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By Hand Delivery

R. Seth Williams, Esquire
District Attorney
City of Philadelphia

Re: Marshall Hale

Dear Mr. Williams:

As you may know, the Pennsylvania Innocence Project is an organization dedicated to identifying cases where truly innocent people are in prison serving sentences for crimes they did not commit. Our vetting process is extensive, as we seek only to assist those who did not commit the crime for which they were convicted. The matter about which I am writing is such a case: Marshall Hale is innocent of rape. We request that you conduct a full and independent review of Mr. Hale's case.

We are filing the enclosed Amended Petition for Post-Conviction Relief and the accompanying Memorandum of Law in the Court of Common Pleas on Mr. Hale's behalf. While we believe that the Petition is on solid legal footing, we would prefer to be able to resolve his claims without lengthy litigation. Thus, the request for your review of this case.

Mr. Hale was convicted of rape on the emotionally charged and apparently certain testimony of the 15 year-old victim of a brutal rape. The girl was forced off a street at gunpoint as she walked to school early in the morning of November 11, 1983, and taken to an abandoned house. There, the man forced her to undress and raped her. After attacking the girl, he wiped himself on her blouse and dropped it on the floor before leaving. The girl identified Marshall Hale as the man who raped her. Yet, there was evidence that semen found on that blouse and the victim's underwear could not have come from Mr. Hale—the semen was of blood type B whereas Marshall Hale is blood type A (and the victim is type O). Even so, the jury found Mr. Hale guilty. This was in 1984, before the 256 exonerations through DNA that have shown our system does, on rare occasion, convict the wrong person.

The victim's changing description

The evidence against Mr. Hale was the testimony of the 15 year-old victim who identified Mr. Hale as her attacker. Immediately after the rape, before going to the hospital, the 5'4" tall girl described the man who raped her as a black male, 30-35 years old, light complexion, 5'11" tall, around 185 pounds, clean shaven, with small ears and a "baby face."¹ Later, after her surgery, she added that the male was between 175 and 190 pounds, "heavy set," with a flat nose and small ears, and called himself "Andre."² Another description that day reflected her memory that the male was 5'9" tall, and weighed 175 pounds with a "heavy set" build. Following surgery, her family took her to Florida to get her away from the scene of the crime, and allow her to heal. Upon her return a month later, the victim was again asked to describe the man who raped her. This time, she said he was 5'5" – 5'7" ("he was taller than me"), with a wide flat nose, developed chest, thick thighs, narrow butt and at least 165 pounds.³ Finally, at a court-ordered lineup, she wrote that the male was 5'9" tall, weighed 165 pounds, was "heavy and chubby build," with no facial hair, no scars or markings, and was 25-30 years old. Although the victim's description varied considerably over time, it never fairly described Mr. Hale who at the time of his arrest, was 24, 5'5" tall, weighed 145 pounds, and had a dark complexion.

The victim first identified Mr. Hale by viewing "more than a hundred" slides⁴ of men on the wall of an office at police headquarters more than a month following the rape. A detective's contemporaneous notes reflect that the victim made a "possible" identification, and that she said she "feels he looks like [the] male" who raped her.⁵ The victim herself said that she "picked slides ... but not as an individual that raped me,"⁶ and that she said "I think that's the one."⁷ Two days later, at 1 am, the police came to the victim's home and showed her a photo array where Mr. Hale was the prime (using the same photo of Mr. Hale as she had already identified). Again, she said that Mr. Hale "looked like" the man. At a court-ordered lineup, the victim told her mother that he was present, although she refused to make an identification to the assigned detective because she was fearful.

¹ N.T. 9/26/84, 66-67.

² N.T. 9/24/84, 81-83.

³ N.T. 9/25/84, 296.

⁴ N.T. 9/25/84, 255.

⁵ N.T. 9/25/84, 315.

⁶ N.T. 9/25/84, 248.

⁷ N.T. 9/25/84, 257.

At the preliminary hearing, the victim identified Mr. Hale as her rapist, but said that on the day she was attacked he looked “chubby” and “older, ... about 30 years old.”⁸ She also admitted that she “didn’t see most of his face” because the man “had glasses and a hat on,”⁹ so that “half his forehead was covered”.¹⁰

The serology evidence excludes Mr. Hale

Other than the victim, the only other evidence regarding the identity of the perpetrator of the rape came from MaryAnne Scafidi, an employee of the Philadelphia Police Department’s Criminalistics Lab. In point of fact, Ms. Scafidi’s testimony—although confusing and disjointed—established Mr. Hale’s innocence. After the attack, hospital personnel at Episcopal Hospital collected a rape kit from the victim. In addition, police collected her clothing—including her blouse, panties, jacket, skirt, socks, and shoes—and a piece of blood-stained masonite with hairs on it found at the scene of the rape. The blouse and panties were stained with blood and semen.

At trial, Ms. Scafidi testified that the victim had blood type O and was a secretor, that is, her blood type is apparent in all of her bodily secretions including saliva, sweat, tears, and vaginal secretions.¹¹ The serologist told the jury that the semen found on the panties was blood type B,¹² as was the blood and semen mixture found on the girl’s blouse,¹³ and that Marshall Hale was blood type A.¹⁴ She gave no information about whether he was or was not a secretor. In addition, the testimony revealed that the blood on the outside of the girl’s socks was type A.¹⁵

The evidence of Mr. Hale’s innocence

Analyzing the inhibition studies conducted on Mr. Hale’s blood, the victim’s blood, the victim’s clothing, and the rape kit, we are able to demonstrate that Mr. Hale did not commit this rape. Lawrence Presley, the director of forensic sciences at Arcadia

⁸ N.T. 3/20/84, 11.

⁹ N.T. 3/20/84, 13.

¹⁰ N.T. 3/20/84, 18.

¹¹ N.T. 9/26/84, 388.

¹² N.T. 9/26/84, 387-388.

¹³ N.T. 9/26/84, 390

¹⁴ N.T. 9/26/84, 392.

¹⁵ N.T. 9/26/84, 391.

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University and a former Chief of the FBI's DNA Analysis Unit, is preparing a report explaining that:¹⁶

- the materials in the rape kit show the presence of H antigens (a protein in human blood);
- neither Mr. Hale's nor the victim's blood contain H antigens;
- there are no possible consensual contributors to the rape kit materials;
- Mr. Hale is a secretor, and had he contributed to the intimate samples collected in this investigation, his blood type, A, would be present;
- therefore, Mr. Hale was not a contributor to the rape kit.

In other words, Marshall Hale did not commit this rape. It was committed by another man who has B type blood and whose blood contains H antigens.

The dispositive forensic evidence shows that the victim got it wrong. And there is ample evidence to support that conclusion: her changing description of the perpetrator; that she picked Mr. Hale's photo by saying she thought he "looks like" the man; the police showing her the same photograph less than two days later at 1:00 in the morning, creating a sense of urgency to her identification; and that she described the attacker as 4 inches taller than Marshall Hale even when he was in the same room with her are just some of the red flags in this case.

We hope that you will take the opportunity to review Mr. Hale's case thoroughly, and we would welcome the opportunity to sit down with you to discuss it further. We at the Pennsylvania Innocence Project truly appreciate your attention to this situation. If there is additional information that we can provide to facilitate your review, please do not hesitate to let us know.

Sincerely yours,



Marissa Boyers Bluestine
Legal Director



Richard Glazer
Executive Director

cc: Marshall Hale

¹⁶ Due to strict time deadlines in filing this Amended Petition, and Mr. Presley's other pressing commitments, a final report of Mr. Presley's conclusions are not available at this time. We are including a preliminary report with this filing. As soon as a report is obtained, I will forward it directly to you.