

**IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CRIMINAL TRIAL DIVISION**

Commonwealth of Pennsylvania,
Respondent,

v.

Ronald Johnson,
Petitioner.

CP-51-CR-0535501-1990

**COMMONWEALTH'S ANSWER TO CONSOLIDATED
AMENDED PETITION FOR POST-CONVICTION RELIEF**

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TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 2

 A. Darryl Alexander’s Interviews and Trial Testimony 4

 1. March 3, 1990 interview 4

 2. March 21, 1990 interview 5

 3. April 9, 1990 interview 6

 4. April 16, 1990 interview 6

 5. Alexander’s trial testimony 6

 B. Mark Jackson’s Interviews and Trial Testimony 7

 1. March 5, 1990 interview 7

 2. March 20, 1990 interview 8

 3. March 29, 1990 interview 9

 4. April 16, 1990 interview 9

 5. Trial testimony 10

 C. Detective Frank McGuirk’s Trial Testimony 11

 D. The Defendant’s Case 11

RELEVANT POST-CONVICTION LITIGATION 12

NEWLY DISCOVERED EVIDENCE 14

 A. Undisclosed Exculpatory Polaroid Photos 14

 B. Undisclosed Activity Sheets Documenting Additional Interviews with Jackson 16

 C. Undisclosed Activity Sheets Showing that Detectives Interviewed Alexander and Jackson Jointly and Coached Jackson to Align his Statement with Alexander’s 17

 D. Additional Undisclosed Information 19

DISCUSSION	20
A. The Commonwealth Failed to Disclose the Polaroids, Activity Sheets, and Notes from the Homicide File.	22
B. The Suppressed Evidence Was Favorable and Material to the Outcome of the Case.	24
CONCLUSION	29

INTRODUCTION

On October 28, 1991, Ronald Johnson was convicted of first-degree murder, conspiracy, and possession of an instrument of crime in connection with the shooting death of Joseph Goldsby. After the jury deadlocked on the death penalty, Johnson was sentenced to life in prison without the possibility of parole. In 2021, at Johnson's request, the Conviction Integrity Unit (CIU) in the Philadelphia District Attorney's Office agreed to investigate his case. Pursuant to a Discovery and Cooperation Agreement, the CIU provided Johnson with open-file discovery of the prosecution file and the Philadelphia Police Department's homicide file.

Johnson has now filed a consolidated amended PCRA petition in which he alleges that the Commonwealth violated his due process rights under *Brady* by withholding material, exculpatory evidence. Based on its extensive investigation and review of the record, the Commonwealth agrees that Johnson is entitled to relief. The only evidence implicating Johnson in Goldsby's murder was the testimony of two eyewitnesses, Darryl Alexander and Mark Jackson, whose statements evolved dramatically over the course of the investigation. Alexander and Jackson both knew Johnson from the neighborhood. During their first interviews, when asked if Johnson was one of the gunmen, they both said no. But when questioned at Johnson's trial, which took place more than a year and a half after Goldsby was killed, both Alexander and Jackson testified that there was "no doubt" in their minds that Johnson was one of Goldsby's two assailants. There was no physical evidence tying Johnson to the crime and police never arrested the second of Goldsby's two assailants.

In its review of the files, the CIU discovered substantial evidence casting doubt on

Alexander and Jackson's identifications. The undisclosed evidence reveals that when detectives showed Alexander and Jackson a series of Polaroid photos, including a photo of Johnson, neither Alexander nor Jackson identified him as one of the perpetrators. In fact, Jackson identified another individual in the Polaroids as the shooter. Detectives made no effort to locate this individual, nor did they investigate other leads. Instead, detectives focused exclusively on eliciting inculpatory statements from Alexander and Jackson. Ultimately, detectives questioned Alexander and Jackson a total of nine times, culminating in an undisclosed joint interview during which Jackson was coached to align his ever-changing statement with Alexander's. The Commonwealth did not disclose the Polaroids, the activity sheets showing that Jackson was coached to change his statement, or other evidence showing that detectives ignored leads about alternative suspects.

Given that the only evidence against Johnson was the testimony of Alexander and Jackson, the Commonwealth acknowledges that the suppressed evidence was material and exculpatory. By failing to disclose this evidence, the Commonwealth violated Johnson's right to due process under the Pennsylvania and United States Constitutions. Accordingly, the Commonwealth respectfully requests that the Court grant Johnson's PCRA petition, vacate his conviction, and grant him a new trial.¹

STATEMENT OF FACTS

On the evening of March 1, 1990, Joseph Goldsby was shot and killed on the 2100 block of Westmoreland Street. Two days later, Goldsby's father contacted detectives and

¹ In the interest of judicial economy, the Commonwealth has only responded to some of Johnson's claims. If the Court grants relief on one or more of those claims, Johnson's remaining claims will be rendered moot. Should the Court wish to address Johnson's other claims, the Commonwealth would respectfully request the opportunity to supplement this response.

told them that Johnson may have had something to do with Goldsby's murder. Pet'r's App. in Support of Counseled PCRA Pet. ("App.") at 26. According to a previously undisclosed activity sheet, Goldsby's father reported that "word in the neighborhood" was that his son had "some problems" with a guy named Spanky and that Johnson was a friend of Spanky's.² *Id.* Goldsby's father also told detectives that Jackson witnessed Goldsby's murder. *Id.* Separately, detectives learned that Alexander may have been at the scene when Goldsby was killed. *Id.*

In the days that followed, detectives questioned both Alexander and Jackson, who provided nearly identical accounts of Goldsby's murder. According to both men, on the night of the shooting, Goldsby was parked on Westmoreland Street and sitting in his car when two men approached. *Id.* at 31–32, 59. The taller of the two men (the "first gunman") entered the passenger side of the car while the second man (the "second gunman") waited on the sidewalk. *Id.* at 31, 34–35, 59. Several minutes later, Alexander and Jackson heard gunshots from inside Goldsby's car and saw the car roll forward and crash into a pole. *Id.* at 32–33, 59. The second gunmen then aimed a gun at Goldsby, but the gun never fired. *Id.* at 33, 60. According to Alexander, Goldsby staggered out of the car and collapsed on the street. *Id.* at 33. He was pronounced dead later that evening. N.T. 10/22/91 at 160.

When detectives asked Alexander and Jackson if they had seen Johnson at the crime scene, they were unequivocal in their responses: they knew Johnson and did not see him at the scene. App. at 34–36, 58–63. But rather than follow other leads, detectives persisted in questioning Alexander and Jackson about Johnson. With each interview—there were nine

² Detectives identified Spanky as Sherrod Freeman. Although they pulled his criminal extract, they do not appear to have interviewed him.

in total—Alexander and Jackson became more confident that Johnson was one of the assailants, though they disagreed about whether he was the first gunman or the second. By the time they reached trial, however, both men testified emphatically that Johnson was the second gunman.

The evidence disclosed to counsel and presented at trial included the following.

A. DARRYL ALEXANDER’S INTERVIEWS AND TRIAL TESTIMONY

1. March 3, 1990 interview

One day after Goldsby was killed, Detective Frank McGuirk contacted Darryl Alexander and arranged for him to come voluntarily to Homicide. App. at 26. In an interview conducted the following day, Alexander described the events surrounding Goldsby’s murder in considerable detail. *Id.* at 31–36. He told McGuirk that on the night of the shooting, he arrived at 21st and Westmoreland Streets just as Goldsby was pulling up in his car. *Id.* at 31. Alexander got into Goldsby’s car to buy drugs, and when he emerged a few minutes later, he saw about six people gathered outside the car, including the first and second gunmen. *Id.* at 31–32. The first gunman was the taller of the two and had a medium complexion and build, while the second gunman was shorter and had a dark complexion. *Id.* at 34–35. Alexander noticed that the gunmen were standing with a woman and that the woman was talking to Carlisely Blakeney. *Id.* at 32.

After a few minutes, when most of the people standing outside Goldsby’s car had dispersed, the first gunman walked over to Goldsby’s car and asked to see his product. *Id.* at 32. At Goldsby’s prompting, the first gunman climbed into the passenger seat of the car. *Id.* At the same time, the second gunman and his female companion moved up the sidewalk to the front of the car. *Id.* Alexander then walked over to Goldsby’s car and leaned down by the driver’s-side window, which was closed. *Id.* Moments later, a shot rang out and the

window shattered in Alexander's face. *Id.* Alexander ran to the corner and shouted that the police were coming. *Id.* at 32–33. From the corner, he could see Goldsby and the first gunman struggling in the car. *Id.* at 33. He heard two more gunshots and saw Goldsby's car roll forward and hit a pole. *Id.* The second gunman, who was still standing outside the car, aimed a gun at Goldsby and pulled the trigger, but the gun just “clicked.” *Id.* Goldsby fought his way out of the car, took two or three steps, and collapsed on the street. *Id.*

Alexander told detectives that he had never seen either of the gunmen before. *Id.* at 34. Referring to Johnson by his middle name, Detective McGuirk asked Alexander if he knew a guy named Greg Johnson from 19th and Erie. Alexander responded, “I know him but I don't think it was him that night. *I do know him and if it was him I would have known him.*” *Id.* at 35 (emphasis added).

2. March 21, 1990 interview

On March 21, 1990, detectives found Alexander at 21st and Estaugh Streets and brought him to Homicide for a second interview. App. at 21, 37. This time, Alexander told Detective McGuirk that he heard a rumor that Johnson and “a guy named Duncan” were in the area “earlier” on the night of the murder. *Id.* at 38. McGuirk then asked Alexander, “In your earlier interview I asked you about Greg Johnson and if it was him. *Id.* You said you knew him and didn't think it was him. Do you still feel that way?” *Id.* In contrast to his previous interview, Alexander responded, “I'm not sure if it was him or not. I would have to see him again.” *Id.* Alexander was shown a photo array and identified Shawn

Duncan as “the taller one” (i.e., the first gunman).³ *Id.* Asked whether he remembered anything about the second gunman, Alexander responded, “*no nothing*. After I asked him what he wanted that night and he said he was waiting for the guy in the car, I took my attention off of him.” *Id.* at 38–39 (emphasis added).

3. April 9, 1990 interview

On April 9, 1990, Alexander was standing near 21st and Estaugh Streets when Detective McGuirk and another officer pulled up alongside him. App. at 2, 40. McGuirk showed Alexander a photo array that included Johnson’s photo. *Id.* at 40. For the first time, Alexander identified Johnson as the second gunman. *Id.* Detectives did not ask him why he had previously denied seeing Johnson at the scene. *Id.* at 35.

4. April 16, 1990 interview

On April 16, 1990, Alexander was brought to Homicide for a fourth interview. By now, Alexander appeared more confident that Johnson was the second gunman, but his confidence came from information supplied by a third-party and not from his own first-hand observations. Alexander told detectives that he had seen Johnson one month earlier and “realized that it favored [the second gunman] but I thought it was him but I wasn’t sure at that point. Then the next day someone told me that they seen Greg Johnson up there for 2 days straight and that [was] when I was reassured that was who it was.” *Id.* at 41.

5. Alexander’s trial testimony

At Johnson’s trial, which was held more than a year and a half after Goldsby’s

³ Another eyewitness, Robyn Johnson, also placed Duncan at the crime scene. App. at 99. Nothing in the record suggests that detectives questioned Duncan or eliminated him as a suspect. At a post-verdict hearing, Detective McGuirk testified falsely that none of the witnesses ever identified the first gunman. N.T. 2/1/93 at 4.

death, Alexander testified that there was “no doubt in my mind” that Johnson was the second gunman. N.T. 10/22/91 at 119. Alexander admitted that when he saw the two gunmen standing on the street, he “really didn’t pay them no attention at that particular time, I didn’t you know. I didn’t even think – I didn’t want to know them, for real.” *Id.* at 71. He also acknowledged telling detectives that he knew Johnson “and if it was him [that night], I would have known him.” *Id.* at 98–99. Trial counsel attempted to impeach Alexander with his prior inconsistent statements but struggled to overcome basic objections to the form and foundation of his questions. *Id.* at 90–105. Ultimately, counsel’s impeachment of Alexander with his first statement was confusing, incomplete, and generally unpersuasive.

Counsel also abandoned any effort to impeach Alexander with his second and third statements. When counsel later tried to introduce the statements through Detective McGuirk, the court sustained the Commonwealth’s objections because Alexander had not been confronted with them first. As a result of counsel’s performance, the jury did not get an accurate picture of how the statements to police on the core issue in dispute—the quality of the identification—had changed over time.

B. MARK JACKSON’S INTERVIEWS AND TRIAL TESTIMONY

1. March 5, 1990 interview

Jackson’s first interview was conducted by Detective Paul Worrell. Jackson volunteered to Detective Worrell that on the night of the shooting, he walked over to 21st and Westmoreland sometime after 9 p.m. App. at 59. When he arrived, he saw a crowd of people hanging around Goldsby’s car. Jackson walked over to the driver’s side of the car and spoke to Goldsby through the window. *Id.* Two men then approached Goldsby and asked if they could taste his stuff, and Goldsby motioned for the taller of the two men to

get in the car. *Id.*

Jackson said goodbye to Goldsby and walked toward 21st Street. *Id.* When he reached the Broken Wheel Bar on the corner, he heard four gunshots. *Id.* Jackson saw Goldsby and the first gunman tussling inside the car. Goldsby's car rolled forward and hit a pole, at which point the second gunman walked to the driver's side window and pointed a pistol at the broken window. *Id.* at 59–60. According to Jackson, the man never fired the gun. *Id.* 60.

Like Alexander, Jackson told detectives that he knew Johnson and did not see him at the scene when Goldsby was killed.⁴ *Id.* at 58. Jackson added that he got a good look at both gunmen and did not know either of them but would recognize them if he saw them again. *Id.* at 61.

Detectives also asked Jackson about the conflict between Goldsby and Johnson's friend Spanky. *Id.* Jackson told detectives that he had witnessed an altercation two weeks earlier between Spanky and Goldsby's girlfriend. *Id.* at 62. Jackson said that while Spanky and Goldsby were fighting, Johnson pulled out a pistol and pointed it at Jackson. *Id.* Notably, while Jackson did not hesitate to implicate Johnson in criminal activity in connection with this incident, he did not identify Johnson as one of Goldsby's assailants.

2. March 20, 1990 interview

On March 20, 1990, McGuirk and another officer brought Jackson to Homicide for a second interview. This time, Jackson said that he heard that Johnson's brother David and a man with the last name Duncan were "supposed to be the ones who killed Joseph

⁴ In a later interview, Jackson told detectives that he had known Johnson for ten years and had seen him at least fifty times. *Id.* at 70.

Goldsby.”⁵ *Id.* at 64. Jackson told McGuirk that David Johnson was the one who got into the car with Goldsby and that Duncan was the one on the street. *Id.* at 66.

According to Jackson’s statement, detectives showed him “a group of Polaroids of several B/M’s” and asked him if he saw “the males that were involved.” *Id.* at 66. Jackson pointed to a man (not Johnson) who appeared in two of the Polaroids and identified him as “the one that got into the car and shot Joe.” *Id.* Police never tried to find out who this man was. As discussed below, the Commonwealth did not disclose the Polaroids or the identities of the men who appeared in the Polaroids. *See infra* at 14–16.

3. March 29, 1990 interview

On March 29, 1990, McGuirk found Jackson on 20th and Allegheny Streets and showed him a photo array. *Id.* at 67. Jackson selected Ronald Johnson’s photo and told McGuirk that he “looks like the guy who got into the car and shot Joe.” *Id.* When asked if he was sure, Jackson responded, “I’m 75 percent sure it was him.” *Id.* As with Alexander, detectives appeared untroubled by the inconsistencies in Jackson’s statements and did not ask him to explain why he had previously stated that he did not see Johnson at the scene.

4. April 16, 1990 interview

On April 16, 1990, Detectives McGuirk and Worrell picked Jackson up at 21st and Estaugh Streets and brought him to Homicide for another interview. *Id.* at 2. During this interview, Jackson told detectives that Johnson was the second gunman—the man who had stood on the sidewalk—and not the man who had gotten into the car with Goldsby. *Id.* at 69–70. ***Unlike his previous statements, Jackson’s fourth statement was consistent with***

⁵ Given that both Jackson and Alexander were eyewitnesses to the shooting, it is striking that they would rely on rumors circulating in the neighborhood rather than their own first-hand observations.

Alexander's recollection of events.

Jackson also told detectives that he had seen Johnson about three weeks earlier on the corner of 20th and Westmoreland. When Jackson walked past the corner, Johnson told him to “be careful what you see and what you say.” App. at 70.

5. Trial testimony

At trial, Jackson (like Alexander) testified that there was “no doubt in my mind” that Johnson was the second gunman. N.T. 10/24/91 at 11. Trial counsel only questioned Jackson about his first and second statements. *Id.* at 28–33. On re-direct, the prosecutor asked Jackson to explain why he didn’t identify Johnson until his *third interview* with police.⁶ *Id.* at 34. Jackson testified that he had feared for himself and his family when he gave his first two statements but later decided it was a moral imperative to tell the truth:

Q: Now, after you gave the two interviews on March 5th and then on March 20th, did you have some time to think about what had happened to Joe Goldsby?

A: Yes, I did.

Q: And what did you decide?

A: That justice needed to be served and I just need to stand up and tell the truth.

Q: When you decided that justice needed to be served and you needed to stand up and tell the truth, *did you get back in contact with the police?*

A: *Yes, I did.*

Id. at 35–36 (emphasis added). Jackson further testified that “he went to the police” on March 29, 1990 and “went back to the detectives again” on April 16, 1990. *Id.* at 36, 39.

⁶ As discussed below, an undisclosed activity sheet reveals that this was Jackson’s fourth interview with police. That the trial prosecutor characterized this as Jackson’s third interview suggests that she did not possess the undisclosed activity sheet. *See supra* at 15, 22–23.

In fact, it was detectives who repeatedly sought out Jackson and not the other way around.⁷

Jackson also did not explain why, if he was scared of Johnson, he named Johnson as his assailant in the previous incident with Spanky.

C. DETECTIVE FRANK MCGUIRK'S TRIAL TESTIMONY

At trial, Detective McGuirk testified that on April 16, 1990, Alexander selected Johnson's photo from an array of eight photographs. N.T. 10/23/91 at 43–44. McGuirk did not tell the jury that he had interviewed Alexander on three previous occasions or that Alexander had given inconsistent statements. As noted above, *see supra* at 7, trial counsel attempted to ask McGuirk about Alexander's prior statements, but the Commonwealth objected on the grounds that counsel had only asked Alexander about his first statement. *Id.* at 48–52. The court sustained the Commonwealth's objection and limited defense counsel to questioning McGuirk about Alexander's first statement. *Id.* at 51.

D. THE DEFENDANT'S CASE

Trial counsel called two witnesses: Richard Duncan, who served as an alibi witness, and Ronald Johnson, who testified on his own behalf. Both men provided detailed accounts of their whereabouts on the day of Goldsby's murder. They both testified that they arrived at a bar on 21st and Madison Streets around 9:00 or 9:30 p.m. After talking with Kenny Gaston outside the bar, they drove him to his girlfriend's house. N.T. 10/24/91 at 53, 84–85. From there, Duncan and Johnson purchased cocaine vials and proceeded to the Budd Bioworks plant to get high. *Id.* at 54–56, 86. When they pulled up, they saw Jimmy Smith (aka Jimmy Seed) and another man, whom Johnson identified as Joel, sitting in a blue

⁷ The activity sheets documenting detectives' pursuit of Jackson were not disclosed to trial counsel. *See App.* at 2, 21, 108.

Oldsmobile. *Id.* at 54–56, 86–88. All four men sat in Johnson’s car and got high together. *Id.* at 55, 87. At about 10:30 p.m., Smith mentioned that Goldsby had been killed. *Id.* at 55–56, 88–89.⁸

After some time, they drove to 20th and Erie Streets. *Id.* at 56, 90. Johnson had planned to ask his brother for money but couldn’t find him. *Id.* at 67, 90. According to Johnson, Smith retrieved money from his apartment, and at about 1:00 a.m., Johnson, Duncan, and Smith returned to the Budd Bioworks plant to continue smoking. *Id.* at 89–91. Johnson and Duncan remained together for the following two days. *Id.* at 57–58, 91–92. Both men were adamant that they did not go to Westmoreland Street that evening and did not see Goldsby. *Id.* at 80, 92, 114.

RELEVANT POST-CONVICTION LITIGATION

After his post-sentence motions were denied, Johnson’s conviction was affirmed on direct appeal. On November 30, 1994, Johnson filed a habeas petition in federal court in which he alleged ineffective assistance of counsel. The federal court found that trial counsel’s performance was deficient, but denied relief, finding that Johnson did not suffer prejudice. *Johnson v. Lehman*, Civil Action No. 94-7583, Report and Recommendation (E.D. Pa. Nov. 28, 1995), App. at 137; *Johnson*, 2007 WL 1650565 (E.D. Pa. June 4, 2007) (adopting Report and Recommendation). In denying relief, the federal court noted that “[t]he prejudice question in this case is a close one. The evidence against Petitioner was

⁸ Petitioner raises a stand-alone *Brady* claim based on a previously undisclosed activity sheet indicating that Smith was potentially facing murder charges in another case. Pet. at 28, 51–52; App. at 108. Based on its investigation, the Commonwealth believes that investigators confused Smith with another man of the same name. In other words, the Jimmy Smith who was with Johnson at Budd Bioworks was not the same Jimmy Smith who was potentially facing charges in another murder.

not overwhelming.” App. at 138; *see also Johnson*, 2007 WL 1650565 at *11.

On August 30, 1999, Johnson filed a first PCRA petition based on after-discovered evidence and *Brady* claims unrelated to the claims presented here. The court dismissed the petition as untimely, the Superior Court affirmed, and the Pennsylvania Supreme Court denied allowance of appeal.

On November 25, 2013, Johnson filed a successor PCRA petition based on newly discovered evidence that at the time of his death, Goldsby was cooperating with the Commonwealth in another case. App. at 177–90. In that case, the Commonwealth charged Terrence Poles with shooting and injuring Goldsby and killing Goldsby’s friend. *Id.* at 178. On October 25, 1989, Goldsby testified against Poles at a preliminary hearing. *Id.* at 178–79. Less than five months later, Goldsby was killed. In his petition, Johnson argued that had he known that Goldsby was a Commonwealth witness, he could have presented evidence to the jury that someone else had a motive to kill Goldsby. *Id.* at 180.

On June 2, 2016, the PCRA court dismissed Johnson’s petition as untimely. One day later, the court vacated its dismissal. N.T. 6/3/16 at 6. The court notified the parties that in reviewing another case, a clerk had come across a redacted document that referred to Goldsby’s murder. The document purported to be a debriefing of another former Philadelphia police officer. *Id.* at 4–5. Ultimately, counsel was unable to authenticate the document and Johnson’s petition was dismissed.⁹ The Superior Court affirmed the PCRA court’s decision and the Pennsylvania Supreme Court denied allowance of appeal.

On June 1, 2022, Johnson filed a PCRA petition based on the Commonwealth’s disclosures of the homicide and prosecution files. Johnson filed an amended consolidated

⁹ The CIU was likewise unable to authenticate the document.

petition on August 31, 2023.

NEWLY DISCOVERED EVIDENCE

The CIU disclosed the homicide and prosecution files to Johnson in September 2021. The files contained substantial evidence casting doubt on Alexander and Jackson’s identifications and impeaching the investigation into Goldsby’s murder.

A. UNDISCLOSED EXCULPATORY POLAROID PHOTOS

The Commonwealth withheld exculpatory Polaroid photos that were shown to Jackson and Alexander. App. at 12–19. When Detective McGuirk interviewed Jackson on March 20, 1990, he stated, “I want to show you a group of Polaroids of several B/M’s and see if you see the males that were involved.” App. at 66. *The Polaroid photos included a photo of Johnson. Id.* at 18. Jackson did not identify Johnson as one of the assailants from the group of Polaroids but did identify another individual as the first gunman. While the Commonwealth disclosed to trial counsel that Jackson had been shown a set of Polaroid photos and that he had identified someone as the shooter, it did not disclose the actual Polaroids or the identities of the men in the photos. As a result, defense counsel did not know Jackson had been shown Johnson’s photo or that he had failed to identify him as one of the assailants.

The Commonwealth also failed to disclose that Alexander was shown the Polaroids—let alone that he did not identify Johnson. At the post-verdict hearing, McGuirk admitted that he showed Alexander the photos and that he failed to include that information in Alexander’s statements. N.T. 2/1/93 at 14. As with Jackson, the failure to disclose this information deprived defense counsel of critical information about the reliability of Alexander’s identification.

What’s more, at the post-verdict hearing, the prosecutor claimed that the Polaroids

could not be located and that they were irrelevant because they did not include a photo of Johnson. N.T. 2/1/93 at 6–7; *see also* App. at 20 (post-verdict counsel’s written request for Polaroids). As to the location of the Polaroids, the prosecutor elicited the following testimony from McGuirk.

Q: Now this Polaroid photograph came from what source?

A: The deceased, Mr. Goldsby, was a witness in another homicide case [the Terrance Poles case] and that photograph was part of that case file. ...

Q: Do you know where that photograph is now?

A: It’s with that case file and in record storage.

Q: Did I request that you attempt to locate it?

A: Yes, we did.

Q: Were you able to locate it?

A: No.

N.T. 2/1/93 at 4–5. When defense counsel insisted that the best-evidence rule still required the Commonwealth to present the Polaroids in court, the prosecutor told the court that “not only is the photograph not available, but the Commonwealth’s contention is that *not only was the defendant not in it*, but there was not an identification of the defendant made from that.” *Id.* at 5 (emphasis added). The prosecutor added that the Polaroids did “not apply” to Johnson’s case. *Id.*

The newly disclosed evidence reveals that this was incorrect. The CIU reviewed the Terrence Poles file and did not find any mention of Polaroids. A previously undisclosed activity sheet from *Johnson’s* homicide file indicates that the Polaroids were given to McGuirk by two officers from the 39th District burglary detail. App. at 96. In fact, the

Polaroids were located in Johnson’s homicide file.¹⁰ The descriptions in Jackson’s statement—e.g., that one of the individuals in the Polaroids was wearing a blue Pistons jacket—confirms that the Polaroids in the homicide file were the same Polaroids that were shown to Jackson.

Not only were the Polaroids in Johnson’s homicide file, but Johnson appeared in one of the Polaroids shown to both Jackson and Alexander. App. at 18. Notably, this evidence reveals that detectives continued to question Alexander and Jackson about Johnson—in Jackson’s case, they questioned him four more times—*after* both men had failed to identify him.

At the same time, by Detective McGuirk’s own admission, investigators made no effort to locate the person whom Jackson had identified as the shooter. N.T. 2/1/93 at 10–11. Indeed, McGuirk told the court that it was more “conducive to the investigation” to pursue Johnson because he didn’t have a “name to go with the face” of the person whom Jackson had identified as the shooter. *Id.* at 10.

B. UNDISCLOSED ACTIVITY SHEETS DOCUMENTING ADDITIONAL INTERVIEWS WITH JACKSON

The Commonwealth withheld evidence that detectives questioned Jackson not four but *six* times, sometimes two days in a row, until Jackson finally identified Johnson as the first gunman. The Commonwealth disclosed to trial counsel that detectives questioned Jackson on March 5, March 20, March 29, and April 16, but previously undisclosed activity sheets show that they also questioned him on March 21 and April 9, both times while he

¹⁰ When asked if he provided the Polaroids to the trial prosecutor, McGuirk testified that he “made them available to the D.A. upon her request,” not that he actually provided them. N.T. 2/1/93 at 17. However, while the trial prosecutor may not have known the contents of these Polaroids first-hand, McGuirk certainly should have.

was out on the street. App. at 21, 108. During the April 9th encounter, detectives asked Jackson “if after seeing Greg Johnson riding around recently, was he convinced that he was the male who shot Joe Goldsby.” App. at 108. According to the activity sheet, Jackson “said that he still believes Greg Johnson looks like the male who shot Goldsby but he can’t say positively.” *Id.* This encounter took place three weeks *after* Jackson failed to identify Johnson from the array of Polaroid photos.

C. UNDISCLOSED ACTIVITY SHEETS SHOWING THAT DETECTIVES INTERVIEWED ALEXANDER AND JACKSON JOINTLY AND COACHED JACKSON TO ALIGN HIS STATEMENT WITH ALEXANDER’S

On April 10, 1990, Detective McGuirk requested that ADA David Webb approve a warrant for Johnson’s arrest. App. at 111. By that time, detectives had interviewed Alexander and Jackson three and five times, respectively. Although both men now agreed that Johnson was one of Goldsby’s assailants, their accounts diverged in one key respect: Alexander identified Johnson as the first gunman and Jackson identified him as the second gunman. According to a previously undisclosed activity sheet, ADA Webb denied McGuirk’s request for an arrest warrant because of the discrepancy in the men’s statements. *Id.*

Six days later, on April 16, 1990, Detectives McGuirk and Worrell found Alexander and Jackson on 21st and Estaugh Streets and brought them to Homicide. App. at 2. According to another undisclosed activity sheet, detectives questioned the men jointly about Johnson’s role in Goldsby’s murder. *Id.* As the activity sheet notes, “[t]he detectives sat with the witnesses and asked them to go through the event as they remembered it occurring. Then each was asked once again what Greg Johnson was supposed to have

done.”¹¹ *Id.* In response, the men insisted on their competing versions of events. *Id.* At that point, “it was explained” to Jackson that if the first gunman was taller, then Johnson must have been the second gunman. *Id.* After the detectives suggested a different answer to Jackson, he “finally realized” that Johnson must have been the man who stayed on the sidewalk. *Id.* Detective McGuirk then prepared seemingly separate and now consistent statements for Alexander and Jackson to sign. The next day, McGuirk returned to ADA Webb with these new statements and again requested approval for an arrest warrant. This time, ADA Webb signed off on the warrant. App. at 110.

At trial, the Commonwealth did not inform the jury that Alexander and Jackson had been interviewed jointly or that Jackson was urged to change his story. To the contrary, the prosecutor bolstered Jackson’s testimony by emphasizing that he and Alexander told consistent stories. In closing argument, the prosecutor told the jury:

You haven’t heard of any reason why [Jackson] would come into a courtroom and make up a story. Because if he was going to make up a story against him, Ladies and Gentlemen, you would have heard that the defendant was the guy in the car with the gun. And he also bears out and corroborates every single thing that Darryl [Alexander] tells you.

N.T. 10/25/91 at 50–51. The jury was thus led to believe that Jackson and Alexander’s statements reinforced one another, when in fact they had contradicted each other up until the moment that Jackson was coached to change his story.

¹¹ Christian Meissner, PhD and Steven Kleinman, Colonel, USAF (Ret.), both experts in forensic interview techniques, observe that repeating the same questions about a suspect’s alleged involvement in the incident, and doing so over multiple interviews, likely conveyed to the witnesses that their previous statements were either incorrect or insufficient. Meissner and Kleinman Report, Ex. A at 13. Meissner and Kleinman also note that the detectives’ approach to interviewing Alexander and Jackson “runs counter to what is known about effective information-gathering method.” *Id.* at 11. In their analysis of the record, they conclude that the reliability of Alexander and Jackson’s statements was “poor.” *Id.* at 15.

D. ADDITIONAL UNDISCLOSED INFORMATION.

The Commonwealth failed to disclose that it received a tip about an alternative suspect. According to previously undisclosed notes from the homicide file, on March 2, 1990, Eddie Pope called the Homicide Unit and spoke with Detective Joe Wyatt. Pope told Detective Wyatt that his daughter, Tonya Scott, lived on 3333 N. 21st Street, less than 400 feet from the spot where Goldsby was killed. App. at 46. Scott's boyfriend, Anthony Floyd, lived two houses away from her. On the night of the shooting, Scott had called her father in tears. She told her father that "somebody got killed near her house" and she believed that Floyd was involved. App. at 46, 109. Detectives deemed the tip credible enough to pull Floyd's court history, criminal extract, and police photo but did not interview Floyd or Scott or rule out Floyd as a suspect. App. at 7–11.

The Commonwealth also failed to disclose an activity sheet and handwritten notes that described an exculpatory interview with an eyewitness named Carlisely Blakeney. Early in the investigation, Darryl Alexander told detectives that he saw Blakeney, who lived on the same block as the shooting, talking with the gunmen and a girl who was with them. App. at 32. Alexander later asked Blakeney if he knew the gunmen. *Id.* at 34. According to Alexander's first statement, which was disclosed to defense counsel, Blakeney responded that "he had seen one of the guys before but he said he knew that the girl had been there several times." *Id.*

Three days after taking Alexander's statement, detectives visited Blakeney at his home. According to a previously undisclosed activity sheet, Blakeney told detectives that he was highly intoxicated on the night of the shooting and didn't remember much, but he did recall "that the guys involved with killing Joe were not from the neighborhood and that he thinks the girl is a piper from north Philly but he doesn't know where." App. at 1.

Detectives did not formally interview Blakeney because his mother had died that day and he was intoxicated, but they noted in the undisclosed activity sheet that they would contact him later that week for a formal interview. *Id.* In another undisclosed document, detectives noted that Blakeney lived three houses from the shooting; that he was talking to the doer; and that the girl he mentioned was known as “Cuchie” and lived at 22nd and Bellevue. App. at 73.

Although detectives were aware that Johnson lived in the neighborhood, App. at 26, they continued to pursue Johnson as a suspect. Nothing in the homicide file suggests that they ever spoke to Blakeney again. Nor did they make any effort to identify Cuchie, even though she was identified as possibly having been with the gunmen just moments before the shooting.

DISCUSSION

The Commonwealth violated Johnson’s due process rights under *Brady* by withholding material, exculpatory evidence that would have undercut the entirety of the Commonwealth’s case against Johnson. The prosecution has an obligation to disclose information that is favorable to the guilt or punishment of the defendant. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This obligation extends to information that is exculpatory as well as impeaching, *Dennis v. Sec’y, Pa. Dep’t of Corr.*, 834 F.3d 263, 284, (3d Cir. 2016), and to evidence that could be used to “attack... the thoroughness and even the good faith of the investigation,” *Kyles v. Whitley*, 514 U.S. 419, 445 (1995). The *Brady* rule also encompasses evidence known only to the police. “To comply with *Brady*, prosecutors must ‘learn of any favorable evidence known to the others acting on the government’s behalf..., including the police.’” *Dennis*, 834 F.3d at 284 (quoting *Strickler*

v. Greene, 527 U.S. 263, 281 (1999)); accord *Commonwealth v. Burke*, 566 Pa. 402, 413 (2001) (“The prosecution’s *Brady* obligation clearly extends to exculpatory evidence in the files of police agencies of the same government bringing the prosecution.”) A criminal defendant need not demand favorable evidence before trial; instead, the prosecution has “an affirmative duty” to disclose it. *Kyles*, 514 U.S. at 432–33.

A new trial is required where the suppressed evidence is material, i.e., where there is “a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” *Cone v. Bell*, 556 U.S. 449, 469–70 (2009). A reasonable probability does not mean the defendant would more likely than not have received a different verdict with the evidence, only that the likelihood of a different result is great enough to undermine confidence in the outcome of the trial. *Kyles*, 514 U.S. at 434; see also *Hull v. Kyler*, 190 F.3d 88, 110 (3d Cir. 1999) (the “undermines confidence” standard “is not a stringent one. It is less demanding than the preponderance standard.”) (citation omitted).

When conducting a materiality analysis under *Brady*, the court must consider the “cumulative effect” of all the suppressed information. See *Kyles*, 514 U.S. at 436 (holding that the materiality of the suppressed evidence must be “considered collectively, not item by item”); *Commonwealth v. Johnson*, 64 A.3d 621, 622 (Pa. 2013) (per curiam) (“in assessing *Brady* materiality, the court is reminded of the requirement to consider the ‘cumulative’ or ‘collective’ effect of all of the relevant undisclosed evidence.”). The court also must evaluate the suppressed evidence “in the context of the entire record,” and “if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient” to satisfy the materiality standard. *United States v. Agurs*,

427 U.S. 97, 112–13 (1976).

A. THE COMMONWEALTH FAILED TO DISCLOSE THE POLAROID, ACTIVITY SHEETS, AND NOTES FROM THE HOMICIDE FILE.

The CIU’s investigation confirmed that the Commonwealth failed to disclose the Polaroids, activity sheets, and notes contained in the homicide file. The CIU’s investigation included a review of the record (both trial and any post-conviction proceedings), the District Attorney’s files, all non-privileged documents in trial counsel’s files, and the Johnson and Poles homicide files.¹² The only discovery letter or notes that could be located did not identify any of these items. In an interview with the CIU, the trial prosecutor stated that she did not recall Johnson’s case. The only thing that she was able to say about discovery was that “[i]t was always my policy, in every case I was trial attorney, to turn over to defense counsel all discovery, whether requested or not, that I had in my possession or had knowledge of its existence.” Additionally, the trial prosecutor said that “[a]t no time in my duties as a[n] Assistant District Attorney did I ever knowingly permit any witness, whether civilian or police officer to lie on the witness stand. If it came to my attention that a witness was fabricating testimony, I immediately took appropriate corrective action. Similarly, I never asked any question to a witness or argued any issue to a jury that I did not believe was eliciting truthful testimony and within the bounds of propriety.”¹³

¹² Many of the individuals involved in this case are now deceased, including Detective McGuoirk, trial counsel Richard Johnson, post-verdict counsel Christine Adair, Darryl Alexander, Sherrod Freeman (“Spanky”), and Carlisely Blakeney. The CIU attempted to interview Mark Jackson but he was unwilling to answer questions.

¹³ Because the trial prosecutor had no recollection of this case and was only able to provide general information about her practices at the time, the record speaks for itself. As such, there is no genuine issue of material fact and this Court does not need to hold an evidentiary hearing. *See* Pa. R. Crim. P. 907(2); *see also* *Commonwealth v. Morris*, 684 A.2d 1037, 1042 (Pa. 1996) (“when there are no disputed factual issues, an evidentiary hearing [on a

The record in this case reveals numerous instances in which the prosecutor made statements or elicited testimony that was contrary to the suppressed evidence but consistent with the documents in the prosecutor’s file. For example, when questioning Jackson at trial, the prosecutor referred to Jackson’s April 16th statement as his “fourth statement,” when in fact the activity sheets show that it was his sixth statement. N.T. 10/24/91 at 40. Similarly, when questioning Jackson about his first three interviews, the prosecutor referred to the March 5th, March 20th, and March 29th interviews and made no mention of the undisclosed March 21st interview. *Id.* at 33–36. When questioning Detective McGuirk about preparing the warrant for Johnson’s arrest, the prosecutor referred only to the second of two warrants that McGuirk prepared and not to the warrant that was rejected by ADA Webb. N.T. 10/23/91 at 45. And in her closing argument, the prosecutor did not indicate that Alexander had been interviewed jointly or that Jackson was urged to change his story but instead suggested that their statements reinforced one another. N.T. 10/25/91 at 50–51. Based on the prosecutor’s description of her practices, it is apparent that she did not possess or know about the suppressed evidence and that the police department did not provide that evidence to the District Attorney’s Office.¹⁴

Finally, regardless of whether the prosecutor had seen the Polaroids or had a practice of turning over all discovery, the transcript of the post-verdict hearing makes clear that the Commonwealth did not disclose the Polaroids or the identities of the men depicted in the Polaroids. *See supra* at 14–16.

PCRA petition] is not required under the rules”).

¹⁴ For purposes of *Brady*, the prosecution is accountable for evidence known only to police investigators. *Kyles*, 514 U.S. at 438.

B. THE SUPPRESSED EVIDENCE WAS FAVORABLE AND MATERIAL TO THE OUTCOME OF THE CASE.

The Commonwealth withheld evidence that could have been used to impeach the testimony of Alexander and Jackson. That testimony was “the essence of the State’s case,” *Kyles*, 514 U.S. at 441 (citation omitted), and was “crucial to the prosecution” because it was the only evidence linking Johnson to the crime, *Banks v. Dretke*, 540 U.S. 668, 700 (2002). Indeed, the Commonwealth did not present any physical evidence linking Johnson to the crime and or even placing him at the scene, and despite the fact that Johnson was well known in the neighborhood, no other witness identified him as one of the perpetrators. Thus, any evidence that challenged Jackson and Alexander’s credibility or the reliability of their accounts would have been devastating to the Commonwealth’s case.

The Polaroids are perhaps the most significant evidence withheld by the Commonwealth. First, they reveal that when shown Johnson’s photo, Alexander and Jackson failed to identify him as either of the two gunmen and Jackson identified another man as the first gunman. By the time of trial, however, Alexander and Jackson confidently identified Johnson as the second gunman. In the hands of competent counsel, the revelation about the Polaroids “would have fueled a withering cross-examination” and “resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense.” *See Kyles*, 514 U.S. at 441, 443.

Notably, in cases like this one, which depend largely or entirely on eyewitness testimony, the Supreme Court has not hesitated to find *Brady* violations when the prosecution withholds impeachment evidence. In *Smith v. Cain*, for example, the sole evidence against the defendant was an eyewitness identification. 565 U.S. 73, 74 (2012). There, as here, the eyewitness testified that he had “no doubt” that the defendant was one

of the perpetrators. *Id.* at 76. But evidence disclosed after trial revealed that the witness initially told police that he could not identify any of the perpetrators. *Id.* According to the Court, the witness’s statements, which would have impeached his testimony, were “plainly material” and “alone suffice to undermine confidence in Smith’s conviction.” *Id.* at 76. And in *Kyles*, a notably stronger case for the prosecution than the one against Johnson, the prosecution presented four eyewitness identifications and a murder weapon that had been found in the defendant’s home. *See* 514 U.S. at 427–30. The Court nevertheless held that disclosure of inconsistent statements by two of the eyewitnesses and a police informant “would have made a different result reasonably probable.” *Id.* at 441.

As in *Smith* and *Kyles*, the suppression of the Polaroids—evidence that would have impeached critical eyewitness testimony—is sufficient to warrant a new trial.¹⁵ But here there is more. Defense counsel was made aware of some (but not all) of Jackson’s inconsistent statements, yet nothing in the record explained why, in his final April 16th statement, Jackson suddenly identified Johnson as the second gunman, thus aligning his statement with Alexander’s. The prosecution suggested that Jackson merely sought to “clarify to detectives which man was the shooter and which man was outside the car.” N.T. 10/24/91 at 40. What’s more, in closing, the prosecutor argued that Jackson had no reason to make up a story and that his story “bears out and corroborates every single thing that Darryl [Alexander] tells you.” N.T. 10/25/91 at 50–51. The April 16th activity sheet

¹⁵ It also bears noting that post-verdict counsel specifically requested the Polaroids from the prosecutor. App. at 20. Although the prosecutor’s duties under *Brady* do not depend upon a request from the accused, the prosecutor’s failure to respond to a specific and relevant request is “seldom, if ever, excusable.” *Agurs*, 427 U.S. at 106–07.

contradicts this narrative. Jackson did not come to the realization that Johnson was the second gunman on his own; rather, he was placed in a room with Alexander and coached to align his story with Alexander's. And Jackson's story did not substantiate Alexander's testimony, as the prosecution argued, but in fact contradicted it up until the moment Jackson was coached to change his story. This type of impeachment is different in kind than the impeachment by prior inconsistent statements that occurred at trial.

The undisclosed Polaroids and activity sheets also would have allowed counsel to impeach Detective McGuirk's testimony and the integrity of the investigation. *See Kyles*, 514 U.S. at 446 (holding that the thoroughness and good faith of a police investigation is a factor to be considered in determining whether withheld evidence is exculpatory); *Dennis*, 834 F.3d at 302 (finding that defense counsel could have used the suppressed information to "highlight the investigatory failures for the jury, which could have supported Dennis's acquittal"). McGuirk's investigative failures were legion. By his own admission, he did not investigate the person whom Jackson identified as the first gunman in the Polaroids. N.T. 2/1/93 at 10–11. He did not document anywhere in the file that Alexander had been shown the Polaroids or that Alexander had failed to identify Johnson. *Id.* at 14. He never took a formal statement from Carlisely Blakeney or attempted to locate the woman whom Blakeney identified as the shooters' female companion. And he never interviewed Anthony Floyd or Floyd's girlfriend, even though she believed that Floyd was involved in Goldsby's murder.

McGuirk's trial and post-verdict testimony was also incomplete and misleading. At trial, when asked whether he showed Alexander a photo array, McGuirk testified only about the array in which Alexander had identified Johnson; McGuirk made no mention

of the Polaroid photos. N.T. 10/23/91 at 43–44. When asked whether he prepared an arrest warrant, he did not disclose that the ADA had refused to sign off on the first arrest warrant he prepared. N.T. 10/23/91 at 45. When asked about Alexander’s April 16th interview, McGuirk failed to mention that Jackson was also present. *Id.* at 43–45. And, in his most troubling omission, McGuirk testified at the post-verdict hearing that Alexander did not identify anyone in the Polaroids, but he failed to mention that Johnson was in one of the Polaroids. N.T. 2/1/93 at 4–17. By withholding such information, McGuirk capitalized on counsel’s ignorance of the suppressed evidence and deprived counsel of the opportunity to impeach Alexander and Jackson’s testimony. Given McGuirk’s central role in the investigation—in addition to being the lead detective, he conducted almost every interview in the case, including Jackson and Alexander’s joint interview—any evidence that impeached his credibility or the caliber of his investigation would have created significant doubt in the jury’s mind about the reliability of Alexander and Jackson’s identifications.

In the end, this is not a complicated case. Johnson was convicted based solely on the eyewitness testimony of two individuals—evidence that the federal court described as “not overwhelming.” *Johnson*, 2007 WL 1650565, at *9, *13. The CIU agrees that this was not a strong case. The evidence used at trial is thoroughly undermined by Alexander and Jackson’s failure to identify Johnson from Polaroid photos and activity sheets revealing that they were questioned nine times, culminating in a joint interview during which Jackson was pressured to change his story. The undisclosed interview with Carlisely Blakeney further contradicts Alexander and Jackson’s identification of Johnson. And the undisclosed tip about Anthony Floyd—which detectives deemed credible enough to pull his criminal history—underscores the failure of detectives to investigate any evidence that pointed to

suspects other than Johnson. When viewed individually and collectively, this evidence undermines confidence in the outcome of Johnson's trial.

Accordingly, the Commonwealth agrees that Johnson's due process rights under *Brady* were violated and that he is entitled to relief.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Court grant the petition for a new trial.

Respectfully submitted,

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Dated: November 9, 2023

CERTIFICATE OF SERVICE

I, Jessica Attie Gurvich, Assistant District Attorney, hereby certify that a true and correct copy of the foregoing Answer to PCRA Petition was served on November 9, 2023 to the parties indicated below via eFile and email:

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VERIFICATION

The facts above set forth are true and correct to the best of the undersigned knowledge, information and belief. I understand the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

/s/ Jessica Attie Gurvich

JESSICA ATTIE GURVICH
Assistant District Attorney

Date: November 9, 2023