

COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
	:	
Respondent,	:	Docket Number
	:	CP-22-CR-1544-1996
	:	
v.	:	Honorable Todd A. Hoover
	:	
Lorenzo Johnson,	:	
	:	
Petitioner.	:	

**PETITION FOR RELIEF UNDER THE PENNSYLVANIA
POST-CONVICTION RELIEF ACT, 42 PA. C. S. § 9541 *ET SEQ.*
AND
CONSOLIDATED OPENING MEMORANDUM OF LAW**

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Dated: August 5, 2013
Swarthmore, Pennsylvania

Petitioner, LORENZO JOHNSON, through undersigned counsel,¹ petitions for post-conviction relief pursuant to the Pennsylvania Post-Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 *et seq.*, the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.²

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¹Undersigned counsel, Michael Wiseman, appears as *pro bono* counsel on behalf of Mr. Johnson, who is indigent. Counsel will file an appropriate motion to dispense with the payment of court costs or fees.

²All emphasis is supplied unless otherwise indicated. Transcripts of the prior proceedings are cited at “NT” followed by a date and page citation. The trial proceedings are cited as “NTT” followed by a page citation.

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INTRODUCTION

This *Petition* presents a case of actual innocence. Lorenzo Johnson is an innocent man who was convicted in 1995 as an accomplice to the first degree murder of Tarajay Williams and is currently serving a life sentence. The evidence presented against Mr. Johnson was so insubstantial that at least three judges have found it legally insufficient and would have vacated his conviction:

I dissent from that portion of the Majority's decision which upholds the conviction of Lorenzo Johnson for first degree murder and criminal conspiracy . . . I believe that there is no direct evidence, nor can any be inferred, linking defendant Johnson to the death of Taraja Williams nor any agreement with defendant Walker which resulted in Williams' death.

Commonwealth v. Lorenzo Johnson, 726 A.2d 1079 (Pa. Super. Ct. 1998). Similarly, two judges of the United States Court of Appeals also found the evidence legally insufficient and ordered Mr. Johnson's conviction vacated. *Johnson v. Mechling*, 2011 WL 4565464 (3d Cir. Oct. 4, 2011).

Following the Third Circuit's grant of habeas corpus relief, the United States District Court for the Middle District of Pennsylvania (Hon. John E. Jones), ordered Mr. Johnson released on his own recognizance while the Commonwealth sought review of the Third Circuit's order in the United States Supreme Court. *Johnson v. Mechling*, 04-cv-1564 (M.D. Pa.), document # 117 (available on PACER). The

release order was issued on January 17, 2012, following an evidentiary hearing at which four employees of the Pennsylvania Department of Corrections attested to Lorenzo Johnson's good and honest character. Mr. Johnson was released from SCI Camp Hill on January 18, 2012.

Then, on May 29, 2012 the United States Supreme Court granted *certiorari* and reversed the decision of the Third Circuit based on narrow legal technicalities regarding the application of the federal habeas corpus statute. Most shockingly, it did so without permitting briefing or oral argument. *Coleman v. Johnson*, 132 S.Ct. 2060 (2012).

Following further proceedings in the District Court, Judge Jones ordered that Mr. Johnson surrender himself on June 14, 2012. Mr. Johnson, who had been reunited for these 148 precious days with his family in Yonkers, New York, now had a job, was engaged to be married, and had gratefully begun readjusting to life outside of prison after sixteen years of incarceration. Mr. Johnson turned himself in knowing that he would serve the rest of his life there if the justice system failed him, but earnestly believing, with all his heart, that the system could not keep an innocent man behind bars for the rest of his life. *Johnson v. Mechling*, 04-cv-1564 (M.D. Pa.) Order, document # 130.

Mr. Johnson now presents to this Court a petition that demonstrates not only

that he is factually innocent of the murder of Tarajay Williams, but that he was prevented from proving this at trial because the trial prosecutor withheld material exculpatory evidence in violation of *Brady v. Maryland* and *Napue v. Illinois*, and the due process principles for which they stand. His conviction also resulted from constitutionally ineffective counsel at trial and during his initial PCRA proceedings.

In support of this *Petition*, Mr. Johnson submits affidavits both from lay witnesses and from a member of the Harrisburg Police Department assigned to investigate Tarajay Williams' shooting. These affidavits constitute newly-discovered evidence – they make clear that the Commonwealth withheld from Mr. Johnson exculpatory evidence that would have demonstrated his innocence, would have destroyed the credibility of the already highly suspect primary witness against him, and would have unquestionably changed the outcome of his trial. These affidavits also make clear that Mr. Johnson's defense attorney at trial – a relatively young and inexperienced lawyer who was trying her first homicide case without adequate resources or supervision -- was hopelessly out of her depth. She failed to interview critical witnesses, and neglected to take the steps a reasonable attorney would have taken to defend a person charged with murder, facing a life sentence.

In short, this is not a routine post-conviction *Petition*. It presents a grave injustice that cries out for correction. It is up to this Court to see that justice is done.

ELIGIBILITY AND BASES FOR RELIEF

1. Petitioner sets forth claims in this *Petition* based on violations of his right to due process of law under the Fourteenth Amendment to the United States Constitution and Article I, § 9 of the Pennsylvania Constitution. He also sets forth violations of his right to effective assistance of counsel at trial, such right secured by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 6 and 9 of the Pennsylvania Constitution. As such, Mr. Johnson is eligible for relief under the PCRA, because he has been convicted of a crime under the laws of the Commonwealth of Pennsylvania and he is serving a sentence of imprisonment pursuant to the conviction.

2. Mr. Johnson specifically pleads that he is entitled to relief under the following provisions of the PCRA:

- a. That his conviction resulted from “a violation of the Constitution of Pennsylvania or laws of this Commonwealth or the Constitution of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa. C.S. § 9543(a)(2)(i).
- b. That his conviction resulted from “ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa. C.S. § 9543(a)(2)(ii).

- c. That his conviction resulted from “the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.” 42 Pa. C.S. §9543(a)(2)(vi).
3. The constitutional errors and newly discovered exculpatory evidence described herein, including the violation of Petitioner’s right to effective assistance of counsel, have been neither previously litigated nor waived. *See* 42 Pa. C.S. § 9543 (a).

THIS PETITION IS TIMELY

4. 42 Pa.C.S. § 9545 states in relevant part:
 - (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:
 - (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
 - (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence;

- (2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

5. This *Petition* is obviously being filed well after the one year period

following the conclusion of direct appeal. However, as described below, this petition is being filed within sixty days of the discovery of new evidence and therefore meets the timing requirements for a successive petition filed more than one year following the completion of direct appeal.

6. Additionally, several claims are based upon newly discovered facts and/or evidence that should have been revealed by the Commonwealth under *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The existence of the facts regarding both of these categories of information – the *Brady* material and the related newly discovered evidence – became known to Petitioner during the past sixty days. The *Brady* evidence, had it been disclosed, would have led reasonable counsel to pursue leads and uncover the additional newly discovered evidence proffered herein. The course the trial “would have taken had the defense not been misled by the prosecution” is part of the *Brady* analysis. *United States v. Bagley*, 473 U.S. 667, 683 (1985). Thus, Petitioner meets the exceptions to the PCRA time bar and these claims are timely. *Commonwealth v. Bennett*, 930 A.2d 1264 (Pa. 2007).

7. To the extent the Commonwealth contests Petitioner’s diligence in the discovery of any of the facts related to these claims, Petitioner requests an evidentiary hearing at which he will prove that he has acted with the requisite diligence. *See below at 10: THIS COURT MUST AFFORD PETITIONER AN EVIDENTIARY HEARING.*

8. Moreover, in light of the *Brady* violations and the violations of Petitioner's right to effective counsel, enumerated in this *Petition*, Petitioner is entitled to review of previously raised *Brady* claims, and previously-raised claims of ineffectiveness of counsel. That is because both species of claim require an evaluation of the cumulative impact of the *Brady* violations and of the claims of ineffectiveness of counsel. See e.g. *Kyles v. Whitley*, 514 U.S. 419, 421 (1995) (materiality of *Brady* violation "turns on the cumulative effect of all such evidence suppressed by the government"); *Wiggins v. Smith*, 539 U.S. 510, 534 (2003) (assessment of *Strickland* prejudice is based on the "totality" of the impact of counsel's deficient performance). In short, the new evidence of due process violations and of counsel's ineffectiveness must be assessed with the old evidence on the same points.

RELEVANT PROCEDURAL HISTORY

9. Petitioner was arrested and charged with murder in the first degree and criminal conspiracy under Dauphin County, Pennsylvania docket number 1544 CD 1996, since renumbered as CP-22-CR-1544-1996. He had a joint jury trial with his co-defendant, Corey Walker, before this Court on March 13, 14 & 17, 1997). Each defendant was convicted on each charge. On March 17, 1997 Petitioner was sentenced to life imprisonment on the first degree murder conviction and to a

concurrent term of imprisonment of five to ten years on the conspiracy count.

10. The Superior Court affirmed on direct appeal. *Commonwealth v. Johnson*, No. 847 Harrisburg 1997, *slip opinion*, Sept. 28, 1998, 726 A.2d 1079 (Pa.Super. 1998) (Table), (Schiller, J., dissenting).

11. Petitioner's allocatur petition to the Supreme Court was denied. *Commonwealth v. Johnson*, 737 A.2d 741 (Pa., 1999).

12. On December 1, 1999 Petitioner filed a PCRA Petition. Following the appointment of counsel (Francis Socha, Esq.), the filing of a counseled amendment and an evidentiary hearing, this Court denied the petition on April 29, 2002. *Commonwealth v. Johnson*, 1544 CD 1996 (Dauphin C.P. April 29, 2002). The Superior Court affirmed. *Commonwealth v. Johnson*, 406 MDA 2002 (Pa. Super) slip opinion, July 17, 2004, 833 A.2d 1146 (Table), reargument denied, Sept. 25, 2003. No petition for allocatur was filed.

13. During the pendency of the appeal of the denial of his first PCRA petition, Petitioner filed a second, counseled PCRA raising a claim of after-discovered evidence.³ The second petition was dismissed without a hearing on May 26, 2004. Following additional litigation regarding the timeliness of his appeal of the

³The after discovered evidence was an affidavit obtained from trial 2 witness Brian Ramsey.

May 26 dismissal of the second Petition, Petitioner's appeal to the Superior Court was ultimately denied on the merit. *Commonwealth v. Lorenzo Johnson*, No. 1688 MDA 2005 and No. 1689 MDA 2005 (Pa. Super. June 15, 2006).⁴

14. Petitioner next filed a *pro se* petition for habeas corpus relief in the United States District Court for the Middle District of Pennsylvania. *Johnson v. Mechling*, 4:04-cv-1564 (M.D. Pa).

15. Undersigned counsel, who was then employed by the Federal Community Defender for the Eastern District of Pennsylvania (hereafter, FCD), was appointed by the District Court on July 24, 2006. *Johnson v. Mechling*, 04-cv-1564 (M.D. Pa.) document # 25.⁵

16. The District Court denied the petition, but only after finding that the Commonwealth had improperly withheld evidence that would have impeached the testimony of Victoria Doubs, a critical witness for the Commonwealth. *Johnson v. Mechling*, 541 F.Supp.2d 651 (M.D. Pa. 2008).

17. As described above in the *Introduction*, the Court of Appeals then granted relief to Petitioner. *Johnson v. Mechling*, 2011 WL 4565464 (3d Cir. Oct. 4,

⁴The appeal at 1689 MDA 2005 was denied on the merits. The appeal at 1688 MDA was denied as moot.

⁵Counsel left that position in September, 2011 and he has been representing Petitioner, *pro bono*, since that time.

2011). Following proceedings in the United States Supreme Court, the order of the Court of Appeals was reversed and Petitioner was reincarcerated.

18. Petitioner remains imprisoned at the SCI Mahanoy, prisoner number DF – 1036.

19. Petitioner was represented at trial and on appeal by Deanna Wagner. He was represented on PCRA by Francis Socha.

THIS COURT MUST AFFORD PETITIONER AN EVIDENTIARY HEARING

20. Although this is a third PCRA Petition, the Court must afford Petitioner an evidentiary hearing. It has long been the standard that post-conviction hearings are appropriate when a petitioner pleads facts entitling him to relief. *Townsend v. Sain*, 372 U.S. 293 (1963). Where – as here – the post-conviction pleadings “raise[] material issues of fact” an evidentiary hearing is required. PA. R. CRIM. P. 908(A)(2); *Commonwealth v. Williams (Roy)*, 732 A.2d 1167, 1189-90 (Pa. 1999) (“Clearly, a material factual controversy exists . . . ; therefore, we hold that the PCRA court erred in dismissing [the] ground for relief without conducting a factual hearing.”) (citing former PA. R. CRIM. P. 1509(b)).

21. A hearing cannot be denied unless this Court “is certain of the total lack of merit” of the petition. *Commonwealth v. Bennett*, 462 A.2d 772, 773 (Pa.Super. 1983) (quoting *Commonwealth v. Rhodes*, 416 A.2d 1031, 1035-36 (Pa. Super.

1979)); accord *Commonwealth v. Korb*, 617 A.2d 715, 716 (Pa.Super. 1992) (remanding for evidentiary hearing where “[i]t appears that appellant has presented a claim of ineffective assistance of counsel which contains at least arguable merit”) (citing *Commonwealth v. Copeland*, 554 A.2d 54, 60-61 (Pa. 1988)). Even in “borderline cases Petitioners are to be given every conceivable legitimate benefit in the disposition of their claims for an evidentiary hearing.” *Commonwealth v. Pulling*, 470 A.2d 170, 173 (Pa. Super. 1983) (remanding for evidentiary hearing) (*quoting Commonwealth v. Strader*, 396 A.2d 697, 702 (Pa. Super. 1978) and *Commonwealth v. Nahodil*, 239 A.2d 840, 840 (Pa. Super. 1968)).

22. A post-conviction hearing is particularly appropriate where the merits of a petitioner’s claims revolve around the credibility of witnesses for whom the petitioner has provided an affidavit – a court may not judge credibility of a recantation witness, or similar witness, based solely on an affidavit. *Commonwealth v. D’Amato*, 856 A.2d 806, 825-826 (Pa. 2004) (“This Court has also emphasized, however, that, even as to recantations that might otherwise appear dubious, the PCRA court **must, in the first instance**, assess the credibility and significance of the recantation in light of the evidence as a whole.”); see also, *Commonwealth v. Johnson*, 966 A.2d 523, 539 (Pa. 2009) (“one of the primary reasons PCRA hearings are held in the first place is so that credibility determinations can be made; otherwise,

issues of material fact could be decided on pleadings and affidavits alone. The PCRA court here obviously appreciated this fact in part, since it made a controlling credibility determination respecting Cook's recantation testimony.”) and *id.*, at 541-42 (“in *D’Amato*,⁶ the PCRA court failed to mention, let alone pass upon, the credibility of the recantation testimony in its opinion. This Court held that the PCRA court had defaulted on its duty to assess the credibility of the recantation and its significance in light of the trial record, and we remanded the matter to the PCRA court for the limited purpose of making such a determination.”).

23. At a minimum, Petitioner must be afforded an opportunity to prove the timeliness of his *Petition*. He has pled with specificity that he has met the exceptions to the PCRA time bar. Therefore, this Court must give him an opportunity to prove these facts. Indeed, the petitioner in *Commonwealth v. Bennett*, 930 A.2d 1264 (Pa. 2007) also invoked the time bar exceptions pled by Petitioner, and the Pennsylvania Supreme Court noted the requirements for an evidentiary hearing:

[B]y invoking the exception at subsection (b)(1)(ii), Appellant alleges that he did not know that his trial counsel was appointed to represent him in his PCRA appeal until much later in the process. Likewise, he contends that he never received a copy of the Superior Court's order dismissing his appeal. Rather, he alleges that he attempted to find out the status of his appeal from the PCRA and Superior Courts. Ultimately, he contends that he did not know of PCRA appellate counsel's failure to

⁶*Commonwealth v. D’Amato*, 856 A.2d 806, 825-826 (Pa. 2004).

file an appellate brief until October 4, 2000, when he received a letter from the Superior Court explaining that his appeal was dismissed due to PCRA counsel's failure to file a brief. Therefore, Appellant has alleged that there were facts that were unknown to him. Additionally, Appellant has provided a description of the steps he took to ascertain the status of his case. These steps included writing to the PCRA court and the Superior Court. Accordingly, Appellant alleges that he exercised due diligence in ascertaining those facts.FN11 Appellant's allegations, if proven, fall within the plain language of subsection (b)(1)(ii).

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Having concluded that Appellant's allegations bring his claim within the ambit of subsection (b)(1)(ii), he must still prove that it meets the requirements therein. Under subsection (b)(1)(ii), he must also prove that the facts were “unknown” to him and that he could not uncover them with the exercise of “due diligence.” Such questions require further fact-finding and the PCRA court, acting as fact finder, should determine whether Appellant met the “proof” requirement under 42 Pa.C.S. § 9545(b)(1)(ii).

Bennett, 930 A.2d at 1272, 1274. *See also Commonwealth v. Lasky*, 934 A.2d 120, 123 (Pa.Super. 2007) (remanding to lower court “for the conduct of an evidentiary hearing by the lower court in order to determine (1) when certain procedural facts became known to Appellant, (2) whether the exercise of due diligence on Appellant's part would have revealed these facts to Appellant sooner and, ultimately, (3) whether Appellant now has a viable claim that one of the exceptions articulated at 42 Pa.C.S.A. § 9545, i. e. (b)(1)(ii), to the one year time limit for filing a PCRA petition”).

STATEMENT OF THE FACTS RELEVANT TO PETITIONER'S CLAIMS

A. The Trial Facts in the Light Most Favorable to the Commonwealth

24. The facts elicited by the Commonwealth at trial, as recounted by the United States Supreme Court, largely in reliance on fact finding made by this Court, and viewed in the light most favorable to the Commonwealth, were as follows⁷:

At trial, the Commonwealth called Victoria Doubs, who testified that she, [Lorenzo] Johnson, and [Corey] Walker were “close friends” who “ran the streets together.” Tr. 213. On the morning of December 14, the three of them awoke at the same residence, bought marijuana, and then went to a Kentucky Fried Chicken restaurant, where they encountered [Tarajay] Williams. Walker announced that he was going to “holler at” Williams about a debt Williams owed. *Id.*, at 217. According to Doubs, Walker and Williams “were talking about the money that [Williams] had owed us,” with Walker “asking [Williams], confronting him, about his money and what’s up with the money and why is it taking you so long to give us the money.” *Id.*, at 217–218. Williams was “cussing [Walker] out, telling him he’d give it to him when he felt like it and he ain’t scared of [Walker].” *Id.*, at 218. A fight ensued, which ended when Williams beat Walker with a broomstick in front of the crowd of people that had gathered.⁸

⁷The Supreme Court’s recitation of the facts arose in the context of Petitioner’s then claim under *Jackson v. Virginia*, 443 U.S. 307 (1979), that the evidence was insufficient to sustain his conviction under the due process clause of the Fourteenth Amendment. Such a sufficiency of the evidence review requires that the facts be reviewed in a light most favorable to the prosecution.

⁸Not only was Victoria Doubs the sole witness at trial to testify to this fight, but no statement or other item produced in discovery corroborated Doubs’s statements, despite the fact that Doubs claimed the fight occurred in front of a crowd of people. In federal habeas proceedings, the District Court found that the Commonwealth had

After the fight, Doubs testified, Walker “was mad, because he got beat by a crackhead. . . . He was saying, yo,that crackhead beat me. I’m going to kill that crackhead. I’m going to kill that kid. . . . He was hot. He was heated.” *Id.*, at 220–221. Johnson was present when Walker made these statements. Later that afternoon, Doubs recounted the beating to others, who laughed at Walker. Walker “repeated it for a while that I’m going to kill that kid. That kid must think I’m some type of joke. I’m going to kill that kid. Who he think he is[?]” *Id.*, at 222. Once again, Johnson was present for these statements.⁹

Another witness was Carla Brown, a friend of the victim, who testified that she was at the Midnight Special Bar on the night of December 14–15, where she saw Walker, Johnson, and Williams engaged in a heated argument. Although she could not hear what they were saying, she could tell they were arguing because they were making “a lot of arm movements.” *Id.*, at 104. The bouncer soon told them to leave, and Brown followed them into the street because she “wanted to know what was going on.” *Ibid.* Brown observed the three men walking in a single-file line, with Walker in front, Williams in the middle, and Johnson in the back. Walker was wearing a long leather coat, walking as if he had something concealed underneath it. Brown followed the three men to an alleyway, at which point Williams recognized Brown and told her to “go ahead” and pass. *Id.*, at 107. Walker then entered the alleyway, followed by Williams, while Johnson remained standing at the entrance. As Brown walked past the alley, she heard a loud “boom,” causing her to

improperly withheld impeachment evidence that Doubs received a benefit from the Commonwealth for her testimony. *Johnson v. Mechling*, 541 F.Supp.2d at 681 (“the Court finds that Johnson's prosecutor had a duty to disclose the plea agreement”); *id.*, 686 (“The prosecution withheld favorable evidence; Johnson reasonably relied on the government’s open file policy and other representations that it had fulfilled its duty to disclose such evidence; and this reliance was confirmed by Doubs’ trial testimony.”); *id.*, 686-687 (court finding that despite the prosecutorial suppression, the evidence of Doubs’ plea deal was not material to the outcome.

⁹Again, the Commonwealth had no evidence to corroborate Doubs’ testimony on this point, either.

run away. *Id.*, at 143. On cross-examination, Brown stated: “They walked [Williams] in that alley. He stood inside the alley. He walked him in the alley. I heard a boom.” *Ibid.*¹⁰

The Commonwealth also called Aaron Dews, who testified that he was in a building bordering the alleyway at 12:45 a.m. on the morning of December 15. He heard a loud boom that caused him to look out into the alley from his second-story window, where he saw two silhouettes fleeing.¹¹

After Dews the Commonwealth called Brian Ramsey, who had been selling cocaine on a nearby street corner at the time of the murder. He testified that he saw Williams walking toward an alleyway with two males and a female, and he heard a loud boom shortly after Williams entered the alley. When pressed on cross-examination, he stated: “I would say that [Williams] was forced in that alley.” *Id.*, at 189.¹²

The jury also heard testimony from police who searched the alley shortly after the murder and found a shotgun with the barrel missing. A medical

¹⁰As the attached affidavits demonstrate, Carla Brown lied repeatedly, including when she testified at the preliminary hearing and at trial. Brown testified at both that she ran from the scene of the shooting and never returned that night, and that she did not speak to the police for a period of days or weeks after the shooting. Proof that she lied is now provided not only by the affidavit of a lay witness who saw Brown at the scene just minutes after the shooting, Davenport Affidavit, but also by **Harrisburg Police Detective Robert Dillard**, who attests that Brown was interviewed by the police the night of the shooting.

¹¹Dews testified to hearing a loud boom, running down from the second floor to the basement to check if the boiler had exploded, running back up the stairs to the second floor TV room in the back of the house, and only *then* looking out the window and seeing the silhouettes of two people running.

¹²Brian Ramsey has provided an affidavit, which is attached, explaining that the men he saw enter the alley with Williams came from the opposite direction on Market Street.

examiner who examined Williams' body testified that the cause of death was a shotgun wound to the chest.

Coleman v. Johnson, 130 S.Ct. 2060, 2062-2064 (2012)

25. On the basis of this evidence, the Supreme Court concluded that a rational jury could infer Mr. Johnson's specific intent to kill Tarajay Williams:

Taken in the light most favorable to the prosecution, the trial testimony revealed that Johnson and Walker "ran the streets together," and had attempted to collect a debt from Williams earlier on the day of the murder. Williams resisted the collection, managing to humiliate Walker in the process by giving him a public thrashing with a broomstick. This enraged Walker to the point that he repeatedly declared over the course of the day in Johnson's presence that he intended to kill Williams. Then, while Walker was noticeably concealing a bulky object under his trenchcoat, Johnson helped escort Williams into an alley, where Johnson stood at the entryway while Walker pulled out a shotgun and shot Williams in the chest.

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On the basis of these facts, a rational jury could infer that Johnson knew that Walker was armed with a shotgun; knew that he intended to kill Williams; and helped usher Williams into the alleyway to meet his fate.

Coleman v. Johnson, 130 S.Ct. at 2065.

B. Evidence, and Lack of Evidence, At Trial That Countered the Commonwealth's Case

26. As noted, the above review of the facts was done in a light most favorable to the Commonwealth. However, there was a great deal of additional evidence introduced at trial that countered the Commonwealth's evidence and

supported Petitioner's alibi, that he was not in Harrisburg the night Williams was killed.¹³ Much of the evidence introduced by the Commonwealth was, in reality, highly suspect.¹⁴ Aside from being highly suspect, none of it was corroborated by

¹³In his various federal court pleadings, Petitioner did not concede the truth of the prosecution's trial facts, but rather accepted them *arguendo* and only for purposes of the sufficiency review.

¹⁴In an insubstantial case, with many inconsistencies and highly incredible witnesses, Carla Brown's veracity was perhaps the most highly suspect.

She initially denied knowing anything about the offense to the police. NTT, 115. She described the victim as wearing a white coat while the victim was found wearing a black coat. As noted, she was high on some combination of crack cocaine and alcohol, and she admitted to being a long time addict. She testified that the amount of drugs in her system on the night of the murder, on a scale of one to ten, was "about a seven." NTT, 153-54.

A phenomenon called cocaine induced confabulation is typical among crack addicts. See JOYCE H. LOWINSON ET AL, EDITORS., SUBSTANCE ABUSE: A COMPREHENSIVE TEXTBOOK (1997), at 818 ("Confabulation may be seen in two phases of high-dose cocaine use."). The text continues:

Confabulation is a neuropsychiatric symptom characteristic of diffuse organic brain disease and/or dysfunction. It refers to the unconscious filling in of memory gaps by imagined experiences, fabricated stories, or grossly distorted accounts of recent or remote events. It is absolutely distinct from lying, which implies both motive and awareness of the distortion or untruth. Confabulatory recall is inconsistent; it may change from moment to moment; and it may be induced unwittingly by suggestion. Confabulation may be seen in two phases of high-dose cocaine use. During the acute intoxication phase, the profound confusion, grandiosity, emotional lability, false sense of mastery, illusions, delusions, and hallucinations occasionally can induce certain users to confabulate "in real time." During the convalescent phase, after

other evidence, even though it was of a type that lent itself to such corroboration.

This must be considered in judging whether Petitioner was prejudiced by the Commonwealth unconstitutionally withholding exculpatory and impeachment evidence, by counsel's ineffectiveness and by the new evidence presented by Petitioner.

27. Walker and Petitioner Woke Up with Victoria Doubs and Spent the Day With Her. Victoria Doubs testified that she had awakened the morning of December 14, 1995, with Walker and Petitioner, and had spent the day with them.

a period of abstinence from cocaine, the person gradually recalls fragments of past experience (many of which may have been originally misperceived) in a distorted way. In an attempt to preserve logical consistency, these may be linked with confabulated material. The more such confabulated material is ratified by the social setting and in particular by authority figures (e.g., physicians, attorneys, or law enforcement officers), the more likely it is to become a fully integrated and unquestioned part of that person's self-history. It even may go on to become the basis for future thoughts, conclusions, and actions.

Id., at 818. Given the various inconsistencies at trial and those presented in the new material, her credibility is shattered.

Moreover, as noted above, Doubs testified that Brown admitted to her that she was an active participant in the homicide, having lured the victim toward the alley in exchange for two rocks of cocaine. NTT, 233. According to the trial testimony of Officer Lucas, who secured the scene of the shooting, he found a black knit hat next to Williams' body with two rocks of cocaine in it. NTT 3/13/97 at 85. Accordingly, she had a substantial motivation to exculpate herself, and if her testimony was not the product of confabulation, it was likely just made up.

That day involved, according to Doubs, the fight with Williams at the KFC and a trip back to 18th and Carnation, where Walker's friends laughed at him when they heard he had gotten beaten by Williams. NTT 3/14/97, 217-223.

28. **The Fight at the KFC and Corey Walker's Reaction to It.** Victoria Doubs testified that the fight between Walker and Williams took place in front of a crowd of people, yet the Commonwealth did not produce a single other witness who saw the fight. Likewise, Doubs testified that she recounted the story of the fight to "others" later that afternoon, prompting Walker to say he was going to "kill that kid," yet the Commonwealth put on no other witness to whom she had recounted the story. Nor did the Commonwealth offer any evidence that Walker took hostile action against Doubs, or that Doubs felt threatened by Walker even though, by her account, she helped further his humiliation by retelling the story to a group of his friends. Even assuming *arguendo* that the fight took place and Doubs recounted it as she testified, the Commonwealth presented no evidence to corroborate Doubs' testimony that *Petitioner* was present at the fight or the later outburst by Walker that he was going to "kill the kid." This of course should be considered in connection with the fact that this fight – if it even occurred – failed to provide Lorenzo Johnson with a motive to kill.

29. **Petitioner Was Involved in an Argument with Williams and Walker**

at the Midnight Special (Fab's) Bar. Carla Brown testified that she arrived at the Midnight Special bar around midnight and was there for only five to ten minutes when she saw Walker, Williams and Petitioner arguing by the juke box. She said the three men were told to leave, and she followed them out of the bar, they walked around the corner onto Market Street, walked partway up the street, Walker and Williams turned into the alley, and then the gun shot sounded. It has never been disputed that Williams was killed after midnight.

30. Gary Miller, son of the owner of the bar, testified for the Commonwealth at trial that he remembered the night Williams was killed and had been working in the bar that night. Miller arrived at the bar around 9 p.m. that night. He testified that he heard the bouncer raise his voice and stepped over to the doorway to see what was going on. He testified that he saw Walker and Williams leaving the bar. He also testified that he did not recall seeing Petitioner in the bar that evening, although when pressed, he said it was "possible" he could have been. NT 3/13/97, 93. When asked by the prosecutor what time he (Miller) recalled Walker and Williams leaving the bar, Miller said he thought "I was just getting there or I was there maybe for a couple minutes or, you know, but I don't think it was that late." NT 3/13/97, 94-96. Miller's testimony strongly suggests that if Walker and Williams were asked to leave the bar, it was much earlier in the evening than the hour after midnight when Williams was

actually killed.

31. Eric Chambers was called as a witness at trial by Petitioner. Chambers was working as “security” at the bar the night of December 14-15, 1995. He testified that there was “an altercation, an argument or whatnot” in front of the bar beside the jukebox. As part of his security duties, Chambers went to the front and saw “a group of people arguing near the jukebox. I seen Tarajay Williams and a group of other people which I don’t know, I couldn’t recognize. But at the time it was just an argument, so we kicked everybody out that was involved.” NTT 3/17/97, 301-02. Chambers testified further that he knew Petitioner by sight and that he did not recall seeing Petitioner in the bar that night or as part of the group that was arguing with Williams. *Id.* at 302. On cross-examination, Chambers was asked if he was positive Petitioner was not there or if Chambers just did not recall seeing him. Chambers answered that he did not see Petitioner in the bar, and that “during the altercation when I went up front, I did not see [Petitioner.]” *Id.* at 303.

32. Corey Walker’s girlfriend, Lashawnyn Jackson, testified as a witness for Walker at trial. She said she and Walker had been in the bar together the night of the shooting, and that Walker had been sitting next to her there all evening. She was able to pinpoint the date they were there because they had spent the previous night at Inn of the Dove, went shopping together at outlet malls together during the day on

December 14, and then went to the bar that evening. Thus, her testimony not only contradicted Brown's account of what happened at the bar, but also contradicted Victoria Doubs testimony that she had awakened on the morning of December 14 with Walker and Petitioner, or that she had spent the day with them. NTT 3/17/97, 317-319.

33. **A Single Line Procession Consisting of Walker, Williams, Petitioner and Carla Brown Left Fab's Bar, Went Around the Corner Heading West on Market Street, and Then Walker and Williams Turned into the Alley Where Williams Was Almost Immediately Shot.** Carla Brown testified that, after the argument involving Walker, Williams and Petitioner, they left the bar single-file, with Williams in between Walker and Petitioner and Brown surreptitiously following behind. They headed south on 14th Street to Market, where they turned, and headed westbound towards 15th Street, walking on the north side of Market. Walker then turned into a narrow alley and Williams followed. Petitioner stood at the entrance to the alley. Brown walked by with her hoody up and heard a gun shot just as she got past the alley. She then took off running, turned into an alley, and never came back that night.

34. Laura Davis, the police officer who was driving eastbound on Market when she heard the gun shot, reported seeing two people, a man with a limp and a

woman, walking on Market Street as she drove from 15th towards 14th. She did not report seeing anyone walking in procession towards her before hearing the gun shot.

35. **Tarajay Williams Was Wearing a White Coat That Night. Corey Walker Was Wearing a Long Black Leather Coat under Which He Appeared to Be Concealing a Gun.** Carla Brown testified that Williams was wearing a white coat the night he was killed. Brown also testified that Corey Walker was wearing a long black leather coat under which he appeared to be concealing a gun. The Commonwealth argued that Walker had concealed a shotgun under the coat.

36. But Brian Ramsey testified that he knew Williams well and saw him right before he walked into the alley where he was killed. Ramsey testified that Williams seemed to be with two other men, and that all three were wearing “black, puffy coats,” made of nylon. NTT 3/14/13, 187-88. The coroner testified that Williams was wearing a black jacket when he was shot. NTT 3/17/13, 292.

37. Gary Miller and Eric Chambers both testified that every person entering the Midnight Special bar was patted down for weapons. NTT 3/13/97, 98; 305.

38. **Two People Ran from the Scene of the Shooting Immediately after the Gun Shot Was Heard.** As the Supreme Court noted, Aaron Dews testified at trial that he was a counselor in the house next to the alley where Williams was shot, heard a loud boom, and saw (through plastic window covering) two silhouettes

running down the alley. However, Dews did *not* testify that he looked *immediately* out the window. He testified he heard a loud boom which he thought was the furnace. He ran down to the basement to see if the furnace was blowing up, then ran back upstairs to the second floor room in the back of the house, and then “peeked out the back windows.” NTT 3/14/97, 161-162.

39. Matters Concerning the Credibility of the Two Chief Witnesses.

Defense counsel tried to cross-examine Victoria Doubs and Carla Brown about matters reflecting on their credibility, but the Commonwealth’s objections to these lines of questioning were sustained by the trial court. Doubs gave a statement to the police at the same time she implicated Walker and Petitioner that she had lied to David Hairston that she was pregnant by him so she could trick him into making childcare payments to her. Defense counsel was not permitted to question her about this. NTT 3/14/97, 237-239.

40. Carla Brown testified that, although she had been a drug addict at the time Williams was killed, she had been clean for the previous nine months. Walker’s attorney sought to introduce evidence that the trial had been continued from the previous month because Brown was giving birth at the time. Walker’s counsel revealed to the Court that the prosecutor had told him that Brown’s baby was crack-addicted when born. Again, the Court would not permit Brown to be questioned

about this.

C. Newly-Discovered Evidence and Exculpatory Evidence The Commonwealth Has Failed to Reveal For the Past Eighteen Years Proving that Lorenzo Johnson is Innocent

41. Petitioner has recently – within the last sixty-days – discovered information from a variety of witnesses that prove his innocence and would have resulted in his acquittal at trial. This information is memorialized in affidavits attached to this petition.

42. This newly discovered evidence was unavailable to Petitioner despite his exercise of due diligence.

43. As the affidavits below demonstrate, some of this information was known to the Harrisburg police but never revealed to Petitioner, and was unavailable to him.

44. As the affidavits also demonstrate, some of the affiants were threatened by the police into telling half-truths and outright lies. Because most of these affiants were involved in drug dealing, or were associated with drug dealers, they continue to this day to fear retaliation by the police for coming forward with the truth. Other affiants, and people interviewed who provided information but would not sign affidavits, consider themselves to be in danger if they reveal the names of people actually responsible for Williams' death. As to those people who not sign affidavits,

Petitioner includes an affidavit from an investigator to whom these witnesses made admissions.

45. Below, Petitioner presents the contents of these affidavits, providing highlights of either new or particularly significant revelations.

i. Detective Robert Dillard

46. Detective Robert Dillard provided the following information in an affidavit, signed July 2, 2013:

1. My name is Robert Dillard. I have lived in Harrisburg my whole life. I was a police officer with the Harrisburg Police for over 10 years. More recently, I was the Deputy Superintendent of the State Capitol Police for 8 years. I am now retired.

2. I was still working for the Harrisburg Police Force in 1995 when Tarajay Williams was killed. I recall investigating his murder. Although I don't remember everything about the case, I do remember some details.

3. From what I remember of Tarajay, he was a really good athlete when he was in school. His dead body was found between two houses down near 14th and Market Streets. I recall finding out that Tarajay was involved in using and selling drugs on the night he was killed, and that the investigation of his murder coincided with our police efforts to clean up the streets in Harrisburg. We had a particularly bad problem because dealers from New York had set up shop here and we all knew they were bringing drugs in from New York on a regular basis.

4. I have some pretty clear recollections about Carla Brown's involvement in this case due to her being a heavy drug user. I've known Carla Brown her whole life. I know Carla's family. It was well-known back when this case happened that Carla had a very serious drug addiction. I don't know what ever became of her. I haven't seen her in

years. Her addiction had a pretty good hold on her back when this murder happened.

5. We brought Carla down to the station on the night Tarajay was killed to question her. I remember her face and I can recall even now what she looked like when we asked her questions at the station. She pretended not to know anything, but we didn't believe her. **We questioned her aggressively that night to get the truth. I don't remember exactly what she came up with next, but whatever it was, we didn't believe it. From what I recall, we officers had to work on her over the course of a few months to get her to tell the truth about what happened to Tarajay.**

6. The other officers working the case with me were Officers Kohr, Duffin, and Curtis. Kohr, Duffin, and Curtis took over the investigation. Developing leads was very difficult.

7. The way we conducted investigations back then was by using sources to find out what people on the street were saying about the murder. Every cop involved had his own source. Curtis was always the best at getting information out of sources. He had lived in Harrisburg his whole life and had a good rapport with people who lived here. Curtis was the first of us to get a name from a source about who killed Tarajay. Once we got the name, we started to build our case around that name.

8. After we saw Carla a few times, she finally gave us a truthful statement about what had really happened when Tarajay was killed. Even though Carla was an eyewitness, based on her serious drug problem, it would be difficult to bring the case before a jury. We continued to work hard to talk to other people and find other witnesses.

Affidavit of Detective (Ret.) Robert Dillard, attached.

47. The fact that Carla Brown provided multiples versions of the events to the investigating officers when she was questioned, and that she was "worked on" for

months, was never revealed to Petitioner's trial counsel. Nor were the "facts" of the versions she provided that were not accepted by the police as true, ever provided to Petitioner's trial counsel.

48. Not a single statement of Brown's was ever provided in discovery to defense counsel.

49. And, although Brown testified at both the preliminary hearing in Petitioner's case and at trial that she left the scene of the shooting, never to return that night, and did not speak to the police until at least a week and a half later, Detective Dillard's affidavit demonstrates that that testimony was a lie, and that the prosecution had reason to know it was false and never corrected it, as they were constitutionally obligated to do. *Brady, supra; Napue, supra.*

ii. Jesse Davis

50. Jesse Davis provided the following information in an affidavit dated June 11, 2013:

1. My name is Jesse Allen Davis. I gave a statement to the Harrisburg police in the early morning hours of December 15, 1995, concerning the shooting death of a friend of mine named Tarajay. I had known Tarajay for six or seven years when he was killed but I never knew his last name. **At the time I provided my statement to the police, they told me I was a suspect in Tarajay's shooting.** I answered all the questions the police asked me. I was never questioned by the police after that night about Tarajay, and because I wanted to stay as far away from the investigation of that case as possible, I never tried

to get any further information about who killed Tarajay or whether anyone had been charged with or convicted of his killing.

2. I am currently in custody at Dauphin County Prison with charges pending for theft and receipt of stolen properties. On June 7, 2013, I was contacted at the Prison by an investigator named Shara Davis from the Office of the Federal Defender in Philadelphia. Investigator Davis said she had been looking for me for quite a while because she wanted to ask me questions about things I had observed on the night of Tarajay's death. I'm not surprised Ms. Davis had a hard time locating me. **I have been trying to stay under the radar for a long time.** I grew up in a well-to-do family, attended private schools, and a year of college. I even had a trust fund at one point and used the money from it to move to San Diego but I ran through those funds and came back to Harrisburg. I got involved in the drug trade back in the '90's, and haven't really been out of trouble since then. **I knew the police had suspected me in Tarajay's murder and, even though I had nothing to do with it, was afraid any contact with the police or anyone else would just implicate me in things further.**

3. I was surprised that Ms. Davis had been trying to find me to ask me questions about Tarajay's death, though. At some point after I was interviewed by the police, I got a letter from someone - I don't know if it was the police or a defense lawyer - asking me about Tarajay. **I crumpled the letter up and threw it away without even reading it. Before and since that time, no one else has approached me to ask about Tarajay.**

4. Ms. Davis explained that she was from the Federal Defender's Office in Philadelphia and that her office represents someone named Lorenzo Johnson. I never heard of him before. Ms. Davis mentioned that his nickname on the street had been "Cat." That still didn't mean anything to me. I never heard of Corey Walker or "Rameke," either.

5. Investigator Davis showed me the statement I had given the police on December 15, 1995. I didn't even want to look at it because I didn't want to be reminded of what happened to Tarajay. Ms. Davis and I

discussed it, though, and I answered Ms. Davis's questions about things that had transpired that night. Some of the things Investigator Davis asked me about were things I had said at the time I gave my statement in 1995. She asked me additional questions, though, that no one had ever asked me before.

6. Until recently, if someone other than the police *had* tried to get me to talk about the circumstances of Tarajay's death, I wouldn't have talked to them. Although I always believed in God and thought He was protecting me in various ways, I've come to realize that I need to act in ways that better comport with what I believe God would want me to do. I would not have answered these questions previously because I was trying to stay out of things. I also didn't want to say or do anything that would disgrace the memory of my friend, Tarajay. But I now believe that God would want me to do the right thing by providing the truthful information contained in this declaration, which I now understand is relevant to the investigation into Tarajay's death.

7. I met Tarajay through my younger brother, Alonzo Rawls. When Tarajay and I started hanging out together, I thought of him as a younger brother and loved him as if he actually was my younger brother. Tarajay and I would sometimes get high together. Even though Tarajay was using drugs every day, he always looked good. He was addicted but you couldn't tell that from the way he looked. The two of us would also run drugs together, too.

8. **In the day before Tarajay was killed, I was with him practically all day.** I met his mother for the first time the day before he was killed. I told his mother that I would watch out for Tarajay and wouldn't let anything happen to him. I really meant that. I was a few years older than Tarajay and I was serious when I said I'd make sure he stayed safe.

9. Tarajay was killed pretty close after midnight on December 15 so December 14 was the day leading up to his death. **On December 14, Tarajay and I spent most of the day together.** Tarajay didn't have a car, but I had borrowed my girlfriend's (Tina Darden's) car. Tarajay and

I drove around and talked. Ironically, we spent part of that day talking about changing our lives. We were both tired of being in the drug game. We were tired of arguing with dealers and running the streets. Tarajay talked to me about wanting to get out of the game and to do something else. I wanted the same thing. At that time, though, we still had to do what we could to make money.

10. At about 3:00 p.m. on December 14, I dropped Tarajay off so I could take care of some personal business.

11. During our discussions, Investigator Davis told me there was evidence introduced at trial that Tarajay had gotten into an argument over a drug debt during the early part of the day on December 14, 1995, with a drug dealer named Corey Walker, in the parking lot of a Kentucky Fried Chicken place in Harrisburg, located at 14th and Market. **That's not true. I was with Tarajay all that day up until the time I dropped him off at 3 p.m., and Tarajay hadn't gotten into any arguments or fights with anyone. Before I dropped him off, we were never at the Kentucky Fried Chicken parking lot at 14th and Market.**

12. Even after 3 o'clock, I continued to make runs. I passed by 14th and Market all afternoon and into the night but I never saw Tarajay at that specific location. I saw Tarajay a bunch of times that night and he never mentioned getting into any fights or arguments with anyone. That's the sort of thing he would have told me, too. Every time I saw Tarajay, he was alone.

13. When I was done working for the day, I ended up at Fab's, which has also been known as Midnight Special. My girlfriend, Tina Darden, showed up. She was angry with me because I had taken her car for days. She didn't know where I was or what I was doing in her car. At one point in the evening, Tina and I saw Tarajay out on the street. He and I spoke briefly.

14. Some time close to midnight, Tina and I were out on the steps of Fab's arguing. We had been arguing for about ten minutes when

I heard a gunshot. Hearing a gunshot didn't phase us because, in that part of town, we heard gunshots all the time. We just kept on arguing.

15. About a minute later, though, a female cop drove up and asked if we had heard the gunshot. I told her I had and that it sounded like it had come from around the corner on Market Street. The cop drove away. I argued with Tina for another few minutes before giving her the keys and leaving on foot. I was going to go to O.D.'s, another bar, at 15th and Market. I turned down Market Street, heading towards 15th. As I was walking, my sense was that things were eerily quiet, like a ghost movie or something. About half a block down Market, I saw someone lying face down near the sidewalk between two houses.

16. I'm not the type of person to see someone lying on the ground and not make sure they're all right so I went over to see what the story was. When I got up close, I saw blood on the snow. I looked around and saw both the male cop in a police car. I flagged him down. The male officer got out of his car and told me to get away from the body and get up against the porch of one of the houses I was between. **The police then searched me and then arrested me. At that point, I didn't even know it was Tarajay lying there.**

17. When I got to the police station, the police started interrogating me. I'm sure that officer Curtis and another detective was there, but I'm not sure who else was there. The police kept telling me that they knew I shot the person in the alley and that they had me on a murder charge. I didn't know it was Tarajay until they said, "We know you killed Tarajay! Tell us why you did it!" When I realized that it was my friend who was killed I was devastated. I started crying. I couldn't believe that Tarajay was gone. I had just promised his mother I would watch over him, and just a day later, he was shot to death. The police kept yelling, demanding more information, and telling me they were going to charge me. I told them what I knew, but I was terrified I was going to get charged with murder.

18. After I got released, I heard rumors that Carla Brown had set

Tarajay up to go into the alley with whoever killed him. I know Carla Brown. Carla, Tarajay, and I grew up in the same part of Harrisburg. Back in the 90s, Carla was what we would refer to as being “greasy” in the streets. She was very manipulative and willing to do anything to anyone if it would benefit her. She could not be trusted and I would never believe a word she said. Carla was addicted to drugs really bad, too. She had more access to drugs when she started dating the father of her children, a guy named Holly Rock. Because of Carla’s reputation, I had no doubt that she would be capable of setting Tarajay up like that. I never told the police what I’d heard about Carla, though, because I didn’t want to be mixed up in this case any more than I already was.

19. In talking to Investigator Davis, she explained to me that Carla Brown had testified at trial that Tarajay left Fab’s bar followed by two men and her. That is not true. I was directly in front of Fab’s, arguing with Tina for at least ten minutes before we heard that gunshot. Tarajay did not walk out of Fab’s during that time, by himself or with anyone else. I never saw Carla Brown walk out of that bar, either.

20. Ms. Davis also told me that there was evidence presented at trial either that Tarajay and a couple of guys had been thrown out of Fab’s for arguing, or that they were arguing right outside the bar in the presence of a bouncer. I wasn’t inside the bar so I don’t know what went on inside **but I was standing right outside the door to the bar and Tarajay was never thrown out with two other people and I never saw him outside arguing with anyone.**

21. If Tarajay had been thrown out of Fab’s, or had come out arguing with someone right just before the shot went off, I would have noticed since I was right there at the steps to the bar. I would have stepped in to defend him if I had seen him arguing with anyone.

22. I’m also certain that Tarajay and Carla never walked past us. If I had seen Tarajay being led away or walking off with Carla or with two men following him, I would have checked to make sure he was okay. I would not have let him walk away like that. If Tarajay had come out

of Fab's and left with people trailing after him, turned the corner, and I had heard a shot right after he went by, I would have been around the corner in an instant to make sure he was okay. I would never have stayed around arguing with Tina.

23. Tarajay's murder sticks out in my mind not only because I found his body, but because I considered him my close friend and someone I felt very protective of. Tarajay's murder really made me feel guilty because I felt like I broke the promise I made to his mother just the previous day. I keep thinking that if I hadn't dropped him off so I could do something else, he might still be alive.

24. I have tried not to think about what happened to Tarajay because I feel responsible that I wasn't there to look out for him. I didn't follow the story of the murder because it was painful to think about. Until now, I didn't know anyone had been convicted for Tarajay's murder. I never followed the trial.

25. I did not purposefully withhold any information from the police when they questioned me on the night Tarajay was killed, or provide them with any misinformation. Neither they nor any defense attorney ever asked me if I was aware there had been an argument or a fight outside Fab's bar the night Tarajay was killed, they never asked me if I knew anything about his being at a Kentucky Fried Chicken store the day he was killed, and they never asked me if Tarajay had left Fab's bar with Carla Brown or any other people that night. I didn't realize this information was relevant to anything.

Affidavit of Jesse Davis, attached.

51. This newly discovered information shows what Petitioner has contended for years: Doubs' story about the fight in the KCF parking lot was false, and Carla Brown's story of having followed Williams, Walker and Petitioner from the bar just prior to the shooting was false.

iii. Carl Williams

52. Carl Williams provided the following information in a recently executed affidavit:

1. My name is Carl Williams. I was born with cerebral palsy, which affects and significantly impairs movement in my legs. Although I was born in Yonkers, New York, I've lived in Harrisburg since the mid-1990s from the time I was about 18 years old. I used to sell drugs in Harrisburg but I haven't been involved in the drug trade in about 10 years. My focus now is on staying out of trouble and providing for my family.

2. In 1995, I would hang out in the area of 14th and Market Streets virtually all day and night selling drugs. One of the people I worked a lot with at 14th and Market Streets was Tarajay Williams.

3. I knew Tarajay probably better than other dealers who were out at 14th and Market. Tarajay and I weren't friends, but we spent a lot of time together. Tarajay was a heavy crack user and used to work as a drug runner.

4. Back then, dealers would use runners in two ways: A dealer could stay stationary and let the runner bring customers to the dealer for a direct sale. A dealer could also give a runner a few rocks to sell to customers and expect that the runner will bring money to the dealer after making the sales. The runners did this work, and other things to help the dealers - like providing a dealer with use of a car for a day - in exchange for a couple of rocks of crack for themselves.

5. Tarajay would run for anyone who sold drugs, but he ran for me on a regular basis. I hung around Tarajay a lot. **Tarajay didn't have a car, and didn't have access to a car.** If he had use of a car, he would have lent it to us to deal from in exchange for drugs from us. It would have been a lot easier than doing the kind of running he was doing.

6. Tarajay and I spent a lot of time together. Sometimes, we would be out selling until 3 or 4 in the morning, just the two of us. We would even get each other food. I never really had any problems with him. Sometimes I would give him a rock or two even before he had made the number of sales I asked him to make because I found him easy to work with. I felt close enough to Tarajay that I went to his funeral to pay my respects to him and his family.

7. A lot of times, I also worked with a guy called "D" from New York. I didn't know him before we came down to Harrisburg, but we met in Harrisburg and got along, so we started selling drugs together. I don't recall D's name, but he had braids and walked with a limp. I'm not sure, but I think he had been shot in one of his legs. We both ended up doing time in prison and ended up losing touch while we were in custody.

8. In the mid-1990's, there were a lot of guys from New York selling drugs in Harrisburg. We came down from New York to Harrisburg because we could make a much bigger profit. There were only certain places in Harrisburg where New Yorkers could sell. One of them was 14th and Market.

9. During this period of time, I knew who Corey Walker and Lorenzo Johnson were, but we weren't close. I knew Corey Walker as "Rameek." All I knew about Rameek and Lorenzo was that they were both from New York and that they were in the drug game like me. When I would see Lorenzo, we'd say hi or ask each other what's up.

10. On the night Tarajay was killed, I was with two friends, Mike "Playboy" McBride, and Mike's girlfriend. I'm not sure what his girlfriend's real name is, but back then, we called her "Kilo". Mike, Kilo, and I were driving around and drove past a bar called O. D.'s. O.D.'s was and still is located at the corner of 15th and Market Streets. We decided to drive over one block to 14th and Market Streets to see what was going on at Fab's, the bar at 14th and Market. It wasn't unusual for me, or for any of us dealers, to drive one block. We were involved in selling drugs and we rarely walked. Walking around with

drugs was a way to get caught by police. Usually, if we had any drugs on us, we would get in a car to go where we needed to go, no matter how short the distance. That way, if a cop tried to catch us, we could just drive away.

11. We drove down Market Street from 15th to 14th. There was a Kentucky Fried Chicken place on 14th Street, between Market and Regina, right across the street from Fab's. Just as we were turning into the parking lot of the Kentucky Fried Chicken, we heard a gunshot blast. **We had driven right down Market, on the same side of the street where Tarajay's body was found a few minutes later. I hadn't seen any person or car out on the street as we were driving down that block.** We parked the car in the KFC parking lot, facing Fab's.

12. After the shot was fired, Mike went into Fab's, while Kilo and I stayed in the car. **There was a guy that Tarajay used to hang out and smoke with standing outside the bar. A few minutes after we heard the shot, Tarajay's friend turned the corner and walked down the street, right towards the alley where the body was found. I can't remember the guy's name, but I think it's something like Jerry.** He used to hang out with Tarajay all the time. Jerry was the only person I saw in the area the entire time. Right after he went into that alley, a police officer came. I believe it was a female officer and she was the first officer to arrive at the scene. After that, a lot of other officers came.

13. About 10 to 20 minutes after the shot went off, I saw Rameek outside Fab's bar when the police were around. Although Lorenzo was with Rameek a lot of the time, **I did not see Lorenzo with Rameek that night.** I was outside the bar in the parking lot across the street and then in the crowd after the police came. Lorenzo was never there. In fact, until I was questioned recently about what I had seen the night Tarajay was killed, I had no idea that Lorenzo had even been accused of Tarajay's murder. I knew that Rameek had been convicted, but on the street, Lorenzo's name never came up as being associated with the murder.

14. No officers talked to me on the night of the shooting. A few days

after Tarajay got killed, I heard the police were looking for me. I was told that Detective Duffin, specifically, was on the street asking people, "Where Coast at?" ("Coast" was my street name.) I heard he wanted to talk to me because he heard Tarajay was running for me on the night he was killed. I didn't know if the police were going to try to pin Tarajay's murder on me, so I laid low. Duffin even came to my apartment, searched it, and took around \$1000 cash he found there. He told my neighbor that if I wanted my money back, I would have to come down to the police station to get it.

15. I was so worried about what Duffin would do, I called a lawyer. My lawyer then called Duffin, who told him I was not a suspect and that he just wanted to talk to me because he heard Tarajay was running for me on the night he was killed. After the lawyer assured me it was okay to talk to Duffin, I went to the police station. At the station, Duffin took me to a room where another fat, white cop was sitting.

16. Duffin was very aggressive. He asked me what I knew about Tarajay's murder and I told him I didn't know anything. Duffin threatened me. He said that if I didn't tell him what I knew, he was going to charge me with carjacking. I hadn't stolen any cars, but I understood that he might be able to come up with a carjacking charge against me. Back then, if a crackhead wanted drugs but didn't have any money, they would let us dealers borrow their cars to drive around in to make deals or to stay mobile so the police wouldn't catch us. Duffin said that was enough for a carjacking charge against me and that my bail would be set at \$100,000. I didn't think he had any carjacking charge on me, but the way he was yelling at me made me nervous about what he would do.

17. The rest of Duffin's questions were about Rameek. He showed me a picture of Rameek and I identified him. He wanted to know where Rameek was, but I didn't know. I had never really dealt with Rameek a lot. I knew who he was, but we weren't friends. During the interrogation, he didn't ask anything about what I saw. He didn't ask if I heard the shot or if anyone was around. All he wanted to know was if I knew who Rameek was and if I knew where Rameek was. The

interrogation didn't last that long, maybe about 10 minutes or so, because I really didn't know anything about Rameek. When I left the station, I went down to the police property room and they gave me my money back.

18. At some later point, Duffin came out to 14th and Market and told me and the other dealers out there that no one would be selling drugs on the corner until he caught Rameek. It was true. The cops were out and watching us hard for a while at 14th and Market, so we couldn't sell as much as we were selling before. It was hurting our business. As odd as it sounds, Duffin came back to 14th and Market one day and told us, "I got Rameek. You can go back to selling now." I heard that around that time they picked Rameek up in Yonkers.

19. The only other thing I knew about Rameek's case is that Carla Brown was supposedly a witness. I knew Carla from hanging around 14th and Market. Carla was a serious drug user back then and I sold to her regularly. I sold crack to her father, too. I think people used to call him "Smoke." I never talked to Carla about what she knew about Tarajay's murder personally, but I knew the police were looking for her. Months after Tarajay was killed, they would come to 14th and Market asking where she was, telling us it was time for trial and they needed to find her. For a while, the police couldn't find her.

20. I saw Carla regularly before Tarajay was killed and after he was killed. I used to sell to her regularly. Carla would bring me customers. Every time she would bring someone in, though, she would expect to be given a rock for free. If we didn't give her free crack, she would take the customer to buy from someone else.

21. I saw the police pick up Carla when it was time for Rameek's trial. They picked her up right at 14th and Regina Street, just one block from 14th and Market Streets. **I saw them handcuff her and put her in a patrol car. At the time they took her in, I know she was still using. She looked and smelled dirty, like she hadn't taken a bath in days. She was also hanging out with people who were smoking crack heavily. I personally had sold her drugs on multiple occasions**

during that time—probably even days before they arrested her. There was no way that she had stopped using drugs by the time she went to court.

22. In 2002, I ended up in custody at the same prison as Rameek. I told Rameek about my interrogation by Duffin. At that point, Rameek asked me to write an affidavit for him about Duffin taking the money from my house and then questioning me. I signed an affidavit dated September 17, 2002 about my dealings with Duffin. Rameek told me that he heard that the guys who killed Tarajay had braids. I hadn't heard that, but it seemed to be what Rameek was focused on.

23. Even during this period of time, when I was talking to Rameek about the case, Lorenzo Johnson's name never came up in connection with this crime - not as someone who was involved, not as someone who was accused of it, not as someone who was convicted of it.

24. I have only recently heard about the way this whole story got told at trial - about Tarajay getting into a fight with Rameek in the Kentucky Fried Chicken parking lot earlier on the day Tarajay was killed where Tarajay supposedly beat Rameek with a broomstick. I had never before heard a word about any fight like that.

25. I was out in the area around 14th and Market almost every day back in those days. I didn't see the fight happen and I didn't hear anything on the street about such a fight happening. Even I hadn't been there right at the time such a fight happened, I would have heard about it very soon afterwards.

26. Tarajay was not the kind of guy to get involved in physical fights with people. I especially can't see Tarajay picking or winning a fight against Rameek. That wasn't the way someone like Tarajay, who depended on dealers to get him drugs, would ever have behaved towards someone he would run for and get crack from.

27. No one from the police department ever asked me whether I saw Lorenzo Johnson out on the street or at Fab's the night Tarajay

was killed. No one from the police department ever asked me whether I'd seen or heard about some fight between Rameek and Tarajay at the KFC that day, either.

28. No one else asked me questions like that, either. If Lorenzo's lawyer had come to talk to me, I would have told his lawyer everything I've said in this affidavit. I would have told Lorenzo's lawyer I never saw Lorenzo that day at the KFC, and I didn't see Lorenzo the night Tarajay was killed, either on the street right before he was shot or even in the crowd outside Fab's after it all happened. I would also have told Lorenzo's lawyer that I thought the story about the fight at the KFC was complete garbage and that Carla Brown was still using drugs right up until the time of trial.

Affidavit of Carl Williams, dated July 15, 2013, attached.

53. Carl Williams' affidavit is important for a host of reasons. First, this newly discovered evidence corroborates Jesse Davis's recent affidavit that he was on the steps of Fab's bar when Williams was shot. Second, this newly discovered evidence shows that yet another person at the scene did not see the procession of Tarajay Williams, Walker, Petitioner and Brown walking down Market Street just prior to the gun shot. Third, this is further evidence from someone who was always in the vicinity of the KFC – and who the police knew to be always in the vicinity of the KFC – that no fight between Williams and Walker had taken place that day in the parking lot.

54. Fourth, Carl Williams confirms that there was a drug dealer named "D" who walked with a limp. This corroborates the statement given to police by Adrian

Fluellen, that he saw Scott Holloway (known on the street as “D”) with Brown and another man that night coming from the direction of O.D.’s, and that Tarajay walked over and joined them shortly at the alley shortly before he was shot. This also corroborates Brian Ramsey’s statement and trial testimony that he saw a man with a limp enter the alley with Tarajay.

55. Finally, Carl Williams’ affidavit provides important evidence of *Brady* and *Napue* violations. Carl Williams was threatened by the police and his property was taken, to force him to talk, but only about what the police wanted to hear to confirm their theory. Moreover, Carl Williams saw Brown being picked up by the police a few days before trial in a clearly drug-addled state. His affidavit supports a claim that the police were well aware that Brown’s trial testimony – that she had been drug-free for ten months at the time of trial – was a lie.

iv. Suquan Ripply Boyd

56. Suquan Ripply Boyd provided the following affidavit, signed on August 3, 2013:

1. My full name is Suquan Ripply Boyd. I used to go by the name Suquan Ripply. I was arrested several times under different names and at some point began using my true name, Suquan Boyd. I currently live in Greenville, South Carolina. I have lived here since December, 2012.
2. I used to live in Harrisburg, Pennsylvania. I also spent 6 years in prison with two years on parole. I was incarcerated from 1995 to 2001,

mostly at the State Correctional Institute at Albion for several drug charges, including several counts of dealing and a criminal conspiracy related to drugs.

3. Once I left prison, I vowed to straighten my life out and I have done that since 2007. I have not been in trouble since 2007. I have been continuously employed since 2007. I currently work as a roofer, often working double shifts. I have a family. I have worked hard to leave the drug world behind me. It will always be part of my past but it is no longer part of my present.

4. During my time in Harrisburg, I was involved in drug dealing with both Corey Walker and with Lorenzo Johnson. We all had the same goals of making money, and we were all from New York. Lorenzo was a nice young man.. Lorenzo and I were close, almost like brothers.

5. **I recall December 14 and 15, 1995 very clearly. I went to New York on a run to purchase drugs with Lorenzo, Cliff Germain, Dave Hairston, a girl named ReRe, and Vicky Bowman. We took two cars and our plan was to purchase drugs in New York and return immediately. Corey Walker was not with us that night.** Typically, Corey or Lorenzo would come with us, but not both at the same time. One of them would stay in Harrisburg to sell drugs while the other one went to New York to replenish the stash.

6. That particular day, December 14, 1995, we left Harrisburg late in the afternoon. It was already beginning to get dark. It was about 3 or 4 a.m. by the time we got home.

7. I didn't get much sleep that night because just a few hours after I got to bed, Lorenzo called to say he had a client. I was the one who had the drugs so they needed to come and get me. Lorenzo said he was picking me up right away, which he did. Lorenzo was driving and the customer was in the front passenger seat. I hopped in the back. To this day, I don't know who the customer was.

8. At around 14th and Market, Lorenzo realized that Detective Duffin

was behind us in an unmarked police car. Lorenzo could see him through the rearview mirror. Lorenzo was not very cool in those days and just panicked. He started to drive off fast and in his panic, he hit a woman's car who was backing out of a parking space. We all opened our car doors, jumped out and started running.

9. I don't think anyone caught Lorenzo's customer but the police got both Lorenzo and me. I didn't have any drugs on me by then, and I wasn't charged with anything. I assumed they had let Lorenzo go, too, but I found out the police kept Lorenzo in custody for several days. During that time, I heard that Tarajay Williams had been killed the night Lorenzo and I were in New York. I don't know where Corey Walker was that night.

10. I didn't know Tarajay Williams except to know that he was a crack addict who used to hang in Harrisburg and sell enough drugs to get himself high.

11. Sometime later, I was sent to Camp Hill to await my trial on drug selling charges. While I was at Camp Hill the FBI came to talk to me and asked me a bunch of questions but I didn't have anything for them. I was young and totally ignorant of the law, and kept thinking I was going to get federal charges in addition to the state charges I was facing. I had a lawyer and was able to plead my case down from 8 to 16 years, to 3.5 to 7 years. I was very happy about that and decided to do my time quietly, get out and go straight. I spent the bulk of my sentence upstate at SCI-Albion.

12. One day while I was at Albion, my cell door opened and a sheriff's officer came in to get me. I thought I was being taken to a preliminary hearing or that I'd be taken to New York to be charged with federal crimes. Instead, I was taken to the police station in downtown Harrisburg. I didn't realize it until later but this happened a few days before Lorenzo's trial was set to begin.

13. I was put in a conference room with Detective Duffin and another police officer I didn't recognize. **Duffin told me that Vicky and Cliff**

had already given him their statements. Duffin told me that Vicky had a robbery charge. He told me that in return for their cooperation, he was able to do things to help get them out of their predicaments. He told me it was now my turn to cooperate and he would see what he could do to help me.

14. I told Detective Duffin exactly what I've said here – that Lorenzo, others, and I were in New York the night Tarajay was killed. I told the truth and I provided details for him. I then signed a statement saying exactly that. During this entire time, another cop was in the room. When I finished my statement, the other cop took my signed statement and left me alone with Duffin.

15. Duffin then began to threaten me. He said he had to call someone to verify what I had said. He left and came back a short time later and told me, in angry tones, that he had checked and that I had lied in the statement I had just given. He said that if I didn't help him out and "be more vague" about my recollections of the actual day of the trip to New York, he was going to get my original sentence of 8 to 16 years imposed. He told me he would call the FBI immediately and would personally see I got indicted on federal charges.

16. This session when I was with Duffin alone lasted about 15 minutes. I was really scared that I would have to spend 7 or 8 more years in prison if I didn't cooperate with him. I was in a panic. He drew up another statement that was vague and that negated the entire long true statement I had given a few minutes earlier. I was scared and I signed it.

17. It hurt me to do this to my friend Lorenzo but Duffin made me think I had no other choice. Besides, Duffin told me I wasn't doing anything terrible. I was just saying the same thing he had convinced Vicky and Cliff to say – that I wasn't positive of the day we had been in New York. But I was completely positive of the day.

18. I couldn't sleep after signing this second statement and felt really bad about it. Before I went into court to testify, I told Lorenzo's lady

lawyer that the first statement I had given the police was true and the second statement I had given wasn't true. I explained what had happened with Detective Duffin.

19. Lorenzo's lawyer told me I could tell the truth on the stand. When she put me up to testify, I got to tell part of the truth but I didn't get to tell the jury everything Detective Duffin had said to convince me to sign that false second statement, like the stuff about helping out Vicky and Cliff. Lorenzo's lawyer didn't ask me a question that gave me the opportunity to tell that part. I tried to say more but couldn't figure out how to do it. I thought maybe there were limits on what I was allowed to say in court.

20. I just want to make sure this information is clear now. I've been worried about this for years, but I was too afraid that if I came forward and accused Detective Duffin of coercing me, I'd be the one to get in trouble and might wind up with additional drug charges or perjury charges or doing more time for the charges I was already serving time for. But Lorenzo Johnson was absolutely with me in New York the night that Tarajay Williams was shot and killed. Despite what I said in that second police report, I have never been confused about the date we made that trip to New York.

Affidavit of Suquan Ripply Boyd, dated August 3, 2013, attached.

57. Ripply's affidavit provides critical *Brady* evidence that the police were providing favors to two of their witnesses – Victoria Doubs, who the police identified as having a robbery charge and was one of the two most critical witnesses at trial, and Clifton Germain, who the Commonwealth called at trial to rebut Petitioner's alibi.

58. Ripply's affidavit also provides evidence of trial counsel's ineffectiveness.

v. Brian Ramsey

59. Brian Ramsey provided the following affidavit:

1. My name is Brian Ramsey. I was born and raised in Harrisburg, Pennsylvania. I went to William Penn High School in Harrisburg until the 11th grade.

2. I gave a statement to the Harrisburg police in December 1995 concerning the shooting death of a friend of mine named Tarajay Williams. I later testified at the trial of Lorenzo Johnson and Corey Walker, who were accused of killing Tarajay.

3. I had known Tarajay for a long time when he was killed. We both grew up in Harrisburg and were very close friends. I have a clear memory of what happened that night, including the date Tarajay was killed, December 15, 1995.

4. In 1995, people on the streets called me “Bo Rock”. I was addicted to crack cocaine. I used to hang out in the area of 14th and Market Streets in Harrisburg. That was one of the places in Harrisburg where people could come to buy crack. I’ve been arrested there for drug-related charges a few times. I would hang out at 14th and Market or 14th and Regina and work with dealers to make drug deals in exchange for money or drugs. Tarajay would do the same. I knew a lot of dealers in the area. I knew Corey Walker and Lorenzo Johnson.

5. After the shooting, the rumors around town were that Tarajay owed whoever shot him money and that Carla Brown had set him up to get drugs. Based on what I saw that night, the rumors are probably true. I went to school with Carla and I’ve known her for a long time. I always wanted to ask her what happened, but I never did. This whole situation is something that I always try to put out of my mind.

6. Even though I testified at trial, I wasn’t allowed to listen to what other people testified about. I just only now found out that Carla Brown testified at trial that there had been a fight at Fab’s between Corey,

Lorenzo and Tarajay just before he was shot and that she (Carla), Corey, Tarajay, and Lorenzo walked straight from the bar to the alley where Tarajay was killed.

7. **If that's really what Carla said at trial, it's not true. I saw Tarajay go into the alley but Tarajay and the guys I saw him with weren't walking together and they weren't coming from the direction of Fab's.**

8. I was standing next to Tarajay on the street. Two guys walked towards us coming from the direction of 15th and Market, a block away from Fab's. Carla Brown was with those guys that night. **I remember clearly that she was wearing a light-colored jacket—it was either light pink or white.** She got out of a car with the two guys.

9. Tarajay told me, "I'll be right back" and walked towards them. I thought he was going up to them to make a deal. He met up with them at the alley. **All of them, including Carla, went into the alley together.**

10. After that, I heard the gunshot. A crowd started to form at 14th and Market and I walked away to get as far as I could from where the gunshot came from.

11. After walking around for a few minutes, I went back to 14th and Market. The crowd was really big by then. That's when I found out that Tarajay had been killed. I was devastated. Tarajay and I were close and we would see each other almost every day. He was a good person and never did anything to hurt anyone.

12. I went down to the police station the night he was killed and gave a statement to the police. The district attorney was there watching, too. I was worried while I was there because I had a three-year warrant at the time. The police were cool and pretty calm. They never threatened me, but I still thought that they would arrest me on the warrant. They didn't. **They let me go home that night after I told to them about what I saw.**

13. Eventually, I was arrested for some unrelated stuff, and I was desperate to work out a deal for my own cases. I got a subpoena while I was in the county prison. **I knew they wanted me to testify about what I saw and thought that maybe I could use the situation to work out a deal on my cases. I sent the prosecutor, Mr. Abruzzo, a letter. In the letter, I let him know that I was in custody and that I needed help getting my case resolved and getting out of custody. I either got a letter in response to my letter or a detective came out to see me. I think the detective told me something like, "I'll see what I can do for you." No one ever promised me anything, but I wanted to do what I could so that maybe they would want to help me out of my situation.**

14. I testified at trial for the district attorney. As I testified, I really tried to follow his lead and give him the information he wanted. At the same time, I did what I could not to hurt Lorenzo and Corey. **I knew at the time I testified that the guys I saw shoot Tarajay didn't match Lorenzo and Corey's description.**

15. **The guys I saw go into the alley with Tarajay had a much smaller build than Lorenzo and Corey. Lorenzo and Corey were what I could call "stocky". These other guys weren't. When I testified, I tried to say that Lorenzo and Corey were bigger than the guys who shot Tarajay, but I guess it wasn't good enough. The guys with Tarajay were also clean-cut. Either Lorenzo or Corey—I don't remember who—had braids back then.**

16. **I also testified that I remembered seeing "them", Corey and Lorenzo, out on the street that night. That was not actually true. I only saw Corey on the street after the shooting. Corey was in the crowd with everyone else who had come out, trying to see what happened. When I did see Corey, he seemed as upset that Tarajay had been killed as everyone else. I never saw Lorenzo that night.**

17. At trial, I also said that the people who killed Tarajay were wearing hats. That was not true. I don't even know why I said it. When the police first asked me, I told them that both guys had short hair.

At trial, it didn't seem like such an important detail since I had already said that I didn't think Lorenzo and Corey shot Tarajay. I just went along with what I thought the prosecutor wanted me to say.

18. I am certain that Carla was the person wearing the light-colored jacket that I saw with the two guys who went with Tarajay into the alley. I've known Carla pretty much my whole life. We grew up living across the street from each other. I would recognize her anywhere. The police asked me if I knew who the girl wearing the white coat was. I told them I didn't know. During the trial, one of the attorneys asked me if Carla was the third person I saw going into the alley with Tarajay. I said that I couldn't say if she was or wasn't there. I should have said that Carla was wearing the white coat, but I didn't. I knew what the rumors were, but I considered her a friend and I didn't want her to get into trouble with the police. But I didn't want to lie, either, which is why I said that I couldn't say she was or wasn't there.

19. I knew Lorenzo and Corey pretty well when they were in Harrisburg. Because I know the kind of people they are, I know they wouldn't have killed Tarajay. Lorenzo and Corey weren't violent people. I had never seen either of them with a gun. They didn't have reputations for being violent.

20. I knew that Lorenzo and Corey had been convicted of murdering Tarajay, but never tried to clarify what I saw because I still had cases pending. In 2002, I was in custody at SCI Somerset. Lorenzo was there, too. I agreed to sign an affidavit for him about my trial testimony. Everything I said in that affidavit is true. I did not see Lorenzo in the crowd that night. I saw Corey and assumed that Lorenzo was there. When I testified to seeing them both, I was just following the prosecutor's lead and saying what I could to help myself. I thought that since I testified that I didn't think Corey and Lorenzo were the ones who went into the alley that they would not be hurt by my saying they were both in the crowd, so I figured it was okay not to do anything before then to correct what I had said at trial.

21. **Lorenzo's and Corey's lawyers never talked to me before trial**

or asked me about what I saw the night Tarajay was killed. If they had asked, I would have told them that I knew Lorenzo and Corey weren't the ones who went into the alley with Tarajay that night. I would have told them that I didn't see Lorenzo that night and just assumed that he was there because he was usually with Corey. But I didn't volunteer any information then because I didn't want to upset the district attorney and make my situation worse.

Affidavit of Brian Ramsey, dated July 31, 2013, attached.

60. As shown, Brian Ramsey saw the men who killed Tarajay – Lorenzo Johnson was not among them. He further disputes Carla's Brown's testimony about the line of men leaving the bar prior to the shooting. As Petitioner has believed for years, Brown herself was involved in the shooting, as evidenced by Ramsey's recollection that she was walking towards the alley with the shooters from the opposite direction of Fab's, and that Williams walked over to join them at the alley.

61. Ramsey also wrote to the prosecutor, Mr. Abruzzo, in an effort to get a deal in exchange for what he could tell them. This information was never provided to Petitioner.

62. Ramsey's affidavit presents violations of *Brady*, constitutes newly discovered evidence and supports Petitioner's claims that his trial counsel – who never attempted to interview this witness – was ineffective.

vi. Adrian Fluellen

63. Adrian Fluellen provided the following information in another recently

signed affidavit (dated July 31, 2013):

1. My name is Adrian Fluellen. I was born and raised in Harrisburg, Pennsylvania. On December 15, 1995, I witnessed the murder of Tarajay Williams. I knew Tarajay my whole life. He was a nice guy, and I considered him a friend. The night Tarajay was killed stands out in my mind because I saw some of what happened that night. The entire situation is really something I would like to forget.

2. In 1995, I sold drugs to make money. I picked up a lot of cases for unlawful delivery and ended up in and out of prison a lot. I had just gotten released from prison about a week before Tarajay was killed. 14th and Market Streets was a place in Harrisburg where a lot of drugs were sold, mostly crack cocaine. A lot of guys from New York came down to Harrisburg and settled into 14th and Market to sell crack. They could make a lot more money in Harrisburg by moving product from New York and selling it for twice as much in Harrisburg.

3. When I got out of prison in December 1995, I wanted to stay home and not get involved with drugs again. I was on parole and I didn't want to go back to prison. At the same time, I knew that I had to make money. After a few days of being out, I went back on the streets to sell at 14th and Market.

4. The morning Tarajay was killed, there were a lot of people on the block at 14th and Market. I can't remember the names of everyone who was there because so much time has passed, but I know there were lots of people on the street when Tarajay was shot.

5. One of the people out on the street that night was Carla Brown. I've known Carla Brown my whole life. In 1995, she was seriously addicted to crack and she would do anything to get it. The night Tarajay was killed, she was with two guys. One guy she was with was Scott Holloway. Everybody on the street called him "D". He dated a girl named Candy. I didn't know the other guy Carla was with—the first time I met and saw him around was that night. I knew Scott because he and I used to hang out and work together. I wouldn't call him a friend, but

we had mutual interests, so we would sell together around 14th and Market. **Carla, D, Tarajay, and the other guy went in between two houses and the shotgun blast went off. As soon as the blast went off, I ran.** I ran home to get as far as I could away from what had just happened.

6. The way I heard it later, the whole situation happened over something that happened just before they shot Tarajay. It was probably over drugs or money that was owed. I also heard rumors that Carla had been paid, probably in drugs, to take Tarajay to the alley with D and that other guy. I couldn't believe what happened. As far as I knew, D was really not the kind of guy who carried guns or who threatened or killed people. But there is no doubt in my mind that he and the other guy went in between the houses with Carla and Tarajay and killed Tarajay.

7. Later that night, on the same day Tarajay was killed, I was back at 14th and Market. D was there, too. We were working together again making sales. One of our sales was to someone working undercover for the police. The police came in, lights flashing, to arrest us. I was on parole and didn't want to go back to prison, so I took off running. D didn't run. When the police caught up to me, they arrested me because I was on parole and because I ran from them. D was not arrested that night, but he was later charged as my co-defendant when the charges were filed.

8. When I got to the police station, I was interrogated in a way that I had never been interrogated before. I had been arrested several times before, but the situation on the night Tarajay was killed was worse than anything I've ever experienced. It is one of the reasons I want to put this whole situation out of my mind. There were a lot of police officers in the room where I was questioned. The District Attorney, John Cherry, was there, too. I can't remember exactly which officers were there, but there were a lot of them. They were loud. They were angry. They told me that they had been rounding up people at 14th and Market on drug charges and questioning everyone about Tarajay's murder. They said they had a list of people who were around that night and that they knew I was the one who shot Tarajay.

9. When they told me I shot Tarajay, I wasn't intimidated because I knew it wasn't true. They had nothing on me because I didn't shoot Tarajay. They tried hard to get me to confess. They even offered me a colloquy. They said that they would offer me a deal right then and there if I admitted to killing Tarajay. They said that if I agreed to the deal, I could go ahead and start serving my sentence in prison. I wasn't going to admit to a murder, especially not a murder I had nothing to do with. I also knew that the police couldn't even promise to let me go home that night, either. I was on parole and there was no way I would be released. I had no reason to tell them anything. For a while during the interrogation, I didn't tell them anything.

10. They continued to accuse me and misstate what happened that morning when Tarajay was killed. I'm not sure, but they may have said that they knew Lorenzo and Corey had done it at one point. The interrogation had been going on for a while. I wanted them to stop accusing me and I wanted them to stop talking to me at that point. I gave them what they wanted. I told them a story about what happened. I told them that three guys, Ace, D, and J went into the alley with Tarajay and killed him. I told them that they walked Tarajay into the space between the houses and shot him. I told them that one of the guys came back out to the sidewalk and held up the shotgun after the shooting happened for the crowd to see.

11. That story was not true. I made up that story so that the police would stop accusing me and so they would stop yelling at me about facts they made up. There were not three guys there when Tarajay was killed. I made up the names "Ace" and "J".

12. I didn't expect what happened after I told the police the story. They asked me to ride around with an officer and identify the guys who were responsible for killing Tarajay. At that point, I didn't have a choice but to go with them. I didn't have any choice but to identify the people who were actually responsible for killing Tarajay. I identified D and the other guy who went into between the houses with Carla, and Tarajay. I would not have pointed out two people who had nothing to do with the shooting because that wouldn't have been right. The police

asked me to write or sign a statement about what I saw, but I refused. I didn't want it to get out that I had even talked to the police about the shooting. I didn't want my name to be anywhere in the paperwork, so I wouldn't let them document my statement.

13. I know that Lorenzo Johnson and Corey Walker were convicted of killing Tarajay. I was surprised that D and the other guy weren't charged at all. I didn't come forward to exonerate Corey and Lorenzo because I really didn't want to be involved. Things that aren't fair happen on the streets and at court all the time. Theirs was just another case of that happening. I also didn't want it to get back to D and the other guy that I had told on them. That would have put my life and my family's life in danger.

14. I know Lorenzo Johnson. He used to hang out at 14th and Market and he and I would talk. Even though he was from New York and I was from Harrisburg, we never had any problems. I liked talking to Lorenzo. He was a really cool guy. Lorenzo was not around the night Tarajay was killed. Lorenzo did not walk into the alley with Tarajay. I don't have a clear recollection of what Corey Walker looks like, but I know that only the people I identified to the police and Carla Brown were the people who went between the houses with Tarajay. If neither of those people is Corey Walker, then Corey Walker wasn't responsible for shooting Tarajay, either.

15. In 2001, I was in Dauphin County Prison. While I was there, I was approached by an attorney for Lorenzo. The attorney told me that he was Lorenzo's PCRA attorney and wanted to know if what I'd stated to the police when I was arrested was true. I told him that it was true and that the guys who I identified to the police were the ones who killed Tarajay, not Lorenzo and Corey. He asked me if I would be willing to testify at the PCRA hearing. I felt like I had no choice because I was going to be subpoenaed, so I did testify. I testified truthfully that what I had told the police the night I was arrested was true. No one asked me if the initial story I gave to the police was true, so I didn't bring it up. I was only thinking that they wanted to know if it was true that Lorenzo had nothing to do with the shooting. When I testified, I figured I was giving

them what they wanted.

16. Before the PCRA attorney, I was never contacted by anyone on Lorenzo or Corey's legal teams. If they had asked me about my initial statement to the police about Ace, D, and J, I could have told them the truth, that I made the story up. I would have told them what I really saw the night Tarajay was killed. If they had subpoenaed me to testify at trial, I would have had no choice but to tell the truth about what D and the other guy did to Tarajay. But no one ever asked me about the story and no one ever asked me to testify at trial.

Affidavit of Adrian Fluellen, dated July 31, 2013, attached.

64. Fluellen exonerates Petitioner – he saw the men that shot Williams and they were neither Petitioner nor Walker. Moreover, his affidavit establishes additional bases for ineffective assistance of counsel and for prosecutorial misconduct.

vii. Eric Chambers

65. Eric Chambers recently provided the following affidavit:

1. My name is Eric Chambers. I am currently in custody at Dauphin County Prison in Harrisburg, PA. I am awaiting sentencing on a federal charge of being a felon in possession of a firearm. I have lived in Harrisburg my whole life. I grew up in The Hill section of Harrisburg. In 1995, I worked as a bouncer at Fab's bar, which was also known as Midnight Special Bar.

2. In 1995, drugs were big in Harrisburg. A lot of New Yorkers moved to Harrisburg to make money selling crack.

3. I knew Tarajay Williams, the guy who was killed in December 1995 around the corner from Fab's. I knew Tarajay from growing up in

Harrisburg. Tara jay was not a bad guy, but he wasn't a saint. Tarajay was a drug fiend.

4. I knew Carla Brown because we grew up in the same neighborhood. I would not trust a word Carla says about anything. Back in 1995, Carla was seriously addicted to crack cocaine. Out in the streets, Carla played dirty. If she felt like someone from New York dissed her or wouldn't do something for her and she couldn't get what she wanted from them, she would go to Harrisburg people and try to get them riled up. She actually would try to start a war between Harrisburg and New York guys. It didn't matter to her that someone could be shot or killed. She liked to start trouble.

5. I remember going to court to testify at trial about what happened in the bar on the night Tarajay died. No one talked to me about what I would say before I testified. Before I testified, I had not spoken with any attorneys or investigators for anyone. If I had been contacted by attorneys or investigators about the case, I would have spoken with them. I would have told the truth about who was arguing with Tarajay and whether either of the defendants had argued with Tarajay on the night he was killed.

6. I no longer have any independent recollection of what happened the night Tarajay Williams was killed. I've read a transcript of my testimony at trial. Reading the transcript refreshed my recollection somewhat, but not a lot. I do know that whatever I testified to at trial was the truth. I had no reason to lie for anyone and I wasn't afraid to tell the truth about what happened.

7. Looking at my testimony now, I read it to mean that Lorenzo Johnson was not in the bar on the night the altercation took place, not that he *might* not have been in the bar that night. The fact that I did not identify the people who were arguing with Tarajay means that I didn't recognize them. I never said that Lorenzo's co-defendant, Corey Walker, was one of the guys who was arguing with Tarajay by the jukebox. If Lorenzo or Corey Walker had been one of the people arguing with Tarajay, I would have said so.

8. At the time I was called to testify, I was still out in the streets. I wasn't about to lie but I was only going to answer the questions I was asked in court. I didn't want to say anything that would draw any attention to me and my situation.

Affidavit of Eric Chambers, dated July 16, 2013, attached.

66. Eric Chambers was called as a defense witness. He had not seen Petitioner at the bar the night Williams was shot. Defense counsel never interviewed him before putting him on the stand to find out what else he might have known at the time, what time the altercation was that Chambers saw Williams involved in, who else was at the bar that night that might also be able to corroborate the fact that Petitioner was not there or that Walker had remained with his girlfriend in the bar all evening, or what he could tell defense counsel about Carla Brown, her reputation, and her whereabouts that evening.

viii. Affidavit of Shara Davis, Recounting Interviews With Lillian Marie (“Ree Ree”) Alexander, Theresa Thomas, William Davenport, and Towana Poteat

67. Shara Davis, an investigator assigned to the federal aspects of Petitioner’s case by the FDC, which is filing a series of federal applications in proximity to the filing of this *Petition*, provides the following affidavit, based on interviews she conducted with Lillian (Ree Ree) Alexander, Theresa Thomas, William Davenport, and Towana Poteat:

1. My name is Shara Davis. I am currently employed as an investigator for the Federal Community Defender Office for the Eastern District of Pennsylvania. I am assigned to a team investigating potential federal constitutional violations committed during the prosecution of Lorenzo Johnson on a charge of first degree murder of Tarajay Williams.

2. In the course of my duties, I have conducted a number of interviews with several individuals connected with this case but was not able to get signed affidavits from them. These individuals are: Lillian M. Alexander (Ree Ree); Theresa Thomas; William Davenport; and Towana Poteat.

3. Accordingly, I reviewed with each the substance of her or his interview with me and had them confirm that the information was true and accurate, asking them to correct me if anything was in error. The information provided by some of these witnesses is recounted below:

Lillian M. Alexander (Ree Ree)

1.1. Most people call Lillian Alexander “Ree Ree.” She has lived in Harrisburg her whole life and knew Tarajay Williams from growing up there. Tarajay was older than Ms. Alexander and she remembers him as a “nice guy” who looked out for her brothers. She said she really cared about Tarajay.

1.2. Ms. Alexander also knew Lorenzo Johnson. She thought Mr. Johnson probably never knew her real name.

1.3. Ms. Alexander explained that she does not recall all the details surrounding Mr. Williams’ death because so much time has passed. She was absolutely certain, however, that Lorenzo Johnson was not with Mr. Williams when he was killed because Ms. Alexander was with Mr. Johnson in New York the night Mr. Williams was shot. Ms. Alexander remembers that she and Mr. Johnson

learned of Mr. Williams's death at the same time, upon their return from New York, before they parted company. She recalls they were right next to each other, and thinks they were standing up when they learned of it.

1.4. Ms. Alexander does not recall the date on which this happened. She said she traveled with Mr. Johnson to New York twice and it was cold on both occasions. On this particular trip, she remembers there being other people along; she thought it was two other men and at least one other woman. The only other person's name she remembered was Suquan. She said that she knew Mr. Johnson spent a lot of time in the company of someone named Rameek, but that Rameek was not with them that night.

1.5. Ms. Alexander said that she was very young when this happened and should not have been going to New York with this group. She knew they were involved in drugs and she had no criminal record, and did not want to get involved in a murder case. As a result, even though she knew Mr. Johnson was charged with Mr. Williams' murder and could not possibly have been involved in it, she did not come forward. She just assumed that since he was not guilty, he would not be convicted of it.

1.6. Even after he was convicted, Ms. Alexander was not willing to come forward. Until now, no one had ever contacted her to ask what she knew. To this day, she does not want to be involved in this matter.

William Davenport

2.1. Mr. Davenport is currently serving a sentence for federal drug charges at Fort Dix Federal Correctional Institution in Fort Dix, New Jersey. He is scheduled to be released from custody in 2023.

2.2. Mr. Davenport was born and raised in Harrisburg, Pennsylvania. Mr. Davenport had a brother named Juan Davenport who was killed a number of years ago. In 1995, Mr. Davenport lived at 1408 Market Street in Harrisburg, which was near the intersection of 14th and Market Streets. Mr. Davenport made a living by making and producing hip-hop music and investing in real estate. In 1995, Mr. Davenport also sold drugs.

2.3. Mr. Davenport knew Tarajay Williams. Tarajay was shot just a few houses down from the apartment building where Mr. Davenport lived. In the early morning hours of December 15, 1995, Mr. Davenport was at home watching television. When Mr. Davenport heard the gun blast, he was startled. Mr. Davenport left the apartment and went outside to see what was going on. The first thing Mr. Davenport saw when he walked out the front door was Carla Brown, Brian Ramsey, and a “bunch of crackheads” standing around. Mr. Davenport doesn’t remember who all the others were, but he definitely remembers Carla and Brian being there. Carla was screaming, “They shot Tarajay!” and crying. Carla and the others were standing just a short distance from Mr. Davenport’s residence.

2.4. As more police arrived, the crowd of people around got bigger. Mr. Davenport stopped watching what was going on with the police and walked over to Fab’s bar at 14th and Market Streets. The bar was just around the corner from Mr. Davenport’s residence, and he wanted to see who was out and about. Mr. Davenport wanted to see if there were any cute girls in the crowd.

2.5. Mr. Davenport was back and forth through the crowd that night after the shooting. Mr. Davenport saw Carla there almost the entire time he was outside. Mr. Davenport remembers Carla the most because she cried until the police put her in a patrol car and took her away.

Mr. Davenport saw the police take Brian Ramsey away in a patrol car, too.

2.6. I told Mr. Davenport that Carla had testified at Tarajay's trial that she had immediately left Market Street after Tarajay was shot and ran to either a speakeasy or Mike Johnson's house. Mr. Davenport told me that that cannot be true because Carla Brown was the first person he saw when he went outside after hearing the blast. Part of the reason Mr. Davenport remembers so well that Carla was there is that she was extremely emotional that night. Mr. Davenport recalls that Carla was so emotional that night, it made him wonder about her relationship with Tarajay. Mr. Davenport knew that Carla and Tarajay were close, but the way she reacted to the shooting made Mr. Davenport think that Carla and Tarajay were closer than Mr. Davenport knew or that Carla and Tarajay had some kind of romantic relationship. Mr. Davenport said that he and Carla have known each other since they were in school together so there is no chance Mr. Davenport mistook her for someone else.

2.7. Mr. Davenport knows Mike Johnson, too. In 1995, Mike Johnson lived at Park and 16th Streets in Harrisburg. Everybody knew that Mike was running a crack house where he lived; people would go there to get high. Mr. Davenport said there was no way Carla could have gone to Mr. Johnson's house and gotten high or any place else and gotten high after that shot Mr. Davenport heard because Mr. Davenport went outside such a short time after hearing the shot and saw Carla standing there.

2.8. Mr. Davenport is not surprised that Carla would say something that isn't true. Even though Mr. Davenport considers Carla a good friend, she's not very credible. Mr. Davenport wouldn't believe a word she says about anything. Back then, Mr. Davenport and Carla didn't hang

out much together. It was a well-known fact that Carla was seriously addicted to crack. Mr. Davenport didn't smoke so he didn't hang out too much with Carla. Carla and Mr. Davenport hung around with different crowds.

2.9. Mr. Davenport knows Brian Ramsey, too. Mr. Davenport knew Brian from before the time Tarajay was killed. Back in 1995, people on the street called Mr. Ramsey "Bo Rock". Mr. Ramsey was addicted to crack just as bad as Carla was and Mr. Davenport didn't socialize with Mr. Ramsey back then. Years after Tarajay was killed, Mr. Davenport and Mr. Ramsey were roommates at a rehab facility together. When they were roommates, Mr. Davenport never asked Mr. Ramsey about what he saw that night. Mr. Davenport had no reason to ask Mr. Ramsey about the case because it had been so long since it happened, and Mr. Davenport really hadn't kept up with the case. Even after their time in rehab, Mr. Davenport and Mr. Ramsey didn't really hang out together.

2.10. Mr. Davenport knew Corey Walker and Lorenzo Johnson, too. At one point, they lived right next door to Mr. Davenport in the apartments at 1406 Market Street. Mr. Walker and Mr. Johnson had moved by the time Tarajay was killed. Mr. Davenport knew they had been charged with murder for shooting Tarajay, but said he really didn't follow the case at all.

2.11. Mr. Davenport recalls that on the night Tarajay was killed, Officer Curtis from the Harrisburg Police was asking people in the crowd if they had seen what happened. Officer Curtis asked Mr. Davenport if he saw anything. Mr. Davenport told Officer Curtis no because he hadn't seen the shooting itself. Mr. Davenport didn't really want to be involved in what was going on, even though he knew Tarajay and didn't have any problems with Tarajay. No one ever asked Mr. Davenport who he saw outside on the

street right after the shooting took place, and Mr. Davenport never volunteered the information.

2.12. No one from Mr. Johnson's or Mr. Walker's legal teams ever contacted Mr. Davenport about what he saw that night, either. Mr. Davenport did not volunteer any information to anyone. Mr. Davenport was still selling drugs back then and didn't want to draw attention to himself by being involved in anyone else's case. Mr. Davenport is now serving a lengthy sentence and wants to start a new life and do the right thing when he is released from custody, so he is finally willing to talk about what he saw.

Theresa Thomas

3.1 Theresa Marie Thomas has lived in Harrisburg her whole life. She was romantically involved with Lorenzo Johnson in 1995 at the time he was accused of murdering Tarajay Williams. At the time Mr. Johnson was arrested, they shared an apartment together at 419 South 14th Street in Harrisburg. Ms. Thomas knew Tarajay Williams, too.

3.2. Ms. Thomas and Mr. Johnson met through a mutual friend. When they first started dating, Ms. Thomas knew Mr. Johnson was involved in the drug trade. She also knew that he would take regular trips up to New York to bring drugs back to Harrisburg to sell.

3.3. On the night Tarajay was killed, Mr. Johnson was not in Harrisburg. He was in New York. Ms. Thomas was not with him in New York, but he told her he was going to New York and she received phone calls from him while he was in New York.

3.4. While Mr. Johnson was in custody awaiting trial for the murder, Ms. Thomas moved to an apartment on South

15th Street. While she was living there, Police Detective Duffin came to see her a couple of times. The first time, Detective Duffin told her that he needed to talk to her about Mr. Johnson's case. He asked her where Mr. Johnson was when Tarajay Williams was killed. Ms. Thomas told Detective Duffin that Mr. Johnson was not in Harrisburg that night and that she was certain of it. She specifically told Detective Duffin that Mr. Johnson had called her from New York.

3.5. Detective Duffin accused Ms. Thomas of lying and told her they had proof that Lorenzo and his "brother", "Rameek" (Corey Walker), did kill Tarajay. He said that if Ms. Thomas came to court and lied by saying Lorenzo was in New York, she would be charged with perjury. Ms. Thomas told Detective Duffin that the police could get her phone records for proof that Lorenzo had called her from New York. Detective Duffin told her that they didn't need her phone records because they already had the proof they needed that Mr. Johnson and Rameek had killed Tarajay. Ms. Thomas said she told Duffin that their proof was wrong and that she was sure Mr. Johnson was not in town when Tarajay was killed.

3.6. Not long after that first visit, Detective Duffin came by Ms. Thomas's apartment again on South 15th Street. She told him again that Mr. Johnson was not in Harrisburg when Tarajay Williams was killed and that Lorenzo had called her from New York. Ms. Thomas said Detective Duffin still refused to believe her and told her again that she would be charged with perjury if she testified. This time, he added that the police would take away her children once she was charged.

3.7. No one from Mr. Johnson's legal team ever tried to talk to Ms. Thomas before Detective Duffin threatened her. She said that, if they had, she would have told them what

she told Detective Duffin and she would have been willing to allow the defense team to get copies of her phone records.

3.8. However, after talking to Detective Duffin, Ms. Thomas was too intimidated to get involved in Mr. Johnson's case in any way. She especially did not want to testify because she was afraid she would be charged with perjury and lose her kids. Ms. Thomas loved her children too much to risk doing jail time or losing custody of them for Lorenzo's sake. She figured that because Lorenzo was innocent, he wouldn't be convicted anyway.

3.9. Ms. Thomas said that, even after Mr. Johnson was convicted, she would not come forward to talk to anyone to tell them that she knew Lorenzo wasn't in town the night Tarajay was shot, or that Detective Duffin had threatened her. Even though she has completely changed her life, she did not want to give the police any reason to come knocking on her door again.

3.10. Ms. Thomas indicated surprise that I, as part of Mr. Johnson's current legal team, had contacted her. She was curious about how I located her. She said that, although it isn't right that Mr. Johnson was convicted of this murder when he was not even in town, she does not want to get involved in his case in any way.

Towana Poteat

4.1. Towana Poteat has lived in Harrisburg her whole life. On December 15, 1995, she was at the Midnight Special bar at 14th and Market Streets in Harrisburg when she found out that her friend, Tarajay Williams, had been killed. Ms. Poteat was also friends with Corey Walker, who was known as "Rameek" and Lorenzo Johnson, who was called "Cat" or "C." Ms. Poteat saw Mr. Williams's

dead body at the scene and has never forgotten the image. She said that she remembers the events of that night vividly.

4.2. By way of background, Ms. Poteat explained that in 1995, drugs were big in Harrisburg. She used to hang out at 14th and Market, which is where a lot of guys from New York would sell drugs, and is where she met Corey Walker and Lorenzo Johnson. Ms. Poteat had known Tarajay for as long as she could remember because they were both from Harrisburg and went to school together.

4.3. The night Tarajay was killed, Ms. Poteat was at Midnight Special with a group of friends, including Wendy Harris, Chavetta Maynard, LaShawnyn Jackson, and Corey Walker. Another friend, Iris Belcher, was there, too, but she was killed shortly after Tarajay. At the time, Corey Walker was dating LaShawnyn.

4.4. Part of the reason Ms. Poteat remembers the night so well because she had a crush on Corey Walker. She said they flirted with each other, he would buy her things and he even took her shopping in New York once. That night, Corey and LaShawnyn were wearing matching Nautica jackets. Seeing them together wearing those matching jackets really annoyed her and she was jealous. Corey was there almost the entire night, mostly inside the bar with Ms. Poteat and their group. Ms Poteat remembers that he left the bar once for a little while with LaShawnyn, but they came back together. After that, Corey stayed inside the bar until they all got the news that Tarajay had been killed.

4.5. Ms. Poteat said she has never been able to understand why Tarajay was killed. Tarajay was her friend and they had gone to school together. She said they would talk all the time, and sometimes they smoked reefer together and hung out. Ms. Poteat said she knew he was a

drug runner and worked with a lot of dealers, but as far as she knew, he didn't have any problems with anyone. He didn't mess up a lot of money and he didn't really hang around with "messy" people who got into trouble. She said Tarajay usually was by himself or with older guys who were also addicts. She said she never saw him getting into fights or arguments with people, and that nothing he did ever caused any controversy.

4.6. Ms. Poteat remembered clearly that the last time she saw Tarajay, they were talking inside the bar. She was going to buy him a beer. He told Ms. Poteat that he was going to step outside. Ms. Poteat asked the bartender, Denise, who everybody called "Niecy", to put a bottle of Colt 45 on ice on the side for Tarajay. Before he left, Tarajay said, "Niecy got me!" Ms. Poteat said she thought he was going to come back for his beer and talk to her but he never did.

4.7. Ms. Poteat said she didn't know that anything had happened to Tarajay until Officer Tom Carter came into the bar. Ms. Poteat said she knew that something had to have happened for Carter to be there. She knew Officer Carter and they had a mutual respect for each other and got along well. She asked Carter, "What happened?" He said, "You tell us."

4.8. Ms. Poteat said she didn't know what he was talking about until he told her that Tarajay had been killed. Ms. Poteat told Carter that that couldn't be true because she had just bought Tarajay a beer and he was supposed to come back. She showed Carter the beer Niecy had put aside for Tarajay.

4.9. Officer Carter then took Ms. Poteat outside where she saw that there was police tape all around the area around the corner from the bar, on Market Street. They

went under the tape and she saw Tarajay lying there. Ms Poteat said she was so upset when she saw him there like that. She identified Tarajay to Officer Carter until Tarajay's mom, who was also Ms. Poteat's hairdresser, came to the scene. She recalls seeing Tarajay's mother standing in the middle of the street crying.

4.10. After Tarajay was killed, Ms. Poteat said she still continued to hang out at Midnight Special and other bars. She remembers telling police officers that Corey Walker was inside the bar at the time Tarajay was killed. She believes she told Officer Duffin that Corey was inside, and is certain she told Officer Curtis that Corey was inside with the rest of them at the time Tarajay was killed.

4.11. Ms. Poteat said that she couldn't believe it when Corey and Lorenzo were charged with, and then convicted of killing Tarajay. She said she was shocked because she knew for a fact that Corey couldn't have done it because he was inside or with LaShawnyn when Tarajay was killed. She said that he hadn't seen Lorenzo Johnson at all that night.

4.12. When asked about Carla Brown, Ms. Poteat said that she knows Ms. Brown because they are both from Harrisburg and from seeing Ms. Brown out on the streets when they both used to hang out at 14th and Market. Ms. Poteat said that Ms. Brown was addicted to crack for over 20 years. Ms. Brown used to be a good singer, but never made use of her talent. In the 90s, when Ms. Brown was smoking, Ms. Brown always smelled really bad. When she was high, Ms. Brown would act "crazy", too. Ms. Brown would twitch and would get fidgety. Ms. Brown would walk in circles really fast and run in alleys. When Ms. Brown was high, she would look like she was about to have a seizure. Ms. Poteat said that she'd seen people high on crack before, but had never seen anyone act like Ms.

Brown when they're high. Ms. Brown's addiction back in 1995 was so bad that if a dealer was having a good day, they would walk past Ms. Brown and not offer to sell to her.

4.13. According to Ms. Poteat, in 1995, Ms. Brown was a runner, mostly for dealers from Harrisburg. It seemed as if Ms. Brown really didn't like the New York dealers who were around. Ms. Brown and her friend, Margaret Cousins, were always rude to the New York guys. Sometimes Ms. Brown would go up to Mr. Walker or Mr. Johnson and ask for free drugs. If they didn't give it to Ms. Brown, Ms. Brown would insult them and call them bitches.

4.14. Ms. Poteat said that she'd seen Ms. Brown interrupt people making a deal with New York guys. If she knew the buyer, Ms. Brown would come up and tell the buyer to go to Ernestine's where the Harrisburg guys were selling because the product was much better. The buyer would leave and go with Ms. Brown and the New York seller would lose the sale. Ms. Brown would break up deals all the time. Ms. Brown would always curse at the New York guys. Ms. Poteat recalls Ms. Brown making fun of Mr. Johnson on time because he had a large cyst on his head at the time. In response, Mr. Johnson told Ms. Brown that she needed to go take a bath.

4.15. Ms. Poteat said she had heard that Ms. Brown was a witness in the case against Mr. Walker and Mr. Johnson. She (Poteat) never thought it was fair that they were convicted based on the testimony of a crackhead. Ms. Poteat said she hadn't seen Carla Brown at all in the bar at all that night.

4.16. Ms. Poteat also said she never saw any fight between Tarajay and Mr. Walker at the bar the night Mr. Williams

was killed. She said Mr. Walker wasn't even really interacting with Tarajay— Mr. Walker was mostly paying attention to LaShawnyn.

4.17. Ms. Poteat mentioned that she knew Gary Miller, Jr., the son of the man who owned Midnight Special, whom she dated for a while. Mr. Miller is the father of Ms. Poteat's fifteen year-old son, Cameron. After Mr. Johnson and Mr. Walker were arrested, Mr. Miller told her it was a shame they were arrested because they used to look out for Tarajay. Ms. Poteat also said that Mr. Miller may have been concerned because the police were always threatening to close the bar. Ms. Poteat also said that Mr. Miller may have been had concerned because he had lent his car to someone who had then used it to commit a robbery in which a police officer was killed.

4.18. Ms. Poteat reiterated a number of times that she was certain that Mr. Walker was in the bar at the time that Tarajay was killed and that Mr. Walker did not argue with Tarajay that night during the time she was there. She also reiterated that she was certain Lorenzo Johnson was not there at all.

4.19. Ms. Poteat said she has never spoken to anyone representing Corey Walker or Lorenzo Johnson about this case. If someone had asked her about what she remembered happening on the night Tarajay was killed, she would have provided them with all the information contained in this affidavit.

Affidavit of Shara Davis, dated August 5, 2013, attached.

ix. Affidavit of Amy Gershenfeld Donnella, Recounting Admissions Made By Carla Brown

48. Amy Gershenfeld Donnella is an attorney employed by the FCD, and she

too has represented Mr. Johnson for a number of years related to his federal proceedings. She provides the following affidavit:

1. My name is Amy Donnella. I am an attorney and a member of the Pennsylvania bar. I have been representing Lorenzo Johnson since 2008. I began representing Mr. Johnson when his case was pending in the Third Circuit Court of Appeals.

2. In late May, 2013, I was told by someone I was interviewing that Carla Brown, a critical Commonwealth witness in Mr. Johnson's case, was in a terminal stage of cancer and now wanted to "tell the truth" about Mr. Johnson. As a result, Attorney Michael Wiseman and I traveled to Harrisburg to interview Ms. Brown.

3. Mr. Wiseman and I went to Ms. Brown's home. Although the woman who answered the door initially told us Ms. Brown was not at home, Ms. Brown eventually came to the door when she learned we were there to ask about Mr. Johnson's case.

4. Ms. Brown did not appear to be ill and she quickly told us she had no desire or intention of speaking with us. She was, in fact, extremely hostile and ordered us to leave.

5. I apologized to Ms. Brown and explained that we had been told she wanted to talk with us. Ms. Brown continued to insist that Mr. Wiseman leave but called me back briefly.

6. Ms. Brown told me that she had previously told an investigator from my office that she never wanted to speak to anyone from our office. I again explained that we had only come because we had been told she wanted to meet with us. I explained that I just wanted to confirm with her that she was sure Mr. Johnson was one of the people she had seen in the bar the night Tarajay Williams was killed.

7. Ms. Brown began yelling at that point that I didn't know what I was talking about – that **she had never been in any bar the night**

Tarajay was killed and that I should read her testimony and get my facts straight.

8. I tried to tell Ms. Brown that I had read her testimony and asked if she'd like to see it. She repeated that I was wrong, I didn't know what I was talking about and she had never been in the bar that night.

9. Ms. Brown would not talk to us further.

Affidavit of Amy Gershenfeld Donnella, dated August 5, 2013, attached.

x. Affidavit of Deanna Wagner Muller, Petitioner's Trial Counsel

49. Mr. Johnson's trial attorney has provided the following affidavit regarding some aspects of her representation:

1. My name is Deanna Wagner Muller, I am an attorney, and a member of the Pennsylvania bar. I began practicing law in 1993 and have spent my entire professional legal career working in the Public Defender's Office in Harrisburg, Pennsylvania.

2. I represented Lorenzo Johnson in his 1997 homicide trial on charges stemming from the shooting death of Tarajay Williams on December 15, 1995.

3. Mr. Johnson's was the first homicide case I ever tried. I had been working for the Public Defender's Office for about four years at the time I tried the case. I was not assigned a second chair on the case.

4. The investigators at our office had a variety of responsibilities during the period of time of Mr. Johnson's trial. They were not specifically trained to be investigators. Typically, a lawyer who needed to have investigative work done would get the assistance of whichever investigator was free at the time. Investigators did not necessarily follow a case through from start to finish.

5. It was typical practice in Harrisburg that lawyers raising ineffective assistance of counsel cases in post-conviction cases would put the trial attorney on the stand without talking to that attorney first. That's what happened during Mr. Johnson's PCRA proceedings. Mr. Socha, who is now deceased, called me to testify without ever having spoken to me before about Mr. Johnson's case.

6. Prior to Mr. Johnson's trial, I believe I requested a change of venue or, in the alternative, of venire. I made this request because Corey Walker had gotten a lot of negative publicity prior to trial. He had been accused of threatening to assassinate the district attorney, John Cherry. I don't believe I requested that Mr. Johnson's trial be severed from Mr. Walker's. Because of the accusations against Mr. Walker, the attorney general's office prosecuted the case instead of the local district attorney's office.

7. Current counsel for Mr. Johnson has asked me if I recall interviewing several people in connection with Mr. Johnson's case at any time before or after Mr. Johnson's trial: Laura Davis, Jesse Davis, Carl Williams, William Davenport, Larry Pates, Brian Ramsey, Adrian Fluellen, Suquan Rippley, or Mr. Johnson's girlfriend at the time. I remember interviewing Victoria Daubs [sic]. I recall talking to Larry Pates at trial, after I had rested my case. I called Suquan Rippley as a defense witness and had my investigator talk to him prior to trial but did not speak to him myself, as I recall. I do not recall speaking to any of these other people.

8. I had three things I wanted to accomplish with Mr. Johnson's defense. I wanted to show that the Commonwealth had failed to prove Mr. Johnson had the intent to kill Mr. Williams; I wanted to show that there were other people who had reason to kill Mr. Williams; and I wanted to put forth Mr. Johnson's alibi.

Affidavit of Deanna Wagner Muller, dated August 5, 2013, attached.

CLAIMS FOR RELIEF

50. The above quoted affidavits provide previously unavailable evidence showing that Petitioner is an innocent man. They show that he was the victim of prosecutorial suppression of exculpatory information, *i.e.*, information that either challenged the credibility of Commonwealth witnesses or the Commonwealth's trial presentation, or that demonstrate that he was not involved at all in the shooting of Mr. Williams. Finally, these affidavits demonstrate that Petitioner was the victim of ineffective assistance of counsel. Petitioner now places these affidavits in their proper legal framework showing that Petitioner is entitled to relief on three separate grounds.

CLAIM I.

NEWLY DISCOVERED EVIDENCE DEMONSTRATES PETITIONER'S INNOCENCE

51. The illegal drug trade was rampant in Harrisbrg during the mid-1990's. In addition to home-grown dealers, a number of New Yorkers saw an opportunity to make more money dealing drugs in Harrisburg than in New York, so moved to Harrisburg but made frequent runs to New York to purchase drugs to bring back and sell in Harrisburg. A certain amount of antagonism existed between the Harrisburg and New York drug dealing factions. The problem of illicit drug sales in Harrisburg

was deemed grave enough in the mid-1990's that a joint commission was formed, comprising members of both the Harrisburg Police Department and the Pennsylvania State Police.

52. The blocks of Market Street in Harrisburg that ran east and west between 14th and 15th Streets, and of 14th Street, running north and south between Market and Regina Streets, were typically heavily trafficked by drug sellers, particularly those who hailed from New York, and by "runners." Runners were typically addicts who would bring customers to the dealers or would sell small quantities of drugs in exchange for a rock or two of crack. The runners often affiliated themselves with more than one dealer.

53. Fab's Bar (also known as the Midnight Special), a popular hang out for those involved in the trade, was located on the east side in the middle of a short block of 14th Street. This block is bounded on the north by Regina Street and on the south by 14th Street. A Kentucky Fried Chicken (KFC) restaurant, which has a large parking lot, sat opposite Fab's on the west side of 14th Street. O.D.'s, another popular bar at the time, was located at Market and 15th Streets.

54. Tarajay Williams, the victim in this case, was a heavy crack user who ran drugs for a number of different dealers. Williams was a close friend of Jesse Davis, a witness who testified at trial for the Commonwealth. The day before Williams was

shot, Davis had promised Williams' mother that he (Davis) would keep an eye on Williams and keep him out of trouble. Davis and Williams had been talking about turning their lives around.

55. On December 14, 1995, Davis and Williams spent the day together until late afternoon, when Davis left Williams to take care of some personal business. Davis continued to see Williams intermittently throughout the rest of the afternoon and evening. Davis never saw Williams in the KFC parking lot, and never saw Williams arguing with anyone – directly in contradiction to Victoria Doubs' testimony.

56. Carl Williams (not related to Tarajay Williams) also knew Tarajay Williams well. He also knew Walker and Petitioner. Carl Williams was a drug dealer at the time and stationed himself daily in the vicinity of the KFC. Carl did not see this fight take place and never heard a word about it from anyone else on the street. Carl also knew that Tarajay did not own or have access to a car. This evidence makes far less credible Doubs' testimony that Tarajay went into a car for the broom with which he alleged beat Corey Walker.

57. Sometime that evening, Davis and his girlfriend, Tina Darden, saw Williams and greeted him as Williams walked by the car in which they were sitting. That was the last time either of them saw Williams.

58. Sometime later, after midnight, Darden and Davis had an argument on the steps of Fab's bar. After arguing for ten minutes or so, they heard a gunshot. The sound of the gunshot did not cause them to interrupt their conversation. Davis and Darden continued their conversation for another couple of minutes, until a female police officer (presumably Officer Laura Davis) drove up and asked them if they knew where the shot had come from. Officer Davis drove off, heading north and turned west onto Regina Street. At this point, Davis left the front of Fab's and walked around the corner onto Market Street, heading westbound, with the intention of going to O.D.'s bar. At no time did Davis see Williams exit the bar or walk by. Nor did he see Carla Brown go into or come out of the bar. This conflicts with Carla Brown's trial testimony that she entered the bar just minutes before she said she "saw" Walker and Petitioner arguing with Williams, and then leaving together shortly afterward.

59. Towana Poteat remembers Walker being in the bar the night Williams was killed, and corroborates Lashawnyn Jackson's trial testimony that she and Walker were there together, as a couple. Poteat recalls Williams leaving the bar (without Walker) and that she put a beer on ice for him when he left, shortly before a police officer came in to tell them Williams had been shot. Poteat reveals that Williams did not leave the bar because of any altercation, let alone an altercation with Corey

Walker. This directly contradicts Carla Brown's trial testimony.

60. When he got partway up the block, he saw someone lying face down in the snow in an alley, and he stopped to try to rouse the person. He then noticed blood in the snow and began shouting. He saw a male police officer driving down the block and signaled for him to come over.

61. Meanwhile, Carl Williams drove down Market Street and heard the gun shot as he was pulling into the KFC parking lot. He had not seen Walker, Petitioner Tarajay Williams or Brown walking westward on Market Street as he was driving, nor did he see any of them exit Fab's. He did see someone he recognized as a friend of Tarajay's, whose name he thought was Jerry, on the steps in front of Fab's. He also saw "Jerry" walk around the corner after Carl heard the gun shot and heard "Jerry" start shouting as he realized he had come across someone who had been shot.

62. Brian Ramsey was out on Market Street the night Williams was killed. Ramsey knew Williams well. They had grown up together in Harrisburg and were "very close friends." Ramsey had known Carla Brown most of his life; they grew up across the street from one another. Ramsey would recognize her anywhere. Ramsey also knew Petitioner and Corey Walker.

63. Ramsey was standing next to Tarajay Williams when he saw two men (not Walker or Petitioner) walk towards them coming from the direction of 15th and

Market Streets. Carla Brown was with the two men. Williams told Ramsey “I’ll be right back,” and walked towards Carla and the two men – contradicting Brown’s testimony. Ramsey was under the impression that Williams was going up to them to conduct a drug transaction.

64. Williams met up with them at the alley and then all of them, including Carla Brown, walked into the alley together. Ramsey heard a gunshot shortly after that. Brown was wearing a white or light-colored coat. In addition to conflicting with less important portions of Brown’s trial testimony, Ramsey’s affidavit shows that Petitioner was not involved in the shooting of Williams.

65. Adrian Fluellen had known Carla Brown his whole life. On the night Williams was killed, Fluellen saw Brown with two men. Fluellen knew Petitioner and he has indicated in his affidavit that he was not one of the two men. Rather, one of them was Scott Holloway; the other was someone Fluellen did not recognize. Fluellen witnessed Williams, Brown, Holloway (whom he called “D”), and this other man go in between two houses and then heard a gun shot blast. Petitioner was not around the night Williams was killed. Fluellen thus provides additional evidence that Petitioner was not involved in the shooting.

66. Police officer Laura Davis had heard the gun shot as she was driving down Market Street on patrol. She saw only two people on the street. A man with

a limp and a woman who was crying hysterically. There is no indication in the records obtained in discovery that Davis ever asked their names.

67. Following the shooting, a crowd gathered quickly on Market Street near the alley where Williams had been shot. Carla Brown was in that crowd and noticeable for her hysterical, emotional conduct.

68. Brown was taken to police headquarters from the scene and questioned. She denied any knowledge of the shooting at that time, and for months afterward. The police, however, did not believe her. They also did not believe a variety of stories that she related. They questioned her repeatedly – as Detective Dillard relates, they “worked on her” – until she told them “the truth.”

69. The night Williams was shot, Petitioner was in New York with Suquan Ripply, Ree Ree (whose real name no one knew at the time, but was Lillian Alexander), and several others. Ree Ree and Petitioner were together when they learned upon their return that Williams had been killed. Petitioner, who was involved in the drug trade at that time, was on his way to pick up narcotics to bring back for sale in Harrisburg.

70. Several hours after their return from New York, Petitioner and Suquan Ripply were in a car driving down Market Street, making a drug sale. Harrisburg Police Officer Kevin Duffin began following them and they fled from the car because

they had drugs with them. Officer Duffin testified at trial that this occurred on December 15, 1995, around noon - approximately eleven hours after Williams had been killed. Thus, the date of this event was fixed by the evidence at trial, according to the testimony of the police.

71. Nevertheless, police officers pressured and made promises to alibi witnesses Doubs, Clifton Germain, and Suquan Ripply, to get them to say that they did not recall the exact date on which they traveled to New York with Petitioner.

A. Newly Discovered Evidence Shows Carla Brown Repeatedly Lied

72. Inasmuch as Carla Brown's account of the events the night of the shooting was mostly uncorroborated at trial, her credibility was a critical factor in any determination of guilt. Virtually every affiant described in this *Petition* knew Carla Brown and considered her to be a conniving, strung out and completely untrustworthy crack addict. Yet, she was the core of the Commonwealth's case.

73. Carla Brown's testimony at trial was built around her description of an argument she said she witnessed at Fab's bar, shortly before Tarajay Williams was killed, that involved Williams, Walker and Petitioner. Even based on her trial testimony, Brown's testimony was incredible. No one else saw Petitioner at the bar before Williams was shot, and no one else saw him involved in any altercation with Williams. Indeed, neither Gary Miller, the bar owner, nor Eric Chambers, the

bouncer at Fab's, saw Petitioner in the bar the night Williams was killed. Chambers' testimony was particularly significant because, as he testified, had Petitioner been there, and involved in an altercation resulting in his being ejected, Chambers would have seen him. Additionally, Miller's testimony conflicted with Brown regarding the time that Brown was supposed to have seen Petitioner at the bar. Whereas Brown said that the argument took place at about midnight, Miller placed the argument between Walker and Williams shortly after Miller arrived at the bar that night, between 9 and 10 p.m.

74. Brown now insists she was never in the bar that night as related in her admission to Attorney Amy Donnella.

75. Carla Brown testified at the preliminary hearing and at trial that she ran away after the shooting and never returned to the location of the shooting. She testified specifically that she ran to Mike Johnson's house, where she got high, and then went to her mother's house, where she remained the rest of the night. NT 5/20/96, 49; NTT 3/13/97, 112, 146-147. William Davenport knew Carla Brown well. He lived a few houses down on Market Street from where Williams was shot. He came out of the house a very short time after hearing the gun shot, and witnessed Carla Brown, Brian Ramsey and "a bunch of crackheads" standing around. Davenport recalls Brown crying and acting "extremely emotional." Davenport also

knew where Mike Johnson lived and asserts that there is no way Brown could have gotten to Mike Johnson's house and back before he (Davenport) got out of his house and saw her on the street crying.

76. Carla Brown also testified at trial that she did not speak to the police for a week and a half after Williams was shot. But Harrisburg Police Detective Robert Dillard has now sworn that Brown was interviewed at the police station the night of the shooting, and Davenport recalls seeing the police take Brown and Ramsey into patrol cars.

77. Carla Brown also testified that she had been drug-free for nine months before testifying. But Carl Williams, a dealer who knew her well, saw her when she was picked up by the police a few days before Petitioner's trial, and attests to the fact that she was still using at the time.¹⁵

B. Newly-Discovered Evidence Supports Petitioner's Alibi

78. Petitioner's defense at trial included the defense of alibi: he was out of town the night of the shooting with other people he identified to defense counsel. These included Suquan Rippley, Cliff Germain, Victoria Doubs, and a woman

¹⁵ This is consistent with the questioning Walker tried to conduct showing that Brown had given birth a month earlier to a baby who was crack-addicted, information he said he had learned from prosecutor Abruzzo pre-trial. NTT 3/14/1997, 142-43.

Petitioner knew only as Ree Ree.¹⁶

79. Suquan Rippley testified at trial that he was with Petitioner in New York the night Williams was killed. On cross-examination, he said that he was confused about the date of the trip and might have gotten it wrong; he just knew that he was in New York with Petitioner the night before the morning on which they were stopped and chased by Harrisburg Police Officer Kevin Duffin.¹⁷ Rippley has now submitted an affidavit confirming that he was never confused about the date on which he traveled with Petitioner to New York, but that he had felt under great pressure from the police to make the dates vague. Rippley has also now said that Police Officer Duffin not only threatened Rippley if he did not make his statement more vague, but urged Rippley to go along with things because the police could help him out - the same way they were going to help Victoria Doubs and Clifton Germain for being vague about the dates of the trip to New York.

80. For the first time, Petitioner has also located Ree Ree, whose real name

¹⁶Petitioner also argued that the Commonwealth did not have prove beyond a reasonable doubt that he had the intent to commit murder and there were a number of other individuals who had motive to kill.

¹⁷ Officer Duffin testified at trial that he chased and then caught Rippley and Petitioner around noon on the morning of December 15, 1995. Although defense counsel did not point this out to the jury, Officer Duffin's testimony fixed the date of Mr. Rippley's trip with Petitioner to New York as taking place exactly when Petitioner and Rippley thought it had been - the evening of December 14, 1995.

he never knew. Lillian Alexander has revealed this week that she, too, recalls going to New York with Petitioner and, although she does not recall the date, she knows that, upon their return and before she and Petitioner parted company that night, she and Petitioner were told at the same time about Williams' death.

81. Petitioner's girlfriend from December, 1995, Theresa Thomas, has also revealed that she knew that Petitioner was in New York the night of December 14-15, 1995, that she told the police repeatedly that Petitioner had called her from New York, and that they could check her telephone records if they wanted to verify this information. The police never provided these facts obtained from Thomas to the defense.

82. None of the evidence set out above could have been discovered through the exercise of due diligence. Jesse Davis would not have come forward or given up this information until he found God, shortly before Petitioner came to interview him. Several witnesses - Theresa Thomas, Towana Poteat, Lillian Alexander (Ree Ree) never came forward and, although they each have confirmed the accuracy of the information attributed to them in the Shara Davis affidavit, they have indicated they remain too scared about the consequences of their telling what they know that they have not signed their affidavits. They would not have come forward sooner or answered anyone's questions because they were afraid of the consequences to

themselves and their families of their speaking. Carl Williams was never identified in any police reports or any other source.

83. Singularly, or in combination, these new facts require the vacation of Petitioner's conviction. The legal standard governing a post-conviction claim of newly discovered evidence is well-known. A petitioner must:

establish that: (1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict.

Commonwealth v. Washington, 927 A.2d 586, 595-96 (Pa. 2007). Petitioner meets each of these prongs.

CLAIM II.

THE COMMONWEALTH SUPPRESSED MATERIAL, EXCULPATORY EVIDENCE IN VIOLATION OF DUE PROCESS

84. The United States District Court has already found that the Commonwealth suppressed exculpatory evidence regarding Victoria Doubs. *Johnson v. Mechling*, 541 F.Supp.2d at 681 (“the Court finds that Johnson's prosecutor had a duty to disclose the plea agreement”); *id.*, 686 (“The prosecution withheld favorable evidence; Johnson reasonably relied on the government's open file policy and other representations that it had fulfilled its duty to disclose such evidence; and this reliance was confirmed by Doubs' trial testimony.”).

85. Although Judge Jones did not find the suppression to be sufficiently material to award Petitioner a new trial, this prior suppression of favorable evidence must now be considered in light of the additional suppressed evidence, described above and reviewed below. As also noted above, this reconsideration must occur because due process requires that a reviewing court consider the totality of the suppressed evidence – new and old. *Kyles v. Whitley*, 514 U.S. 419, 421 (1995) (materiality of *Brady* violation “turns on the cumulative effect of all such evidence suppressed by the government”).

A. The Commonwealth Suppressed Material, Exculpatory Impeachment Evidence in Violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article One, Sections Nine of the Pennsylvania Constitution

86. The Commonwealth violated Petitioner’s constitutional right to due process, right to a fair trial, and the right to present a defense by withholding from him and his counsel material, exculpatory evidence, including impeachment evidence, in violation of his rights as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 9 of the Pennsylvania constitution.

87. To establish such a *Brady* violation, Petitioner must prove three elements:

[1] the evidence [at issue] was favorable to the accused, either because

it is exculpatory or because it impeaches; [2] the evidence was suppressed by the prosecution, either willfully or inadvertently; and [3] prejudice ensued.

Commonwealth v. Chmiel, 30 A.3d 1111, 1130 (Pa., 2011). The evidence withheld by the Commonwealth (detailed below) ensured “[t]hat no reliable adjudication of Petitioner’s guilt or innocence could have taken place.” *Commonwealth v. Strong*, 761 A.2d 1167, 1175 (Pa. 2000) (reversing conviction for Commonwealth’s failure to comply with *Brady* obligations).

88. The Commonwealth also failed to correct testimony given by Carla Brown it knew to be false, in violation of *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (The State commits a Fourteenth Amendment violation when “although not soliciting false evidence, [it] allows it to go uncorrected when it appears.”)

B. Brady/Napue Evidence Relating to Carla Brown

89. Carla Brown provided the critical evidence that inculpated Petitioner. She said he was in Fab’s bar the night Williams was killed; she said he was part of the argument at the bar that also involved Williams and Walker, and that resulted in all three of them being asked to leave the bar; she placed him third in a single-line procession walking west on Market Street to the alley where Williams was killed; and she said that he stood at the “post” outside the alley at the time Williams was shot.

90. Brown also testified at both the preliminary hearing and at trial that, after

she heard the gun shot, she took off running and ran until she reached Mike Johnson's house. NT 5/20/96, 50-53. She got to Mike Johnson's house, went in, and "smoked," because she was so upset over what had just happened. She testified that she then went directly home to her mother's house. She testified that she only first talked to the police when she was contacted some days or weeks after the shooting. NTT 3/14/97, 146-147.

91. This was a lie. Carla Brown did, in fact, return that night to the scene of the shooting. William Davenport who knew Carla Brown well affirms that he saw Brown at the scene of the shooting within minutes of hearing the gun shot. She was particularly noticeable because she was emotionally distraught. Davenport also remembers seeing her being put into a police car.

92. Most significantly, Police Detective Dillard, also an affiant, remembers Brown being brought in and questioned that night. He recalls how her face looked that night and that no one believed what she said. Police Detective Dillard affirmed that the police worked on Brown for months to get her to "tell the truth."

93. The Commonwealth withheld this information from Petitioner. Nowhere in any discovery provided to the defense is any statement from Brown given on the night of the shooting. Nor is there any mention in the discovery that Brown was brought to the police station the night of the shooting.

94. Moreover, the prosecutor made no attempt to correct Brown's false statements at the preliminary hearing or at trial that she went to Mike Johnson's house and then to her mother's house, or that she never talked to the police until a week or more after the shooting.

95. Brown also testified at trial that she had been clean of drugs for the ten months prior to trial. Carl Williams, however, states in his affidavit that he continued selling drugs to her through this period of time and that he saw her being picked up by the police a few days prior to Petitioner's trial. Williams said it was clear Brown was using drugs at the point at which she was picked up. The Commonwealth had every reason to know Brown was still using drugs during the ten month period before trial but failed to provide that information to Petitioner and failed to correct her false testimony at trial.

i. The Evidence Withheld by the Commonwealth Was Powerful Impeachment Evidence

96. Evidence now provided by William Davenport that Carla Brown was at the scene of the shooting shortly after it happened puts the lie to her claims to have fled the scene, never to return. The police picked Brown up at the scene that night and drove her to police headquarters. The Commonwealth did not provide this information to Petitioner and let her false testimony at the preliminary hearing and at

trial go uncorrected.

97. Evidence now provided by Harrisburg Police Detective Dillard that Carla Brown gave a statement to the police the night of the shooting puts the lie to her claim that she did not provide any statements to the police within the first week or two after the shooting. The Commonwealth did not provide this information to Petitioner and let her false testimony at the preliminary hearing and at trial go uncorrected.

98. Evidence now provided by Harrisburg Police Detective Dillard that the police did not believe anything Carla Brown told the police the night of the shooting and pressured her for months to change her story raises the serious possibility that Brown eventually made up a story the police wanted to hear.

99. Evidence now provided by Carl Williams that Brown was using drugs during the ten month period prior to trial, when she claimed to be drug-free, not only impeaches her testimony at trial and shows her further to be a liar, but also would have provided the jury with more reason to believe she was testifying under threat or promise of benefit from the Commonwealth.

ii. The Commonwealth Withheld This Evidence

100. At no time during the long course of the prosecution of this crime or the

subsequent litigation of this case post-conviction has the Commonwealth ever acknowledged that Carla Brown was at the scene of the crime shortly after the shooting – even when Brown testified twice under oath that she went first to Mike Johnson’s house after the shooting and then to her mother’s house.

101. At no time during the long course of the prosecution of this crime or the subsequent litigation of this case post-conviction did the Commonwealth ever acknowledge that the police took a statement from Carla Brown on the night of the shooting and that, at that time, she denied knowing anything about the shooting - even when Brown testified twice under oath that she first spoke to the police days or weeks after the shooting.

102. At no time during the long course of the prosecution of this crime or the subsequent post-conviction litigation has the Commonwealth ever acknowledged that Brown lied about being drug-free in the months prior to trial. To the contrary, the Commonwealth argued in closing that Brown had no reason to lie and that, just because she had been an addict did not mean the jury should find her lacking in credibility.

iii. This Evidence Was Material

103. The Commonwealth’s evidence against Petitioner in this trial was so

insubstantial that one of the three judges on the Superior Court of Pennsylvania, and the Third Circuit Court of Appeals, believed it was insufficient to have proved Petitioner's guilt beyond a reasonable doubt under *Jackson v. Virginia*, 443 U.S. 307 (1979).

104. By all measures, including the United States Supreme Court's recitation of the facts supporting the jury's verdict, Carla Brown's testimony was critical to the Commonwealth's case against Petitioner. Correspondingly, her credibility was critical to the Commonwealth's case.

105. Nothing Brown said about Petitioner's involvement in this shooting was corroborated by any other witness at trial. Gary Miller, the bar owner, testified that Walker and Williams had argued at the bar shortly after Miller arrived at the bar that night, probably between 9 and 10 p.m., and that he had to ask them to take their argument elsewhere. Brown says the argument took place right before Williams was killed, which was after midnight.

106. Miller did not recall Petitioner being in the bar at all that night or part of the argument. Brown said Petitioner was there and involved in the argument.

107. Eric Chambers, who had formerly worked as a bouncer at Fab's, testified that he did not see Petitioner in the bar the night Williams was killed. He testified

that, if Petitioner had been there, he must have been crouching in a corner somewhere; otherwise, Chambers would have seen him. Chambers said he would have seen Petitioner if he had been involved in an argument or had to be escorted out.

108. Evidence clearly demonstrating that Brown lied about her whereabouts after the crime and that she lied about when she first spoke to the police went to the heart of her credibility. “Impeachment evidence which goes to the credibility of a primary witness against the accused is critical evidence,” and is material to the case. Commonwealth v. Strong, 761 A.2d 1167, 1175 (Pa. 2000).

C. The Commonwealth Also Withheld Evidence That Promises and Threats Were Made to Witnesses In Exchange For Their Helpful Testimony

109. Suquan Ripply testified at trial that he was threatened by Officer Kevin Duffin into saying he was unsure of the date that he went with Petitioner to New York. Ripply has just revealed to Petitioner, however, that Officer Duffin also told Ripply that he (Duffin) was in a position to help Ripply out, *just as he had helped out Doubs and Germain in exchange for their agreement to be vague about the dates they traveled to New York*. Duffin even told Ripply that Doubs had a robbery charge in the context of letting Ripply know he had helped Doubs and Germain out.

110. Theresa Thomas, Petitioner’s girlfriend at the time Williams was killed,

told the police that Petitioner called her from New York the night Williams was shot. This information was never provided in discovery to Petitioner. Instead, Officer Duffin threatened her with perjury if she testified to that effect at trial, and told her that if she was charged with perjury, her children would be taken from her.

111. Towana Poteat, a woman who was at the bar with Walker and his girlfriend, Lashwanya the night Williams was killed, told a police officer that night that Williams had left the bar alone, minutes beforehand, and that she had put a beer on ice waiting for Williams' return. She had subsequent discussions about Williams' shooting with Officer Curtis. Poteat told Curtis on several occasions that Walker could not have been responsible for the shooting because he was sitting at the bar when Williams left that night. Poteat's statements to the police were never provided to Petitioner by the Commonwealth. Poteat's name was never even provided to Petitioner, even though she was brought to the scene and identified Williams that night before Williams' mother arrived.

112. A number of other people were with Walker, Lashawnyn Jackson, and Poteat at the bar that night who could have confirmed this information. None of their names was provided in discovery to Petitioner, either. Even if police did not have reason to suspect on the night of the shooting that someone from the bar committed the shooting, Poteat's statement to the police that Williams had been in the bar shortly

before being shot would have provided useful information to the defense in its later investigation.

113. According to the newly discovered evidence, an entire crowd of people were at the scene of Williams' shooting soon after it occurred. The names of these people, the fact of their presence that night, and the contents of their statements to the police were never revealed by the Commonwealth to the defense.

114. Brian Ramsey testified for the Commonwealth at trial. Before doing so, but after being subpoenaed by the Commonwealth to testify at Petitioner's trial, Ramsey wrote to the prosecutor and let him know that he (Ramsey) needed help getting his unrelated case resolved and getting out of custody. Someone on behalf of the Commonwealth let Ramsey know they would do what they could to help him out. This resulted in Ramsey doing the best he could to help the prosecutor and follow his lead. Even if the Commonwealth never offered Ramsey anything or made any specific promise to help him, the Commonwealth had a constitutional obligation to notify the defense that Ramsey had approached them about a deal in exchange for his testimony. It should be noted that Ramsey was clearly not simply coming forward to help as a concerned citizen. He did not write his letter to Prosecutor Abruzzo until after he had already been subpoenaed to testify, which means, as he indicates in his affidavit, that he was hoping for some benefit for providing testimony that supported

the Commonwealth's case.

115. The Commonwealth also failed to notify Petitioner that Gary Miller, Jr., who testified on behalf of the Commonwealth had been implicated in a police killing when his car was used to rob the store where the officer was shot, and ammunition had been found in the car. *Commonwealth v. Seifullah Abdul-Salaam, In re Suppression Hearing*, Docket No. 94-1499 (CCP Cumberland), NT 12/28/1994, 5-14, attached. Miller testified that Walker and Williams had had an altercation and had been forced to leave Fab's bar. This evidence supported Brown's testimony. The Commonwealth's failure to provide the defense with information concerning Miller's legal woes was amplified by the fact that the prosecutor argued in closing that Miller's testimony that Walker and Williams fought and were expelled from the bar corroborated Brown's testimony, and that Miller had no reason to lie. NTT 3/17/97 at 382-83.

D. The Cumulative Improperly Withheld Evidence Would Have Resulted in a Different Outcome At Trial

116. When considering whether evidence that has improperly been withheld from the defense is material requiring vacation of a conviction, a court must consider all of the evidence as a whole. The evidence must be considered not only on its own merit but in terms of what the evidence would have meant for the investigation of the

case and preparation for trial. Even if withheld evidence might have been deemed inadmissible, it may still have had value in leading to other admissible evidence, supporting a discovery request or in finding additional witnesses. *Kyles v. Whitley*, *Kyles v. Whitley*, 514 U.S. 419, 421 (1995) (materiality of *Brady* violation “turns on the cumulative effect of all such evidence suppressed by the government”).

117. In Petitioner’s case, the Commonwealth failed to provide *at least* the following information to the defense: who the original source was that identified Petitioner and his co-defendant as perpetrators; who the hysterical woman and man with the limp were that Officer Davis saw on Market Street immediately after hearing the gun shot; who was in the bar immediately after the shooting; who was gathered on the street immediately after the shooting; that Carla Brown was at the scene immediately after the shooting and acting hysterical; that Doubs, Germain, and Ripply were all coerced into changing their alibi statements; that Officer Curtis seized \$1000 from Carl Williams’ house in order to get him down to police headquarters to be interviewed about the shooting; and that the police questioned Brown “aggressively” on numerous occasions before getting a statement from her that incriminated Petitioner.

118. Armed with this additional exculpatory supporting Petitioner’s alibi, contradicting the Commonwealth’s theory of the case, and impeaching the

Commonwealth's chief witnesses, defense counsel would have had far more avenues to investigate and she would have had the basis for preparing very differently for trial. In other words, in assessing materiality, the Court considers how effective counsel could have proceeded in the absence of the due process violations both at trial and in pre-trial investigation and development of other evidence. *Kyles*, 514 U.S. at 441 (finding prejudice where "disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable"); *id.*, 441-49 (reviewing ways in which competent counsel could have used and developed withheld information to impeach prosecution witnesses and undercut police investigation); *United States v. Bagley*, 473 U.S. 667, 676 (1985) (materiality analysis considers whether suppressed information, "if disclosed and *used effectively*" by the defense, may have made a difference); *id.*, 683 (materiality inquiry considers "any adverse effect that the [suppression] might have had on the preparation or presentation of the defendant's case" and "the course that the defense and the trial would have taken had the defense not been misled"); *Wilson v. Beard*, 589 F.3d 651, 664 (3d Cir. 2009) ("The question under [due process] is whether disclosure of the suppressed evidence to *competent* counsel would have made a different result reasonably probable"). *See also Simmons v. Beard*, 590 F.3d 223, 231 (3d Cir. 2009) (same); *Breakiron v. Horn*, 642 F.3d 126 (3d Cir 2011) (same).

119. Had this additional exculpatory evidence been presented and argued at trial, no reasonable juror could have found that the Commonwealth had proved its case against Petitioner beyond a reasonable doubt.

120. Most important, this exculpatory information, when viewed in combination with the newly discovered evidence offered herein, and with the prior suppressed evidence regarding Doubs, proves that Petitioner was not simply “not guilty.” This evidence proves he is innocent of the crimes with which he was charged, and that the Commonwealth had reason to know he was innocent but prosecuted him for murder nonetheless.

CLAIM III.

TRIAL COUNSEL, APPELLATE COUNSEL, AND POST-CONVICTION COUNSEL WERE ALL CONSTITUTIONALLY INEFFECTIVE

121. Due process violations, such as those discussed above, certainly have the potential to adversely impact trial counsel’s preparation. By the same token, such violations also can adversely affect a case through post-conviction proceedings. Here, it cannot be denied that trial counsel’s investigation and preparation, as well as post-conviction counsel’s preparation and investigation, was likely to have been vastly different had the Commonwealth fulfilled its constitutional obligation and provided the defense with the exculpatory evidence it had gathered, including

impeachment evidence, and had the Commonwealth not made promises and threats to witnesses that resulted in the witnesses failing to come forward and failing to reveal to the defense what they knew.

122. However, it also cannot be denied that trial/appellate and post-conviction counsel each performed deficiently in various respects. Petitioner discusses those deficiencies.

A. Trial Counsel Failed Adequately to Investigate Prior to Trial

123. Trial counsel did not have the resources, training or experience to adequately investigate Petitioner's alibi or the charges against him.

124. Although trial counsel intended to put forward a defense that Petitioner had an alibi, that the Commonwealth did not have evidence to prove that Petitioner had the intent to commit murder, and that the Commonwealth's evidence was insupportable, counsel did not have the training or resources to investigate, and *did not investigate*, in a manner that would allow her to develop the defense she had settled upon.

125. Prior to trial, trial counsel did not personally interview any of the people Petitioner identified as having traveled with to New York the night of Williams was shot. Counsel did not interview Suquan Ripply prior to trial, Ree Ree, Victoria

Doubs, or Clifton Germain.

126. Prior to trial, trial counsel did not interview Theresa Thomas, Petitioner's girlfriend at the time. Thomas would have provided counsel with phone records showing that Petitioner was in New York as he said he was, on the date he said he was there.

127. Trial counsel did not interview witnesses who gave exculpatory statements to the police. She did not interview Eric Chambers prior to calling him as a witness. She did not interview Jessie Davis, Brian Ramsey or Adrian Fluellen to clarify statements they had made to the police.

128. Trial counsel did not interview Victoria Doubs or Carla Brown prior to trial. Nor does she appear to have interviewed Mike Johnson or Brown's mother, the people to whose homes Brown said she fled after the shooting.

129. It does not appear that trial counsel tried to determine and interview other people who might have been at the Kentucky Fried Chicken restaurant the day of the fight Doubs reported between Williams and Walker, or people who would have heard Doubs tease Walker at 18th and Carnation. It does not appear that trial counsel tried to find out whether anyone else could corroborate Doubs' report that Walker said he was going to kill Williams because he was so humiliated, or whether

Petitioner was present when (and if) Walker made such statements.

130. The failure to take any of these actions when defending Petitioner against a charge of first degree murder that carried a life sentence – particularly in light of the defense trial counsel intended to put forth – was objectively unreasonable.

131. Petitioner had a right to the effective assistance of counsel at trial. *Strickland v. Washington*, 466 U.S. 688 (1984); *Commonwealth v. Pierce*, 527 A.2d 973, 976-77 (Pa. 1987). U.S. Const. Amend. VI; Pa. Const. Article I, § 9. Claims of ineffective assistance of counsel are evaluated under the two-prong *Strickland* test. To prevail, Petitioner must show: (a) counsel’s deficient performance, *i.e.*, that his attorney’s performance fell below “an objective standard of reasonableness,” *Strickland*, 466 U.S. at 688; and (b) prejudice, *i.e.*, that confidence in the result of the original sentencing proceeding is undermined due to counsel’s deficiencies, *id.*, 694. Both prongs are met here, where trial counsel failed to properly and fully investigate and present evidence that would have secured Petitioner’s alibi and rebutted the prosecution’s attempt to discredit it.

132. The Sixth Amendment requires that trial counsel “investigate all apparently substantial defenses available to the defendant,” *United States v. Williams*, 615 F.2d 585, 594 (3d Cir. 1980); *United States v. Kauffman*, 109 F.3d 186, 190 (3d Cir. 1997) (“at a minimum, counsel has the duty to interview potential witnesses and

to make an independent investigation of the facts and circumstances of the case.”), *accord, Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (“It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case.”); *Rolan v. Vaughn*, 445 F.3d 671, 682 (3d Cir. 2006) (counsel ineffective for failing to interview potential defense witness); *United States v. Gray*, 878 F.2d 702, 711-12 (3d Cir. 1989) (counsel must investigate and contact witnesses and attempt to obtain available evidence which diminishes the prosecution’s case and supports that of the defense).

133. Counsel failed to investigate some aspects of the alibi entirely. As to those elements of the defense, counsel could not have had a reasonable tactic or strategy for not investigating or presenting them. *Strickland*, 466 U.S. at 691-92; *United States v. Gray*, 878 F.3d 702, 710 (3d Cir. 1989) (“In the context of defense counsel's duty to investigate, ‘strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.’”), *quoting, Strickland, id.* As for those supports for the alibi which counsel had in his possession, there also could have been no reasonable tactic or strategy for failing to present them.

134. Indeed, in a legion of cases, counsel have been found ineffective for failing to investigate a valid alibi, or where they investigated and presented only a partial alibi, neglecting to present the full and valid alibi. For instance, in *Montgomery v. Petersen*, 846 F.2d 407 (7th Cir. 1988), counsel was held ineffective even though he presented **twelve** alibi witnesses because he failed to investigate and present **one** disinterested alibi witness:

Unlike many of the “failure to investigate” cases that have come before this court and the other circuits, this is not a case where counsel totally failed to present a defense. However, the importance of the information that was not tracked down and presented to the jury is, under the facts of this case, extraordinarily significant. Here, the Sears clerk can hardly be characterized as a cumulative alibi witness. Rather, he was the only disinterested witness in the case. All twelve of the other defense witnesses were either close friends or relatives of the petitioner.

Id., at 413. In Petitioner’s case, counsel presented only a portion of the alibi, but failed to present additional evidence to support the alibi.

135. Courts have not hesitated to find counsel ineffective for failing to present only partial alibi evidence. *See Washington v. Smith*, 219 F.3d 620, 633-34 (7th Cir.2000) (holding that additional alibi evidence was not cumulative where the alibi evidence that was presented to the jury, was inconclusive); *Stewart v. Wolfenbarger*, 468 F.3d 338, 359 (6th Cir.2007) (finding additional alibi evidence was not cumulative where it “would have added a great deal of substance and credibility” to

the alibi that was presented); *Henry v. Poole*, 409 F.3d 48, 64 (2d Cir. 2005) (trial counsel held ineffective: “The defect in Henry's trial attorney's representation was the elicitation of an alibi for the wrong date – an error that plainly went to the heart of the alibi, and undermined the defense”); *Avery v. Prelesnik*, 545 F.3d 434, 437-439 (6th Cir. 2008) (counsel ineffective for failing to launch a “complete” investigation of colorable alibi involving evidence “that the trial jury did not have before it.”).

136. Trial counsel’s failure to conduct a full and proper investigation constituted deficient performance.

137. Petitioner was prejudiced by trial counsel’s failure to undertake a reasonable investigation. To establish prejudice, a petitioner “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. A “reasonable probability” is one “sufficient to undermine confidence in the outcome.” Id. The *Strickland* prejudice standard is not “stringent” – it is, in fact, “less demanding than the preponderance standard.” *Jermyn v. Horn*, 266 F.3d 257, 282 (3d Cir.2001) (quoting *Baker v. Barbo*, 177 F.3d 149, 154 (3d Cir.1999)); see also *Woodford v. Visciotti*, 537 U.S. 19, 22 (2002) (*Strickland* “specifically rejected the proposition that the defendant had to prove it more likely than not that the outcome would have been altered”).

138. In a case as close as this one, and where the unrepresented evidence so clearly bolsters the alibi defense that was partially presented by counsel, prejudice is clear.

B. Counsel was Ineffective on Appeal

139. The same attorney who represented Petitioner at trial also represented him on appeal. Because a lawyer may not question her own effectiveness, appellate counsel was unable to raise any claim of ineffectiveness. *Commonwealth v. Natividad*, 938 A.3d 310, 321 n.3 (Pa. 2007) (“this Court has acknowledged that counsel is not expected to allege his own ineffectiveness. *See, e.g., Williams*, 782 A.2d at 523; *Commonwealth v. Frankhouser*, 491 Pa. 171, 420 A.2d 396, 398 (1980) (‘[I]t is ... unrealistic to expect counsel to file motions and/or an appeal challenging his own effectiveness.’) (quoting *Commonwealth v. Mabie*, 467 Pa. 464, 359 A.2d 369, 37172 (1976))). Therefore, we decline to find Appellant's claims waived for direct-appeal counsel's failure to allege his own ineffectiveness.”))). Thus, for purposes of layering his current claims of ineffective assistance of counsel, direct appeal counsel’s failures are immaterial.

C. Post-Conviction Counsel Was Ineffective

140. Post-conviction counsel's ineffectiveness is demonstrated by the wealth of evidence that he failed to investigate and present. PCRA counsel failed to investigate, allege or raise the many ways in which trial counsel was ineffective: failure to investigate, to prepare witnesses, to fully explore the alibi, the failure to ask for severance from Walker, failure to appeal the Court's ruling limiting cross-examination of Carla Brown having given birth to a crack-addicted baby just before trial, and Doubs' lie about naming her baby after a man, in order to extract money from him.

141. When post-conviction counsel conducts such a bare-bones investigation, and simply calls trial counsel to the stand – without even speaking with her before calling her – he is deficient, particularly in a case with as much unexplored evidence as this. And, when counsel is deficient in a case as insubstantial as this one, and where current counsel have presented a wealth of new and previously unexplored evidence, it is apparent that post-conviction counsel's deficiencies caused prejudice under *Strickland* and its progeny.

PETITIONER IS ENTITLED TO DISCOVERY

142. The Commonwealth has never turned over to Petitioner the first eight (8) pages of the police investigative report produced in his case. The information contained in this report, which was requested by the defense pre-trial, may have additional evidence that would have been exculpatory, would have provided important investigatory leads, or would have contained information with which to impeach the Commonwealth's witnesses.

143. Nor has the Commonwealth ever turned over to Petitioner statements made by Carla Brown to the Commonwealth, despite the fact the newly discovered evidence now reveals that she was interviewed "aggressively" by the Commonwealth on multiple occasions, beginning on December 15, 1995, and including a date just days before she testified at trial.

144. Nor has the Commonwealth ever turned over to Petitioner the letter written by Brian Ramsey to the trial prosecutor (Abruzzo) requesting favorable treatment in exchange for his testimony.

145. Petitioner has presented evidence herein that Brown may have been noticeably using drugs in the ten months prior to trial and that the Commonwealth

had reason to be aware of this.¹⁸

146. At a minimum, Petitioner is entitled to the first eight pages of the police investigative reports; copies of all statements made by Carla Brown to the police; all notes taken by the police of her statements including the dates on which she was interrogated or otherwise spoken to the law enforcement; any names or lists compiled by the police of people present at the scene of the shooting or in Fab's bar immediately prior to and after the shooting; any notes reflecting Theresa Thomas' and/or Towana Poteat's statements and/or interactions with the police; and any and all notes regarding Carla Brown's physical or mental state during interviews and during the ten months prior to trial.

147. Discovery in post-conviction proceedings is governed by Pa.R.Crim.P. 902 (E) (1), which permits discovery upon leave of Court and upon a showing of exceptional circumstances. Petitioner proffers that he shows such exceptional circumstances.

¹⁸ At trial, co-defendant Walker's attorney (Shugars) made an offer of evidence that Brown gave birth to a crack-addicted baby a month before trial, citing as the source of that information a telephone call during which prosecutor Abruzzo told him that. Mr. Abruzzo denied having said this. The court would not permit Walker to cross-examine Brown on this point. NTT 3/14/97, 143.

Given what Petitioner has now learned, Petitioner is now entitled to any information in possession of, or known by, the Commonwealth that Carla Brown gave birth to a crack-addicted child in the ten-month period prior to trial.

148. Given the scope and breadth of Petitioner's proffers, he has unquestionably established exceptional cause for the Commonwealth to provide the above requested materials.

CONCLUSION AND REQUEST FOR RELIEF

For all of the above reasons and the attached affidavits and exhibits, Petitioner requests the following relief:

- A. That the Commonwealth be required to respond to this *Petition*;
- B. That the Court permit Petitioner to file such amendments, supplements or briefs as required in the interest of justice;
- C. That the Court permit oral argument on any and all dispositive issues;
- D. That the Court permit discovery as requested above;
- E. That following discovery, the Court conduct evidentiary hearings on all material disputed issues of fact; and,
- F. That the Court vacate Petitioner's conviction and sentence and award him a new trial.

Respectfully Submitted,



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Dated: August 5, 2013
Swarthmore, Pennsylvania

Certificate of Service

I, Michael Wiseman, hereby certify that on this 5th day of August, 2013 I served a copy of the foregoing upon the following person by United States Mail and by email:

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