ELKHART COUNTY SUPERIOR COURT NO. 3
ELKHART, INDIANA
CRIMINAL DIVISION

STATE OF INDIANA	)	
	)	
RESPONDENT,	)	Case No. 20D03-0309-MR-155
	)	
v.	)	
	)	
ANDREW ROYER,	)	
	)	
PETITIONER.	)	

ORDER GRANTING PETITION FOR POST-CONVICTION RELIEF, VACATING CONVICTION, AND ORDERING NEW TRIAL

Petitioner Andrew Royer's Successive Petition for Post-Conviction Relief ("Petition") was filed on June 4, 2029, based upon newly discovered evidence and constitutional violations. After the recusal of the Elkhart Superior Court 3 Judge, the Kosciusko Superior Court No. 3 Judge, Joe V. Sutton, was assigned to serve as Special Judge. The Elkhart County Prosecutor's Office filed an Answer to the Petition on September 4, 2019. On September 12, 2019, the parties participated in a scheduling conference with this Court to discuss the matters pending. At the conclusion of that conference, it was agreed that a bifurcated proceeding would take place where Petitioner would initially present undisputed facts and issues during the first phase. On October 2, 2019, the Petitioner and the State jointly filed a motion to bifurcate the proceedings in this case. In that joint motion, the parties came to an agreement to litigate the following issues at the first phase of this proceeding:

- The latent print exclusion and issues surrounding Mr. Chapman's original identification as alleged in Sections IV(L) and IV(Q) of Petitioner's brief. See pgs. 73-75; see also 94-96.

- Detective Conway's discipline and removal from the homicide unit as alleged in Section IV(E) of Petitioner's brief. See pgs. 42-44.

- Nina Porter's recantation as alleged in Section IV(A) of Petitioner's brief. See pgs. 32-36.

- Detective Daggy's admissions as alleged in Section IV(D) of Petitioner's brief. See pgs. 37-42.

- Detective Conway's admissions as alleged in Section IV(F) of Petitioner's brief. See pgs. 44-54.

- Jerome Johnson's recantation as alleged in Section IV(C) of Petitioner's brief. *See* pgs. 36-37.

A four-day evidentiary hearing took place on October 22-24 and November 1, 2019. At that hearing, this Court heard arguments and evidence on the claims raised in the Petition. At the conclusion of this hearing, the parties agreed to file Proposed Findings of Fact and Conclusions of Law. Those matters having since been filed, this Court finds that the matter is appropriate for review and disposition under Indiana Rules of Procedure for Post-Conviction Remedies (P.C. 1 and P.C. 12).

After considering the pleadings and materials submitted, the testimony and evidence presented to the Court, the arguments of counsel, and the various submissions of the parties, this Court enters the following findings of fact and conclusions of law and GRANTS Petitioner's Successive Petition for Post-Conviction Relief. In doing so, this Court finds as follows:

Background

1. The issues presented arise from the tragic death of Helen Sailor on or about November 28, 2002. On November 29, 2002, Ms. Sailor was found in her apartment deceased. (R. at 327).[1]

2. The Elkhart Police Department started a homicide unit in August of 2003, this case was the unit's first investigation. (R. at 398, 402-403). Detective Carl Conway was assigned to the unit and was the lead investigator at the time Mr. Royer was charged. (EH at 185:10-13). Detective Daggy assisted Detective Conway in the underlying investigation. (R. at 406).

3. Lana Canen and Andrew Royer had a joint trial in 2005. There, Detective Daggy informed the jury that police flagged Lana Canen's name during the investigation. (R. at 403). The jury learned that Ms. Canen was pulled over while driving in a car with Nina Porter. (R. at 481, 707). Ms. Porter ultimately provided a statement to Detective Conway on September 2, 2003. Ms. Porter's statement implicated Mr. Royer and Ms. Canen in the murder of Helen Sailor.

4. The jury learned the contents of Ms. Porter's September 2, 2003 statement. Ms. Porter testified at trial that she knew Mr. Royer and Ms. Canen and often saw them together. (R. at 675, 700). According to Ms. Porter, Canen controlled Mr. Royer's behavior and told him "what to do." (R. at 701). Ms. Porter further revealed that while she was drinking on the patio of the Highrise on July 3, 2003, Ms. Canen made several admissions to her regarding the Sailor homicide. (R.

[1] Citations to the record in this case will be referred to as "R. at __" while citations to the evidentiary hearing transcript will be referred to as "EH at ___."

at 703-705, 713). In one of those admissions, the jury was informed that Ms. Canen confessed: "Thanksgiving, thanks for giving death." (R. at 707-708).

5. Detective Conway testified at length about his involvement in the underlying investigation, including his interrogations of Mr. Royer on September 3, 2003 and September 4, 2003. (R. at 478). According to Detective Conway, Mr. Royer waived his *Miranda* rights on September 3, 2003, seemed pretty "relaxed about the whole situation," and was "very articulate." (R. at 483, 520). Detective Conway testified that the interrogation began at 9:34 a.m. and that he engaged in what he considered to be a "pre-interview process." (R. at 485-486). 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 Detective Conway's interrogation techniques:

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).

6. Detective Conway also 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).

7. After more than four hours of interrogation, Detective Conway 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 statement was admitted into evidence as State's Exhibit 16. (R. at 495).

8. The jury learned that Detective Conway interrogated Mr. Royer a second time the following day. (R. at 502). Again, after more than three and one-half hours of interrogation, 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).

9. Finally, the jury was presented with testimony about physical evidence linking Ms. Canen to the Sailor homicide. Joel Bourdon, an employee of the Elkhart Police Department, testified that he found a latent print in Sailor's kitchen. (R. at 572). Dennis Chapman, an employee of the Elkhart County Sheriff's Department, testified that he received several fingerprint lifts on August 29, 2003 from the crime-scene and standards from Ms. Canen. (R. at 621-22). After conducting a comparison, Mr. Chapman informed the jury that the latent print on Ms. Sailor's medicine bottle was a "match" to Ms. Canen. (R. at 621-22, 627).

10. In closing arguments, based on the testimony of Ms. Porter, Mr. Chapman, and Detective Conway, the State urged the jury 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).

11. The prosecution in closing argument also highlighted Mr. Royer's statements to Detective Conway. (R. at 721). 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).

11. The State implored the jury to ignore the defense argument that the interrogation "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).

12. The State also argued that Mr. Royer's confessions were corroborated by the latent print discovered on Ms. Sailor's medication bottle. The State recounted Detective Chapman's testimony that 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—in which she denied being in Ms. Sailor's apartment—were lies. (R. at 732).

13. 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*). The State then implored the jury to combine Mr. Royer's statements to Detective Conway 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).

14. The jury was informed:

> 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).

15. With this, Mr. Royer was convicted of felony murder and sentenced to 55 years in prison.

FINDINGS OF FACT

I. Detective Chapman's Lack of Training and Experience as Latent Print Examiner

16. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the

documentary exhibits submitted to the Court, establish the following facts relating to the latent print issues:

17. At Mr. Royer's 2005 trial, the State presented the testimony of Dennis Chapman, a deputy at the Elkhart County Sheriff's Department, as an expert on latent print comparisons. There, Mr. Chapman testified that he was formerly a fingerprint analyst for the FBI where he was responsible for examining and comparing prints. (R. at 617). Mr. Chapman further testified that he made approximately 100 latent print identifications and comparisons in the past several years. (R. at 617). Ultimately, Mr. Chapman informed the jury that he compared a latent recovered from a medicine bottle at the crime-scene to Ms. Canen's standards and determined that it was a match. (R. at 621-22, 627).

18. Retired Deputy Sheriff Dennis Chapman testified at the evidentiary hearing. There, unlike at trial, Mr. Chapman admitted that his experience at the FBI was limited to comparisons of known inked print cards (standards) to other known inked standards. (EH at 55:17-56:7). Importantly, Mr. Chapman did not compare known prints to latent lifts. (EH at 56:3-7, 56:15-17).

19. Mr. Chapman now admits that he was never trained to do latent print comparisons. (EH at 60:11-15). Given this, Mr. Chapman testified that he was even "surprised they wanted me to do this one since it was a homicide." (EH at 68:18-19).

20. At trial, the jury heard something very different altogether when Mr. Chapman testified that he had completed these types of examinations hundreds of

times. At the evidentiary hearing Mr. Chapman acknowledged that his trial testimony was not true and claimed that what he really meant was that he had compared ink print cards. (EH at 92:21-23).

21. It is undisputed that Mr. Chapman's lack of qualifications to conduct latent print comparisons was not disclosed to the defense prior to trial. (EH at 15-16).

22. Prior to trial, Ms. Becker and Mr. Williams divided witnesses to prepare and put on the stand. (EH at 15:14-16). Ms. Becker was the prosecutor responsible for meeting with Mr. Chapman and preparing him to testify. (Id. at 15:18-20). During those meetings, Mr. Chapman misled Ms. Becker into believing that he was qualified to conduct the type of latent print comparisons that exist here. (EH at 15:22-25). During her conversations with Mr. Chapman, Ms. Becker was never provided with his resume and it was never represented to her that he was not qualified to conduct comparisons of latent prints. (EH at 16:12-16). Pursuant to Rule 3.8, *Brady v. Maryland*, 383 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), Ms. Becker should have disclosed such exculpatory and impeachment evidence to the defense. (EH at 16:18-17:3).

23. The Court finds that Mr. Chapman's lack of qualifications to compare latent prints was not disclosed to Mr. Royer or his defense counsel at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

24. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Chapman's testimony that he was qualified to compare latent prints and that the latent left at the scene matched Ms. Canen was material to the State's case at trial. This new evidence demonstrates that Chapman's testimony and the State's argument to the jury were false and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

25. The Court also finds that the evidence presented satisfies the requirements of *Brady v. Maryland*[2] and *Giglio v. United States.*[3] It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is relevant, material, and exculpatory. The Court finds that the evidence is favorable to the defense as it would have constituted critical impeachment evidence of the State's main forensic witness. Finally, the Court finds that the withheld evidence was material to an issue at trial and the failure to

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[2] *Brady v. Maryland*, 373 U.S. 84, 87 (1963)
[3] *Giglio v. United States*, 405 U.S. 150 (1972)

disclose such evidence deprived Mr. Royer of this right to due process and a fair trial.

II. Latent Print Exclusions

26. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the documentary exhibits submitted to the Court, establish the following facts relating to the latent print exclusions:

27. Mr. Chapman received a request from the Elkhart Police Department to conduct a comparison of latent prints to known standards in the Sailor homicide. (EH at 60:18-23). Mr. Chapman had the evidence for approximately 189 days prior to forming his opinions in a written report. (EH at 79:10-13). Mr. Chapman estimates that he only worked on the comparison for approximately a week during the 189 days. (EH at 79). According to Chapman, he did not find a match to Ms. Canen until "just before" he returned the print back to the Elkhart Police Department. (EH at 80:17-18).

28. Mr. Chapman documented his opinions in this case in a report. (EH at 76; Petitioner's Ex. 12). Having reviewed the report, Mr. Chapman revealed that he first received the evidence in this case on August 29, 2003. (EH at 77). On that date, he received fingerprint standards and lifts that he needed to compare the standards to. (EH at 77-78). Mr. Chapman compared the standards of caregivers to the latent at issue. (EH at 86:1-9). In doing so, Chapman determined that "it didn't come from none of the caregivers." (EH at 86:8-9).

29. At trial, Mr. Chapman informed the jury that the print was a match to Lana Canen.

30. Mr. Chapman reviewed a latent print expert's power-point presentation prior to Ms. Canen's 2011 evidentiary hearing. (EH at 94:1-9). After his review, Chapman came to the realization that he "made a mistake in [his] original analysis." (EH at 94:12).

31. Mr. Chapman testified at the evidentiary hearing that the latent print left at the crime-scene on the victim's medicine bottle was not Ms. Canen's. (EH at 94:13-14). Mr. Chapman recalled that "the ridge count was way off. It wouldn't have been hers, well without you not knowing it (inaudible) sense. The distance from the delta to the core was a lot longer in the latent print then what her print was." (EH at 95:5-9).

32. Mr. Chapman also admits that he did not even look for dissimilarities when he conducted his original comparison. (EH at 95:21-22). This is critical, as even Chapman explains, "all I needed was that one error [dissimilarity], because it wasn't similar so I knew it wasn't hers then." (EH at 95:12-13).

33. The Court finds that the exclusion of Ms. Canen from the latent prints found at Ms. Sailor's residence was not disclosed to Mr. Royer or his defense counsel at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

34. The Court finds that evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On

this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Chapman's false testimony that the latent left at the scene matched Ms. Canen was material to the State's case against Mr. Royer at trial. As noted above, the State repeatedly argued to the jury that the latent print match to Canen corroborated the statements obtained from Mr. Royer. This new evidence demonstrates that Mr. Chapman's testimony and the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

III. Additional Evidence Relating to Mr. Chapman's Latent Print Opinion

35. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented at the evidentiary hearing, including the documentary exhibits submitted to the Court, establish the following facts relating to additional latent print issues:

36. After Ms. Canen's evidentiary hearing, in 2012, Mr. Chapman was disciplined by the Elkhart County Sheriff's Department for his role in this case. (EH at 96:11-25). As part of that process, on August 24, 2012, Mr. Chapman met with his supervisor Jeff Siegel about his testimony at trial. (Id.; Petitioner's Ex. 13). Sheriff Siegel was a Captain in the Elkhart Sheriff's Department at the time.

(EH at 108:4-6). Sheriff Siegel created a memorandum of that interview that was admitted as Petitioner's Exhibit 13.

37. In that conversation, Mr. Chapman revealed that he felt pressure to make the print comparison made during the underlying investigation. (EH at 97:1-5). He further felt pressured by phone calls he received from the Elkhart Police Department after receiving the evidence. (EH at 98:5-11). Mr. Chapman also confessed that these calls – and the fact that he "hadn't got it done yet" caused him more pressure. (EH at 98:9-11).

38. Sheriff Siegel, then Captain, also drafted a performance evaluation based on his investigation into Mr. Chapman's opinions in this case. (EH at 110:12-17; Petitioner's Exhibit 14). At the conclusion, Sheriff Siegel stopped any fingerprint analysis that Mr. Chapman was involved with and barred him from conducting any such examinations in the future. (EH at 110:19-111:2). Mr. Chapman was likewise barred from testifying in criminal cases. (Petitioner's Ex. 14). Sheriff Siegel agreed with the decision to ban Mr. Chapman from conducting and testifying about fingerprint analysis: "the analysis was such a big part of that case that we shouldn't make that, uh, put him in that situation again." (EH at 111:21-24).

39. This Court heard newly discovered evidence illustrating that Mr. Chapman was also provided with information that may have biased the opinions he formed. At the hearing, Mr. Chapman testified that Elkhart police officers told him their theory of the murder prior to completing his finger print analysis.

Specifically, Mr. Chapman was informed that Ms. Canen was the suspect prior to conducting his comparison and that she was the brains behind the murder. (EH at 74:21-24, 75:4-10). He was also informed that the actual killer was too simple to think up the plan that was carried out. (EH at 98:12-16).

40. When it comes to latent print analysis, Mr. Montooth, a highly experienced laboratory analyst from the Indiana State Police Laboratory, explained that ISP analysts try to limit the amount of information they are told about a case in order to eliminate bias and being unfairly influenced in making an identification. (EH at 817:11-14).

41. The Court finds that Mr. Chapman's admissions to feeling pressure and being provided with information that may have biased his opinions were not disclosed to Mr. Royer or his defense at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

42. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Chapman's testimony that he felt pressure to make an identification and was provided with information that may have biased his opinion

is material to the State's case at trial. This new evidence demonstrates that Chapman's testimony and the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

43. The Court also finds that the evidence presented satisfies the requirements of *Brady v. Maryland* and *Giglio v. United States* as well. It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is relevant, material, and exculpatory. The Court further finds that the evidence is favorable to the defense as it would have constituted critical impeachment evidence of the State's main forensic witness. Finally, the Court finds that the withheld evidence was material to an issue at trial.

Indiana State Police Laboratory Reviews Latent Print Evidence

44. Petitioner likewise presented evidence relating to examinations of the latent prints in the Sailor homicide by members of the Indiana State Police Laboratory (hereinafter referred to as "ISP Laboratory"). The Court finds that this evidence demonstrates that the latent prints at issue exclude Lana Canen and Andrew Royer from being contributors.

45. Marcus S. Montooth, a senior latent print examiner and current supervisor of the Latent Print Identification Unit at ISP, conducted the comparison and testified that in August 2012, the ISP received a request from the Elkhart Prosecutors office to rework the latent print evidence pertaining to this case. (EH at

792:11-14; 793:23-25; 794:1-13; Petitioner's Ex. 50). Per the request, Mr. Montooth compared one latent print found in item 001 to the exemplars belonging to Lana Canen. (EH at 797:10-14).[4]

46. The latent print recovered from item 001 was subsequently labeled as latent 001A. (EH at 806:3-4). Latent 001A was then compared to exemplars of all ten fingers and palms belonging to Lana Canen. (EH at 806:5-8). Mr. Montooth revealed that latent print 001A was eliminated as having been made by Lana Canen. (EH at 797:10-14; Petitioner's Ex. 51, Ex.52).

47. In conducting this analysis, Mr. Montooth looked at the differences and similarities between latent print 001A and the exemplars. (EH at 806:12-15). As an expert, Mr. Montooth made it clear that it is "standard practice" to look at both the similarities and differences when comparing print. (EH at 806: 12-23). He explained: "you start by looking for similarities, uh, to see if anything is there to continue your comparison...if you find anything that's similar then you move out from there to see if anything is different." *Id.* Ultimately, he created a report with the results of this comparison. (Petitioner's Ex.51; EH at 807:12-14.)

48. On October 1, 2012, Mr. Montooth received a second request to compare additional latent prints along with latent print 001A to the exemplar belonging to Lana Canen and "multiple other exemplars." (EH at 807:21-25, 808:1)

[4] Item 001 was previously identified as part of a group of latent lifts received by ISP analyst Frank Aldrich and identified as item 106A. (EH at 800: 24-25).

(Petitioner's Ex.55). In total, Mr. Montooth found and compared fourteen latent prints sufficient for comparison purposes. (EH at 810:19-21).

49. Through this comparison Mr. Montooth made two identifications. (EH at 810: 21-24). First, Mr. Montooth found that Latent 001A matched the left middle finger of Pamela Kruder, a health aide worker. (EH at 812: 16-17). Importantly, Latent 001A is the same latent print that Deputy Chapman erroneously matched to Ms. Canen's left pinky finger in 2004. (EH at 812: 22-24; Petitioner's Ex.51). According to Mr. Montooth's testimony, Chapman not only identified the wrong person, but he likewise misidentified the finger and hand as well.

50. The second print, latent 73A1, was identified to the right index finger of Angel Noe, not Canen's left pinky finger. (EH at 813:2-7).

51. As part of his comparison process, Mr. Montooth also reviewed portions of the entire Indiana State Laboratory file that were related to the latent prints he was asked to compare. (EH at 813: 17-20).

52. To provide context to Mr. Montooth's testimony, the Court recounts the following factual background regarding the transfer of the latent prints at issue. The Elkhart Police Department originally sent the latent evidence to the Indiana State Police laboratory. By October of 2003, Detective Bourdon removed all the latent evidence originally sent to the Indiana State Police and gave it to Mr. Chapman for comparison. (EH at 838: 6-15). Detective Bourdon testified that he removed the evidence because at the time the Indiana State Police laboratory was too busy to compare the evidence and because "it made sense" that all of the

evidence should be compared by one examiner; in this case Mr. Chapman. (EH at 838:18-25, 839:1-2).[5]

53. Detective Bourdon admits that contrary to the State's position for recruiting Chapman for this process due to a delay at the laboratory, the Indiana State Police Laboratory can "rush cases" that need to be reviewed immediately. (EH at 829:1). Here, Detective Bourdon testified that the Elkhart Police Department and the Elkhart County Prosecutor's Office did not request that the review of the latent print evidence in this case be prioritized or "rushed." (EH at 830:1-9).

54. Even more, in November 2003, Detective Brown of the Elkhart Police Department submitted two hinged lifters along with four fingerprint cards to the Indiana State Police Laboratory for comparison in another homicide investigation. (Petitioner's Exhibit No. 57). Thus, at the same time as the Elkhart Police Department and the Elkhart County Prosecutor's Office were removing latent prints and physical evidence in the Sailor homicide investigation due to an alleged delay, they were contemporaneously seeking to use the Indiana State Police laboratory to conduct latent examinations in other homicide cases. Therefore, the reasons given for submitting the latent and known prints to Mr. Chapman for comparison is not supported by the evidence.

55. The Court finds that the two positions are contradictory.

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[5] In addition to the latent prints being transferred from the Indiana State Police Laboratory, the comparison cards were as well. On August 29, 2003, Detectives Conway and Hammel delivered fingerprint cards and lifts to Mr. Chapman of the Elkhart County Sheriff's Department for examination. (EH at 514:15-515:2; see also Petitioner's Ex. 12).

56. In March 2004, Mr. Chapman returned the latent evidence to the Elkhart Police Department. (EH at 331:4-333:8; 843:8-15). Explaining further, Mr. Montooth testified that his review revealed that in April 2004, one month after Mr. Chapman identified the latent print as belonging to Lana Canen, the Elkhart Police Department sent the same latent prints to the Indiana State Police Laboratory for entry in the Automated Fingerprint Identification System (AFIS). (Petitioners Ex. 55; EH at 842:22-25, 843:1-15).[6] This was confirmed by Detective Joel Bourdon who was in charge of collecting, processing and maintaining the physical evidence in the Sailor Homicide. (EH at 832:6-11; EH at 838: 6-12).

57. As Mr. Montooth testified, the purpose of AFIS is to identify prints and it is atypical to use AFIS after a print has already been identified. (EH at 816:21-25, 817: 1-6). Latent print science is based on the premise that no two prints – on earth – are identical. Given this, in his 16 years of practice at the Indiana State Police Laboratory, Mr. Montooth has never run an identified print through AFIS. (EH at 816:21-23). Mr. Montooth testified that in 2004 the lifts were found to be insufficient for comparison for the purposes of AFIS and no identifications were made. (EH at 815:8-11, 827:19-22; Petitioners Ex.56). The results of this analysis

[6] Mr. Montooth testified that according to the notes he reviewed in preparation for his second analysis, Item 106 was identified as a sealed plastic bag containing eight adhesive lifters. (EH 821:1-4). From these lifters, Indiana State Police Laboratory Analyst Mr. Frank Aldrich found seven lifts and labeled them 106A. When Mr. Montooth received the lifts in 2012, he received six lifts in item 106A, one lift in item 001, which was originally part of 106A. (EH at 823:7-25). Mr. Montooth testified that as part of his investigation he reviewed all of the eight lifts found in item 106, which most recently were categorized as one lift in item 106, six lifts in item 106A and one lift in item 001. (EH at 821-823; 800:24-25).

were communicated to Det. Bourdon who then disclosed the results to the Elkhart Prosecutor's office. (EH at 843:7-11).

58. The Court finds that the series of events recounted above indicates that the State had doubts before trial as to the accuracy of Mr. Chapman's opinion.

59. As Mr. Montooth recounted, there would be no legitimate reason for the submission of standards which purportedly had already formed a match to Ms. Canen through the AFIS system unless such doubts existed.

60. The Court further finds that the submission of the evidence to the ISP laboratory for an AFIS search along with the results that the latent prints were insufficient for comparison purposes should have been disclosed to the defense.

61. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). The Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that this evidence is material to the State's case at trial. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

IV. Detective Conway's Removal from the Homicide Unit

62. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the documentary exhibits submitted to the Court, establish the following facts relating to Mr. Conway's removal from the Elkhart Police Department's homicide unit:

63. In 2003, William Wargo Jr. was Sergeant of the Elkhart Police Department's homicide unit. (EH at 118:7-9). The remaining members of homicide included: (1) Lt. Paul Converse; (2) Det. Mark Daggy; (3) Lt. Peggy Snider; and (4) Carl Conway. Sergeant Wargo was the direct supervisor of Det. Conway in 2003. (EH at 119:17-19.

64. In 2003, Detective Conway was assigned to the Gwen Hunt homicide investigation. (EH at 129:19-130:1). Beginning in August 2003, Detective Conway was also assigned as the lead investigator in the Sailor homicide investigation. (EH at 185:10-16; 204:8-13).

65. During the investigation into the Hunt homicide, Sergeant Wargo was informed that Detective Conway spoke to an attorney representing Stacy Orue around February 2004. (EH at 130:7-10). In this conversation, Sergeant Wargo was presented with complaints surrounding Detective Conway's questioning of Ms. Orue. (EH at 130:17-131:2). Specifically, Detective Conway made a request to interview Orue to her attorney to interview Orue without counsel's presence. In doing so, Detective Conway falsely represented that Orue was a witness and not a suspect in a criminal investigation.

66. After conducting interviews with Conway, Sergeant Wargo and Lieutenant Converse requested that "Detective Conway ... be removed from the homicide unit." (EH at 135:2-3).

67. Detective Conway was removed from the homicide unit because his supervisors had concerns about the impact that his misrepresentations would have on future homicide investigations and his credibility at trials if called to testify. (EH at 137:12-21). For these reasons, Lieutenant Converse and Sergeant Wargo requested Detective Conway's removal, a request that was ultimately accepted by the Chief of Police at the Elkhart Police Department. (EH at 142:5-19).

68. Detective Conway admits that he was removed from the homicide unit of the Elkhart Police Department prior to Mr. Royer's trial. (EH at 517:11-13). Detective Conway testified that he was informed at the time of his removal that it stemmed from the "possibility [of] misrepresentation to an attorney." (EH at 519:23-25).

69. Detective Conway's removal from the homicide unit was not by choice. (EH at 532:18-22). In fact, Detective Conway attempted to appeal his removal to the Chief of Police, which was summarily denied. (EH at 533:2-6). To this day, Detective Conway has never been placed back in the homicide unit of the Elkhart Police Department. (EH at 533:7-9).[7]

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[7] Detective Conway was later removed from the sex-crimes unit as well. (EH at 534:5-6). During that removal process, Detective Conway made a complaint to Assistant Elkhart County Prosecutor Vicki Becker. (EH at 536:15-22). A disciplinary proceeding ensued that resulted in an agreement between Mr. Conway and the Elkhart Police Department. (Petitioner's Ex. 41; EH at 537:1-22). As part of that agreement, the Elkhart Police Department agreed to withdraw any allegations alleging or suggesting that "he caused the Office of the Prosecuting Attorney to lose faith in the Elkhart Police Department or to

70. Pursuant to a stipulation between the parties, "it is undisputed that any discipline against or demotion of Detective Conway from the homicide unit was not disclosed by the Elkhart Police Department to Mr. Royer's defense prior to his 2005 trial." (EH at 19:20-25).

71. As the lead investigator in the Sailor homicide, responsible for obtaining statements from Mr. Royer, Detective Conway's credibility was a critical factor in the case. Detective Conway's testimony regarding his interrogations of Mr. Royer and his claims that Royer confessed to the murder subsequent are matters clearly material to Royer's innocence or guilt. The decision made by leadership in the Elkhart Police Department to remove Detective Conway from the homicide unit is material impeachment evidence. The new evidence significantly undermines Detective Conway's credibility and testimony at trial.

72. This Court finds that the State introduced no evidence contradicting Sergeant Wargo's findings or the supporting documentary evidence submitted by Mr. Royer.

73. The Court finds that this new evidence would have been material to the jury's determination of Detective Conway's credibility as a witness at trial. This new evidence would have been material to the jury's ultimate determination of Mr. Royer's innocence if known and if available at the time of trial.

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question its ability to supervise its detectives, investigate sex crimes, or to perform any other form of police activities." (Petitioner's Ex. 41; EH at 538:5-11). In exchange, Detective Conway accepted a written reprimand. (EH at 541:18-542:10).

74. The Court finds that this new evidence would have been relevant to Detective Conway's testimony and credibility at trial about his interrogation of Mr. Royer.

75. The Court finds that Detective Conway's removal from the homicide unit was not disclosed to Mr. Royer or his defense at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

76. The Court finds that evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that Mr. Conway's removal from the homicide unit because his supervisors had concerns about the impact that his misrepresentations would have on homicide investigations and his credibility at trials if called to testify is material to the State's case at trial. This new evidence demonstrates that Conway's testimony and the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

77. The Court finds that the evidence presented satisfies the requirements of *Brady v. Maryland* and *Giglio v. United States* as well. *Brady v. Maryland*, 373 U.S. 84, 87 (1963). It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is favorable to the defense as it would have constituted critical impeachment evidence of the State's main law-enforcement witness. Finally, the Court finds that the withheld evidence was material to an issue at trial.

V. Monetary Consideration Promised and Paid to Nina Porter

78. Petitioner has presented this Court with newly discovered evidence establishing that the State's critical third-party witness, Nina Porter, was paid $2,000 for her cooperation in this case.

79. This Court was first presented with testimony from Pamela Fahlbeck, President and CEO of a home healthcare company in 2002. (EH at 665:1-5). In that capacity, Ms. Fahlbeck came to know Helen Sailor, a longtime customer of her company. (EH at 665:23-25). Ms. Fahlbeck offered a $2,000 reward immediately after Ms. Sailor's murder. (EH at 668:16-25). Ms. Fahlbeck publicized the reward by placing posters in the "apartment housing locations," laundry shops, and "anywhere that anybody would let [her] post it" within a week of the murder. (EH at 668:21-669:3).

80. During the course of the underlying investigation, Ms. Fahlbeck also informed Elkhart police that she offered a reward. (EH at 678:15-18). At some point, Ms. Fahlbeck was informed by an Elkhart detective that "the person had

been found by another person who said they knew [who did] it. And the reward money would go to that individual." (EH at 670:22-25).

81. It is undisputed that Nina Porter received the payment of $2,000 after her testimony at trial. (EH at 718:12-25; 721:15-18).

82. Ms. Porter testified that she was promised the reward money prior to giving her statement in this case. (EH at 718:7-22). Detective Daggy testified that he didn't have any personal knowledge as to whether Detective Conway made such promises to Ms. Porter. (EH at 903:1-5; 904:22-905:10).

83. According to Mr. Daggy, on August 12, 2005 the reward was given in exchange for Ms. Porter's trial testimony. (EH at 897:17-19; 899:8-11; Petitioner's Ex. 60). Ms. Porter was provided the money because she testified consistently with the statement obtained from her during the underlying investigation. (EH at 932:11-14). Had Ms. Porter deviated from her statement, she would not have been paid. (EH at 932:11-14). Ms. Porter was paid because her testimony helped obtain the convictions of Ms. Canen and Mr. Royer. (EH at 932:15-19).

84. Although the source of the money paid to Ms. Porter was from the reward money posted by the home healthcare company, it was Mr. Daggy who provided Ms. Porter with the check. (EH at 898:10-18).

85. It is undisputed that the payment of $2,000 to Nina Porter was not disclosed to Mr. Royer's defense prior to trial. (EH at 20:1-4).

86. This Court finds that the undisclosed payment to Ms. Porter is material impeachment evidence. The Court also finds that the undisclosed payment casts doubt on the credibility of Ms. Porter's 2005 trial testimony.

87. Additionally, this Court finds Ms. Porter's testimony that she was promised consideration prior to giving a statement and testifying at trial to be credible. Furthermore, neither the promise nor the actual payment to Porter were disclosed prior to trial, which is a classic *Giglio* violation.

88. Consistent with the parties' stipulation, the Court finds that the promise and payment to Ms. Porter was not disclosed to Mr. Royer or his defense at the time of his criminal trial and could not have been discovered by him or his counsel in the exercise of reasonable diligence in 2005.

89. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State*, 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that payment is material to the State's case at trial. This new evidence demonstrates that the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

90. The Court finds that the evidence presented satisfies the *Brady v. Maryland* standard as well. *Brady v. Maryland*, 373 U.S. 84, 87 (1963). It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is favorable to the defense as it would have constituted critical impeachment evidence of the State's star third-party witness. Finally, the Court also finds that the withheld evidence is material to an issue at trial.

VI. Nina Porter's Recantation of Her Statement and Attendant Trial Testimony

91. Petitioner presents this Court with newly discovered evidence regarding Ms. Porter's original statement and trial testimony. At the underlying hearing, Ms. Porter painstakingly described the circumstances that led to her false statement and ultimate testimony against Petitioner and Lana Canen. The Court summarizes such evidence as follows.

92. In September 2003, Nina Porter was driving a car with Lana Canen when she was pulled over by the Elkhart Police. (EH at 686: 21-23, 687:5-8). At the time of this encounter, Ms. Porter was recently released from prison and on parole and probation. (EH at 688:4-18). Ms. Porter testified that she understood she faced eight years in custody if she violated her probation or parole. (EH at 688:19-25).

93. At this traffic stop, Lana Canen was arrested; Ms. Porter however, was given a traffic citation and allowed to go home. (EH at 689: 4-25). At no point during this interaction with the Elkhart Police did Ms. Porter volunteer information

regarding the murder of Helen Sailor, Lana Canen, or Andy Royer. (EH at 692:19-35; 693:1-5).

94. After the stop, Detective Conway spoke with Officer Kruzynski "and was told that he arrested Canen during a traffic stop and that Canen was with a person by the name of Nina Porter. Wanting to speak to someone that might have personal knowledge about Canen, I did some research and learned that Porter was listed as being Canen's next door neighbor." (Petitioner's Ex. 17; EH at 220). The officer did not provide Detective Conway with any information indicating that Nina Porter had knowledge regarding the Sailor homicide. (EH at 220:19-23).

95. Detective Conway stated that he went to speak with Ms. Porter because he wanted to speak to someone who might have personal knowledge about Ms. Canen and not because Ms. Porter divulged information regarding the homicide. (EH at 221:16-24).

96. The next day, September 2, 2003, Detective Conway arrived at Ms. Porter's house and informed her that there was an outstanding warrant for her arrest and took her into custody. (EH at 693:10-21, 694:2-12). Detective Conway testified that at the time he went to speak with Porter, he was aware that she was on probation and parole, "I believe so, yes sir. I believe that's why she, yes sir I do believe so." (EH at 226:15-19) (emphasis added).

97. After being placed into an interrogation room, Ms. Porter was not questioned about the warrant for her arrest. Instead, Ms. Porter was questioned for hours about the Sailor homicide. (EH at 697: 4-10; 698:19-22).

98. When Ms. Porter stated that she "didn't know anything... didn't get told anything" and "didn't even know what to say that she [Lana Canen] could have told her," Ms. Porter was told that she would "be in trouble" if she didn't cooperate. (EH at 697:23-25).

99. Detective Conway admits to speaking with Ms. Porter "quite extensively" before taking her statement. (Petitioner's Ex. 18; EH at 256:3-6). Ms. Porter remembers Detective Conway, who she described as having "very big shoulders" being "very tall," and "very loud" and who sat about eight inches from her as she was fed the details of the Sailor homicide. (EH at 703:4-23, 704:1-13).

100. Ms. Porter described the questioning that resulted in her feeling "scared" that she was "in trouble for murder because it was so intimidating..." (EH at 704:14-20). When Ms. Porter revealed that Canen never confessed to her, Detective Conway responded by intimidating and threatening her that "was going to lose [her] kids and if [she] didn't tell the truth that Lana told [her] everything..." (EH at 699: 6-14; 704:25-705:2). Detective Conway does not deny speaking to Ms. Porter about her family and probation status prior to obtaining her statement. (EH at 252:17-24).

101. After repeated attempts to obtain a statement from Ms. Porter, she recalls that Detective Conway showed her photographs of the deceased body of Helen Sailor. (EH at 700:1-7). Each photo had words written on the back that were meant to serve as cues for Ms. Porter to repeat. (EH at 700:8-25). Specifically, Ms. Porter recalls one of the photographs containing the phrase "Thanksgiving", which

was her cue for repeating "Thanksgiving. Thanks for giving death." (EH. at 706:1-17, 707:2-4).

102. While the recorder was off, Ms. Porter testified that the police turned the photos over and told 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.)

103. Ms. Porter maintains that all the information she provided was either on the back of a photograph or information that the police told to her over the course of the lengthy unrecorded "pre-interview process." (EH. at 707:5-27, 708:1-7). Detective Conway confirmed that he went through what Ms. Porter's statement was going to reflect prior to turning on a recorder. (EH at 257:7-17).

104. Ms. Porter revealed that the fear of going to prison and losing custody of her children were the driving factors that eventually led her to agree to make false statements and testify falsely at trial (EH. at 712: 1-4, 10-13; 717:10-15; 719:18-23).

105. Ms. Porter testified that she was also promised significant monetary consideration as well. Prior to giving a recorded statement, Elkhart police informed Ms. Porter that she would receive a reward from the "home healthcare place" in exchange for her cooperation. (EH. at 701:18-19, 718:7-25)

106. Feeling ashamed that she testified falsely at trial, Ms. Porter admits that Ms. Canen never made any incriminating statements to her about the murder of Ms. Sailor. (EH. at 706:20-24, R.720:10-11). Ms. Porter never heard Ms. Canen

say, "Thanksgiving. Thanks for giving death." (EH. at 707:2-4). (EH. at 717:1-2). Further, Lana Canen never asked Ms. Sailor for money. (EH. at 716:1-9), never confessed that she got money from an old lady. (Id. at 22-24) and never said that Andy wasn't supposed to hurt the old lady (EH. at 717:3-5).

107. This Court finds Ms. Porter's testimony to be credible when she explained that she would not have testified falsely against Ms. Canen or Mr. Royer, had she not been threatened with having her probation and parole revoked, going to prison and losing custody of her children – including her disabled child – if she did not cooperate. (EH at 717:10-15).

108. This Court finds Ms. Porter's testimony to be credible when she testified that the statements police told her to say were "all a lie." (EH at 720:1) In her words: "My testimony here today is that I did not know anything about this murder, or the woman being murdered herself until the information was given to me to give back. I didn't know anything." (EH at 750:8-12).

109. The State declined to introduce any testimony to combat the statements made by Ms. Porter. Mr. Daggy testified that he has no recollection of participating in the questioning of Ms. Porter on September 2, 2003. (EH at 851:17-852:10). The State asked a single substantive question of Detective Conway about the statements involving Ms. Porter: whether he questioned her in a confrontational way. (EH at 605:11-13). The State elicited no testimony from Detective Conway regarding the other allegations made by Ms. Porter.

110. The Court finds Ms. Porter's testimony that she was threatened by Detective Conway and promised monetary consideration to testify falsely against Ms. Canen and Mr. Royer to be credible.

111. The Court finds that Ms. Porter's recantation is credible.

112. The Court finds that Ms. Porter's explanation for how her statement was created is credible.

113. It is undisputed that the coercion and fabrication of Nina Porter's statements and false trial testimony were not disclosed to Mr. Royer's defense lawyer. (EH at 20:4-8). The Court finds that this could not have been discovered by Mr. Royer or his counsel in the exercise of reasonable diligence in 2005.

114. This Court finds that the circumstances leading to the creation of Ms. Porter's statement and subsequent trial testimony are material, relevant, and exculpatory.

115. The Court finds that the evidence presented satisfies the newly discovered evidence standard set forth in *Carter v. State,* 738 N.E.2d 665, 671 (Ind. 2000). On this score, the Court finds that this is newly discovered evidence that has been discovered since trial which is material and relevant. The Court finds that this evidence is not cumulative nor merely impeaching. This Court further finds that the evidence is competent, worthy of credit, and can be produced upon retrial. The Court finds that new evidence is material to the State's case at trial. This new evidence demonstrates that the State's argument to the jury were inaccurate and materially misleading. The Court finds that this new evidence undermines the

credibility of the State's case and there is a reasonable probability that this new evidence will produce a different result on retrial.

116. The Court finds that the evidence presented satisfies the *Brady v. Maryland* standard as well. *Brady v. Maryland*, 373 U.S. 84, 87 (1963). It is undisputed between the parties that the evidence was not disclosed to the defense. The Court finds that the evidence is favorable to the defense as it would have constituted critical exculpatory and impeachment evidence relating to the State's star third-party witness. Finally, the Court also finds that the withheld evidence is material to an issue at trial.

VII. Interrogation Issues

117. The Court next addresses the two statements obtained by Detective Conway from Mr. Royer on September 3, 2003 and September 4, 2003. What remains of the State's case is based almost exclusively on two audio-recorded statements from September 3, 2003 and September 4, 2003. Those audio-recorded statements total approximately 61 minutes. This Court heard substantial evidence and testimony regarding those statements and what occurred during the approximate seven and a half hours of Detective Conway's unrecorded interrogations of Mr. Royer. Given the newly discovered evidence, the Court concludes that the statements obtained from Mr. Royer are unreliable. The Court also finds that the statements are involuntary. Given the newly discovered evidence discussed *infra*, Mr. Royer's unreliable statements would not result in a conviction upon retrial.

118. This Court finds that the record and pleadings submitted by the parties, along with the testimony and evidence presented, including the documentary exhibits submitted to the Court, establish the following facts relating to the statements obtained from Mr. Royer:

A. Detective Conway's Reputation for Getting Confessions

119. Petitioner established newly discovered evidence demonstrating that Detective Conway has a reputation for obtaining confessions. Detective Conway testified regarding his reputation for obtaining confessions. Detective Conway obtained a confession from every suspect he interrogated while assigned to the homicide unit. (EH at 186:12-20). When asked whether he had a reputation within the Elkhart Police Department in 2003 for obtaining confessions, Detective Conway clarified that he built this reputation over his "seventeen years plus at being a detective, yes sir." (EH at 196:2-12; see also 197:22-198:1). The Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer.

B. No Internal Interrogation Training at the Elkhart Police Department

120. Petitioner has likewise developed newly discovered evidence indicating that Detective Conway's ability to get confessions was not a direct result of his internal interrogation training at the Elkhart Police Department. Prior to questioning Mr. Royer in September 2003, the Elkhart Police Department did not provide Detective Conway with meaningful internal training on how to conduct

interrogations. (EH at 201:14-23). There were no formal interrogation techniques taught internally, including how to interrogate a suspect suffering from a mental disability. (EH at 201:24-202:3). The Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer.

C. Detective Conway's Awareness and Dismissal of Royer's Vulnerabilities

121. Petitioner has likewise developed newly discovered evidence indicating that Detective Conway was aware of Mr. Royer's vulnerabilities during the interrogation process. Knowing these vulnerabilities, Petitioner has demonstrated that Detective Conway did not use any protections to safeguard against the possibility of Mr. Royer giving false and unreliable statements. The Court summarizes the most salient facts in turn.

122. Prior to interrogating Mr. Royer, Detective Conway was informed by Detective Snider, a member of the homicide unit, that the Elkhart Housing Authority had documentation illustrating that Mr. Royer was severely disabled and had the mind of a child. (EH at 211:1-10). Detective Conway admits that he was aware of such information prior to engaging in a two-day interrogation of Mr. Royer. (EH at 284:17-285:1). Mr. Conway admitted on the stand that he considered this evidence to be just an opinion. (Id.) Although Detective Conway testified that he disagreed with this opinion (EH at 285:2-5), he did not take any investigative steps to determine whether Mr. Royer was mentally disabled or the extent of his mental disability prior to interrogating him. (EH at 286:20-287:3).

123. Conversely, Detective Daggy testified that he did not disagree with the information obtained by Detective Snider that Mr. Royer was severely mentally disabled and had the mind of a child. (EH at 858:14:20). In his words, "I know there are some issues with him mentally." (EH at 858:19-20).

124. Although Detective Conway testified that he did not contact Oaklawn prior to questioning Mr. Royer, had he done so, he would have learned that Mr. Royer was diagnosed with schizoaffective disorder while receiving treatment at Oaklawn. (EH at 166:17-22). Mr. Royer was also on multiple psychiatric medications. (EH at 169:14-15).

125. Geneva West was a property manager for the Elkhart Housing Authority in 2002. (EH at 653:12-14). At the time of the underlying events, Ms. West was the manager of the Waterfall High-Rise. (EH at 653:21-654:1). Ms. West was familiar with Andrew Royer in November of 2002, as he was a resident in the Waterfall High-Rise. (EH at 654:22-655:6). As Ms. West revealed, Mr. Royer qualified to be a resident of the High-Rise because he had a "mental disability." (EH at 655:21-25). Ms. West recalled speaking to an Elkhart police officer on August 28, 2003 regarding the investigation into Helen Sailor's death. (EH at 657:7-24). In that meeting, Ms. West informed the officer that the file pertaining to Mr. Royer documented that he was severely disabled, had the mind of a child, and was being treated at Oaklawn. (EH at 658:17-22; 660:14-16).

126. In spite of this, Mr. Royer was not permitted to have a lawyer, counselor, nor family member present for his interrogations on September 3, 2003

and September 4, 2003. (EH at 295:8-20). The Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer.

D. Violation of *Miranda* Rights

127. Petitioner has developed newly discovered evidence establishing that Mr. Royer did not knowingly and voluntarily waive his *Miranda* warning on September 3, 2003 and September 4, 2003.

128. On September 3, 2003, Detective Conway began reviewing the waiver with Mr. Royer at 9:34 a.m. (EH at 300:18-301:2). Mr. Royer signed the form at 9:35 a.m. (EH at 301:6-10). Detective Conway admits that it took him a single minute to go through the waiver with Mr. Royer. (Petitioner's Ex. 23; EH at 301:11-14).

129. Detective Conway provided Mr. Royer with another *Miranda* waiver on September 4, 2003 at 8:25 a.m. (EH at 491:11-492:10). It took Detective Conway a single minute to complete the review of the waiver. (Id.).

130. Given Mr. Royer's demonstrated mental vulnerabilities, the Court finds that this newly discovered evidence, too, would impact whether the statements are admissible and reliable, as Mr. Royer could not have made a knowing and voluntary waiver of his Miranda rights in a single-minute.

E. Detective Conway Fed Information to Mr. Royer During the Unrecorded Interrogations

131. Petitioner has presented additional newly discovered evidence establishing that the statements obtained from Mr. Royer are unreliable. Detective Conway made critical admissions that would impact a future trier of fact's consideration of the statements obtained from Mr. Royer.

132. Mr. Conway spoke to Mr. Royer "quite extensively" before obtaining his recorded statement. (EH at 349:14-350:1). Given that Detective Conway obtained Mr. Royer's September 3, 2003 recorded statement at 1:32 p.m. and the waiver was signed at 9:35 a.m., this Court finds that Detective Conway interrogated Royer for nearly four hours prior to taking his recorded statement. (Petitioner's Ex. 18; EH at 359:10-13). During this unrecorded interrogation, Mr. Royer maintained his innocence for the first two to three hours. (EH at 363:13-16).

133. Although Detective Conway admits that it's inappropriate to feed someone information about the details of the crime during an interrogation, "so that way they are not repeating back just what they're told," Mr. Conway admits to engaging in this tactic with Mr. Royer. (EH at 500:4-7; 365:3-5). Detective Conway repeatedly provided intimate details of the crime to Mr. Royer during the unrecorded interrogation process. (EH at 388:5-10).

- Detective Conway admits he was the first person to accuse Mr. Royer of striking the victim. (EH at 399:22-200:7).

- Detective Conway was also the first to bring up towels being thrown away. (EH at 401:18-402:12). After Mr. Royer did not respond in a satisfactory manner, Detective Conway then confronted Mr. Royer with the towels being thrown in the dumpster. (EH at 402:20-403:25).

- Detective Conway admits he was the first person to bring up that a substance was poured on the victim. (EH at 419:21-23).

134. This Court finds that Detective Conway's admissions regarding the nature and method of the Royer interrogations are significant newly discovered evidence, most especially when compared to his testimony at Mr. Royer's 2005 trial. There, Detective Conway testified that:

Q: Okay when you were interviewing the defendant, Andrew Royer, for the first time on September 3, 2003, 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.

Q: Why not?

A: I mean, we were well aware of Mr. Royer and, and of, we have limited knowledge about his mental background. So I definitely wanted to make a point not to give 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.

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135. This Court finds that Detective Conway did not have a credible explanation for why his admissions to feeding Mr. Royer information about the homicide during his interrogation were directly contrary to the testimony he provided at the 2005 trial.[8] (EH at 423:1-16).

136. Given his admissions, this Court finds that Detective Conway repeatedly provided information about the homicide to Mr. Royer throughout the unrecorded two-day interrogation sessions.

[8] Detective Conway questioned Mr. Royer for more than 3.5 hours on September 4, 2003 prior to taking his statement. (EH at 494:4-9). As Detective Conway confesses, his manner of questioning would have been the same as the day before. (EH at 495:1-17). Mr. Royer's answers – like the day before – were also inconsistent with what Detective Conway knew the physical evidence showed. (EH at 499:1-8).

137. The Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer.

F. Further Undercutting the Reliability of Royer's Recorded Statements, Detective Conway Admits to Breaking Royer's Will

138. Petitioner has presented additional newly discovered evidence illustrating that Mr. Royer's statements were neither voluntary nor reliable.

139. Detective Conway admits that Mr. Royer was "very mentally fatigued and having a hard time maintaining concentration" prior to taking his statement on September 3, 2003. (EH at 358:2-6). According to Detective Conway, Mr. Royer was: (1) "drifting," (EH at 364:19); (2) "defeated," (EH at 381:15-19); (3) "emotional," (EH at 381:23-24); (4) "breaking down," (EH at 382:20-22); (5) "tired and fatigued," (EH at 412:16-19); and (6) had a "clouded memory prior to take his statement." (EH at 473:21-23). This Court finds that Detective Conway's admissions regarding Mr. Royer's mental state to be newly discovered evidence supporting Petitioner's contention that his statements were involuntary.

140. This Court further finds the following answers to be material regarding the lack of reliability of Mr. Royer's statements:

Q: You wanted people to understand why you were saying the things that you were saying didn't you, right? Wanted to provide context to it?

A: Context and also because his memory was clouded, his memory was – he was having a hard time remembering certain things. Confusing.

Q: He was confused, right?

A: Yes sir.

Q: He was fatigued?

A: Yes sir.

Q: And he was disabled?

A: Uh, disabled, yes sir.

(EH at 473:18-474:4).

141. On this front, Detective Conway revealed that Mr. Royer's mental well-being broke down to such a point where he was no longer comfortable questioning Mr. Royer anymore. (EH at 413:18-22). In fact, Detective Conway had such concerns about Mr. Royer's mental state that he believed that continuing to interrogate Mr. Royer could jeopardize the integrity of the investigation. (EH at 413:23-414:1). Because of this, he stopped questioning Mr. Royer as he had concerns about getting a confession that was reliable and truthful. (EH at 414:2-25). All of this occurred before Detective Conway ever took Mr. Royer's recorded statement on September 3, 2003. (EH at 415:1-4).

142. Instead of terminating the interrogation, as he should have, Detective Conway took Mr. Royer's eighteen-minute recorded statement. (EH at 417:8-19). Mr. Royer's statement ended at 1:54 p.m., where he was then placed under arrest. (EH at 580:12-17).

143. Mr. Royer was in such a state of confusion that Detective Conway had to remind him that he gave a confession and was under arrest. (EH at 476:4-12).

144. A booking sheet documents that Mr. Royer was placed under arrest for the murder at 5:30 p.m. on September 3, 2003. (Petitioner's Ex. 23; EH at

482:25-483:6). At that time, Detective Conway requested that Mr. Royer not be moved to the Elkhart County Sheriff's department until further notice because he was "going to interview him the next day." (EH at 284:11-21). By that time, Detective Conway clearly recognized that Mr. Royer's statement was unreliable. Detective Conway now admits that the statement was inconsistent with the physical evidence and Mr. Royer was confused and fatigued at the time he gave it. (EH at 484:10-18).

145. The Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer.

G. The Elkhart Police Department's Investigation into Royer's Statements Corroborated Their Unreliability

146. Petitioner has presented additional newly discovered evidence illustrating that Mr. Royer's statements were unreliable. According to Detective Conway, the reliability of a statement is dependent upon a comparison to the actual facts developed in the investigation. In his words: "you should always try to corroborate somebody's statement." (EH at 305:13-18).

147. This Court heard evidence that Detective Conway made several failed attempts to corroborate the two statements provided by Mr. Royer. (EH at 305:19-306:2). He went to a pawn shop with Mr. Royer in an effort to corroborate that the victim's possessions were pawned there. (EH at 504:8-505:11). As Detective Conway testified, none of the records or follow-up investigation

corroborated this information. (EH at 504:8-507:15). Forensic testing was done, that too, did not link Mr. Royer to the crime. (EH at 508:12-509:2).

148. In the end, Detective Conway admits he was only able to corroborate two basic pieces of information from all of Mr. Royer's statements: (1) Mr. Royer knew Lana Canen; and (2) lived in the building at the time of the murder. (EH at 306:14-307:9).

149. The admissions documented above constitute newly discovered evidence further establishing this Court's finding that the statements provided by Royer are unreliable.

150. Further supporting this Court's finding that Royer's statements are unreliable, and thus, unlikely to result in his conviction at a retrial, are Detective Conway's admissions that: (1) the statements were inconsistent with one another, (EH at 507:16-19); (2) the statements were inconsistent with forensic testing, (EH at 508:12-509:2); and (3), the statements were often inconsistent with the physical evidence, (EH at 509:10-14).

151. On this last front, Detective Conway testified that details in the recorded statements conflict with the physical evidence: (1) Mr. Royer's claim that he put lotion on the victim's body was not accurate, (EH at 383:21-382:3); (2) Mr. Royer's claim that he choked the victim with his bare hands was not accurate, (EH at 384:4-15); (3) Mr. Royer's claim that he choked the victim with a rope was not accurate, (EH at 410:1-6); and (4) Mr. Royer's claim that he poured milk on the victim was not accurate. (EH at 411:2-25).

152. Detective Conway agreed that the information Mr. Royer provided was so inconsistent that "it is confusing..." and "problematic." (EH at 457:10-14, 23-25; 461:1-10; 470:20-21). When this would occur, Detective Conway admitted to confronting Mr. Royer with detailed leading questions to obtain false statements and admissions from Mr. Royer. (EH at 398:25-299:6; 405:22-25). This Court finds that Detective Conway's actions further confirm the unreliability of Mr. Royer's statements.

153. Further supporting this Court's finding that Mr. Royer's statements are unreliable is that criminal charges were not filed against Lana Canen for an entire year after Mr. Royer's admissions. (EH at 512:11-513:4). Despite having admissions from Mr. Royer implicating Lana Canen in the murder of Helen Sailor the police waited approximately one year to charge and arrest her for murder.

154. The State declined to provide a credible explanation for why Ms. Canen was not charged and arrested for an entire year after Mr. Royer's supposedly implicated her – twice – in the murder of Helen Sailor. On this score, the Court relies upon the stipulation entered into between the parties:

> Ms. Becker did not move to initiate charges against Lana Canen until after Dennis Chapman conducted his latent print identification and came to the opinion that the latent recovered from Helen Sailor's apartment was that of Lana Canen's. Without Mr. Chapman's identification of Lana Canen, the State would not have approved the initiation of murder charges against Ms. Canen based on the evidence that existed at that time.

(EH at 13:19-14:6)

155. This Court finds that the newly discovered evidence discussed above, including the admissions by Detective Conway, would impact a future trier of fact's

consideration of the statements obtained from Mr. Royer. The statements are unreliable and given the newly discovered evidence, there is a reasonable probability of a different result on retrial.

H. Detective Conway Declined to Follow the Practice of the Elkhart Police Department in Video-Recording Royer's Statement

156. The Elkhart Police Department's homicide unit had a practice of video-recording statements obtained from suspects prior to Mr. Royer's interrogations in September 2003. (EH at 126:9-16). When the homicide unit was formed, Sergeant Wargo informed officers under his command that they were to video-record statements obtained from suspects in homicide investigations. (EH at 126:23-127:4). They were likewise instructed that the method of recording should be video and not a handheld audio-recorder. (EH at 127:5-10). Thus, this Court finds that Detective Conway's decision to not video-record Mr. Royer's statements was a deviation from the practices of the homicide unit at the time. (EH at 129:13-18).

157. Even more, a closed-circuit monitoring system was kept in Lieutenant Converse's office in September 2003. (EH at 123:3-14). That system was connected to a television that allowed officers to view the interrogations taking place in the interrogation room. (EH at 123:8-18). Sergeant Wargo testified that it would take seconds to record an interrogation taking place, if officers desired to press the record button. (EH at 123:24-124:10.

158. At first, Detective Conway maintained that he didn't learn of the video-recording possibilities until after he left the homicide unit in 2004. (EH at 235:14-21). He also testified that he didn't learn of the video-recording possibility until after his February 5, 2004 questioning of Stacy Orue. (EH at 261:14-19).

159. Detective Conway was then impeached with video-recordings and reports of him questioning witnesses and suspects in homicide investigations dating back to October 29, 2003, a mere seven weeks after the Royer interrogations. (EH at 262:25-266:15; Petitioner's Ex. 20; Petitioner's Ex. 21). After being confronted with videos and reports documenting him participating in video-recorded interviews as far back as October 2003, Detective Conway testified that he "was mistaken" in his earlier testimony. (EH at 267:16-20; see also 309:11-16). Therefore, Detective Conway was aware of the existence of the video-recording system around the time of the Royer interrogations.

160. When asked whether Detective Conway's decision to not record the entire interrogation looked bad, Detective Daggy responded: "I will say it doesn't look good." (EH at 866:21-867:1). The Court agrees.

161. This Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer. The statements are unreliable and given the newly discovered evidence, there is a reasonable probability of a different result on retrial.

I. Detective Daggy's Observations Support the Unreliability of Mr. Royer's Statements

162. Petitioner has presented this Court with newly discovered evidence derived from Detective Daggy's testimony. This Court summarizes some of Detective Daggy's admissions below.

163. From witnessing the September 3, 2003 interrogation of Mr. Royer, Detective Daggy came to form his belief that the manner of questioning was not only leading, but in fact, "super-leading." (EH at 870:7-10; 878:2-6; 886:25-887:3).

164. In fact, Detective Daggy informed the Court that this was one of the worst interrogations that he witnessed in his career. (EH at 875:3-5). For Mr. Daggy, "it was one of the most difficult ones to watch." (EH at 875:20-23).

165. Detective Daggy formed the same opinions regarding the recorded statements obtained from Mr. Royer on September 3, 2003 and September 4, 2003. (EH at 2-15).

166. From Detective Daggy's view, the interrogation was so taxing that when Detective Conway exited the room, "he would appear like he was...struggling, he appeared fatigued or tired." (EH at 870:18-23). According to Detective Daggy, Detective Conway was also frustrated and having a hard time due to Mr. Royer's mental disability. (EH at 871:10-14; 872:9-21).

167. Detective Daggy testified that the corroboration of details in a confession is an important process to determine whether the statement is reliable. (EH at 894:2-7). Here, Detective Daggy agreed that Mr. Royer's statements conflicted with one another and the physical evidence. (EH at 894:12-895:21). In

fact, Detective Daggy testified that he believed that portions of Mr. Royer's statements "were lies." (EH at 895:22-25).

168. Detective Daggy further revealed to this Court that although Mr. Royer implicated Lana Canen in the Sailor homicide in two recorded statements – September 3, 2003 and September 4, 2003 – Ms. Canen was released from jail in September of 2003. (EH at 913:3-11).

169. According to Detective Daggy, probable cause did not exist to initiate charges against Lana Canen based on Mr. Royer's statements on September 4, 2003. (EH at 913:15-20).

170. This is a critical admission from the Court's perspective, as is discussed above, by this time the State possessed two audio-recorded statements from Mr. Royer admitting his involvement in the Sailor homicide and an additional statement from Ms. Porter implicating Ms. Canen and Mr. Royer in the crime.

171. Detective Daggy clarified that he did not take any action to initiate charges against Ms. Canen until September 2, 2004, after Mr. Chapman issued his opinion positively matching Lanen's inked prints to the latent print found at the scene of the homicide. (EH at 961:1-18).

172. This Court finds that this newly discovered evidence, too, would impact a future trier of fact's consideration of the veracity and reliability of the statements obtained from Mr. Royer. The statements are unreliable and given the newly discovered evidence, there is a reasonable probability of a different result on retrial.

Based upon the foregoing FINDINGS OF FACT, this Court enters the following CONCLUSIONS OF LAW.

CONCLUSIONS OF LAW

173. This Court finds that the evidence discussed in this Order is newly discovered evidence that was unknown and unavailable to Mr. Andrew Royer at the time of his trial and could not have been discovered in the reasonable exercise of due diligence; such evidence is material and relevant; non-cumulative; not merely impeaching; not privileged nor incompetent; due diligence was used to discover it in time for trial; the evidence is worthy of credit; it can be produced upon retrial; and there is a reasonable probability that it will produce a different result upon retrial. *Carter v. State*, 738 N.E.2d 665, 671 (Ind. 2000).

174. This Court concludes that each item of newly discovered evidence, by itself, makes it reasonably probable that a jury would reach a different result at another trial.

175. Additionally, given that this Court must consider what would occur at a retrial, the newly discovered evidence when considered together, as it would be presented by the defense at a retrial, well exceeds the standard set forth in *Carter v. State*, 738 N.E.2d 665, 671 (Ind. 2000). This Court concludes that the newly discovered evidence, when considered together and viewed in light of the entire trial record, is of such a value that it "will probably produce a different result upon retrial." Id.

176. Based upon the Findings of Fact and the record and evidence presented in this case, it is clear that the jury was presented with false and misleading evidence and arguments and that these false and misleading evidence and arguments were material to the issue of Mr. Andrew Royer's innocence. Furthermore, the introduction of false evidence and arguments violated the fundamental concepts of due process and denied Mr. Andrew Royer a fair trial, "understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995); *U.S. v. Bagley*, 473 U.S. 667, 682 (1985).

177. Further, under *Brady v. Maryland* and *Giglio v. United States,* the State's failure to disclose exculpatory and impeachment evidence that is material violated Mr. Andrew Royer's due process rights.

178. To prevail on his *Brady* claim, Mr. Andrew Royer merely must establish that the prosecution suppressed evidence, that the evidence was favorable to the defense, and that the evidence was material to an issue at trial. *Bunch v. State*, 964 N.E.2d 274, 297 (Ind. Ct. App. 2012). 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." *Bunch v. State*, 964 N.E.2d 274, 297 (Ind. Ct. App. 2012). Critically, as *United States v. Bagley* explains, *Brady* is to be considered in the cumulative and not in isolation. *United States v. Bagley*, 473 U.S. 667, 675 (1985). Further, the question is not whether the Defendant would more likely than not have received a different verdict with the evidence, but whether in

its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. *Hayden v. State*, 830 N.E.2d 923, 931 (Ind. Ct. App. 2005).

179. Based on the Findings of Fact and the record evidence presented in this case, it is clear that the State suppressed material evidence that was favorable to the defense. It is further clear that there is a reasonable probability that had the evidence been disclosed, the result of Mr. Andrew Royer's trial would have been different. This Court finds that the withheld *Brady* evidence would have a reasonable probability of a different result if considered on its' own or together, as *Bagley* allows. Further, given the withholdings in this case, this Court finds that the verdict is not worthy of confidence.

180. As it relates to the payment to Nina Porter, in *Gordy v. State*, 270 Ind. 381 (1979), the Indiana Supreme Court recognized a prosecutorial duty of voluntary disclosure of promises made to State's witnesses, including monetary rewards offered in exchange for testimony. Thus, contrary to the State's argument, the *source* of the reward money is irrelevant to this Court's consideration. Rather, the critical issue is whether the witness was promised something of value for her testimony against the defendant. If so, the promise of payment is relevant to impeach the credibility of the state's witness and must be disclosed under *Giglio*. Based on the Findings of Fact, this Court finds in favor of Petitioner.

181. Additionally, in *Fields v. Wharie*, the Seventh Circuit affirmed that the State's obligation under *Brady* to disclose payments to witnesses extends through the denial of the direct appeal. *Fields v. Wharie*, 672 F.3d 514 (7th Cir. 2012). Only

then is a judgment final. Given that Ms. Porter was paid before Mr. Andrew Royer's final judgment, the State was obligated to disclose the payment to Ms. Porter. Having failed to do so, this Court finds that the State violated the rule in *Brady* and *Giglio* and deprived Mr. Andrew Royer of due process and the right to a fair trial.

182. This Court concludes that Mr. Andrew Royer's due process rights were violated by the State's presentation of false and misleading evidence resulting in a conviction obtained in violation of his rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution as well as the coordinate rights established under the Indiana Constitution. The violations of Mr. Royer's constitution rights were unfairly prejudicial and entitle him to a new trial.

Based upon the foregoing findings of fact and conclusions of law, and pursuant to the Indiana Rules of Procedure for Post-Conviction Remedies, this Court finds and concludes that the newly discovered evidence entitles Andrew Royer to a new trial and that Andrew Royer's conviction was obtained in violation of the Constitution of the United States. Consequently, the Petitioner's Successive Petition for Post-Conviction Relief is GRANTED and IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Andrew Royer's conviction be VACATED and a new trial ORDERED.

SO ENTERED this 31st day of MARCH, 2020.

Joe V. Sutton, Special Judge
Elkhart Superior Court No. 3