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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

MILTON LEE LEMONS,
Defendant-Appellant.

Supreme Court No. 163939
Court of Appeals No. 348277
Trial Court No. 06-004818-FC

DEFENDANT-APPELLANT'S THIRD SUPPLEMENTAL AUTHORITY (*KAISER v STATE*)

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Supplemental Authority: *Kaiser v State*

Pursuant to MCR 7.312(I), Defendant-Appellant Milton Lemons submits *Kaiser v State*, __ NW3d __; 2024 WL 1080968 (Minn 2024), as supplemental authority. *Kaiser* was decided by the Minnesota Supreme Court on March 13, 2024, after briefing and oral argument were completed in this case.

In 2016, a jury convicted Mr. Kaiser of felony murder based on evidence of Shaken Baby Syndrome/Abusive Head Trauma (SBS/AHT). A medical expert for the prosecution testified at trial that he observed macular schisis (a fold filled with blood within the retina) in the child's eye, which could only have been caused by AHT, and a second expert concurred. *Id.*, slip op at 4-5. Five years later, the first expert retracted his testimony at a post-conviction hearing. *Id.* at 5, 11.

The Minnesota Supreme Court unanimously affirmed the reversal of Mr. Kaiser's conviction on the grounds of false expert testimony. The Court explained that the first expert's description of macular schisis "as a representation of medical consensus" gave the Court "reason to treat it as a statement of fact." *Id.* at 10-11. Yet, the Court found, "there was no actual scientific support for the proposition that macular schisis is exclusively caused by abuse." *Id.* at 10. Crucially, the Court held that this testimony should be deemed false and required the reversal of Mr. Kaiser's conviction even though the second expert had not retracted his testimony.

The reasoning in *Kaiser* supports Ms. Lemons' claims for relief. The only medical testimony presented against Ms. Lemons at trial, that her child's injuries "[could not] be fully explained by any other medical entity" besides shaking, was retracted by Dr. Cassin and is now known to be false. A new trial is required so a jury can decide Ms. Lemons' case based on the truth of what occurred, and not based on false assumptions that afflicted her first trial.

Respectfully Submitted,

MICHIGAN INNOCENCE CLINIC

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Dated: March 15, 2024

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