

ELKHART COUNTY CIRCUIT COURT
ELKHART, INDIANA
CRIMINAL DIVISION

STATE OF INDIANA,)	
)	
RESPONDENT,)	Case No. 20D03-0309-MR-155
)	
v.)	Honorable Teresa Cataldo
)	
ANDREW ROYER,)	
)	
PETITIONER.)	ORAL HEARING REQUESTED
)	

VERIFIED PETITION TO VACATE JUDGMENT
PURSUANT TO INDIANA TRIAL RULE 60(B)(8)

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VERIFIED PETITION TO VACATE JUDGMENT
PURSUANT TO INDIANA TRIAL RULE 60(B)(8)

Pursuant to Indiana Trial Rule 60(B)(8), Petitioner respectfully requests that this Court vacate the judgment. In support, Petitioner states as follows:

INTRODUCTION

An epidemic exists in Elkhart, Indiana where wrongful convictions are a predictable product of whirlwind trials. Tragically, these unjust convictions often take decades to unravel, leaving innocent men and woman to languish in prison for crimes they did not commit. Three individuals have been exonerated from Elkhart thus far, a sobering statistic for a city of approximately fifty-two thousand people. The latest Elkhart exoneree, Keith Cooper, was convicted in a trial that lasted less than a day. With a two-day trial, Andrew Royer's experience is no different.

A victim of the Elkhart epidemic, Mr. Royer stands wrongfully convicted of a murder that occurred in 2002. Mr. Royer had absolutely nothing to do with the crime and is now in a position to bring this Petition because newly discovered evidence proves his innocence. This newly discovered evidence is so compelling that a former Lieutenant at the Elkhart Police Department is "surprised" that Mr. Royer continues to remain wrongfully convicted. In an unprecedented affidavit, retired Lt. Peggy Snider renounced the code of silence and revealed that she witnessed an Elkhart detective coerce Mr. Royer into giving a false confession. Mr. Royer tragically asked the detective if he could "go home" after giving his false confession. Since the new and compelling evidence requires the vacatur of his wrongful judgment, it is time for Mr. Royer, an innocent man, to finally return home.

A summary of the circumstantial evidence at trial demonstrates how powerful the newly discovered evidence truly is.¹ There, the State argued Mr. Royer's motivation for participating in this crime was his desire for money, frustration with religion, and deference to his co-defendant, Lana Canen. The State then presented four puzzle pieces resulting in the simultaneous convictions of Mr. Royer and Ms. Canen: (1) Nina Porter testified that Ms. Canen confessed to her and had complete control over Mr. Royer; (2) Former Elkhart County Deputy Sheriff Dennis Chapman offered an expert opinion that Ms. Canen was the origin of a latent print discovered at the crime-scene; (3) the jury was presented with two audio-recorded statements from Mr. Royer, totaling 61 minutes, where he confessed involvement in Ms. Sailor's death; (4) and finally, a Highrise resident named Jerome Johnson testified that Mr. Royer arrived at his apartment in the late evening hours of Thanksgiving with Lana Canen. With this backdrop, Mr. Royer and Ms. Canen were each convicted of felony murder.

Since trial, it is now undisputed that Deputy Chapman was never qualified to be an expert in latent print comparisons and that Ms. Canen is actually excluded from the latent print recovered at the crime-scene. (*Ex. 1, Canen PCR Opinion at 7.*) With this evidence *alone*, the State of Indiana joined Ms. Canen in requesting that her conviction be vacated. (*Ex. 2, State's Response to Petitioner's Request for Immediate Ruling on PCR at 7.*) On November 2, 2012, Ms. Canen's

¹ This Petition would not have been possible without the tireless work from students working with the Notre Dame Exoneration Project. Throughout the past year, these law students, including Margaret Campbell, Paula Cardona, and Alyssa Slaiman, amongst others, have worked steadfastly on Mr. Royer's behalf. Mr. Royer is grateful for their help.

conviction was vacated and the charges were dismissed without retrial. (*Id.*; *Ex.* 3, Order on MTD at 1). Nonetheless, Mr. Royer has languished in prison an additional six years despite Ms. Canen's exoneration.

Three innocence projects have conducted an extensive investigation over the past year.² The fruits of this investigation prove that the puzzle presented to the jury at Mr. Royer's trial was nothing more than an illusion all along. For starters, Nina Porter revealed that her statement and correlating testimony at Mr. Royer's trial was false, fabricated, and a product of police coercion. (*Ex.* 4, Nina Porter Affidavit at 1, *Ex.* 5, Nina Porter Recorded Statement e.g., *Ex.* 6, Nina Porter Tr. of Recorded Statement e.g.). According to Ms. Porter, Ms. Canen never confessed to her, and Mr. Royer was not her puppet.

Further, compelling evidence now exists that Mr. Royer's confession was false, coerced, and video-recorded. At trial, the State presented the jury with clips from two audio-recorded statements taken over the course of an interrogation session that spanned multiple days. Though Mr. Royer's counsel argued that the statements were false – and that the information contained within them was fed to Mr. Royer – he was without the evidence which now exists to convince the jury that Mr. Royer was manipulated and coerced into falsely confessing to a crime he did not commit. (*Ex.* 7, Chris Crawford Aff. at ¶¶3,7).

² This Petition and investigation has been a collaboration between the Exoneration Project at the University of Chicago Law School, the Notre Dame Exoneration Project, and the Wrongful Conviction Clinic at the Indiana University McKinney School of Law.

On January 3, 2018, Detective Mark Daggy revealed for the first time that Mr. Royer's interrogation was "definitely" video-recorded. (*Ex. 8, Daggy Recording; Ex. 9, Tr. of Daggy Recording at 7:11-12*). Although Mr. Royer's statements were bitterly contested at trial, the video-recorded two-day interrogation of Mr. Royer was never disclosed. According to Mr. Daggy, the video-recording would show how Detective Conway told Mr. Royer what to say throughout the marathon interrogation. (*Ex. 8, Daggy Recording; Ex. 9, Tr. of Daggy Recording at 8:4-9:1; Ex. 10, Larry Towns Affidavit at 1*). Mr. Daggy even acknowledged that Mr. Royer's interrogation was one of the worst he had ever seen. *Id.* Put simply, the State withheld a video-recording that would have revealed the methods used to coerce Mr. Royer into his fabricated and false confession. Had the two-day video-recorded interrogation been produced, the jury would have acquitted Mr. Royer.

Detective Daggy's confession that Mr. Royer's interrogation was video-recorded is bolstered by an affidavit from Peggy Snider. (*Ex. 11, Snider Recorded Conversation; Ex. 12, Tr. of Snider Recorded Statement at 8-11, 15; Ex. 13, Peggy Snider Aff. at 1*). Ms. Snider was a Lieutenant at the Elkhart Police Department during the investigation into the death of Helen Sailor. (*Id.*) In that capacity, Lt. Snider watched portions of Mr. Royer's interrogation on a closed-circuit television and stated:

Mr. Royer's interrogation was one of the worst I have ever seen in my 34 years in the Elkhart Police Department...Most of the information regarding Ms. Sailor's murder was fed to Mr. Royer by Detective Conway. Further, it was clear that Mr. Royer was a vulnerable person who was susceptible to

the tactics being used by Detective Conway during the two-day interrogation. It was obvious that Mr. Royer felt pressured to give a statement and used the information fed to him by Detective Conway to finally confess.

(Id.)

Based on what she witnessed, Ms. Snider believes that Mr. Royer “falsely confessed to the murder of Helen Sailor” and reveals that she always believed his confession to be “unreliable.” *(Id.)* Finally, Ms. Snider attests that she has always believed – based on her intimate knowledge and participation in the underlying investigation – that Mr. Royer was not involved in the murder of Ms. Sailor and that another suspect, Larry Wood, was the likely perpetrator. *(Id.)*

According to the statements, Mr. Royer falsely confessed that he killed Ms. Sailor because of his frustration with religion or desire for money. New evidence debunks both theories and corroborates Mr. Royer’s claim that his confession was false. As revealed in a half-dozen affidavits, individuals with Mr. Royer on Thanksgiving in 2002 state that he never asked them for money nor engaged in a conversation about religion on the day of Ms. Sailor’s death. (*Ex. 14*, Affidavit of Jeannie Pennington at ¶8-10; *Ex. 15*, Affidavit of Sylvia Pennington at ¶3-6; *Ex. 16*, Affidavit of Norman Pennington at ¶5-7; *Ex. 17*, Affidavit of Ashley Colón at ¶4-6; *Ex. 18*, Affidavit of Daniel Royer at ¶2-4). Each of these individuals reveal that Mr. Royer was calm and untroubled on Thanksgiving, contrary to Mr. Royer’s false confessions and the arguments made by the State at trial. Shockingly, no attorney spoke with any of these individuals prior to Mr. Royer’s trial.

Mr. Royer also presented this Court with an affidavit from Dr. Richard Leo, one of the world's leading experts on false confessions, in his original Petition for Post-Conviction Relief. Without any of the above-mentioned evidence, Mr. Royer was denied a new trial on his claim that his attorney was ineffective for failing to consult with a false confession expert. Regardless, this Court must consider Dr. Leo's opinions when determining whether there is a reasonable probability on retrial that a jury might reach a different verdict. *See Bunch v. State*, 964 N.E.2d 274, 296 (Ind. Ct. App. 2012). For instance, Dr. Leo opines that a number of psychologically coercive techniques were used in this case and that Mr. Royer possessed a number of personality traits which made him vulnerable to such techniques. (*Ex. 19*, Dr. Richard Leo Aff. at 1-6). According to Dr. Leo, Mr. Royer's statements share many common characteristics of a false confession. (*Id.*) For this Petition, Dr. Leo supplemented his prior opinions in light of the significant newly discovered evidence. (*Id.*) According to Dr. Leo, this new evidence corroborates the unreliability of Mr. Royer's confession. (*Id.*)

Next, the jury never heard significant evidence implicating alternate suspects because Mr. Royer's attorney was wholly ineffective at trial. For instance, prime-suspect Larry Wood was the last person known to see Ms. Sailor alive and ultimately confessed to police that it was possible he assisted her inside. (*Ex. 20*, Police Reports at 164). Police later discovered that Mr. Wood's shoes had blood and an oily substance on them, which they knew to be consistent with the crime-scene. (*Id.*) Mr. Wood was ultimately taken to the Elkhart Police

Department on December 12, 2002 for questioning. According to a recently disclosed document, Mr. Wood confessed involvement in strangling Ms. Sailor during that meeting. (*Ex. 21*, Woods Polygraph Document at 2). Shockingly, the jury heard none of this compelling evidence.

But Mr. Wood was not the only viable alternate suspect that the jury never learned of. Tony Thomas, a convicted murderer, was also lurking around the Highrise at the time of Ms. Sailor's death. According to Highrise residents, Mr. Thomas was "belligerent" and "sniffing" in the early evening hours of November 28, 2002. (*Ex. 22*, Eunice Miller Aff. at 1; *Ex. 23*, James Cassity Aff. at 1). Robert Hogan bumped into Mr. Thomas on a Highrise elevator around 5:30 p.m. (*Ex. 24*, Robert Hogan Aff. at 1). At that time, Mr. Thomas "stopped on each floor and...poked his head out and looked into the hallway" before claiming he had the wrong floor. (*Id.*) Mr. Thomas ultimately remained on the elevator after Mr. Hogan exited and was on the elevator around 5:30 p.m., the same time Ms. Sailor returned home. Again, the jury heard none of this compelling evidence.

The State is now without a single witness linking Mr. Royer to Ms. Canen on the day of the murder. In a recently obtained affidavit, Jerome Johnson concedes that his trial testimony linking Mr. Royer to Ms. Canen in the late evening hours of Thanksgiving was a lie. (*Ex. 25*, Johnson Aff. at 1). This false testimony from Mr. Johnson at trial was especially damning in light of the false opinion regarding the latent print match to Ms. Canen. (*Id.*) Mr. Johnson now reveals that he "did not have any visitors on Thanksgiving Day or that evening."

(*Id.*) Further, Mr. Johnson attests that he only changed his story at trial – and linked Mr. Royer to Ms. Canen on Thanksgiving – after “the police hounded [him] for six months.” (*Id.*) Ultimately, Mr. Johnson was harassed by the police into making a false statement and perjuring himself at trial.

Every wrongful conviction is tragic in its own right, but Mr. Royer’s is particularly heartbreaking. Rudolph Gourdine, a retired Chaplain and case-manager at Oaklawn - a mental health and addiction services facility in Elkhart - opined in a recent affidavit that Mr. Royer had mental health issues at the time of his interrogation that “impacted his cognitive functioning.” (*Ex. 26*, Affidavit of Rudy Gourdine at ¶8). In his experience, “someone with Mr. Royer’s diagnosis would tend [to] relieve a stressful situation, like an interrogation for murder, by saying whatever the interrogator would want to hear...” (*Id.* at 2). Though the police did not question Mr. Gourdine during the underlying investigation, they were certainly on notice of Mr. Royer’s vulnerabilities prior to bringing him into an interrogation room. For instance, Lt. Snider learned on September 2, 2003 – the day prior to his first interrogation - that Mr. Royer was “severely disabled...had the mind of a child and ...would do anything anybody asked him to.” (*Ex. 20*, Police Reports at 186). Nonetheless, Detective Conway preyed on those same vulnerabilities to manufacture Mr. Royer’s false-confessions. The jury heard no evidence of Mr. Royer’s mental disabilities or Detective Conway’s outrageous police misconduct, which ultimately deprived him of a fair trial.

The result of an unfair trial has forced Mr. Royer, an innocent man, to languish in prison for the last fifteen years. Mr. Royer brings this Petition to correct this gross miscarriage of justice. Due to the overwhelming amount of newly discovered evidence, justice demands that this Court vacate the judgment on Mr. Royer's initial Petition for Post-Conviction Relief and order a new trial.

I. PROCEDURAL BACKGROUND

The relevant procedural history is as follows:

On September 3, 2003, Mr. Royer was charged in Elkhart Circuit Court Case Number 20C01-0409-MR-118, with murder in connection with the death of Helen Sailor. (*Ex. 27*, Criminal Complaint at 1554). That charge was amended to felony murder on August 5, 2005. (*Ex. 28*, Amended Charging Complaint at 27). Following a two-day trial with his co-defendant, where Mr. Shaffer, Ms. Porter, and a number of Elkhart police officers testified against Mr. Royer, he was convicted of murder on August 10, 2005. (*Ex. 29*, Docket at 6). On September 1, 2005, Mr. Royer was sentenced to 55 years in the Indiana Department of Corrections. (*Ex. 30*, Sentencing Order at 84-85).

Mr. Royer pursued post-conviction relief in the Indiana Courts. On March 5, 2007, Mr. Royer filed a timely post-conviction petition. (*Ex. 31*, Royer Post-Conviction Petition at 1). His petition was amended by appointed counsel on May 17, 2010. (*Ex. 32*, Royer Amended Post-Conviction Petition at 1). On January 6, 2011, an evidentiary hearing was held where Dr. Leo, a false confession expert, testified on Mr. Royer's behalf. (*Ex. 33*, Royer PCR Hearing

Tr. at 27-121). Mr. Royer's post-conviction petition was denied on May 17, 2011. (*Ex.* 34, PCR Order at 98). On June 17, 2011, Mr. Royer filed a timely notice of appeal. (*Ex.* 35, Notice of Appeal at 99-100). After briefing, the Appellate Court affirmed the denial of Mr. Royer's post-conviction petition. *See Royer v. State*, 959 N.E.2d 932 (Ind. Ct. App. 2011).

In 2009, Mr. Royer's co-defendant, Lana Canen, filed a post-conviction petition. (*Ex.* 36, Canen PCR Petition). That petition was later amended and a hearing was held on August 12, 2012. (*Ex.* 1, Canen PCR Opinion at 1820). After the hearing, the State joined Ms. Canen in requesting that her conviction be vacated due to newly discovered evidence. (*Ex.* 2, State's Response to Canen PCR at 1818). On October 12, 2012, the trial court granted the joint motion for a new trial. (*Ex.* 37, New Trial Order). On November 2, 2012, the Elkhart County Prosecutor's Office dismissed all charges against Ms. Canen. (*Ex.* 3, Order on Motion to Dismiss).

On December 6, 2016, Mr. Royer unsuccessfully attempted to file a pro se Successive Petition for Post-Conviction Relief based on the reversal of Ms. Canen's conviction. (*Ex.* 38, Successive PCR)

II. JURISDICTIONAL STATEMENT

Mr. Royer respectfully requests that this Court vacate the judgment of his original Petition for Post-Conviction Relief under Indiana Trial Rule 60(B)(8). The Indiana Supreme Court explicitly held in *State v. Collier* that this Honorable Court retains discretion to grant Mr. Royer's request pursuant to Indiana Trial Rule

60(B)(8). *See State v. Collier*, 61 N.E.3d 265, 269-270 (In. 2016). Here, as in *Collier*, exceptional circumstances justify the equitable relief sought by Mr. Royer.

As is discussed at length below, the newly discovered evidence forming the basis for this Petition demonstrates that the original court was without the complete record when it denied Mr. Royer's Petition for Post-Conviction Relief. This occurred because the State continued to withhold significant evidence of Mr. Royer's innocence.³ In sum, the newly discovered evidence discussed at length below meets the standards set forth in *State v. Collier*. As a result, Mr. Royer's request for relief pursuant to Indiana Trial Rule 60(B)(8) is entirely appropriate.

III. GROUNDS FOR VACATING MR. ROYER'S CONVICTION

This Motion sets forth the basis for Mr. Royer's request for relief. Petitioner is entitled to the vacatur of the PCR judgment and a new trial pursuant to Indiana Trial Rule 60(B)(8) because: (1) he is actually innocent, and has located new

³ Additionally, significant new evidence has come to light illustrating that the original findings of the post-conviction court were clearly erroneous and should be reversed. At the conclusion of Mr. Royer's evidentiary hearing, the trial court found that Mr. Crawford made a reasonably strategic decision to not consult with a false-confession expert because of his belief that an Elkhart jury would reject such testimony. (*Ex.* 34, Royer PCR Opinion at 5), 7. The Court of Appeals subsequently affirmed the lower-court's ruling. *Royer v. State*, 959 N.E.2d 932 (Ind. Ct. App. 2011). The Honorable Judge Terry Shewmaker presided over Mr. Royer's petition on post-conviction relief. (*Ex.* 34, Royer PCR Opinion). Prior to finding against Mr. Royer, Judge Shewmaker was a prosecutor at the Elkhart County Prosecutor's Office. In that capacity, Judge Shewmaker assisted in the trial prosecution of the *State of Indiana v. Edgar Garrett*, 20C01-9502-CF-00003. (*Ex.* 42, SB Tribune Articles at 1-3). Mr. Garrett was charged with capital murder based in part on a confession obtained from him by Elkhart police officers. (*Id.* at 1). On November 6, 1995, Mr. Garrett called a false confession expert, Dr. Richard Ofshe, to testify on his behalf at trial. (*Id.* at 2). By the time Judge Shewmaker heard Mr. Royer's Petition on Post-Conviction Relief, he was aware that an Elkhart jury acquitted Mr. Garrett of capital murder after hearing testimony from a false confession expert. None of this information was known to Mr. Royer or his appellate counsel at the time of his PCR original hearing. Indeed, such evidence supports Mr. Royer's contention that his counsel did not make a reasonably strategic decision, and thus, was ineffective for failing to consult with a false confession expert prior to trial.

evidence materially relevant to his innocence that he could not with reasonable diligence have discovered and produced at his original PCR hearing or at trial; (2) he has new evidence demonstrating the failure to disclose material, exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), materially affecting his substantial rights, and (3) he has new evidence demonstrating that he received ineffective assistance of counsel in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) that fell below an objective standard of reasonableness and prejudiced Mr. Royer in a significant way. To date, no court has considered this newly discovered evidence. Each of these grounds provides an independent basis for this Court to vacate the PCR judgment and grant Mr. Royer a new trial.

A. Newly Discovered Material Evidence Requires That Mr. Royer's Conviction be Vacated in the Interests of Justice.

The existence of newly discovered material evidence, not previously presented and heard, requires the vacatur of Mr. Royer's judgment in the interests of justice. *See* Indiana Trial Rule 60(B)(8). The evidence presented at the evidentiary hearing and trial is now completely disproven by the newly discovered evidence that forms the basis for Mr. Royer's claims. It is necessary to first consider the evidence presented at trial in order to fully understand the impact and materiality of this new evidence.

1. The Underlying Crime According to the State

a. The Tragic Death of Helen Sailor

At approximately 5:30 p.m. on November 28, 2002, Larry Converse and his wife dropped off Helen Sailor at the door of the Waterfall Highrise Apartments

("Highrise") in Elkhart, Indiana. (R. at 340). Caroline Hoffer, a certified nursing assistant, called Ms. Sailor about ten times, between 8:45 and 9:15pm, to remind her that she would be coming the next morning. (R. at 324-325). Ms. Sailor was 94 years old and Ms. Hoffer assisted in caring for her. (R. at 317). Ms. Sailor did not answer Ms. Hoffer's calls that evening. (R. at 325).

Ms. Hoffer called again the next morning without an answer. (R. at 325). Concerned, Ms. Hoffer arrived at the Highrise around 7:00 a.m. and tried to "buzz" into the building, but Ms. Sailor was unresponsive. (R. at 325). The doorman let Ms. Hoffer into the building and she knocked on Ms. Sailor's locked door for several minutes to no avail. (R. at 326). Hoffer then called the Converses, who arrived within 10-15 minutes with a key to the apartment. (R. at 327). They entered the apartment and found Ms. Sailor's body. (R. at 327).

Ms. Hoffer testified that Ms. Sailor's key chain was in its proper spot, but other belongings were out of place: the rug was "cockeyed", two empty jugs of Cranberry juice remained in the sink, and her Bible and walker were both out of place. (R. at 329-30). Carol Converse stated that Ms. Sailor typically kept cash in her Bible, but no cash was found in the Bible that morning. (R. at 343-44). Though Ms. Sailor's key chain was in its proper spot, the drawers in her dresser were pulled out and a box she kept under her bed was out of place. According to Ms. Hoffer, the apartment had "definitely been gone through." (R. at 330-331).

Dr. Joseph Prahlow, a forensic pathologist, conducted an autopsy on Ms. Sailor's body on November 29, 2002. (R. at 348). Dr. Prahlow testified that the

manner of death was strangulation as there was a furrow mark (abrasion as a result of a ligature around the neck) (R. at 373-74) and evidence of a compressed neck. (R. at 366, 392-93.) Dr. Prahlow also observed relatively minor scrapes, scratches, and bruises on the body with abrasions on the nose and forehead; two black eyes; blood on the right ear, and extensive bruising and swelling on her hands and wrists. (R. at 355-357, 360). Significantly, Dr. Prahlow discovered a greasy pink fluid on Ms. Sailor's clothing. (*Id.*)

b. The Jury Hears That the Initial Investigation Produced No Suspects

Detectives Thayer and Christian of the Elkhart Police Department led the initial investigation into Ms. Sailor's death. (R. at 398, 402-403). Detective Thayer testified that no clear suspect emerged after the initial week of investigation. (R. at 400-401, 651). He also informed the jury that officers returned to the Highrise over the next seven months but still identified no suspects. (R. at 652). Detective Daggy later confirmed Detective Thayer's testimony and informed the jury that there were no red-flags early in the investigation and that no "suspect rose to the top." (R. at 400).

c. Mr. Royer and Ms. Canen Become Suspects After Creation of Elkhart Homicide Unit

The jury next learned that the Elkhart Police Department started a homicide unit in August of 2003 and that the Sailor case was the unit's first investigation. (R. at 398, 402-403). Detective Carl Conway was assigned to the homicide unit and assisted Detective Daggy in the investigation. (R. at 480). According to Detective

Conway, the unit went through the casefile in August 2003 with a “fine tooth comb” and followed up on unresolved leads. (R. at 481).

One of those leads supposedly came from Jerome Johnson, a resident of the Highrise. Mr. Johnson testified that he was at his apartment on Thanksgiving evening when “Lana and Andy stopped by.” (R. at 432). According to Mr. Johnson, “Andy knocked about midnight” and was let into the apartment. (R. at 432). Mr. Johnson’s sister, Martha Haff, testified that she too believed Mr. Royer came over and stayed approximately two hours before leaving around 1:00 a.m. (R. at 448, 450). As best Ms. Haff could recall, Mr. Royer was alone. (R. at 448).

Detective Daggy informed the jury that a red-flag eventually surrounded Lana Canen’s name during the investigation. (R. at 403). The jury then learned that the police fortuitously pulled Ms. Canen over while she was driving in a car with Nina Porter, an acquaintance of both Ms. Canen and Mr. Royer. (R. at 481, 707). After obtaining Ms. Porter’s statement, Detective Daggy testified that “leads start[ed] to develop” and “things [started to] fall into place.” (R. at 404).

d. Nina Porter Testifies that Canen Confessed on Multiple Occasions and Maintained Control of Royer

Nina Porter was the State’s key witness at trial. As discussed *supra*, police pulled Ms. Porter over while she was driving with Ms. Canen, gave her a ticket for driving without a license, and placed her under arrest. (R. at 708-709).

Importantly, Ms. Porter was on probation at the time she was taken into custody and interviewed by two detectives at the police station. (R. at 708-709).

Ms. Porter testified to knowing Ms. Canen since April 2003, when they lived at the Highrise in Elkhart. (R. at 675). She also testified to knowing Mr. Royer through Ms. Canen, who she often saw together. (R. at 675, 700). According to Ms. Porter, Ms. Canen controlled Mr. Royer's behavior and told him "what to do." (R. at 701). Ms. Porter then informed the jury that Ms. Canen once told Mr. Royer to go outside and wait in the rain and he followed her commands. (R. at 702).

Ms. Porter ultimately testified that while drinking on the patio of the Highrise on July 3, 2003, Ms. Canen repeatedly told her, "no one was supposed to get hurt." (R. at 703-704, 713). Sometime later, Ms. Canen told Ms. Porter that she "went upstairs to an old lady, and she said she could come and get money. When she got there, she couldn't give her the money because someone told her not to." (R. at 705). Finally, as Ms. Canen was leaving the patio she mumbled in an angry voice: "Thanksgiving, thanks for giving death." (R. at 707-708).

According to Detective Daggy, the investigation took on a new character after obtaining Ms. Porter's statement. (R. at 404-05). Police now identified Ms. Canen and Mr. Royer as suspects and Royer was interrogated the following day. (R. at 405, 481).

e. Jury Hears That Charles Lambert Gave Ride to Lana Canen on Thanksgiving

Jurors heard testimony from Charles Lambert, who saw Lana Canen outside the Highrise around 6:30 p.m. on Thanksgiving. (R. at 461). Mr. Lambert drove Ms. Canen to her boyfriend's residence around 7:00 p.m. (R. at 462-463). According

to Mr. Lambert, Ms. Canen was alone, appeared to be relaxed, and possessed a large duffle bag at the time she requested the ride. (R. at 463-465 468).

f. Mr. Royer's Jury Was Informed that Ms. Canen's Fingerprint Matched a Print Found at Crime-Scene

The jury was presented with a number of witnesses at trial who testified about physical evidence linking Ms. Canen to the Sailor crime-scene. Joel Bourdon, a police department technician, testified that he found a latent fingerprint in Sailor's kitchen. (R. at 572). Further, Detective Dennis Chapman revealed that he was formerly a fingerprint analyst for the FBI, where he was responsible for examining and comparing fingerprints. (R. at 617). According to his testimony, Detective Chapman worked as a detective technician and claimed to have made approximately 100 latent print identifications and comparisons in the past several years. (R. at 617). The jury next learned that on August 29, 2003 Detective Chapman received several fingerprint lifts from the crime-scene and latent print cards from Lana Canen. (R. at 621-622). After conducting a comparison, Chapman informed the jury that the print on Ms. Sailor's medication bottle was a "match" to Ms. Canen. (R. at 621-22, 627).

g. Detective Conway Testifies that Mr. Royer Confessed Over the Course of a Two-Day Interrogation in September 2003

Detective Conway testified at length about his involvement in the underlying investigation, including his interrogations of Mr. Royer. (R. at 478). According to Detective Conway, Mr. Royer was interrogated solely as a result of the information obtained from Ms. Porter. (R. at 482). Prior to questioning Mr. Royer, Detective

Conway was trained to interrogate suspects by the Reid Corporation. (R. at 479).

1. Mr. Royer's September 3, 2003 Statement to Detective Conway

On September 3, 2003, Mr. Royer “willingly” accompanied Detective Conway and other officers to the Elkhart Police Department. (R. at 482). Detective Conway admitted before the jury that Mr. Royer did not have his medication at the time. (R. at 512). Nonetheless, after arriving at the Elkhart Police Department, Mr. Royer was brought into an interrogation room and informed that he was being questioned about the murder of Helen Sailor. (R. at 482-483). At that time, Mr. Royer waived his Miranda rights and according to Detective Conway, seemed pretty “relaxed about the whole situation” and “very articulate⁴.” (R. at 483, 520).

The first day of Mr. Royer's interrogation began at 9:34 a.m. (R. at 485-486). At that time, Detective Conway engaged in what he considered to be a “pre-interview process.” (R. at 486). This process was designed to “build a rapport at first, and then obviously due [to] the topic at hand there is denials...we're trying to go ahead basically sift through, I guess, the nonsense that's going on. In fact, it can take quite a long amount of time.” (R. at 487). The jury learned that Detective Conway “deliberately” did not record the “pre-interview process” because “that was

⁴ That Detective Conway was allowed to get away with testifying to this effect is shocking. Detective Conway's own September 10, 2003 report documents the following: “Let it be noted that when I asked Royer “if he understood the magnitude of what he had confessed to”, he stated that he “did not confess to anything because I had the wrong guy.” I reminded Royer that he confessed to “choking someone out” and he responded by saying “Yeah, well...can I just go home now.”” Ex. 20, Police Reports at 191. Thus, Detective Conway's testimony that Mr. Royer was articulate and understood what was occurring in the interrogation room is directly contrary to his own police reports. Yet, Mr. Royer's counsel failed to elicit any of this significant evidence from Detective Conway on cross-examination.

the procedure that our police department had established at the time.” (R. at 487, 507, 513). Regardless, Mr. Royer’s pre-interview process lasted for approximately “two or three hours.” (R. at 487).

The Reid technique was ultimately used to break Mr. Royer down and obtain his confession. (R. at 489). In Detective Conway’s view, the Reid technique consisted of “openly confront[ing]” Mr. Royer with “the situation and the knowledge that we have in reference to their participation in the crime.” (*Id.*) According to Detective Conway, Mr. Royer was “very susceptible to it” and “openly admitted that he committed the homicide.” (*Id.*)

Notably, Detective Conway was familiar with all of the details gathered in the underlying investigation prior to interrogations of Mr. Royer and thoroughly reviewed the case prior to Mr. Royer’s interrogations. (R. at 509, 510, 519). In spite of having extensive knowledge of the homicide, Detective Conway told the jury that he did not “give any [information] at all” to Mr. Royer during the pre-interview process. (R. at 489). According to Detective Conway, he held back primary details and only confronted Mr. Royer “with very vague generalized information that we have...” (R. at 489). The following exchange is illustrative of what the jury heard with regard to the techniques used by Detective Conway:

Q: When you were interviewing the defendant, Andrew Royer, for the first time on September 3, did you give him any details about Helen Sailor’s murder?

A: No. As a matter of fact, in Mr. Royer’s case I made a point not to do it.

Q: Why not?

A: I mean, I – we were well aware of Mr. Royer, and – and of – we had limited knowledge about his mental background. So I definitely wanted to make a point not to give to Mr. Royer just for the sheer fact that he might go ahead and dispose of the concept that we might have been spoon feeding him information.

(R. at 490-491).

Detective Conway testified that Mr. Royer “gave renditions of” his involvement and for the “most part, he openly admitted that he went into Helen Sailor’s apartment and he strangled her, and then he was able to give us details about how he committed the strangulation along with what he did to dispose of some of the evidence...that we found during the original investigation that corroborated what he was saying.” (R. at 491). Detective Conway subsequently informed the jury that Mr. Royer demonstrated how he strangled Ms. Sailor with a rope, which corroborated injuries on her body. (R. at 491-492). Finally, Detective Conway claimed that Mr. Royer knew details not released to the public, including that towels were used to clean the apartment and disposed of in the trash chute. (R. at 492, 493).

After more than four hours of interrogation, Detective Conway ultimately ended the “pre-interview process” and decided to audio-record Mr. Royer’s statement at 1:30 p.m. (R. at 494, 513). Mr. Royer’s twenty-two minute September 3, 2003 audio-recorded statement was then admitted into evidence as State’s Exhibit 16. (R. at 495). The jury also learned that Detective Conway stopped the taped statement because Mr. Royer “was starting to get very fatigued...” and unable to concentrate on what was happening. (R. at 500, 515). Although the

interrogation concluded, Mr. Royer's nightmare did not, as he was "placed under arrest for murder." (R. at 500).

2. Mr. Royer's September 4, 2003 Statement to Detective Conway

Mr. Royer was interrogated a second time by Detective Conway the following day. (R. at 502). Mr. Royer was supposedly "refreshed" for the second interrogation and signed another waiver of rights form at 8:25 a.m. (R. at 502-503). At the onset, though, Mr. Royer revealed that he was afraid of Detective Conway. (R. at 503). But Detective Conway then went "ahead and talked and kind of rebuil[t] that rapport again..." (R. at 502). Up until this time, Detective Conway testified that he did not believe that Mr. Royer was being truthful about the murder. (R. at 502). Again, after more than 3.5 hours of interrogation, Detective Conway's use of the Reid technique ultimately succeeded in breaking Mr. Royer down. At 11:56 a.m., Detective Conway obtained a thirty-nine minute audio-recorded confession from Mr. Royer that was admitted into evidence as State's Exhibit 18. (R. at 504).

On cross-examination, Detective Conway admitted to knowing that Mr. Royer had "some mental issues" prior to interrogating him. (R. at 508). Despite this, Detective Conway declined to make any adult or mental-health professional from Oaklawn available to Mr. Royer. (R. at 514). Detective Conway further conceded that he did not provide Mr. Royer with his medication prior to taking the taped-statements. (*Id.*) Finally, the jury learned of Detective Conway's failed attempts to corroborate some of the information from Mr. Royer's statements. For instance, Mr. Royer told Detective Conway that some of the proceeds from the

murder were pawned off at a specific pawnshop. (R. at 516). Detective Conway recounted that he took Mr. Royer to that pawnshop and was informed by the owner that Mr. Royer did not pawn any items there. (R. at 516).

3. Mr. Royer's 2004 Statement to Detective Daggy

The jury learned that Detective Daggy questioned Mr. Royer in 2004. (R. at 406-407). Detective Daggy testified that he did his best to “let him do his thing” during his interview as he didn’t “want to provide him with anything...because that would appear to be leading.” (R. at 408). Detective Daggy revealed that Mr. Royer maintained his innocence during the 2004 questioning.

In doing so, Mr. Royer explained that he was with his family until approximately 4:00 p.m. on Thanksgiving before being dropped off at the Highrise. (R. at 408). Mr. Royer stated that he took a nap after arriving at his apartment before going to Martins’ supermarket to purchase a case of beer. (R. at 409). Thereafter, Mr. Royer drank beer before taking another nap. (R. at 409). This part of Mr. Royer’s 2004 statement was later impeached, as the jury learned through the testimony of Larry Haack that Martins’ supermarket was closed on Thanksgiving. (R. at 422).

h. Detective Thayer and Lt. Snider Testify to Lana Canen's Statements

As stated above, Detective Thayer participated in the underlying investigation beginning in 2002. (R. at 637). Detective Thayer attempted to contact Ms. Canen a number of times early on. (R. at 639). Ultimately, in a brief conversation, Ms. Canen informed Thayer that she was out of town visiting friends

and family over the Thanksgiving holiday. (R. at 641, 649). As discussed *supra*, Ms. Canen's account in this regard was impeached through the testimony of Mr. Lambert and Mr. Johnson, who both claim she was at the building at various points in the evening.

Finally, Lt. Peggy Snider testified that she questioned Ms. Canen on September 2, 2003. (R. at 665). In this meeting, Lt. Snider asked Ms. Canen whether she had ever been inside Ms. Sailor's apartment, to which she denied ever being inside. (R. at 670). At some point, Lt. Snider told Ms. Canen that the police "have a fingerprint, it is your fingerprint, and it was in Helen's apartment." (R. at 670). After hearing this information, Ms. Canen asked Lt. Snider where the print was found. (R. at 671). Lt. Snider stated in response that "it had something to do with Helen's medication." (R. at 671). From there, Ms. Canen said that if the print was found on medication that it couldn't be dispositive as she opened hundreds of pill bottles in her lifetime. (R. at 671).

i. Defense Attorneys for Mr. Royer and Ms. Canen Decline to Call a Single Witness to Testify at Trial

Over the course of the two-day trial, the State called approximately nineteen witnesses to testify. Mr. Royer's counsel declined to call a single witness to testify on his behalf. As a result, jurors heard no evidence relating to his alibi witnesses, alternate suspects, or his severe mental health condition which made him vulnerable to giving a false confession. Put simply, Mr. Royer's counsel failed to put

on a defense.⁵

j. The State Urges the Jury in Closing Argument to Convict Royer Due to Testimony from Porter, Fingerprint Match to Canen, and Statements to Detective Conway

With this backdrop, the State told jurors in closing arguments that “when you’re putting a puzzle together... you don’t have to have every piece of the puzzle. You don’t have to have the picture box in order to see what it is.” (R. at 719). Based on the testimony of Ms. Porter, Detective Chapman, and Detective Conway, the State urged each juror to “see that picture. You can see that writing on the wall. What was the writing on the wall. There you go. Let’s start with that one. Thanksgiving. Thanks for giving death.” (R. at 719-720).

According to the State, Nina Porter’s statement and corresponding testimony corroborated Mr. Royer’s statements to Detective Conway and the fingerprint match to Ms. Canen. (R. at 720). Specifically, the State argued:

Out of the mouth of Lana Canen. The day before Independence Day, the day before fourth of July 2003, as she sat on the patio with Nina Porter drinking some Root Beer Schnapps just hanging out. And what does she keep saying? No one was supposed to get hurt. That statement, folks, no one was supposed to get hurt is incredibly profound for what reason? There was a plan. No one was supposed to get hurt. What does that do? Corroborate virtually every piece of evidence that came from that stand. No one was supposed to get hurt and yet Helen did. It wasn’t their intent to kill her when they went to her home. It was their intent to get money from her, money. (R. at 720).

The jury was then told to convict both defendants because “out of the mouth of Lana Canen” she was “talking about the fact that she would go up to the old lady’s apartment...she’d go up there and mooch money from Helen Sailor. But then

⁵ Ms. Canen’s counsel, Brent Zook, also failed to call a single witness.

the day that she refused to give money, Thanksgiving, was the day that she was given death.” (R. at 720).

But the prosecution didn’t just focus on Ms. Porter’s testimony, indeed, they made several arguments regarding Mr. Royer’s statements to Detective Conway as well. (R. at 721). In this way, the State argued that they “could play that tape over again for you” and urged the jury to listen to it again during deliberations while imploring them to focus on a few specific details:

- “Andrew Royer talked about the fact that he strangled her for a long time, five, ten minutes.” (R. at 721).
- “Also, profoundly important from his statement you saw on the slide the criss cross. Comes down like this and ends here. They don’t meet up. How did Andrew Royer demonstrate that he strangled Helen? I’m quite sure that Andrew Royer had not had an opportunity to meet with Dr. Prahlow to find out about that little detail before he gave his statement.” (R. at 721-722).
- “He had such intimate knowledge about this crime that there’s no other way to explain it, folks.” (R. at 722).
- “Andrew Royer talked about the fact that jewelry had been taken from the jewelry box, the red jewelry box that was underneath the bed.” (R. at 724).
- “Remember how he talked about the fact that he cleaned things up, organized things, put things back so that it didn’t look like they had been tampered with.” (R. at 724).
- “And while he’s got intimate details many many intimate details, he never tells us the whole story. Intimate details such as I slapped her open handed on the cheek. I knocked her down in the kitchen.” (R. at 729).

The jurors were told that the motive for Ms. Sailor's murder was money and were urged to reject Mr. Royer's contention that his confessions were false. (R. at 722). In doing so, the State reiterated, "And after the pre-interview which defense wanted you to believe was so unreasonable, boy, they just pounded it into him. They put all those words in his mouth, and then he just recited everything that the detectives wanted him to say." (R. at 728-729). But Mr. Royer's confessions weren't all, the State claimed.

Indeed, the State argued that Mr. Royer's confessions were corroborated by the latent print discovered on Ms. Sailor's medication bottle. The jury heard in closings that the police "got lucky. We got luck lucky." (R. at 732). At that point the State took a deep-dive into Mr. Chapman's testimony, recounting how he "took the fingerprint card of Lana Canen, and he compared it to the print from the tub, and he said, yep, that print is Lana Canen's. Her left pinky – left little finger." (R. at 732). According to the State, this proved Ms. Canen's statements to police (when she denied being in Ms. Sailor's apartment) were a lie. The State argued "Lana's never been in that apartment before except when Helen Sailor was being murdered. Except when that pill container was being moved from the cupboard to the stove..." (R. at 732).

The State then implored the jury to combine Mr. Royer's statements to Detectives Conway and Daggy with that of Ms. Porter's statement: "listen to his statement and the way that he talked, you see his thought processes, you hear Nina Porter's statement. He doesn't talk much. Lana controls him. Andy, go stand in

the rain. And what did he do? He did it. Turn around and leave, and he did it.” (R. 733-at 734). Based on the testimony from Ms. Porter, Mr. Royer did “whatever Lana told him to do.” (R. at 734).

According to the State’s closing argument, this case came down to the testimony of Nina Porter. In their view, Porter’s testimony “**corroborate[d] virtually every piece of evidence that came from that stand.**” (R. at 720)(*emphasis added*).

Finally, the jury was informed that:

To find them guilty, all you have to do is look at the statement and see her fingerprint. That’s enough to find them guilty because the State of Indiana has to prove that they committed a robbery or attempted to commit a robbery. You got that from her statements. Nobody was supposed to get hurt. She just was supposed to give me money. Money is gone from Helen’s apartment. There’s the robbery, folks, and Helen is sure dead. That’s all you have to find beyond a reasonable doubt. You have the power now to say you are guilty, and we know you are guilty, and now you have to take responsibility for it cause you have to wonder then will Lana say once again Thanksgiving, thanks for giving death.

(R. at 734-736).

With this, Mr. Royer was convicted of felony murder even though there was never a shred of physical evidence developed against him.

IV. FACTS SUPPORTING MR. ROYER'S CLAIMS FOR RELIEF

In support of his claims, individually and collectively, Petitioner states the following facts.

A. **Nina Porter Finally Reveals That Her Statement and Testimony was False, Fabricated, and a Product of Police Coercion**

According to the State, Nina Porter's testimony "[c]orroborate[d] virtually every piece of evidence that came from that stand." (R. at 720). On November 29, 2017, Porter emotionally and unequivocally revealed for the first time that her statement and corresponding testimony was false, fabricated, and a product of police coercion. (*Ex. 4*, Aff. of Nina Porter at 1; *Ex. 5*, Audio-Recording of Nina Porter; *Ex. 6*, Porter Recording Tr. e.g.). Ms. Porter admits that her statements to police and subsequent testimony at Mr. Royer's trial were "all false [Canen] never told me anything about anything." (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 5*, Audio-Recording of Nina Porter; *Ex. 6*, Porter Recording Tr. at 7).

In her affidavit and recorded statement, Ms. Porter provides an account of what really happened in September 2003. In this way, police pulled Ms. Porter over while she was driving with Ms. Canen. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 3). At the time she encountered police, Ms. Porter was recently released from prison and on probation. (*Id.*) The following day, police came to Ms. Porter's apartment, told her that Ms. Canen confessed, and took her to the police station for questioning. (*Id.*)

In her affidavit, Ms. Porter revealed that Detectives told her what to say once she was at the police station and that she eventually caved from their pressure and repeated the information provided to her. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 8, 11). Specifically, Porter recalled the police doing the following:

[Detectives] just kept saying that she told them I knew ‘this’. So they told me, ‘Lana said she told you “this”, or Lana said she told you “that.” When it got into the next day, it was just kind of finally like, okay, you know, I’m ready to tell you so I can go home. But we didn’t sit there and take a whole deposition on the tape at one time. That was over a lot of hours that actually became into whatever this [report] is. Porter said she was tired, and “that after so many hours, I knew what they wanted me to say.”

(*Id.* at 7).

Further, Ms. Porter revealed the methods by which the police fabricated her statement. In this way, Ms. Porter recalled that the police showed her pictures with the tape recorder off before turning it on again. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 4). While the recorder was off, the police would turn the picture over and tell her to read the phrase written on the back. (*Id.*) When the recorder was turned back on, Ms. Porter read the phrase written on the back of the photographs. (*Id.*) Ms. Porter recalled that one of the photographs contained the phrase Thanksgiving, which was her cue for repeating “Thanksgiving. Thanks for giving death,” a false statement that the police scripted for her to repeat. (*Id.*) In sum, Ms. Porter revealed that any information she provided was either on the back of a photograph, which she would read when the detectives turned on the tape recorder, or it was information that the detectives told to her over the course of the unrecorded ‘pre-interview process.’ (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 10).

Nina Porter now admits that Lana Canen never made any incriminating statements to her about the murder of Ms. Sailor. Ms. Canen never said to her, “Thanksgiving. Thanks for giving death.” (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 14). Ms. Canen likewise never made statements to her about a murder nor did she say that “nobody was supposed to get hurt.” (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 22). Finally, Ms. Canen never confessed to getting money from an old lady to Ms. Porter. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 22-23).

Ms. Porter reveals that the Detectives didn’t just resort to fabricating her statement, they also coerced her into going along with it. At one point in the interview, there were three detectives inches from Ms. Porter’s face, screaming, “Do you want to lose your kids? Do you want to go back to prison?” (*Id.* at 4). These tactics caused Ms. Porter deep fear and anxiety that she would lose her children if she did not cooperate. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 12). Ms. Porter revealed that the officers also threatened to charge her with murder unless she “fess[ed] up.” (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 13). Ms. Porter confessed that she was emotionally “beat up” and drained after these encounters with police. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 12).

Porter eventually agreed to go along with the false statement and testify at trial after police threatened that she could lose her freedom and her children. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Porter Recording Tr. at 18). Ms. Porter felt threatened to testify and believed she had no choice, “had I had a choice, I wouldn’t have said anything. I didn’t

know anything to say.” (*Ex. 4, Affidavit of Nina Porter at 1; Ex. 6, Porter Recording Tr. at 20*). Ultimately, Ms. Porter simply gave the police the information they had given her, even though it was not truthful. (*Ex. 4, Affidavit of Nina Porter at 1; Ex. 6, Porter Recording Tr. at 21*). Ms. Porter ultimately received \$2,000 from Detective Daggy for testifying consistently with her false statement, something that was never disclosed to the defense. (*Ex. 4, Affidavit of Nina Porter at 1; Ex. 6, Porter Recording Tr. at 25; Ex. 7, Chris Crawford Aff. at ¶6*).

B. A Retired Elkhart Lieutenant Reveals Her Belief That Mr. Royer is Innocent, His Statements Coerced, and His Interrogations Video-recorded

Peggy Snider worked as a law-enforcement officer at the Elkhart Police Department for 34 years before retiring in 2017. (*Ex. 13, Peggy Snider Aff. at 1*). Ms. Snider was a Lieutenant during the investigation into Ms. Sailor’s death. (*Id.*) Although Ms. Snider had limited involvement in interviews, she maintained a critical role in the investigation at the time Mr. Royer was charged. (*Id.*)

Ms. Snider spoke with former Elkhart Police Captain Larry Towns on December 24, 2017. (*Ex. 10, Larry Towns Aff. at 1; Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. e.g.*). The contents of this conversation are memorialized in a recording and transcript. (*Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. e.g.*). In that conversation, Ms. Snider first revealed that she always believed in Mr. Royer’s innocence. (*Ex. 10, Larry Towns Aff. at 1; Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. at 8:17-21; 10:8-12*). In her words, “there’s still going to be shit over that because ... we put Andy Royer in

jail for that and I don't think – I don't think Andy did it.” (*Ex. 10, Larry Towns Aff. at 1; Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. at 8:17-21*).

Not only did Ms. Snider reveal her long-held belief that Mr. Royer is actually innocent, but she also indicated in that conversation that Mr. Royer's interrogation was riddled with problems. Ms. Snider attests that she watched some of Mr. Royer's “interview and ... that case was fucked up.” (*Ex. 10, Larry Towns Aff. at 1; Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. at 10:5-7*).

Ms. Snider also confessed her long-held belief that Larry Woods is most likely responsible for the murder of Helen Sailor. (*Ex. 10, Larry Towns Aff. at 1; Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. at 10:8-12*). In the end, Ms. Snider revealed the depth of her pain for Mr. Royer's wrongful-conviction and acknowledged that she “feel[s] bad” because she really believes he is innocent. Indeed, Ms. Snider is “surprised something hasn't happened with that yet.” (*Ex. 10, Larry Towns Aff. at 1; Ex. 11, Peggy Snider Recording; Ex. 12, Peggy Snider Tr. at 15:9-11*).

Ms. Snider later attested to these statements in an affidavit signed on February 4, 2018, approximately six-weeks after her recorded phone conversation with Larry Towns. (*Ex. 13, Peggy Snider Aff. at 1*). In this affidavit, Ms. Snider revealed that “based on [her] involvement with the investigation, [she] came to believe that Andrew Royer was not involved nor responsible for Ms. Sailor's death. Instead, the investigation led [her] to believe that another person, Larry Wood,

was responsible for Helen Sailor's death." (*Ex. 13, Peggy Snider Aff. at 1*).

Significantly, Ms. Snider also revealed that she watched portions of Mr. Royer's interrogation via a closed-circuit television maintained in the Lieutenant's office. (*Ex. 13, Peggy Snider Aff. at 1*). Based on her viewing, Ms. Snider stated:

Andrew Royer's interrogation was one of the worst I have ever seen in my 34 years in the Elkhart Police Department. I believe that most of the information regarding Ms. Sailor's murder was fed to Andrew Royer by Detective Conway. It was clear that Andrew Royer was a vulnerable person. It was obvious that Andrew Royer felt pressured to give a statement, and at the end of the statement Andrew Royer asked Detective Conway if he could go home now.

(*Id. at 1*).

Put simply, Ms. Snider has believed since 2003 that "Andrew Royer's confession was unreliable."⁶ (*Id. at 1*).

C. Detective Daggy Confesses That Mr. Royer's Video-recorded Interrogation Was Among the Worst He Has Seen

In a recorded conversation between former Elkhart Police Captain Larry Towns and lead Detective Daggy on January 3, 2018, Daggy revealed Mr. Royer's interrogation "definitely...was videotaped." (*Ex. 10, Aff. of Larry Towns at 1; Ex. 8, Daggy Recording; Ex. 9, Daggy Recording Tr. at 6*). The video-recording of Mr. Royer's interrogation has never been disclosed.

Detective Daggy also admitted that the Royer interrogation was the worst he

⁶ Ms. Snider had a conversation with the lead interrogator, Detective Carlton Conway, after she gave her recorded audio-statement and subsequent affidavit. (*Ex. 39, Second Snider Aff. at 1*). Apparently, Detective Conway made statements during this conversation that "refreshed" Ms. Snider's "memory on why Andrew Royer was arrested." (*Id. at 1*). Ms. Snider did not recant any of the information provided in her prior recorded statement or affidavit.

had ever seen. (*Ex. 10*, Aff. of Larry Towns at 1). In a subsequent recorded conversation, Detective Daggy elaborated on his rationale for characterizing the interrogation of Mr. Royer in this manner. Detective Daggy stated that the questions in the interrogation were leading, the statements themselves were inconsistent, and Detective Conway fed information to Mr. Royer, in essence telling him what to say. (*Ex. 8*, Daggy Recording; *Ex. 9*, Daggy Recording Tr. at 9). Detective Daggy's recorded and unrecorded admissions help establish that Mr. Royer's confession was false, fabricated, and demonstrates that Detective Conway's testimony at trial was misleading.

D. The Fingerprint Match to Mr. Royer's Co-Defendant, Lana Canen, at Trial Conclusively Excludes Her

As previously discussed, Detective Chapman testified that he was formerly a fingerprint analyst for the FBI where his responsibility was to examine and compare fingerprints. (R. at 677). In this capacity, Detective Chapman allegedly made approximately 100 latent print identifications prior to trial. (R. at 617). As it relates to this case, Detective Chapman claimed that a latent finger print lift from Helen Sailor's medication bottle matched Ms. Canen. (R. at 621-22, 627).

In fact, Detective Chapman was never trained nor qualified to conduct latent print comparisons. In a 2014 deposition, Detective Chapman revealed that he had no training in latent fingerprint comparisons prior to his testimony at Mr. Royer's trial. (*Ex. 40*, Chapman Dep. Tr. at 9-13). He further admitted to misleading the trial prosecutor, Vicky Becker, into believing that he had experience in comparing latent prints. (*Id.* at 32-33; *Ex. 41*, Canen PCR Hearing Tr. at 101-02). When asked

whether he committed perjury at Mr. Royer's trial or just misunderstood the question, Detective Chapman responded that it was "**probably** a misunderstanding." (*Ex.* 40, Chapman Dep. Tr. at 32-33; *Ex.* 41, Canen PCR Hearing Tr. at 101-02).

In fact, Detective Chapman had received no formal training on fingerprint analysis. The only experience Detective Chapman had prior to testifying that Ms. Canen's print "matched" the latent print at the scene of the murder, was comparing known inked prints to other known ink prints. (*Ex.* 41, Canen PCR Hearing Tr. at 101). In other words, Detective Chapman merely looked at name-cards and made sure the names and prints were the same. (*Id.*) Detective Chapman now acknowledges that doing a latent print comparison is more difficult than comparing known prints. (*Ex.* 42, Chapman Aff. at ¶¶17, 19). Put simply, Detective Chapman was never trained by the FBI nor the Indiana Law Enforcement Academy to perform latent print comparisons. (*Id.*) Further, prior to testifying at Mr. Royer's trial, Detective Chapman had never been qualified as an expert on fingerprint analysis before he testified about the Canen latent print comparison. (*Id.*)

In a deposition, Ms. Becker testified that Detective Chapman intentionally lied to her when he claimed to be an expert in latent print comparisons. (*Ex.* 43, Becker Dep. Tr. 85-87). Ms. Becker's "understanding is that he had personally performed over 100 evaluations of latent print comparisons." (*Id.* at 85). To her, Detective Chapman "set himself out to be an individual who could analyze and compare prints." (*Id.* at 83). That belief was false and not supported by the facts.

More significantly, it is now undisputed that the latent print evidence admitted at Mr. Royer's trial was demonstrably false. On October 12, 2012, the Elkhart Circuit Court vacated Ms. Canen's conviction based on a joint motion by defense counsel and the State. The basis for the motion for dismissal was newly discovered evidence about the false fingerprint evidence that the state relied on to convict Ms. Canen. (*Ex. 1*, PCR Opinion at 6-7). Prior to that joint motion, a certified fingerprint examiner from the International Association for Identification testified that the unknown latent fingerprint found in Ms. Sailor's apartment did not match Ms. Canen. (*Ex. 41*, PCR Hearing Tr. at 6-7). Further, Dennis Chapman, the original fingerprint examiner, testified that he re-examined the latent print and conceded that his original testimony at trial was wrong. (*Id.* at 7). Chapman also admitted that he had never been certified as a latent print examiner. (*Id.* at 77).

According to Ms. Becker, the fact that the latent print found in Ms. Sailor's apartment excluded Ms. Canen was game-changing evidence. In her words, "Obviously, you know, this is a major problem..." (*Ex. 43*, Becker Dep. Tr. at 44:1-2). The following examination of Ms. Becker is illustrative of how impactful the newly discovered evidence was:

Q: Would you agree that had Mr. Chapman testified at the criminal trial for Lana Canen that the thumbprint which was being examined did not match Lana Canen, that that most likely would have caused a different outcome?

A: Yes, I do.

(*Ex. 43*, Becker Dep. Tr. at 45:5-11).

Ms. Becker ultimately determined that her office did “not feel that it is appropriate use of resources to attempt to retry Ms. Canen for this case given what has occurred.” (*Id.* at 46:21-25). In her view, it was unlikely that a conviction would have been obtained without the fingerprint match. (*Id.* at 47:11-12).

E. According to an Oaklawn Employee, Mr. Royer Suffered Severe Mental Health Issues and Was Vulnerable to Giving a False Confession

Mr. Royer began receiving mental health treatment at Oaklawn - a mental-health and addiction services organization - well before becoming a suspect in Ms. Sailor’s death. Though Mr. Royer was diagnosed with Schizoaffective disorder, depression, and a personality disorder prior to giving a false confession, no evidence was presented at trial regarding his serious vulnerabilities and mental-health issues. Prior to trial, Mr. Royer’s defense counsel did not speak to a single mental health professional. Following Royer’s murder conviction, witnesses have revealed significant information bolstering Mr. Royer’s claim that his confessions were false. (*Ex.* 26, Aff. of Rudolph Gourdine at 1-4).

Rudolph Gourdine worked at Oaklawn for more than 30 years. (*Id.* at 1). While there, Mr. Gourdine was a Chaplain and case manager whose responsibilities included meeting with patients on a regular basis. (*Id.* at 1). Mr. Gourdine assisted in treating Mr. Royer for more than a year and remembers him “very well.” (*Id.*)

According to Mr. Gourdine, Mr. Royer’s mental health issues impacted his “cognitive functioning” prior to his interrogations in 2003. (*Id.* at 1). Based on his

recollection and review of Oaklawn medical records, Mr. Royer was compliant with taking medication prior to his questioning by Detectives. (*Id.* at 1-2). As discussed above, Elkhart police did not provide Mr. Royer with his medication prior to subjecting him to a lengthy and stressful interrogation for murder. Mr. Gourdine reveals that the lack of medication for someone like Mr. Royer can have “catastrophic consequences” as the “lack of medication can cause the patient’s paranoia...to set in more.” (*Id.* at 2). Based on his experience, “someone with Mr. Royer’s diagnosis would tend [to] relieve a stressful situation, like an interrogation for murder, by staying whatever the interrogator would want to hear, just so he or she could be out of that situation.” (*Id.* at 2).

Mr. Gourdine’s belief is confirmed by Mr. Royer’s medical records. According to a November 2002 medical report, Mr. Royer had poor eye contact and insight during conversations with Oaklawn staff and was described as “vulnerable” and “shy.” (*Id.* at 2). Additionally, Mr. Royer had difficulty “analyzing and comprehending” conversations. (*Id.* at 2). Based on his experience and review of medical records, Mr. Gourdine attests that Mr. Royer was “severely disabled” in September of 2003 and “could be easily persuaded to repeat anything a person of authority would ask him to say, especially in a stressful situation.” (*Id.* at 2). Although Mr. Gourdine’s name was referenced in police reports, Mr. Royer’s counsel never made any attempts to speak to him prior to trial. (*Id.* at 3). As such, the jury was never presented with this significant information supporting Mr. Royer’s contention that he is actually innocent and that his

confession was false.

F. Jerome Johnson Admits Mr. Royer Was Not At His Apartment on Thanksgiving With Lana Canen

Jerome Johnson testified at trial that “Lana and Andy stopped by” his apartment in the late-evening hours of Thanksgiving (R. at 432). According to his testimony, “Andy knocked about midnight” and was let into the apartment. (R. at 432). Mr. Johnson’s damning testimony placing Mr. Royer with Ms. Canen on the evening of the murder was significant evidence used to obtain Royer’s murder conviction. In a recently obtained affidavit, Mr. Johnson recants his trial testimony and reveals that he was coerced into testifying falsely.

In fact, Mr. Johnson did not have “any visitors on Thanksgiving Day or that evening.” (*Ex. 25, Johnson Aff. at 1*). Mr. Johnson initially told the police that he did not have any visitors on Thanksgiving and was unaware of who was involved in the murder. (*Id.*) Mr. Johnson now reveals that detectives “hounded” him for nearly six months to change his statements, and at one point, Detective Conway threatened to charge him with murder. (*Id.*) Ultimately, Mr. Johnson succumbed to police pressure and falsely testified at trial that he met with Royer and Canen at his apartment on the evening of the murder. (*Id. at 1-2*).

G. One of The World’s Foremost False Confession Experts Opines that Mr. Royer’s Confession Bears the Common Characteristics of a False Confession

Dr. Richard Leo, a Social Psychologist and Associate Professor of Law at the University of San Francisco School of Law, opines that Mr. Royer’s confession

has many of the common characteristics of a false confession.⁷ (*Ex.* 41, PCR Hearing Tr. at 61). A recently obtained affidavit from Dr. Leo supports the Petitioner pending before this Court. (*Ex.* 19, Dr. Richard Leo Aff. at 1-6).

1. Dr. Leo’s Testimony at Mr. Royer’s Original PCR Hearing

At Mr. Royer’s hearing on his Petition for Post-Conviction Relief, Dr. Leo testified that that his research specializes in the discipline of social psychology and criminology on police, police investigation, and, more specifically, police interrogation and confessions. ((*Ex.* 41, PCR Hearing Tr. at 28). Based upon his research, training, and experience, Dr. Leo stated that educating a lay jury that false confessions occur is the most difficult part of litigating a false confession case. (*Id.* at 35). In his words, “there’s great skepticism that an innocent person would make a false confession... .” (*Id.*)

Dr. Leo also explained how police interrogation is designed to be psychologically coercive by utilizing various techniques, several of which were utilized during Mr. Royer’s interrogation, including: (1) lying to the suspect; (2) repeated refusal to accept the suspect’s denials; and (3) the length of the interrogation. (*Id.* at 41, 59). As if that weren’t enough, Dr. Leo reveals that common characteristics – such as having a low I.Q. and mental illness - often render a suspect more vulnerable to these techniques. According to Dr. Leo, Mr.

⁷ Dr. Leo is a world-renowned expert in false-confessions and possesses a Ph.D. in Jurisprudence and Social Policy (specializing in criminology and Social Psychology) from the University of California, Berkley; a J.D. from the University of California Berkley, an M.A. in Sociology from the University of Chciago; and a B.A. in Sociology from the University of California, Berkley. (*Ex.* 44, CV of Dr. Richard Leo).

Royer possessed many of the characteristics rendering him vulnerable to a coercive interrogation, including his diagnosis with schizophrenia, adult autism, depression, and low cognitive functioning. (*Id.* at 59).

Dr. Leo opined that another step used to assess whether a confession is reliable is the “fit.” According to Dr. Leo, “fit” is how well the facts in the confession match the known facts of the actual crime. (*Id.* at 52). In his testimony, Dr. Leo identified several areas where Mr. Royer’s confession did not fit with the known facts of the crime scene: 1) Mr. Royer claimed to have cleaned and straightened the scene to make it look ordinary; however, witnesses testified at trial that the apartment was a mess and the victim’s drawers were pulled out and dumped, (*Id.* at 60; 2) Mr. Royer stated that he cleaned the blood with towels yet evidence technicians discovered no blood at scene or bloody towels, (*Id.* at 60); 3); Mr. Royer claimed to have pawned the jewelry supposedly taken from Ms. Sailor’s apartment at a local pawnshop, yet the store had no record of any such transaction, (*Id.* at 61) and, finally, 4) Mr. Royer initially claimed to have left the body in the kitchen while it was actually recovered in the bedroom. (*Id.* at 61). Through suggestive prompting by Detective Conway, Mr. Royer ultimately changed his statements to “fit” the crime-scene.

Significantly, Dr. Leo testified that it was impossible to determine if facts were provided to Mr. Royer or whether he possessed information that would only be known to the true-killer (or the investigating officers) because the police claimed that they had failed to record the initial five and a half hours of the

interrogation where false confession contamination may have occurred. (*Id.* at 114). Though Mr. Royer’s initial Petitioner for Post-Conviction Relief was denied, significant new evidence has been discovered which strengthens and supplements his original petition and requires further consideration by this Court.

2. Due to the Newly Discovered Evidence, Dr. Leo Submits a Supplemental Affidavit Opining that Mr. Royer’s Confession is Likely False

Dr. Leo has reviewed much of the additional evidence supporting Mr. Royer’s claims and attests in a recently obtained affidavit that “the new evidence reviewed both reinforces” his earlier opinions that the “statements by Mr. Royer display many of the characteristics associated with a false confession...” (*Ex.* 19, Dr. Richard Leo Aff. at 3). Based on this new evidence from Lt. Snider and Detective Daggy, Dr. Leo also opines that “Detective Conway contaminated Mr. Royer’s interrogations and subsequent statements. Contamination is one of the characteristics associated with a false confession.” (*Id.* at 3-4). Because of this, Dr. Leo believes that the contamination of Mr. Royer’s statements “bolsters” his earlier belief that the statements given by “Mr. Royer display many of the characteristics associated with a false confession.”⁸ (*Id.* at 6).

⁸ The State’s reliance on Mr. Royer’s false confessions at trial is absolutely misplaced. For starters, the Reid Technique – admittedly used by Detective Conway – has been resoundingly rejected by numerous Courts. Courts have long expressed concern about approaches such as the Reid Technique that rely on psychological coercion. Just four years after the first edition of the manual was published, *Inbau et al., supra, at ix*, the Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), “repeatedly cited and implicitly criticized” the Reid approach. *Gohara, supra, at 808 n.93; Miranda*, 384 U.S. at 457, 86 S.Ct. 1602 (“To be sure, this is not physical intimidation, but it is equally destructive of human dignity.”). *Miranda* commented that the Court for

H. Friends and Family of Mr. Royer Dispute State's Supposed Motive at Trial and Reveal Mr. Royer's Counsel Never Spoke to Them

The State argued at Mr. Royer's trial that his motivation for murdering Ms. Sailor was money. (R. at 722). This theory was partially based on the confession Detective Conway elicited from Mr. Royer during the September 3, 2003 interrogation. (*Ex. 45*, Royer First Interview Transcript at 4). But a second motivation, Mr. Royer's supposed frustration with religious discussions during his Thanksgiving meal with family, was developed during his September 4, 2003 interrogation. (*Ex. 46*, Royer Second Interview Transcript at 2). For example, Mr.

decades had "recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Id.* at 448, 86 S.Ct. 1602 (*quoting Blackburn v. Alabama*, 361 U.S. 199, 206, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960)).

Nothing in that respect has changed: the Court continues regularly to hold that psychological coercion can render a confession involuntary. *Arizona v. Fulminante*, 499 U.S. 279, 287–88, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); *Miller v. Fenton*, 474 U.S. 104, 109, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). Following the Supreme Court's guidance, we too have repeatedly recognized that "psychological coercion alone can result in an involuntary confession" *United States v. Lehman*, 468 F.2d 93, 100 (7th Cir. 1972) (conceding that "subtle psychological ploys" can render a confession involuntary); *Etherly v. Davis*, 619 F.3d 654, 663 (7th Cir. 2010) (considering possible psychological coercion as part of the totality test, while noting the need to distinguish between coercion, on the one hand, and encouragement to tell the truth, on the other); *United States v. Villalpando*, 588 F.3d 1124, 1128 (7th Cir. 2009) ("[A] false promise of leniency may render a statement involuntary"); *United States v. Dillon*, 150 F.3d 754, 757 (7th Cir. 1998) ("A confession is voluntary if, in light of the totality of the circumstances, the confession is the product of a rational intellect and free will and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will."); *Burns v. Reed*, 44 F.3d 524, 527 (7th Cir. 1995) (describing the "body of due process case law, which generally proscribes the physical or psychological coercion of confessions" as "well-established, albeit heavily fact-dependent").

Royer provided the following account during the second day of his interrogation:

Detective Conway: Now we talked a little bit about your family. What took place at your family's house on Thanksgiving?

Royer: Oh..it was a lot of..uh pressure going on there. There w..um..there's talking about ..uh..God is this and God is that and it was really depressing me...

Detective Conway: So tell me, did you kind of feel like they were telling you you're living life wrong? That you were doing something wrong?

Royer: Yes...they made me kind of feel like I was (clears throat) an outcast or that I didn't know what was going on...

(*Id.*)

* * * * *

Detective Conway: Did you knock on the door?

Royer: Yes I knocked on the door and...cause I wanted to talk to her...about some issues..

Detective Conway: And what are these issues?

Royer: Uh..about um..(coughs)..uh..just certain religions and uh..i was kind of feelin' like I had to be a part of it all or something and I was really intruding on her..uh business.

(*Id.* at 4).

The State ostensibly avoided this theory at trial, aided by Mr. Royer's attorney, who did no investigation into whether the motivations – be it money or religion - were true. (*Ex. 7, Chris Crawford Aff. at ¶¶ 8,9*). Although defense counsel argued to the jury that Mr. Royer's confessions were false, he did no factual investigation and presented no evidence at trial to prove their falsity. (*Id.*)

New evidence debunks both motive theories. As shown in a half-dozen affidavits, individuals with Mr. Royer on Thanksgiving in 2002 aver that he never asked for money earlier that day and there were no discussions involving religion. (*Ex.* 14, Jeannie Pennington Aff. at ¶8-10; *Ex.* 16, Sylvia Pennington Aff. at ¶3-6; *Ex.* 16, Norman Pennington Aff. at ¶5-7; *Ex.* 17, Ashley Colón Aff. at ¶4-6; *Ex.* 18, Daniel Royer Aff. at ¶2-4). Indeed, Mr. Royer’s mother revealed that “Andy was in a pleasant mood during Thanksgiving of 2002” and provided a photograph “that was taken after our Thanksgiving meal. As you can see in the photograph⁹, Andy was happy that day.” (*Ex.* 14, Jeannie Pennington Aff. at ¶7; *Ex.* 47, 2002 Thanksgiving Family Photo).



The jury never saw the photograph of Mr. Royer at trial. They likewise never heard from a single witness who was with Mr. Royer on Thanksgiving. Shockingly, defense counsel did not speak with any of these individuals prior to trial. (*Ex.* 14,

⁹ Mr. Royer is the third individual in the top row.

Jeannie Pennington Aff. at ¶12; *Ex.* 15, Sylvia Pennington Aff. at ¶3-6; *Ex.* 16, Norman Pennington Aff. at ¶8; *Ex.* 17, Ashley Colón Aff. at ¶7; *Ex.* 18, Daniel Royer Aff. at ¶5; *Ex.* 7, Crawford Aff. at ¶9). As such, none were given an opportunity to disprove Mr. Royer's false confessions – and the State's alleged theories of motivation - for this crime.

I. The Jury Likewise Never Learned Significant Evidence Implicating Larry Wood In The Murder of Ms. Sailor

The jury never learned at trial that the police had identified two alternative murder suspects, Larry Wood and Mr. Thomas. Although the State disclosed a number of police reports revealing their investigation into those suspects, Mr. Royer's attorney declined to introduce any evidence at trial about these suspects. Mr. Crawford also did not conduct any investigation into alternate suspects nor call a single witness to testify about Mr. Wood's or Mr. Thomas' likely involvement in the murder. (*Ex.* 7, Chris Crawford Aff. at ¶10; *Ex.* 48, Trial Tr. e.g.) Even worse, when Elkhart police officers testified at trial that no alternate suspects existed, Mr. Crawford failed to cross-examine them on the matter. In fact, he declined to confront their arguably perjured testimony in any respect.

In a recently obtained affidavit, former Elkhart police officer Peggy Snider revealed her long-held belief that Mr. Wood likely killed Ms. Sailor. (*Ex.* 13, Snider Aff. at 1). This revelation, alone, is compelling exculpatory evidence of Mr. Royer's innocence. Petitioner urges this Court to also consider the significant evidence that Ms. Snider used to form her opinion – evidence that the jury never

heard and is compelling enough to likely change the result on retrial.

a. Lieutenant Peggy Snider Recently Revealed Her Belief That Larry Wood Is Responsible for Ms. Sailor's Death

Lieutenant Peggy Snider was involved in the investigation into Helen Sailor's death. Lt. Snider was present at the crime-scene on November 29, 2002 and participated in a number of witness interviews, including but not limited to: (1) George Colwell, (*Ex.* 20, Police Reports at 158); (2) Russ Rhoades, (*Id.*); (3) Mary DeJong, (*Id.* at 170); (4) Geneva West, (*Id.* at 182-186); (5) Lana Canen, (*Id.* at 198-199); (6) Charles Lambert, (*Id.* at 204); and (7) Bret Canen, (*Id.* at 284). Ms. Snider made a number of supervisory decisions as well. For instance, she requested to have the medication bottles "processed for latent impressions" and obtained a warrant to search Mr. Royer's residence. (*Id.* at 41, 46; *Ex.* 49, Search Warrant at 430-431). As Ms. Snider's recent affidavit reveals, she also witnessed Mr. Royer's interrogation session. (*Ex.* 13, Snider Aff. at 1). As such, Ms. Snider was intimately familiar with the investigation into Ms. Sailor's death.

Based upon her knowledge of the investigation, Ms. Snider "came to believe that Andrew Royer was not involved nor responsible for Ms. Sailor's death." (*Ex.* 13, Snider Aff. at 1). Even more, Ms. Snider states in her affidavit that the "investigation led [her] to believe that another person, Larry Wood, was the person responsible for Helen Sailor's death." (*Id.*) As is discussed below, her opinion is based upon significant evidence implicating Mr. Wood.

b. Police Discovered That Larry Wood Drank a Red Substance on Thanksgiving, Recovered Bloody Shoes From His Apartment, and Learned He Was The Last Person Seen With Ms. Sailor

Larry Wood lived in the Highrise at the time of Ms. Sailor's death and was questioned almost immediately after her body was discovered. (*Ex. 20*, Police Reports at 150-151). During the initial interview, Mr. Wood confessed that "he knew the victim, was familiar with her, and knew she was blind." (*Ex. 20*, Police Reports at 150). Mr. Wood conveyed that on the day of the murder he saw Ms. Sailor dropped off at her apartment in the late afternoon and "got up and pushed the bottom to the entrance door to allow her entry." (*Id.*) Although Mr. Wood initially denied going into Ms. Sailor's apartment, he later admitted that it was possible he went on the elevator with her, walked her home, and even assisted her inside. (*Ex. 20*, Police Reports at 164). According to Mr. Wood, he returned to watch television with David Stancil after encountering Ms. Sailor.¹⁰

The detectives further learned during this interview that Mr. Wood was the delivery person with Seifert Drugs and was responsible for delivering prescription medication to Ms. Sailor and the other residents in the Highrise. (*Ex. 20*, Police Reports at 150). Put simply, Mr. Wood had regular contact with Ms. Sailor.

Detectives Hammel and Thayer ultimately searched Mr. Wood's residence during their initial encounter with Wood. (*Id.* at 164) There, the detectives discovered a bowl on the his countertop that "appeared to have some residue of

¹⁰ David Stancil was later interviewed and informed Detective Conway that he was not present at the Highrise during the time-period that Wood encountered Ms. Sailor and could not have watched television with Wood at that time. (*Ex. 20*, Police Reports at 260).

red juice or punch.” (*Id.*) Importantly, as stated above, a reddish substance – similar to that found in Mr. Wood’s sink - was discovered on Ms. Sailor’s body. Mr. Wood claimed that “he had made red kool aid or punch for Thanksgiving, which he had drank.” (*Id.*)

The officers also found a pair of Mr. Wood’s shoes that had “some brown stains on the inside” during their search of the residence. (*Ex.* 20, Police Reports at 150). According to the officers, the stains “appeared as though they could have been blood.” (*Id.*) After noticing the stains, Detective Thayer put the “pair of Woods shoes on his notebook. When he moved them they left an oily residue. It also appeared that there was blood on the inside such as would be made by fingers or thumbs when putting them on.” (*Id.* at 164). Detective Christian documented that Mr. Wood’s shoes “were taken and tested positive after luminol.” (*Id.*) Because Mr. Wood’s shoes contained oil¹¹ and blood, the investigating officers recovered them as evidence. (*Id.* at 150).

After witnessing the results of the Luminol testing, Mr. Wood claimed that he “cut his finger cutting tomatoes the day before Thanksgiving.” (*Id.* at 164). When confronted with the oily substance – similar to that found at the crime-scene – Mr. Wood retorted that he likely “walked through oil on the road by the railroad tracks” but could not name a single road to the officers. (*Id.*) The detectives reports indicate that Mr. Wood appeared to be “very nervous” and asked if he was in trouble. (*Id.* at 150).

¹¹ As is discussed *supra*, an oily substance was found on Ms. Sailor’s body at the crime-scene.

c. Elkhart Detective Todd Thayer Returns Bloody and Oily Shoes Without Requesting Further Testing or Comparison

Although Larry Wood was the last person seen with Ms. Sailor prior to her death - and in spite of the fact that he had bloody shoes which contained an oily substance - a 2003 report from Detective Christian reveals that Detective Thayer returned Mr. Wood's shoes without submitting them for further testing. (*Ex. 20, Police Reports at 164*). According to Detective Christian's report, the bloody shoes were never submitted to the Indiana State Crime Laboratory to determine whether the blood was Ms. Sailor's. (*Id.*)

d. According to a Never Before Disclosed Polygraph Document, Larry Wood Confessed to Strangling Sailor

Mr. Wood was taken to the Elkhart Police Department on December 12, 2002 for questioning. (*Ex. 20, Police Reports at 254*). There, Mr. Wood "fell to his knees and began to cry" just prior to entering the examination room. (*Id.*) According to a November 6, 2003 report – drafted more than a year later than the underlying examination - Mr. Wood was uncontrollable "because of the stress of being at the Police Department and from being listed as a possible suspect in this case." (*Id.*)

At 9:45 a.m., Mr. Wood signed a waiver of Miranda rights form in the presence of Detective Coppins. (*Ex. 20, Police Reports at 821*). That same day, Mr. Wood answered a series of questions posed to him. (*Ex. 21, Larry Wood Polygraph Sheet at 822*). Shockingly, according to Examiner Coppins, Mr. Wood made the following admissions during his truth verification examination:

Q: (R) Do you have any specific knowledge of who strangled Helen?

A: Yes

Q: (R) Did you strangle Helen?

A: Yes

(Id.)

According to a document created by Examiner Coppins, Mr. Wood confessed to strangling Mr. Sailor. This document was never disclosed to Mr. Royer or his defense team.

e. After Mr. Royer is Charged, Coppins Creates Report Contradicting Mr. Wood's 2002 Confession

On December 31, 2003, more than two months after the initiation of charges against Mr. Royer, Detective Coppins documented his prior truth verification examination of Larry Wood. (*Ex. 20, Police Reports at 254-255*).

Examiner Coppins report contains the following information:

I formulated two relevant questions. Question #4 was "Do you have any specific knowledge of who strangled Helen?" which he replied no. The second relevant question was "Did you strangle Helen?" and his verbal response again was no."

(Id.)

Put simply, Coppins' report is inapposite to the December 12, 2002 document listing Mr. Wood's confession. (*Ex. 21, Larry Wood Polygraph Sheet at 822*).

f. Either Larry Wood Confessed to Coppins or He Denied Involvement And Failed the Polygraph

Under either scenario, police obtained significant evidence against Mr. Wood through his truth verification examination on December 12, 2002. In this way, if Examiner Coppins results are true in his 2003 report, namely, that Mr. Wood “showed extreme amounts of stress” when he denied killing Ms. Sailor, then Mr. Wood would have simply failed the examination. (*Ex. 20*, Police Reports at 254). Thus, the State would be mistaken if they attempt to argue that Mr. Wood’s documented confession to Coppins was simply inaccurate and that the 2003 report should instead be credited. Indeed, as shown above, significant evidence from Wood’s 2002 examination still implicates him in the murder.

More importantly, Coppins’ November 2003 report demonstrates that the Elkhart Police Department went out of their way to rationalize Mr. Wood’s shocking behavior – and potential reasons for supposedly failing the examination – in an effort to mitigate his viability as a murder suspect at Royer’s criminal trial.¹² (*Ex. 20*, Police Reports at 254-255). In so doing, Coppins claims that the extreme stress by Mr. Wood throughout the examination was meaningless as “this would have been due to his emotional state of mind and his mental status or because he was simply the murderer” and opined that the test results were “inconclusive.” (*Id.* at 254-255). According to an expert report by William Endler, Coppins’ is wrong. (*Ex. 50*, Endler Aff. at 1; *Ex. 51*, Endler CV). In a recently

¹² By this time, the Elkhart Police Department had already initiated charges against Mr. Royer and Ms. Canen, thus providing an incentive to provide cover for Mr. Wood’s potential culpability.

obtained affidavit, Mr. Endler, a former Elkhart Detective and an expert in truth verification testing, opines that Larry Woods' failed the examination because deception was indicated. (*Id.*)

g. Mr. Wood Refuses to Cooperate with Police

Mr. Wood ultimately refused to cooperate with police. For example, Detective Conway documented in his October 16, 2003 report that Mr. Wood refused to come to the police station. (*Ex. 20, Police Reports at 241*). A week later, on October 22, 2003, Detective Conway again attempted to obtain a formal statement from Mr. Wood in order to document the delivery practices of Seifert Drugs, but Mr. Wood “refused to speak...without an attorney present.” (*Id.* at 265). Eventually, Mr. Wood again refused to cooperate and stated that “he would contact [Conway] when he is able to afford an attorney.” (*Id.*)

Although Mr. Wood was the last person seen with Ms. Sailor, had bloody shoes with an oily residue on them, and either failed a polygraph examination when he denied involvement or outright confessed – depending on which Coppins' report is credited – Detective Conway stopped his “attempts at speaking to Wood” in October of 2003 because he did not “foresee Wood retaining an attorney.” (*Id.* at 245). Notably, at the time Detective Conway gave up on questioning Wood – an obvious suspect in the homicide – he had already obtained a false confession from Mr. Royer and a fabricated statement from Ms. Porter. Put simply, since Mr. Conway had already closed his case against Mr. Royer and Ms. Canen, there was no need to continue building a case against Mr. Wood – even though significant

evidence indicated that he killed Ms. Sailor.

h. After Charges Are Initiated Against Mr. Royer, Detective Thayer Manufactures Report Claiming that Testing Was Conducted on Mr. Wood's Shoes Prior to Their Return

Detective Thayer also affirmatively altered written reports regarding the criminal investigation into Mr. Wood after charges were filed against Mr. Royer. On December 31, 2003, four months after charges were initiated, Detective Thayer created a document entitled "additional information," (*Ex. 52*, Thayer Document at 281), which is neither on Elkhart Police Department letterhead nor in the form of a legitimate police report. (*Id.*)

Detective Thayer claims in this correspondence that he brought Mr. Wood's shoes to Detective Joel Bourdon at the Elkhart Police Department to conduct Luminol testing. (*Id.*) According to Detective Thayer's report - written thirteen months after retrieving Mr. Wood's shoes - "no areas of the shoes reacted in a positive test for possible blood." (*Id.*) Even more, "the tread pattern of the shoes were also visually examined and compar[ed] to latent shoe impressions left at the crime scene. It was determined that the tread pattern did not match the latent impressions." (*Id.*) Significantly, not a single report from the Elkhart Police Department indicates that Detective Bourdon actually requested or tested Mr. Wood's shoes in any way. And as discussed *supra*, Detective Christian provided a detailed account of the Luminol testing conducted on Mr. Wood's shoes during the November 29, 2002 visit, which directly contradicts Thayer's account.

Detective Thayer further claims in his correspondence that although he

intended to return the shoes after the tests were conducted, he did not “know when or if the shoes were returned to Woods, nor the whereabouts of the shoes at this time.” (*Id.*) It should further be noted that Detective Thayer’s document was created long after Detective Christian’s report. There is no legitimate explanation for this delay. More importantly, Detective Thayer only created this correspondence as the Elkhart Police Department was working to obtain Mr. Royer’s conviction.

J. Significant Evidence Implicates Convicted Murderer Tony Thomas in Ms. Sailor’s Death

Prior to the creation of the homicide unit at the Elkhart Police Department in 2003, police learned that a convicted killer named Tony Thomas was lurking inside the Highrise at the time Ms. Sailor was murdered. Recently obtained affidavits from James Cassity and Robert Hogan shed light on Mr. Thomas’ strange behavior prior to Ms. Sailor’s death. According to Mr. Cassity, Thomas was “belligerent,” high, and desperate for money an hour prior to Ms. Sailor returning home. (*Ex. 53, New Cassity Aff. at ¶10-14*). Similarly, Robert Hogan attests in an affidavit that Mr. Thomas was acting strangely on the Highrise elevator around the same time as Ms. Sailor returned home. (*Ex. 54, New Hogan Aff. at ¶5-13*). The jury, of course, heard none of this information because Mr. Royer’s attorney failed to conduct an investigation into Mr. Thomas. (*Ex. 7, Chris Crawford Aff. at ¶10*).

a. Original Investigators Suspect That Tony Thomas Was Responsible for Murder of Helen Sailor

At some point, Elkhart officers also suspected that Tony Thomas, a convicted murderer from Arkansas, was responsible for Ms. Sailor's death. Detective D'Andre Christian spoke to a number of witnesses who directly implicated Mr. Thomas in the murder and placed him on a Highrise elevator at the same time that Ms. Sailor was last seen, perhaps not coincidentally, entering an elevator.

At the time of Ms. Sailor's murder, Mr. Thomas' grandmother, Alberta Wolfe, lived in Apartment 300 of the Highrise complex. (*Ex.* 20, Police Reports at 154). Significantly, Ms. Wolfe was out of state for Thanksgiving and provided Mr. Thomas with a key so that he could clean her apartment and feed the fish. (*Id.*) By the time of Ms. Sailor's death, Mr. Thomas had already served more than a decade in an Arkansas prison for murder. (*Id.*) Detective Christian obtained affidavits from Eunice "Judy" Miller and James Cassity on December 9, 2002. (*Ex.* 23, James Cassity Aff. at 1; *Ex.* 22, Eunice Miller Aff. at 1). Collectively, these affidavits reveal significant information about the whereabouts and demeanor of Tony Thomas on the date that Ms. Sailor was killed.

At the time of Ms. Sailor's death, Eunice Miller was a resident on the Highrise. (*Ex.* 22, Eunice Miller Aff. at 1). On Thanksgiving 2002, Ms. Miller was at her apartment with Mr. Cassity. The Detective learned from both individuals that Mr. Thomas was "not good" when he knocked on Eunice's door around 2:00 p.m. (*Ex.* 22, Eunice Miller Aff. at 1). Mr. Thomas revealed that he had been

living in his car for three months and was only able to fight off the cold weather with blankets. (*Id.*) Mr. Thomas was so distraught over his situation that Ms. Miller “took his hand, knelt down and prayed with him.” (*Id.*)

Ms. Miller ultimately invited Mr. Thomas to Thanksgiving dinner. (*Id.*; *Ex. 23, James Cassity Aff. at 1*). After Mr. Thomas left, Ms. Miller asked Mr. Cassity to hide her purse because Mr. Thomas’s “behavior made [her] concerned enough that [she] wanted her purse protected.” (*Id.*) Ms. Miller revealed to Detective Christian that “something was not right with Tony” on the day that Ms. Sailor was killed. (*Id.*) Mr. Cassity corroborated Ms. Miller’s account. (*Ex. 23, James Cassity Aff. at 1*).

Mr. Thomas was “belligerent” and “sniffing” when he eventually returned to Ms. Miller’s apartment. (*Ex. 23, James Cassity Aff. at 1; Ex. 22, Eunice Miller Aff. at 1*). By that time, Mr. Thomas was high and stated he was “not going to the mission.” (*Id.*) Nonetheless, Ms. Miller eventually invited Mr. Thomas to Thanksgiving dinner and asked for him to meet in the lobby at 4:45 p.m. (*Id. at 2*). Having waited an additional 15 minutes, Ms. Miller and Mr. Cassity eventually left the building at 5:00 p.m. without Mr. Thomas. (*Id. at 2; Ex. 23, James Cassity Aff. at 1*). Upon returning, Mr. Cassity attempted to leave a plate of food for Mr. Thomas at his grandmother’s apartment around 11:00 p.m. but the knocks went unanswered. (*Ex. 22, Eunice Miller Aff. at 2; Ex. 23, James Cassity Aff. at 1*). Mr. Thomas was wearing a green army jacket, jeans, and black slippers on November 28, 2002. (*Ex. 22, Eunice Miller Aff. at 2; Ex. 23, James*

Cassity Aff. at 1). Ms. Miller was able to positively identify Mr. Thomas in a photo-array. (*Ex.* 22, Eunice Miller Aff. at 2).

b. Affidavit From James Cassity Unearths Newly Discovered Evidence Implicating Thomas in the Sailor Homicide

On May 30, 2018, Mr. Cassity signed an affidavit corroborating his earlier accounts to police implicating Tony Thomas and revealed significant new information not disclosed to the defense prior to trial. (*Ex.* 53, New Cassity Aff. at 2). Mr. Cassity states he told an Elkhart Detective in December of 2002 that he believed Tony Thomas was responsible for the murder of Ms. Sailor because he was so belligerent and irrational on the day of the murder. (*Id.*)

c. Robert Hogan Informs Investigators That a Person Matching Tony Thomas' Description Was Acting Erratically on High-rise Elevators Around the Time Ms. Sailor Returned to the Building

Another Highrise resident, Robert Hogan, signed an affidavit for police revealing a “suspicious” person on the Highrise elevator around 5:30 p.m. on Thanksgiving. (*Ex.* 24, Robert Hogan Aff. at 1). At the time he arrived on the elevator, Mr. Hogan saw a black male wearing “a green army coat, green arm[y] hat with a brim all the way around.” (*Id.*) Based on the descriptions provided by Ms. Miller and Mr. Cassity, police correctly believed that the description matched Tony Thomas. (*Ex.* 24, Robert Hogan Aff. at 1). Mr. Hogan informed the police that Mr. Thomas “stopped on each floor and...poked his head out and looked into the hallway.” (*Id.*) After each stop, Mr. Thomas claimed he had the wrong floor and remained on the elevator after Mr. Hogan exited. (*Id.*) Mr. Hogan believed

the individual he saw was “a crack head” that “didn’t seem to know where he was or what he was doing.” (*Id.*)

d. Robert Hogan Reveals New Information Regarding Police Investigation in Recently Obtained Affidavit

Significant new evidence was unearthed in a recently obtained affidavit from Mr. Hogan. (*Ex.* 54, New Hogan Aff. at 1). In this affidavit, Mr. Hogan first confirmed the account he originally provided to police in 2002. (*Id.* at 1-2). In addition, Mr. Hogan revealed that the police informed him that they already had a suspect and that “their suspect had been inside Helen Sailor’s apartment many times, and delivered her medicine to her apartment.” (*Id.* at 2). This, of course, is inapposite to the testimony by Elkhart officers at trial when they – one by one – denied that any suspects existed early in the investigation. Additionally, Mr. Hogan revealed that no attorney or investigator spoke to him prior to trial on Mr. Royer’s behalf. (*Id.* at 2). Mr. Crawford confirmed as much in his recent affidavit. (*Ex.* 7, Chris Crawford Aff. at ¶10).

e. Former Highrise Manager, Geneva West, Reveals Significant Information Implicating Thomas in Affidavit

Geneva West worked for the Elkhart Housing Authority during the time of the Sailor homicide investigation. (*Ex.* 55, Geneva West Aff. at ¶2). At the time, Ms. West was assigned to manage the Highrise in addition to other properties in Elkhart. (*Id.*) Ms. West remembers Mr. Thomas well, as she “had problems with Tony throughout” her entire time with the housing authority. (*Id.*) According to Ms. West, Mr. Thomas “strongly believed that Tony was living in his

grandmother's...apartment.” (*Id.* at ¶8). Ms. West came to this realization because Mr. Thomas was at the Highrise “all the time.” (*Id.* at ¶9). In her recent affidavit, Ms. West revealed that the “Housing Authority’s file will have a lot of write-ups...regarding Tony Thomas. He was a nuisance to the building and the residents that lived there.” (*Id.* at ¶9).

f. August 2003 Report Refers to Undisclosed Interview and Polygraph Examination of Thomas in 2002

Though the State has never disclosed any report or recording regarding questioning of Tony Thomas, according to an August 8, 2003 report, an interview did take place. (*Ex.* 20, Police Reports at 164). The limited summary report now disclosed reveals that Mr. Thomas declined to join Eunice Miller for Thanksgiving because “he already had other plans.” (*Id.*)

According to Detective Christian’s report, Mr. Thomas said that “after visiting with Eunice he watched the football game in apartment 312 and left the building between 4:00 - 5:00 p.m.” but did not encounter anyone on an elevator in the process. (*Id.*) Mr. Thomas then claimed that he stopped at the residences of Margaret Haugs and Angie Nolan after leaving the Highrise before attending a “party at an unknown address on Cleveland.” (*Id.*) Mr. Thomas’ account of his whereabouts conflicts with the affidavits and statements obtained from Eunice Miller and James Cassity. Additionally, Mr. Thomas’ claim that he did not see anyone on an elevator is likewise in conflict with Mr. Hogan’s detailed account of Mr. Thomas’ actions on the elevator at the High-rise.

g. Elkhart Police Officers Inexplicably Return Physical Evidence Obtained from Thomas Without Testing or Comparing it to Sailor Crime-Scene

As discussed herein, the initial investigation into Ms. Sailor's death was flawed. For instance, Detective Christian admits in her August 2003 report that she "assume[s] that [she] attempted to contact these women to verify Thomas whereabouts but do[es] not remember what, if anything was found." (*Ex. 20, Police Reports at 164*). Detective Christian also disclosed in this report that she believes that Mr. Thomas was given a truth-verification exam, but no documentation has ever been disclosed regarding such a test. (*Id.*) The police did at least retrieve a number Mr. Thomas' belongings from his grandmother's apartment. (*Id.*) These items consisted of several cigarette butts and a pair of shoes "that had tread which resembled that found at the scene." (*Id.*)

In spite of Elkhart Police officers recovering shoes from Mr. Thomas that "resembled" the tread discovered at the crime-scene, the shoes were apparently never tested for blood nor compared to the underlying prints at issue. (*Ex. 20, Police Reports at 265*). In a police report from November 25, 2003, Detective Conway revealed that the cigarettes and shoes obtained from Mr. Thomas "were not located" in the evidence room at the Elkhart Police Department. (*Id.*) Detective Conway then questioned Detective Christian about the whereabouts of physical evidence obtained from Mr. Thomas. (*Id.*) During this conversation, Detective Christian revealed that "Detective Thayer returned these items back to Wolfe." (*Id.*) Thus, the Elkhart Police Department apparently returned shoes

back to **both alternate suspects** without having any substantive testing done on them first.¹³

K. With Far Less Evidence, Another Court Rules that Mr. Royer's Co-Defendant, Lana Canen, Deserved a New Trial. Mr. Royer is Entitled to the Same Relief Here

Lana Canen filed a *pro se* Petition for Post-Conviction Relief in 2009. On May 11, 2012, Ms. Canen filed a Motion for Retesting of Fingerprint Evidence. (*Ex. 56*, Canen Motion for Retesting at 1764-1798). That Petition was amended on June 21, 2012. (*Ex. 57*, Canen Amended PCR at 1799-1807). There, Ms. Canen presented significant evidence indicating that Dennis Chapman's opinion evidence regarding the latent print match at trial was false. (*Id.*) On August 12, 2012, the Circuit Court held an evidentiary hearing where expert testimony was presented and arguments were heard. (*Ex. 1*, Canen PCR Opinion at 1820). At that hearing, Ms. Canen presented evidence from Kathleen Bright-Birnbaum and Detective Dennis Chapman, who both opined that Ms. Canen was not the source of the fingerprint lifted from a tub at the crime-scene. (*Ex. 2*, State of Indiana's Response at 1816-1819).

After that hearing, the State filed a Response to Petitioner's Request for Immediate Ruling on Petition for Post-Conviction Relief and Release From Incarceration. (*Ex. 2*, State of Indiana's Response at 1816-1819). In that motion, the State of Indiana informed the court that the Indiana State Police Laboratory

¹³ Detective Conway wrote in his November 2003 report, another crafted months after Mr. Royer's arrest, that Detective Christian claimed the tread on the slippers were compared to the prints at the crime-scene and were excluded. (*Ex. 20*, Police Reports at 265). Not a single documentary report confirms this contention.

completed its review and concluded in a “written report that the Petitioner was not the source of State’s Exhibit 46.” (*Id.* at 1818). Because of this, “THAT in the interests of justice, the State joins in Petitioner’s motion that Petitioner’s conviction be vacated. Det. Chapman’s testimony, previously relied upon by the State in light of his professed experience, is no longer believed to be credible.” (*Id.* at 1818). On October 12, 2012, this Court concluded that:

[I]n the interest of justice, Petitioner’s request for relief should be granted. This determination was made with great caution and is rendered with the understanding the circumstances presented here are most extraordinary and not in the usual course. However, it is clear that an erroneous identification of the source of the fingerprint occurred in this case and clearly the State’s witness, Dennis Chapman, has recanted his testimony as presented at trial. The discovery of Petitioner’s exclusion as the source of the latent print meets all nine requirements listed above and qualifies as newly discovered evidence.

(*Ex.* 1, Canen PCR Opinion at 1826-1827).

Shortly thereafter, on November 2, 2012, the State of Indiana moved to dismiss all charges against Ms. Canen. (*Ex.* 58, State MTD at 1828). According to a later deposition, Ms. Becker determined that she did “not feel that it [was an] appropriate use of resources to attempt to retry Ms. Canen for this case given what has occurred.” (*Ex.* 43, Vicky Becker Dep. Tr. at 46:21-25). In her view, it was unlikely that a conviction would have been obtained without the fingerprint match. (*Id.* at 47:11-12). On November 2, 2012, this Court granted the State’s Motion to Dismiss and Ms. Canen was exonerated.

V. LEGAL ARGUMENT

Mr. Royer is entitled to the vacation of the PCR judgment and a new trial pursuant to Indiana Trial Rule 60(B)(8) because: (1) he is actually innocent, and has located new evidence materially relevant to his innocence that he could not with reasonable diligence have discovered and produced at trial; (2) he has new evidence demonstrating misconduct by Elkhart police officers under *Brady v. Maryland*, 373 U.S. 83 (1963), materially affecting his substantial rights, and (3) he received ineffective assistance of counsel in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) that fell below an objective standard of reasonableness and prejudiced Mr. Royer in a significant way. Each of these grounds provides an independent basis for this Court to grant Mr. Royer a new trial.¹⁴

a. ANDREW ROYER HAS PRESENTED THIS COURT WITH MATERIAL NEW EVIDENCE OF HIS INNOCENCE THAT REQUIRES THE VACATION OF PRIOR JUDGMENT.

In *Carter v. State*, the Indiana Supreme Court delineated the standard for granting a new trial based on newly discovered evidence. *Carter v. State*, 738 N.E.2d 665, 671 (Ind. 2000). The Court reiterated that standard in *Taylor v. State*. *Taylor v. State*, 840 N.E.2d 324, 329-30 (Ind. 2006). Newly discovered evidence mandates a new trial only when the defendant demonstrates each of the following

¹⁴ The Indiana Supreme Court held in *State v. Collier* that this court retains jurisdiction of a Trial Rule 670(B)(8) motion so long as it's filed within a reasonable period of time and alleges a meritorious claim or defense. *State v. Collier*, 61 N.E.3d 265 (Ind. 2016). In citing a motion filed 11 years after the judgment, the court reiterated that the "passage of time alone is not enough to warrant the denial of a motion on the basis of timeliness." *Id.* Here, Mr. Royer easily satisfies the test delineated in *Collier*.

nine requirements: (1) the evidence has been discovered since trial; (2) it is material and relevant; (3) it is noncumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the evidence is worthy of credit; (8) it can be produced upon a retrial of the cause; and (9) it will probably produce a different result at trial. *Id.* Mr. Royer easily meets this standard.

i. An overwhelming amount of new evidence has been discovered since trial.

As described *supra*, an overwhelming amount of newly discovered evidence has been uncovered since trial. At trial, Mr. Royer was convicted because of the false, coerced, and fabricated evidence from the State's key witnesses: (1) Detective Dennis Chapman, who testified that a latent print found at the crime-scene matched Mr. Royer's co-defendant; (2) a false and coerced statement by Nina Porter, claiming that Lana Canen confessed to the crime; (3) Mr. Royer's false confession; and (4) Matt Johnson's false and coerced testimony linking Mr. Royer to Ms. Canen on the evening of the murder. The new evidence Mr. Royer presents here destroys the testimony on these issues, and makes clear that on retrial, no reasonable trier of fact would conclude that Mr. Royer had any role in the death of Ms. Sailor.

As is discussed more fully above, Mr. Royer has developed significant evidence since trial that overwhelmingly establishes his innocence. First, **Nina Porter** has recanted her testimony implicating Mr. Royer and Ms. Canen in the murder of Helen Sailor. (*Ex.* 4, Porter Aff. at 1). According to Ms. Porter, "The statement I gave in 2003, along with my testimony against Lana Canen and

Andrew Royer, was not truthful. I got that information from the police and I testified to it because of threats and pressure I received from Elkhart police officers.” (*Id.* at 1).

Next, though **Detective Chapman** testified at trial that Ms. Canen’s print was discovered at the crime-scene, he too, has since recanted that testimony. Since trial, it was revealed that Deputy Chapman was never qualified to be an expert in latent print comparisons. (*Ex.* 1, PCR Opinion at 7). More importantly, it is undisputed, and Chapman now admits, that the print found at the crime-scene did not come from Ms. Canen. Indeed, Ms. Canen is actually excluded from having contributed that print. (*Id.*)

Additionally, compelling evidence now exists corroborating that Mr. Royer’s confession was false, coerced by the police, and video-recorded. On January 3, 2018, **Detective Daggy** revealed for the first time that Mr. Royer’s interrogation was “definitely” video-recorded. . (*Ex.* 8, Daggy Recording; *Ex.* 9, Tr. of Daggy Recording at 7; *Ex.* 10, Larry Towns Affidavit at 1). According to Mr. Daggy, the video-recording shows how Detective Conway fed information to Mr. Royer and, in essence, told him what to say during the marathon interrogation. (*Ex.* 9, Daggy Recording Tr. at 9). Mr. Daggy further admitted that Mr. Royer’s interrogation was the worst he had ever seen. (*Ex.* 10, Larry Towns Affidavit at 1).

Further supporting Mr. Royer’s claim that his confession was both false and coerced is an affidavit from former Elkhart **Lt. Peggy Snider**(*Ex.* 11, Snider Recorded Conversation; *Ex.* 12, Tr. of Snider Recorded Statement at 8-11, 15; *Ex.*

13, Peggy Snider Aff. at 1). Lt. Snider watched Mr. Royer's interrogation on a closed-circuit television and attests that:

Mr. Royer's interrogation was one of the worst I have ever seen in my 34 years in the Elkhart Police Department...Most of the information regarding Ms. Sailor's murder was fed to Mr. Royer by Detective Conway. Further, it was clear that Mr. Royer was a vulnerable person who was susceptible to the tactics being used by Detective Conway during the two-day interrogation. It was obvious that Mr. Royer felt pressured to give a statement and used the information fed to him by Detective Conway to finally confess.

(*Ex. 13, Affidavit of Lt. Peggy Snider at 1*).

Because of this, Ms. Snider maintains that Mr. Royer "falsely confessed to the murder of Helen Sailor" and has "believed since 2003" that "Mr. Royer's confession was unreliable." (*Id.*) Ms. Snider reveals that she never believed that Mr. Royer's confession was reliable nor that probable cause existed for his arrest. (*Id.*) Finally, Ms. Snider maintains that she has always believed – based on her intimate knowledge and participation in the underlying investigation – that Mr. Royer was not involved in the murder of Ms. Sailor and that another suspect, Larry Woods, was the likely perpetrator. (*Id.*)

As is discussed at length above, newly discovered evidence also debunks the supposed motivation for Mr. Royer's alleged participation in the crime. As shown in **a half-dozen affidavits**, individuals with Mr. Royer on Thanksgiving in 2002 aver that he never asked them for money earlier that day and that not a single religious conversation occurred during Thanksgiving. (*Ex. 14, Affidavit of Jeannie Pennington at ¶8-10; Ex. 15, Affidavit of Sylvia Pennington at ¶3-6; Ex. 16, Affidavit of Norman Pennington at ¶5-7; Ex. 17, Affidavit of Ashley Colón at ¶4-6;*

Affidavit of Daniel Royer at ¶2-4). Each of these witnesses further revealed that Mr. Royer was calm and did not seem troubled during Thanksgiving of 2002, contrary to the arguments made by the State at trial. (*Id.*)

In addition, Mr. Royer presents this Court with an affidavit from one of the foremost leading experts on false confessions, **Dr. Richard Leo**. Dr. Leo's opines that a number of psychologically coercive techniques were used in against Mr. Royer and he possessed a number of personality traits which made him vulnerable to such techniques, which constitutes compelling evidence that Mr. Royer's confession was false and coerced. (*Ex. 19*, Dr. Richard Leo Affidavit at 1-6) In sum, Dr. Leo opines that Mr. Royer's confession shared many common characteristics of a false confession. (*Id.*) Dr. Leo's new opinion is based on extensive new evidence discovered during Mr. Royer's post-conviction investigation, which includes an affidavit from a former Oaklawn employee who provided Mr. Royer with mental health treatment and revealed that he was vulnerable and susceptible to providing a false confession. (*Ex. 26*, Affidavit from Rudy Gourdine at e.g.)

Mr. Royer has likewise developed significant evidence implicating two alternate suspects, either one of whom who are likely responsible for Ms. Sailor's death. An affidavit from **James Cassity** reveals that Tony Thomas was "belligerent," desperate for money, and high on drugs at the Highrise on the evening Ms. Sailor was killed. (*Ex. 23*, Cassity Aff. at 1-2). Further, significant evidence indicates that Larry Wood was the last individual seen with Ms. Sailor,

had blood and oil on his shoes, and either failed a polygraph examination when denying involvement in the crime, or, as a report indicates, actually confessed to strangling Helen Sailor. (*Ex.* 21, Larry Wood Polygraph Sheet at 822). Also, former **Lt. Peggy Snider** reveals that she has always believed that Mr. Royer is innocent and that Mr. Wood is responsible for Sailor's death. (*Ex.* 13, Snider Aff. at 1). A jury heard none of this new compelling evidence of Mr. Royer's innocence.

Finally, **Jerome Johnson** revealed that his testimony at trial – linking Mr. Royer to Ms. Canen on the evening of Ms. Sailor's death – was a lie. In fact, in his recently obtained affidavit, Mr. Johnson attests that Mr. Royer was not at his apartment with Lana Canen on Thanksgiving in 2002. (*Ex.* 25, Johnson Aff. at 1). Critically, Mr. Royer wasn't at his residence at all Thanksgiving day. (*Id.*) As with the other witnesses, Mr. Johnson only testified falsely against Mr. Royer after the police "hounded" and badgered him for more than six months. (*Id.*) As such, the police fabricated testimony in an effort to mislead the jury into believing that Mr. Royer was with Ms. Canen around the time of Ms. Sailor's murder.

ii. This evidence is material and noncumulative, and does not merely impeach or contradict the former evidence.

This petition presents an avalanche of new evidence for this Court to consider about the merits of Mr. Royer's conviction. As described in this petition, this evidence has never been considered by any court because it is newly discovered. It represents evidence that was either withheld by the State or uncovered from witnesses during a post-conviction investigation.

iii. This evidence could not have been discovered prior to trial.

The evidence mentioned *supra* could not have been discovered earlier because the State withheld material exculpatory evidence that might have otherwise have led him to it. In addition, only through extensive investigation was Mr. Royer able to obtain a dozen affidavits that he now possesses. As with the *Brady* issues that Mr. Royer raises, the State cannot have it both ways—because they suppressed this evidence from Mr. Royer, they cannot be heard to complain that he should have discovered it earlier.

iv. This evidence is worthy of credit and is likely to produce a different result upon retrial.

All of this evidence is material and non-cumulative. The evidence was not introduced at Mr. Royer's trial. Furthermore, this evidence clearly establishes Mr. Royer's innocence and requires this Court to grant him a new trial.

Importantly, it also does not merely impeach or contradict former evidence. Instead, the newly discovered evidence demonstrates outrageous police misconduct, including the fabrication of false testimony and false confession that has resulted in the wrongful conviction and incarceration for over 15 years of an innocent man. Moreover, this newly discovered evidence would clearly change the result on retrial.

b. ANDREW ROYER HAS PRESENTED THIS COURT WITH NEW EVIDENCE DEMONSTRATING THAT HIS RIGHTS WERE VIOLATED UNDER *BRADY V. MARYLAND*.

Petitioner repeats and alleges the facts contained above as if fully alleged here. It is a violation of Fifth Amendment Due Process Clause and the Indiana Constitution for the prosecution to fail to disclose material exculpatory evidence to the defense. U.S. Const. amends. V, XIV; Ind. Const. art. 1, §§ 12, 13; *Brady v. Maryland*, 373 U.S. 83 (1963).

New investigation in this case has revealed a shocking lack of concern by the police with disclosing exculpatory evidence to Mr. Royer at the time of trial. Elkhart police officers were aware of exculpatory evidence that discredited witnesses, that proved that others, and not Mr. Royer, were involved in this crime, yet they failed to disclose it. Indeed, the failure to disclose *Brady* material was a pattern and practice of the Elkhart Police Department during the entire time that the Elkhart Police Department worked on the underlying investigation. These *Brady* violations entitle Mr. Royer to a new trial.

The State's failure to disclose favorable evidence, where the evidence is material either to guilt or to sentencing, to an accused in a criminal proceeding violates the Due Process Clause regardless of the prosecutor's good or bad faith. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The Court has expanded the duty to disclose to include impeachment evidence as well as exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985). In order to comply with *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to others

acting on the government's behalf in this case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

The evidence need only be shown to be material, with "materiality" defined according to opinions interpreting the *Brady* rule. *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). Under *Brady*, evidence is material "if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Id.*

To prevail on a *Brady* claim, a defendant must establish: (1) that the prosecution suppressed evidence; (2) that the evidence was favorable to the defense; and (3) that the evidence was material to an issue at trial." *Minnick v. State*, 698 N.E.2d 745, 755 (Ind.1998) (citing *Brady*, 373 U.S. at 87, 83 S.Ct. 1194), *cert. denied*, 528 U.S. 1006, 120 S.Ct. 501, 145 L.Ed.2d 387 (1999); *Bunch v. State*, 964 N.E.2d 274, 297–98 (Ind. Ct. App. 2012). "Favorable evidence" includes both exculpatory evidence and impeachment evidence. *See Prewitt v. State*, 819 N.E.2d 393, 401 (Ind.Ct.App.2004), *trans. denied*. Suppression of *Brady* evidence is constitutional error warranting a new trial. *Turney v. State*, 759 N.E.2d 671, 675 (Ind.Ct.App.2001), *trans. denied*; *Bunch v. State*, 964 N.E.2d 274, 297–98 (Ind. Ct. App. 2012). Mr. Royer meets this standard.

i. Police and prosecutors had favorable evidence that they did not disclose to Mr. Royer.

As is discussed more fully *supra*, the Elkhart Police Department possessed and intentionally withheld evidence: (1) Nina Porter's statement was fabricated and coerced; (2) Mr. Royer's interrogation was video-recorded; (3) Elkhart officers

believed that Mr. Royer was innocent and that another individual was responsible for the murder all along; (4) Elkhart officers watched Detective Conway coerce and fabricate Mr. Royer's false confession; (5) Elkhart County Detective Dennis Chapman was never qualified to conduct latent print comparisons; (6) the print recovered from the crime-scene latent print excluded Lana Canen rather than forming a match; and that (7) Larry Woods apparently confessed that he "strangled" Ms. Sailor in an examination with Officer Coppins from the Elkhart Police Department.

1. Withheld Material Regarding Nina Porter's Fabricated and Coerced Statement

According to the State, Nina Porter's testimony "[c]orroborate[d] virtually every piece of evidence that came from that stand." On November 29, 2017, Porter emotionally and unequivocally revealed for the first time that her statement and corresponding testimony was false, fabricated, and a product of police coercion. (*Ex. 4*, Aff. of Nina Porter at 1; *Ex. 5*, Audio-Recording of Nina Porter; *Ex. 6*, Recording Tr. at 1-25).

In her affidavit, Ms. Porter revealed that Detective Conway, among others, told her what to say during this interview. (*Ex. 4*, Affidavit of Nina Porter at 1; *Ex. 6*, Recording Tr. at 4). According to Ms. Porter, the police fed her the information ultimately contained in their report and her trial testimony. (*Id.* at 8, 11). The police did not just fabricate her statement, they also coerced her into testifying falsely at trial. Ms. Porter stated that, at one point in the interview, three detectives were inches from her face and were screaming "Do you want to lose your kids? Do you want to go back to prison?" (*Id.* at

4). Detectives told her she would be charged if she did not go along with their fabricated statement. (*Id.* at 13). Ms. Porter agreed to go along with the information the police had given her, even though it was not truthful. (*Id.* at 21). Finally, Ms. Porter received \$2,000 from Detective Daggy for testifying consistently with her false statement. (*Id.* at 25; *Ex.* 59, Porter Payment Receipt at 1).

The State never disclosed that Ms. Porter's statement was fabricated and coerced. (*Ex.* 7, Chris Crawford Aff. at ¶6). Neither Mr. Royer nor his defense team were made aware that Ms. Porter was compensated in exchange for testimony consistent with her false and fabricated statement. (*Id.*)

2. Withheld Material Relating to Mr. Royer's Video-Recorded Interrogation

At trial, the State played portions of Mr. Royer's audio-recorded statements. The recorder was turned on after nearly six hours of interrogation on the first day, and three and one half hours on the second. Mr. Royer's counsel argued that his confession was false, to little avail. But significant evidence has since been uncovered that dramatically impacts the reliability of Mr. Royer's alleged confessions. To begin, Detective Daggy admits that he watched Royer's interrogation on a closed-circuit television from the Lieutenant's room at the police station and that the interrogation "definitely...was video-taped." (*Ex.* 10, Aff. of Larry Towns at 1; *Ex.* 8, Daggy Recording; *Ex.* 9, Daggy Recording Tr. at 6). Shockingly, the video-recording of Mr. Royer's interrogation was never turned over to the defense. (*Ex.* 7, Chris Crawford Aff. at ¶3). Because of this, the jury never got to see the interrogation methods which caused Mr. Royer's false statements. (*Ex.* 7,

Chris Crawford Aff. at ¶3). According to the new evidence discussed above and below, the withheld video-recording of Mr. Royer's interrogation would reveal significant misconduct.

3. Withheld Material Relating to Mr. Royer's False Confession

Significant evidence has been uncovered since the PCR bolstering Mr. Royer's claims that his confession was false and a produce of coercion. Two members of the Elkhart Police Department – one current and one retired – believe that Mr. Royer's interrogation was the worst they have ever seen. (*Ex.* 10, Larry Towns Aff. at 1; *Ex.* 13, Peggy Snider Aff. at 1). These Elkhart officers withheld such evidence prior to Mr. Royer's trial.

Detective Daggy elaborated on his rationale for characterizing the interrogation of Mr. Royer as the worst he had witnessed In a recently recorded conversation. In his view, the questioning of Mr. Royer was leading, the statements themselves were inconsistent, and that Detective Conway fed information to Mr. Royer. (*Ex.* 9, Daggy Recording Tr. at 9). As is discussed at length *supra*, Detective Daggy was not the only person at the Elkhart Police Department who had grave concerns about Mr. Royer's statements.

Lt. Snider also watched portions of Mr. Royer's interrogation via a closed-circuit television maintained in the Lieutenant's office. (*Ex.* 13, Peggy Snider Aff. at 1). Based on her viewing, Ms. Snider attests that:

Andrew Royer's interrogation was one of the worst I have ever seen in my 34 years in the Elkhart Police Department. I believe that most of the information regarding Ms. Sailor's murder was fed to Andrew Royer by

Detective Conway. It was clear that Andrew Royer was a vulnerable person. It was obvious that Andrew Royer felt pressured to give a statement, and at the end of the statement Andrew Royer asked Detective Conway if he could go home now.

(Id. at 1).

Put simply, Lt. Snider has always believed that “Andrew Royer’s confession was unreliable.” *(Id.* at 1). The revelations by Detective Daggy and Lt. Snider are incredible, as they completely undercut the State’s case against Mr. Royer, where the State argued at length that Mr. Royer’s confession was both reliable and voluntarily given. Ms. Becker argued to the jury in closing arguments:

And by the time that this started to come together when Detective Conway went out to interview Andrew Royer, then things really started to make sense because an Andrew — Andrew was in a position where he knew he had been had. And after the pre-interview which defense wanted you to believe was so unreasonable, boy, they just pounded it into him. They put all those words in his mouth, and then he just recited everything that the detectives wanted him to say. Now, if that were the case, maybe we might actually have the real story about what happened because we'd all really like to know why Helen died that night. Is it pretty clear it had something to do with money? Yeah.

(R. at 728-29).

The State was able to successfully make these arguments because it simultaneously withheld all the evidence revealing that Mr. Royer’s statements were a product of coercion and fabrication. The omission of the aforementioned evidence discrediting Mr. Royer’s statements significantly impacted the verdict at trial.

4. Withheld Material Supporting Mr. Royer's Innocence and Another Individual's Guilt

The State also withheld evidence bolstering Mr. Royer's claims of innocence and other individuals' guilt. For instance, on December 24, 2017, Lt. Snider revealed that she has always believed in Mr. Royer's innocence. (*Ex.* 10, Larry Towns Aff. at 1; *Ex.* 11, Peggy Snider Recording; *Ex.* 12, Peggy Snider Tr. at 8:17-21; 10:8-12). In her words, "there's still going to be shit over that because ... we put Andy Royer in jail for that and I don't think – I don't think Andy did it." (*Ex.* 10, Larry Towns Aff. at 1; *Ex.* 11, Peggy Snider Recording; *Ex.* 12, Peggy Snider Tr. at 8:17-21). None of this was disclosed prior to trial. (*Ex.* 7, Chris Crawford Aff. at ¶3).

Not only did Ms. Snider reveal her belief that Mr. Royer is innocent, but she also confessed that she has always believed that an individual other than Mr. Royer named Larry Woods was responsible for the murder of Helen Sailor. (*Ex.* 10, Larry Towns Aff. at 1; *Ex.* 11, Peggy Snider Recording; *Ex.* 12, Peggy Snider Tr. at 10:8-12). In the end, Ms. Snider revealed the depth of her pain for Mr. Royer's wrongful-conviction while acknowledging that she "feel[s] bad" because she really believes he is innocent. Indeed, Ms. Snider is "surprised something hasn't happened with that yet." (*Ex.* 10, Larry Towns Aff. at 1; *Ex.* 11, Peggy Snider Recording; *Ex.* 12, Peggy Snider Tr. at 15:9-11). Mr. Royer's attorney was provided with none of this prior to trial. (*Ex.* 7, Chris Crawford Aff. at ¶3).

5. Withheld Brady Material Relating to Latent Print

Significant evidence relating to a latent print found at the crime-scene was also withheld from Mr. Royer and his counsel prior to trial. As is discussed more thoroughly above, Detective Dennis Chapman testified that he was formerly a fingerprint analyst for the FBI and his responsibility there was to examine and compare fingerprints. (R. at 617). At trial, Detective Chapman testified to receiving several fingerprint lifts and claimed that a lift from Helen Sailor's medication bottle matched Ms. Canen. (R. at 621-22, 627).

The State withheld that Detective Chapman was never trained nor qualified to conduct latent print comparisons. In a 2014 deposition, Detective Chapman revealed that he had no training in latent fingerprint comparison's prior to his testimony at Mr. Royer's trial. (*Ex.* 40, Chapman Dep. Tr. at 9-13). He further admitted to lying to the trial prosecutor, Vicky Becker, and misleading her into believing that he had experience in comparing latent prints. (*Id.* at 32-33; *Ex.* 41, Canen PCR Hearing Tr. at 101-02). In a separate deposition, Ms. Becker testified that Detective Chapman lied to her when he maintained to be an expert in latent print comparisons. (*Ex.* 43, Becker Dep. Tr. 85-87). According to Ms. Becker, her "understanding is that he had personally performed over 100 evaluations of latent print comparisons." (*Ex.* 43, Becker Dep. Tr. 85). To Ms. Becker, Detective Chaplman "set himself out to be an individual who could analyze and compare prints." (*Id.* at 83).

The State also withheld that the latent print found at the crime-scene never matched Ms. Canen. In fact, it is undisputed now that the latent print opinion testified to at Mr. Royer's trial was demonstrably false. At a 2012 evidentiary hearing, Ms. Canen presented evidence from Kathleen Bright-Birnbaum and Detective Dennis Chapman, who both opined that Ms. Canen was not the source of the fingerprint lifted from a tub at the crime-scene. (*Ex. 2*, State's Response at 1816-1819). After that hearing, the State filed a Response to Petitioner's Request for Immediate Ruling on Petition for Post-Conviction Relief and Release From Incarceration. (*Id.*) In that motion, the State of Indiana informed the court that the Indiana State Police Laboratory completed its review and concluded in a "written report that the Petitioner was not the source of State's Exhibit 46." (*Id.* at 1818). In spite of this, the State successfully introduced Detective Chapman's opinions at trial, thus helping to contribute to Mr. Royer's wrongful conviction. Again, none of this evidence was disclosed to Mr. Royer's counsel prior to trial. (*Ex. 7*, Chris Crawford Aff. at ¶5).

6. Withheld Brady Material Relating to Confession from Alternate Suspect, Larry Wood

Also withheld was a document showing that Larry Wood confessed to a polygraph examiner that he strangled Helen Sailor. On December 12, 2002 at Larry Wood answered a series of questions posed to him by Detective Coppins. (*Ex. 21*, Larry Wood Polygraph Sheet at 822). According to a document prepared by Examiner Coppins, Mr. Wood made the following admissions during his polygraph examination:

Q: (R) Do you have any specific knowledge of who strangled Helen?

A: Yes

Q: (R) Did you strangle Helen?

A: Yes

Shockingly, Mr. Wood confessed to strangling Mr. Sailor and the Elkhart Police Department and this document was withheld from Mr. Royer's lawyer and the jury was not permitted to consider this evidence at trial.

ii. Mr. Royer's counsel did not have an opportunity to locate this evidence prior to trial

Attorney Chris Crawford could not have, with any reasonable diligence, located and produced this evidence at trial. Nor can the State seriously argue at this stage that he could have. The Supreme Court has rejected any argument "declaring that the prosecutor may hide, defendant must seek . . ." as it is "not tenable in a system constitutionally bound to accord defendant's due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004). Defense counsel cannot be required to "scavenge for hints of undisclosed Brady material." *Id.* at 695.

Further, Mr. Royer need not speculate about whether his trial prosecutor knew about the withheld evidence. "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). The evidence establishes that the Elkhart Police Department had knowledge of the exculpatory evidence at issue and the prosecutor had a legal obligation to disclose such evidence to Mr. Royer's counsel. *See Strickler v. Greene*, 537 U.S. 263, 280-281

(1999)("[T]he rule encompasses evidence known only to police investigators and not to the prosecutor."). Because the police willfully concealed and prosecutor failed to disclose this evidence, Royer cannot be held accountable for having failed to present this evidence at trial.

iii. The outrageous police misconduct prejudiced Mr. Royer's right to a fair trial

It is hard to envision a case where withholding exculpatory evidence prejudiced a defendant more than the police's misconduct prejudiced Mr. Royer's constitutional right to a fair trial. Mr. Royer was sentenced to 55 years in prison for a crime he did not commit because Elkhart police officers coerced government witnesses, coerced a false confession from Mr. Royer himself, falsified a latent print match, and willfully concealed exculpatory evidence. Even more, the newly discovered evidence relating to Ms. Porter reveals that the Elkhart police officers not only promised her consideration in exchange for her false statement against Mr. Royer, but also scripted her false statement in the first place. The false testimony of these witnesses procured by corrupt Elkhart police officers deprived Mr. Royer of his constitutional right to a fair trial. . (Ex. 7, Chris Crawford Aff. at ¶1-7).

Because the prosecution failed to disclose the aforementioned exculpatory and favorable evidence to Mr. Royer, and because this information would have resulted in an acquittal at trial, the prosecution violated the rule in *Brady* that justifies a new trial.

c. MR. ROYER HAS PRESENTED THIS COURT WITH NEW EVIDENCE DEMONSTRATING THAT HIS RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT OF THE CONSTITUTION WAS VIOLATED BY HIS ATTORNEY'S DEFICIENT PERFORMANCE AT TRIAL

Mr. Royer's trial counsel, Chris Crawford, attempted to provide Royer with a defense. However, Mr. Crawford was hamstrung in his efforts by police misconduct. In this Petition, Mr. Royer has presented this Court with evidence that police and prosecutors withheld significant evidence of his innocence and that the testimony of a number of witnesses was purchased, fabricated, and coerced. Mr. Royer has presented evidence that police and prosecutors withheld other exculpatory evidence impeaching key State's witnesses. The evidence withheld from Mr. Royer was a violation of the rule *Brady v. Maryland*, and establishes his innocence. However, Mr. Royer also makes an additional claim that his trial counsel was ineffective for his failure to: (1) sever trials from Lana Canen; (2) investigate alternate suspects; (3) investigate and introduce evidence of Mr. Royer's mental health-history and statements to police; and (4) impeach witnesses at trial.

In a complex murder case such as this – with a police investigation spanning nearly three years – Mr. Crawford's witness list consisted of three witnesses. (*Ex.* 60, Defendant's Witness List and Exhibit List). Mr. Crawford and Ms. Canen's attorney, Brett Zook, were so ineffective that they failed to call a single a witness at trial. Further, Mr. Crawford failed to list a single exhibit on his pretrial order. (*Id.*) Together, these defense attorneys were so ineffective that the following colloquy took place between Prosecutor Vicky Becker and Judge Shewmaker prior to

trial:

The Court: You believe discovery is completed. And, Ms. Becker, do you believe defense discovery to be complete from Mr. Zook?

Ms. Becker: The representations to me is that there is no witnesses, there's no real defense. So I fully believe that it's taken care of.

(*Ex.* 61, July 28, 2005 Hearing Tr. at 28).

Mr. Crawford's ineffective legal representation entitles Mr. Royer to a new trial. Mr. Crawford's actions on this score illustrate that his performance were so deficient that Mr. Royer was denied effective assistance of counsel, in violation of the Constitution of the United States, Amendments VI and XIV, and the Constitution of the State of Indiana, Article 1 § 12. To succeed on a claim of ineffective assistance of counsel, Mr. Royer must first demonstrate that counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Second, Mr. Royer must show that the deficient performance prejudiced him. *Id.* He easily meets both requirements.

1. MR. ROYER'S COUNSEL WAS INEFFECTIVE FOR FAILING TO IMPEACH WITNESSES WITH PRIOR STATEMENTS

Counsel can be held to be ineffective where he or she fails to present any meaningful impeachment of the State's key witnesses. *Ellyson v. State*, 603 N.E.2d 1369, 1374 (Ind. Ct. App. 1992). In *Ellyson*, the Indiana Court of Appeals ordered a new trial after finding that the trial attorney provided ineffective assistance of counsel by failing to impeach a witness with prior inconsistent statements. *Id.* at 1374. The Indiana courts have similarly held that a fair trial is denied when the

conviction results from a breakdown in the adversarial process and renders the trial result unreliable. *Siglar v. State*, 541 N.E.2d 944, 946 (Ind. 1989). To show that the trial result is unreliable, a defendant must show that, but for counsel's unprofessional errors, the result probably would have been different. *Id.*; *Miller v. State*, 541 N.E.2d 260, 262 (Ind. 1989). Mr. Royer easily satisfies the test outlined above.

Mr. Royer's counsel failed to introduce significant impeachment evidence against Elkhart police officers - who denied the existence of alternate suspects - and Jerome Johnson, who linked Mr. Royer to Ms. Canen on the evening of the murder. Mr. Royer's counsel had ample evidence on both scores to impeach these witnesses but declined to do so. For the reasons discussed below, counsel's failure to introduce such evidence is egregious and warrants a new trial.

a. Counsel Failed to Confront Elkhart Police Officers Who Perjured Themselves at Trial When They Testified that the Underlying Investigation Failed to Develop Alternate Murder Suspects

Mr. Royer's jury was told that the underlying investigation into Ms. Sailor's death produced *only* two suspects: Andrew Royer and Lana Canen. Indeed, a number of Elkhart police officers took the stand and testified that no other suspects were developed in the underlying investigation. For example, Detective Thayer testified that the investigation failed to identify any alternative suspects over the initial seven months. (R. at 400-01; R. at 651-652). Detective Daggy doubled down and informed the jury that there were no red-flags early in the investigation. (R. at 400). As is discussed at length above, such testimony is demonstrably false, as the

Elkhart Police Department conducted an extensive investigation into Tony Thomas and Larry Wood, both of whom were considered suspects prior to trial.

Even aside from the investigation detailed above, the Elkhart Police Department labeled Tony Thomas and Larry Wood as murder suspects in several investigative police reports. In a May 8, 2003 laboratory report, Detective Bourdon requested that the blood standards of suspects Larry Wood and Tony Thomas be compared to physical evidence recovered at the crime-scene. (*Ex.* 20, Police Reports at 100). A report from Detective Coppins indicates “that Wood was a possible suspect” in the murder of Helen Sailor. (*Id.* at 254). On November 28, 2003, Detective Conway documented that “during the original investigation, a person by the name of Tony Thomas was looked at as being a possible suspect.” (*Id.* at 261). The following week, Detective Conway confirmed that “Detective Christian was given information about a possible suspect by the name of Tony Thomas that was seen walking around the Waterfall High Rise.” (*Id.* at 265). These documents are but a few of the voluminous records disclosed by the State indicating that Wood and Thomas were both suspects in the homicide.

Although Mr. Royer’s counsel was armed with significant evidence indicating that Tony Thomas and Larry Wood were suspects in the Sailor homicide investigation, he failed to confront any Elkhart officer who took the stand and testified otherwise. Indeed these officers were each able to testify with impunity as they falsely denied the existence of alternate suspects. As is discussed further below, not only did jurors not learn of the existence of alternate suspects, they also

never learned of the significant evidence implicating those other individuals. Mr. Crawford's failure to use significant impeachment evidence was egregious and renders the underlying conviction unreliable.

b. Counsel Inexplicably Declines to Confront Jerome Johnson with Prior Inconsistent Statements

Mr. Royer's counsel was also ineffective for his failure to confront Jerome Johnson. At trial, Mr. Royer's attorney knew of strong impeachment evidence to use against Jerome Matthew Johnson, a key witness for the state. As is discussed *supra*, Mr. Johnson testified that Mr. Royer and Ms. Canen visited his apartment in the evening hours of Thanksgiving in 2002. Prior to trial, though, Mr. Johnson met with Elkhart Police officers and gave a recorded statement revealing that no one visited his apartment on Thanksgiving in 2002. Specifically, Mr. Johnson revealed the following to Detective Conway on December 9, 2003 in an audio-recorded statement:

Q: Did anybody else stop by?

A: Not that I remember

(*Ex. 20*, Police Reports at 980-981).

Mr. Johnson's recorded interview was disclosed to Mr. Royer's counsel prior to trial. Nonetheless, the jury never learned that Mr. Johnson initially revealed to the police that no one aside from his sister visited him on Thanksgiving in 2002. Mr. Johnson was permitted to falsely testify that Mr. Royer and Ms. Canen came over his apartment on the evening of the murder. Trial counsel's failure to alert the jury to this inconsistent testimony was error and renders the underlying conviction

unreliable.

2. MR. ROYER'S COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST A SEVERANCE OF TRIALS

Mr. Royer's counsel was likewise ineffective for failing to request a severance from Lana Canen at trial. Indiana law states, "Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground that they are of the same or similar character, the defendant shall have a right to severance of offenses. In all other cases the court, upon motion of the defendant or prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering: (1) the number of offenses charged; (2) the complexity of the evidence to be offered; and (3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense." Ind. Code § 35-34-1-11(a) (1981). Defendants are entitled to have offenses severed as a matter of right and counsel's failure to do so can amount to deficient performance. *See Wilkerson v. State*, 728 N.E.2d 239, 249 (Ind. Ct. App. 2000). Here, Mr. Royer easily meets the legal standard.

In this case, Mr. Royer's counsel failed to move for severance even though Mr. Royer requested a separate trial from Ms. Canen. In a 2004 letter to Mr. Crawford, Mr. Royer stated "I want a separate tr[ia]l from Lana Canen, is what I am requesting" (*Ex. 62*, Royer Letter to Mr. Crawford at 1). Mr. Crawford ignored this request made by Mr. Royer. The failure to sever trials resulted in the State introducing evidence and impeachment testimony against Ms. Canen that

implicated Mr. Royer in the murder of Ms. Sailor. Mr. Crawford even concedes that his failure to seek a severance was not for strategic reasons and “sitting here today, I would have absolutely moved to sever...” (*Ex. 7, Crawford Aff. at ¶11*). For the reasons provided below, counsel’s failure to raise a motion for severance prevented Royer from exercising his right to a fair trial.

c. Ms. Canen’s Fingerprint was Introduced at Mr. Royer’s Trial Linking Both Mr. Royer and Ms. Canen To Ms. Sailor’s Apartment

As discussed *supra*, Mr. Royer’s jury was presented with a number of witnesses that testified to the physical evidence found linking Ms. Canen to the Sailor crime scene. Mr. Bourdon and Detective Chapman testified that a fingerprint was found on one of Ms. Sailor’s medication bottles which was a “match” to Ms. Canen. It is now undisputed that the print did not come from Ms. Canen, but during the trial the print corroborated witness testimony that Ms. Canen and Mr. Royer were at Ms. Sailor’s apartment the night of Ms. Sailor’s death. Counsel’s failure to move for severed trials would have excluded the physical evidence that helped to corroborate Mr. Royer’s false confession.

d. Impeachment Testimony Introduced at Trial Implicated Mr. Royer as a Result of Counsel’s Failure to Motion for Severance

The failure to sever defendants also allowed for the jury to hear testimony from Detective Thayer detailing the brief conversation he had with Ms. Canen where she stated she was out of town visiting family and friends for the Thanksgiving holiday. (R. at 641, 649). As is discussed *supra*, Ms. Canen’s account about her location on Thanksgiving was impeached by both the testimony of Mr.

Lambert and Mr. Johnson who stated Ms. Canen was at the Highrise at various times throughout the evening on Thanksgiving. Similarly to the physical evidence that was introduced at Mr. Royer's trial, the impeachment testimony of Ms. Canen would not have been introduced at Mr. Royer's trial if his defense counsel had motioned for a severance.

e. Ms. Porter's Witness Testimony Introduced at Mr. Royer's Trial Unjustly Prejudiced the Outcome of Mr. Royer's Case

The failure to request a severance also allowed for the State to introduce an alleged confession from Ms. Canen to Ms. Porter. The State then used this third-party statement in their closing argument to urge the jury to convict Mr. Royer. For instance, the State argued in closing argument that Ms. Porter's testimony "corroborate[d] virtually every piece of evidence that came from that stand." (R. at 720). Ms. Porter stated Mr. Royer did "whatever Lana told him to do." (R. at 734). As previously stated, Ms. Porter's testimony was the linchpin to the State's argument in support of a conviction against Mr. Royer and Ms. Canen. Ms. Porter's testimony would have likely been excluded from Mr. Royer's trial if Mr. Crawford had raised a motion for severance.

f. The Failure to Sever Prejudiced Mr. Royer

The State's case at Mr. Royer's trial was based on a false confession and much more evidence against Ms. Canen, including significant impeachment, a supposed finger-print match, and her alleged confession to Nina Porter. Although Mr. Royer requested a severed trial in his correspondence to counsel, and in spite of very clear law in Indiana affording Mr. Royer a right to a separate trial, his counsel

simply failed to make the request. As a result of this failure, the State was able to introduce evidence against Ms. Canen with impunity and argue that this evidence supported a conviction against Mr. Royer as well. Put simply, Mr. Royer was denied his right to a fair trial because of his counsel's deficient legal representation.

3. Mr. Royer's Counsel Was Ineffective For Failing to Investigate Alternate Suspects and Introduce Evidence Implicating Those Suspects

Mr. Royer's counsel provided ineffective assistance of counsel for failing to investigate and introduce evidence implicating alternate suspects in the murder of Ms. Sailor. The law is well-settled in Indiana: counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Parish v. State*, 838 N.E.2d 495, 500 (Ind. Ct. App. 2005) (quoting *Strickland v. Washington* 466 U.S. 668, 690-91 (1983)). In *Parish v. State* - another double wrongful conviction case from Elkhart - the court held that the trial attorney provided ineffective assistance of counsel when he decided not to conduct an investigation which could have uncovered evidence that was essential to the underlying crime and the defendant's alibi defense. *Parish*, 838 N.E.2d at 501-02. Furthermore, counsel's representation cannot be deemed adequate or effective when he fails to produce any evidence at all from available sources in support of a defense. *Williams v. State*, 508 N.E.2d 1264, 1268 (Ind. 1987). Here, Mr. Royer easily meets the tests above rendering Mr. Crawford's representation constitutionally deficient.

Mr. Crawford failed to meaningfully investigate anything prior to trial. (*Ex.* 7, Crawford Aff. at ¶8-11). For instance, he declined to conduct investigation into Mr. Royer's false confessions even though he was aware of Mr. Royer's severe mental illness. (*Id.* at ¶8-9). Further, he failed to speak with any of Mr. Royer's mental health care providers or family members who were with him on the day in question. (*Id.*) Additionally, Mr. Crawford failed to investigate any potential alternative suspects or introduce evidence developed by Elkhart police officers implicating alternative suspects. (*Id.* at ¶10). For the following reasons, Mr. Royer is entitled to a new trial.

a. Counsel Fails to Investigate Mr. Royer's Coerced False Confession and Contact Any Alibi Witnesses

At trial, the State repeatedly informed the jury that Mr. Royer confessed. Although Mr. Crawford argued the confessions were false, he failed to conduct any investigation to prove their falsity. (*Id.* at ¶8-11). Mr. Crawford did not investigate the impact Mr. Royer's mental health issues could have on a confession or speak with any of Mr. Royer's Oaklawn treaters. (*Id.*) As discussed *supra*, Mr. Royer's case manager at Oaklawn, Mr. Gourdine, stated that a combination of Mr. Royer's severe mental health issues and lack of medication could make Mr. Royer especially vulnerable to interrogation techniques and easily persuaded to say anything that would get him out of stressful situation. At trial the jury did not hear any testimony relating to the implications Mr. Royer's mental health could have on a false confession.

Mr. Crawford also did not investigate the State's alleged motive for Mr. Royer's participation in killing Ms. Sailor. (*Id.* at ¶8-11). In his two-day interrogation, Mr. Royer provided conflicted theories of motivation for the murder of Ms. Sailor. Through an investigation, Mr. Crawford could have spoken with individuals who were with Mr. Royer on the day in question to determine whether he was desperate with money at the time or frustrated with religion. As revealed *supra*, these witnesses would have rejected the State's theories for the crime, and as a result, would have directly attacked the credibility of Mr. Royer's confession. Yet, Mr. Royer's family was never contacted by Mr. Crawford. (*Ex. 7*, Chris Crawford Aff. at ¶8-9). Mr. Crawford did nothing to try and prove the falsity of Mr. Royer's confessions, and as a result provided ineffective assistance of counsel.

b. Counsel Failed To Investigate Alternate Suspects Even Though Multiple Investigate Reports Detailing Alternate Suspects Were Disclosed to the Defense

There was significant evidence disclosed to Mr. Crawford connecting the murder of Ms. Sailor to two alternative suspects, but Mr. Crawford did absolutely nothing with it. Larry Wood and Tony Thomas were labeled suspects in multiple investigative reports, but Mr. Crawford did not conduct any investigation into their potential involvement nor call any witnesses to the stand to testify about their involvement in the murder. As discussed above, Elkhart police officers even testified during trial that they did not have any other suspects, but Mr. Crawford failed to impeach the officers on any of their false statements during trial.

At Mr. Royer's trial the jury never heard any of the significant evidence implicating Mr. Wood in the murder of Ms. Sailor. As discussed above, Mr. Wood

had regular contact with Ms. Sailor through his job with Seifert Drugs and admitted that he may have been in her apartment the day of the murder. Shoes were also found in Mr. Wood's apartment with blood stains and an oily substance on the bottom, mirroring the substances found on Mr. Sailor's body. The second suspect, Tony Thomas, is a convicted killer and was at the Highrise the day of Ms. Sailor's murder. Mr. Thomas was high, belligerent, desperate for money and acting suspicious during the hour of Ms. Sailor's death. Mr. Crawford failed to investigate information disclosed to him regarding alternate murder suspects. (*Id.* at ¶10). Additionally, Mr. Crawford failed to contact any witnesses prior to trial or question any witnesses at trial about Mr. Wood or Mr. Thomas's potential involvement in the murder of Ms. Sailor. (*Id.*) As the result, the jury never heard any of the information relating to murder suspects Larry Wood and Tony Thomas.

For the reasons discussed at length above, Mr. Royer's counsel fell below the legal standard for effective legal representation.

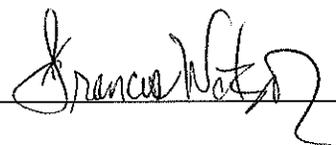
CONCLUSION

Andrew Royer has discovered new evidence material to his defense which he could not with reasonable diligence have discovered and produced at trial. This evidence illustrates Mr. Royer's innocence and reveals that the prosecution, through the Elkhart Police Department, withheld material exculpatory evidence. Further, Mr. Royer's trial counsel was wholly ineffective. Under Indiana Trial Rule 60(B)(8), this Court should vacate the judgment on Mr. Royer's Petition for Post-Conviction Relief and grant Mr. Royer a new trial.

AFFIRMATION

I affirm under the penalties for perjury that the foregoing representations are true to the best of my knowledge and belief.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I affirm that a copy of the foregoing Notice of Appearance was duly served on Vicky Becker of the Elkhart County Prosecutor's Office by electronic mail on June 13, 2018.

Respectfully submitted,

/s/ Elliot Slosar