IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
Respondent,	:	
	:	CP-51-CR-0535501-1990
v.	:	
	:	
RONALD JOHNSON,	:	
	:	
Petitioner.	:	
	:	
	:	
	:	

CONSOLIDATED AMENDED PETITION FOR POST CONVICTION RELIEF

For more than 30 years, Ronald Johnson has steadfastly maintained his innocence. Over the course of decades, he has diligently presented evidence undermining the testimony of the Commonwealth's two eyewitnesses—the only evidence against him. Throughout years of litigation, in state and federal court, the Commonwealth has vigorously opposed these claims, all the while withholding material, exculpatory evidence clearly relating to and supporting his claims for relief.

Previously undisclosed activity sheets and a suppressed polaroid photograph array reveal the efforts that officers took to manipulate and reconcile the inconsistent statements of Mark Jackson and Darryl Alexander, the only evidence against Mr. Johnson. Police and prosecution files, previously in the sole control of the Commonwealth, reveal that law enforcement had a number of undisclosed contacts with the two eyewitnesses, during which they gave contradictory and inconsistent statements, exculpating Mr. Johnson. The files reveal that two weeks after initial

interviews, during which both witnesses unequivocally told police that Mr. Johnson was not present, police showed them a photo array which included Mr. Johnson, and *neither* identified Mr. Johnson as being at the scene of the crime. Instead, from that lineup, Jackson identified a third party as the shooter. However, instead of investigating that suspect, police narrowed their focus on Mr. Johnson, repeatedly stopping Jackson and Alexander in the street and pressuring them to inculpate Mr. Johnson. The previously suppressed documents reflect that only after multiple stops, several contradictory and inconsistent statements, and one joint and coercive interview, did the two finally provide consistent inculpatory statements. All the while, police ignored important leads and disregarded witnesses who had information about the actual culprits. At trial, the Commonwealth failed to present the inconsistencies in the many statements of its only two witnesses, erroneously represented that Mr. Johnson was the lone suspect in the case, and misled the jury as to the veracity of a Mr. Johnson's alibi witness. Because the two witnesses constituted the sole evidence against Mr. Johnson, the newly disclosed evidence is material and requires relief.

Not until September 2021, when the Commonwealth finally disclosed its file to counsel for Mr. Johnson, did Petitioner learn of this evidence, which had been, at all times, in the exclusive control of the Commonwealth, unavailable to Petitioner. The newly disclosed evidence establishes multiple timely claims under *Brady* and *Napue*, and reveals an ongoing violation of Mr. Johnson's constitutional rights. On June 1, 2022, Mr. Johnson filed an Amended Petition for relief pursuant to Article I, Section 14 of the Pennsylvania Constitution and the 6th and 14th Amendments of the United States Constitution, and 42 Pa. C.S. § 9542 et seq., which address the significance of his newly available claims under *Brady v. Maryland*, 373 U.S. 83 (1963), *Napue v. Illinois*, 360 U.S. 264 (1959), and *Giglio v. United States*, 405 U.S. 150 (1972). He filed a second Amendment on May 18, 2023. He files the present Consolidated Petition in order to present one comprehensive

document that incorporates all cognizable claims. Because the newly disclosed documents have never been available to the defense through the exercise of due diligence, Mr. Johnson meets the jurisdictional requirements of the Post Conviction Relief Act ("PCRA"), established constitutional violations, and demonstrated his innocence, Mr. Johnson is entitled to relief.

Part I: Relevant Facts and Procedural History

I. Introduction

On March 1, 1990 Joseph Goldsby was shot and killed in his car on the 2100 block of Westmoreland Street in Philadelphia. Goldsby was dealing drugs when two men approached his car, interested in making a purchase. According to eyewitnesses, the taller of the two men entered the passenger side of Goldsby's vehicle while the shorter man waited on the sidewalk. A struggle ensued inside the car, multiple gunshots were fired, and the car rolled forward into a pole. N.T. 10/22/91, at 20.

At trial, the Commonwealth contended that Mr. Johnson was standing beside the passenger door of the victim's car, aimed a gun into the vehicle and pulled the trigger, but it misfired. *Id.* No firearms, ballistics, or forensic evidence of any kind connected Mr. Johnson to the crime. To substantiate its theory, the Commonwealth relied exclusively upon the eyewitness testimonies of Darryl Alexander and Mark Jackson, both of whom changed their stories considerably over the course of their many police interviews. In each of their first interviews, Alexander and Jackson unequivocally stated that Mr. Johnson was not at the scene of the crime. App. 35, 58. Over the course of subsequent interviews, Alexander and Jackson identified other potential suspects, and oscillated between identifying Mr. Johnson as the man on the sidewalk or the man in the car. On April 16, 1990, suddenly their statements coalesced. App. 40-42, 69-70. These newly consistent

accounts were the entirety of the Commonwealth's case against Mr. Johnson, resulting in a conviction and sentence of life without the possibility of parole.

Over the years, Mr. Johnson has pursued several claims relating to the veracity of the two witnesses. During his federal habeas proceedings, he learned through discovery that the Commonwealth failed to disclose their criminal histories, as well as a letter written by the trial prosecutor asking a Florida prosecutor for leniency for Jackson, because of Jackson's testimony against Mr. Johnson. In denying relief, the district court acknowledged that it was "a close call." App. 138. Unbeknownst to that court, and to Mr. Johnson, the Commonwealth had in its possession other relevant evidence undermining the testimony of Jackson and Alexander.

Specifically, the Commonwealth failed to disclose law enforcement activity sheets that paint a vastly different picture of how detectives manipulated and coached their two witnesses over a series of police stops, to change their statements into consistent accounts inculpating Mr. Johnson. App. 2. For the first several days of the investigation, not a single eyewitness identified or mentioned Mr. Johnson, though he lived in the neighborhood and was known to the witnesses. After hearing a rumor that he was involved, detectives began asking witnesses about Mr. Johnson. Even after witnesses repeatedly told detectives that Mr. Johnson was not present at the crime scene, and identified other individuals, officers inexplicably honed in on Mr. Johnson to the exclusion of all other suspects, abandoning credible information inculpating alternative suspects. Though Jackson and Alexander twice told police that Mr. Johnson was not present at the scene of the crime, newly disclosed activity sheets explain how officers continued to harass, manipulate and coerce them until eventually they gave consistent statements inculpating Mr. Johnson. *See, e.g.,* App. 1, 12-19, 21, 108. The newly disclosed files also reveal that the Commonwealth failed to disclose the

existence and information about alternate suspects and leads, which police utterly failed to investigate. *See, e.g.,* App. 1, 7-11, 26, 46, 73, 109.

While withholding material evidence that eviscerated law enforcement's case against him, the Commonwealth also suppressed evidence supporting Mr. Johnson's alibi, Richard Duncan, the sole defense presented by trial counsel. Unbeknownst to trial counsel, prosecutors possessed in their file results of a polygraph examination showing Duncan's statements to be truthful. App. 91, 95.

Not only did the Commonwealth fail to disclose this wealth of evidence in advance of trial, it capitalized on the suppression, presenting and bolstering testimony at trial that it knew to be false, eliciting false testimony from Detective McGuoirk about the meetings with Jackson and Alexander, concealing two additional meetings with Jackson and obscuring important details about other meetings. *See e.g.,* N.T. 10/23/91, at 43-44. At the post-trial hearing, McGuoirk denied that Mr. Johnson had been included in a photo lineup, that had been shown to both Alexander and Jackson, and falsely maintained that the photos could not be located. N.T. 2/1/1993, at 5–6, 14. Far from correcting this perjury, prosecutors capitalized on it, doubling down on these false assertions in their arguments. N.T. 10/25/91, at 50-51. This false testimony significantly strengthened the Commonwealth's case against Ronald Johnson.

Over the past three decades, Mr. Johnson has been diligent, raising all available evidence of his innocence. Throughout multiple proceedings, the Commonwealth has continued to suppress relevant exculpatory evidence and obstruct access to the truth in the face of Mr. Johnson's compelling challenges to his conviction and sentence. While Mr. Johnson fought for information, the Commonwealth concealed it. The Commonwealth's conduct represents a violation of Mr. Johnson's constitutional rights and an abandonment of the prosecutor's "duty to refrain from

improper methods calculated to produce a wrongful conviction." *Connick v. Thompson*, 563 U.S. 51, 71 (2011). The new evidence is squarely within the parameters prescribed by the PCRA; it thoroughly undermines Mr. Johnson's conviction and requires a new trial.

II. The Commonwealth's Investigation and Trial

On October 28, 1991, Mr. Johnson was convicted of first-degree murder, criminal conspiracy, and possessing an instrument of crime. The jury deadlocked on the death penalty determination.

A. The Commonwealth's Case

At trial, the Commonwealth advanced the theory that Mr. Johnson robbed and killed Goldsby for his money and drugs. In support of this theory, the Commonwealth relied solely on the inconsistent and ever-changing testimony of two witnesses: Darryl Alexander and Mark Jackson. None of the other witnesses presented by the Commonwealth inculpated Mr. Johnson. In advance of trial, the Commonwealth disclosed the existence and substance of several interviews with its eyewitnesses; these are summarized herein.

1. Darryl Alexander

a. 3/3/90 Interview

Detective McGuoirk first interviewed Alexander two days after Goldsby's murder. Alexander explained that he arrived on the 2100 block of Westmoreland Street as Goldsby drove up, a few minutes before the shooting, and got in Goldsby's car to purchase drugs. App. 31-36. When Alexander exited the car, there were about six people outside, waiting to buy from Goldsby, one of whom was Mark Jackson. *Id.*

While Jackson conducted his transaction with Goldsby, Alexander remained nearby, attempting to sell two caps of crack to anyone in the immediate vicinity, including the man who Alexander alleged later shot Goldsby ("the first gunman"). *Id.* The first gunman was standing with

another man ("the second gunman") and a woman who was talking to an individual named Carlisey, aka Moon X, who lived on the block. *Id.* The first gunman then approached Goldsby's car and entered on the passenger's side to sample Goldsby's product. *Id.* While the first gunman was still in the car, Alexander walked towards Goldsby's car to make another purchase. *Id.* When Alexander bent down over the driver's side window to make the request, the glass shattered, at which point he realized a gun had gone off. *Id.*

As Alexander ran down the block, away from the car, he recalled hearing a struggle inside the car and two more gunshots before the car started rolling forward, ultimately crashing into a nearby pole. App. 33. After the crash, Alexander saw the second gunman pull his automatic weapon out and attempt to shoot Goldsby, but his gun "just clicked." *Id*. The second gunman and woman ran down Westmoreland Street towards 22nd Street. *Id.*

According to Alexander, as the rest of the group fled, Goldsby and the first gunman continued to struggle in the car, eventually exiting through the passenger side of the car. The first gunman told Goldsby, "I said give it up or I turn it loose," and Goldsby staggered two or three steps before collapsing on the other side of the street. App. 33. The first gunman then fled, and Alexander ran to Goldsby, calling for Jackson's help. *Id.* Alexander flipped Goldsby over and then went through the car, pocketing food stamps from the floor of the passenger side and drugs from the driver's seat. *Id.*

Realizing that Goldsby was badly wounded, Alexander ran to Goldsby's house. *Id.* On the way, Alexander recalled telling Carl, Goldsby's brother, and then Anthony Floyd,[1] that Goldsby had been shot. *Id.* When Alexander arrived at Goldsby's house he told Goldsby's girlfriend about the shooting. *Id.* Alexander then ran back to 21st and Westmoreland, where he saw Jackson

[1] Previously undisclosed detective notes revealed Floyd as an alternative suspect. *See* Part II, I.E.1.

walking away from the crime scene, putting some object in his pockets. *Id.* Alexander stayed and directed the police to Goldsby and then left. *Id.*

Alexander told detectives he had never seen the first gunman, the second gunman, or the woman with them before that night. App. 34. Alexander described the first gunman as wearing a dark blue jacket with gold frame glasses, 6'1" to 6'2" and of medium build and complexion, about mid 20s. App. 34. As for the second gunman, Alexander described him as having a darker complexion, with a blue jacket, about 5'7", thin, and carrying a silver gun.[2] App. 35. Finally, he described the woman as darker complected, thin, and "ugly." *Id*. Asked point blank by detectives if he was familiar with Mr. Johnson, 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.* (emphasis added). According to Alexander, Carlisey said that he had seen one of the men before, and that he had seen the woman several times. *Id*.[3]

b. 3/21/90 Interview

During his second interview with Detective McGuoirk on March 21st, 1990, Alexander told detectives that Kenny Gaston came by his work and said that Mr. Johnson and "Duncan" were in the area the night of the murder. Alexander now stated that if he could see Mr. Johnson again, he'd be able to say with more certainty whether he had been at the scene. Alexander concluded his

[2] Darryl Jones, who fit this description, reportedly "was there and seen what happened." App. 77-78.

[3] Previously undisclosed detective notes reveal that when detectives followed up with Carlisey, he was highly intoxicated but recalled that the gunmen were not from the neighborhood and that the woman who accompanied them was from North Philly. App. 1. According to newly disclosed contemporaneous law enforcement documents, detectives planned to follow up with Carlisey. App. 1, 71-72. They apparently did not, and no formal interview was ever conducted despite the fact that he seemed to be the only person present on March 1, 1990 who was familiar with the gunmen before the night of the murder. *See* Part II, I.E.2.

second interview by picking Shawn Duncan, Richard Duncan's brother, from a photo array as the first gunman who got into the car with Goldsby.[4] App. 37-39.

c. 4/9/90 Interview

In his third meeting with police, on April 9, 1990, Alexander positively identified Mr. Johnson as the second gunman from a photo lineup. The lineup was presented by Detective McGuoirk while he was sitting in his squad car. Alexander was on the street. App. 108. This meeting was not memorialized until April 16, 1990.

d. 4/16/90 Interview

In Alexander's fourth and final interview, conducted on April 16, 1990, six weeks after his initial statement, Alexander told law enforcement that it was indeed Mr. Johnson he had seen that night. Alexander recalled that weeks earlier he saw Mr. Johnson and "realized 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 [Ronald] Johnson up there for two days straight and that when I was reassured that was who it was." App. 41.

e. 10/22/91 Testimony of Darryl Alexander

At trial, Darryl Alexander testified with certainty that Ronald Johnson was the second gunman whose weapon misfired while he was standing outside the driver's side of Goldsby's car. N.T. 10/22/91, at 57. Alexander testified that he did not pay much attention to the first gunman, despite having told police that he had a full conversation with the first gunman just moments before the shooting. N.T. 10/22/91 at 71-75. He testified that he did not remember what he said in each of the three statements he gave to police—statements that directly contradicted his testimony. N.T. 10/22/91, at 92.

[4] This is consistent with Robyn Johnson's identification of Shawn Duncan at the scene. App. 99.

Alexander was questioned by trial counsel about his March 3, 1990 statement—in which Alexander told detectives "I know Greg[5] but I don't think it was him that night. I do know him and if it was him, I would have known him"—Alexander merely acknowledged, without further explanation, that he recalled providing such responses. App 35, N.T. 10/22/91, at 98-99.

The court directed trial counsel to provide Alexander with the opportunity to review his second and third police statements before questioning him about those statements. N.T. 10/22/91, at 104-05. The court called a recess to allow for such review, but when Alexander returned to the stand, trial counsel inexplicably neglected to ask any questions about those statements. N.T. 10/22/91, at 106. Despite his initial statement that Mr. Johnson was not there, his apparent difficulty recalling the events of March 1 and his subsequent conversations with police, Alexander testified with uncanny certainty that he could identify Mr. Johnson as the second gunman.

2. Mark Jackson

a. 3/5/90 Interview

Mark Alan Jackson, the second key witness in the Commonwealth's case—whose version of events over time would conform to Alexander's changed narrative—was first interviewed by Detective Paul Worrell on March 5, 1990, four days after the murder. App. 58-63. During this interview, Jackson stated that he had known Goldsby for about 15 years and admitted to being present when Goldsby was killed. *Id.* Jackson stated that on March 1, 1990 he was walking around the 2100 block of Westmoreland Street a little after 9:00 p.m., when he saw a crowd of people around 21st, near Goldsby's white Cordoba. *Id*. Jackson went over to talk to Goldsby, who was in the car alone at the time. Jackson spoke with Goldsby on the driver's side and acted as crowd control, telling people to back away from the car to avoid attracting the cops. *Id.* Jackson was

[5] Officers also referred to Mr. Johnson by his middle name "Greg" and referred to him as "Greg Johnson" and "Greg Johnson from 19th and Erie" throughout the investigation.

trying to sell fake caps of crack cocaine, but no one bought them. *Id.* Two men came up to the crowd and asked others if the drugs were good, then asked Goldsby if he would let them taste his stuff. Goldsby agreed and let one of the men enter the passenger side of the car. *Id.* Jackson described this man as about 27-29 years old, 6'0", 175 lbs., dark skinned, with a low haircut, a small mustache, wearing a waist length black down jacket. Jackson described the second man as in his 20s with a baby face, 5'9", 150 lbs., light skinned, with the same hairstyle as the first man, wearing a stone washed jean outfit. *Id.* According to Jackson, the second man waited on the sidewalk near the driver's side of the car. App. 58-63.

At this point, Jackson said goodbye to Goldsby and walked back with Alexander towards 21st Street. *Id.* When he reached the Broken Wheel Bar on the corner, he heard a series of four shots, muffled from inside the car. The car started to roll forward and Jackson saw two men tussling inside. The car crashed into a pole, and the second man walked to the driver's side window and held up the gun. The gun misfired and then he ran off. *Id.* Jackson saw the passenger door open and the first man got out, dragged Goldsby from the car, slung him to the ground and stood over him pointing the pistol at him. *Id.*

Goldsby attempted to run the opposite way from both men, towards Jackson, who was about 50 feet away. App. 60. *Id.* Then both gunmen ran towards 22nd street, though Jackson did not know which way they went after that. Jackson left before the police arrived because he had an open bench warrant. He told police that Goldsby had two caps of crack on him and a wad of cash bulging from his pocket. Though neither were documented in any police reports, Jackson claimed he did not take them. He noted that he, Alexander, Carl Goldsby (the victim's brother), and his neighbor were there but specified that he did not see any women come or leave with the two gunmen.

Jackson told officers that he got a good look at both gunmen, noting that he "didn't know either of them" but would recognize them if he saw them again. App. 58. When detectives asked Jackson if he thought Mr. Johnson was involved in the shooting, Jackson told detectives unequivocally that Mr. Johnson was not at the scene. *Id*. However, he stated that he believed Mr. Johnson could have been involved, because of problems between Mr. Johnson, Goldsby, Goldsby's girlfriend, and Spanky (aka Sherrod Freeman). *Id.*

b. 3/20/90 Interview

On March 20, 1990, Jackson told Detective McGuoirk that he had learned from Kenny Gaston that David Johnson, Mr. Johnson's brother, and a man with the last name of Duncan were "supposed to be the ones who killed Joseph Goldsby." App. 64-66. Shown an array of polaroid photographs, Jackson identified a man as the shooter in two separate photos. App. 66. Jackson also told detectives that three days after his first interview, his grandmother had been threatened, with a note offering $500 for the family to keep their mouths shut. Jackson claimed he could not produce the note because his grandmother had burned it on the spot.

c. 3/29/90 Interview

On March 29, 1990, Jackson identified Ronald Johnson from a photo array, and stated that he was 75% sure that *Johnson was the first gunman* who got into the car with Goldsby. App. 67. On this date, Jackson told McGuoirk that he was sure he saw Mr. Johnson's face the night of the shooting. He did not offer, and McGuoirk did not ask, an explanation for his earlier statements that Mr. Johnson was not present and was not one of the gunmen. Jackson acknowledged that he had last seen Mr. Johnson the previous Friday driving around in a silver car near 20th and Westmoreland. When asked once more if Mr. Johnson shot Goldsby in the car, Jackson responded, "I think so." *Id*.

d. 4/16/90 Interview

In Jackson's fourth and final interview on April 16, 1990, he identified Mr. Johnson as the second gunman on the sidewalk at the driver's side of the car, and not the first gunman who got into the car with Goldsby, as he had previously told police. App. 69.

e. 10/24/91 Testimony of Mark Jackson

By the time of trial, Jackson was emphatic that Mr. Johnson was the second gunman. Jackson testified there was no doubt in his mind that Ronald Johnson was the man on the sidewalk who pointed his gun at Goldsby and misfired. N.T. 10/24/91, at 11. Jackson testified that from the middle of Westmoreland Street, he was able to see and hear the first gunman struggling with and yelling at Goldsby from inside the car. N.T. 10/24/91, at 7-8, 11-12 After the ensuing struggle, Goldsby's car hit the pole, and Goldsby collapsed in the street and Jackson ran back to help. N.T. 10/24/91, at 13. Jackson left a few minutes later, out of fear of encountering the police because he had an open bench warrant. N.T. 10/24/91, at 15, 22.

On cross examination, trial counsel referred Jackson to his first police statement in which Jackson stated that he saw the gunmen and did not know either of them, but that he knew Mr. Johnson, and Mr. Johnson was not at the scene. N.T. 10/24/91, at 24-29. Trial counsel also introduced Jackson's March 20, 1990 statement, in which he said he heard from a friend that David Johnson, Mr. Johnson's brother, was the second gunman. N.T. 10/24/91, at 30-33. Jackson made no attempt to reconcile or explain his contradictory statements, instead simply testifying that he had no corrections to make to his first statement and that he recalled providing each of the statements to police. N.T. 10/24/91, at 33.

On redirect, the prosecution painted Jackson's shifting stories as the product of fear. N.T. 10/24/91, at 34.

3. Detective McGuoirk

Detective Franklin McGuoirk, the primary detective in the investigation, testified to Darryl Alexander's ability to identify Ronald Johnson in a photo array on April 16, 1990.[6] N.T. 10/23/91, at 43-45. McGuoirk recalled that he prepared an arrest warrant the following day, then on April 18, 1990, he arrested Mr. Johnson. N.T. 10/23/91, at 45.

On cross examination, trial counsel attempted to question McGuoirk about Alexander's three prior inconsistent statements. N.T. 10/23/91, at 48-50. However, because counsel had failed to question Alexander about his second and third statements, the court sustained an objection by the Commonwealth, limiting questioning to Alexander's first statement. N.T. 10/23/91, at 50-52. Thus, the jury never learned of key discrepancies between Alexander's multiple statements.

B. The Defense's Case

Trial counsel relied on an alibi defense, calling to the stand Richard Duncan and Ronald Johnson.

1. Testimony of Richard Duncan

Richard Duncan testified that on the night of the shooting, he and Mr. Johnson had been driving around all night getting high. N.T. 10/24/91, at 50-58. He detailed picking up Kenneth Gaston, dropping him off at his girlfriend's house between 9:00 p.m. and 9:30 p.m., and then going to the Budd Bioworks plant in Hunting Park. N.T. 10/24/91, at 52-54. It was there, while getting high with Jimmy Seed and another man, that he and Mr. Johnson first learned of Goldsby's death. N.T. 10/24/91, at 54-56. They continued getting high and later went to 20th Street and Erie

[6] Alexander's photo identification actually occurred on April 9, but wasn't formally recorded until April 16 during Alexander's final interview. App. 40.

Avenue. N.T. 10/24/91, at 56. Only two days later did Duncan leave the presence of Mr. Johnson; "He was with me. He was with me the whole time." N.T. 10/24/91, at 57-58.

The Commonwealth was aggressive in its attempts to discredit Duncan:

> Q: So were you in fact with the defendant when he went to the 2100 block of Westmoreland Street to purchase drugs from Joe Goldsby?
> A: We never went to Westmoreland Street.
> Q: Was the defendant with you when you got into the car with Joe Goldsby and the defendant put a gun…
> A: Beg your pardon?
> Q: I said, was the defendant with you when you got into the car with Joe Goldsby and the defendant put a gun through the window at Joe Goldsby's head?
> A: I never seen Joe Goldsby that evening.

N.T. 10/24/90, at 80.

On redirect the defense addressed the amount of money Duncan and Mr. Johnson had on them, and Duncan clarified that they had spent about $50 on drugs and had sold parts of the car to continue paying for drugs. N.T. 10/24/91, at 81.

2. Testimony of Ronald Johnson

On direct, Mr. Johnson provided a detailed timeline of his whereabouts on the night of Goldsby's murder. At around 9:00 p.m. Mr. Johnson and Richard Duncan were at a bar on 21st and Madison Streets. They stayed there for 5-10 minutes, and then gave Kenneth Gaston a ride to his girlfriend's house about 15 minutes away. N.T. 10/24/91, at 84-85. After staying there for another 10 to 15 minutes, Mr. Johnson testified that he and Duncan drove to the back of the Budd Bioworks plant to smoke, and encountered Jimmy Seed (James Smith) and his friend Joel Green. N.T. 10/24/91, at 86-88. All four men smoked together for about 30 minutes until Joel Green went to purchase more drugs. N.T. 10/24/91, at 88. At around 10:30 p.m., Seed told Mr. Johnson and Duncan of Goldsby's murder and, importantly, that Seed had been there when Goldsby was killed. N.T. 10/24/91, at 88-89. Mr. Johnson then drove Seed to his apartment and went to find his brother,

David, though he was unsuccessful. Mr. Johnson, Duncan, and Seed then went to Seed's apartment to get more money, and returned to a spot near the Budd Bioworks plant around 1:00 a.m. to continue smoking. N.T. 10/24/91, at 89-90. Mr. Johnson and Richard Duncan remained together for the following two days, from March 1st to the early hours of March 4th, 1990. N.T. 10/24/91, at 91-92.

On cross, the Commonwealth attempted to impeach Mr. Johnson's account, suggesting that the timeline he presented during his police interview would have placed his conversation with Seed just prior to the murder.[7] The Commonwealth closed its cross by asking, "Now, Mr. Johnson, on March 1st of 1990 at 9:30 p.m. didn't you approach the victim in this case, Joe Goldsby, with the intent to rob him and take drugs and money from him?" N.T. 10/24/91, at 114. The defense's objection was overruled. Mr. Johnson responded, "I didn't see Joe that day." *Id*.

III. Procedural History

A. Post-trial motions and direct appeal

In his post-trial motion, Ronald Johnson argued, primarily, that his trial counsel was ineffective for failing to impeach the Commonwealth's two key witnesses, Mark Jackson and Darryl Alexander, with their pending criminal charges and prior inconsistent statements. The jury heard neither of the criminal histories of the two eye-witnesses, nor of any pending charges against them. Trial counsel had agreed to forego questioning Jackson regarding his *pending* criminal charges, without even inquiring about the nature of those charges, in exchange for the prosecutor agreeing to not ask Ronald Johnson about an unsubstantiated allegation that he threatened Jackson

[7] Mr. Johnson's timeline, and the fact that Seed told him about the murder, is corroborated by Seed's statement. App. 47-50.

while they were in a holding cell together (N.T. 01/11/1993, at 27-28), a claim Ronald Johnson later rigorously denied.[8] PCRA Hearing, 05/18/1999, at 34-37.

Post-trial counsel also raised a claim regarding a polaroid photograph array shown to Mark Jackson on March 20, 1990. The only information provided to trial counsel concerning this photo array had been a note in Jackson's statement that he had identified a person in two of the images as the individual who entered the car and shot Joseph Goldsby.[9] The polaroids were not discussed at trial. Prior to the post-sentence motion hearing, appellate counsel Christine Adair submitted a discovery motion requesting the array. App. 20. The polaroids, however, were never disclosed to her. During the post-trial hearing, the Commonwealth maintained that the photographs did not include Mr. Johnson, and that they could not be located. N.T. 2/1/1993, at 5-6.

Ronald Johnson's motion for new trial was denied, and the Superior Court of Pennsylvania affirmed on April 7, 1994, the Pennsylvania Supreme Court denied his appeal on September 15, 1994. *See Commonwealth v. Johnson*, CP-51-CR-0535501-1990, Trial Court Opinion. J., Byrd, 10/28/1993; *Commonwealth v. Johnson*, PA Superior Ct. Opinion, No. 2670 Philadelphia, 1993, 4/7/1994.

B. Federal Habeas Corpus

On November 30, 1994, Ronald Johnson filed a petition for a writ of habeas corpus in District Court for the Eastern District of Pennsylvania, again arguing the unreliability of the two

[8] At the 1999 evidentiary hearing, Ronald Johnson testified he did not learn about the agreement until the 1993 evidentiary hearing, almost two years after trial, and that, if trial counsel had consulted with him before making the agreement, Mr. Johnson would have told his attorney the alleged threat never happened, that he was never even in the same cell as Jackson, and that there were sheriffs who could testify to that. PCRA Hearing, 05/18/1999, at 35-37, 40.

[9] The March 20, 1990 statement was properly disclosed and briefly referenced the suppressed polaroid array without revealing their content.

eyewitnesses. *Johnson v. Lehman*, E.D. Pa. NO. 94-7583. On October 3, 1995, the district court ordered the Commonwealth to disclose the criminal histories of Jackson and Alexander, and permitted Mr. Johnson to submit an affidavit that he was never made aware of the prosecutor's letter asking a Florida prosecutor for leniency on Jackson, because of Jackson's testimony against Mr. Johnson. *Id.* at D.E. 16, 12/2/1997. Though the district court determined that trial counsel performed deficiently, the court nonetheless denied Mr. Johnson's habeas petition finding that he had not established prejudice. *Id.* at D.E. 12, Report and Recommendation, 11/28/1995 (App. 137); *see also Johnson v. Lehman,* 2007 WL 1650565, 6/4/2007, at * 9. In denying relief, the court expressly noted that "[t]he prejudice question in this case is a close one. The evidence against Petitioner was not overwhelming." Report and Recommendations at 13 (App. 150).

C. Successor PCRA

On November 25, 2013, Mr. Johnson filed a counseled supplemental petition based on newly discovered evidence that at the time of his murder, Goldsby was cooperating with the Commonwealth against a man who had recently shot him, gravely injuring Goldsby and killing his friend, Jerome Sanders. Shortly before he was killed, Goldsby had testified for the Commonwealth at a preliminary hearing against a man named Terrence Poles, who had shot him. App. 178. Following Goldsby's testimony, Poles was bound over for trial. However, before that trial was to begin, Goldsby was again shot, and this time killed.

Poles' attempted murder of Goldsby and Goldsby's actual murder were committed in similar ways, with each assailant approaching Goldsby under the guise of a drug deal before shooting him. App. 178. Yet, trial counsel was never told about Poles' prior attempt against Goldsby's life, nor about Goldsby's cooperation against Poles, despite the fact that the Poles' trial involved the same DA's office and the same judge as Mr. Johnson's, and occurred a mere 5 months

prior. *Id.* at 180-182. Though the Commonwealth's theory was that Poles had shot Goldsby and his friend with the help of a second gunman, the second gunman was never captured. *Id*. at 178-81.

On June 2, 2016, the court granted the Commonwealth's motion to dismiss on jurisdictional grounds, noting that Goldsby's status as a witness against Poles was a matter of public record. PCRA Hearing, 6/2/2016, *Commonwealth v. Johnson*, CP-51-CR-0535501-1990. The court granted a reconsideration, after the clerk found case-related documents in another case file, but again dismissed the petition as untimely, when those documents could not be authenticated. *Id.,* April 13, 2018 Order.

Though the Commonwealth supported a remand for an evidentiary hearing as to the Poles issue, the Superior Court affirmed the CCP's dismissal on September 10, 2019. *See Commonwealth v. Johnson,* Superior Court Opinion, No. 1334 EDA (2018) at 4, fn. 1; *Commonwealth v. Johnson*, 2019 WL 4273905, (2019), re'arg denied, *Commonwealth v. Johnson,* 2019 Pa. Super. LEXIS 1142, No.1334 EDA 2018 (2019). A petition for an allowance of appeal was lodged with the Pennsylvania Supreme Court, but denied on June 16, 2020. *Commonwealth v. Johnson*, No. 633 EAL 2019, Per Curiam Order, 6/16/2020.

Part II: Claims for Relief

In September 2021, the Commonwealth disclosed its file to counsel for Mr. Johnson, revealing exculpatory and material evidence, and in June 2022, Mr. Johnson filed claims stemming from those disclosures, which he Amended in May 2023. The newly disclosed documents have been at all times in the exclusive control of the Commonwealth, and were not available to Mr. Johnson through any exercise of diligence. The newly disclosed evidence undermines confidence in the verdict. Had the Commonwealth disclosed this evidence at the time of trial there is a reasonable probability that the jury would have reached a different outcome. Individually and cumulatively, the newly disclosed evidence undermines confidence in the verdict, and exonerates Mr. Johnson. A new trial is required.

I. The Commonwealth Withheld Material Exculpatory Evidence in Violation of *Brady v. Maryland* and The Fifth, Sixth, And Fourteenth Amendments of the United States and Pennsylvania Constitutions Requiring Relief.

A review of newly disclosed District Attorney Office ("DAO") and homicide files revealed previously suppressed contemporaneous law enforcement records, including activity sheets, notes, investigative documents, and polygraph test results, demonstrating how law enforcement manipulated witnesses and evidence in order to secure a conviction against Ronald Johnson. Newly disclosed activity sheets reflect that homicide detectives harassed, coerced, and then inappropriately and suggestively coached Mark Jackson to change his statement to conform with Darryl Alexander's, after both men had unequivocally told police that Mr. Johnson was not present at the scene of the crime, and had not identified him in a photo lineup. The activity sheets reveal, for the first time, that after hearing a rumor of Mr. Johnson's involvement from non-eyewitnesses, officers narrowly focused their investigation on Mr. Johnson, to the exclusion of multiple credible leads. The Commonwealth failed to disclose these leads to trial counsel and withheld results from

a polygraph test administered to Mr. Johnson's alibi witness, corroborating his alibi and strengthening the evidence against alternate suspects. As discussed above, trial counsel was aware that the statements of each witness had evolved over the course of several interviews. However, because the Commonwealth had failed to disclose key investigative documents, trial counsel was unaware of officer's efforts to manipulate the witness statements as well as critical contradictions contained in the witnesses' undisclosed statements. The newly disclosed evidence fatally undermines Mr. Johnson's conviction and impeaches the investigation undertaken by law enforcement. When viewed in light of the *only* evidence against Mr. Johnson—the now thoroughly undermined testimony of Alexander and Jackson—it is clear that the newly disclosed evidence is material and that Mr. Johnson's conviction must be vacated.

A. The Newly Disclosed Evidence

Unbeknownst to trial counsel, the Commonwealth withheld a number of interviews, as well information and details from the disclosed interviews that fatally undermine the ultimate testimonies of Alexander and Jackson. Together these documents reveal multiple inconsistencies and contradictions from Jackson and Alexander, including that both were initially shown a photo array *that included Ronald Johnson*, and did not pick Mr. Johnson out of the lineup.

i. The Polaroids

The Commonwealth withheld an exculpatory photograph array that was shown to witnesses, including Mark Jackson and Darryl Alexander. Though Mr. Johnson was in the array, neither Jackson nor Alexander identified him as a perpetrator of the crime, and Jackson affirmatively identified another individual as the shooter.

In post-trial motions, the Commonwealth failed to produce the polaroids, strenuously asserting that they could not be located. N.T. 2/1/93, at 5, 6-7. Counsel for the Commonwealth

argued that the polaroids were irrelevant, because Mr. Johnson was not in them. They elicited the same from lead Detective Frank McGuoirk. *Id.* at 14. At the post sentence motion hearing, Detective McGuoirk confirmed that he had shown Mark Jackson a series of polaroids, and that Jackson had identified the man who entered the car and shot Goldsby. As to the origin of the polaroids, McGuoirk explained that "Mr. Goldsby, was a witness in another homicide case and that photograph was part of that case file." N.T. 2/1/1993, at 4. As to the location of the polaroids at the time of the hearing, the Commonwealth elicited the following:

> 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. 2/1/1993, at 5. The Commonwealth then asked Detective McGuoirk: "In relationship to that photograph, to the best of your knowledge, was the defendant in that photograph?" *Id.* Defense counsel objected before McGuoirk could answer, demanding that the polaroid be presented in court. The Commonwealth replied: "in this case *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.* (Emphasis added). Dismissing the relevance of the polaroid, the Commonwealth argued: "They did additional investigation, got information concerning the defendant here, photo spreads were shown and this defendant was identified. . . there was nothing in relationship to [Mr. Johnson]." *Id.* at 6.

The Commonwealth elicited further testimony from McGuoirk, who said that the polaroid showed six or seven men at a party, and that he had never identified any of the males depicted. *Id.* at 8. McGuoirk confirmed that Darryl Alexander had also been shown the polaroid array, and did not "ID anybody in the polaroids." N.T. 2/1/1993, at 14.

In contrast, the newly disclosed evidence revealed for the first time that Mr. Johnson *was* in the polaroids. App. 18. This is significant because it means that both Jackson and Alexander failed to identify Mr. Johnson as one of the perpetrators, despite being shown a photo array that included him, just weeks prior to the coercive joint interview that produced the Commonwealth's only evidence at trial. It also revealed that Jackson affirmatively identified the shooter in two separate photos, a lead that law enforcement wholly disregarded. *See* N.T. 2/1/93, at 8 (McGuoirk testifying that he never ascertained the identity of anyone in the photos).

ii. Withheld activity sheets reveal undocumented interviews with Jackson

At trial, the Commonwealth implied that the precarious trajectory of Alexander and Jackson's statements was the product of fear: they were simply afraid of Mr. Johnson. *See* N.T. 10/24/91, at 34. The Commonwealth's piecemeal disclosures helped to support that fiction. Newly disclosed activity sheets reveal that the changing narratives of Alexander and Jackson were in fact the result of repeated and improper police pressure.

In addition to the polaroids, which reinforced Jackson and Alexander's unequivocal statements that Mr. Johnson was not present at the scene of the crime and revealed that Jackson made a positive identification of a third party, newly disclosed activity sheets reveal the harassing, coercive and suggestive methods that police engaged in to lead both men to their ultimate statements.

The activity sheets reveal two additional undisclosed law enforcement interactions with Jackson. On March 21, the day after he was shown the polaroid photograph array, police stopped Jackson on the street to show him an additional photo array, and he "was not able to identify anyone." App. 21. On that date, he also told officers that he had heard from Kenny Gaston that Gaston knew who committed the crime. *Id*. One week later, on March 29, 1990 officers

memorialized Jackson's apparent identification of Mr. Johnson in yet another photo array. App. 67. Counsel was not aware of the March 21 stop or that photo array, during which Jackson again declined to inculpate Mr. Johnson.

Law enforcement's second undisclosed meeting with Jackson came on April 9, 1990 when officers "came upon Mark Jackson." App. 108. The activity sheet continues:

> Mark stated that he has seen Greg Johnson, one of the suspects in the murder, riding around the area of 21st & Westmoreland Sts in a gray car lately with a light skin B/M. Mark Jackson had previously viewed a photo display with Greg Johnson and stated that he was 75% sure that Greg Johnson was the male who got in the car with Joe Goldsby and shot him. On 4-9-90 he was asked if after seeing Greg Johnson riding around recently, was he convinced that he was the male who shot Joe Goldsby. Mark said that he still believes Greg Johnson looks like the male who shot Joe Goldsby but can't say that positively.

App. 108.

Having disregarded Jackson's initial identification and, instead, repeatedly stopped him to inquire about Mr. Johnson, Jackson finally caved and officers attempted to get a warrant for Mr. Johnson's arrest. App. 111. However, they could not, because though Jackson and Alexander had now each identified Mr. Johnson, they had identified him as two totally different people: Alexander had identified him as the shooter, who got into the car with the gun, while Jackson had identified him as the second gunman, who stood on the curb outside of the car.

A third suppressed activity sheet reveals law enforcement's methods to align the statements of Jackson and Alexander, and revive the warrant application. Less than a week later, on April 16, 1990, detectives picked up Alexander and Jackson together and conducted a joint interview with them. App. 2. During this interview, officers were unabashed in their efforts to mold Jackson's statement to Alexanders. The suppressed April 16 activity sheet reflects that on "Monday 4-16-90 Det. McGuoirk and Det. Worrell went to the area of 21st & Eastaugh sts. to located Darryl Alexander and Mark Jackson." App. 2. The report notes that prior to this meeting,

Jackson had most recently stated that he was "75% sure that Greg Johnson was the male who got in the car with Joe Goldsby and shot him." *Id.* Whereas, Alexander "was 100% sure Johnson was on the sidewalk." *Id.* The activity sheet reflects that "both males were picked up both around 21st & Eastaugh and taken to homicide." *Id.* Once there, "the 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. Again, they stated the same as before." *Id.* The detectives continued to jointly interview the two men about the incident: "Both were asked to describe the guy who got into the car and the guy on the sidewalk. Both agreed that the male who got into the car was about 6'0" or 6'1" and the male on the sidewalk was 5'8" to 5'9". *Id.*

Then detectives began to coach Jackson's version of events, suggesting that he change his story to align with Alexander's. "Mark Jackson was asked if he knew how tall Greg Johnson is and he stated he is about 5'8". He was then asked if the guy who got in the car with Goldsby was 5'8" or if he was taller. He stated the guy was taller. *It was explained to him that* if he was taller than *it couldn't have been Greg Johnson* who got into the car." *Id.* (emphasis added) The report notes that after this discussion, with prompting from law enforcement, "Mark Jackson finally realized that the male who got into the car couldn't have been Greg Johnson but that Greg was the one who must have stayed on the sidewalk." *Id.* This was so despite the fact that Jackson knew Mr. Johnson and should have been able to easily identify him.

After manipulating the two witnesses' statements in a joint interview and feeding information to Mark Jackson in order to ensure that his statement aligned with Alexander's, Detectives McGuoirk and Worrell[10] finally had the consistent stories they needed. They returned

[10] As discussed in detail in Section III, the newly disclosed evidence is emblematic of Detective Worrell's pattern and practice of coercive tactics. In November 2021, the Commonwealth disclosed to post-conviction counsel material detailing Detective Worrell's "history of using coercive techniques to obtain confessions and incriminating statements." App. 294.

to ADA Webb the very next day and obtained an arrest warrant, having neatly resolved the inconsistencies that had led to its rejection the week prior. App. 110-111.

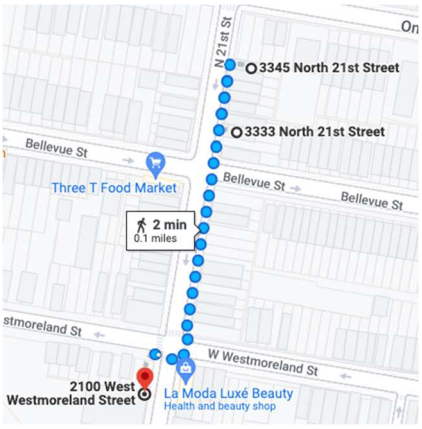
2. Polygraph examination administered to defense witness Richard Duncan

The Commonwealth suppressed evidence of a polygraph test administered to Richard Duncan, Mr. Johnson's key alibi witness at trial, showing him to be truthful. App. 91, 95. Law enforcement administered the test after Duncan's April 2, 1990 interview, in which he stated that he was with Mr. Johnson throughout the night that Goldsby was murdered, that he did not kill Joseph Goldsby, was not present when Goldsby was shot, and did not know who shot him. Richard Duncan was never charged in connection with Goldsby's murder.

3. Law enforcement tip and investigation related to alternative suspects

a. Anthony Floyd

Previously undisclosed notes reveal that the Commonwealth failed to turn over documents relating to the law enforcement's investigation into a credible alternate suspect. On March 2, 1990, a day after the murder of Mr. Goldsby, Eddie Pope called the Philadelphia Homicide Unit from Connecticut and spoke with Detective Joe Wyatt about his daughter, Tonya Scott. App. 46. The



note was addressed to Detective Frank McGouirk. Mr. Pope shared that his daughter lived on 3333 N. 21st Street (around the corner from Goldsby's murder) and that her boyfriend, Anthony, lived a few doors away. Pope informed police that Anthony was a drug dealer and that his daughter had called him on March 1, 1990, the night of Mr. Goldsby's murder, about Anthony being involved in a homicide. Another note

detailed how Ms. Scott called her father crying saying that "somebody got killed near her house" and she wanted a place to stay for her and her baby. App. 109.

Detective McGouirk followed up on this lead by pulling Anthony Floyd's Court history, criminal extract, and police photo. App. 7, 9, 11. Detective McGouirk discovered that Floyd lived at 3345 N. 21st, an address corroborating the lead, and was 6ft, 145lbs, and dark complexioned, a description matching the shooter. It is now clear that detectives McGouirk and Worrell abandoned this lead despite having strong corroborating evidence. The Commonwealth failed to disclose this information pertaining to Floyd and his possible involvement in Mr. Goldsby's murder.

b. Carlisely Blakeney

Multiple suppressed activity sheets reveal that Carlisey Blakeney was identified and interviewed by law enforcement, and that he gave an account implicating other suspects and exculpating Mr. Johnson.

An initial suppressed activity sheet detailed Blakeney's interactions with the perpetrators just prior to the homicide and his familiarity with them:

> Darryl stated that he would probably know the shooter if he saw him again but wasn't sure about the other guy and the girl but that Carllisey [sic] had been talking to them for a few minutes and may know them. Carlisey had told Darryl that he recognized the girl from coming around the area and that she is a piper.

App. 26. A subsequent undisclosed activity sheet from March 6, 1990 reveals for the first time that detectives did successfully identify Carlisey as Carlisey Blakeney, and located Blakeney, also known as Moon X. *See* App. 1 ("Det. McGuoirk & Sgt. Murray went to 2106 W Westmoreland St in an effort to locate and interview Carlisey AKA Moon X.")

The activity sheet details that when detectives went to 2106 W Westmoreland St., they met a man who identified himself as Carlisey Blakeney. App. 1. Detectives recorded that Blakeney told them "that the guys involved with killing Joe were not from the neighborhood."

Id. The activity sheet further notes that Blakeney stated "that he thinks the girl is a piper who is from North Philly but he doesn't know where." *Id.*

The activity sheet states that Blakeney was not formally interviewed that night because his mother had died that day and he was intoxicated, noting that "[h]e will be contacted later in the week for a formal interview." App. 1. In an additional undisclosed note, detectives recorded that "[Blakeney] was talking to the doer." App. 73. Detectives also wrote, possibly in reference to the woman Blakeney said was with the shooter: "Girl: lives 22nd & Bellevue. They call her Cuchie." *Id*. There is no evidence that law enforcement ever conducted a formal interview with Blakeney, nor is there any indication that police investigated his account.

4. Notes and activity sheets revealing that Jimmy Seed was present at the scene, and that he and James Wagstaff were under investigation for murder at the time of Goldsby's death

Previously undisclosed documents reveal that a witness identified Jimmy Seed aka Jimmy Smith as being present at the murder, and that Seed and James Wagstaff were suspects in another ongoing murder investigation around the time Goldsby was killed. App. 51, 108. Jimmy Seed was a key witness to the events of March 1, 1990 and a potential suspect. At trial, Mr. Johnson testified that Seed had told him and Richard Duncan that he had witnessed the murder. N.T. 10/24/91, at 87. Richard Duncan also testified that Seed had told them about the murder. N.T. 10/24/91, at 55-56. The Commonwealth never disclosed the detectives' investigation into Jimmy Seed and James Wagstaff, nor did it disclose that there may have been another witness stating that Seed was at the scene.

B. Mr. Johnson Meets the Jurisdictional Requirements and Standards Under the PCRA and the United States Constitution.

1. Mr. Johnson's Petition is timely because *Brady* evidence meets both the newly discovered fact exception of § 9545(b)(1)(ii) and the governmental interference exception of § 9545(b)(1)(i).

The timeliness requirements of the PCRA dictate that a petition must be filed within one year of the date that the judgment becomes final, unless the petitioner can establish one of three exceptions. 42 Pa. C.S.A. § 9545(b)(1). It is well-established that *Brady* violations fit into both the governmental interference and newly discovered fact exceptions to the timeliness requirements of the PCRA. *See Commonwealth v. Johnson*, 64 A.3d 621, 622 (Pa. 2013) (finding (b)(1)(ii) exception was proved for *Brady* claims); *Commonwealth. v. Sattazahn*, 869 A.2d 529, 534 (Pa. Super. 2005) ("It is well-settled that a Brady violation can fall within the governmental interference exception."). The Court has rejected narrowing the "newly discovered fact" exception to "meritorious" *Brady* claims, instead explicitly holding that the exception "does not require a merits analysis of the claim in order for it to qualify as timely and warranting merits review." *Commonwealth v. Lambert*, 884 A.2d 848, 852 (Pa. 2005). In *Lambert*, the Court determined that "so long as the facts set forth in the police file were not otherwise known to appellant, the Brady claims he asserts are 'timely' under the newly discovered evidence exception," and thus "reviewable on the merits." *Id.*

2. Mr. Johnson meets the standard under *Brady v. Maryland*

The law governing *Brady* violations is "well-settled." *Lambert*, 884 A.2d at 853. In *Brady*, the Supreme Court held that the government violates due process rights of a criminal defendant when it suppresses favorable evidence regardless of its good or bad faith. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The prosecution's duty to disclose such evidence is mandatory even if there is no request by the defense. *United States v. Agurs*, 427 U.S. 97, 107 (1976) ("there are situations in which evidence is obviously of such substantial value to the defense that elementary fairness requires it to be disclosed even without a specific request. For though the attorney for the sovereign

must prosecute the accused with earnestness and vigor, he must always be faithful to [the] overriding interest that 'justice shall be done.'") This duty to disclose includes both impeachment evidence and exculpatory evidence, and extends to evidence in the files of local law enforcement agencies in the same government bringing the prosecution. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995); *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (Pa. 2001).

The materiality standard for *Brady* violations dictates that "favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles*, 514 U.S. at 433. The materiality prong of *Brady* does not require demonstration by a preponderance of the evidence that disclosure of the suppressed evidence would have resulted in acquittal. *Id.* at 434. Rather, the question is whether the government's evidentiary suppression "undermines confidence in the outcome of the trial." *United States v. Bagley*, 473 U.S. 667, 678 (1985).

The Court has even acknowledged that *Brady* can be violated when "the undisclosed information may not have affected the jury's verdict." *Wearry v. Cain*, 136 S. Ct. 1002, 1006 n.6 (2015). Further, the sufficiency of the evidence is not the test for materiality. *Kyles*, 514 U.S. at 434-35. Mr. Johnson need not demonstrate that "in light of the undisclosed evidence, there would not have been enough left to convict . . . [S]ufficiency of [the remaining] evidence [is not] the touchstone" of materiality. *Kyles*, 514 U.S. at 434-35 & n.8. Rather, a defendant need only show that the favorable evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.* at 435. *Kyles* clarified that the materiality of undisclosed evidence should be evaluated for its cumulative effect, rather than on an individual basis. *Kyles*, 514 U.S. at 436 (holding that the materiality of suppressed evidence must be

"considered collectively, not item by item."); *see also Dennis v. Sec'y, Pa. Dep't of Corr*., 834 F.3d 263, 312 (3d Cir. 2016) (en banc). In this case, the only evidence against Mr. Johnson is thoroughly tainted by *Brady* violations and prosecutorial misconduct.

The withheld evidence in this case is both exculpatory and impeaching. The cumulative effect of the withheld evidence in Mr. Johnson's case is similar to *Kyles*, as "the essence of the State's case' was the testimony of eyewitnesses," *Kyles*, 514 U.S. at 441. Here, the testimony of Jackson and Alexander comprised the entirety of the Commonwealth's case linking Mr. Johnson to the crime. The Commonwealth's duty is well established: "the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached." *Id*. at 437. The burden then shifts to the court to analyze the state's disclosure obligation on the "cumulative effect of all suppressed evidence favorable to the defense, not on the evidence considered item by item." *Bagley*, 473 U.S. at 675, n. 7.

3. Mr. Johnson meets the standard under 42 Pa. C.S. § 9543.

The purpose of the Post-Conviction Relief Act (PCRA) is to prevent fundamentally unfair convictions and to provide a mechanism whereby persons convicted of crimes they did not commit, or individuals who have been serving illegal sentences, may obtain collateral relief. *Commonwealth v. Carbone,* 707 A.2d 1145, 1148 (Pa. Super 1998). A petitioner is eligible for relief if his conviction or sentence resulted from: a violation of the constitution of this Commonwealth or the Constitution or laws of the United States; ineffective assistance of counsel; the improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court; or the unavailability at the time of trial of exculpatory evidence that has subsequently become available

and would have changed the outcome of the trial if it had been introduced. *See* 42 Pa.C.S.A. § 9543(a)(2).

As discussed more fully in each claim, the evidence introduced herein meets the rigorous standards of the PCRA. The evidence Petitioner has proffered severely undermines reliability in his conviction. It shows: prosecution suppressed material evidence of the police investigation of the crimes that eviscerated the testimony of its primary witnesses; as well as material evidence supporting his alibi witness; and that the prosecutor continued to hide this evidence from Petitioner and the court throughout the post-conviction proceedings.

The failure to disclose exculpatory and material information violated Mr. Johnson's constitutional rights, warranting relief under the PCRA.

C. Newly disclosed evidence in the form of activity sheets and a suppressed polaroid photograph array reveal that detectives manipulated the testimony of the only two witnesses against Petitioner, undermining confidence in the verdict and requiring a new trial.

Detectives struggled to build a case against Mr. Johnson from the unreliable and ever-changing statements of Darryl Alexander and Mark Jackson. Both had changed their stories considerably over the course of their many police interviews. In each of their first interviews, Alexander and Jackson explicitly stated that Mr. Johnson was not at the crime scene. App. 31, 58. Both men knew Ronald Johnson, and both initially told detectives they did not know the two gunmen. *Id*. After identifying other individuals to police and oscillating in identifying Mr. Johnson as the primary or second gunman on April 16, detectives suddenly emerged with a consistent story from Alexander and Jackson. This was the story that the Commonwealth presented at Mr. Johnson's trial.

Previously undisclosed activity sheets and a suppressed polaroid photograph array reveal the efforts that officers took to manipulate and reconcile the inconsistent statements of Mark

Jackson and Darryl Alexander, the only evidence against Mr. Johnson. The narrative that emerges from the suppressed documents wholly eviscerates the testimony of both witnesses and undermines law enforcement's investigation and the case against Mr. Johnson. First, the polaroid photos reveal that, contrary to the post-trial testimony of McGuoirk or in court averments of counsel for the Commonwealth, Mr. Johnson was included in the photo array shown to both Alexander and Jackson, neither of whom identified Mr. Johnson. Thereafter, the newly disclosed records reveal that Detectives Worrell and McGuoirk repeatedly stopped Alexander and Jackson, pressuring them to inculpate Mr. Johnson. On April 9, they finally prevailed, and both men identified Mr. Johnson. But police had a problem, they each put him in entirely different roles. According to Alexander, Mr. Johnson was the second gunman, standing on the sidewalk at the driver's side window, misfiring a gun. In Jackson's version, Mr. Johnson was the first gunman, who entered the car via the passenger side door, and shot Mr. Goldsby.

The activity sheets reveal that the following day, law enforcement's request for an arrest warrant for Mr. Johnson was denied by ADA Webb, specifically because of the inconsistencies in these accounts. App. 111. Less than one week later, on April 16, 1990, another undisclosed activity sheet reflects that law enforcement picked the two men up together, interviewed them together, and mounted arguments to convince Jackson that Alexander's narrative was the correct one. "It was explained to [Jackson]," the activity sheet records, "that if [the man who entered the car] was taller than it couldn't have been Greg Johnson who got into the car." App. 2. Thereafter, "Mark Jackson *finally realized* that the male who got into the car couldn't have been Greg Johnson but that Greg *was the one who must* have stayed on the sidewalk." *Id* (emphasis added). Entering their April 16 joint interview with diametrically opposed statements, the two men emerged with a perfectly aligned narrative. The very next day, Detective McGuoirk returned to ADA Webb's

office. With the newly consistent statements in hand, the Commonwealth approved a warrant for Mr. Johnson's arrest. App. 110.

The Commonwealth's failure to disclose this evidence undermines confidence in the verdict at trial as it directly undercuts the only evidence implicating Mr. Johnson. Absent the compromised testimony of Jackson and Alexander, there was no evidence whatsoever linking Mr. Johnson to the crime. Reasonably competent counsel would have undoubtedly used this information to effectively impeach both the molded narrative presented by the two witnesses and the detectives' targeted and improper investigation.

1. The polaroid photographs and activity sheets were withheld by the Commonwealth

Mr. Johnson did not have access to these documents until the Commonwealth disclosed its files. The suppressed interviews appear nowhere in the records, nor in any discover letters. The record at trial makes clear that counsel did not have access to the April 16 activity sheet. At trial the significance and details of the April 16 meeting were obscured and mischaracterized by the Commonwealth. Despite the fact that Jackson and Alexander's April 16 statements were repeatedly referenced by the Commonwealth, the testifying detectives obscured the fact that the two men were picked up, transported, and interviewed together and omitted the detectives' efforts to convince Jackson to change his story to match Alexander's.

The record also makes clear that the polaroids were suppressed. Post-sentence counsel requested the photographs in discovery, and the Commonwealth maintained that they could not be located:

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. 2/1/1993, at 5. The Commonwealth then argued, incorrectly, that "in this case *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.* (Emphasis added). Mr. Johnson was, in fact, in the photograph; a point that post-trial counsel would have certainly made, had the photograph array been disclosed.

2. The withheld activity sheets and polaroid photograph array are favorable and material.

The newly disclosed polaroid photographs and activity sheets go to the heart of the Commonwealth's case, undermining the only evidence against Mr. Johnson. There is no doubt that their suppression undermines confidence in the verdict.

Unbeknownst to Mr. Johnson's jury, Mark Jackson, Darryl Alexander and *all* other witnesses in the case had been shown a photograph array that included Mr. Johnson, and yet not a single person identified him. N.T. 2/1/1993, at 5–8, 14. Counsel would have questioned Jackson and Alexander about their failure to identify Mr. Johnson from the photographs in just two weeks after the crime. Law enforcement officers were solicitous with witnesses in their inquiries about Mr. Johnson's purported involvement. The repeated efforts by the Commonwealth's key witnesses to tell law enforcement that he was not there, combined with the failure of any witnesses to identify him was compelling exculpatory evidence. Reasonable counsel would have certainly marshalled this effectively.

Counsel would have also used the revelation that Mr. Johnson was in the polaroid to thoroughly impeach the testimony of Darryl Alexander. On March 21, 1990, when asked whether Mr. Johnson was involved, Alexander told officers: "I'm not sure if it was him or not I would have to see him again." App. 38. Unbeknownst to counsel, officers had already shown Alexander a

photo of Mr. Johnson and Alexander had not identified him as being involved in the murder of Joseph Goldsby. N.T. 2/1/1993, at 14. Reasonably competent counsel would have used this evidence to convincingly refute Alexander's eventual account implicating Mr. Johnson.

Competent counsel would have also used the newly disclosed evidence to undermine law enforcement's investigation and the Commonwealth's myopic pursuit of Mr. Johnson. Informed of both Alexander and Jackson's failure to identify Mr. Johnson from a photo line-up, counsel would have exposed the chicanery and subterfuge that the Commonwealth used to sustain its unreliable investigation. Detective McGuoirk's failure to record the contents of the polaroids, and failure to record or acknowledge the fact that Jackson and Alexander did not identify Ronald Johnson in an early line-up fatally undermines McGuoirk's credibility. Similarly, the prosecutor's unequivocal dismissal of the relevance of the polaroid evidence in post-sentence proceedings, efforts to obfuscate the whereabouts of the polaroids, and failure to disclose this critical exculpatory information to defense counsel fatally undermine the Commonwealth's case. Counsel would have used this evidence to fully expose the Commonwealth's bad faith and its vexing fixation on Mr. Johnson, decimating the credibility of its case.

Finally, reasonably competent counsel would have marshalled the photograph as decisive exculpatory evidence. It is not a mystery why counsel for the Commonwealth was unequivocal about the contents of the polaroid at the post-sentence motion hearing, pronouncing that "the defendant was not in it." *Id.* at 5. She knew that Mr. Johnson's presence in the photos, combined with the fact that both eyewitnesses did not identify him, constituted a rejection of his involvement. She emphasized that other photo spreads, which included Mr. Johnson, "were shown and this defendant was identified." *Id.* at 6. As for the polaroids, she falsely claimed: "there was nothing in relationship to [Mr. Johnson]." *Id.* Counsel for the Commonwealth knew or should have known

then that the polaroid photographs were exculpatory, as they included Mr. Johnson. Her words highlight the importance and exculpatory nature of the polaroid, which counsel would have used to demonstrate that both Jackson and Alexander failed to identify Ronald Johnson as the perpetrator.

So too would counsel have used evidence of the withheld interviews to undermine Jackson's ultimate identification of Mr. Johnson, as well as McGuoirk's testimony. Taken together these repeated stops show the lengths to which law enforcement was willing to go to manipulate Jackson's testimony. Officers were not satisfied with Alexander and Jackson's initial contemporaneous statements and identifications, when both unequivocally told police that Mr. Johnson was not at the scene of the crime. So McGuoirk returned weeks later, showing a photo array, featuring Mr. Johnson. Again, the two men did not identify him as a perpetrator, and Jackson identified a wholly different individual. Instead of following up on that lead, officers stopped him in the street and showed him another photo array the very next day. This time Jackson identified no one. App. 21. On the same day, Alexander told police that he had heard a rumor that Mr. Johnson was involved. *Id*.

Thereafter, police stopped Jackson on a weekly basis, stopping him on March 29, April 9, and April 16. At each encounter, law enforcement affirmatively injected Mr. Johnson into the interview. At each encounter, Jackson's story moved toward the narrative the police were looking for. Had the jury been presented with these repeat encounters, there is a reasonable likelihood that they would have rejected Jackson's statement along with law enforcement's investigation, and the resultant case against Mr. Johnson.

The Commonwealth elicited false and misleading testimony from Detective McGuoirk as to what occurred on April 16. McGuoirk testified that Alexander "had made an identification on

April 9th. It was reduced to a written interview on April 16th." N.T. 10/23/91, at 49. Benignly, McGuoirk told the jury: "I brought him in on April 16th and did an interview with him concerning the photo display and the identification of the defendant." *Id.* at 50. At no point did Detective McGuoirk acknowledge that Jackson was also present during Alexander's interview. Instead, he misleadingly portrayed the meeting with Alexander as a mere formality to make his prior identification official. App. 110-111. The Commonwealth failed to at any point correct his false testimony. *See,* Part II, Section II.

Similarly, throughout its questioning of Mark Jackson, the Commonwealth went to great lengths to obscure and misrepresent the details of the meeting on April 16. During its examination of Jackson, the Commonwealth carefully avoided any mention of the critical undisclosed details of the meeting. In fact, the prosecutor improperly and falsely implied that Jackson had independently gone to see detectives. *See* N.T. 10/24/91, at 39 ("On April 16th of 1990, when you went to the detectives and spoke to them again."); *Id.* ("On April 16th of 1990, referring you to Commonwealth Exhibit C-31, you went back to the detectives again and spoke to them concerning Greg Johnson, correct?"); *Id.* at 37 ("On April 16th of 1990, did you have a further discussion with the homicide detectives."). The Commonwealth concluded its redirect of Jackson by asking, "in your. . . fourth statement you gave on April 16th 1990, did you clarify to the detectives which man was the shooter and which man was in the car?" *Id.* at 40. The Commonwealth's line of questions and Jackson's false testimony affirmatively misled the jury. *Id.* at 39. The jury was led to believe that prior to April 16, 1990, Jackson had three contacts with police, instead of five, and that Jackson had gone of his own accord to see detectives in order to voluntarily and independently clarify his prior statements.

The jury was thus left with the false impression that Jackson had independently come to the realization that he made an error regarding which man was on the sidewalk and which was in the car, without having been repeatedly stopped, coached and pressed by detectives. The previously undisclosed activity sheets reveal that Jackson's final statement was actually the product of pressure and coercion from Detectives McGuoirk and Worrell, who detailed how they fed Jackson information and convinced him to rethink his version of events. "*It was explained to him* that if he was taller than *it couldn't have been Greg Johnson* who got into the car." App. 2 (emphasis added). It was only after detectives molded his testimony that "Mark Jackson *finally realized* that the male who got into the car couldn't have been Greg Johnson but that Greg *was the one who must have stayed* on the sidewalk." *Id.* (emphasis added).

The prosecutor failed to correct this misleading testimony, instead capitalizing on it before the jury. In closing, the prosecutor bolstered Mark Jackson's testimony and credibility, arguing: "You haven't heard of any reason why he 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 every single thing that Darryl tells you." N.T. 10/25/91 at 50-51. In fact, Jackson *had told* police that Mr. Johnson was "the guy in the car with the gun." *See* App. 67. And Jackson's multiple stories *did not* "bear out every single thing Darryl" Alexander told the jury. The newly disclosed records flatly contradict the prosecutor's averments.

Reasonably competent counsel would have used the suppressed evidence to strengthen the defense theory that Mr. Johnson was never at the scene of the murder. Jackson's testimony was so critical to the Commonwealth's case that the prosecutor refused to bring charges without it. App. 111. The suppressed evidence makes clear that Jackson went from unequivocally denying that Mr.

Johnson was one of the two shooters, to saying that Mr. Johnson was the shooter who got into the car, to then, after *repeated* contacts with officers and under suggestive and coercive tactics, "finally" identifying him as the second gunman who stayed outside the car. Armed with evidence that Jackson's final story came about through improper suggestion and manipulation, reasonably competent counsel would have effectively impeached Jackson by showing that he had no independent recollection of Mr. Johnson as the second shooter, that his statements contradicted those of Alexander, and that Jackson's testimony was the product of undue influence by law enforcement.

Taken together, competent counsel would have used the withheld polaroid photograph array and activity sheets to impeach Detective McGuoirk's portrayal of law enforcement's contacts with Jackson and Alexander and undermine the entire investigation undertaken by law enforcement. Officers' willingness to disregard Jackson's March 20, 1990 identification and manufacture testimony against Mr. Johnson fatally undermines any confidence in the investigation undertaken in the present case. This Court should vacate Mr. Johnson's conviction.

D. Newly Disclosed Polygraph Test Results Related to Alibi Witness Richard Duncan Undermine Confidence in the Verdict and Requires Relief.

A review of the previously undisclosed files reveals that the Commonwealth suppressed material exculpatory evidence of a polygraph test administered to Richard Duncan, Mr. Johnson's key alibi witness, which showed that Duncan was being truthful. App. 91, 95. Law enforcement administered the test after an interview on April 2, 1990, in which Duncan stated he did not kill Joseph Goldsby, was not present when Goldsby was shot, and did not know who shot him. App. 95. Law enforcement knew from a previous interview, just days prior to taking the polygraph test, that Duncan maintained that he was with Mr. Johnson "that whole night" of March 1, 1990, and that he heard that Goldsby was killed by the Jamaican Shower Posse, who were supplying him

with drugs. App. 95. The polygraph test results, while inadmissible at trial, fortified Duncan's statements to law enforcement, which prompted them to decline to charge him with murder, eliminate him as a suspect and Mr. Johnson's accomplice. This suppressed evidence directly contravenes the prosecutor's attempts to discredit his statements and dispute his veracity.

Inadmissible evidence is subject to analysis under *Brady*. *See Wood v. Bartholomew*, 516 U.S. 1 (1995). The *Wood* Court, despite the polygraph test result's "uncontroverted inadmissibility" as evidence at trial, engaged in a *Brady* analysis to determine whether disclosure would have had a material effect on trial counsel's pre-trial investigation and preparation. *Wood*, 516 U.S. at 7. In light of *Wood*, the Third Circuit determined that instead of requiring admissibility as part of materiality, "[t]he proper inquiry…[is] to consider whether disclosure of the [undisclosed evidence] would have impacted the course of trial, which includes investigative activities." *Dennis v. Sec'y, Pennsylvania Dep't of Corr.*, 834 F.3d 263, 308 (3d Cir. 2016) (finding that disclosure of suppressed evidence would have empowered defense counsel to pursue strategies and preparations he was otherwise unequipped to pursue). Indeed, admissibility is irrelevant to the essence of *Brady*. The court should consider materiality of a piece of suppressed evidence in terms of its value to defense counsel's ability to strategize, prepare, investigate and present their case at trial. *Dennis*, 834 F.3d at 311 ("Alterations in defense preparation and cross-examination at trial are precisely the types of qualities that make evidence material under *Brady*.").

Here, it is clear that the newly disclosed polygraph results would have "impacted the course of trial" as well as counsel's "investigative activities." *Id.* Had competent trial counsel been aware of the polygraph results prior to trial, he would have credited Duncan's statements and taken additional steps to investigate and corroborate the evidence of Mr. Johnson's alibi, including extensively interviewing Duncan during the pretrial phase, following up on leads from Duncan's

statement, and preparing additional questions for Duncan on direct and redirect examination at trial. Reasonable trial counsel would have also undermined law enforcement's investigative strategy, including their decision to disregard serious and credible alternative suspects.

1. The Commonwealth withheld exculpatory evidence that Richard Duncan took a polygraph test showing that he was truthful.

On April 2, 1990, Philadelphia Police Detective Troutner and Officer Ocasio picked up Richard Duncan from 1926 West Butler Street and brought him to the Homicide Division for a polygraph examination. App. 95. While administering the examination, the officers asked Duncan the following questions:

> Q: Did you kill Joseph Goldsby?
> A: No
> Q: Were you present when Joseph Goldsby was shot?
> A: No
> Q: Do you know for sure who shot Joseph Goldsby?
> A: No

App. 95.

Officers concluded that Duncan was being truthful, noting in their activity sheet that "no deception [was] indicated" by his responses. *Id*. Duncan was the primary alibi witness for Mr. Johnson. On March 30, 1990, a few days before taking his polygraph examination, Duncan gave a statement to Detective McGuoirk explaining in detail where he and Mr. Johnson were on the night that Goldsby was shot. App. 79. Although trial counsel received copies of Duncan's written statements on March 30 and April 2, the Commonwealth withheld the results of his polygraph test.

2. The newly disclosed evidence is favorable and material.

Although Duncan's polygraph results would not have been admissible at trial, the additional information that law enforcement determined that Duncan had been truthful in his two

interviews would have altered reasonably competent counsel's investigation, trial strategy and preparation. *Wood*, 516 U.S. at 7; *Dennis*, 834 F.3d at 311. Armed with the polygraph result, any reasonably competent counsel would have credited the evidentiary value of Duncan's alibi, and investigated the locations and individuals to which Duncan referred. At trial, counsel would have been able to strenuously oppose the Commonwealth's improper mischaracterization of Duncan's alibi testimony. Instead, counsel was left to sit by while the Commonwealth blatantly distorted Duncan's accounting of his and Mr. Johnson's whereabouts on the night of Goldsby's death:

> Q; And Mr. Duncan, [Mr. Johnson] was in your company at all times; is that right?
> A: Yes.
> Q: So were you in fact with the defendant when he went to the 2100 block of Westmoreland Street to purchase drugs from Joe Goldsby?
> A: We never went to 21st and Westmoreland Street
> Q: Was [Mr. Johnson] with you when you got into the car with Joe Goldsby and [Mr. Johnson] put a gun…
> A: Beg your pardon?
> Q: I said, was [Mr. Johnson] with you when you got into the car with Joe Goldsby and [Mr. Johnson] put a gun through the window at Joe Goldsby's head?
> A: I never seen Joe Goldsby that evening

N.T.10/24/90, at 80

It was wholly improper for the prosecutor to repeatedly infer that Duncan was present when Goldsby was shot, while concealing a contradictory polygraph evaluation. Armed with the polygraph results, reasonably competent counsel would have prevented or objected to and interrupted this unethical line of questioning. Additionally, knowing that Duncan was being truthful would have had significant bearing on counsel's investigation strategy. At the very least counsel would have conducted the requisite investigation to rebut the Commonwealth's improper mischaracterization. Instead, on redirect, trial counsel was unable to revive Mr. Johnson's only

witness after the Commonwealth's improper distortion of Duncan's consistent and truthful accounting of events.

Had counsel appropriately credited Duncan's statement, it would have guided their development of alternative suspects in Mr. Johnson's case. With knowledge of Duncan's positive polygraph results, reasonably competent counsel would have investigated other leads and witnesses from Duncan, developing a compelling alternative theory to the crime that interlocked with other evidence withheld by the Commonwealth. *See* App. 225.

Finally, when viewed in context of law enforcement's investigation, the Duncan polygraph test reflects significant negligence and/or incompetence on the part of law enforcement, further undermining the Commonwealth's investigation in this case. Detectives McGuoirk, Worrell, Troutner, and Officer Ocasio repeatedly ignored viable leads and theories that did not implicate Mr. Johnson. Even as they had determined that Duncan was being truthful,[11] Detectives McGuoirk and Worrell failed to investigate any of the leads therefrom, and instead continued to repeatedly visit Jackson and Alexander, pressuring them to change their testimony.[12]

This disclosure would have fundamentally altered trial counsel's strategy for impeaching the officers and prompted reasonably competent counsel to look at the coercive techniques taken with regard to Jackson and Alexander. It would have also strengthened Mr. Johnson's alibi strategy. Because the suppressed evidence "would have impacted the course of trial [] include[ing] investigative activities" a new trial is warranted. *Dennis,* 834 F.3d at 308.

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[11] Law enforcement apparently credited Duncan's results, since they never charged him with murder.

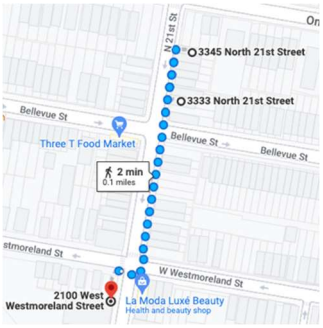
[12] Indeed, these coercive techniques are consistent with improper tactics frequently undertaken by Detective Worrell. According to a newly disclosed *Brady* proffer from the DA's office, Detective Worrell was notorious for obtaining false confessions and/or statements from suspects and witnesses in homicide cases and engaging in coercive interview tactics, including physical and psychological abuse and threats of incarceration. *Id*. at 312-313.

E. Newly disclosed evidence in the form of contemporaneous investigation records reveal the existence of alternate suspects, undermining the reliability of law enforcement's investigation and Mr. Johnson's conviction, requiring a new trial.

In addition to the discarded lead from Mark Jackson's March 20, 1990 photo identification, previously undisclosed contemporaneous investigation documents reveal that officers received substantive tips implicating alternate suspects, which they apparently credited, conducting investigations into these leads. None of this information was turned over to counsel.

1. The Commonwealth failed to disclose material exculpatory evidence implicating alternative suspect Anthony Floyd.

One clear alternate suspect who law enforcement investigated and then abandoned was Anthony Floyd. On March 2, 1990, a day after the murder of Mr. Goldsby, Eddie Pope, called the Philadelphia Homicide Unit and spoke with detectives about information about a murder the night before. App 46. A note addressed to Detective McGuoirk reflects that Mr. Pope shared that his daughter lived on 3333 N. 21st Street, around the corner from where Mr. Goldsby was murdered, and that her boyfriend, Anthony, lived a few doors away. *Id.*



He mentioned that Anthony was a drug dealer and that his daughter called him on March 1, 1990, about Anthony being involved in a homicide on the same night of the murder. She wanted to find a new place to stay. App. 109.

Detectives apparently credited the tip, pulling Anthony Floyd's court history, criminal extract, and police photo. App. 7, 9, 11. Detective McGuoirk confirmed that Floyd lived at 3345 N. 21st, around the corner from where the murder occurred, and was 6ft, 145lbs, and dark complexioned, the same description of the shooter given by eyewitnesses. There is also a note with Floyd's name and address, along with Mr. Johnson's as part of the investigation file. App. 10. From the file, it appears that detectives McGuoirk and Worrell abandoned this lead without

excluding Floyd as a suspect, despite strong corroborating evidence, including that Alexander told police he saw Floyd on the night of the murder near the scene. Neither the tip, nor the investigation undertaken by law enforcement into Floyd were disclosed to Mr. Johnson.

Reasonably competent counsel would have used this evidence to impeach Detective McGuoirk, who testified that law enforcement's investigation had not identified any suspects other than Mr. Johnson. N.T. 10/23/91, at 48. Counsel would have underscored law enforcement's failure to follow up on this and other leads, including Jackson's March 20 identification of the shooter. Counsel would have used the alternative suspect evidence to cast doubt on Alexander and Jackson's testimony, especially given their wildly inconsistent identifications of who was actually present during the killing. Competent counsel could have demonstrated that Mr. Johnson had no affiliation with Floyd, further proving his absence from the crime. The Anthony Floyd tip identified an individual who matched contemporaneous eyewitness descriptions of the man who murdered Mr. Goldsby—including descriptions given by Alexander and Jackson. Floyd, on the other hand, was identified by witnesses as being near the scene of the murder. Finally, counsel could have pointed to the contemporaneous police reports reflecting that, though Floyd was seen near the crime scene on the night of the murder, officers never questioned him. With the benefit of this evidence, counsel would have undermined the reliability of law enforcement's investigation, cross examining detectives about why they chose to pursue unsubstantiated rumors while abandoning credible leads.

The Commonwealth's failure to turn over this exculpatory and impeaching evidence undermines reliability in Mr. Johnson's conviction, which rests solely on the fabricated identification of Mr. Johnson by Alexander and Jackson. Any competent counsel would have demonstrated to the jury that the description given in the initial statements of Alexander and

Jackson matched Floyd, not Mr. Johnson. Without this information, however, the jury never learned that Anthony Floyd, who Alexander had placed near the scene of the murder, had purportedly committed a homicide on the same night and in the same location as Goldsby's murder, and that he matched the description of the shooter. App. 11, 46, 109. When considered cumulatively with the evolving statements of Jackson and Alexander, as well as law enforcement's failure to investigate Jackson's March 20 identification and its efforts to manipulate the testimony of Alexander and Jackson, there is a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles*, 514 U.S. at 433.

2. The Commonwealth failed to disclose an exculpatory interview with a critical eyewitness to Mr. Goldsby's murder in violation of *Brady*.

The Commonwealth failed to disclose that it conducted an exculpatory interview with a key eyewitness. Detectives learned from witnesses Darryl Alexander and Derek Holmes, that a man named Carlisey, also known as Moon X, had witnessed Joseph Goldsby's murder and had interacted with the perpetrators just prior to the shooting. App. 32, 44. In Alexander's first statement, which was properly disclosed to the defense, he mentioned that the perpetrators were talking to Carlisey, who lived steps away from where the homicide occurred. App. 32. Alexander said Carlisey later "came up to the window of the car to make a transaction with Joe and Joe told [Carlisey] that he would bring him some back. The guy who did the shooting was still in the car at that time." App. 32. Alexander also stated that "I asked Carlisey and he said he had seen one of the guys before but he said he knew that the girl had been by there several times." App. 34.

A newly disclosed activity sheet reveals for the first time that detectives successfully identified Carlisey aka Moon X as Carlisey Blakeney and then located him. In the previously withheld interview, Blakeney told officers that: "the guys involved with killing Joe were not

from the neighborhood." App. 1. An additional newly disclosed activity sheet corroborates that Blakeney told Alexander that he recognized the woman with the two shooters, and that Alexander thought Blakeney "may know them." App. 26. In an additional undisclosed note, investigators recorded that "[Blakeney] was talking to the doer." App. 73.

This previously suppressed evidence further exculpates Mr. Johnson, who, unlike the individuals Blakeney identified, was well known and from the neighborhood where Goldsby was murdered, a fact that is established by the witnesses in the case. The suppressed documents also thoroughly impeach the Commonwealth's investigation, as detectives failed to ever conduct a formal interview with Blakeney after they located him, even though he was then the only person present on March 1, 1990 who told investigators and other witnesses that he was familiar with the perpetrators before the night of the murder, and was "*talking to the doer*" just before the murder occurred. App. 73 (emphasis added).

There is no evidence that law enforcement ever conducted a formal interview with Blakeney, nor is there any indication that police investigated his account. These suppressed documents reveal for the first time that: 1) investigators identified and spoke to critical eyewitness Carlisey Blakeney AKA Moon X; 2) police confirmed that Blakeney spoke directly to Goldsby's killers; and 3) Blakeney told police that the perpetrators were not from the neighborhood.

a. The suppressed evidence is favorable.

Reasonably competent counsel would have used Blakeney's account to convincingly rebut the evolving and manufactured stories from Mark Jackson and Darryl Alexander. Counsel would have argued that Blakeney, an eyewitness who spoke directly to the shooter, knew the killers and, critically, knew that the killers were not from the area. App. 1, 73. Mr. Johnson *was*

from the neighborhood, and there is extensive evidence that he was well-known in the area, including details from various neighbors who recalled the car he drove, his family members, and who he spent time with. *See e.g.* App. 49, Post-trial Motions Hearing N.T. 5/26/92, at 25.

Reasonably competent counsel also would have used this suppressed evidence to impeach the Commonwealth's investigation. The Commonwealth failed to conduct any follow-up into this essential eyewitness with no explanation. Law enforcement recorded that Blakeney was not formally interviewed due to intoxication and his mother's recent death, and that they planned to formally interview him later that week. However, they failed to conduct a formal interview, or pursue any further investigation related to Blakeney, even though in investigators' own notes they emphasized that he had spoken directly to Goldsby's killer on the night of the homicide. App. 73. Competent counsel would have seized upon this inexplicable failure to formally interview a critical eyewitness, especially given Blakeney's extensive interactions with the killers and his comments about where they were from and the woman accompanying them. Counsel would have marshaled the undisclosed evidence to convincingly argue that it exposed the Commonwealth's singular and myopic focus on Mr. Johnson, decimating the credibility of law enforcement's investigation.

b. The suppressed evidence is material.

The suppressed evidence relating to eyewitness Carlisey Blakeney's exculpatory account is material. Multiple witnesses reported that Blakeney was on the scene and that he interacted with the people who shot Goldsby. Newly disclosed activity sheets reveal that police spoke to Blakeney, the *only* witness who initially expressed that he knew the perpetrators, and that he told investigators that he had witnessed the murder and that the killers were not from the neighborhood.

Had reasonably competent counsel known of Blakeney's account, he would have used it to undermine confidence in the already shaky case against Mr. Johnson, which was built exclusively on the tenuous and shifting stories of Mark Jackson and Darryl Alexander, who both had explicitly stated that Mr. Johnson was *not* at the crime scene in their first interviews. App. 35, 58. Blakeney's suppressed account, alongside the undisclosed evidence that detectives coached Mark Jackson to align his story with Alexander's, would have made both the absence of evidence against Mr. Johnson, his alibi defense, and the Commonwealth's obstinate focus on him undeniable.

At trial, there was no indication of the many leads summarily abandoned, the witnesses never interviewed, and the alternative suspects flatly ignored. The jury was kept in the dark and even misled as to the scope and results of the Commonwealth's investigation. Detective McGuoirk went so far as to falsely testify that law enforcement had not identified *any* suspects other than Mr. Johnson. N.T. 10/23/91, at 48.

There is no doubt that the jury also would have questioned the Commonwealth's failure to interview Blakeney and follow up on his account, especially in light of law enforcement's persistence in repeatedly interviewing Jackson and Alexander, who gradually shifted their stories until they coalesced. App. 2. This was further underscored by additional undisclosed evidence revealing law enforcement's failure to investigate Mark Jackson's identification of the shooter, or thoroughly investigate and interview Anthony Floyd. At the expense of conducting critical eyewitness interviews and pursuing robust evidence implicating other suspects, the Commonwealth pushed ahead with its manufactured case against Mr. Johnson.

The Commonwealth suppressed critical exculpatory evidence related to eyewitness Carlisey Blakeney, who spoke directly to Goldsby's killers just prior to his murder. This

unmistakable violation of *Brady v. Maryland* is emblematic of the Commonwealth's unrelenting pursuit of Mr. Johnson's wrongful conviction. Relief is required.

3. Previously undisclosed evidence establishes that James Smith ("Jimmy Seed") was present when Goldsby was killed, and that Seed and James Wagstaff were under investigation for murder.

Jimmy Seed was a critical witness to the events of March 1, 1990. Both Mr. Johnson and Richard Duncan testified that Seed told them about Goldsby's murder. N.T. 10/24/91, at 55-56, 87. Duncan told detectives that since the shooting, people, including a man named David from Rugby Street, had been saying that Jimmy Seed was present at the shooting. App. 92. Previously undisclosed contemporaneous records reveal that a witness put Seed at the scene, that detectives had investigated Seed, and that Seed and James Wagstaff were suspected of, and would possibly face charges for, another murder.

A newly disclosed activity sheet reflects that:

> Det. McGuoirk (sic) also asked the officers if they knew a male called Jimmy Seed from 23rd & Atlantic and a male known as Jimmy Wagstaff. The officers stated that Jimmy Seed is a witness in a case that Wagstaff is suspected of having killed someone. It is currently being investigated by Det. Alfimow. Det. McGuoirk checked with Sgt. Snyder and learned that indeed *Jimmy Seed aka Jimmy Smith is involved in the murder and may also be charged*. Det. McGuoirk wishes to speak to Sneed [sic] because Richard Duncan stated that Sneed [sic] told him about Goldsby being killed shortly after it occurred and he may have been present when the killing went down.

App. 108 (emphasis added). Another previously undisclosed note also indicated that an informant reported that Seed was at the scene. App. 51 ("Jimmy Sneed [sic] is real James Smith he lives Wishickon and Mehan [Sic] James Smith was there as per person.").

During cross-examination of Mr. Johnson, the Commonwealth tried to impeach his account of events by repeatedly implying that Duncan and Mr. Johnson's conversation with Seed had occurred prior to the murder of Mr. Goldsby. N.T. 10/24/91, at 110-112. Counsel never learned

that detectives had investigated Jimmy Seed, that an informant had confirmed his presence at the scene of the crime, or that he was potentially facing charges for another murder. Reasonably competent counsel could have used this information to corroborate both Mr. Johnson and Mr. Duncan's account.

In his own statement to police, Seed claimed he learned of the murder after he "stopped a police truck and asked them for a jump and they said they were looking for somebody." App. 48. Knowing that Seed was being investigated for a murder, would have caused reasonably competent counsel to be skeptical about the veracity of this assertion and investigate it further. Reasonably competent counsel would have been aware that numerous witnesses named Seed as being on the scene, and would have investigated Seed, and pressed the Commonwealth to do the same. At trial, counsel would have used Seed's presence to argue that the testimony from Mr. Johnson and Duncan was credible. Counsel would have effectively impeached Seed's claim that he flagged down officers to ask about the murder, and demonstrated that Seed lied about when he had learned of the murders. Given the weak evidence against Mr. Johnson, and the fact that he had an actual alibi, there is a reasonable probability that armed with this new evidence, the result of the proceedings would have been different. *Kyles*, 514 U.S. at 433. Relief is required.

4. The previously undisclosed documents further illustrate that the Commonwealth shaped a case against Mr. Johnson while ignoring and then burying credible evidence implicating other suspects, undermining confidence in law enforcement's investigation.

Law enforcement had eyewitness identifications, as well as information and descriptions matching other suspects yet chose to exclusively focus on Mr. Johnson as the only suspect. Newly disclosed documents, including detective notes, corresponding court histories and criminal extracts, demonstrate how law enforcement initially investigated and received credible leads regarding Anthony Floyd, Alexander's March 20 identification, and eyewitness information from

Blakeney. Yet detectives chose to focus their investigation on Mr. Johnson. Detectives introduced Mr. Johnson's name into the investigation, after hearing a rumor from individuals who were not even present at the scene. They inserted it into the eyewitness interviews, then worked to cultivate and manipulate the statements of Alexander and Jackson, until they went from denying Johnson's involvement to embracing it. Based on Alexander and Jackson's fabricated story, Mr. Johnson was convicted of first-degree murder and sentenced to life imprisonment without parole after the jury deadlocked on a death sentence.

Law enforcement's abandonment of credible leads relating to other suspects further underscores its improper and unreasonable exclusive focus on Mr. Johnson. Contemporaneous investigation documents and records went undisclosed. The newly disclosed contemporaneous investigation records reflect that law enforcement credited these leads, began to investigate and seriously consider them, before inexplicably abandoning them. As the Supreme Court made clear in *Kyles v. Whitley*, "A common trial tactic of defense lawyers is to discredit the caliber of the investigation or the decision to charge the defendant, and we may consider such use in assessing a possible *Brady* violation." 514 U.S. 419, (1995) (citing *Bowen v. Maynard,* 799 F.2d 593, 613) (10th Cir. 1986). Armed with the undisclosed evidence, reasonably competence counsel would have thoroughly impeached the reliability of law enforcement's investigation.

Reasonably competent counsel would have used the suppressed evidence relating to Anthony Floyd, Mark Jackson's March 20 photo lineup identification, Carlisey Blakeney, and Jimmy Seed to cast serious doubt on the reliability of the Commonwealth's investigation. The *Kyles* Court recognized the materiality of withheld evidence that demonstrates the unreliability of an investigation. In *Kyles*, the police failed to investigate a key suspect and suppressed evidence that later turned out to be material when compared to all of the facts surrounding his

involvement. The suspect had made self-incriminating statements to police admitting that he changed the license plates on the victim's car. "And when combined with his police record, evidence of prior criminal activity near Schwegmann's, and his status as a suspect in another murder, his devious behavior gave reason to believe that he had done more than buy a stolen car." *Id.* at 447.

Mr. Johnson's case mirrors *Kyles* in that the suspects were known to detectives, were identified by eyewitnesses as being at or near the scene on the night of the murder, but investigations into them were then unreasonably abandoned, a fact now illuminated because of access to the DAO files. Evidence of Anthony Floyd and Jimmy Seed's suspected involvement in homicides and criminal histories could have been used to "throw the reliability of the investigation into doubt and to sully the credibility of Detective[s]." *Id.* The same applies to the discarded information from Blakeney and abandoned photo lineup identification from Jackson. Reasonably competent counsel would have used this undisclosed evidence during the cross-examination of Detective McGuoirk. On the stand, counsel could have asked McGuoirk to explain why Floyd and Seed were not charged or investigated further, why Jackson's March 20 lineup identification was ignored, or why Blakeney was never formally interviewed, despite recognizing the perpetrators. Counsel also could have asked why detectives repeatedly questioned witnesses about Mr. Johnson despite a lack of any supporting evidence. Reasonably competent counsel, armed with this evidence, would have been able to impeach the reliability of the investigation and the detective's testimony. As the Court in *Kyles* concluded, "however the evidence would have been used, it would have had some weight and its tendency would have been favorable." *Id*. at 451.

F. The cumulative effect of the suppressed evidence undermines confidence in the outcome at trial.

The United States Supreme Court recently reiterated *Brady v. Maryland's* cumulative effect standard in *Wearry v. Cain*, 577 U.S. 385 (2016). In *Wearry,* the Court reversed the Louisiana state postconviction court because it improperly evaluated the materiality of each piece of evidence in isolation rather than cumulatively. Similar to Mr. Johnson, Wearry's conviction rested exclusively on eyewitness testimony, including statements casting doubt on the star witness's credibility. *Id*. at 389. The Court held that when considered cumulatively, in light of the evidence against him, the undisclosed evidence undermined confidence in Wearry's conviction. *Id*. at 393. Considering the significance of the evidence withheld in Mr. Johnson's case as well as the weakness of the case against him at trial, here too no one can "be confident that the jury's verdict would have been the same." *Kyles*, 514 U.S. at 453.

The prosecution's case against Mr. Johnson rested entirely on Mark Jackson and Darryl Alexander's testimony taken from their April 16, 1990 statements, identifying Mr. Johnson as the second gunman who remained on the sidewalk and attempted to shoot Goldsby. As discussed above, in Part II, Section II.B, the Commonwealth withheld numerous documents and a photo array that undermined Jackson and Alexander's testimony, and exculpated Mr. Johnson.

The suppressed polaroid photograph array reveals that neither Jackson nor Alexander identified Mr. Johnson when shown a photo array lineup that included him, before identifying him a week later. From that initial suppressed array, Jackson identified a third party, who law enforcement failed to identify or locate.

Activity sheets reveal a series of undisclosed interactions between Jackson and law enforcement, in which law enforcement attempted to manufacture Jackson's ultimate account. A previously undisclosed activity sheet from April 16, 1990 detailed the measures taken by police to

eliminate inconsistencies between Jackson and Alexander's statements. App. 2. The activity sheet not only demonstrates how Jackson was pressured to change his account to match Alexander's, it reveals the lengths to which the Commonwealth went at trial to obscure and mischaracterize the April 16th identification. The activity sheet establishes that detectives coerced a witness identification, in order to obtain an arrest warrant and produce the only evidence at trial against Mr. Johnson.

Another previously undisclosed activity sheet from March 3, 1990 reveals how Mr. Johnson's name was introduced into the investigation in the first place. App. 26. Four witnesses, including a police officer, were interviewed before Jackson and Alexander by detectives. None mentioned or were questioned about Mr. Johnson. After learning about a rumor regarding his involvement in the Goldsby shooting, law enforcement immediately narrowed their focus onto Mr. Johnson, abandoning multiple credible alternative suspects and leads.

One such suspect was Anthony Floyd, who police inexplicably failed to investigate after receiving a tip from the father of Floyd's girlfriend. App. 109. Detectives knew that Floyd was near the scene on the night of the murder, matched the description of Goldsby's murderer and lived nearby, yet inexplicably failed to even interview him, instead narrowly focusing on Mr. Johnson.

Activity sheets and contemporaneous records reveal that eyewitness Carlisey Blakeney exchanged words with the perpetrators, knew who they were, and told police they were not from the neighborhood. Yet police unreasonably failed to follow up with him.

Other previously undisclosed activity sheets reveal that a witness identified James "Jimmy Seed" Smith was present at the crime scene (App. 51) and that Smith and James Wagstaff were known to law enforcement as suspects in another murder around the time of Goldsby's death, undermining Seed's own unsubstantiated alibi. App. 48. Taken together, this evidence establishes that officers had legitimate alternate suspects, flatly contradicting the Commonwealth's assertions

to the jury. The newly disclosed evidence undermines law enforcement's investigation and reveals additional witnesses who could have testified on Mr. Johnson's behalf.

Additionally, the newly disclosed evidence fortifies the defense at trial. A previously undisclosed document reveals that a polygraph test administered to Richard Duncan, Mr. Johnson's key alibi witness, established that he was truthful. App. 95. *See above,* Part II, Section II.C. Apparently crediting the polygraph results, police never charged Duncan as an accomplice. Disclosure of the polygraph test would have materially altered counsel's strategy and investigative efforts and strengthened the credibility of Duncan's alibi testimony at trial. Instead, the Commonwealth was able to wholly discredit Duncan's testimony, going so far as to accuse him on the stand of being present when Goldsby was murdered.

The newly disclosed evidence reveals that at trial the Commonwealth failed to disclose both evidence that discredited its own case, as well as evidence that credited the defense's case. Taken together, these disclosures cast grave doubt on the reliability of the Commonwealth's investigation and the integrity of Mr. Johnson's conviction. Here, as in *Kyles,* when "the cumulative effect" of the undisclosed files is considered against the already weak evidence against Mr. Johnson, there is a reasonable probability the result of the proceedings would have been different. *Kyles*, 514 U.S. at 433. Relief is required.

II. The Commonwealth Presented Testimony That It Knew or Should Have Known Was False in Violation of *Napue v. Illinois*.

In addition to establishing relief pursuant to *Brady v. Maryland*, the newly disclosed evidence also reveals multiple instances of prosecutorial misconduct as well as violations of *Napue v. Illinois*. The Commonwealth's failure to correct testimony that it knew or should have known was false, tainted Mr. Johnson's trial and violated his constitutional rights. Here, the clearly misleading and false testimony of Detective McGuoirk, Darryl Alexander, and Mark Jackson

obscured significant impeachment evidence as to all three witnesses and resulted in the presentment of false testimony. The fiction presented at trial, that Jackson had independently corroborated Alexander's testimony, was the lynchpin of the case against Mr. Johnson. The prosecutor not only allowed this testimony to go uncorrected in front of the jury in violation of *Napue*, she highlighted the tainted account and emphasized it during her closing argument. This false narrative permeated the entire case against Mr. Johnson, persisting well into post-conviction proceedings. The Commonwealth's failure to correct the record violated Mr. Johnson's constitutional rights and warrants relief.

A. Mr. Johnson Has Met the Jurisdictional Requirements and Made the Requisite Showing Under the PCRA and the United States Constitution Warranting Relief.

1. Mr. Johnson's *Napue* claims meet both the newly discovered fact exception of § 9545(b)(1)(ii) and the governmental interference exception of § 9545(b)(1)(i).

Mr. Johnson's *Napue* claims are timely. The newly discovered introduction of false testimony at trial meets two of the exceptions to the PCRA statute's timeliness bar. 42 Pa. C.S.A. § 9545(b)(1). This false testimony was only revealed when the Commonwealth turned over previously undisclosed *Brady* evidence. It is well established that *Brady* violations fit into both the governmental interference and newly discovered fact exceptions to the timeliness requirements of the PCRA. *See Commonwealth v. Johnson*, 64 A.3d 621, 622 (Pa. 2013) (finding (b)(1)(ii) exception was proved for Brady claims); *Commonwealth v. Sattazahn*, 869 A.2d 529, 534 (Pa. Super. 2005) ("It is well-settled that a Brady violation can fall within the governmental interference exception."). Thus, both the governmental interference and newly discovered fact exceptions apply to these claims under *Napue v. Illinois*, which could not have been brought prior to the discovery of the underlying *Brady* evidence. As a result of governmental interference, there was no way for

Mr. Johnson to know that the Commonwealth witnesses had testified falsely under 9545(b)(1)(i). In addition, the notes and reports revealing the Commonwealth's failure to correct false testimony are newly discovered facts that could not have been ascertained sooner with the exercise of due diligence, satisfying 9545(b)(1)(ii).

2. Mr. Johnson meets the standard under *Napue v. Illinois.*

A criminal defendant's right to due process is violated when a prosecutor presents testimony or evidence that she knew or should have known was actually false and material to the verdict. *See Napue v. Illinois*, 360 U.S. at 269-27; *see also United States v. Agurs*, 427 U.S. at 103; *Alcorta v. Texas*, 355 U.S. 28, 31-32 (1957). The use of false evidence at trial is material and therefore requires reversal under *Napue*, if it "may have had an impact on the outcome of the trial." *Napue*, 360 U.S. at 272; *accord Bagley*, 473 U.S. at 680 (holding that knowing use of perjured testimony is material unless it is harmless beyond reasonable doubt).

In circumstances where the prosecutor knowingly conveys or fails to correct false information to the jury, in violation of its obligations under *Giglio* and *Napue*, an even lower materiality standard applies. In this situation, the proper materiality standard is that of *Bagley*, 473 U.S. at 678–79, n.9, and *Agurs*, 427 U.S. at 103, which requires the Commonwealth to show that the error is harmless beyond a reasonable doubt. *Haskell v. Superintendent, Greene SCI*, 866 F.3d 139, 141, 146 (3d Cir. 2017) (petitioner entitled to relief when he shows a reasonable likelihood that the prosecutor's knowing use of false testimony could have affected the jury). *See also United States v. Alzate*, 47 F.3d 1103, 1110 (11th Cir. 1995) (quoting *Agurs*) (when the prosecutor knowingly conveys false information to the jury, the falsehood is material "if there is any reasonable likelihood" it "could have affected the judgment of the jury," requiring the Commonwealth to show "harmless[ness] beyond a reasonable doubt"); *Jackson v. Brown*, 513

F.3d 1057, 1076 (9th Cir. 2008) (although *Napue* does not create a per se rule of reversal, "if it is established that the government knowingly permitted the introduction of false testimony reversal is virtually automatic").

Constitutional protections for defendants in criminal trials are intended to afford them the highest degree of due process. The criminal legal system is predicated upon the foundations of achieving justice not only for victims and their families, as well as communities, but importantly, for the accused. As such, the "prosecutor's duty to seek justice trumps his or her role as an advocate to win cases for the Commonwealth." *Commonwealth v. Chmiel*, 643 Pa. 216, 239 (Pa. 2017). This duty confers an extreme responsibility upon prosecutors:

> The prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution *is not that it shall win a case, but that justice shall be done.*

Id. (emphasis in original). Therefore, "[i]t is as much a prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Connick v. Thompson*, 563 U.S. 51, 71 (2011).

3. Mr. Johnson meets the standard under 42 Pa. C.S. § 9543.

The purpose of the Post-Conviction Relief Act (PCRA) is to prevent fundamentally unfair convictions and to provide a mechanism whereby persons convicted of crimes they did not commit, or individuals who have been serving illegal sentences, may obtain collateral relief. *Commonwealth v. Carbone,* 707 A.2d 1145, 1148 (Pa. Super 1998). A petitioner is eligible for relief if his conviction or sentence resulted from: a violation of the Constitution of this Commonwealth or the Constitution or laws of the United States; ineffective assistance of counsel; the improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court; or the

unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced. *See* 42 Pa.C.S.A. § 9543(a)(2).

As discussed more fully in each claim, the evidence introduced herein meets the rigorous standards of Pennsylvania's PCRA statute. The evidence Petitioner has proffered fatally undermines reliability in his conviction. It shows that the prosecutor failed to correct false testimony from its key eyewitnesses and critical law enforcement witnesses. Instead of correcting this false testimony, the prosecutor capitalized on it, throughout the trial and post-conviction proceedings. The prosecutor's actions violated Mr. Johnson's constitutional rights, warranting relief under the PCRA.

B. The Commonwealth violated *Napue v. Illinois* by failing to correct the false and misleading testimony of Detective McGuoirk, Darryl Alexander and Mark Jackson concerning their meeting on April 16th.

The Commonwealth and its witnesses worked in lockstep to shield the truth about the April 16th meeting and the efforts of law enforcement to manipulate the testimony of Mark Jackson to match Alexander's. At trial, Detective McGuoirk misled the jury about the nature and significance of the meeting on April 16, and, incredibly, never mentioned Jackson in his testimony. Of the meeting, McGuoirk testified that Alexander "had made an identification on April 9. It was reduced to a written interview on April 16th." N.T. 10/23/91, at 49. The jury was repeatedly given the false impression that the only reason for any meeting on the 16th was so McGuoirk could formalize Alexander's prior identification: "I brought him in on April 16th and did an interview with him concerning the photo display and the identification of the defendant." *Id.* at 50. The newly disclosed evidence, including reports authored by Detective McGuoirk, directly contradicted his own testimony.

At the April 16 meeting, Detectives McGuoirk and Worrell, along with Alexander, convinced Jackson to change his statement to match Alexander's by "explain[ing] to him that . . . it couldn't have been Greg Johnson who got into the car." App. 2. Their efforts to manipulate Jackson's statements came less than a week after they failed to obtain an arrest warrant against Johnson specifically because Jackson's testimony did not match Alexander's. App. 111. The April 16th joint meeting was the only reason why the flawed and flimsy case even made it to trial. Only after that meeting, wherein McGuoirk convinced Jackson to change his testimony to match Alexander's, *with them both present*, was he able to get approval for an arrest warrant for Ronald Johnson. App. 110.

Mark Jackson similarly avoided revealing the truth about the meeting, falsely testifying that he had gone to the detectives of his own accord. *See* N.T. 10/24/91, at 39 (Q: "You went back to the detectives again and spoke to them concerning Greg Johnson; is that correct?" A: "Yes."). As detailed above in Section II.C.1(c), the Commonwealth asked numerous questions emphasizing that Jackson had gone to see detectives independently and of his own accord. *See* N.T. 10/24/91, at 39, ("On April 16th of 1990, when you went to the detectives and spoke to them again."); *id.* ("On April 16th of 1990, referring you to Commonwealth Exhibit C-31, you went back to the detectives again and spoke to them concerning Greg Johnson, correct?"); *id.* at 37 ("On April 16th of 1990, did you have a further discussion with the homicide detectives."). The Commonwealth's elicitation of this fraudulent testimony reinforced the false narrative that Jackson had independently changed his statement to match Darryl Alexander's. In reality, this could not have been further from the truth.

The April 16th statements were critical to the case against Mr. Johnson, and they were referenced repeatedly by the Commonwealth's witnesses. Despite these frequent opportunities to

correct the record, the Commonwealth allowed these falsehoods to stand, bolstered them in examination and argument, and capitalized on them during closing arguments. The ADA urged the jury in closing to trust Jackson because they "haven't heard of any reason why [Jackson] would come into a courtroom and make up a story." N.T. 10/25/91 at 50-51. Of course, this was only true because the Commonwealth had failed to disclose reports showing Jackson had numerous reasons to make up a story, including coercion and manipulation from detectives. The prosecutor continued that "if [Jackson] 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." *Id.* This argument is particularly brazen, as Jackson *had* claimed this was exactly what he had seen prior to the April 16th meeting, *after having previously claimed* that Mr. Johnson was not present during the shooting at all. Finally, the Commonwealth emphasized that Jackson "bears out *every single thing* that Darryl tells you." N.T. 10/25/91 at 51 (emphasis added). In reality, Jackson's initial statements did not bear out any of Alexander's statements, and the jury never learned how Jackson's final statement had come to do so.

The Commonwealth's inaccurate and deceptive presentation of the evidence denied Mr. Johnson a just trial and verdict. It is well established that a prosecutor's closing arguments warrant relief when the comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo,* 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974). Here, the Commonwealth violated *Napue* when it "knowingly allowed material false testimony to be introduced at trial, failed to step forward and make the falsity known, and knowingly exploited the false testimony in its closing argument to the jury." *Brown v. Wainwright,* 785 F.2d 1457, 1458 (11th Cir.1986).

By failing to correct false testimony and acknowledge that detectives manipulated the testimony of Mark Jackson so that it corroborated the testimony of Darryl Alexander, the prosecutor misled the jury about the strength and reliability of the Commonwealth's only evidence against Mr. Johnson. Had the prosecutor corrected the false testimony, the jury would have learned of the coercive tactics of the officers and discovered that Jackson's final version of events was neither given voluntarily nor did it come from his own independent memory, but instead from manipulative tactics on the part of police.[13] The Commonwealth clearly "affected the judgment of the jury" by failing to disclose the activity sheets and then affirmatively and repeatedly misrepresenting the events which they discussed. *Napue v. Illinois*, 360 U.S. 264, 271, (1959). Had the jury known that Jackson's final story only came about through suggestion and manipulation, there is no doubt they would have questioned the Commonwealth's investigation and the reliability of the evidence against Mr. Johnson. The Commonwealth cannot show that this violation was harmless beyond a reasonable doubt. *Bagley*, 473 U.S. at 680. Relief is required.

C. The Commonwealth violated *Napue v. Illinois* by eliciting and failing to correct Detective McGuoirk's false testimony that no other suspects were identified during the investigation.

The Commonwealth elicited and failed to correct false testimony by Detective McGuoirk denying that anyone else had been identified during their investigation. As detailed in Section II.C.3, previously undisclosed evidence reveals that detectives had identified and investigated Anthony Floyd, a man fitting the description of the shooter who was reportedly involved in a homicide on the same night and at the location of Goldsby's murder. Compounding the prejudice

[13] As discussed above, the coercive tactics employed in this case are a pattern and practice by Detective Worrell and have led to false confessions and coerced statements resulting in exonerations in other Philadelphia cases. *See* Section I.C.1.

of this constitutional violation, Detective McGuoirk perjured himself at trial when he testified that no one else had been identified during the investigation:

Q: Now, Detective, has anyone else been identified or arrested in this matter?

A: No.

N.T. 10/23/91, at 48. This false testimony was elicited by the Commonwealth on direct examination, and went uncorrected before the jury in violation of *Napue v. Illinois*.

The newly disclosed evidence squarely contradicts McGuoirk's unequivocal testimony at trial. The note pertaining to Anthony Floyd was addressed to Detective McGuoirk. The previously undisclosed files indicate that McGuoirk credited the tip and immediately identified Floyd, and launched an investigation into him, pulling his court history, criminal extract, and police photo. App. 7, 9, 11. Detective McGuoirk confirmed that Floyd lived at 3345 N. 21st, around the corner from where the murder occurred, and was 6ft, 145lbs, and dark complexioned, the same description of the shooter given by witnesses. App. 11. It does not appear from the DAO or police files that Floyd was ever ruled out as a suspect.

By suppressing this alternative suspect evidence and failing to correct Detective McGuoirk's false testimony, the Commonwealth dishonestly strengthened the appearance of its case against Mr. Johnson, obscuring the fact that it narrowly targeted Mr. Johnson, despite the existence of other potential suspects. The jury never learned that Anthony Floyd, who Alexander had placed near the scene of the murder, had purportedly committed a homicide on the same night and in the same location as Goldsby's murder, and that he matched the description of the shooter. App. 11, 46, 109. Nor was the jury aware that the Commonwealth had inexplicably disregarded credible leads and abandoned an investigation into an alternative suspect. Instead, the jury was left with the impression that the only evidence pointed towards Mr. Johnson. The newly

disclosed evidence pertaining to Anthony Floyd, especially considered in light of the April 16th meeting, dismantles the Commonwealth's invented narrative. In allowing this myth to be perpetuated through the false testimony of Detective McGuoirk, the Commonwealth improperly "affected the judgment of the jury." *Napue*, 360 U.S. at 271.

Prejudice is "virtually automatic" under *Napue* precisely because of the difficulty in assessing the effect of a false assertion on the decision maker. *Jackson v. Brown*, 513 F.3d 1057, 1076 (9th Cir. 2008). In the present case, given the fragility of the case against Mr. Johnson, there exists a "reasonable likelihood" that allowing this false narrative to go uncorrected "could have affected the judgment of the jury." *United States v. Alzate,* 47 F.3d 1103, 1110 (11th Cir. 1995) (quoting *Agurs*).

D. The Commonwealth violated *Napue v. Illinois* by eliciting and failing to correct the record regarding the truthfulness of Ronald Johnson's alibi witness.

The Commonwealth not only failed to disclose *Brady* evidence corroborating Richard Duncan's alibi testimony, as detailed in Section II.C.2, it allowed the prejudicial effects of this suppression to reverberate throughout Mr. Johnson's post-conviction proceedings. As at trial, throughout post-conviction proceedings and federal habeas proceedings, the Commonwealth attacked Richard Duncan's credibility as Mr. Johnson's alibi. *See e.g,* App. 119, 167, 172. Apparently crediting the Commonwealth's attacks, the federal district court denied Mr. Johnson's habeas petition in what it deemed a "close call." App. 138. While the court found that counsel was deficient, it denied relief based on Mr. Johnson's "weak" alibi defense at trial, finding Richard Duncan's testimony at trial to be "completely incredible." App. 146-147. All the while, the Commonwealth remained silent as to the polygraph results supporting Duncan's veracity.

By repeatedly undermining Richard Duncan's credibility at trial and throughout post-conviction proceedings while suppressing crucial evidence corroborating his truthfulness, the

Commonwealth betrayed its duty to seek justice above securing and defending wrongful convictions. *See, Commonwealth v. Chmiel*, 643 Pa. 216, 239 (Pa. 2017). The trial and reviewing courts have never had an opportunity to learn that Duncan had been shown to be truthful during his interview with police.

Additionally, because the Commonwealth deprived defense counsel and the courts of strong corroborating evidence regarding Duncan's credibility, no court has ever been able to properly evaluate the evidentiary strength of Duncan's statements regarding other aspects of law enforcement's shoddy investigation. Had Petitioner and the courts known about Duncan's verified truthfulness, they would have recognized the value of other witnesses. For example, two individuals, Derrick Holmes and Robyn Johnson, both told police that they were present at the crime scene and did not see Mr. Johnson, with the latter identifying an entirely different alternative suspect. Duncan's alibi evidence, fortified by the results of his polygraph results, would have in turn highlighted the credibility of Robyn Johnson and Derrick Holmes. Taken together, the evidence from these three witnesses would undermine the confidence in Mr. Johnson's verdict, as well as the judicial review afforded to him. In a case where an appellate court found it to be "a close one," the Commonwealth cannot show that its suppression of evidence supporting Ronald Johnson's alibi was harmless beyond a reasonable doubt. *Bagley*, 473 U.S. at 680. Relief is required.

III. Detective Paul Worrell's History of Misconduct Constitutes After Discovered Evidence Pursuant to § 9543(a)(2)(vi).

Detective Paul Worrell's history of misconduct is after-discovered evidence that merits relief under 42 Pa.C.S.A. §9543(a)(2)(vi). Worrell's misconduct was unknown at the time of Mr. Johnson's trial, as he played a minimal role during the proceedings, and much of his documented misconduct post-dates Mr. Johnson's conviction. In his pending PCRA petition,

Mr. Johnson raised newly disclosed activity sheets revealing that Detective Worrell was responsible for manufacturing the only evidence implicating him through repeated, unduly suggestive, and coercive witness interviews of Jackson and Alexander. These unlawful tactics match Detective Worrell's newly established pattern and practice of misconduct. This critical evidence of Detective Worrell's misconduct would have changed the outcome of the trial.

A. Mr. Johnson meets the legal standard pursuant to § 9543(a)(2)(vi).

To obtain relief based on after-discovered evidence, appellant must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted. *Commonwealth v. Pagan,* 950 A.2d 270, 292 (2008). The test is conjunctive; the defendant must show by a preponderance of the evidence that each of these factors has been met in order for a new trial to be warranted. *See Pagan, supra; Commonwealth v. Rivera,* 939 A.2d 355, 359 (Pa. Super. 2007).

In order to obtain a new trial based on after-discovered evidence, the petitioner must explain why he could not have produced the evidence in question at or before trial by the exercise of reasonable diligence. *Commonwealth v. Jones,* 402 A.2d 1065, 1066 (Pa. Super. 1979); *Commonwealth v. Brosnick*, 607 A.2d 725, 729 (1992).

Additionally, a petitioner must show that the after-discovered evidence is not merely corroborative or cumulative. The Pennsylvania Supreme Court has defined "corroborative or cumulative" evidence as being "of the same character and to the same material point as evidence already adduced at trial." *Commonwealth v. Williams*, 215 A.3d 1019, 1026 (Pa. Super. 2019) (quoting *Commonwealth v. Small*, 189 A.3d 961, 974 (Pa. 2018)). The

Pennsylvania Supreme Court further held that after-discovered evidence that relates to a material point made at trial may still not be considered merely corroborative or cumulative if it is "of a higher grade or character" than the evidence previously presented. *Id*. In other words, after-discovered evidence that is of a similar character to, or upon the same point as previously raised evidence that is shown to be of a higher grade or character may still constitute evidence supporting the grant of a new trial. *Id*.

B. Detective Worrell's history of misconduct combined with his improper conduct in the present case requires relief.

As discussed above (and in Mr. Johnson's initial successor petition) the Commonwealth previously disclosed to post-conviction counsel documents detailing a history of coercive interview tactics utilized by Detective Worrell. The misconduct disclosure asserts that Detective Worrell had "a history of using coercive techniques to obtain confessions and incriminating statements." App. 294. Specifically, the Commonwealth conceded that Worrell, often working with Detective Martin Devlin, had coerced statements and confessions, resulting in the wrongful convictions of Walter Ogrod and Willie Veasy. App. 273-274 ("Detective Worrell utilized inherently coercive tactics and inaccurate information to obtain a false and unreliable confession from Ogrod."); *Id.* at 322 (referencing Willie Veasey's coerced confession: "In this case and in several others involving confessions by Devlin and Worrell, the Commonwealth lost sight of the fact that 'ours is an accusatorial and not an inquisitorial system' of justice, *Rogers v. Richmond,* 365 U.S. 534, 541 (1961).") The disclosure also details Worrell's misconduct in securing the wrongful convictions of Shaurn Thomas and Carl Tonez. App. 355-356. In the case of Mr. Thomas, the Commonwealth referenced a declaration from key Commonwealth witness John Stallworth, "describing his interrogation by Devlin and Worrell that led to him giving a statement implicating himself and others, including Thomas, in Martinez's murder. In a

deposition in the federal civil rights lawsuit, Stallworth testified that detectives physically abused him and provided him with facts about the case that he used in his inculpatory statement." App. 355.

Mr. Johnson meets the requirements under 42 Pa.C.S.A. §9543(a)(2)(vi). First, Mr. Johnson could not have obtained Detective Worrell's history of misconduct through his own diligence because it was not until very recently that the Commonwealth disclosed this evidence, which was previously in its exclusive possession. The trial record is void of any mention of Detective Worrell's coercive techniques in inducing witness identifications or any other misconduct. The appellate record similarly lacks any suggestion that Worrell was engaging in abusive and unlawful investigation tactics. There is no indication that evidence of Worrell's misconduct was obtainable by a reasonably diligent petitioner.

Second, the nature of the after-discovered evidence of Detective Worrell's pervasive misconduct and improper investigatory tactics is of a higher grade and different character than previously presented evidence. The disclosure of Worrell's previous misconduct in police investigations relates to Mr. Johnson's argument at trial that he was falsely identified by Mark Jackson and Daryl Alexander, but goes far beyond the quality and character of any evidence presented at trial on this point. Evidence of Worrell's pattern of engaging in fabrication, intimidation, and even physical violence in order to secure witness statements favorable to the prosecution reveal that law enforcement's investigation into Mr. Johnson was thoroughly corrupted, and that the credibility of the Commonwealth's two key witnesses was highly compromised. Furthermore, Mr. Johnson presented an alibi defense at trial, that he was with his friend, Richard Duncan, at a different location than the crime scene at the time Mr. Goldsby was murdered. This alibi defense did not hinge on or rely upon any allegations of police misconduct.

The after-discovered evidence of misconduct is thus not being used merely to corroborate a prior defense or claim, and properly supports a claim for a new trial.

Third, Detective Worrell's history of misconduct and direct role in Mr. Johnson's false identification does not merely serve the purpose of impeaching a witness, but critically undermines the legitimacy of law enforcement's investigation and the credibility of the Commonwealth's case against Mr. Johnson. The Commonwealth's sole evidence against Mr. Johnson was the eyewitness testimony of Mark Jackson and Darryl Alexander. Worrell's history of false identification misconduct directly relates to the repeated, unduly suggestive and coercive techniques Worrell used to convince Jackson to conform his identification with Alexander's. Jackson and Alexander's suggestive joint interview allowed the Commonwealth to secure an arrest warrant for Mr. Johnson that was previously denied by the ADA because of significant inconsistencies in their accounts. App. 2, 111. Detective Worrell's misconduct goes to the heart of the Commonwealth's only evidence against Mr. Johnson and his history of misconduct aligns with his previously suppressed actions in Mr. Johnson's case. The false identification misconduct is exculpatory.

Finally, Detective Worrell's history of misconduct and direct role in securing the only evidence against Mr. Johnson would produce a different verdict if a new trial were granted. Without the false identification of Jackson and Alexander, the Commonwealth has no evidence against Mr. Johnson.

Mr. Johnson meets the four-prong after-discovered evidence test by the preponderance of the evidence. *Commonwealth v. Pagan,* 950 A.2d 270, 292 (2008). Relief is required.

IV. Conclusion

WHEREFORE, Mr. Johnson respectfully requests that this Court vacate his conviction and order any other relief it may deem appropriate.

Respectfully submitted,

s/ Jennifer Merrigan

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August 31, 2023

CERTIFICATE OF SERVICE

I Jennifer Merrigan certify that I have caused electronic copies and mailed first class copies of this petition to the following:

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s/ Jennifer Merrigan

Jennifer Merrigan

Dated: August 31, 2023