DISTRICT ATTORNEY'S OFFICE
By: PATRICIA CUMMINGS
Assistant District Attorney, Supervisor
CARRIE WOOD
Assistant District Attorney
Conviction Integrity Unit

Three South Penn Square
Philadelphia, PA 19107
215-686-8747

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

COMMONWEALTH	:	
	:	CP-51-CR-0532781-1992
v.	:	
	:	
WALTER OGROD	:	

COMMONWEALTH'S ANSWER TO PETITION
FOR POSTCONVICTION RELIEF

TO THE HONORABLE SHELLEY ROBINS NEW:

LAWRENCE KRASNER, the District Attorney of Philadelphia County, by his representatives, Patricia Cummings and Carrie Wood, Assistant District Attorneys, answers that Mr. Walter Ogrod is entitled to relief on several of his New Evidence, Due Process, *Napue,* and *Brady* claims enumerated in his CONSOLIDATED, AMENDED PETITION FOR HABEAS CORPUS AND POSTCONVICTION RELIEF (Consolidated Petition).

On February 12, 2018, attorneys for Ogrod submitted a request for review of this case to the Philadelphia District Attorney's Office Conviction Integrity Unit (CIU). That request was premised on multiple claims, however, the request mainly focused on Ogrod's claim of innocence. Shortly after receiving the request, the CIU also received an internal memorandum from the PCRA Unit in the office stating there are reasons to consider further DNA testing in the case as well as a Conviction Integrity Review.

Shortly after receiving the defense request and the internal memorandum, the CIU began its review and investigation into Ogrod's claims and the murder of four-year-old Barbara Jean Horn (Barbara Jean). A comprehensive review of both the record and applicable law combined

with a thorough review of all available materials has revealed that several of Ogrod's claims warrant relief.

More specifically, based on the pleadings, the trial and post-conviction records, and the factual record set forth in the Parties' Joint Stipulations of Fact, the Commonwealth concedes that Ogrod is entitled to relief based on newly discovered exculpatory evidence and as a result of violations of his right to due process under the Pennsylvania Constitution and the United States Constitution as described in Claims I and V of his Consolidated Petition.

OVERVIEW AND SHORT FACTUAL SUMMARY

1. On October 8, 1996, after several days of trial, a Philadelphia death qualified jury found Ogrod guilty of attempted involuntary deviate sexual intercourse and murder in the first degree.

2. At the conclusion of the penalty phase of trial, that same jury found one aggravating circumstance and no mitigating circumstances and set Ogrod's penalty at death.

3. Tragically, that jury, who was asked to pass judgment on Ogrod's innocence or guilt and, if adjudged guilty, determine whether Ogrod should pay the ultimate penalty for his crimes, was given false, unreliable and incomplete evidence to make their decisions.

4. More specifically, the jury was told that Barbara Jean, a four-year-old homicide victim, died in July 1988 as a result of blows to her head from a weight bar used by Ogrod during a sexual rage that occurred in Ogrod's basement.

5. However, at the time of trial, the Commonwealth knew or should have known Barbara Jean likely died from asphyxia.

6. Asphyxia was an inconvenient fact that simply could not be reconciled with the Commonwealth's theory that Ogrod murdered Barbara Jean so the Commonwealth chose to suppress it from the jury, Barbara Jean's family and Ogrod.

7. Simply put, had the information regarding Barbara Jean's cause of death been disclosed as required by both the Pennsylvania and United States Constitution, it would have undermined all of the evidence the prosecution relied upon to convict Ogrod.

8. Now, almost a quarter century after Ogrod was sentenced to death, relevant, reliable science has confirmed that Barbara Jean did not die as a result of the blows to her head; Ogrod's weight bar could not have caused and did not cause those injuries; Detective Marty Devlin and Detective Paul Worrell utilized inherently coercive tactics and inaccurate information to obtain a

false and unreliable confession from Ogrod; and jailhouse informants colluded to provide false and unreliable testimony against Ogrod in an effort to procure favorable treatment in their own criminal prosecutions.[1]

9. In short, the Commonwealth concedes Ogrod was wrongfully convicted.

10. The Commonwealth further concedes that, but for an exceptionally unfair trial, it is "more likely than not any reasonable juror would have reasonable doubt" and acquit him. *House v. Bell*, 547 U.S. 518, 538 (2006).

11. Ogrod's conviction and capital sentence also represent a gross miscarriage of justice.

12. After a careful and thorough review of the evidence in this case, the Commonwealth also agrees that Ogrod is likely innocent of the crime for which he was convicted.[2]

13. Having concluded that Ogrod is likely innocent, the Commonwealth urges this Court to vacate his convictions and sentence.

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[1] John Hall and Jay Wolchansky (who testified in Ogrod's second trial under the alias Jason Banachowski) were inmates together and were housed in the same jail as Ogrod. Of the two, Hall was an infamous jailhouse informant who testified for the Commonwealth in many high profile prosecutions in Philadelphia and surrounding Counties. As a result of local press coverage, Hall was known as the "Monsignor" due to his long track record of purportedly obtaining jailhouse confessions, disclosing those confessions to police and prosecutors, and then cooperating in cases in order to obtain leniency in his own criminal cases. In Ogrod's case and for reasons discussed below and in the Joint Stipulations of Fact, Hall fed Wolchansky a purported confession (sometimes referred to as the Wolchansky Confession) from Ogrod and then Wolchansky used that purported confession in hopes of obtaining leniency in his own pending criminal cases.

[2] Neither the Pennsylvania legislature nor the Pennsylvania state courts have adopted a standard of proof for demonstrating "actual innocence" in post-conviction proceedings. *See, e.g.*, *In re Payne*, 129 A.3d 546, 556 (Pa. Super. Ct. 2015) (*en banc*) (noting that the "quantum of evidence necessary to satisfy" the actual innocence requirement of Pennsylvania's post-conviction DNA testing statute, 42 Pa.C.S. § 9543.1, "has never been defined"). The Commonwealth therefore relies upon the standard applied in federal courts "where when the claimed injustice is that constitutional error has resulted in the conviction of one who is actually innocent of the crime." *Schlup v. Delo*, 513 U.S. 298, 324 (1995). Under those circumstances, the standard for "actual innocence" is defined as whether it is "more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt—or, to remove the double negative, that more likely than not any reasonable juror would have reasonable doubt." *House*, 547 U.S. 538 (describing *Schlup* innocence standard); *see also Commonwealth v. Conway*, 14 A.3d 101, 109 (Pa. Super. 2011) (noting parties' agreement that the *Schlup* standard for actual innocence applied in context of proceedings under post-conviction DNA testing statute).

14. And, in addition to the gross miscarriage of justice committed against Ogrod, Barbara Jean's family and the jury, the Commonwealth recognizes that because the information regarding Barbara Jean's cause of death stayed hidden for decades, the actual perpetrator of the crime has not only escaped prosecution but it is possible the perpetrator has been free to commit other crimes.[3]

FACTUAL AND PROCEDURAL SUMMARY

The Crime

15. On July 12, 1988 at 5:30 p.m., Barbara Jean was discovered by a neighbor dead inside a cardboard television box (box) found on the curb (next to metal trash cans) in front of 1409 St. Vincent Street, Philadelphia, which is less than 1,000 feet from her home.

16. Barbara Jean had been beaten and her body was naked, wet and partially covered by a plastic garbage bag.

17. Police, the medical examiner, and the criminalistics laboratory collected biological matter from the box and the plastic bag that partially covered Barbara Jean's body.

18. Barbara Jean's stepfather, John Fahy, was interviewed and he told police that he last saw her alive at the Fahy residence, 7245 Rutland Street, around 3:00 p.m. that same afternoon.

19. At the time of the murder, Ogrod lived at 7244 Rutland Street, directly across the street from Barbara Jean's residence.

[3] One of the first investigative steps taken by the CIU was to determine whether any physical evidence existed that was suitable for DNA testing. Once the physical evidence was located, with the collaboration and consent of Ogrod's counsel, Bode Technology was retained to conduct testing on what Bode determined was the only DNA evidence suitable for testing - a sample of body wash recovered from the autopsy table after Barbara Jean's autopsy. For point of reference, in general, if a medical examiner determined that collection of a "body wash" was appropriate, they would place a plastic sheet under the body before placing the body on the autopsy table and then wash off the body (the wash, including any biological material potentially left behind by the perpetrator, collecting on top of the plastic sheet). After the wash was complete, the medical examiner would collect some of the wash in a jar. The wash collected from in this case produced a full male DNA profile suitable for comparison. The CIU then collected a buccal swab reference sample from Ogrod on June 4, 2019. Bode Technology subsequently reported that Ogrod was excluded as a contributor to the DNA profile produced by the wash. Ultimately, the profile was uploaded to local, state and national DNA databases (CODIS) between October 10, 2019 and November 19, 2019. As of the date of the filing of this Answer, there have been no hits to the DNA profile uploaded to CODIS.

20. Ogrod was interviewed in a neighborhood canvas – during that interview, Ogrod told police that, at 3:30 p.m. on the day of the murder, Barbara Jean's step-father knocked on the door of the Ogrod residence and asked if he or others in the house had seen his daughter.

21. Other neighbors were interviewed and at least five eyewitnesses told police they saw a man carrying and/or dragging the box through the neighborhood late on the afternoon of the murder.

22. The police obtained varying descriptions of the man carrying the box, none of which matched Ogrod's description.

23. The day after the murder, Philadelphia Assistant Medical Examiner Paul Hoyer conducted an autopsy in which he identified bruises on Barbara Jean's back and lacerations and bruises to her head.

24. During the autopsy, fingernail scrapings, oral, rectal, and vaginal swabs, as well as the wash used to clean Barbara Jean's body (and any material collected by the wash) were collected and preserved.

25. In his autopsy report, Dr. Hoyer opined that the child had been killed between 3:30 and 4:30 p.m. on July 12, 1988 and he determined the cause of death was cerebral injuries, which he defined as "scalp lacerations and contusions, subarachnoid hemorrhage, focal superficial brain lacerations and contusions, and mild brain swelling."

26. Although the police investigation led to several possible suspects, Ogrod was not one of them, and no one was immediately arrested.

27. The police investigation stalled and a tip line was set up, requesting any and all information pertaining to the unsolved murder.

28. Hundreds of people called in with information and the names of possible suspects—including a number of people who identified a suspect already identified by the police as looking like the composite sketch drawn from eye witness descriptions of the man seen carrying the box.

29. Not one of the tips received implicated Ogrod.

30. The investigation into Barbara Jean's murder became a cold case.

31. In early 1992, the case was assigned to the Special Investigations Unit (SIU) in the homicide unit of the police department and Devlin and Worrell were assigned to re-investigate the case.

32. Devlin and Worrell, along with their assigned SIU Sergeant, Laurence Nodiff, reviewed the case file (including all of the interviews, the grand jury notes, and activity sheets) and they spoke to the investigators that were initially assigned to the case.

33. Devlin and Worrell also went back to the neighborhood where Barbara Jean lived and where her body was discovered and "knocked on every single door in the neighborhood" doing neighborhood surveys and re-interviewing people who had been interviewed during the original investigation.

34. Meanwhile, Sergeant Robert Snyder, one of the other SIU sergeants at the time of the cold case investigation, was part of a prior, separate investigation into the Dunne murder, a homicide that occurred in the basement of the Ogrod residence in 1986 – two years before Barbara Jean's murder.

35. During the Dunne murder, three men entered the Ogrod residence during the night, went to the basement where they knew Ogrod's brother Greg slept, and attacked Greg and his 16-year old girlfriend, Maureen Dunne—stabbing and clubbing them.

36. Dunne died from a stab-wound to her heart and Greg survived.

37. Dunne was the daughter of Philadelphia Police Department Detective William Dunne, a 26-year veteran of the force.

38. At the time of the attack, Ogrod was asleep upstairs and was awakened by his brother's screams from the basement.

39. Ogrod called 911 and was interviewed by homicide detectives, however, when the perpetrator of the crime was eventually prosecuted, Ogrod was not called to testify at trial.

40. The police homicide file relating to the Dunne murder contained pictures of the basement of the Ogrod residence, including at least one picture showing a weight machine and its lateral pull-down weight bar.

41. Given who Dunne's father was, the manner in which the SIU operated at the time, and how the re-investigation of Barbara Jean's murder was conducted, Devlin and Worrell were clearly familiar with the circumstances of how Dunne was murdered in Ogrod's basement.

42. In fact, the lateral pull-down weight bar pictured in one of the Dunne homicide photographs ultimately became central to the Commonwealth's case against Ogrod—specifically being identified in the Devlin Confession referenced below in paragraph 46 and at both Ogrod

trials as the purported murder weapon responsible for inflicting the mortal head wounds to Barbara Jean.

43. Indeed, Devlin and Worrell were particularly interested in Ogrod – asking other people about him and ultimately tracking him down in a new neighborhood he had relocated to after moving out of his residence in Barbara Jean's neighborhood.

44. When Nodiff, Devlin, and Worrell arrived at Ogrod's new residence, Ogrod was at work so they left a card with their contact information requesting Ogrod to contact them.

45. Ogrod complied with their request, which eventually lead to him voluntarily going to police headquarters for an interview.

The Prosecution of Ogrod

46. Ogrod was arrested on April 6, 1992 solely based on a purported confession (the Devlin Confession) he gave after he was interrogated by Devlin and Worrell.

47. Immediately after signing the Devlin Confession, Ogrod disavowed its contents and asserted his innocence.

48. After unsuccessfully trying to suppress the Devlin Confession, the Commonwealth prosecuted Ogrod during his first trial solely based on the theory of the crime as described in the Devlin Confession – Ogrod attempted to sexually assault Barbara Jean and when she resisted he beat her over the head with his weight bar and then he washed her off and left her naked body in a box as trash to be picked up not far from both of their homes.

49. During the first trial, Ogrod testified specifically claiming that the Devlin Confession had been coerced during a lengthy interrogation that occurred while he was sleep deprived and where he was emotionally and verbally abused by Devlin and Worrell.

50. On November 4, 1993 around 2:25 p.m., after multiple days of deliberation, the jury returned with a unanimous verdict of not guilty and marked the verdict slip accordingly.

51. However, as the jury foreman was about to read the verdict aloud, one juror stated in open court that he did not agree with the verdict so the judge immediately declared a mistrial.

52. The Pennsylvania Supreme Court summarized how the first trial ended as follows:

> The trial itself took eight and a half days. Judge Stout charged the jury on November 2, 1993. After less than nine hours of deliberations, the jurors indicated to Judge Stout that they were deadlocked. [E]ventually the jury was unable to reach a unanimous verdict and the trial court declared a mistrial.

The trial court described the events leading to the mistrial as follows:

> On November 3, 1993 at 2:55 p.m., the jury sent a note to the Court indicating it was unable to reach a unanimous verdict. The Court advised the jury that it had been deliberating only 8 1/2 hours after having heard testimony for 8 1/2 days. The guidelines for deliberations were reread to them and the deliberations resumed at 2:59 p.m. The Appellant's attorney moved for a mistrial. The motion was denied. The jury continued to deliberate until 5 p.m. or thereabouts. On November 4, 1993 at 10:35 a.m., the jury requested a review of the definition of reasonable doubt. That was given at 10:45 a.m. and the jury returned to deliberate. Between 10:45 a.m. and 2:15 p.m., screaming and table banging were audible in the hallway.

At 2:15 p.m., on one sheet of paper, the Court received the following two notes[:]

> "Hon. Juanita K. Stout Court number 513 11/3/93. It has become apparent from the deliberations that the jury has been unable to reach a unanimous decision. Vote 11–1 respectfully submitted Charles Graham. Foreman."
> "It has been said that there is NOTHING that can be said to convince or change the mind of the juror who does not agree. The juror has stated this and a unanimous verdict is not possible Charles T. Graham, Foreman."
> The Court requested the Sheriff to bring the defendant to the Courtroom and notified counsel to return. During this brief interval, the jury foreman advised the Court crier that a verdict had been reached after all. The crier then advised the jury of the procedure for announcing the verdict and told the jurors that they might be polled.

After the defendant and attorneys had assembled, the jury was brought into the courtroom at 2:25 p.m. At that time, the following occurred:

> COURT CRIER: Good Afternoon, your Honor, your Honor may I take the verdict, please?
> THE COURT: You may.
> COURT CRIER: Ladies and Gentlemen of the Jury, you have agreed upon a verdict?
> THE JURY: Yes, we have.
> COURT CRIER: Have all twelve agreed?
> JUROR NUMBER 2: No.
> COURT CRIER: On—.
> SPECTATOR: Wait a minute.
> JUROR NUMBER 2: I don't agree with the verdict.
> THE COURT: If you do not agree with the verdict, I will have to declare a mistrial.

Opinion of Stout, J. at 1–3. The juror did not agree and, on November 4, 1993, the trial court declared a mistrial. N.T. 11/4/93, at 1135.

(footnotes omitted) *Com. v. Ogrod*, 576 Pa. 412, 430–33, 839 A.2d 294, 305–07 (2003).

53. Two very significant events occurred in between the first and second trial – the Commonwealth assigned ADA Judith Rubino, a different prosecutor, to try the case and the Commonwealth obtained new evidence from Wolchansky, a jailhouse informant, claiming that Ogrod confessed to him that he killed Barbara Jean when the two were housed together in the jail awaiting trial (most of Wolchansky's testimony originated from communications he had with Hall, the notorious jailhouse informant first mentioned in footnote 1, *infra*).

54. Although Ogrod was represented by the same defense attorney during the second trial, Ogrod did not testify in his own defense.

55. The Pennsylvania Supreme Court summarized the second trial as follows:

> The second trial of Appellant before Judge Stout began on September 16, 1996. On October 8, 1996, after several days of trial, the jury found Appellant guilty of attempted involuntary deviate sexual intercourse and murder in the first degree. A penalty phase hearing ensued. At its conclusion, the jury found one aggravating circumstance and no mitigating circumstances and set the penalty at death.
> (footnotes omitted) *Com. v. Ogrod*, 576 Pa. 412, 430–33, 839 A.2d 294, 305–07 (2003).

Procedural History

56. The Pennsylvania Supreme Court affirmed Ogrod's convictions and death sentence on direct appeal on December 30, 2003. *Commonwealth v. Ogrod*, 839 A.2d 294 (Pa. 2003). Re-argument was denied on April 27, 2004, by a tied 3-3 vote. *Commonwealth v. Ogrod*, 850 A.2d 614 (Pa. 2004).

57. The United States Supreme Court denied Ogrod's petition for a writ of certiorari on February 28, 2005. *Ogrod v. Pennsylvania*, 543 U.S. 1188 (2005)

58. On June 7, 2005, Governor Edward G. Rendell signed a death warrant scheduling Ogrod's execution for August 2, 2005.

The Current Proceedings

59. On June 8, 2005, Ogrod filed a timely first in time PCRA petition and a petition to stay his execution. The court issued a stay of execution pending the outcome of the PCRA proceedings.

60. On March 2, 2007, Ogrod filed his initial motion for discovery in connection with the PCRA proceedings, including a request for DNA testing of available forensic evidence.

61. For a number of years, Ogrod and the PCRA Unit of the DAO engaged in pre-petition discovery and related litigation (which included the PCRA Unit of the DAO reproducing most of the discovery that was provided at the time of trial).

62. On June 24, 2011, Ogrod filed an Amended PCRA Petition, which he later amended and supplemented. On April 4, 2013, the Commonwealth filed a Motion to Dismiss the Amended Petition.

63. Ogrod filed his second Motion for Discovery on June 11, 2013, including a renewed request for DNA testing.

64. Ogrod's first Amendment and Supplement to his Amended PCRA Petition was filed on October 21, 2014.

65. In 2014, the Commonwealth agreed to DNA testing of biological matter from the homes of initial police suspects Wesley Ward and Ross Felice, but opposed DNA testing of any evidence obtained from the victim or the autopsy.

66. The evidence from the alternate suspects' homes was analyzed – some of the evidence was too degraded and/or contaminated to be meaningfully tested and the evidence suitable for testing that yielded a DNA profile was not a match to the victim.

67. On March 20, 2015, the Commonwealth filed a Motion to Dismiss the Amended and Supplemented PCRA Petition.

68. Ogrod's Second Amendment and Supplement was filed on December 30, 2016.

69. In 2017, the Commonwealth agreed to an evidentiary hearing as to the following three claims of ineffective assistance of counsel: (i) trial counsel's ineffectiveness for failing to retain expert assistance from a medical examiner to refute Dr. Mirchandani's testimony regarding the murder weapon used during the crime; (ii) trial counsel's ineffectiveness for failing to offer appropriate and relevant evidence to prove the defendant's "confession" was involuntary; and (iii) trial counsel's ineffectiveness for failing to investigate and proffer appropriate and relevant mitigation evidence during the penalty phase of trial.

70. On February 6, 2018, the Commonwealth filed reports from Dr. Bruce Wright and Dr. Ian Hood.[4]

71. On February 12, 2018, while all of his claims were still pending, Ogrod's counsel requested that the Philadelphia District Attorney's Office CIU review Ogrod's case.

72. During the course of that review, the CIU provided Ogrod's counsel with a copy of the District Attorney's Office's file (DAO file) in this case—over forty-thousand pages of documents.

73. During the parties' review of the DAO file, it became apparent that there was *Brady* evidence that had not previously been disclosed to Ogrod. *See* Consolidated Petition at pages 175-207.

74. In January 2020, Ogrod amended and consolidated his petition again with one new Due Process claim, which included several separate and distinct categories of *Brady* evidence ("the *Brady* claims").

75. Although the *Brady* claims encompass many separate and distinct categories of evidence, this Answer summarizes the claims into three categories in accordance with the Commonwealth's concession of relief.

76. The first category includes suppressed exculpatory and impeaching "material information" in the DAO file indicating that Barbara Jean likely, or probably, died from asphyxia and not head wounds.

77. The second category includes suppressed exculpatory and impeaching "material information" in the DAO file and/or police homicide files that corroborate Ogrod's claim that the Devlin Confession constitutes a false and unreliable confession.

78. The third category includes suppressed exculpatory and impeaching "material information" in many DAO files and police homicide files related to the jailhouse informants'

[4] Both of those reports were filed before the CIU began its investigation into this case and before the PCRA Unit reviewed the entire Ogrod file and other files related to this case. As a result, when both Wright and Hood were retained in this matter they were provided incomplete information (given what the CIU file review and investigation has revealed). The other result of the incomplete information is that the questions posed to the experts were either incorrect or so limiting in nature that the questions themselves combined with the incomplete information provided to the experts resulted in inaccurate or misleading expert reports. As such, the CIU hereby withdraws both reports. Further detailed information regarding the unreliability of both reports is included in the Parties' Joint Stipulations of Fact.

credibility such as their prior cooperation in other cases, their hopes and expectations of receiving leniency in their own cases in exchange for their testimony, the DAO's knowledge of many facts evidencing collusion between the two informants, and Wolchansky's mental health records and the DAO's belief that he was malingering in his own criminal case in an effort to avoid prosecution.

79. As described in more detail below, the Commonwealth agrees with Ogrod that he is entitled to relief on his Due Process *Brady* and *Napue* claims.

80. If this Court agrees with the Commonwealth that Ogrod is entitled to relief on any one of his claims and vacates his conviction and sentence, his remaining claims will be rendered moot.[5]

81. The Commonwealth respectfully requests that this Court defer judgment (and any evidentiary hearing) on any remaining claims not addressed and agreed to in this answer. Such deferral would be in the interest of judicial economy and justice.[6]

THE COURT HAS JURISDICTION TO GRANT RELIEF ON THE DUE PROCESS & *BRADY* CLAIMS

82. The Commonwealth agrees with Ogrod that this Court has jurisdiction to review his claims pursuant to Article I, Section 14 of the Pennsylvania Constitution and 42 Pa. C.S. §§ 9542 *et seq*.

83. Because Ogrod's initial PCRA petition was timely filed, his amendments are also properly filed. *Commonwealth v. Crispell*, 193 A.3d 919 (Pa. 2018).

[5] In *Commonwealth v. Medina*, the Superior Court held that where the grant of relief is affirmed as to one ground, there is no need for the court to address remaining grounds. More specifically, the trial court, in *Medina*, granted relief based on newly discovered evidence so the Superior Court, in affirming that decision, held there was no need to address the remaining *Brady* claim. 92 A.3d 1210, footnote 5 (Pa. Super. 2014).

[6] While the merits of these potentially moot claims may not be resolved in these proceedings, their existence is not surprising as the majority of documented wrongful convictions are the result of multiple constitutional and systems-level errors. *See generally*, Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, (Harvard University Press 2012) (discussing the cases of the first 250 wrongfully convicted people exonerated by DNA testing and highlighting that such cases generally involve numerous investigatory and trial errors).

RELIEF IS WARRANTED BASED ON THE LAW AND THE UNDISPUTED FACTUAL RECORD

84. As an initial matter, the Parties agree that Ogrod is entitled to relief. However, the Commonwealth recognizes that agreement alone cannot obligate a court to set aside a verdict in a criminal case. *See Commonwealth v. Brown*, 196 A.3d 130, 145–46 (Pa. 2018) (noting that "the PCRA requires judicial merits review favorable to the petitioner before any relief may be granted").

Standard of Review

85. The Commonwealth urges this Court to grant Ogrod relief because it believes the record establishes that his constitutional rights have been violated. *Brown*, 196 A.3d at 145 (noting that prosecutors are limited to "attempts, through the exercise of effective advocacy, to persuade the courts to agree that error occurred as a matter of law" where they agree that relief is warranted); *see also Commonwealth v. Cox*, 204 A.3d 371, 387 (Pa. Mar. 26, 2019) ("confessions of error by the Commonwealth are not binding on a reviewing court but may be considered for their persuasive value").

86. In his concurrence in *Brown*, Justice Wecht outlined a framework for post-conviction courts resolving uncontested petitions:

> The PCRA court is tasked with considering the facts before it and resolving factual disputes. If there is no factual dispute because the Commonwealth and the petitioner are in agreement regarding the petitioner's entitlement to relief, then the role of the PCRA court is to resolve the legal implications of these facts.

Brown, 196 A.3d at 196 (Wecht, J., concurring).

87. As Justice Wecht described, there is no factual dispute here and the Parties agree that Ogrod's rights have been violated. The ultimate decision whether to grant relief—i.e., whether the facts and circumstances of this case amount to a constitutional violation—rests with this Court.[7]

[7] Justice Wecht also opined that PCRA courts may premise relief on "the Commonwealth's confession of error." *Brown*, 196 A.3d at 196; *see also id.* at 194 (Dougherty, J., concurring) (disagreeing with Justice Wecht and opining that "a prosecutor's confession of error is properly viewed not as dispositive, but as persuasive, often highly persuasive").

Joint Stipulations of Fact

88. In order to facilitate this Court's review (and consistent with its ethical duties), the Commonwealth has entered into and filed Joint Stipulations of Facts with Ogrod. *Commonwealth v. Mathis*, 463 A.2d 1167, 1171 (Pa. Super. Ct. 1983) (noting that "[i]t is axiomatic that parties may bind themselves by stipulations" in criminal proceedings) (quoting *Marmara v. Rawle*, 399 A.2d 750 (Pa. Super. Ct. 1979)).

89. The stipulations represent the relevant facts as disclosed during the Parties' review of the case and the CIU's independent as well as collaborative investigation of Ogrod's claims.

90. Where parties stipulate as to particular facts, the stipulation does away with the necessity for introducing evidence of the fact stipulated. *In re Shank's Estate*, 161 A.2d 47 (Pa. 1960). This is so even if the evidence contains otherwise inadmissible hearsay statements. *Jones v. Spidle*, 286 A.2d 366 (Pa. 1971).

91. A stipulation is part of the evidentiary record and "binds the Commonwealth, and the Court[.]" Commonwealth *v. Phila. Elec. Co.*, 372 A.2d 815, 821 (Pa. 1977); *Commonwealth v. Rizzuto*, 777 A.2d 1069, 1088 (Pa. 2001) (noting that stipulations "become the law of the case") *abrogated on other grounds by Commonwealth v. Freeman*, 573 Pa. 532, 827 A.2d 385 (2003); *Park v. Greater Delaware Valley Savs. & Loan Ass'n*, 523 A.2d 771, 773 (Pa. Super. 1987) ("[S]tipulated facts are binding upon the court as well as the parties"); *Tyson v. Commonwealth*, 684 A.2d 246, 251 n.11 (Pa. Cmmw. Ct. 1996).

92. This Court need not conduct an evidentiary hearing to grant relief because no material facts remain in dispute as to the claims discussed below. Pa. R. Crim. P. 907(2); *Commonwealth v. Morris*, 684 A.2d 1037, 1042 (Pa. 1996) ("when there are no disputed factual issues, an evidentiary hearing [on PCRA petition] is not required under the rules"); *see Commonwealth v. Martinez*, 147 A.3d 517, 524 (Pa. 2016) (affirming grant of relief where "[t]he trial court held a hearing" at which "[n]o evidence was offered . . . as the Commonwealth was willing to stipulate to the facts as stated in Martinez's petition").

93. The Commonwealth submits that the record in this case establishes that Ogrod is entitled to relief for the reasons outlined below.

OGROD IS ENTITLED TO RELIEF IN LIGHT OF VIOLATIONS OF HIS RIGHT TO DUE PROCESS AND NEWLY DISCOVERED EVIDENCE OF HIS INNOCENCE

94. The Commonwealth's failure to disclose favorable evidence and correct false testimony violated Ogrod's right to due process as set forth in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959). And, the newly disclosed evidence warrants relief under 42 Pa. C.S. § 9543(a)(2)(vi) independent of those constitutional violations.

95. The undisclosed evidence as well as newly developed evidence establishes that the use of the Devlin Confession and the testimony of the jailhouse informant violated Ogrod's right to due process because both constitute evidence that is fundamentally unreliable. *Lisenba v. People of State of California*, 314 U.S. 219, 236 (1941).

Brady v. Maryland

96. The Commonwealth has an obligation to disclose to the defense information that is favorable to the guilt or punishment of the defendant. *Brady v. Maryland*, 373 U.S. 83 (1963). This obligation requires that the Commonwealth disclose information that is exculpatory as well as impeaching. *Smith v. Cain*, 565 U.S. 73 (2012).

97. It also extends to evidence that could be used to "attack . . . the thoroughness and even the good faith of the investigation." *Kyles v. Whitley*, 514 U.S. 419, 445 (1995). It extends to information possessed by law enforcement in the same jurisdiction as the prosecutors. *Id.* at 438; *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (2001).

98. A new trial is required where the evidence the Commonwealth failed to disclose is material, i.e., when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *Cone v. Bell*, 556 U.S. 449, 470 (2009).

99. A reasonable probability does not mean the defendant would more likely than not have received a different verdict with the evidence, only that the likelihood of a different result is great enough to undermine confidence in the outcome of the trial. *Kyles*, 514 U.S. at 434. Additionally, "[t]he question under Brady is whether 'disclosure of the suppressed evidence to *competent* counsel would have made a different result reasonably probable.' *See Kyles*, 514 U.S. at 441, 115 S.Ct. 1555 (emphasis added)." *Wilson v. Beard*, 589 F.3d 651, 664 (3d Cir. 2009)

100. Thus, the Pennsylvania Supreme Court has held that relief is warranted on a *Brady* claim where the petitioner establishes (1) "the evidence 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." *Burke*, 781 A.2d at 1141.

Napue v. Illinois

101. It is well settled that the Commonwealth may not knowingly use false evidence, including false testimony, to obtain a tainted conviction. *Commonwealth v. Hallowell*, 383 A.2d 909, 911 (Pa. 1978) (citing *Napue v. Illinois, 360 U.S. 264 (1959)*). A conviction obtained through the knowing use of materially false evidence/testimony may not stand. *Id*.

102. A prosecuting attorney has an affirmative duty to correct the testimony of a witness which he knows to be false. *Id*. The prosecutor may not present testimony that it knows is false, without correcting the error as soon as it becomes known. The knowledge of one prosecutor is attributable to all the prosecutors in the same office. *Id*. at 238.

103. A strict standard of materiality is applied such that the false testimony is material—and a new trial is required—if it could in any reasonable likelihood have affected the judgment of the jury." *Commonwealth v. Wallace*, 455 A.2d 1187, 1190–91 (Pa. 1983) (citations and quotations omitted).

The Introduction of Inherently Unreliable Evidence Violates Due Process

104. "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice," and the right is violated where "the absence of that fairness fatally infected the trial." *Lisenba v. People of State of California,* 314 U.S. 219, 236 (1941). Thus, a defendant's rights are violated when the introduction of particular evidence "so infused the trial with unfairness as to deny due process of law." *Lisenba v. People of State of California*, 314 U.S. 219, 228 (1941); *see also, e.g., Keller v. Larkins*, 251 F.3d 408, 413 (3d Cir. 2001) (noting that defendants must show that evidentiary errors "undermine the fundamental fairness of the entire trial" to prevail on due process claim).

105. In this case, Ogrod's right to due process was violated in two distinct ways: by the introduction of the false and unreliable Devlin Confession and by the introduction of inherently unreliable evidence from a jailhouse informant.

False Confessions Violate Due Process

106. It is axiomatic that due process is violated" when a coerced confession is used as a means of obtaining a verdict of guilt." *Lisenba,* 314 U.S. at 236–37.[8]

107. "A trial dominated by mob violence in the courtroom is not such as due process demands. The case can stand no better if mob violence anterior to the trial is the inducing cause of the defendant's alleged confession. If, by fraud, collusion, trickery and subornation of perjury on the part of those representing the state, the trial of an accused person results in his conviction he has been denied due process of law. The case can stand no better if, by the same devices, a confession is procured and used in the trial. The concept of due process would void a trial in which, by threats or promises in the presence of court and jury, a defendant was induced to testify against himself. The case can stand no better if, by resort to the same means, the defendant is induced to confess and his confession is given in evidence." *Id.* at 237.

108. The guarantee of due process extends to prevent "fundamental unfairness in the use of evidence whether true or false," *id.* at 236, so it is of no moment whether other evidence supports the coerced confession. Indeed, the Supreme Court has long "rejected the argument that introduction of an involuntary confession is immaterial where other evidence establishes guilt or corroborates the confession." *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960) (collecting cases). Accordingly, "[o]fficers of the law must realize that if they indulge in such practices they may, in the end, defeat rather than further the ends of justice." *Lisenba*, 314 U.S. at 240 (1941).

109. Likewise, it is of no moment whether the coercion was apparent at the time the confession was admitted or if it was demonstrated belatedly. *Blackburn*, 361 U.S. at 210 (finding due process violation where confession wrung from mentally ill defendant was introduced at trial). The question courts must answer when faced with a claim that a conviction rests on a coerced confession is simply whether or not the confession was coerced. *Id.* ("As important as it is that persons who have committed crimes be convicted, there are considerations which transcend the question of guilt or innocence.").

[8] The term coerced confession is used interchangeably throughout this document with the term false and/or unreliable confession.

Convictions Based Upon Unreliable Evidence Violate Due Process

110. As with coerced confessions, convictions based upon inherently unreliable or false evidence are fundamentally unfair. *See Han Tak Lee v. Glunt*, 667 F.3d 397, 403 (3d Cir. 2012); *see also Keller v. Larkins*, 251 F.3d 408, 413 (3d Cir. 2001). This is so where the evidence is later disproved by advances in science. *Han Tak Lee*, 667 F.3d at 403 at n.6 (noting prosecutor's concession that due process is violated if new scientific evidence disproves evidence put forth at trial).

111. And it is also so where a conviction is based on material testimony of a jailhouse informant shown to be false. *Maxwell v. Roe*, 628 F.3d 486, 506 (9th Cir. 2010); *cf. United States v. Agurs*, 427 U.S. 97, 103 (1976) ("[T]he Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair.").

112. Because due process is concerned with fairness, it is immaterial whether the trial prosecutor knew that the evidence presented was perjured or false; rather, if false evidence is proffered, the only question is whether "there is a reasonable probability that, without the perjury, the result of the proceeding would have been different." *Maxwell*, 628 F.3d at 506–07 (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

113. Courts "have recognized the unreliability of jailhouse informants—who are themselves incarcerated criminals with significant motivation to garner favor…" *Id.* at 504; *see also, e.g.*, *Zappulla v. New York*, 391 F.3d 462, 470 (2d Cir. 2004) (noting that numerous scholars and criminal justice experts have found the testimony by "jail house snitches" to be highly unreliable); *Sivak v. Hardison*, 658 F.3d 898, 916 (9th Cir. 2011)(noting that "inmate testimony is inherently unreliable" as they "sometimes embark on a methodical journey to manufacture evidence and to create something of value" (quoting *Commonwealth of N. Mariana Islands v. Bowie*, 243 F.3d 1109, 1124 (9th Cir. 2001).

114. "According to the Northwestern University Law School's Center on Wrongful Convictions, 45.9 percent of documented wrongful convictions in capital cases involved testimony by jailhouse informants or by 'killers with incentives to cast suspicion away from themselves,' making "snitches the leading cause of wrongful convictions in U.S. capital cases." Russell D. Covey, *Abolishing Jailhouse Snitch Testimony*, 49 WAKE FOREST L. REV. 1375, 1379 (2014).

115. Among these unreliable witnesses, "[t]he most dangerous informer of all is the jailhouse snitch who claims another prisoner has confessed to him. Sometimes these snitches tell

the truth, but more often they invent testimony and stray details out of the air.' *Maxwell*, 628 F.3d at 505 (quoting Hon. Stephen S. Trott, *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 HASTINGS L.J. 1381, 1394 (1996)).

116. "A defendant has the constitutional right to impeach a witness by showing bias. *Davis v. Alaska*, 415 U.S. 308, 316-17, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). If a defendant is denied this right, then a new trial must be granted, except if the error was harmless. *United States v. Stavroff*, 149 F.3d 478, 481 (6th Cir.1998). However, "once a reviewing court applying [the] *Bagley* [materiality analysis] has found constitutional error there is no need for further harmless-error review." *Kyles*, 514 U.S. at 435, 115 S.Ct. 1555." *Robinson v. Mills*, 592 F.3d 730, 737 (6th Cir. 2010). For jailhouse informants, bias evidence is a repeated, working relationship with law enforcement. *Id*.

117. "In determining whether the suppression of impeachment evidence is sufficiently prejudicial to rise to the level of a *Brady* violation, courts analyze the totality of the undisclosed evidence "in the context of the entire record." *Agurs*, 427 U.S. at 112, 96 S.Ct. 2392; *see also Bagley*, 473 U.S. at 682, 105 S.Ct. 3375 (opinion of Blackmun, J.)." *Benn v. Lambert*, 283 F.3d 1040, 1058 (9th Cir. 2002)

The Standard for Relief Under § 9543(a)(2)(vi)

118. To be eligible for relief based on newly-available evidence under § 9543(a)(2)(vi), a petitioner must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted. *Commonwealth v. Padillas*, 997 A.2d 356, 363 (Pa. Super. 2010) (citing *Commonwealth v. Pagan*, 950 A.2d 270, 292 (Pa. 2008)).

Ogrod is Entitled to Relief Under Brady, Napue, Lisenba and § 9543(a)(2)(vi)

119. Ogrod alleges (and the Commonwealth concedes) that evidence described in Ogrod's *Brady* claims was suppressed. If that evidence had been disclosed as the Pennsylvania and United States Constitutions require, the outcome of his case would have been different.

120. Ogrod is entitled to relief under 42 Pa. C.S. § 9543(a)(2)(i), as the suppression violated his right to due process under both the Pennsylvania and United States Constitutions, as

well as § 9543(a)(2)(vi), as there is a reasonable probability that he would have been acquitted if this evidence had been made available at the time of trial.[9]

The Suppressed Evidence, the False and Unreliable Evidence and the New Evidence

121. As accurately described in Ogrod's Supplemental Petition, previously-undisclosed evidence was discovered during the joint-review of the DAO file by the CIU and Ogrod's counsel beginning in 2018 and continuing into 2019.

122. As noted above, this suppressed evidence generally fell into three categories: (1) evidence contradicting the Commonwealth's theory of the cause of death; (2) evidence corroborating Ogrod's claim the Devlin Confession was false and unreliable, and (3) evidence jailhouse informants colluded to provide false testimony against Ogrod in an effort to procure favorable treatment in their own criminal prosecutions.

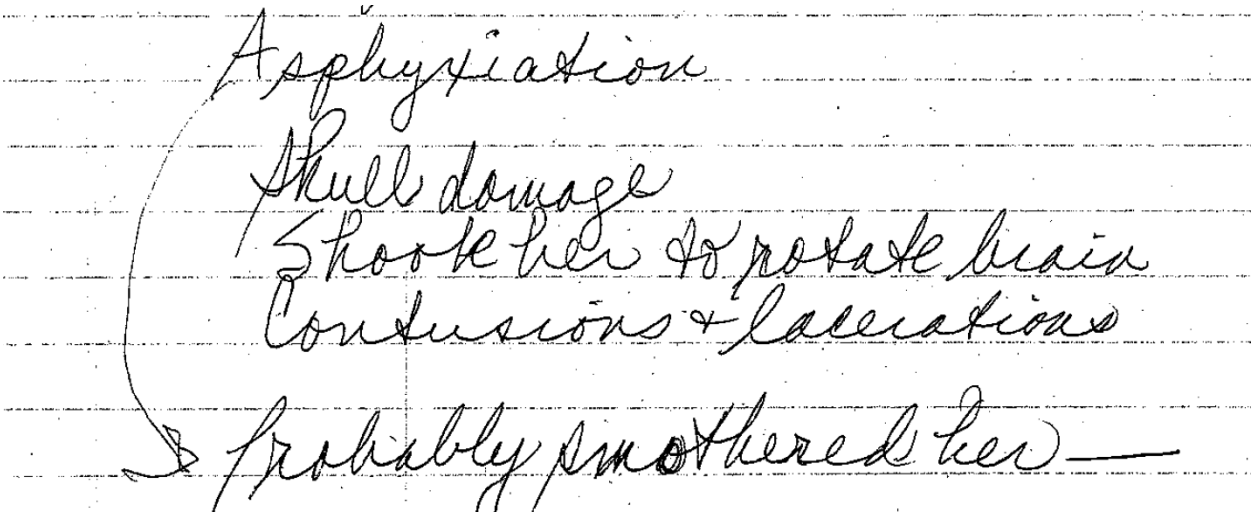
123. Scientific review of the suppressed evidence along with other evidence obtained pretrial and post-conviction has led to the discovery of newly available evidence as defined by § 9543(a)(2)(vi) of the P.C.R.A. which, when considered in its totality, would likely result in a different verdict if a new trial were granted.

The Cause of Death

124. The DAO file contains previously undisclosed trial preparation notes of ADA Rubino indicating that a Commonwealth medical expert, Dr. Lucy Rorke reviewed the case and concluded that Barbara Jean died from asphyxia.[10] The relevant section of those notes is reproduced here:

[9] And in regard to Ogrod's *Napue* claims, the Commonwealth concedes Ogrod has met the less onerous standard for relief in that a new trial is warranted because the false evidence could in any reasonable likelihood have affected the judgment of the jury.

[10] Interestingly, although Dr. Rorke testified for the Commonwealth in both trials, ADA Casey and ADA Rubino never asked her to opine on cause of death so she managed to steer clear of offering her medical opinion that Barbara Jean died from asphyxia. In 2019, as part of the CIU's effort to locate slides and photos documenting the original autopsy in this case, the CIU reached out to Dr. Rorke, who is now retired, regarding whether she would have taken photographs of Barbara Jean's brain in this case. In order to refresh Dr. Rorke's recollection of the case, the CIU provided her copies of both of her original reports. After reviewing the reports, Dr. Rorke informed the CIU that "it is unlikely that I would have taken any photographs of the brain as the abnormalities [sic] on gross examination were not too exciting." That statement is contradictory to the testimony she gave in both trials.



125. After discussing the issue of cause of death with ADA Rubino, the CIU emailed these notes to ADA Rubino. ADA Rubino confirmed that these are her notes and they were likely made while she was preparing Dr. Rorke to testify.[11]

126. In an effort to understand what caused Barbara Jean's death, the CIU retained Dr. Ljubisa J. Dragovic, chief forensic pathologist and medical examiner in Pontiac, Michigan and an expert in both forensic pathology and forensic neuropathology.

127. Then, given the questions regarding mechanism of injury combined with the Commonwealth's theory at trial that the murder weapon was Ogrod's weight bar, the CIU also retained Dr. Kirk L. Thibault, PhD, University of Pennsylvania, a biomechanical engineer and expert in human injury biomechanics, to evaluate the case.

128. Dr. Dragovic reviewed the primary evidence, the autopsy reports and photographs, before reviewing any of the testimony or expert reports developed during the PCRA proceedings.[12]

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[11] Prior to ADA Rubino's above-referenced confirmation, the CIU sent a letter to her to inform her of the current litigation and in that letter the CIU enclosed a copy of the current defense pleadings. The letter also asked ADA Rubino to contact the CIU if she had any relevant information to the claims and/or if she wanted to discuss the case. After the letter was sent, ADA Rubino called the CIU and several lengthy telephone discussions ensued. During one of the telephone conversations, ADA Rubino stated that based on her knowledge of the case, her review of the pleadings and conversations with the CIU, she believes Ogrod should be granted relief in the form of a new trial.

[12] In accordance with current research on minimizing or eliminating cognitive bias in science and medicine, the CIU's objective was to obtain an independent opinion regarding cause of death unaffected by any kind of cognitive bias. So, Dr. Dragovic was initially only given the scientific primary evidence to review. Then, after reviewing that evidence, Dr. Dragovic was provided the

129. Upon completing his review, Dr. Dragovic's opinion is, to a reasonable degree of medical certainty, that the conclusions reached by the Commonwealth's expert witnesses that Barbara Jean died from cerebral injuries are not supported by the scientific medical evidence.[13]

130. According to Dr. Dragovic, Barbara Jean's death was caused by something other than a head injury and Dr. Hoyer should have taken steps (but did not) to consider whether asphyxia was the cause of death. Since tissue slides derived from the autopsy no longer exist and Dr. Hoyer's autopsy report failed to include a microscopic evaluation of the lung tissue, Dr. Dragovic is unable to conclusively say whether Barbara Jean died from asphyxia.[14]

131. Dr. Thibault also examined the available evidence, including a weight bar that was the same make and model as the weight bar in the Ogrod basement found at the time of the Dunne murder in 1986.

132. Dr. Thibault concluded that Barbara Jean's injuries were not compatible with being struck by the weight bar as described in the Devlin Confession, particularly in the absence of skull fractures and underlying focal brain injuries.[15]

133. As a result, Dr. Thibault also disagrees with the conclusions of the Commonwealth's trial witnesses as to the possibility that the weight bar caused the injuries to Barbara Jean's head.[16]

Commonwealth's subjective evidence to review.

[13] During the first trial and second trials, Dr. Mirchandani testified that Barbara Jean died from cerebral injuries. Dr. Rorke also testified at both trials but never directly opined on the cause of death. Instead, she simply described the "severity" of Barbara Jean's head injuries.

[14] The tissue slides as well as the rape kit slides in this case have likely been destroyed. The Philadelphia Medical Examiner's Office has conducted a thorough search for these slides, as has the Office of Forensic Science, and the slides cannot be located.

[15] Dr. Dragovic also concluded that the lack of damage to the skull and brain, coupled with the narrow nature of the resulting wound margins on the scalp, indicate that the object used to cause the "tears/cuts" in the victim's scalp was "rather light in weight and relatively thin in profile."

[16] Also significant is the fact that all of the Commonwealth expert witnesses testified that the three similarly shaped bruises on Barbara Jean's shoulders and back were consistent with being struck by some portion of a weight bar like the one described as the murder weapon in the Devlin Confession. Dr. Dragovic, however, concluded that those three, similarly shaped bruises on Barbara Jean's shoulders and back are "hickeys." The CIU asked both Dr. Hood and Dr. Thibault for their opinion on this issue – Dr. Hood agreed that they could be hickeys, but they "were likely inflicted by a large adult due to their size" and Dr. Thibault concluded that the weight bar was not compatible with these bruises due to the lack of fracture to the scapulae.

134. In sum, the Commonwealth's trial theory, the Devlin Confession and the testimony from the jailhouse informant, which all posit that Barbara Jean died from trauma to the head inflicted by the weight bar, are not supported by the newly available medical findings or the available science.

The Devlin Confession

135. The DAO file as well as other files within the possession of the Commonwealth contain favorable information regarding the unreliability of the Devlin Confession that was suppressed at the time of trial. In addition to the suppressed notes regarding the cause of death, the information includes notes and interviews relevant to the issue of voluntariness as well as a plethora of information regarding how Devlin and Worrell had a history of using coercive techniques to obtain confessions and incriminating statements.

136. To set the stage, it is important to assess the suppressed information understanding that the Devlin Confession is a product of an interrogation of Ogrod that took place when Ogrod was sleep deprived after having been working for nearly 30 hours, having just completed an all-night, 18-hour shift driving a bakery delivery truck over a 300-mile route.

137. According to Ogrod's testimony at the first trial, he was placed in a small, room with only a table and a chair that was bolted to the floor.[17]

138. Ogrod testified that during the interrogation, Devlin closed the door and blocked him when he attempted to leave the interrogation room.

139. No inquiry was made as to whether Ogrod's physical and mental conditions affected his ability to understand and participate in the interrogation.

140. According to Ogrod, the interrogation tactics utilized by Devlin and Worrell included confronting him with pictures of Barbara Jean's body in the box, accusing him of having committed the murder, and, when he insisted he had nothing to do with it, repeatedly telling him that he was mentally blocking any memory of the murder and they were going to help him remember it.

141. Ogrod also testified that he was never given the opportunity to make a telephone call despite multiple requests during the course of the interrogation.

[17] Although Ogrod did not testify in the trial for which he was convicted, his testimony must be considered to fully evaluate the claims he has raised in his Consolidated Petition.

142. Devlin and Worrell repeatedly informed Ogrod they knew he committed the crime. When Ogrod denied any involvement, they repeatedly told him he was blocking the memory and they were going to help him remember.

143. During the lengthy interrogation process, Ogrod said they repeatedly gave him coffee and, in the middle of the interrogation, brought him some food, stating "We will be all night. You might as well eat."

144. At the end of the interrogation, the homicide detectives handed Ogrod the Miranda warnings and told him the answers to write in. When Ogrod asked to call his lawyer, the police said that they would make an appointment with his lawyer, but in the meantime they were going to arrest Ogrod and put him in general population – and when this hit the news, they would kill him in general population.

145. Ogrod's theory of defense in both trials was that the Devlin Confession had been coerced as a result of Devlin and Worrell's interrogation tactics and he claimed in the suppression hearing that he was particularly vulnerable and susceptible to coercion.

146. To support Ogrod's theory, Ogrod's trial attorney called Ogrod's psychiatrist, Dr. Gamine, as a witness in the motion to suppress hearing and Ogrod himself testified during the trial.

147. Dr. Gamine said he was not an expert in false confessions, but he was aware they did occur.

148. Dr. Gamine also talked about Ogrod's limited ability to cope with stress and how Ogrod was suggestible and could easily be manipulated.

149. Dr. Gamine's testimony also referenced implanted memories. However, he recognized the scientific novelty of the topic when he stated that it was "just starting to be written about and was not yet accepted in the field."

150. The Commonwealth, however, argued that the confession was voluntary, Ogrod's witnesses were not credible and that instead of being easily manipulated, it is possible Ogrod just did not deal with stress well.

151. The trial court went on to find that even though Ogrod, "from time to time suffers from anxiety and does not deal with stress as well as a well-adjusted person might, he was capable of making a voluntary statement."

152. The suppression motion was denied, and the case proceeded to trial in the fall of 1993.

153. Meanwhile, contrary to the Commonwealth's argument and the trial court's finding, an undated five-page "personality profile" of Ogrod was found in the Ogrod DAO trial file entitled "Supplemental Investigation of Walter J. Ogrod." The document recounts nine interviews conducted by the Commonwealth of Ogrod's former teachers at Ashbourne School.

154. These nine interviews essentially characterize Ogrod as a person who is easily manipulated.

155. According to the five-page document, those who interacted with Ogrod on a daily basis during his school years told interviewing police that he was "not a troublemaker," but rather "a very passive individual" who "would do anything to be accepted by his peers."

156. During the various interviews, former teachers described Ogrod as:

- "a socially emotionally disturbed student,"
- "a follower who was not able to make his own decisions,"
- "a follower who often kept to himself and who only got in trouble passively by being in the wrong place at the wrong time,"
- "a very sad individual who felt ostracized by the other students and could be persuaded by them to do anything,"
- "a follower who kept to himself and stayed out of trouble,"
- "a square type of kid who got teased a lot and wanted to be liked by the tougher boys in school," and
- someone who "would go out of his way to make other people happy."

157. These interviews were not disclosed to Ogrod or his counsel prior to either of his trials.

158. Also unbeknownst to Ogrod at the time of both trials, Devlin and Worrell engaged in coercive tactics in obtaining false confessions and/or statements from suspects and witnesses in at least two homicide cases before they interrogated him.

159. The CIU recently made disclosures to Ogrod that reveal Devlin and Worrell's history of using improper interrogation techniques that have resulted in the reversals/vacaturs of several homicide convictions.

160. In the prior homicide cases, Devlin and other homicide detectives he worked with used coercive techniques during their interrogations. These tactics included physical and or

psychological abuse as well as threats of incarceration. Often, the abuse and threats were followed by promises that the subject of the interrogation could leave or go home if they simply signed the statement that was hand-written by one of the homicide detectives.

161. Here, it was a promise of getting Ogrod "a place to go where [he] can get a little help" because he "seemed a little off."

162. In at least one of these cases, DNA evidence proved a confession Devlin coerced was false. In other cases, evidence obtained during the investigation contradicted and/or disproved much of the information obtained from the suspects and or witnesses during the interrogation.

163. Significantly, Devlin and other homicide detectives did not memorialize witness statements and suspect confessions via audio or video recording. Rather, just like in Ogrod's case, they claimed they contemporaneously transcribed them verbatim by hand during the interrogation.

164. In 2016, when Devlin was cross examined by the defense in the re-trial of Anthony Wright, he testified that as Wright spoke during the interrogation, he never asked Wright to slow down so Devlin could keep up and accurately transcribe all statements. Then when asked to demonstrate his transcription skills in front of the jury, Devlin was unable to replicate the hand-written transcription skills he claimed to possess.

165. The Devlin Confession bears striking similarities – in length, structure, and specificity – to other purported confessions taken by Devlin and/or Worrell that were later found to be either unreliable and/or false.

166. As part of the CIU's investigation of the Devlin Confession, the CIU consulted Dr. Christian Meissner, PhD and Steven Kleinman, Colonel, USAF (Ret.), two experts in interviewing techniques and false confessions and asked them to conduct an assessment of the reliability of the Devlin Confession to specifically determine the extent to which the statement (a) provided any new information unknown to investigators at the time of the interview that was later corroborated by further investigation, (b) contained information known to investigators that, given the use of accusatorial approaches and suggestive/leading questions, could constitute contamination, and (c) included information that was inconsistent with known facts in the case.

167. In a report submitted to the CIU, Dr. Meissner and Kleinman concluded Ogrod's statement "failed to include any novel information about the crime, nor did he provide any information in his statement that would have demonstrated unique, guilty knowledge of the crime

outside of information already known to police and/or the public via media coverage of the incident."

168. More specifically, many of the details included in Ogrod's statement were already known to police at the time of his interrogation – such as Barbara Jean being hit in the head, her body washed and then wrapped in a trash bag and left in a box in a vicinity near her home.

169. In contrast to what was publicly known about the crime, Ogrod's statement also included information that was inconsistent with the available evidence, including such details as (a) the clothing worn by the victim (one-piece vs. two-piece), (b) the lack of any forensic evidence indicating the presence of blood or body fluids in the basement, (c) the absence of any throw rugs in the basement at the time of the incident, (d) that the back door to the garage could not be opened at the time of the incident, and (e) that the weight bar used to strike the victim was inconsistent with the type of wound indicated by the autopsy and subsequent expert review of that autopsy.

170. Given the available scientific understanding of (a) the interrogation techniques and situational factors that can lead an innocent person to provide a false confession, (b) the particular vulnerabilities of certain individuals who are more susceptible to interrogation, and (c) the lack of indicia of reliability in the statement provided by Ogrod, the ultimate conclusion provided in the written expert report is that the Devlin Confession was not only unreliable but almost certainly coerced.

The Jailhouse Informants

171. There is a significant amount of information that was not disclosed to Ogrod during trial regarding the two jailhouse informants who played a role in this case – some of it constitutes suppressed *Brady* information, other parts of the information support Ogrod's *Napue* claim and finally, some of the information constitutes newly discovered evidence that establishes that the introduction of the Wolchansky Confession so infused the trial with unfairness as to deny Ogrod due process of law.[18]

[18] On April 4, 2013, the Commonwealth filed a Motion to Dismiss Ogrod's Amended PCRA Petition. In that motion, the Commonwealth argued that all of Ogrod's *Brady* claims regarding the jailhouse informants lacked merit for a multitude of reasons. Of particular significance are the following factual assertions: 1) that Ogrod's trial counsel was well aware that Wolchansky and Hall cooperated in the Dickson case and that Hall also cooperated in other cases; 2) that an affidavit from trial counsel's investigator confirms Ogrod knew of Hall's cooperation in other cases; 3) trial counsel testified in a post-sentence motion that he made a strategic decision not to impeach

172. As a preliminary matter, the Wolchansky Confession was fabricated by Hall. As noted in footnote 1, *infra*, Hall was a notorious jailhouse cooperator known as the "Monsignor" due to his long track record of purportedly obtaining jailhouse confessions, disclosing those confessions, and using his cooperation in these cases in order to obtain leniency in his own criminal cases.

173. Hall fed Wolchansky a purported confession from Ogrod and then Wolchansky used that purported confession in hopes of obtaining leniency in his own pending criminal cases.

174. Because the two jailhouse informants colluded, information regarding Hall is therefore necessary to consider in assessing the reliability of the Wolchansky Confession.

Wolchansky in regard to his cooperation in another case; and 4) that Wolchansky's mental health records were not withheld because trial counsel received Wolchansky's medical records from the prison. All of these factual assertions are either incorrect, incomplete or misleading. Most of them are expressly disproven by the facts stipulated to in the Parties' Joint Stipulations of Fact. The only factual assertions not addressed in the Parties' Joint Stipulations of Fact are those referenced in numbers 3 and 4. Number 3 is misleading and incomplete because trial counsel's testimony was provided in response to a claim of ineffective assistance of counsel, not a *Brady* claim. It is impossible to make an informed, strategic decision as to whether to impeach a witness when trial counsel has not been provided the relevant information from the Commonwealth. In regard to number 4, trial counsel did receive Wolchansky's medical records from the prison but, the prison expressly withheld all psychiatric records. Clearly, the Commonwealth did not review the entire prosecution file before including these factual assertions in its motion. Given that fact, combined with the suppressed evidence the CIU's review and investigation has revealed, the CIU hereby withdraws that motion and all other previously filed Commonwealth pleadings addressing Ogrod's *Brady* claims. Simply put, the Commonwealth plainly did not satisfy its duty to learn of any favorable evidence, prior to submitting the now-withdrawn pleading(s). For decades and with some frequency, it appears that the Philadelphia District Attorney's Office failed to comply with its obligations in regard to *Brady* and its progeny. Compounding that problem was a practice sanctioned by the leadership of the prior administrations' Law Division not to require PCRA prosecutors to review trial file boxes or make them available to defense counsel or the defendant for their review. Once the current administration, which took office at the start of 2018, confirmed such *Brady* failures were real and learned of the PCRA practices, a commitment was made to do better. More specifically, consistent with Standards 3-8.1 and 3-8.3 of the American Bar Association's Standards for Prosecutorial Function, the current administration is endeavoring to better educate its staff on their legal and ethical obligations under *Brady* and its progeny and to adopt policies of transparency such as the Law Division's open file practices that provide access to trial boxes to defense counsel in appropriate cases. *See* Bruce Green & Ellen Yaroshefsky, *Prosecutorial Accountability 2.0,* 92 Notre Dame L. Rev. 51 (2016) *available at* SSRN: https://ssrn.com/abstract=2722791.

175. Also, in an effort to assess the collusion between Hall and Wolchansky and the jailhouse informant testimony used against Ogrod at trial, the CIU consulted with Professor Alexandra Natapoff, a legal expert in the use and abuse of jailhouse informants.

176. After consultation with Professor Natapoff and conducting a review of relevant information, the CIU concluded there are significant red flags present in this case regarding the inherent unreliability of the Wolchansky confession.

177. Hall is deceased so the CIU was unable to interview Hall.

178. Before he died, Hall provided a sworn statement to defense counsel claiming he was the individual who provided Wolchansky with all of the details of the Wolchansky Confession.

179. In order to assess the credibility of Hall's sworn statement, the CIU interviewed his wife, Phyllis Hall, and obtained hundreds of letters written by Hall to Phyllis while he was incarcerated – many were about Hall's "snitch scheme." [19]

180. Phyllis stated that she would help Hall gather newspaper articles and, at one point she assisted Hall in his "snitch scheme." She stated that her assistance included helping Hall get additional information about Ogrod because the newspaper articles Phyllis gathered for Hall did not have enough details about the case, so while Hall pursued getting additional details about the case directly from Ogrod she actually wrote to Ogrod pretending to be a stripper that wanted to befriend him.

181. Hall's letters to Phyllis also claim that because of his and Wolchansky's assistance and cooperation in the Ogrod case "Everybody made out."

182. The facts contained in Hall's sworn statement are corroborated by Hall's letters, the facts of Ogrod's case and information obtained from Phyllis.

183. The central facts used in both the Wolchansky Confession and in Hall's sworn statement regarding Ogrod's purported confession are demonstrably false - of great import is that both Hall and Wolchansky claimed Ogrod confessed to killing Barbara Jean with the weight bar

[19] Phyllis verified that the handwriting in the letters is Hall's. And, based on the comparison of Hall and Wolchansky statements to each other, the known facts of how Barbara Jean died, and Hall's letters to Phyllis, the CIU determined that statements Phyllis made during her CIU interview are credible. Significantly, during that interview, Phyllis stated that Hall told her he fabricated the details of the Wolchansky Confession and provided those details to Wolchansky.

(according to Wolchansky, Ogrod became enraged, grabbed the weight bar and hit Barbara Jean in the head while Hall said Ogrod confessed to smashing her skull in).

184. During the second jury trial, defense counsel questioned Wolchansky about his mental health and Wolchansky denied having any mental health problems.

185. Documents in the Commonwealth's possession at the time of trial, which were not disclosed to trial counsel, however, demonstrate that contrary to Wolchansky's denial at trial, Wolchansky had mental health problems that were persistent, severe, and at times psychosis-inducing – to the extent that Wolchansky's ability to perceive and truthfully and accurately recount information was compromised.

186. In Ogrod's DAO trial file, a handwritten note authored by ADA Rubino stated that, in 1989, "Jason Banachowski"[20] was taking "Medication – Melaril"—an antipsychotic drug widely used at the time to treat schizophrenia and psychosis—and was suffering from "paranoia – hearing voices from cocaine."

187. The following documents were also found in other DAO files in the Commonwealth's possession[21] and were not disclosed to Ogrod's trial counsel:

- A Mental Health Evaluation for Wolchansky dated July 26, 1989, diagnosing him with Mixed Personality Disorder with Borderline and Anti-Social Features, primary and severe substance dependence problems, and possibly a Bipolar or Cyclothymic Disorder, which was difficult to assess given his lengthy poly-substance dependence.

- A document entitled Intake Health Information for PPS Staff, dated December 20, 1994, documenting Wolchansky's self-report that he had "a history of serious mental illness" and/or "received outpatient or inpatient mental health treatment" and recommending him for mental health placement.

- A handwritten letter from "[Assistant District Attorney] Lynn" Nichols to "Will" [Kushto] dated October 14, 1994 requesting that Wolchansky's case be "specially assigned" because the defendant would be presenting "a bogus mental health defense (i.e. schizophrenia)" and the public defender representing Wolchansky would be presenting "medical records and a doctor to testify that [Wolchansky] is being treated for schizophrenia."

- A memorandum dated January 27, 1995 from ADA Wilfred B. Kushto to ADA Kendall Zylstra specially assigning ADA Zylstra to prosecute *Commonwealth v. Jay*

[20] Wolchansky's alias.

[21] The DAO files for Commonwealth v. Jay Wolchansky, CP-51-CR-205731-1995 and CP-51-CR-0103571-1995 were located in the DAO's boxes in the David Dickson case where Wolchansky testified in the first trial.

Wolchansky (CP-9408-0378) and asking him to inquire about an insanity defense, to subpoena Wolchansky's *crimen falsi* quarter session files, and to review the law on diminished capacity.

- A Presentence Report for Wolchansky dated April 24, 1995 listing his extensive history of *crimen falsi* convictions beginning at fourteen years of age, his mental health history, and his history of abusing drugs and alcohol.

188. The DAO files recently reviewed by the CIU and Ogrod's counsel also contained documents showing the DAO was aware of Hall's involvement as a "cooperator" in twelve separate homicide cases spanning from 1983 to 1997, including nine homicide prosecutions in Philadelphia County.

189. In at least one of those homicide cases, *Commonwealth v. Dickson*, both Hall and Wolchansky served as joint "cooperators." Wolchansky testified at the first Dickson trial that ended with a hung jury after Wolchanksy testified that Dickson confessed to manual strangulation and the medical examiner testified the perpetrator used a cord or a wire. Hall then testified at the retrial where the medical examiner added manual strangulation (in addition to being strangled by a cord or a wire) and Dickson was convicted.

190. The CIU has also been able to trace a lot of information about Hall and Wolchansky's housing in jail for years and it is clear from the existing records that the two jailhouse informants had plenty of opportunity to collude with each other about their respective cooperation in various criminal cases. Interestingly, they even shared the same attorney during the time period they were communicating about the Ogrod case.

191. None of this collusion information was provided to trial counsel or presented to the jury that convicted and sentenced Ogrod to death.

192. According to Professor Natapoff, her legal research has shown there is substantial evidence that jailhouse informants collude in order to bolster the credibility of their testimony and to enhance the value of their cooperation to the government.

193. In particular, experienced or repeat jailhouse informants have been known to develop collusive strategies to procure, fabricate, share, and trade information regarding other jail or prison inmates.

194. Experienced informants learn that such collusive bolstering increases the appearance of credibility and therefore the value of their information, which in turn increases the likelihood of receiving rewards from the government.

195. As a result of these inherent and demonstrated risks of collusion, unreliability, and perverse incentives, evidence or testimony provided by multiple jailhouse informants should be viewed with presumptive skepticism.

196. In sum, the research in general, and what we know about Hall and Wolchansky in particular, demonstrates that experienced informants are adept at facilitating both fabrication and collusion.

197. Evidence offered by Hall and Wolchansky must be evaluated in light of the strong possibility of collusion and fabrication; and since the two clearly presented the same or similar evidence, the submission of the Wolchansky Confession shortly after Hall submitted the "confession" from Ogrod should itself be viewed as a red flag of unreliability.

The Suppressed Evidence Would Have Changed the Outcome of Ogrod's Trial

198. The Commonwealth agrees that the suppressed evidence here was material. If the Commonwealth had disclosed the evidence described above, it is likely that Ogrod would have been acquitted.

199. As referenced earlier, the Commonwealth possessed a Personality Profile regarding Ogrod that was essentially a report outlining a series of interviews with Ogrod's former teachers.

200. The Personality Profile characterized Ogrod as a complacent, socially inadequate youngster who followed the lead of others, was unable to make decisions for himself, and would do anything to please others. The Personality Profile also indicated that Ogrod was "not a troublemaker," but rather "a very passive individual" who "could be persuaded . . . to do anything" by his peers. This report—which was never disclosed to Ogrod—was highly corroborative of Ogrod's prior claims that his confession was coerced. [22] *See* Sept. 23, 1993 N.T. 3-7.

[22] The Commonwealth was obligated to disclose the Personality Profile to the defense under both the Pennsylvania Rules of Criminal Procedure and *Brady v. Maryland*. Nevertheless, the existence of the Personality Profile was suppressed until the CIU provided open file discovery during its review. The Personality Profile was material evidence, because "if disclosed and used effectively, it might make a difference." *United States v. Bagley*, 473 U.S. 667, 676 (1985). Armed with the corroborative statements in the profile, trial counsel may have advised Ogrod to testify in his own defense as he did at his first trial, which did not result in a conviction. *See Commonwealth v. Green*, 640 A.2d 1242, 1245 (Pa. 1994) ("In determining the materiality of the omitted evidence we must, therefore, consider any adverse effect that the prosecutor's failure to disclose might have had on not only the presentation of the defense at trial, but the preparation of the defense as well.").

201. Although the Personality Profile made it clear that Ogrod was extremely susceptible to coercion and unlikely to decide to take a decisive action on his own (e.g., confessing to a murder he did not commit), the trial prosecutor uncritically presented the testimony of Devlin and Wolchansky regarding Ogrod's supposedly self-motivated confessions. Per Devlin's account, Ogrod's confession as impromptu and voluntary—he simply began to cry during questioning then proceeded to confess. Wolchansky, likewise testified that Ogrod—"a follower who often kept to himself and who only got in trouble passively by being in the wrong place at the wrong time," "wouldn't shut" up about the murder. N.T. 10/4/1996 at 20.

202. The Commonwealth's failure to contextualize these accounts by informing the jury of Ogrod's deficiencies and the possibility that the confessions may have been false violated his right to due process. Rather than correcting Devlin's and Wolchansky's testimony that Ogrod actively and independently chose to confess, the Commonwealth based its case primarily on those dubious confessions without providing the jury with information necessary to evaluate their credibility.

203. There is a reasonable likelihood that Ogrod would have been acquitted if the Commonwealth had complied with its obligations under *Napue* and its progeny; relief is warranted.

204. In addition, had the *Brady* evidence described herein been disclosed, Ogrod could have directly undermined the scientific evidence regarding cause of death, called into question the

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However, the Commonwealth notes that Pennsylvania courts have consistently held that "no *Brady* violation occurs where the parties had equal access to the information or if the defendant knew or could have uncovered such evidence with reasonable diligence." *E.g. Commonwealth v. Grant*, 813 A.2d 726, 730 (Pa. 2002). The Court of Appeals for the Third Circuit rejected that notion in *Dennis v. Sec'y, Pa. Dep't of Corr.*, 834 F.3d 263, 293 (3d Cir. 2016) (*en banc*) ("reject[ing] that concept as an unwarranted dilution of *Brady's* clear mandate"). There, the Pennsylvania Supreme Court had previously concluded that the prosecution had not withheld key evidence in its possession despite its failure to provide that evidence to the defense. *Id.* at 288. The Third Circuit held that that conclusion was "an unreasonable application of law and fact," *id.* at 293, because "[o]nly when the government is aware that the defense counsel already has the material in its possession should it be held to not have 'suppressed' it in not turning it over to the defense." *Id.* at 292. The Commonwealth recognizes that *Dennis* is not binding in these proceedings and that this Court is obligated to follow the precedents set forth by the Supreme Court of Pennsylvania. But the ruling in *Dennis* is sound, and the Commonwealth will urge the Pennsylvania Supreme Court to adopt its reasoning in the appropriate case. *Cf. Commonwealth v. Natividad*, 200 A.3d 11, 36 n.18 (Pa. 2019) (noting that the Supreme Court of Pennsylvania is "mindful of [the] pointed criticisms" levied by *Dennis*).

competence of the investigation, supplied the jury with competing narratives, and highlighted the investigators' deficiencies in pursuing those narratives.

205. Finally, given the initial not-guilty verdict during the first trial, and the jailhouse informant testimony used during the second trial, Ogrod would not have needed much to "undermine[] confidence in the outcome of his trial," *Kyles*, 514 U.S. at 434, as there was little confidence to begin with. Given the dubious testimony offered against Ogrod, the Commonwealth must concede that the suppressed evidence was material and would have changed the outcome of his trial.

206. The Commonwealth violated its obligations under *Brady*, *Napue*, *Lisenba* and the newly disclosed evidence satisfies 42 Pa. C.S. § 9543(a)(2)(vi).

OGROD IS LIKELY INNOCENT AND HIS TRIAL WAS FUNDAMENTALLY UNFAIR

207. Ogrod is entitled to relief based on the due process violations, the *Brady* violations and the *Napue* violations discussed above. His trial was also marred by many additional errors which rendered it fundamentally unfair and resulted in his wrongful conviction. As the Superior Court has noted "[t]he purpose of the PCRA is to prevent a fundamentally unfair conviction and provide an action where persons convicted of crimes they did not commit or individuals who have been serving illegal sentences may obtain collateral relief. *Commonwealth v. Carbone*, 707 A.2d 1145, 1148 (Pa. Super. Ct. 1998) (quotation omitted). This case cries out for its application.

No Credible Evidence Links Ogrod to the Crime

208. In this case and several others involving false confessions obtained by Devlin and Worrell, the Commonwealth apparently lost sight of the fact that "ours is an accusatorial and not an inquisitorial system" of justice, *Rogers v. Richmond*, 365 U.S. 534, 541 (1961), and that "tactics for eliciting inculpatory statements must fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness." *Miller v. Fenton*, 474 U.S. 104, 110 (1985), quoted in *Illinois v. Perkins*, 496 U.S. 292, [301] (1990) (Brennan, J., concurring). *Commonwealth v. Moose*, 529 Pa. 218, 230, 602 A.2d 1265, 1271 (1992).

209. Scientific understanding of the interrogative process and its effects has progressed exponentially since the initial interrogation of Ogrod occurred a generation ago. Based on recent behavioral science research relating to memory, questioning tactics, and compliance, it is readily

apparent that the information reported by the law enforcement officials who conducted Ogrod's interview should be viewed as limited in scope, biased toward a preconceived outcome (i.e., Ogrod's guilt) and—critically—inherently unreliable.

210. In light of what credible medical science has told us about what caused Barbara Jean's death and the unreliability and sheer falsity of the Devlin Confession and the Wolchansky Confession, there exists no credible evidence to prove Ogrod was the person who murdered Barbara Jean.

Ogrod is Likely Innocent

211. Given the totality of the record, including that outlined in the Parties Joint Stipulations of Fact, it is likely Ogrod is in fact innocent.

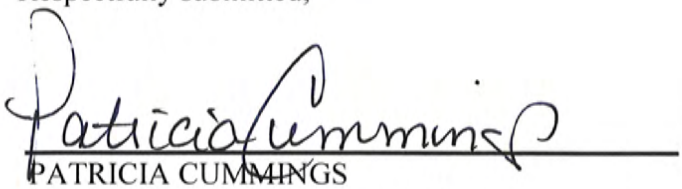
212. And as supported by the law and facts in this Answer, the Commonwealth concedes that numerous constitutional violations likely "resulted in the conviction of one who is actually innocent of the crime." *Schlup*, 513 U.S. at 324.

213. This case is not simply an exercise in correcting procedural error; it is an opportunity to correct the conviction of a person who is likely innocent, "perhaps the most grievous mistake our judicial system can commit." *Satterfield v. Dist. Attorney Phila.*, 872 F.3d 152, 154 (3rd Cir. 2017).

CONCLUSION

A trial, Ogrod found himself adrift in a perfect storm of unreliable scientific evidence, prosecutorial misconduct, *Brady* violations and false testimony. As a result, Ogrod was wrongfully imprisoned for nearly three decades on death row - and all agree his incarceration constitutes cruel and unusual punishment. Ogrod is likely innocent, and his continued incarceration represents an ongoing miscarriage of justice. The Commonwealth urges this Court to grant Ogrod relief and vacate his conviction and sentence.

Respectfully submitted,



PATRICIA CUMMINGS
Supervisor, Conviction Integrity Unit

/s/Carrie Wood

CARRIE WOOD
Assistant District Attorney
Conviction Integrity Unit

Date: February 28, 2020

VERIFICATION

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

Respectfully submitted,

Patricia Cummings

PATRICIA CUMMINGS
Supervisor, Conviction Integrity Unit

CERTIFICATE OF SERVICE

I, Patricia Cummings, Assistant District Attorney, hereby certify that a true and correct copy of the foregoing *Commonwealth's Answer to Petition for Postconviction Relief* was served on February 26, 2020, to the parties indicated below via email:

Andrew J. Gallo
Robert E. McDonnell
MORGAN, LEWIS & BOCKIUS, LLP
One Federal Street
Boston, MA 02110

James S. Rollins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
One Post Office Square
Boston, MA 02109

Tracy Ulstad
Samuel J.B. Angell
Loren Stewart
Federal Community Defender Office
for Eastern District of Pennsylvania
Capital Habeas Corpus Unit
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106

Patricia Cummings

PATRICIA CUMMINGS
Supervisor, Conviction Integrity Unit

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

COMMONWEALTH	:	
	:	CP-51-CR-0532781-1992
v.	:	
	:	
WALTER OGROD	:	

ORDER

AND NOW, this _____ day of February 2020, it is hereby **ORDERED** that the

PETITIONER'S MOTION FOR A NEW TRIAL IS GRANTED.

It is **FURTHER ORDERED** that:

WALTER OGROD; PA INMATE NUMBER: _____;

PHILADELPHIA POLICE PHOTO NUMBER: _____ _____ _____;

is **GRANTED A NEW TRIAL**.

BY THE COURT:

_____
HONORABLE SHELLY ROBBINS-NEW
COMMON PLEAS JUDGE