IN THE PHILADELPHIA COURT OF COMMON PLEAS

COMMONWEALTH OF PENNSYLVANIA :

v. CP-51-CR-903912-1996 (PCRA)

EDDIE RAMIREZ :

RESPONSE TO PETITIONS FOR POST-CONVICTION RELIEF

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I. INTRODUCTION[1]

On February 20, 1995, someone robbed a Northeast Philadelphia laundromat of roughly $1,100 in paper currency. The robber viciously beat the only laundromat employee working, Joyce Dennis, to death with a metal pipe.

The prosecution's case against the petitioner, Edward Ramirez, who was 18 at the time, consisted of Ramirez's co-defendant and teenage witnesses, all but one of whom have since allegedly recanted their police statements and trial testimony. In the intervening years, the Commonwealth has disclosed evidence that calls the reliability of Ramirez's conviction into question: previously undisclosed police activity sheets, handwritten notes, police interviews, grand jury testimony, internal memoranda, and past police misconduct.

[1] The Commonwealth notes that two of its current ADAs, Paul George and Thomas Gaeta, were involved Ramirez's defense at various points. George, as part of a team from the Defender Association of Philadelphia, and Gaeta, as part of a team from the Federal Community Defender Office. Pursuant to its ethical obligations and the DAO's internal screening protocol, the Commonwealth has screened both George and Gaeta have from participating in this case. They have not aided the Commonwealth in any capacity.

Based on this suppressed evidence, Ramirez now claims (among other things) that the prosecution violated his constitutional rights by not disclosing this evidence prior to his trial. *See Brady v. Maryland*, 373 U.S. 83 (1963). Ramirez also puts forth new, compelling DNA evidence from the murder weapon that excludes him as a contributor.

After a careful review of the record and relevant precedent, the Commonwealth is constrained to concede that its suppression of the presented evidence violated *Brady* and to recommend that Ramirez be granted a new trial. The crux of Ramirez's claims is whether the suppressed evidence undermines confidence in the verdict—in *Brady* terms, whether it was material. The Commonwealth now believes that Ramirez's conviction is unworthy of confidence and can no longer defend it. If the jury had been told of additional evidence supporting Ramirez's arguments, from evidence of a bloody struggle (when there was no blood on Ramirez) to evidence of alternative suspects to evidence that would have impeached the credibility of key prosecution witnesses, there exists a reasonable probability that the result of the trial would have been different.

The Commonwealth does not arrive at this conclusion lightly. But the Commonwealth is mindful that "[p]rosecutors have a special duty to seek

justice." *Connick v. Thompson*, 563 U.S. 51, 65–66 (2011). A prosecutor's "interest 'in a criminal prosecution is not that he shall win a case, but that justice shall be done.'" *Dennis v. Secretary, Pa. Dept. of Corrs.*, 834 F.3d 263, 290 (3d Cir. 2016) (en banc) (internal alteration omitted) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)); *see also* Explanatory Comment 1, Pa. R. Prof. Conduct 3.8 ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."). The Commonwealth's position here is the product of a thorough review of the record, coupled with "careful consideration" in light of its "primary authority for defining and enforcing the criminal law." *Kennedy v. Superintendent Dallas SCI*, 50 F.4th 377, 382 (3d Cir. 2022) (quoting *Engle v. Isaac*, 456 U.S. 107, 128 (1982)).

This response first reviews, in some detail, what happened during the investigation into the decedent's death and then Ramirez's trial, as well as the relevant appellate and post-conviction proceedings. Next, this response analyzes why, if the suppressed evidence had been disclosed to Ramirez prior to trial, when looked at collectively with all the other evidence in the case, there is a reasonable probability that the outcome of the trial would have been different.

The Commonwealth takes no position here on whether Ramirez is guilty or innocent of this heinous crime, only on the fairness of his trial pursuant to its constitutional obligations. After an exhaustive and careful review, and considering all the suppressed evidence in light of the record as a whole, including new DNA evidence and consistent allegations of police misconduct, the Commonwealth must conclude that the outcome of Ramirez's trial is unreliable and that justice requires he receive a new one.[2] In the alternative, if the court wishes to hear more, the Commonwealth does not oppose an evidentiary hearing on Ramirez's *Brady* claims.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. The crime

In the early morning hours of February 20, 1995, Joyce Dennis, the decedent, was found brutally beaten to death in the back office of the laundromat where she worked. The rear door of the laundromat was propped open using that door's deadbolt lock. There was evidence of a bloody struggle

[2] In the interests of judicial economy, the Commonwealth addresses only the *Brady* claims Ramirez raised in the second and third amendments to his 2015 PCRA petition, filed in 2020 and 2022, respectively. Ramirez is entitled to complete relief on those claims, and the disposition of those claims will moot the remainder of Ramirez's petition and its amendments. Should the Court wish to hear from the Commonwealth regarding Ramirez's remaining claims, the Commonwealth respectfully requests the opportunity to supplement this response.

beginning in the washing-machine area and moving into the back office. The back office, where the decedent was found, is accessible only with a key. The decedent was found there lying in a pool of blood next to a bloody metal pipe typically kept in that back office.

Each employee of the laundromat also had a cashbox located in the back office. Each cashbox was accessible using only that employee's key. Roughly $300 of paper currency was taken from the decedent's cashbox, in addition to approximately $800 in paper currency taken from the laundromat's communal cash cup. No other employee's cashbox appeared to have been touched, nor were any washing machines, dryers, vending machines or change machines. Neither the proceeds from the robbery nor the decedent's keys were ever recovered and no physical evidence was tied to any particular suspect.

B. The investigation

The police arrived quickly after the decedent's husband reported that she did not return home from work when her shift ended at 2am. Upon arriving, investigators noticed blood and spatter around the laundromat and in the back office, that the rear door was propped open and had blood on it, and a black men's jacket with a torn pocket was on the floor with spots

of blood on it. The police took photos, dusted for fingerprints, and conducted a number of witness interviews in winter and spring of 1995. An investigating grand jury was convened in the fall of 1995, which bore no fruit. In spring of 1996, the case was reassigned from the initial lead assigned detective, Detective Walter Hoffner, to Detective John McDermott to investigate the matter as a cold case. Detective McDermott conducted further witness interviews, ultimately leading to the arrest and charging of Petitioner Edward Ramirez and his friend and co-defendant, Billy Weihe. Ramirez was charged with first-degree murder and the Commonwealth intended to seek the death penalty. Because the facts are so integral to the *Brady* claims here, the relevant statements and investigative materials are summarized in some detail below.

1. Laundromat employees

Ernest Manger, the owner of the laundromat, told police that the decedent typically locked the rear door of the laundromat at 8pm and the front door at 12:30am, and that, between what she had on her person and in her cashbox, she likely had access to around $1,000 when she was killed. *See* Pet's App'x[3] at 21a (Ernest Manger 2/20/95 Statement). Mary Allen, another

[3] To avoid inundating the court with duplicates, documents that are included in the appendix that Ramirez filed with his 2020 amendment will be cited to as at "Pet's App'x." Documents included as exhibits attached to

laundromat employee, similarly told police that both doors are locked by 12:30am and no one is allowed in after that point unless they need to do wash. *See* Pet's App'x at 25a (Mary Allen 2/20/1995 Statement). Jay Darnell, Sr., who lived across the street from and worked at the laundromat, told police that Ramirez was in his (Darnell's) home the night of the murder and at about 11pm Darnell's daughter, Mary Emanuel, sent Ramirez to the laundromat to fetch a can of soda, which he did. *See* Pet's App'x at 28a–29a (Jay Darnell, Sr. 2/24/1995 Statement). Ernest Manger and Jay Darnell, Sr. testified at trial consistently with their statements. Mary Allen was not called to testify.

2. Girls from the laundromat

Wanda Vargas and Joanne Esquline, cousins and patrons of the laundromat, told police that they arrived at the laundromat at about 9:30pm and stayed until about 11:30pm on the night of the murder. Vargas said that she and Esquline were last to leave the laundromat at 11:30pm and that the decedent locked the front door behind them. *See* Pet's App'x at 38a (Wanda Vargas 2/22/1995 Statement). The girls also told the police that, before they

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Ramirez's 2022 amendment will be cited to as at "Pet's Ex." Otherwise new exhibits or exhibits that do not appear to be part of a prior filing will be cited to as part of the Commonwealth's appendix, cited to as "DAO App'x," and filed with this response.

left, they saw Ramirez come into the laundromat to get a soda and flirt with Esquline. *Id*. at 39a; *see also id*. at 8a (Joanne Esquline 3/6/1995 Statement). Esquline also remembered giving Ramirez her phone number in the laundromat close to 11:30pm. *Id*. at 8a. Esquiline lastly said Ramirez called her that night, at around 12:30am, and they talked for about 20 minutes before she got tired and hung up. *Id.* at 9a. Neither girl was called to testify at trial.

3. Teenagers from the Darnell house

It is undisputed that Ramirez spent a few hours at his friends' Mary Emanuel and J.C. Darnell's house on the night of the murder. The house was across the street from the laundromat, where Emanuel and Darnell's father, Jay Darnell, Sr. worked. At the Darnell house that night were Ramirez, Billy Weihe, Mary Emanuel, J.C. Darnell, and Pete Gozzi. Their relevant statements are summarized as follows.

a. Mary Emanuel

Jay Darnell, Sr.'s daughter, Mary Emanuel, then 20, gave two statements to police and testified before a grand jury and at an earlier PCRA hearing in this case. In her statements, Emanuel told police that Ramirez went to the laundromat to get a soda around 11pm and was gone for roughly 10–15 minutes. Ramirez, his friend Billy Weihe, and another friend named Pete Gozzi all left Emanuel's house at about 1:30 or 2am. *See* Pet's App'x at 35a

(Mary Emanuel 2/24/1995 statement); DAO App'x at 19 (Mary Emanuel 2/28/1995 statement).

Emanuel was also called to testify before a grand jury in October 1995. There, she told the court that, after Weihe gave an initial statement to police in which he inculpated Ramirez and suggested Emanuel was also involved in the murder, police picked her up and told her they knew she was involved and were "screaming in [her] face and threatening" her. *See* IGJ N.T., 10/11/1995 at 19. She expressed the opinion that the police had scared Weihe into giving his statement since they tried to do the same to her. *Id*. at 20. She also told the grand jury that, after the police put her and Weihe together in the same room at the police station, Weihe admitted to her that his statement was a lie, that "Eddie really didn't do this," and that they threatened him with life in prison if he did not inculpate Ramirez. *Id*. at 20–21. These grand jury notes were not disclosed to defense counsel before trial and Emanuel was not called to testify at trial.

Nearly ten years later at a PCRA hearing in this matter, Emanuel reiterated Weihe's statement to her and the police's attempt to coerce her. *See* N.T., 1/5/2005 at 64 ("They told me if I didn't tell them that Edward Ramirez did this, I was going to do 30 years in jail. They had me in tears. They

screamed in my face. They threatened my family. They rode around the block. They tortured us.").

b. J.C. Darnell

Mary's brother, J.C Darnell, age 17, was also interviewed by police. He told them that he remembered Ramirez leaving to get his father a soda from the laundromat sometime before 11:30pm and that everyone left his house at about 1am. *See* DAO App'x at 17 (J.C. Darnell 2/24/1995 Statement). He saw Ramirez the next day and Ramirez did not have any injuries on his hands. *Id*. at 18. Darnell was not called to testify at trial.

c. Peter Gozzi

Gozzi, age 18, who met up with Emanuel and Ramirez around 11pm the night of the murder, went back to Emanuel's house with them. Though he did not remember the exact time he left the Darnell house with Ramirez and Weihe, his recitation of events would place that time around 1am. *See* DAO App'x at 25–26 (Peter Gozzi 3/1/1995 Statement). He testified consistently at trial with his statement and reiterated he could not recall the time.

4. Teenagers from Sara Hurd's house

The prosecution's theory of the case was that, after Ramirez and Weihe committed the crime sometime before 12:45am, they ran to a girl named Sara Hurd's house to party and do drugs until morning and again met up

at her house later in the week. In addition to Ramirez and Weihe, Joseph Maio, Luis Rivera, Sara Hurd, Thomas Dennis, and Joseph McDevitt were involved in the alleged goings-on at the Hurd house.

a. Joseph Maio

Joseph Maio, then 17, gave two statements to police. In his first statement, issued in March 1995 and taken by Detective Worrell, he told police that Ramirez called him the night of the murder at around 2am from the Darnell house to complain about having to walk across town earlier because he did not have a bus pass. *See* Pet's App'x at 99a–100a (Joseph Maio 3/17/1995 Statement). He also told police that he didn't know anything about the murder, that Ramirez did not have any extra money after the date of the robbery, and that he did not think Ramirez was involved. *See id*. at 101a–102a.

Fifteen months later, in June 1996, Maio gave another statement to Detective McDermott in which he said that he overheard Ramirez and Weihe confess to the crime at a party at Sara Hurd's house on the night of the murder. He said Ramirez showed up to Hurd's "no later than 11:30pm" and that both of his pockets were "loaded with change" such that "you could hear all the change as he walked." *See* Pet's App'x at 115a–117a (Joseph

Maio 6/19/1996 Statement). According to Maio, Ramirez confessed to hitting the decedent a couple of times until she fell down and leaving with a bag of money while Weihe and another boy, T.A. or Thomas Dennis[4], watched or stood outside. *Id*.

Maio testified at trial consistently with his second statement. He has since allegedly recanted. According to affidavits signed by three women who purport to have known Maio, Maio confessed to them that his statements were a lie and the product of police threats. *See* Pet's App'x at 110a–112a (Billie Joe Blood Aff. ¶¶ 2–3; Maureen Suarez Aff. ¶ 2; Sabrina Suarez Aff. ¶ 2). Maio died in 2011.[5]

b. Thomas Dennis (T.A.)

T.A., or Thomas Dennis, told an investigator working for Ramirez's defense that he was with Joe Maio for the entirety of the night of the murder, that he never saw Ramirez or Weihe, and that he did not go to Sara

[4] Thomas Dennis has no relation to the decedent. To avoid confusion, the Commonwealth refers to Dennis by his nickname, T.A.

[5] The Commonwealth takes no position on the reliability or credibility of the recantations and/or allegations of police misconduct in this matter, as they do not bear on the disposition of Ramirez's *Brady* claims. To wit, though Billie Joe Blood's affidavit was not prepared until 2016, Ramirez's defense counsel knew of her existence at the time of trial and did not find her credible. *See* N.T., 1/3/2005 at 91.

Hurd's house. He also claimed to have given two written statements to police saying the same things. No such statements were disclosed, T.A. was not called at trial, and he was never charged with any crime connected to this case. However, during voluntary discovery completed in 2021, it was discovered that police conducted at least one interview with T.A. According to a handwritten summary, T.A. told police that he was not with Ramirez and/or Weihe on the night of the crime and spoke with both Weihe and Ramirez at about 1:30am that night about "how they got home," because they did not have bus passes. *See* Pet's Ex. 28 (Handwritten Investigative Notes).

c. Sara Hurd and Luis Rivera

Sara Hurd, then 15, was first interviewed by Detectives Vivarina and Snell in March 1995 without a lawyer or parent present. During this interview, she told police that she knew Eddie went to get a soda from the laundromat on the night of the murder but that was it. *See* Pet's App'x at 49a (Sara Hurd 3/17/1995 Statement).

In 2015, Hurd prepared an affidavit alleging that when the police initially approached her, they told her they wanted to drive her around the block to ask a few questions before driving "straight to [the police station]." Pet's App'x at 46a—47a (Hurd Aff. ¶ 2). Hurd alleges that the detectives

interviewing her "screamed" at her and threatened her with charges if she did not tell them that Ramirez had admitted to her that he committed the crime. She refused to do so. *Id*. ¶ 3. When she returned home she told her mother what had happened and they called the Public Defender's Office, which assigned Jules Epstein to her case. The Commonwealth notes that Hurd's account of police coercion matches Mary Emanuel's almost exactly. *Compare* Emaunel PCRA N.T., 1/5/2005 at 64 ("They told me if I didn't tell them that Edward Ramirez did this, I was going to do 30 years in jail. They had me in tears. They screamed in my face. They threatened my family. They rode around the block. They tortured us.") *with* Hurd Aff. ¶¶ 2–3 ("They asked if they could drive me around the block for five minutes [before] …. The officer became really angry and started screaming at me that I was hiding evidence and he could give me charges for hiding evidence from them … [and that] if I didn't cooperate they would take my baby from me.").

The police then interviewed Luis Rivera, who was 15 and was interviewed by Detective Worrell without a parent or lawyer present. According to Rivera's statement, he overheard Ramirez confess the crime to Sara Hurd while at her house "the Thursday or Friday after" the murder. *See* Pet's App'x at 60a (Luis Rivera 3/20/1995 Statement). Rivera testified at Ramirez's

trial consistently with his statement. Rivera has since recanted his police statement and trial testimony, echoing Emanuel and Hurd's stories regarding coercion. *See* Pet's App'x at 55a (Rivera Aff. ¶ 2) ("One of the cops started yelling at me that I had to tell them the truth or they would beat the shit out of me"…"He threatened me with being charged as an accessory or conspirator for withholding the truth from them"…"Finally I wanted it to stop so badly I decided to tell the police what they wanted to hear even though it wasn't true . . . I never had a single conversation with Eddie.").[6]

After taking Rivera's statement, Detective Worrell re-interviewed Hurd with counsel (Epstein) present. At this time, no alleged coercion or misconduct occurred. There, Hurd reaffirmed that she never heard Eddie confess anything, and that Luis Rivera did not overhear anything in her house. *See* Pet's App'x at 67a (Sara Hurd 3/22/1995 Statement).

d. Joseph McDevitt

Police also interviewed Joseph McDevitt in the spring of 1996, who then said that he was at the party at Sara Hurd's house on the night of the crime and overheard Ramirez confess to the crime and talk about "getting paid."

[6] The Commonwealth has previously stipulated that the detective who took Ramirez's statement, Paul Worrell, engaged in a pattern and practice of eliciting false statements from witnesses dating back to at least 1992. *See Commonwealth v. Willie Veasy*, CP-51-CR-641521-1992, Joint Stipulations ¶¶ 46–57. The court there granted Veasy relief.

See Pet's App'x at 150a–151a (Joseph McDevitt 7/2/1996 Statement). McDevitt has since recanted that police statement, asserting that he was threatened with prosecution if he did not give an inculpatory statement and that the police tried to get him to say Ramirez purchased marijuana with loose change from him, but he refused. *See* Pet's App'x at 142a–143a (McDevitt Aff. ¶¶ 3–5). As part of his 2015 affidavit, McDevitt asserts that he called the DAO before Ramirez's trial and spoke with an unknown female ADA. During that conversation, McDevitt allegedly told the ADA that his statement was a lie and he was coerced. *Id*. ¶ 6. He was not called to testify at trial and no such conversation was relayed to the defense.

5. Butchy Oberholzer

The police interviewed John "Butchy" Oberholzer, a known criminal from the area, in March 1995 in relation to the murder. He told police that he did not know anything about it or any of the people allegedly involved, though he knew the laundromat and had done wash there before. *See* Pet's Ex. 21 (John Oberholzer 3/1/1995 Statement). Undisclosed police activity sheets and handwritten notes, discussed below, suggest Oberholzer may have been involved.

6. Investigating Grand Jury

In the fall 1995, an investigating grand jury was convened for the purpose of hearing evidence in this matter. At those hearings, Mary Emanuel, her brothers Samuel Emanuel and J.C. Darnell, and her friend Pete Gozzi all gave testimony. Additionally, the original lead detective investigating the matter, Detective Walter Hoffner, testified. None of these grand jury transcripts was disclosed to the defense pre-trial. While some of the grand jury notes were disclosed during the initial PCRA proceedings in this case, Detective Hoffner's testimony was not disclosed to the defense until voluntary discovery took place in 2021. The substance of Detective Hoffner's grand jury testimony is summarized as follows.

a. Detective Walter Hoffner (Pet's Ex. 11)

At a grand jury hearing on September 19, 1995, Detective Hoffner first told the grand jury that the decedent's injuries were so severe that initial responding officers reported that she'd been shot in the head. IGJ N.T., 9/19/1995 at 8–9. The murder weapon appeared to be a four-foot-long metal pipe found in the laundromat's back office, two feet of which were "covered in blood." *Id*. at 10. Detective Hoffner told the grand jury that he believed the decedent was punched several times in the face before being beaten

with the pipe. *Id*. at 12. Detective Hoffner also reported that the decedent was "a big woman" who lifted weights and ran five miles per day. *Id*. at 13.

Detective Hoffner then told the jury that he recovered a black waist-length men's medium-sized winter jacket, made of cloth, laying out of place near the rear office with a torn pocket. The jacket "smelled like mildew and had water stains on it" and was something that "a street person" would wear. *Id*. at 14, 28.[7]

As to blood evidence, Detective Hoffner told the grand jury that there was blood on the door handle to the laundromat's office, blood on the inside of the rear door (which has to be pushed open from the inside), blood spatter on the floor and on some of the washing machines, blood spatter up to four feet high on the walls of the back office, a pool of blood around the decedent's head and blood in her hands. Detective Hoffner told the grand jury that his team believed the assailant may have had his own injuries.

As to the laundromat's operations, Detective Hoffner told the grand jury that the laundromat employees kept their small bills in locked cashboxes in the back office to make change for customers with bigger bills. Each em-

[7] The Commonwealth notes that none of the witnesses interviewed by police recognized this jacket and it was agreed at trial that the jacket was not Ramirez's.

ployee had their own cashbox with its own key. Detective Hoffner estimated that the decedent had about two or three-hundred dollars in small bills and about eight hundred dollars in large bills that were stolen. Lastly, in response to a question from a juror, Detective Hoffner told the jury that anyone who used the laundromat would know that "the attendant goes in the [office] with little bills and big bills and comes out with little bills," noting specifically that "it's not like they had change" there. *Id*. at 59.

As to the timeline of events, Detective Hoffner testified that the decedent did not let anybody start a wash after 11:30pm when she would customarily lock the front door and begin cleaning. She would lock the back door earlier in the evening so she only had one entryway to worry about. After 11:30, she would only let in people that had laundry or that she knew "for her own protection." *Id*. at 19–22. He believed that the decedent was opening the rear door for someone she knew when he pushed his way in. *Id*. at 54. The rear door's deadbolt opens and closes with a key and was found propped open.

Detective Hoffner also expressed his opinion that the decedent was killed "between 11:30pm and a quarter to 12" on the night of the murder. He based this opinion on knowing the decedent locked the front door behind two girls at 11:30pm and that it was customary that she would then

begin to clean. Detective Hoffner knew that it took about 30 minutes to clean the laundromat. When the police arrived at 3:05am, the place hadn't been fully cleaned yet, but a mop and cleaning supplies had been taken out and cleaning had begun.[8]

The investigating grand jury did not produce charges.

7. Corey Watkins and Melanie Foreman

In April 1996, after the case had been cold for seven months, the police questioned Corey Watkins, a drug dealer who was in local custody, regarding the laundromat murder. According to a defense investigator who spoke with Watkins, police handcuffed Watkins to a chair and coerced him into signing a prepared statement. *See* Pet's App'x at 85a–87a (O'Leary Aff. ¶ 2). In that statement, Watkins told police that Joe Maio told him that Weihe confessed the crime to Maio. Pet's App'x at 155a (Corey Watkins

[8] The Commonwealth notes that in 2018, a defense investigator working for Ramirez spoke with Detective Hoffner at his retirement home in central Florida about this case. During that conversation, Detective Hoffner allegedly told the investigator that he believed Ramirez was innocent of the crime. As evidence, he noted that no coins were stolen, making the witnesses' testimony about coins noncredible, and that it was among the bloodiest crime scenes he'd ever seen, so the perpetrator would have been covered in blood. Hoffner also allegedly told the trial prosecutor about his reservations about Ramirez's guilt before trial but was ignored. *See* DAO App'x at 35 (12/12/2018 defense investigative memo). The Commonwealth notes that this memo was provided to them pursuant to a limited waiver of the work product privilege. The Commonwealth has so far been unsuccessful in contacting Detective Hoffner to corroborate this.

4/25/1996 statement). Watkins also reported in his statement that he saw Weihe try to buy drugs with a "pocketful of change." *Id*. at 156a. He told police that his friend, Melanie Forman, also had information.

Five days later, the police interviewed Forman, who was a drug dealer facing federal gun and drug charges. Forman told the police that she knew that Ramirez, Weihe, and T.A. did the crime. *See* Pet's App'x at 71a (Melanie Forman 5/1/1996 Statement). According to Forman, Ramirez confessed the crime to her at Sara Hurd's house while partying and told her that he got $250 in the robbery. *Id*. at 72a. She said that, on the night of the murder, Sara Hurd bought PCP off of her using $1 bills Ramirez had gotten from the robbery. *Id*. at 74a. According to Forman's statement, Ramirez committed the crime while Weihe retrieved a soda and T.A. waited outside.[9] Forman testified for the prosecution at Ramirez's trial and reiterated some of the contents of her statement. Watkins was not called to testify.

[9] It's suggested in Forman's statement that police had interviewed her previously and she denied having any knowledge of the crime. Forman Statement at 13. The Commonwealth has been unable to find any prior recorded statements from Forman or any notes regarding prior interviews in the file.

Both Watkins and Forman were interviewed by Detective McDermott and have since recanted their police statements and/or trial testimony, citing police pressure and threats of prosecution as motivating their statements. *See* Pet's App'x at 86a (O'Leary Aff. ¶¶ 2—3).[10]

8. Billy Weihe

The police interviewed Billy Weihe three times in this matter. In March 1995, Weihe first told the police that he and Ramirez slept in his basement on the night of the murder and that, when Ramirez woke up, he confessed the crime to him and showed him a wad of money. Weihe then announced to the police that he had lied and was going to tell them the truth, then telling them that he was at Mary Emanuel's house with Mary, her brother J.C. Darnell, Ramirez, and Peter Gozzi on the night of the murder and that, at some point during the night, Ramirez announced he was "going to get

[10] Forman also claimed the detectives who interviewed her were feeding her information and telling her what to say in addition to threatening her. The Commonwealth notes that Detectives McDermott and Vivarina, who interviewed Forman, do not have any known record of formal discipline. That said, in the interests of fulfilling its ethical obligations to the court, the Commonwealth acknowledges that both detectives have faced allegations of coercing and/or eliciting false statements from witnesses that at least one jury has believed. *See Commonwealth v. Whitaker*, CP-51-CR-0413791-2002, *on remand from grant of habeas relief in Whitaker v. Superintendent Coal Twp*, 721 Fed. App'x 196 (3d Cir. 2018) (non-precedential).

paid," and left the house to rob the laundromat. Weihe then said that neither he, nor Ramirez, nor Emanuel told anyone about what happened. He surmised that Emanuel planned the robbery with Ramirez, because she knew the layout of the laundromat due to her father's employment there. Weihe guessed that Eddie left to rob the laundromat at midnight or 12:15am and returned 30 minutes later with money and "full of energy." DAO App'x at 03–15 (Billy Weihe 3/1/1995 Statement). Weihe said he did not see any blood or cuts on Ramirez. According to previously undisclosed police activity sheets, and Weihe's trial testimony, he then immediately recanted his statement, saying he had made the whole thing up. *See* Pet's Ex. 5 (3/2/1995 Hoffner Activity Sheet); N.T., 12/16/1995 at 108.[11]

Weihe then issued a second statement on April 11, 1995 to Detectives Worrell and Gross that reaffirmed his first, recanted statement. Pet's App'x 41a–43a (William Weihe 4/11/1995 Statement). He then recanted that second

[11] Weihe's testimony in this regard came as a surprise to Ramirez's defense counsel, who asked the trial prosecutor if there were any notations in the file either suggesting or confirming this recantation. The trial prosecutor, who the Commonwealth believes did not have the activity sheet, responded that there were not. *See* N.T., 12/16/1997 at 165 (**Q**: Do you have that notation anywhere?; **A**: No, Mr. McMahon.). As discussed below, this notation exists on the recently disclosed March 2, 1995 police activity sheet.

statement, which was not disclosed pre-trial but was mentioned during trial. *See* N.T., 12/16/1997 at 176.

Thirteen months later, in July 1996, the police interviewed Weihe a third time. This time, interviewed by Detectives McDermott and Vivarina, Weihe implicated both himself and Ramirez. He told police that he was at the Darnell residence on the night of the murder with Ramirez, Mary Emanuel, J.C. Darnell, and T.A. Weihe said that at some point they left and went back to his house, after which Ramirez announced he wanted to rob the laundromat. *See* Pet's App'x at 166a–167a (Billy Weihe 7/3/1996 Statement). Weihe then agreed to be Ramirez's lookout and the two began walking back towards the laundromat.

Ramirez then allegedly walked in through the front door and Weihe sat on a table in the front of the laundromat. Weihe told police Ramirez asked for money three times, to which the decedent did not respond, before he saw Ramirez hit her with something, causing her to fall to her knees. *Id*. at 168a. Weihe then went outside, immediately followed by Ramirez who "already had the money." *Id*. at 169a. According to Weihe, Ramirez's pockets were so full of loose change that his pants were falling down. *Id*. at 177a. The two boys then ran down Pratt Street before running into T.A. Weihe told police that the three boys then went to Sara Hurd's house, where

Ramirez confessed the crime to attendees at her party, including Hurd, Maio, and T.A. Ramirez then left to purchase PCP from Melanie Forman with proceeds from the robbery. The group smoked PCP for the remainder of the night, with Ramirez leaving to buy PCP at least once more. *Id*. at 169a–172a. Later in the evening, Weihe allegedly saw a spot of blood on one of Ramirez's boots. *Id*. at 176a.

9. David Wadsworth

Detective McDermott interviewed David Wadsworth in June 1996. Wadsworth told police that people were saying that Ramirez, Weihe, and T.A. were involved but that he asked Ramirez about it and Ramirez denied his involvement. *See* DAO App'x at 28–30 (David Wadsworth 6/24/1996 Statement). Wadsworth was not called to testify at trial and has since signed an affidavit alleging the police tried to coerce him into inculpating Ramirez, but he refused. *See* DAO App'x at 31 (Wadsworth Aff. ¶¶ 1–2) (alleging police tricked him into getting into their car and then took him to 8th and Race where they "threatened [him] with a warrant" and to throw him in jail if he did not inculpate Ramirez).

C. The trial

After the renewed investigation in spring 1996, Ramirez was arrested and charged with first-degree murder, robbery, and conspiracy. The Commonwealth sought the death penalty. Ramirez retained Jack McMahon to represent him. The trial prosecutor was Mark Gilson, and the case was tried in front of a jury before the Honorable Paul Latrone.

At trial, the prosecution's theory was that, after leaving the Emanuel residence near midnight, Ramirez and Weihe went to Weihe's house where they ate food and decided to go to a party at Sara Hurd's house. On the way to Hurd's house, Ramirez robbed and murdered the decedent and then he and Weihe continued on to the party where they confessed the crime and used his proceeds to purchase PCP from Melanie Forman.

The defense theory was that Ramirez had nothing to do with the murder as he had no blood on him, the laundromat did not keep loose change in the back office, the prosecution's proposed timeline made little sense, and the prosecution's witnesses were unreliable.

The parties' main evidence is summarized as follows:

1. The prosecution's case

a. Ernest Manger

Ernest Manger, the owner of the laundromat, testified that each laundromat attendant has a locked cashbox in the back office used to make change for customers, *i.e.*, exchanging large bills for small bills to use in the change machines. N.T., 12/12/1997 at 22. He estimated that the decedent's cashbox would have had a couple hundred dollars in it, plus a cup with an accumulation of large bills from everyone's shifts with about $800 in it. Almost no money was kept on the attendant's person or in a bag. *Id*. at 50–51. Manger noted that it is possible a roll of dimes or pennies could be in a cashbox because they can't be used in any machines. *Id*. at 26.[12] He also testified that the front door is typically locked by 12:30am and the side/rear door is locked earlier in the evening, and that he'd never seen Ramirez in his store before. *Id*. at 35–37, 53.

b. Joseph Maio

Maio testified mostly consistently with his second police statement, *i.e.*, that he overheard Ramirez confess to the crime at Sara Hurd's party the

[12] Indeed, a roll of dimes was found in the decedent's cashbox left over from the robbery. N.T., 12/15/1997 at 50.

night of the murder while everyone, including Hurd's mother, was drinking and doing drugs. N.T., 12/12/1997 at 81, 86. Maio could not remember what time this happened but estimated sometime around midnight. *Id*. at 85. He testified that Ramirez confessed to robbing and killing the decedent when he went to get a soda because Ramirez saw "change like bags or something like pouches" and the decedent alone and decided to do the crime. *Id*. at 88; *see also id*. at 137 (agreeing both of Ramirez's pockets were "loaded with change"); 140 (Ramirez said he "took the bag with money in it"). Specifically, Maio said Ramirez was loaded down with quarters and had "a little bit of ones" in paper currency. *Id*. at 142–43. Lastly, he testified that when Ramirez arrived to Hurd's party he looked the same as he did earlier in the day, in the same clothes, and there was no blood on him. *Id*. at 145.

Maio testified that his first police statement was a lie he told to protect his friends, but the second, inculpatory one was true. *Id*. at 100–02.[13] As

[13] The Commonwealth notes that Maio, a minor, was accompanied by his father when he issued his first statement claiming no knowledge, and was by himself and no longer a minor when he gave his second statement that inculpated Ramirez. *See* N.T., 12/12/1997 at 97, 101. His first interview was conducted by Detective Worrell and his second interview was conducted by Detectives McDermott and Vivarina.

noted above, Maio has allegedly recanted his second police statement and his trial testimony and is now deceased.

c. Detective William Gross

Detective Gross testified that there was blood found on the floor and rear door of the laundromat as well as the handle to the office and the office's interior. He noted the decedent's cleaning supplies were out. He told the court there were no signs of blood in the main laundry area, the metal pipe had some blood on it, and a fleece jacket was smeared with blood. N.T., 12/15/1997 at 25, 55. He also reiterated that the laundromat's rear door requires a key to both get in and get out, the rear office was always locked, and that the decedent's keys were never recovered. *Id*. at 35, 38.

d. Peter Gozzi

The prosecution also called Peter Gozzi who testified largely consistently with his statement. Gozzi told the court that he was at the Emanuel house on the night of the murder with Ramirez, Weihe, and others when Ramirez left for about fifteen minutes to get a soda. Gozzi could not remember what time Ramirez left or returned, or when they all left the house for the evening. N.T., 12/15/1997 at 69, 71, 80. Gozzi then drove Ramirez and Weihe to Weihe's house, neither one of them mentioning any nearby party. *Id*. at 81.

e. Luis Rivera

Rivera, consistent with his statement, testified that he spoke with Ramirez the week of the murder and Ramirez confessed to the crime at Sara Hurd's house, but not at her party. N.T., 12/17/1995 at 8. He also claimed Ramirez appeared "glassy eyed" at the time like he was inebriated, though that is not in his police statement. *Id*. at 9.[14]

f. Dr. Gregory McDonald

The assistant medical examiner, Dr. McDonald, testified that the decedent had sustained no fewer than nine blows to the left side, right side, and top of her head resulting in multiple fractures to the skull. N.T., 12/17/1995 at 41, 45–46. She also had facial injuries consistent with being punched with a fist as well as defensive injuries on her left hand. *Id*. at 42. Crucially, Dr. McDonald testified that the decedent was likely killed between 11:30pm and 2:30am and that her assailant would not necessarily be covered in blood. *Id*. at 51–52, 56, 60.

g. Melanie Forman

Consistent with her statement, Melanie Forman testified that on the night of the murder, Sara Hurd purchased drugs from her using mostly $1

[14] As noted above, Rivera has since recanted this testimony claiming that it was the product of police pressure and coercion.

bills. N.T., 12/16/1995 at 7–8. Hurd allegedly bought drugs from Forman between nine and twelve times that night using money from the robbery. *Id*. at 8. The following day, after hearing about the murder, Forman went to Hurd's house where she smoked PCP with Hurd, Ramirez, and T.A. *Id*. at 24. Forman testified that, at this point, Ramirez confessed the crime to her and told her he did it with Weihe and T.A. *Id*. at 25–27, 30. This differed from her statement to police, in which she alleged this conversation happened later in the week. *Id*. at 43. Two weeks after she gave her police statement, two of her drug charges were dropped. *Id*. at 45.[15]

h. Billy Weihe

Weihe testified at trial consistently with his third police statement. He testified that he met up with Ramirez in the early evening of February 19, 1995, and hung out with him, Joe Maio, and T.A. N.T., 12/16/1995 at 79. After smoking marijuana, the four boys planned to catch the bus across Roosevelt Boulevard to the Emanuel house. *Id*. at 83. According to Weihe, only Maio and T.A. had bus passes, so he and Ramirez walked. *Id*. at 85. When they arrived at the Emanuel house, Mary Emanuel and her brother J.C. were there and their parents were upstairs. Maio and T.A. were not there. The group realized they needed rolling papers to smoke more marijuana, so

[15] As noted above, Forman has since recanted her statement and testimony.

Mary and Ramirez decamped to a nearby 7-Eleven to purchase some. Before the group left, Darnell, Sr. asked Mary to get him a soda while they were out. *Id*. at 89.

Emanuel and Ramirez came back 30 minutes later, at around 11pm, with another friend they'd run into at the 7-Eleven, Pete Gozzi. *Id*. at 91. When they returned, they realized they'd forgotten a soda for Mary's father, so Ramirez ran to the laundromat across the street to grab one from a vending machine. *Id*. at 92–93. Weihe did not know how long Ramirez was gone or what time it was, but when he returned, the group smoked more marijuana before Mary's parents asked the kids to leave. Again, Weihe was unsure of the time. *Id*. at 93. Gozzi then drove the two boys to Weihe's house and dropped them off.

According to Weihe, after eating some food, the boys decided to walk back towards J.C.'s house, a walk that would take roughly 15 minutes. On the way, Ramirez told Weihe he'd decided to rob the laundromat and asked Weihe to act as his lookout. *Id*. at 98. Ramirez allegedly walked in through the front door and asked for money, to which the decedent did not respond. Ramirez then allegedly "hit her with a black stick." *Id*. at 103. Weihe could not remember if the door was locked or how exactly Ramirez got in, or from where he got the stick but said that Ramirez wielded the stick with only one

hand. *Id.* at 211, 219. Weihe then went outside and did not hear or see anything else.

When Ramirez left the laudromat, he did not have anything with him but Weihe said he could hear all the loose change jingling in his pockets and Ramirez had one spot of blood on one of his boots. *Id*. at 226, 232. Weihe said that Ramirez was wearing a black jacket, Timberland boots and his father's black leather gloves at the time, but no hat. *Id*. at 107–08. The boys then ran from the scene and ran into their friend T.A. *Id*. at 113. They then all went to Sara Hurd's house. *Id*. at 118. Weihe said that Ramirez, not Hurd, then used the laundromat money to buy PCP from Melanie Forman. *Id*. at 120. When they returned to Sara Hurd's house, Ramirez allegedly confessed the crime to a group of people. *Id*. at 123.

During his testimony, Weihe mentioned that he had recanted his first two statements to detectives, recantations that were not disclosed prior to trial. *Id*. at 164, 167, 175–76. When defense counsel asked the trial prosecutor if there were any notations in the file reflecting these recantations, the prosecutor responded that there were not. *Id*. at 165; *see also id*. at 171 ("**McMahon**: That is a statement by {Weihe}. Do we have that?; **Gilson**: No."). The trial prosecutor was mistaken, as the Commonwealth believes

he simply did not have these notations. Weihe's recantation is reflected in recently disclosed activity sheets and grand jury testimony.

In exchange for his cooperation against Ramirez, Weihe was permitted to plead guilty to third-degree murder. He ultimately served 5 years in prison.[16]

2. The Defense's Case

a. Brooke Williams

Brooke Williams, a friend of Ramirez's, testified for the defense. She testified that on the night of the crime she was at Sara Hurd's house, there was no party, and she never saw Ramirez. N.T., 12/18/1997 at 4–7.

b. Detective Stephen Vivarina

Detective Vivarina was called to testify by the defense. He admitted that Weihe recanted his initial statement to him, and an activity sheet prepared by Detective Vivarina was then turned over during trial establishing the recantation. There is no record evidence that the more detailed activity sheet prepared by Detective Hoffner -- which specified that Weihe recanted his statement specifically as to Ramirez's involvement -- was disclosed. N.T., 12/18/1997 at 21–41.

[16] To the Commonwealth's knowledge, Weihe has not recanted any part of his trial testimony.

c. Jay Darnell, Sr.

Jay Darnell, Sr., Mary Emanuel and J.C. Darnell's father, testified that Ramirez and friends left his home at around 1am on the night of the murder, echoing J.C.'s statement to police. N.T., 12/18/1997 at 61–63. He also testified that it was customary to lock the front door to the laundromat by 12:30am, though the decedent would let people in after that if she knew them. *Id*. at 65–66. He lastly alleged that loose coins were not kept in the rear office at all. *Id*. at 68.

d. Sara Hurd

The defense called Sara Hurd, who testified that she was at home with her son and Brooke Williams on the night of the murder and did not have a party, though she did have one the night before. She never heard anyone confess to this crime in her home or her presence. N.T., 12/18/1997 at 96–102. She also testified on cross-examination that the police attempted to coerce her into issuing an inculpatory statement, but she refused. *Id*. at 104–07, 121–22. She has since reaffirmed this in a sworn affidavit. *See* Pet's App'x at 46a–47a (Hurd Aff. ¶¶ 1–3).

e. Eduardo Ramirez, Sr.

Lastly, the defense called Ramirez's father, who was a former police officer then working as an investigator for the Defender Association of Philadelphia. He told the court that his son was at the Darnell/Emanuel house on the night of the murder and that he returned home the following morning wearing the same clothes. N.T., 12/19/1997 at 9–11. He had no blood on his clothes or boots and had no money. *Id*. at 11–13.

3. Closing argument – defense

In closing, the defense argued that no physical evidence tied Ramirez to the crime, specifically noting that no bloody clothes, money, or keys were ever recovered and no fingerprints matched Ramirez. N.T., 12/29/1997 at 14–19, 29–30. Ramirez's counsel argued the import of the jacket recovered from the laundromat, presumably from the spot where the struggle with the decedent began, and that it did not belong to Ramirez. *Id*. at 21–22.

He also argued that the Commonwealth witnesses were unreliable. In so arguing, he stressed that there was no evidence any change was stolen from the laundromat, that the proposed timeline of events made little sense, and that the real assailant would have been covered in blood. *Id*. at 32–45, 50–58.

4. Closing argument – prosecution

Since the timeline of events was critical in this case, in his closing, the trial prosecutor first argued that Ramirez left the Darnell/Emanuel house "sometime after [midnight] but nowhere as late as 1am." N.T., 12/29/1997 at 77. By extension, he argued that the front door to the laundromat may not have been locked at that point, despite custom, though he conceded the decedent appeared to be in the middle of cleaning at the time of the attack. *Id*. at 81–83, 87. To bolster this argument, the trial prosecutor suggested to the jury that the defense called Darnell, Sr. about what time the boys left his home, knowledge he had only second-hand, rather than calling one of the kids themselves because the kids' testimony would have been unfavorable to the defense, *i.e.*, they would have said Ramirez left earlier. *Id*. at 78. The Commonwealth notes that the trial prosecutor misspoke here, as all three kids either said or suggested in their statements to police that Ramirez left the Darnell house between 1 and 2am, which is favorable to the defense's argument. *See* Pet's App'x at 46a (Mary Emanuel 2/28/1995 Statement); DAO App'x at 17 (J.C. Darnell 2/24/1995 Statement); DAO App'x at25 (Peter Gozzi 3/1/1995 Statement).

The prosecutor also argued that the "black stick" Weihe mentioned in his testimony, though not the murder weapon, may have referred to the

wooden broom in the laundromat and that may have been the instrument that began the assault. *Id*. at 86–87. He also argued that there was only a little bit of blood at the scene and that the idea that the assailant would have been covered in blood is "movie talk." *Id*. at 99–101. He suggested that no money was recovered because Ramirez spent most of it "that night buying drugs from Melanie Forman." *Id*. at 116. As to the change, the prosecutor argued that it was "flat wrong" that they don't keep loose change in the back office because a roll of dimes was found in the decedent's cashbox. *Id*. at 118–19. In so arguing, he relied on the testimony of Detective Gross. *Id*.; *see also id*. at 120 ("Use your common sense. Of course they have change there."). Lastly, he relied heavily on Weihe's guilty plea and the credibility of Forman, Rivera, and Maio in urging the jury to convict Ramirez. *See id*. at 125–43.

D. Conviction, Post-Conviction Proceedings, and Disclosures

The jury deliberated for roughly two and a half days before finding Ramirez guilty of second-degree murder, robbery, and conspiracy. During the course of their deliberations, they asked for Maio's testimony to be read back to them, as well as for definitions of second and third-degree murder and accomplice liability. Ramirez was sentenced to a mandatory term of life imprisonment.

In 2000, the Pennsylvania Superior Court affirmed Ramirez's conviction and sentence on issues not presently before this Court. The Pennsylvania Supreme Court denied *allocatur*. *See Commonwealth v. Ramirez*, 1030 EDA 1998 (Pa. Super. June 5, 2020), *appeal denied*, 764 A.2d 1067 (Pa. 2000) (Table).

In 2001, Ramirez filed a timely *pro se* petition pursuant to Pennsylvania's Post-Conviction Relief Act, 42 Pa. C.S. § 9541–46. Ramirez's post-conviction counsel, Mark Scott-Sedley, then filed an amendment and an addendum to Ramirez's PCRA petition. As part of these PCRA proceedings, it became clear that the Medical Examiner's Office had in its possession fingernail clippings from the decedent that had neither been turned over nor tested. The PCRA court ordered the clippings be tested for DNA. Those tests found male DNA under the decedent's fingernails that did not belong to Ramirez.

As part of these proceedings, Ramirez alleged numerous instances of ineffective assistance of counsel, which led to a number of evidentiary hearings that took place in 2005 before the Honorable Peter F. Rogers. The relevant testimony from those hearings is summarized below:

1. Defense counsel

Jack McMahon, Ramirez's trial counsel, testified before Judge Rogers in January 2005. McMahon testified that he believed he had a strong case due

to of the lack of physical evidence and because the Commonwealth witnesses were "less than savory characters" who had lied in the past and had credibility problems. N.T., 1/3/2005 at 27–28. McMahon also said that he would not have chosen to pursue any specific alternative suspect due to of Weihe's guilty plea, including Butchy Oberholzer, because without some connection to Weihe or this crime, he did not feel it would be a good argument. *Id*. at 74, 84–85. To that end, McMahon noted that if he had any evidence that Oberholzer, or anyone else, had committed the crime, he would have used it but he "didn't have that," so he didn't. *Id*. at 89. He also noted that he felt Maio came off well in his testimony and that, if he'd had any additional evidence to impeach him with, he would have used it. *Id*. at 36, 39, 92.

2. Trial prosecutor

The trial prosecutor also testified as part of the 2005 PCRA hearings. Relevant to this action, he told the court that that all the discovery that was tendered pre-trial was reflected on the discovery letters. N.T., 4/22/2005 at 73. He specifically noted that he did not believe any grand jury notes were turned over to defense counsel in advance of trial.[17] N.T., 1/3/2005 at 108–

[17] The Commonwealth notes that grand jury notes favorable to a criminal defendant are generally discoverable pursuant to the government's constitutional obligations under *Brady*. *See Comment* to Pa.R.Crim.P. 230(B)(3);

09. He also testified that he had no information from Medical Examiner's Office Investigator Suplee available to him before trial. N.T., 4/22/2005 at 75–78.

* * *

The PCRA court dismissed Ramirez's petition in 2006, finding that all of his claims were waived, previously litigated, or without merit. The Pennsylvania Superior Court remanded for an additional evidentiary hearing on an ineffective-assistance claim not relevant to this action. On remand, the PCRA court found the additional claim meritless and again dismissed. The Superior Court then affirmed the lower court's dismissal of all of Ramirez's claims and the Pennsylvania Supreme Court denied *allocatur*. *See Commonwealth v. Ramirez*, No. 1684 EDA 2010 (Pa. Super. Feb. 6, 2012), *appeal denied*, 51 A.3d 838 (Pa. 2012) (Table).

In 2015, Ramirez filed the instant PCRA petition raising the following claims:

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see also Commonwealth v. Lang, 537 A.2d 1361, 1363 (Pa. 1988) ("The Commonwealth acknowledges its obligation to disclose exculpatory information to the defendant prior to trial, even if such evidence is produced by the investigating grand jury."); *Commonwealth v. Cascardo*, 981 A.2d 245, 260 (Pa. Super. 2009) (favorable grand jury transcripts subject to disclosure under *Brady*); *cf. Tierney v. United States*, 410 U.S. 914, 916 n.2 (1973) (noting that "grand jury testimony is regularly disclosed to criminal defendants without court order pursuant to *Brady*").

1) The Commonwealth violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose evidence that police coerced or attempted to coerce the statements and testimony of Luis Rivera, Melanie Forman, Joseph Maio, Sara Hurd, Joseph McDevitt, Corey Watkins, Mary Emanuel and Billy Weihe[18];

2) Ramirez's trial counsel was ineffective for failing to "investigate, develop, and present" evidence of police misconduct and coercion in this case; and

3) Initial PCRA counsel was ineffective for failing to raise a due process claim rooted in Mary Emanuel's allegations of coercion and Maio's alleged recantation.

See 2015 PCRA Pet. ¶¶ 51–65.[19]

In 2016, Ramirez filed an amendment to his petition including signed affidavits from women named Billie Jo Blood,[20] Maureen Suarez, and Sabrina Suarez regarding Maio's alleged recantation and an affidavit from David Wadsworth, described above, who is now claiming the police tried to coerce him into inculpating Ramirez, which he did not do. Ramirez also

[18] In the alternative, Ramirez raises the same claim as an after-discovered evidence claim sounding in the PCRA and focused on the alleged recantations of Rivera, Forman, and Maio. *See* 2015 PCRA Pet. ¶¶ 60–62.

[19] Ramirez has also filed a habeas corpus action, raising the claims considered here and additional claims, that is currently stayed in federal court pending the disposition of this petition. *See generally Ramirez v. DiGuglielmo*, E.D. Pa. No. 12-5803.

[20] As noted above, though Blood's affidavit was not prepared until 2016, Ramirez's defense counsel knew of her existence at the time of trial and did not find her credible. N.T., 1/3/2005 at 91. The Suarez sisters were not mentioned prior to Ramirez's recent PCRA petitions.

filed a motion for new DNA testing. Specifically, Ramirez requested that the wooden broom, metal pipe, and fleece vest from the crime scene all be tested for male DNA. The Commonwealth ultimately agreed to the testing, which took place in 2019. The resultant DNA testing, using methods and technology that did not previously exist, found the same male DNA on both the metal pipe and the fleece vest. Ramirez was excluded as a source for that DNA.[21]

In 2020, Ramirez filed a second amendment to his pending petition raising an after-discovered evidence claim based on the new DNA testing results. The 2020 amendment also included an additional *Brady* claim that the Commonwealth failed to disclose the misconduct history of Detective Paul Worrell, who played a role in the Ramirez investigation and took statements from Luis Rivera, Sara Hurd, Joseph Maio, and Billy Weihe. Worrell's misconduct history had recently been made public by the 2019 exoneration of Willie Veasy. *See* 2020 PCRA Amendment ¶¶ 15–20; *see also Commonwealth v. Willie Veasy*, CP-51-CR-641521-1992, Joint Stipulations ¶¶ 1–80 (filed Oct. 1, 2019).

[21] No conclusive DNA was able to be pulled off the wooden broom.

In 2021, Ramirez and the Commonwealth engaged in voluntary discovery, including a review of the DAO's file for this case.[22] As a result of that discovery, Ramirez filed a third amendment to his petition in 2022 raising additional *Brady* claims based on the alleged suppression of the following 11 additional pieces of evidence found in the DAO's file:

(1) Six police activity sheets, materially summarized as follows:

- Activity sheet dated 2/21/1994, prepared by Detective Hoffner, writing that the assailant may have significant injuries and that detectives checked the area hospitals for trauma patients;

- Activity sheet dated 2/22/1995, prepared by Detective Hoffner, noting that decedent's husband's boss was posting a $2,500 reward for information on the homicide and that "arrangements would be made";

- Activity Sheet dated 2/23/1995, prepared by Detective Hoffner, noting that J.C. Darnell was a suspect in a previous burglary of the laundromat and that the decedent began cleaning up "about 11:30pm that night." The activity sheet also noted an interview with undisclosed witness, Betty Kiefer, who told the police she spoke with Darnell the morning after the murder and he was wearing boots with "dark brown stains on them" and that he appeared "real nervous";

- Activity sheet dated 3/1/1995, prepared by Detective Hoffner, which notes an interview with undisclosed witness Bert Calafell, who told police he had

[22] The police department's homicide file, as well as one box of the DAO's file, are currently missing. The Commonwealth has gone to great lengths to locate the missing materials, but has been unsuccessful.

heard that Butchy Oberholzer did the job with a white kid named Billy;

- Activity sheet dated 3/2/1995, prepared by Detective Hoffner, which notes that he spoke with Mary Emanuel, who denied overhearing Ramirez commit any crimes. Detective Hoffner notes that he spoke with OME investigator Suplee, who told Hoffner that the assailant "would not only have his clothes covered with blood but his face and hands" too. Detective Hoffner also noted a conversation with Dr. McDonald wherein the doctor relayed that the decedent appeared to have been punched with a fist three times and had a tooth knocked out as a result. Hoffner also heard Weihe recant his inculpatory statement and say that "he lied when implicating Ramirez."[23]

- Activity sheet dated 5/16/1995, prepared by Detective Hoffner, noting an interview with undisclosed witness Sean Maguire. Maguire told police he heard that Butchy Oberholzer committed the laundromat murder with a white male named Billy.

(2) handwritten investigative notes regarding similar evidence and specifically summarizing undisclosed interviews with witnesses T.A. and Nathaniel Rodriguez;

(3) form 75-328 noting profuse bleeding from decedent's head from OME Suplee;

(4) an ATF operational plan targeting Weihe for contact from a confidential informant;

[23] Another activity sheet, also dated 3/2/1995 but prepared by Detectives Vivarina and Snell, noted Weihe indicated he "made up his story and was afraid." This activity sheet was disclosed at trial during Detective Vivarina's testimony and is not at issue here.

> (5) the grand jury testimony of Detective Hoffner, summarized in detail above; and
>
> (6) an internal memo written by ADA Gail Fairman noting that the decedent engaged in a "struggle" with her assailant and complaining that it is difficult to get what they want out of juvenile witnesses when they "bring attorneys."

See generally 2022 PCRA Amendment.

The Commonwealth now responds. As noted above, the Commonwealth limits its response to the cumulative effect of Ramirez's *Brady* claims, as the Commonwealth believes those claims warrant relief in the form of a new trial which would moot the remainder of Ramirez's claims. As such, the Commonwealth currently takes no position on Ramirez's after-discovered DNA evidence claim or Ramirez's claims focused on various witnesses' recantations or police misconduct, outside of Detective Worrell. Similarly, the Commonwealth takes no position as to Ramirez's guilt or innocence, only the fairness of his trial and the reliability of its result.

III. DISCUSSION

A. Ramirez's *Brady* claims are timely and thus properly before the Court.

A PCRA petition must be filed within one year of the date a petitioner's conviction becomes final. *See* 42 Pa.C.S. § 9545(b). Because Ramirez filed his 2015 PCRA petition nearly 15 year after his conviction became final, it is facially untimely. To that end, Ramirez alleges he satisfies the government

interference exception to the time bar. To meet this exception, Ramirez must show his failure to raise a claim earlier was the result of "interference by government officials." *Id*. § 9545(b)(1)(i).

It is well-settled that properly pleaded *Brady* claims meet this exception, as by virtue of the claim itself the petitioner has recently discovered evidence that was in control of the State. *Commonwealth v. Natividad*, 200 A.3d 11, 19 (Pa. 2019). Then, so long as the petitioner raises a *Brady* claim based on newly discovered evidence that was in the government's possession within one year of learning of said evidence, the petition is timely. 42 Pa. C.S. § 9545(b)(2).

Here, the Commonwealth agrees (1) that the evidence that forms the basis of Ramirez's *Brady* claims, *i.e.*, police activity sheets, handwritten investigative notes, grand jury testimony, misconduct history, internal memoranda, and police interviews were in the exclusive possession of the Commonwealth; and (2) that Ramirez's *Brady* claims were raised within one year of the Commonwealth's disclosure of this evidence. Because these claims were raised within one year of the date on which the facts underlying them became discoverable, they are timely. Further, because Ramirez could not have raised these claims in earlier proceedings, they are not waived. *See* 42

Pa. C.S. § 9544(b), § 9545(b)(1)(ii). As such, Ramirez's *Brady* claims are properly before the Court.

B. Ramirez is due relief on his claims that the prosecution violated *Brady v. Maryland* by failing to turn over a host of evidence in this matter.

The prosecution has an obligation to disclose to the defense information that is favorable to the guilt or punishment of the defendant, and the failure to do so may deprive a defendant of due process. *Brady*, 373 U.S. at 87. To prove a *Brady* violation, the evidence must have been (1) favorable to the accused, either exculpatory or impeaching, (2) suppressed by the state, either willfully or inadvertently, and (3) material enough that prejudice resulted from its suppression, meaning that there is a reasonable probability of a different result. *Dennis v. Sec'y, Penn. Dep't of Corrs.*, 834 F.3d 263, 284–85 (3d Cir. 2016) (en banc). Materiality of suppressed evidence must be "considered collectively, not item by item." *Id*. at 312 (citing *Kyles*, 514 U.S. at 441).

Below, the Commonwealth first assesses whether the evidence Ramirez presents was (1) suppressed by the prosecution and (2) favorable to Ramirez. The Commonwealth then evaluates whether when considered together the suppressed evidence is material, undermining confidence in the outcome of Ramirez's trial. The Commonwealth concludes that Ramirez

has satisfied all three *Brady* elements and recommends he be granted a new trial.

1. The police activity sheets, handwritten investigative notes, grand jury testimony, Weihe recantations, internal memoranda and police misconduct evidence is favorable and was suppressed.

As set out in detail above, Ramirez now presents the following 12 pieces of evidence in support of his *Brady* claims:

- Police activity sheet dated 2/21/1994 noting that the assailant may have significant injuries and that detectives checked the area hospitals for trauma patients (Pet's Ex. 9);
- Police activity sheet dated 2/22/1995 noting that decedent's husband's boss was posting a $2,500 reward for information on the homicide and that "arrangements would be made" (Pet's Ex. 37);
- Police activity sheet dated 2/23/1995 noting that J.C. Darnell was a suspect in a previous burglary of the laundromat and that the decedent began cleaning up "about 11:30pm that night." The activity sheet also noted an interview with undisclosed witness, Betty Kiefer, who told the police she spoke with Darnell the morning after the murder and he was wearing boots with "dark brown stains on them" and that he appeared "real nervous" (Pet's Ex. 31);

- Police activity sheet dated 3/1/1995, prepared by Detective Hoffner, notes an interview with undisclosed witness Bert Calafell, who told police he had heard that Butchy Oberholzer did the job with a white kid named Billy (Pet's Ex. 25);
- Police activity sheet dated 3/2/1995, notes that Detective Hoffner spoke with Mary Emanuel, who denied overhearing Ramirez commit any crimes. Detective Hoffner notes that he spoke with OME investigator Supplee, who told Hoffner that the assailant "would not only have his clothes covered with blood but his face and hands" too. Detective Hoffner also noted a conversation with Dr. McDonald wherein the doctor relayed that the decedent appeared to have been punched with a fist three times and had a tooth knocked out as a result. Hoffner also heard Weihe recant his inculpatory statement and say that "he lied when implicating Ramirez" (Pet's Ex. 5);
- Police activity sheet dated 5/16/1995 noting interview with undisclosed witness Sean Maguire. Maguire told police he heard that Butchy Oberholzer committed the laundromat murder with a white male named Billy (Pet's Ex. 26);

- Investigative notes from police interviews with witness T.A., who told police he was not at Sara Hurd's house on the night of the murder and did not see Ramirez at all that night, and Nathaniel Rodriguez, who told police he overheard Oberholzer complain about not getting much money from the job (Pet's Ex. 28);
- Form 75-328 noting profuse bleeding from decedent's head (Pet's Ex. 6);
- An ATF operational plan targeting Weihe for contact with a Confidential Informant (Pet's Ex. 20);
- The grand jury testimony of Detective Hoffner, summarized in detail above[24] (Pet's Ex. 11);

[24] Though it appears that other witnesses' grand jury testimony was disclosed during the 2005 PCRA litigation of this matter, the Commonwealth agrees and stipulates that Detective Hoffner's grand jury testimony was not among them. Indeed, the only record evidence available supports this. *See* DAO App'x at 33 (1/28/2003 Correspondence from PCRA counsel noting receipt of Mary Emanuel and J.C. Darnell's grand jury testimony); DAO App'x at 32 (Correspondence from FCDO attorney Andrew Childers confirming that the file they received from Ramirez's PCRA counsel contained only four grand jury transcripts: Mary Emanuel, J.C. Darnell, Peter Gozzi, and Samuel Emanuel). The Commonwealth nevertheless agrees that, regardless of whether Hoffner's grand jury testimony was disclosed in 2005 (which would make any discrete *Brady* claim based on that transcript now waived), if it was not disclosed pre-trial then it may be considered as part of the required cumulative materiality analysis on Ramirez's live *Brady* claims, which is meant to analyze all suppressed evidence in the context of the entire record. *See Munchinski v. Wilson*, 694 F.3d 308, 327 n.12 (3d Cir. 2012); *cf. Strickler v. Greene*, 527 U.S. 263, 286 (1999) (analyzing *Brady* and

- an internal memo written by ADA Gail Fairman noting that the decedent engaged in a "struggle" with her assailant and complaining that it is difficult to get what they want out of juvenile witnesses when they "bring attorneys" (Pet's Ex. at 10); and
- Police misconduct stipulations regarding Detective Paul Worrell regarding conduct dating back to 1992 (DAO App'x 36–74) (filings from *Commonwealth v. Willie Veasy*, CP-51-CR-641521-1992).

a. Suppression

The first prong of a *Brady* analysis is whether a piece of evidence was suppressed by the government. It is well-settled that, to comply with *Brady*, prosecutors must "learn of any favorable evidence known to [them and to] others acting on the government's behalf, including the police," and pass that to the defense. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). There is no requirement that a failure to disclose evidence be done in bad faith or otherwise with intention. *Brady*, 373 U.S. at 87 (suppression of favorable evidence violates due process "irrespective of the good faith or bad faith of the prosecutor"). Indeed, "it is the character of the evidence, not the

holding, in the default context, that there is no duty to raise constitutional claims before sufficient evidence is discovered to fully support them).

character of the prosecutor," that makes out a *Brady* claim. *United States v. Agurs*, 427 U.S. 97, 110 (1976).

Further, defendants are entitled to rely on the government's affirmative duty to disclose evidence that is either exculpatory or impeaching, so there is no due diligence requirement under *Brady* and no duty to request such evidence. *Kyles*, 514 U.S. at 434; *see also Strickler v. Green*, 527 U.S. 263, 286–89 (1999); *Banks v. Dretke*, 540 U.S. 668, 696 (2004); *cf. Dennis v. Sec'y, Penn. Dep't of Corrs.*, 834 F.3d 263, 279 (3d Cir. 2016) (en banc) (reversing state court's denial of relief on *Brady* claims as contrary to clearly established federal law, specifically noting the lack of a due diligence requirement after *Kyles*, and chastising lower courts for taking an "unreasonably narrow" view of *Brady*). A prosecutor's subjective assessment of the reliability or usefulness of any potentially favorable evidence goes to the weight of that evidence and is irrelevant to the affirmative duty to disclose. *Kyles*, 514 U.S. at 450–51; *cf.* ALAIR S. BURKE, *Revisiting Prosecutorial Disclosure*, 84 IND. L. J. 481, 494 (Spring 2009) (Because of "confirmation bias, selective information processing, and the resistance to cognitive dissonance…prosecutors err in applying *Brady*'s materiality standard [by] systematically underestimating, not overestimating, materiality"). Lastly, there is no requirement that evidence be admissible to be subject to disclosure. *Dennis*, 834 F.3d at 308–

09 (admissibility requirement is contrary to clearly established federal law) (analyzing *Wood v. Bartholomew*, 516 U.S. 1, 7 (1995)). A defendant need only show that an item was suppressed for purposes satisfying the PCRA by a preponderance of the evidence. *See* 42 Pa. C.S. § 9543(a).

Here, the Commonwealth agrees that there is no record evidence that the items presented here were passed to the defense pre-trial.[25] To be sure, there is also no record evidence that the trial prosecutor knowingly or intentionally failed to disclose the evidence. The trial prosecutor testified to a prior PCRA court during an evidentiary hearing that anything not listed on the discovery letters was not passed in pre-trial discovery, specifically noting that he did not believe any grand jury transcripts were passed.[26] N.T., 1/3/2005 at 108–09; N.T., 4/22/2005 at 73. He further testified that two additional items not included in the letters were passed during trial and

[25] As noted above, one box of the DAO's file is missing, as is the police department's homicide file. In addition, the undersigned has reviewed the state court record currently housed in the federal courthouse, and it is incomplete. That said, the Commonwealth is mindful that it cannot escape its constitutional obligations due to its own shoddy recordkeeping.

[26] As noted above, favorable grand jury testimony is subject to disclosure pursuant to the government's constitutional obligations under *Brady*. *See Lang*, 537 A.2d at 1363 ("The Commonwealth acknowledges its obligation to disclose exculpatory information to the defendant prior to trial, even if such evidence is produced by the investigating grand jury.").

"brought out on the record": results of a polygraph examination not at issue here, and one activity sheet reflecting a conversation between police and Weihe. N.T., 4/22/2007 at 74.

The Commonwealth's own review of its file aligns with the trial prosecutor's prior testimony. It does not appear that any of the evidence now presented by Ramirez was passed prior to the 2021 voluntary discovery in this case, save for Detective Worrell's misconduct history, made public in 2019, and the activity sheet regarding Detective Vivarina's conversation with Weihe, which was passed during the detective's trial testimony.[27] *See* Pet's Exs. 12, 13 (pre-trial discovery letters); N.T., 1/3/2005 at 108–09; N.T., 4/22/2005 at 73–74.

[27] The Commonwealth has reached out to the trial prosecutor and defense counsel regarding the suppressed evidence. Defense counsel did not recall receiving any of it, but did not have his old file to check. He asserted generally that, if he'd had any of this material, he would have used it. The trial prosecutor relayed that he did not believe he passed any of it with the possible exception of "Activity Sheets," as he "seem[ed] to recall" defense counsel "questioning some of the witnesses with information from the Activity Sheets." DAO App'x at 34 (5/23/23 correspondence from Mark Gilson). As noted above, only one activity sheet was brought out and used at trial to question a witness, Detective Vivarina. *See* N.T., 12/18/1997 at 29; N.T., 4/22/2005 at 74 (trial prosecutor noting one activity sheet was passed during trial and brought out on the record regarding Weihe's first police interview during Detective Vivarina's testimony).

The evidence in question here was all maintained in either the prosecution's files and/or the police department's homicide files. Thus, because the evidence was known to the government in advance of Ramirez's trial and there is no record evidence it was disclosed, and mindful of the fact that the standard to show suppression is merely a preponderance, given all of the above, the Commonwealth agrees and stipulates[28] that the above-described 12 items were suppressed for the purposes of a *Brady* analysis.

b. Favorability

The second prong of the three-pronged *Brady* analysis is favorability, *i.e.*, the suppressed evidence must be favorable to the guilt or punishment of the defendant. Evidence can be favorable either as exculpatory or impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 682 (1985). "[E]xculpatory evidence need not show a defendant's innocence conclusively" to be favorable under *Brady*. *Dennis*, 834 F.3d at 287. Indeed, suppressed evidence that "does not wholly undermine the prosecution's theory of guilt does not sap it of its exculpatory value." *Id*. In addition,

[28] Factual stipulations are "formal concessions . . . that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 677–78 (2010).

evidence that could have been used to impeach the testimony and credibility of key witnesses and/or call into question the good faith of the larger investigation is sufficient to establish favorability under *Brady*. *Kyles*, 514 U.S. at 445–51.

The Commonwealth agrees that the suppressed evidence presented here is favorable under *Brady* both for its exculpatory and impeachment value. The suppressed police activity sheets, investigatory notes, internal memoranda, and grand jury testimony, support all four prongs of Ramirez's trial defense: (1) the assailant would have been covered in blood;(2) there were no loose coins taken in the robbery; (3) the witnesses' testimony was unreliable; and (4) the likely timeline of events makes it unlikely that Ramirez was the killer. This evidence, taken together with the undisclosed witness interviews that are part of the handwritten investigative notes, could have also added an alternative suspect defense and allowed the defense to attack the reliability of the larger investigation.

The undisclosed ATF Operational Plan, in the context of Weihe's two pre-trial recantations, also would have been favorable in allowing reasonably competent defense counsel to argue to the jury that Weihe's testimony was colored by police pressure. Further, the undisclosed police interview with T.A. would have been favorable as both impeachment and

exculpation, and Detective Worrell's misconduct history would have been favorable in allowing reasonably competent defense counsel to attack the credibility of the witnesses he interviewed and the good faith of the larger investigation. *See Kyles*, 514 U.S. at 445 (*Brady* extends to information that could "attack . . . the thoroughness and even the good faith of the investigation").

2. Assessed cumulatively, the suppressed items were material.

Suppressed evidence is material if there is a reasonable probability that, had the evidence been disclosed, the result of the trial would have been different. *Kyles*, 514 U.S. at 434. However, materiality is "not a sufficiency-of-the-evidence test," meaning that "a defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." *Commonwealth v. Natividad*, 200 A.3d 11, 26 (Pa. 2019)[29] (quoting *Kyles*, 514 U.S. at 434–35). To show a reasonable probability, a defendant need show only that the suppression undermines confidence in the outcome of the trial. *Id*.; *see also Strickler*, 527 U.S. at 298 (noting concern that use of the word "probability"

[29] The Commonwealth notes that, though the *Natividad* court outlined the correct materiality standard, its application of that standard was contrary to clearly established federal law, leading to a reversal in federal court. *See Natividad v. Beard*, No. 08-449, 2021 WL 3737201 (E.D. Pa. Aug. 24, 2021).

may mislead lower courts, causing them to believe that the standard is "akin to the more demanding standard, 'more likely than not,'" when the materiality standard is a lower standard of proof closer to a "significant possibility") (Souter, J., concurring in part).

For example, suppressed evidence that would have bolstered a defendant's defense at trial may put the case in such a different light that *Brady* materiality is satisfied. *See Dennis*, 834 F.3d at 295 (citing *Kyles*, 514 U.S. at 435). Similarly, suppressed evidence that could have been used to impeach the credibility of a key witness "in a manner not duplicated" by other evidence, or to attack the reliability of the investigation, is sufficient to establish *Brady* materiality. *Id*. at 298, 308. Also, admissibility of evidence at trial is not relevant to a materiality analysis. *See Dennis*, 834 F.3d at 298 (rejecting state court opinion that inadmissible hearsay "cannot be the basis for a *Brady* violation" and cannot be used for impeachment purposes) (discussing *Kyles*, 514 U.S. at 433–34 & *Wood*, 516 U.S. at 7–8). Finally, materiality is to be considered collectively, not item by item. *Kyles*, 514 U.S. at 436. The "importance of cumulative prejudice cannot be overstated" in a materiality analysis as it "stems from the inherent power held by the prosecution, which motivated *Brady*." *Dennis*, 834 F.3d at 312 (citing *Kyles*, 514 U.S. at 437).

Here, after careful review and consideration of the trial record, the suppressed evidence, the case as a whole, and relevant precedent, the Commonwealth agrees that the evidence suppressed here, considered collectively, satisfies *Brady's* materiality test. Indeed, while individual pieces of the suppressed evidence would warrant *Brady* relief on their own, here "the cumulative effect of their suppression commands it." *Dennis*, 834 F.3d at 311.

The suppressed evidence substantially calls into doubt the prosecution's case.

The suppressed evidence, assessed cumulatively, calls into doubt substantial parts of the prosecution's theory of the case and supports all four key aspects of Ramirez's defense at trial as well as adds a potential fifth, an alternative suspect.

a. Blood and injury evidence

First, the suppressed activity sheets and grand jury testimony would have bolstered Ramirez's argument at trial that the real assailant would have been covered in blood and had his own injuries. No witness told either police or the court that Ramirez had blood on him the night of or the day after the murder, or any apparent injuries, save for Weihe's testimony that he saw a spot of blood on one of Ramirez's boots. To support the prosecution's argument that the lack of blood or injuries on Ramirez was

not relevant, Assistant Medical Examiner Dr. Gregory McDonald testified that, in his opinion, the assailant would not necessarily have been covered in blood and the decedent was punched in the face once. N.T., 12/17/1995 at 41–42. Detective Gross also testified that the blood at the scene was limited. N.T., 12/15/1997 at 25, 55. The prosecutor then argued in his closing that "there was no evidence of a struggle." N.T., 12/29/1997 at 96.

Detective Hoffner's grand jury testimony and the suppressed activity sheets, by contrast, describe the bloody scene in detail and note that (1) it was so bloody the first officers on the scene thought the decedent had been shot in the head and (2) the assailant may have had injuries so significant that police were sent to area trauma hospitals looking for the assailant. *See* IGJ N.T., 9/19/1995 at 25–29; 2/21/1994 activity sheet; *see also* Pet's Ex. 10 (ADA Fairman memo) ("There was evidence that a struggle began in the washing machine area of the business"). Additionally, one of the undisclosed activity sheets relays a conversation between police and Office of the Medical Examiner Investigator Suplee, who was of the opinion after analyzing the scene himself that the assailant "would not only have his clothes covered in blood, but his face and hands" too. *See* Pet's Ex. 5 (3/2/1995 Hoffner activity sheet); *see also* Pet's Ex. 6 (Form 75-328) (noting "profuse bleeding" from the decedent). The same activity sheet notes that

Dr. McDonald relayed to police that the decedent appeared to have been punched in the face three times by a fist and had a tooth knocked out as a result. Pet's Ex. at 5. All of this would have been valuable impeachment evidence of Dr. McDonald and Detective Gross and bolstered the argument that the assailant would have been covered in blood and injured himself after a struggle. Had it been disclosed, it also would have allowed Ramirez to call either Detective Hoffner or Investigator Suplee as his own rebuttal witnesses, in addition to providing bases for further questioning of Dr. McDonald and Detective Gross.

The dearth of available, contrary evidence allowed the trial prosecutor to argue in his closing that the idea the assailant would have been covered in blood is "movie talk" that was not realistic and that there was no struggle. N.T., 12/29/1995 at 96, 99–101. This type of evidence—evidence that bolsters a defendant's trial defense that otherwise "had little objective reinforcement"—is the hallmark of *Brady* material and by itself would likely warrant a new trial. *Dennis*, 834 F.3d at 287.

b. Coins

The argument that only paper currency and not coins were stolen during the laundromat robbery was another pillar of Ramirez's defense at trial. Indeed, both Joseph Maio and Billy Weihe testified that they knew

Ramirez robbed the laundromat because his pockets were "loaded with change" and they could hear all the loose change jingling in his pockets. *See* N.T., 12/12/1997 at 88, 137, 142 (Maio); N.T., 12/16/1995 at 226 (Weihe).[30] In rebuttal, Ramirez called Jay Darnell, Sr., who worked at the laundromat, to testify that no loose coins were kept there. N.T., 12/18/1997 at 68. The trial prosecutor argued in his closing that Darnell was "flat wrong" because a roll of dimes was found in the decedent's cashbox and because "common sense" dictates that "of course they had change there." N.T., 12/29/1995 at 118–20.

The undisclosed 3/2/1995 activity sheet further suggests that only paper currency was stolen in denominations of $1s, $5s, $10s, and $20s. *See* Pet's Ex. 5. Indeed, the sheet does not mention coins at all. Additionally, and more critically, Detective Hoffner's grand jury testimony expresses the belief that "it's not like they had change" there. IGJ N.T., 9/19/1995 at 77. This activity sheet and testimony -- from the original lead investigator working the case -- would have been valuable impeachment evidence as to both Maio and Weihe's testimony regarding coins. Indeed, the only coin evidence presented to the jury was the recovery of a roll of dimes from the

[30] This evidence also appears to have been important to the jury, as it asked to have only Maio's testimony read back to them and requested to be reinstructed on felony murder.

decedent's cashbox. But neither Weihe nor Maio testified that Ramirez had rolls of change. Indeed, they testified that he had loose change in his pockets with Maio specifying that the loose change was quarters. N.T., 12/12/1997 at 142. Quarters, however, were only dispensed from the change machines, which were not hit. N.T., 12/11/1997 at 146; N.T., 12/12/1997 at 25–26.

The activity sheet and prior testimony could have presented the jury with some "reinforcement" of the defense theory and directly contradicted the trial prosecutor's assertion in his closing. *Compare* IGJ N.T., 9/19/1995 at 59 ("It's not like they had change" there) *with* N.T., 12/29/1995 at 170 ("Of course they had change there"). *See Commonwealth v. Weiss*, 81 A.3d 767, 788 (Pa. 2013) (suggesting undisclosed impeachment evidence is material under *Brady* if it supports the defense's theory at trial); *Lambert v. Beard*, 633 F.3d 126 (3d Cir. 2011) (reversing state court denial of relief where undisclosed activity sheet could have been used to impeach key witness's credibility).

c. The timeline of events

Another significant evidentiary dispute at Ramirez's trial was the timeline of events leading to the decedent's death. It was undisputed that Ramirez and Weihe were at the Darnell residence on the night of the murder and that Peter Gozzi drove them back to Weihe's house at some

point. But the time that Ramirez and Weihe left the Darnell residence was not just disputed, it was critical.

The evidence presented at trial established that the decedent locked up the laundromat at 12:30am, that she began cleaning soon after locking up, and that when she was found, it appeared her cleaning had been interrupted soon after starting. Wanda Vargas and Joanna Esquilin, by contrast, told police that they left the laundromat at 11:30pm and that the decedent locked the door behind them. Based on this, Detective Hoffner opined in his undisclosed grand jury testimony that the decedent was likely killed between 11:30 and 11:45pm. Putting all of this together, even crediting the later 12:30am lock-up time presented at trial, there is evidence the murder would have likely occurred before 12:45am.

Recognizing this, the trial prosecutor argued to the jury that Ramirez and Weihe left the Darnell residence close to midnight, giving them enough time to go to Weihe's house, eat food, and walk back towards the laundromat before 12:45am. N.T., 12/29/1995 at 77. He further argued that defense witness Jay Darnell, Sr., who testified that the kids left his house at 1am, was unreliable because this information had come to him second-hand. In so arguing, the trial prosecutor suggested to the jury that the defense did not call either witness who had first-hand knowledge, Mary

Emanuel and J.C. Darnell, because their testimony would have been unfavorable to the defense's theory. *Id*. at 78–79. As noted above, these suggestions were mistaken.

The newly disclosed grand jury testimony establishes that the initial lead investigator, Detective Hoffner, believed the decedent was killed within fifteen minutes of locking up and that she locked up at 11:30pm. This evidence is valuable both as exculpation and impeachment. The original assigned detective's opinion as to the circumstances surrounding the murder would have allowed reasonably competent counsel to further impeach Maio, who told police that Ramirez arrived at Sara Hurd's house after the murder "no later than 11:30pm," to call rebuttal witnesses, and to call the good faith of the larger investigation into question. *See Kyles*, 514 U.S. at 437; *see also* N.T., 1/3/2005 at 92 (defense counsel testifying that if he'd had further evidence to impeach Maio, he would have used it).

d. Witness credibility

The credibility of Commonwealth witnesses Forman, Rivera, Maio, and Weihe were paramount to the Commonwealth's case and to Ramirez's trial defense. Indeed, in a case where the only available physical evidence (a bloody scene and a recovered fingerprint) did not point to Ramirez, the witnesses' credibility was critical.

At trial, the prosecutor argued that Melanie Forman remembered the night of the murder because Sara Hurd had purchased her whole stash of PCP that night and that, the next morning, she went to Hurd's house where Ramirez confessed to her with T.A. present. 12/29/1997 at 125–26. The prosecutor further argued that Ramirez confessed to Forman because, as a drug dealer, she had a "right to know" where her money was coming from. *Id*. at 138. The trial prosecutor then argued that Weihe had no reason to lie because he was agreeing to have himself locked up. *Id*. at 133–36. Lastly the trial prosecutor argued that Maio was a credible witness both because he was friends with Ramirez and because the defense had nothing powerful to impeach him with. *Id*. at 142–43.

In addition to the above-described activity sheets, memoranda, notes and grand jury testimony regarding blood, coins, and timing that could have been used to impeach the witnesses and larger investigation, evidence of an undisclosed police interview with T.A. in which he reportedly contradicts nearly everything that was said about him and his involvement would have been powerful impeachment evidence of Maio, Forman, and Weihe. Indeed, all three witnesses intimated that T.A. was either with Ramirez and Weihe during the crime or with them at Sara Hurd's house afterwards. *See* N.T., 12/16/1997 at 112–18 (Weihe says that he and Ramirez

ran into T.A. after the crime); N.T., 12/12/1997 at 83 (Maio says that he saw T.A. arrive at Sara Hurd's house with Ramirez and Weihe); N.T., 12/16/1997 at 25–27 (Forman says Ramirez told her he did the crime with Weihe and T.A.). However, no police interviews with T.A. were disclosed pre-trial, he was not called at trial, and he was never charged with any crime. The previously undisclosed interview notes with T.A., found in 2021 during voluntary discovery, notes that the police interviewed T.A. around the same time they interviewed Mary Emanuel, and he told them he was not with Ramirez or Weihe that evening and that he called Weihe's house at 1:30am the night of the murder and spoke to both him and Ramirez on the phone about how they got home earlier since they did not have bus passes. *See* Pet's Ex. 28.

Additionally, specifically as to Weihe's credibility, Detective Hoffner's undisclosed note that Weihe immediately recanted his first police statement, specifically saying that he fabricated Ramirez's involvement, dovetails with Mary Emanuel's undisclosed grand jury testimony in which she says that Weihe told her "Eddie really didn't do this" and that the police threatened him with life in prison if he didn't inculpate Ramirez. *See* Pet's Ex. 5; IGJ N.T., 10/11/1995 at 20–21. Taken with the undisclosed ATF Operational Plan meant to target Weihe, dated May 26, 1996, Pet's Ex. 20,

reasonably competent defense counsel could have used all this to color the inculpatory police statement Weihe issued just five weeks later.

Lastly, Ramirez presents newly discovered evidence of Detective Worrell's history of eliciting false statements from witnesses dating back to 1990. If this had been known before Ramirez's trial, reasonably competent counsel could have presented it to the jury to further call the witnesses' credibility into question. Specifically, here, Worrell took (recanted) statements from both Weihe and Luis Rivera. In this case, where there exists a large number of misconduct allegations, any past police misconduct could have been useful not only to question and further impeach Rivera and Weihe, but to "call the thoroughness or even the good faith of the larger investigation into question." *Kyles*, 514 U.S. at 446.[31]

Such cumulative impeachment evidence, evidence that calls into question key witnesses' credibility and motives in a way not duplicated by other evidence, is quintessential material evidence under *Brady*. *See*, *e.g.*, *Dennis*, 834 F.3d at 298–99; *Wearry v. Cain*, 577 U.S. 385, 393–94 (2016) (per

[31] Though not relevant to the disposition of the *Brady* claims addressed here, the Commonwealth notes that all the allegations of misconduct in this case, including recantations, appear consistent and that, in general, "multiple recantations may themselves be mutually corroborating evidence, with each one having the potential to bolster the reliability of the others." *Howell v. Superintendent Albion SCI*, 978 F.3d 54, 61 (3d Cir. 2020).

curiam) (reversing denial of relief where suppressed evidence that damaged key witness's credibility was not disclosed and the state courts, in holding otherwise, "egregiously misapplied settled law"); *Banks v. Dretke*, 540 U.S. 668, 702 (2004) (suppressed impeachment evidence required reversal of conviction where evidence was not duplicative of other impeachment evidence).

e. Alternative suspect evidence

In addition to the above-described evidence supporting the arguments Ramirez made at trial that otherwise had little support, the recently disclosed activity sheets and police interview notes would have given reasonably competent defense counsel an additional defense to raise: an alternative suspect. Indeed, the recently disclosed March 1, 1995 activity sheet summarizes an interview with undisclosed witness Bert Calafell, who told police that he'd heard Oberholzer did the job with a white male named Billy. *See* Pet's Ex. 14. Similarly, the recently disclosed May 16, 1995 activity sheet summarizes an interview with undisclosed witness Sean Maguire, who echoed the sentiment that Oberholzer was involved along with a white male named Billy. *See* Pet's Ex. 26. Further, undisclosed interview notes with witness Nathaniel Rodriguez relay that Rodriguez claimed to have

heard Oberholzer complain about not getting much money from the job. *See* Pet's Ex. 28.

Similarly, the recently disclosed February 23, 1995 activity sheet notes that J.C. Darnell, Jay Darnell, Sr.'s son who lived across the street from the laundromat, was suspected of previously burglarizing the laundromat. The same activity sheet summarizes an interview with undisclosed witness Betty Kiefer, who told police that she spoke with J.C. Darnell the morning after the murder and that his boots had dark brown stains on them and he appeared "real nervous." *See* Pet's Ex. 31.

Reasonably competent defense counsel could have used this evidence to paint a picture of potential alterative suspects for the jury. Ramirez's defense counsel testified at an earlier PCRA proceeding that if he'd had access to a potential alternative suspect connected with either the crime or the players involved, he would have used it. N.T., 1/3/2005 at 74, 84–85, 89. He noted specifically he would have brought up Oberholzer if there had been any connection to Billy Weihe, but to his knowledge, there wasn't. *See id*. at 89. Reasonably competent counsel could have used this evidence to argue that the police took a "remarkably uncritical attitude" in accepting Ramirez as the killer here. *Kyles*, 514 U.S. at 420.

Generally, suppressed evidence suggesting that an alternate suspect may have committed the crime falls within *Brady*'s ambit, even if the police considered the leads fruitless. *Kyles*, 514 U.S. at 447; *Dennis*, 834 F.3d at 306 (noting that there is "no requirement that leads be fruitful to trigger disclosure under *Brady*" and reversing state court that held otherwise); *see also*, *e.g.*, *Haskins v. Superintendent Greene SCI*, 755 F. App'x 184, 189 (3d Cir. 2018) (non-precedential) (holding that suppressed evidence pointing to an alternative suspect that would have given the jury a competing version of events is material under *Brady*).

* * *

Assessed cumulatively, as is required, and in light of the record as a whole, including all evidence, the above-described 12 pieces of suppressed evidence satisfy *Brady's* materiality standard. The prosecution's case at trial already suffered from weaknesses from conflicting or shifting witness testimony and a lack of physical evidence connecting Ramirez to the crime. Suppressed evidence directly supporting Ramirez's trial defense, calling the witnesses' reliability into question, and suggesting alternative suspects undermines confidence in the jury's guilty verdict. If the evidence now before this Court had been disclosed, instead of hearing only four witnesses who offered inconsistent accounts, only one of whom claimed to witness

the event, the jury also could have heard from the original lead investigator on the case, the medical examiner's investigator, and additional witnesses to impeach or rebut the Commonwealth witnesses' testimony. The above-described evidence casts the case in a different light and establishes a reasonable probability of a different outcome. The new, compelling DNA evidence and consistent allegations of misconduct only further undermine that confidence.

As the jury already had reason to doubt the witnesses' testimony, and indeed did not find Ramirez guilty of first-degree murder as it was, it is reasonably probable that disclosure of the suppressed evidence would have built upon and reinforced those doubts in a way that changed the trial's outcome. Considering all of the suppressed evidence together and the trial record as a whole, the Commonwealth agrees that Ramirez has established *Brady* materiality and recommends he be granted a new trial. *Cf. Strickland v. Washington*, 466 U.S. 668, 696 (1984) ("[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.").

C. In the alternative, the Commonwealth does not oppose a hearing on Ramirez's *Brady* claims.

If the Court disagrees with the above or wishes to hear more, the Commonwealth does not oppose a hearing on Ramirez's *Brady* claims, limited

to the factual issue of suppression, as materiality is a question of law properly reserved for the court. *See Wilson v. Beard*, 589 F.3d 651, 657 n.1 (3d Cir. 2009) (noting that *Brady* materiality is "a legal question for [the court] to decide").

IV. CONCLUSION

Eddie Ramirez's second-degree murder conviction was based on less than overwhelming evidence, hinging on witnesses who offered shifting narratives and no physical evidence. We now know that the prosecution suppressed a large amount of material that would have been favorable to Ramirez's defense, undercutting the prosecution's case and calling into question the good faith of the larger investigation.

That the suppressed evidence does not conclusively exonerate Ramirez is of no moment. A jury that heard all the evidence, old and new, could still believe Weihe's testimony, which alone would be sufficient to sustain the conviction. But the existence of sufficient evidence does not defeat materiality. Indeed, even the actual-innocence gateway standard, which is much more demanding than *Brady's* materiality standard, was met in a case that was "not a case of conclusive exoneration." *House v. Bell*, 547 U.S. 518, 553–54 (2006). So, while the Commonwealth does not concede that Ramirez

has proven his innocence, he has shown more than enough to satisfy *Brady* and therefore recommends that he be granted a new trial.

Respectfully submitted,

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