

4. Failure to hire experts to rebut and testify against the State's evidence;
 5. Failure to investigate an alternative perpetrator.
 - b. New evidence CBS News Inc. 48 Hours "Click for a Killer";
 - c. Prosecutorial misconduct for failing to disclose the information learned as a result of the CBS News Inc. 48 Hours "Click for a Killer."
4. The thrust of Mr. Allwine's postconviction petitions are that the State relied on experts to obtain a conviction. Those experts testified about ballistics, DNA, computer forensics, medical examination, blood spatter and shoe print. Mr. Allwine argues that trial counsel did not counter any of the State's experts either with another expert or with cross examination with defense expert input. Mr. Allwine argues that a new trial should be held because he received ineffective assistance of counsel. To further that claim, Mr. Allwine argues that experts are needed to demonstrate how their opinions could rebut the State's witness testimony and create reasonable doubt.
5. Because Mr. Allwine is in prison for life, and because he gave all of his money (\$100,000) to trial counsel, he has no money to retain experts necessary to further his arguments. Thus, obtaining IFP funding from the Court was integral to his ability to advance his petitions, conduct an evidentiary hearing and request a new trial.
6. On March 2, 2020, Mr. Allwine filed his Second Petition for Postconviction Relief. Mr. Allwine's Second Petition further clarified his arguments in the First Petition.
7. On May 4, 2020, the State filed its Memorandum of Law in Opposition to Mr. Allwine's Petition for Postconviction Relief. The State objected to Mr. Allwine's Petitions for Postconviction Relief arguing that trial counsel's failure to use experts was "trial strategy." In support of this argument, the State submitted an Affidavit from trial counsel, wherein he explained why he chose not to call or consult with experts.

8. Trial counsel claims his “strategy” was that Mr. Allwine wasn’t home at the time of A.A.’s death therefore he did not focus on the State’s expert witness testimony. Trial counsel sidestepped all of the scientific to say Mr. Allwine was not there. The problem with this strategy is that trial counsel inadvertently introduced the time of A.A.’s death during cross examination with the State’s medical examiner, Kelly Mills. Trial counsel asked Dr. Mills if A.A.’s time of death was 3:15 p.m. (Exhibit A – Transcript of Testimony of Kelly Mills). Dr. Mills confirmed she could narrow the time of death to that specific time. *Id.* This means Mr. Allwine (by accord of his own lawyer’s cross examination question), did not have an alibi that the entire trial strategy was structured around because he was home with A.A. at 3:15 p.m. Therefore, it was imperative upon trial counsel to have consulted with experts prior to any testimony so as not to make such a mistake. Additionally, had trial counsel consulted with experts, he would have realized that the central issue in this case is the time of death because experts we’ve consulted with have told us that there is no way based upon evidence in this case that the State’s medical examiner could have concluded within a reasonable degree of medical certainty that A.A. died at 3:15 p.m. that day.
9. The State argues that trial counsel’s actions or inactions were “strategy” and therefore does not rise to the level of ineffective assistance. The strategy “employed” by trial counsel fell below the threshold standard that an attorney handling a case like this should have met. He was required to consult with and/or work with and/or hire and present experts. Therefore, trial counsel’s representation meets the standard for ineffective assistance of counsel.
10. It was clear upon reading trial counsel’s affidavit that we did not have his entire file despite requesting his entire from him at the outset of the Postconviction matter. We did receive is file at the outset of our representation, but the expert binder was not provided to us until we made additional inquiry to trial counsel following our receipt of his affidavit in May of 2020 which detailed his “strategy” on why he did not use experts. (We had also made multiple

discovery demands for information from the State, which was disclosed in pieces and only after we requested discovery on multiple occasions).

11. On June 1, 2020, I submitted correspondence requesting leave to amend our Petition for Postconviction Relief to respond to the State's brief and requested a scheduling order to establish a deadline. We requested 30 days to submit our amended Petition for Postconviction Relief.
12. On June 3, 2020, Your Honor issued a Findings of Fact and Amended Order Setting Briefing Schedule on Petition for Postconviction Relief. Your Honor set a deadline for Mr. Allwine's response of Friday, June 12, 2020. The Order also stated that the record would close on June 12, 2020 and the matter would be taken under advisement.
13. On June 12, 2020, Mr. Allwine submitted his Second Memorandum of Law in Support of Petitioner's Amended Petition for Postconviction Relief. Counsel also submitted correspondence to the Court requesting that the record be left open, as counsel was still waiting on information from trial counsel (specific information about experts he consulted with), and IFP funding for experts. Mr. Allwine argued the following points in his Second Memorandum of Law in Support of Petitioner's Amended Petition for Postconviction Relief:
 - a. The State engaged in prosecutorial misconduct for failing to disclose the contents of the television show that asserted an alternative perpetrator and by mischaracterizing evidence presented at trial in its closing argument and making statements that had no factual underpinnings;
 - b. That Petitioner is entitled to information held by trial counsel (specific information about experts he consulted with) to adequately respond to the claims made by Respondent in addressing ineffective assistance of counsel;
 - c. Additional Grounds for Leave of Court.
14. We received trial counsel's expert file on June 19, 2020. This file contained information that was not disclosed previously, including expert reports and

communications between trial counsel and his hired experts to include ballistics and computer forensics.

15. On June 22, 2020, a phone conference was held between Christa Groshek, Nicholas Hydukovich and Your Honor. I was present in the room during this conversation and listened to the conversation on speaker phone in its entirety. I also took detailed notes regarding what was said during the phone conversation.
16. Your Honor indicated that you wanted to “move the case forward.” Ms. Groshek provided information to Your Honor about items we were missing from prior counsel’s file that was crucial to Mr. Allwine’s argument.
17. Ms. Groshek also inquired about what information Your Honor needed with regard to the multiple In Forma Pauperis requests for experts. Your Honor indicated that more financial information was needed, specifically whether Mr. Allwine had any “book deals” or other sources of income or assets so he could hire experts. Ms. Groshek explained he had no book deals or other sources of income or assets.
18. Ms. Groshek re-explained that her intent was to present experts to further the theory that trial counsel was ineffective. Ms. Groshek cited to cases wherein various courts deemed trial counsel ineffective for failure to hire experts in complicated cases such as this one. Those cases were: *United States v. Nwoye*, 824 F.3d 1129 (Dist. Of Col. 2016) and *Dugas v. Coplan*, 428 F.3d 317 (1st Cir. 2005).
19. At no point during this conversation did Your Honor indicate that the record was closed. In fact, the Court granted the defense’s request to keep the record open to submit another IFP affidavit with specific discussion of whether or not Mr. Allwine had access to other money, i.e. a book deal, or other such revenue. Your Honor stated that at the time you make your decision, you want to ensure you are “considering all arguments so that we can do this once.” Additionally, Your Honor indicated that you didn’t want to be in a position wherein you make a ruling on some issues and then “it turns out there were other things that hadn’t

been explored.”

20. Your Honor set a deadline of July 15, 2020 for Mr. Allwine to submit an updated Affidavit for Proceeding In Forma Pauperis. Your Honor indicated that it would make a ruling on the In Forma Pauperis request first by deciding whether the record would be kept open. If the request was granted, Your Honor would issue a separate Order with timelines for experts to review materials. Your Honor also stated that if it were to allow a schedule, Your Honor expected that the briefs may be supplemented.
21. The history of Mr. Allwine’s In Forma Pauperis requests are detailed below:
 - a. On July 8, 2019, Mr. Allwine submitted an Affidavit for Proceeding In Forma Pauperis with a supporting affidavit and expert information for a medical examiner.
 - b. On August 5, 2019, Your Honor issued an Order granting IFP funds for a medical examiner in the amount of \$1,300.
 - c. On August 20, 2019, Mr. Allwine submitted an Affidavit for Proceeding In Forma Pauperis containing identical financial information as the Affidavit filed with the Court on July 8, 2019. The August 20, 2019 Affidavit and supporting information sought \$4,500 for funding for a computer forensic expert. This funding was necessary because Mr. Allwine’s computer forensic expert required mirror images of the computer forensic items analyzed by the State’s forensic expert, Mark Lanterman. In order to obtain these mirror images, Mr. Lanterman required payment of \$750.00 per forensic image, totaling \$4,500.00.
 - d. On September 9, 2019, Your Honor issued an Order denying IFP funding for Mr. Allwine noting that the Affidavit did not contain enough financial information, nor did it contain enough information to show why these experts were necessary to Mr. Allwine’s defense.
 - e. On March 2, 2020, Mr. Allwine submitted an Affidavit for Proceeding In Forma Pauperis containing additional financial information along with the

information disclosed in the previous filings on July 8, 2019. This Affidavit and supporting documentation sought funding for a computer forensic expert.

- f. On March 25, 2020, Your Honor issued an Order denying IFP funding for Mr. Allwine, noting that the Affidavit did not contain enough financial information nor did it contain enough information to show why these experts were necessary to Mr. Allwine's defense.
22. On July 8, 2020, Mr. Allwine submitted an updated Affidavit for Proceeding In Forma Pauperis along with supporting documents requesting funding for a computer forensic expert and for additional funding for the medical examiner.
- a. On July 13, 2020, I sent e-mail correspondence to Your Honor's staff attorney inquiring as to whether Your Honor needed any additional information and when we could expect a decision on our request.
 - b. On July 13, 2020, Your Honor's staff attorney stated that Your Honor was requesting our office file an informal letter brief providing the Court with authority for an Order authorizing expenditures for §611.21 services (1) in a post-conviction matter in general and (2) when requested by private counsel. This letter brief was due to the Court on July 20, 2020.
 - c. On July 20, 2020, I filed the requested letter brief and provided a courtesy copy via e-mail to Your Honor's staff attorney.
 - d. On July 21, 2020, Your Honor requested that Mr. Allwine submit a supplemental affidavit in support of his request for funding detailing his income at the outset of the prosecution when the criminal complaint was filed against Mr. Allwine on January 18, 2017.
 - e. On July 22, 2020, I detailed our position regarding that request via e-mail to Your Honor's staff attorney. Our position was, and remains, that Mr. Allwine's income "at the outset of the prosecution" would mean his income at the time he filed his Petition for Post-Conviction Relief, not at the very outset of prosecution in 2017.

- f. On July 23, 2020, Your Honor requested we provide a supplemental affidavit showing Mr. Allwine's income at the outset of prosecution at the time he was charged on January 18, 2017.
- g. We encountered many challenges while attempting to gather information about Mr. Allwine's income at the outset of prosecution. First, Mr. Allwine is incarcerated at Minnesota Correctional Facility Stillwater. Due to the national pandemic surrounding COVID-19, we have been unable to visit with Mr. Allwine in person since March 2020. All communications have been by phone or mail. We sent Mr. Allwine a new Affidavit to fill out via U.S. Mail. Second, Mr. Allwine does not have access to any of his financial records or documents. We have worked with family members to try and obtain as much information as we possible, however many of the documents and records Mr. Allwine had at the outset of prosecution were destroyed and are now unavailable. Finally, we discovered in August of 2020 that Mr. Allwine had an additional source from a refund from the State for utilizing solar panels on his home. We attempted to obtain information about the amount of income this source provided and in what years this income was obtained. This proved difficult, as the documentation was not available to Mr. Allwine. We are still trying to piece together his assets.
- h. On August 5, 2020, I submitted a correspondence to the Your Honor indicating that we were in the process of obtaining Mr. Allwine's supplemental affidavit and would provide it when received.
- i. On August 12, 2020, I e-filed the chain of e-mail correspondence detailing Your Honor's inquiries regarding Mr. Allwine's IFP requests for funding.
23. On September 25, 2020, Groshek Law submitted an ex parte attorney affidavit in support of IFP funding.
24. Groshek Law never received an Order granting or denying Mr. Allwine's July 8, 2020 request for funding.

25. On September 21, 2020, Groshek Law received the Courts Findings of Fact, Conclusions of Law and Order Denying Second Petition for Postconviction Relief.
26. In the Findings of Fact, Conclusions of Law and Order Denying Second Petition for Postconviction Relief, Your Honor indicates that *Your Honor denied the request to continue to keep the record open during the June 22, 2020 and thus the record was closed as of that date.* At no point during the June 22, 2020 phone conversation did Your Honor indicate that the record was closed. Your Honor allowed additional time for Mr. Allwine to submit supplemental documentation as to his income for IFP funding to hire experts.
27. It was understood that Your Honor would first rule on the Affidavit for Proceeding In Forma Pauperis and then decide the matter depending on whether the request for funding was granted.
28. We respectfully request that Your Honor's Findings of Fact, Conclusions of Law and Order Denying Second Petition for Postconviction Relief be set aside for good cause. Defense counsel received no ruling on July 8, 2020 Affidavit for IFP funding, there is additional information presented to the Court regarding Mr. Allwine's financial situation and need for experts to solidify the claim of ineffective assistance of counsel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. §358.116.

Date:

9/25/20

Anna E. Tobia

Anna E. Tobia, Esq.

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF WASHINGTON TENTH JUDICIAL DISTRICT

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4 State of Minnesota **JURY TRIAL**

5 Plaintiff, **VOLUME XVI**

6 vs. **Court File No 82-CR-17-242**

7 Stephen Carl Allwine,

8 Defendant.

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10 The above-entitled matter came duly on for
11 Jury Trial before the Honorable B. William Ekstrum,
12 one of the Judges of the above-named Court, on the
13 30th day of January, 2018, at the Washington County
14 Judicial Center, City of Stillwater, County of
15 Washington, State of Minnesota.

16 * * *

17 A P P E A R A N C E S

18 Jamie Kreuser and Fred A. Fink, Jr.,

19 Assistant Washington County Attorneys, appeared as
20 counsel for and on behalf of the State.

21 Kevin DeVore, Esq., appeared as counsel
22 for and on behalf of the defendant, who was
23 personally present.

24

25



1 A The window of death can't be made any
2 shorter.

3 Q So somebody testified previously that
4 their time of death was 3:00 to 3:15, you wouldn't
5 be able to narrow it down to that level?

6 A It depends on what that was based off of.
7 If you want to elaborate.

8 Q It's just what was testified to. I was
9 just asking you if you could agree or not agree with
10 it?

11 A Still in the afternoon, so I can agree
12 with that.

13 Q All right. So let's talk about the
14 scopolamine. This is a drug that you haven't
15 necessarily worked with; is that correct?

16 A That is correct.

17 Q How did you educate yourself about this
18 drug? Did you read stuff on it, or did you talk to
19 people, or what did you do?

20 A By the toxicology books that we use for
21 reference.

22 Q Okay. And if I understand you correctly,
23 you cannot tell how actually the drug was
24 administered; is that correct?

25 A I believe she consumed it in an oral way.

1 blood can come out.

2 Q Now, you're aware that the photograph that
3 you had in your Power Point where it showed Amy
4 Allwine on the floor, you're aware that that gun had
5 been moved prior to that photograph being taken,
6 correct?

7 A Yes, I was made aware of that.

8 Q You would agree, then, the scene that we
9 are seeing isn't the actual scene before it had been
10 contaminated, correct?

11 A I could agree with that.

12 MR. DEVORE: Just one minute, Your Honor,
13 to review my notes.

14 I have no further confession. Thank you,
15 Dr. Mills.

16 THE COURT: Redirect?

17 MR. FINK: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. FINK:

20 Q You indicated to Mr. DeVore that she died
21 in the afternoon. She was killed in the afternoon
22 of November 13th.

23 A That is correct.

24 Q And you indicated that you would agree
25 that death would have occurred at 3:15 or earlier?

1 A Yes.

2 Q The scopolamine was delivered orally
3 through the mouth you indicated. Can you tell us
4 how you can come to that conclusion?

5 A The gastric contents had the largest
6 quantity of the drug scopolamine. When you
7 administer something, wherever it is taken -- so if
8 there was an injection, you would get a high level
9 there. You can kind of correlate backwards.

10 The stomach does not absorb from the blood
11 into the gastric contents. We absorb our gastric
12 contents into our blood. It's not a reverse process
13 because that's how we get our nutrients. Our
14 stomach doesn't extract our nutrients from our blood
15 and then put it into the stomach. It goes opposite
16 way. So it's a one-way system of delivery.

17 So that being a higher level indicates
18 that she had consumed it orally, and then it was
19 being absorbed from her gastric contents into her
20 blood system.

21 Q Okay. Now, the scene as you saw it, as
22 well as the nature of her upper body clothing when
23 you received her, is that consistent with her being
24 dragged or carried to the location she was found in?

25 A It can be, yes.