that his testimony at trial was not true, and others' sworn statements, constituted newly discovered evidence that would "more likely than not change the verdict on retrial"; and (2) the failure of the State to disclose prior to trial that a familial relationship existed between a prosecutor and M.H., the then 10-year old witness who now recants his testimony (they were cousins). Because the Appellate Court ruled that the newly discovered evidence warranted a new trial, it did not reach the merits of the Defendant's alternative claim(s). *Id.* On or about November 2, 2018, the Illinois Supreme Court denied leave to appeal the Third District Appellate Court's order remanding the case and reversing the 1999 conviction.

Following the Illinois Supreme Court's denial of the Appellate Prosecutor's petition for leave to appeal in November of 2018, the Kankakee County State's Attorney's Office undertook diligent efforts to review the entirety of the case file, court records, appellate briefs, transcripts and new evidence[3]. After a thorough case review and discussion, the Office enlisted the assistance of Detective Logan Anderson, Kankakee City Police Department. Neither State's Attorney Rowe nor Detective Anderson were involved in the initial investigation or prosecution of this case; this permitted the Office and Department to review the case through a fresh set of eyes. Detective Anderson conducted extensive interviews of witnesses regarding the new evidence, recanted testimony and sworn affidavits, and traveled the state to interview witnesses who are today incarcerated or have otherwise relocated. Not all witnesses were able to be located. In every instance where a witness was able to be re-interviewed but for one, the affiants' statements were unimpeachable – they provided statements consistent with their sworn affidavit. In regards to the sole exception, that affiant was unwilling to provide a recorded statement and denied having ever signed an affidavit when shown one purporting to contain his signature. Further, he denied being present at the time of the shooting or having any first-hand knowledge of the matter. Regardless of his unwillingness to provide a recorded statement, his sworn

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[3] The Defendant has remained on bond since posting property on January 11, 2019.

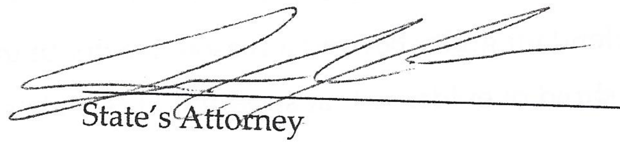
affidavit was consistent with and cumulative to other affiants' sworn statements and testimony. Detective Anderson was thorough and diligent in his re-investigation of these matters.

At this juncture of the case, the Appellate Court's ruling stands, the Defendant's conviction has been reversed, and the State must now determine whether it can prove the Defendant guilty beyond a reasonable doubt in light of the new evidence. Not a single shred of evidence that supported the State's contentions at the original trial in this case remains intact. "The State's theory at trial was that defendant's act of shooting Murrell was not justified because he shot an "unarmed" man. The State supported this theory by calling [to testify] one eyewitness to the shooting, a ten year old boy who has since testified under oath that he lied when he said Murrell did not have a gun. Further, during closing argument, the prosecutor repeatedly mentioned that defendant gunned down an unarmed man." *citing* 2018 IL App (3d) 170050-U, ¶41 (emphasis added). The State's case was built upon the premise that the victim was unarmed. All evidence presented by the State pointed to and depended upon that fact scenario. It would be disingenuous of this Office to now do an about-face and pursue a charge of murder in any degree based upon some new theory that the victim did in fact possess a gun; that would represent a complete reversal of the most significant fact originally at issue in the case. Further, it would be impossible for the State to obtain a first degree murder conviction when the State's only witness at trial has now joined the chorus of those witnesses who previously impeached his testimony (but whom were never called to testify at trial). As the Third District stated, "[a]ll of this [new] evidence corroborates defendant's original statement that Murrell rushed up the porch steps with one hand on his gun in his waistband and the other hand extended toward defendant. Thus, at retrial, **evidence that defendant acted in self-defense would be stronger** when weighed against the recanted statement of the State's only eyewitness." *Id.* at ¶42 (emphasis added).

Quite simply, the evidence in this case as it exists in 2019 is poles apart from what was presented to the jury in 2000. The new evidence no longer points to a charge of murder and the State would not be serving the ends of justice if it pursued same under the facts as they now exist.

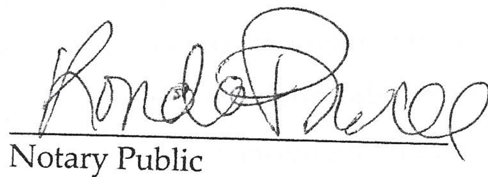
WHEREFORE, for the reasons stated above, the State prays that this Court grant its motion for nolle prosequi of all charges against the Defendant in this case.

Respectfully submitted,



State's Attorney

SUBSCRIBED and SWORN TO before me
this 31st day of May, 2019.



Notary Public