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<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CRIMINAL DIVISION
<b>V.</b>	:	
<b>INDIA SPELLMAN</b>	:	CP-51-CR-0001161-2011 CP-51-CR-0001160-2011
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**DEFENDANT’S POST-HEARING BRIEF IN SUPPORT OF REQUEST  
FOR RELIEF PURSUANT TO THE POST CONVICTION RELIEF ACT**

**I. INTRODUCTION**

Defendant (“Spellman”) was convicted of robbery and second-degree murder arising from separate crimes involving two different victims that occurred roughly an hour apart on August 18, 2010. The “evidence” in support of those convictions consisted of coerced “statements” from Spellman and a fourteen-year-old boy named Von Combs, and two inherently suspect identification witnesses who provided descriptions of a female that do not come close to resembling what Spellman looked like.

Over twelve years after her incarceration, what is known now should shock the conscience of this Court. Government misconduct including the procurement of a false confession by way of a physical assault on Spellman (an unaccompanied

minor) by a now disgraced former detective; two *Brady* violations; the destruction or loss of crucial evidence during the pendency of Spellman's prosecution; and grossly inadequate trial counsel that failed to present a compelling and corroborated alibi defense are all contributory facts here that are immutable and thus uncontested. Combs has also recanted.

Spellman's conviction and incarceration are a gross miscarriage of justice. At a minimum, a new trial is required. More appropriately, the Commonwealth should be barred from re-prosecuting Spellman due to its misconduct and because Spellman is factually and legally innocent.

## **II. FACTUAL BACKGROUND**

### **A. The Commonwealth's Evidence**

The instant matter arises from the robbery of Shirley Phillips and the subsequent robbery and shooting death of George Greaves, both in Philadelphia, on August 18, 2010. The shooting death of Mr. Greaves occurred sometime between 3:22 P.M. and 3:48 P.M. at 7901 Pickering Avenue, roughly an hour after the robbery of Ms. Phillips on the 7900 block of Rugby Street, which was about a half mile away. A male and a female committed these crimes together.

Ms. Phillips described the perpetrators as a "young boy," about 5'2", skinny, brown skin and short cropped hair. She described the female as a 25- to 30-year-

old, size 18, 180-pound female wearing all black Muslim clothes. *See*, Trial Exhibits 64, 65 at Appendix PHB 188-193. At trial, Ms. Phillips also said that the female perpetrator was dark skinned. *See*, N.T. 2/14/13 at 32-38.

Roughly an hour after the robbery, George Greaves was shot in his driveway which was about a half mile away from the robbery of Ms. Phillips. The cause of death was a gunshot wound to his left chest. *See*, N.T. 2/14/13 at 9. Ms. Kathy Mathis lived a few houses away from Mr. Greaves. She did not see who shot Mr. Greaves but testified that after she heard the gunshots, she saw a male and a female running from the crime scene. She testified that the female in question was “thick.” *See*, N.T. 2/14/13 at 121-123. Moreover, in her statement to detectives, Ms. Mathis said that the female was “thick”, and stated that the female was wearing Muslim head garb, a black top, and possibly a pair of jeans. She could not tell, based on the way the female was running, whether she was holding part of her top up. *See*, Trial Exhibit C-63 at Appendix PHB 185-187.

On the day of the crimes, Police Officer Jacqueline Speaks responded to a radio call for a “person with a gun” around 3:45 at the Pickering Avenue location. It took her roughly six minutes to arrive at the scene of Greaves’ murder. *See*, N.T. 2/14/13 at 40. By the time she arrived on the scene, emergency medical personnel had already been there, and a sheet had been placed over Mr. Greaves’ body. *Id* at 41. Officer Speaks spoke with Kathy Mathis at the scene of the

Greaves murder. *Id* at 44. Ms. Mathis told Officer Speaks that there was a male and female perpetrator between the ages of 14 and 17 and recorded the female as having been described as between 15 and 18 years old. *See*, Court-1 at Appendix PHB 004. Officer Speaks would also later testify that Mathis told her the female was wearing Muslim garb. *Id*. While at the scene of Greaves' murder, Officer Speaks also heard flash information about the robbery on Rugby Street and concluded that the perpetrators matched the description of the people running from the Greaves' crime scene. That flash information described the female as a black female with dark skin, dressed in long Muslim garb. *Id*.

The next day, August 19, 2010, Officer Speaks responded to a call for a person screaming inside a house on the 1100 block of Sharpnack Street. Upon arrival, Officer Speaks encountered a woman named Shawn Combs, who was crying and screaming, and was very upset. By that point, Officer Speaks had heard the flash description of the perpetrators of the robbery on Ms. Phillips, which she knew matched the flash description of the perpetrators of Mr. Greaves' murder. That included a description of a young male juvenile with a teardrop tattoo under his eye.<sup>1</sup> Since Officer Speaks had responded to Ms. Combs' house many times before, she knew that Ms. Combs' son, Von Combs, matched that description.

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<sup>1</sup> The tattoo description came from Andre Wooden, discussed below, who passed away before the trial.

Based on what Ms. Combs was doing and saying, Officer Speaks asked Ms. Combs whether she thought that her son Von had anything to do with Mr. Greaves' murder, and then Ms. Combs suddenly fell off her bed. *Id* at 48-51. Officer Speaks called former homicide detective James Pitts based on her suspicion that Von Combs was involved with the crimes.

Officer Speaks would later testify that she took Ms. Combs to homicide, and during that trip Ms. Combs volunteered to her that she “couldn’t believe he was with that young lady. She be in my house still,” and “some girl around his age, ...She’s coming back. She’s sneaking in my window at night when I’m sleeping...My clothes are missing, she’s stealing my clothes and kemars.” Ms. Combs also confirmed that she herself was Muslim. *See*, Court-1 at Appendix PHB 005. Detective Henry Glenn would later testify that Ms. Combs claimed the girl’s name was India.<sup>2</sup> *See*, PHB at 006.

Based on Ms. Combs’ behavior and statements, police believed that Von Combs was involved with the robbery of Ms. Phillips and the homicide of Mr. Greaves. However, Combs was not in Philadelphia that day so they could not apprehend him. Von Combs came home the next day (August 20, 2010) after Ms. Combs called him and instructed him to come home. Police took Combs into

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<sup>2</sup> Ms. Combs was later shown a photo array and identified the wrong “India.” *Id.*

custody, and he was told to point out where Spellman lived. He complied. *See*, PHB 006-007.

Von Combs arrived at homicide in the early afternoon of August 20, 2010. He signed a “statement” taken by Detectives Pitts and Jenkins in which it was stated that he was with Spellman during the Phillips’ robbery, and that she initiated the robbery by pointing a gun at Phillips and demanding her things. Combs also claimed that upon approaching the Greaves’ residence, Spellman said that “this is the last one,” approached Greaves and pointed a gun at him, a tussle ensued and the gun went off, killing Greaves. *See*, PHB 007-009.

Spellman was arrested that same day and arrived at the homicide unit after Von Combs. Her father, Bruce Stafford Jr., sat outside the interrogation room and was never inside the room with Spellman during the interrogation. Spellman ultimately signed a “statement” taken by Detectives Pitts and Glenn, wherein she supposedly confessed to committing the robbery, and inculpated Combs as the person who shot Greaves. According to this “statement,” Combs shot Greaves because Greaves “disrespected him.” *See*, PHB 010-012 and 182-184.

After unsuccessfully litigating a motion to suppress her “statement” on February 13, 2013, Spellman’s jury trial commenced before Judge Minehart. The Commonwealth elicited testimony from Ms. Phillips, who confirmed her

descriptions to police but nevertheless identified Spellman as the robber, claiming that Spellman looked lighter at the bar of the Court because she must have been wearing “makeup.” Von Combs testified and affirmed his “statement” to detectives, and also added a whole host of additional details about what he claimed happened that day. Combs had been adjudicated delinquent by the time of Spellman’s trial was serving his time in a juvenile detention facility, from which he would be released after testifying against Spellman. Ms. Mathis testified and made a surprise in-court identification of Spellman<sup>3</sup> but reaffirmed that the female she saw was “thick.” She claimed for the first time at trial to have seen Spellman’s face as she was fleeing the crime scene. Finally, Spellman’s “statement” was read to the jury.

Spellman was convicted of robbery (of Ms. Phillips) and second-degree murder (of Mr. Greaves) on February 20, 2013. She was subsequently sentenced to a term of incarceration of thirty years to life. Spellman has been incarcerated since August 20, 2010.

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<sup>3</sup> Ms. Mathis was never asked pre-trial to identify Spellman. Her identification of Spellman at trial was an ambush and the subject of a motion for a mistrial, which request was denied. See, N.T. 2/13/13 at 28; 2/14/13 at 113.

## B. What The Jury Did Not Hear

The instant years' long PCRA litigation has been protracted and extensive. The facts that have been developed- nearly all of which are uncontested- show far beyond a preponderance of the evidence that Spellman is entitled to relief.

*1. Spellman's "statement" is false and was the product of abuse committed by a serial abuser and unethical behavior by his colleagues.*

Homicide detectives actively prevented Spellman's parents from accompanying her during her interrogation by refusing them access to her before they questioned her; then telling them that Spellman had already confessed and that they had to leave; and then after they left, telling Spellman that her parents had essentially abandoned her. Then Detective Pitts hit her in the face. Then Spellman signed the statement that falsely implicated herself in a robbery and a murder.

Spellman, then seventeen years old<sup>4</sup>, was arrested at her home where her father (Bruce Stafford, Jr.) and grandfather (Bruce Stafford, Sr.) lived on August 20, 2010 between 2:30 and 3:00 in the afternoon. *See*, N.T. 2/19/13 at 69. She was placed in handcuffs and transported to the Roundhouse by police. N.T. 8/24/22 at 149. Mr. Stafford, Sr., began calling around trying to find a lawyer. N.T. 2/13/13 (VOL. I) at 76-77. Mr. Stafford, Jr. followed behind with the police

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<sup>4</sup> Spellman has always been an Episcopalian. N.T. 2/19/13 at 80.



and went to the Roundhouse, and called Spellman's mother, Morkea Spellman, and she indicated she was on her way. N.T. 8/24/22 at 90-91.

While at homicide, Mr. Stafford, Jr. repeatedly told police that he wanted to be in the room with his daughter and that he wanted a lawyer to be with her during questioning. Every time he made this known; he was told to wait. While waiting, Mr. Stafford, Jr.'s phone was taken away from him. *Id* at 90-92; *see also*, N.T. 2/19/13 at 71-72.

In the meantime, Morkea Spellman arrived at homicide. She could not get past the front desk. She made repeated calls upstairs to tell officers that she insisted on being in the room with her daughter, only to be told that someone would come down and get her. Nobody ever came and got her. Her repeated phone calls to Spellman's father went unanswered because the police had confiscated his phone. *See*, N.T. 8/24/22 at 114-115; 2/19/13 at 81-83.

Before 5:00 p.m., Mr. Stafford, Jr. was told that his daughter confessed to robbery and her involvement in the Greaves' homicide. *See*, N.T. 8/24/22 at 95-96. He was brought downstairs and escorted outside with Morkea Spellman. Mr. Stafford, Jr. signed out of the building at 4:52 P.M. *See*, PHB at 093. Once outside, Detective Glenn asked Morkea to sign a form, and she refused and asked to see her daughter. Detective Glenn told her she would not be seeing her

daughter. All these events occurred before 6:00 P.M. *See*, N.T. 8/24/22 at 114-115.

After tricking Spellman's family into leaving, Detectives Glenn and Pitts commenced Spellman's first interview at approximately 6:10 p.m. *See* PHB 178. Spellman had previously been taken immediately to the interrogation room and was not afforded the chance to see her father, who had been brought by separate officers to the Roundhouse. *See*, N.T. 8/24/22 at 149-50.

Detective Glenn accused Spellman of killing Greaves, and when Spellman said that she didn't know what Glenn was talking about, he called her a damned liar. *See*, N.T. 8/24/22 at 151. Spellman began crying, said she didn't kill anyone, and repeatedly asked for her father. Detective Glenn told Spellman that her father had already left. *Id.* Detective Glenn then left the room.

Former Detective Pitts then came into the interrogation room. He told Spellman that she was "going to give him some information;" was loud and abusive with her; called her a "damn liar," and struck her in her mouth. *Id.* at 151-52. Pitts left, and then returned with a pre-typed statement. Spellman could not read the statement because she had reading comprehension difficulties. Nevertheless, Pitts told her that if she signed the statement, she would be allowed to go home. Spellman signed the statement, unknowingly confessing to the crimes

she was eventually convicted of. *Id* at 154-156. She has been incarcerated ever since.

2. *Former Detective Pitts has since been exposed as a serial abuser and procurer of false statements and confessions.*

On November 3, 2017, in the case of *Commonwealth v. Dwayne Thorpe*, CP-51-CR-0011433-2008, the PCRA court vacated Thorpe's first-degree murder conviction and ordered a new trial in light of its judicial finding that former Detective Pitts employs a pattern, practice, and routine habit of coercing false witness statements. In the Thorpe case, ten (10) witnesses testified to Detective Pitts' abuse, which included: holding witnesses for extended periods of time, physical violence, threats against family members, threatening to take children away, and threatening to take Section 8 housing away.

In fact, by the time of Spellman's prosecution, Internal Affairs had made several sustained findings of Pitts' misconduct, which in and of themselves were rejections of Pitts' credibility. Among these incidents of misconduct were that Pitts (i) used an unwarranted lengthy detention of an eighty-four year old man in an attempt to secure cooperation from that man in locating another person; (ii) physically assaulted his wife which he tried to cover up by fabricating an injury to himself; and, (iii) conducted a forty-seven hour long detention of a witness who

was not permitted to call a lawyer or anyone else. *See*, PHB030-040. This information was not known by or disclosed to Spellman during her prosecution.

On March 18, 2022, former Detective Pitts was indicted for perjury and obstruction of administration of law with respect to an unrelated murder case where he testified falsely by denying that he assaulted a suspect until that person signed a confession. PHB at 030. He currently awaits trial in that matter, docketed at *Commonwealth v. James Pitts*, CP-51-CR-0004729-2022.

*3. Kathy Mathis told the DAO that she couldn't see the faces of the perpetrators.*

On September 13, 2010, less than a month after the crimes, Kathy Mathis called the District Attorney's Office and said that she did not see the faces of the people she saw fleeing the Greaves' murder scene. This statement was memorialized in what has become known as "the Mathis Note." *See*, PHB at 022. That she told the DAO this was not disclosed to or known by the defense when Mathis claimed for the first time at trial that she recognized Spellman's face.

*4. Spellman has an alibi.*

On August 18, 2010, Spellman was at home, all day, and particularly between 2:30 P.M. and 4:00 P.M. Bruce Stafford Sr. and Bruce Stafford, Jr. both testified that Spellman was home that day all day and was on the phone and

computer, as was her typical routine. See, N.T. 8/24/22 at 58, 74-76, 81, 83, 105-06, 109-11. Spellman herself testified that she did not leave the house that day and was on her phones and the computer. *Id* at 137-48, 159.

Spellman's cellphone records alone confirm that on August 18, 2010, her cellphone was accessed roughly one-hundred forty times for phone calls and text messages; and, notably, between 2:51 P.M. and 4:05 P.M., thirty-eight minutes of phone calls were made from the same cell tower location (near her home), which is the same location that appears dozens of more times that day. See, PHB at 106-09. More pointedly, Spellman was on her cell phone from 3:33 P.M. to 3:58 P.M., from that same tower location, and her phone also pinged off that same location at 3:10 P.M.

The jury did not hear any of Spellman's alibi evidence.

*5. Combs has recanted his statement and testimony that implicates Spellman.*

In 2011, Combs tried to have his statement to Detective Pitts suppressed because he claimed it was not voluntarily made, see, *In re V.C.*, 66 A.3d 341 (Pa. Super. 2011). He testified at Spellman's PCRA hearing and explained that he was fed answers by Detective Pitts and others and that the statement he signed and the testimony he gave implicating Spellman is false. Combs confirmed Spellman's PCRA testimony that he wrote her an apology letter after the two were arrested.

According to Combs, he wrote this letter as a result of his “conscience.” Combs provided further corroboration that Spellman first came on detective’s radar when his mother, Shawn (Wyatt) Combs told them about her. *See*, N.T. 11/10/22 at 9-44.

### **III. BASES FOR RELIEF**

#### **A. The PCRA.**

To be eligible for relief under the PCRA, a petitioner must plead and prove by a preponderance of the evidence one or more of the following:

(2) That the conviction or sentence resulted from one or more of the following:

**(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.**

**(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.**

(iii) A plea of guilty unlawfully induced where the circumstance make it likely the inducement cause the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner’s right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vi) The imposition of a sentence greater than the lawful maximum.

(vii) A proceeding in a tribunal without jurisdiction.

*See*, 42 Pa.C.S.A. §9543 (emphasis added).

***B. Brady v. Maryland, 373 U.S. 83 (1963).***

Due process requires that in order for a trial to have a reliable adjudication of guilt or innocence, all evidence, whether exculpatory or impeachment, must be disclosed by the Commonwealth. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Commonwealth v. Simpson*, 66 A.3d 253, 264 (Pa. 2013); *see United States v. Bagley* 473 U.S. 667, 676 (1985), *citing, Giglio v. United States*, 405 U.S. 150, 154 (1972); *Commonwealth v. Wholaver*, 177 A3.d 136, 158-59 (Pa. Jan. 11, 2018).

In order to prove a *Brady* violation, a defendant must prove three things: (1) the evidence at hand is favorable to the accused, either because it is exculpatory or because it impeaches; (2) the evidence was suppressed by the prosecution, either willfully or inadvertently; and (3) prejudice ensued. *Commonwealth v. Weiss*, 622 Pa. 663, 691, 81 A.3d 767, 783 (Pa. 2013), *citing, Commonwealth v. Lambert*, 584 Pa. 461, 471 (Pa. 2005). *See also, Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).

The duty to disclose under *Brady* extends to favorable evidence known to others acting on the government's behalf. *Commonwealth v. Burke*, 781 a.2d 1136, 1142 (Pa. 2001), *citing*, *Kyles v. Whitley*, 514 U.S. 419, 438 (1995); *see* *Commonwealth v. Smith*, 417 Pa. 321, 208 A.2d 219 (Pa. 1965) (reversing defendant's judgement of sentence where the Commonwealth violated its duty under *Brady* by denying the defendant access to witness statements taken by the FBI).

“The duty to disclose under Brady encompasses impeachment evidence as well as exculpatory evidence. However, for a defendant to be entitled to a new trial based on the prosecution's failure to disclose information relating to a witness' credibility, the defendant must demonstrate that the reliability of the witness may well be determinative of his guilt or innocence.” *Simpson*, 66 A.3d at 266 (internal quotations and citations omitted).

### **C. Ineffective Assistance of Counsel.**

The test for determining the ineffectiveness of counsel is the same under (3<sup>rd</sup>. Cir. both the United States and Pennsylvania Constitutions. *Commonwealth v. Williams*, 936 A.2d 12, 19 (Pa. 2007). To obtain relief on a claim of ineffective assistance of counsel, a petitioner must show (1) that there is merit to the underlying claim; (2) that counsel had no reasonable basis for his/her course of



conduct; and (3) that the ineffectiveness resulted in prejudice to the petitioner. *See, e.g., Commonwealth v. Rega*, 933 A.2d 997, 1018 (Pa. 2007).

#### **D. After Discovered Evidence.**

To be entitled to relief on an after discovered evidence claim, Defendant must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted. *Commonwealth v. Pagan*, 950 A.2d 270, 292 (Pa. 2008).

### **IV. ARGUMENT**

#### **A. Spellman is entitled to a new trial because the Commonwealth violated *Brady v. Maryland*, 373 U.S. 83 (1963).**

In a *Brady* analysis, "favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles*, 514 U.S. at 433 (quotation and citation omitted). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).

In evaluating whether a reasonable probability of a different outcome has been demonstrated, "[t]he 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." *Kyles*, 514 U.S. at 434. A defendant thus "need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." *Id.* at 434-35. Rather, a defendant need only show that the favorable evidence "could reasonably be taken to put the whole case in such a different light as to *undermine confidence* in the verdict." *Id.* at 435 (emphasis added). The materiality of the undisclosed evidence is considered in light of the other evidence offered by the state during trial. *See, Johnson v. Folino*, 705 F.3d 117, 129 (3<sup>rd</sup> Cir. 2015).

Thus, the framework within which to assess each of Spellman's *Brady* claims requires this Court to assess the quality of the evidence used to convict Spellman in light of what is known now. Here, there are two categories of evidence that must be assessed: (i) eyewitness testimony, and, (ii) Spellman's and Combs' inculpatory "statements."

1. The eyewitness testimony

- (a) *Ms. Phillips' testimony was not reliable.*

Ms. Phillips described the female robber as a 25- to 30-year-old, size 18, 180-pound female wearing long all black Muslim clothes, including a head covering that did not conceal the female's face. *See*, Trial Exhibits 64, 65 at Appendix PHB 189-193. At trial, Ms. Phillips affirmed this description and also said that the female perpetrator was dark skinned. *See*, N.T. 2/14/13 at 32-38.

Spellman did not match this description in any discernable way. *See*, PHB at 095, which is a photo of Spellman taken roughly a week before these crimes. *See*, N.T. 8/24/22 at 117. Indeed, at trial, Ms. Phillips conceded that Spellman is not "dark," but nevertheless claimed that she must have been wearing makeup.<sup>5</sup>

Perhaps the only reason Ms. Phillips' testimony was credited was because it was purportedly corroborated by other evidence, such as Ms. Mathis' identification.<sup>6</sup>

*(b) Ms. Mathis' identification was not compelling.*

Ms. Mathis testified that the female fleeing the murder scene was "thick." *See*, N.T. 2/14/13 at 121-123. Moreover, in her statement to detectives, Ms. Mathis said that the female was "thick", and stated that the female was wearing

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<sup>5</sup> Ms. Phillips also stated that she was "blind as a bat" without her glasses. N.T. 2/14/13 at 27.

<sup>6</sup> The inculpatory statements are addressed below.

Muslim head garb, a black top, and possibly a pair of jeans, and had a brown complexion. She could not tell, based on the way the female was running, whether she was holding part of her top up. *See*, Trial Exhibit C-63 at Appendix PHB 186-187.

Ms. Mathis identified Spellman for the first time at trial. This came as a complete surprise to the defense, because in the two and a half years between the time of the crime and her trial testimony, the Commonwealth never showed her a photo array, nor had Ms. Mathis ever attended a lineup for Spellman. Moreover, Ms. Mathis claimed for the first time at trial that she saw Spellman's face when Spellman turned around while fleeing from the crime scene. When confronted with the fact that this detail was not in her statement (but that Combs turned around *was* mentioned in her statement), Ms. Mathis insisted that she told detectives this, but they didn't record this detail. She claimed (like others have) that she may have only skimmed the statement and that rather than make sure she reviewed the statement for accuracy, a detective just told her to sign it. N.T. 2/14/13 at 124-127.

*(c) First Brady Violation- The existence of the Mathis Note undermines confidence in the verdict.*

The failure to furnish the defense with the Mathis Note is precisely why *Brady* exists. This Court has already easily concluded that the first two prongs of

*Brady*- whether the Note is “favorable” (here, impeaching) and suppressed by the Commonwealth are satisfied. The question then is whether this Court’s confidence in Spellman’s convictions should be undermined. It should be.

Ms. Phillips’ identification was as weak as they come. Thus, her identification of Spellman was sufficiently impeached and likely would not have been credited were it not for Mathis’ identification, which in and of itself was of limited value for several reasons. First, Mathis’ identification was simply wrong- Spellman was objectively not “thick” (she was objectively skinny) nor was she “brown skinned” (she is light skinned). Moreover, the crimes themselves were of short duration and thus Mathis had an extremely limited time within which to view the female fleeing the scene; and it was a high stress situation where the female was running past Ms. Mathis immediately after Ms. Mathis heard gunshots and was trying to shove her resistant great grandson back into the house. *See*, N.T. 2/14/13 at 23-25.<sup>7</sup> Perhaps this is why Ms. Mathis failed to identify Combs (who was closer to her than the female was- *see* N.T. 2/13/13 at 25-26) at his lineup.

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<sup>7</sup> As the Commonwealth observed in its 6/24/22 Answer, all these factors significantly weaken the reliability of Mathis’ identification testimony, as explained by renowned expert Dr. Jennifer Dysart, who had “never before seen a case where all of the identifying witnesses were asked to make their first identification attempt of the suspect in court at a hearing or at a trial.” *See*, Commonwealth Answer at 14, para. 53, and PHB054-072.

Had the Mathis note been furnished to the defense, she would have been directly confronted with her own statements made weeks after the crime- that she “Never saw the faces. Didn’t see the face.” *See*, PHB at 022. There are no conceivable circumstances in which Ms. Mathis’ subsequent identification of Spellman- two-and-a-half years later- would have been credited.<sup>8</sup> And consequently, neither would Ms. Phillips’ identification have been believed.

Consequently, Spellman is entitled to a new trial in light of the Commonwealth’s *Brady* violation for failing to have furnished the defense with Ms. Mathis’ statement that she could not make an identification of Spellman.<sup>9</sup>

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<sup>8</sup> "The question under *Brady* is whether 'disclosure of the suppressed evidence to *competent* counsel would have made a different result reasonably probable.'" *See Wilson v. Beard*, 589 F.3d 651, 664-65 (3d Cir. 2009)(emphasis added, citations omitted). Even though Spellman avers trial counsel’s ineffectiveness on different grounds, it is “reasonably probable” that even that lawyer would have secured a different outcome, as trial counsel’s main focus was attacking the identification testimony of Ms. Mathis and Ms. Phillips.

<sup>9</sup> *Accord*, *Kyles v. Whitley*, 514 U.S. 419 (1995)(*Brady* violation found and new trial ordered where eyewitnesses’ prior impeaching statements were not furnished to the defense); and, *Smith v. Cain*, 565 U.S. 73 (2012)(undisclosed statement that purported eyewitness “couldn’t see faces” was material). *Compare*, *Moore v. Illinois*, 408 U.S. 786 (1972)(materiality not found despite failure to disclose impeachment evidence, where other compelling evidence was “unimpeached”). Here, all the other “evidence” against Spellman has been resoundingly impeached.

## 2. The inculpatory “statements.”

Former Detective Pitts secured two signed statements in this case, one from Spellman and one from Combs, both minors at the time of their interrogations. By time of Spellman’s trial in February 2013, Pitts had been found by Internal Affairs to have abused his authority relative to detaining an eighty-four year old man in order to induce that man’s grandson to come to court; and also to have physically assaulted his ex-wife and then fabricated an injury to himself to “buy time” to figure out how to defend his criminal domestic violence, through which he falsely accused his ex-wife of criminal behavior. *See*, PHB at 032-037. During Spellman’s appeal (a period within which *Brady* still applies) IA sustained another finding of abuse of authority when Pitts unlawfully detained a person for forty-seven hours without justification- an episode for which the City paid a civil settlement. *See*, PHB at 037-041.

*(a) Second Brady Violation- Failure to disclose Pitts’ then existent pattern of misconduct undermines confidence in the verdict.*

Spellman, a terrified juvenile who could not read, was isolated from her concerned parents and without counsel when Pitts (a large man- *see*, N.T. 8/24/22 at 162) walked into the interrogation room, alone. Pitts was loud and abusive with this scared juvenile who had no idea what was going on, and then he hit her in the mouth and told her she could go home only if she signed the papers he put in front

of her. Pitts made no attempt to ensure that Spellman knew what she was signing (consistent with detectives' behavior with Mathis, and as explained below, Combs).<sup>10</sup>

Anyone who litigates homicide cases in Philadelphia knows that former Detective Pitts has employed these kinds of tactics for the duration of his career in homicide. Even a Common Pleas judge went so far as to hold that as a matter of fact, Detective Pitts employs a habit of abusing people into signing false statements through various means. *See, Commonwealth v. Dwayne Thorpe*, CP-51-CR-0011433-2008.

Indeed, the Commonwealth was aware of this burgeoning pattern as far back as Spellman's prosecution in 2013, because it had knowledge of *at least* two (eventually three) instances of this conduct. The Commonwealth's failure to furnish this information about Pitts deprived the defense of valuable impeachment evidence.

For example, the incident with the 84-year-old detainee would have been probative impeachment material with respect to Spellman's suppression claim that her father's phone was confiscated and that Spellman's repeated request to have

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<sup>10</sup> This is also consistent with the Court's findings in the *Thorpe* case. *See, Commonwealth's Answer* filed 6/24/22 at p.26.



her father present were denied. *See*, N.T. 2/13/13 (volume I) at 80-82. Obviously, the incident where Pitts assaulted another woman (his ex-wife), fabricated an injury and falsely accused her of criminal conduct is probative of Spellman's claim that he hit her in the face, and made her sign a false confession. Finally, Pitts' behavior with respect to the witness he detained for forty-seven hours and used extreme interrogation techniques on is probative of whether he was loud and abusive with Spellman, who he ensured was isolated when he abused her. Thus, had the defense been able to impeach Pitts, Spellman's "confession" would either have been suppressed or completely discredited by the jury.

To be clear, this is more than a "he-said, she-said" attack on Spellman's "confession." There are significant objective indicia that her "confession" is utterly fabricated. First, it is objectively undisputed that Spellman's father left the building at 4:52 P.M.. *See* PHB at 093. It is undisputed that her mother tried in vain to see Spellman before she was interrogated but was never allowed past the front desk.<sup>11</sup> It is undisputed that Spellman signed her first *Miranda* waiver at 6:10 P.M., and her "confession" at 7:20 P.M. *See* PHB at 178-84. It is also thus

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<sup>11</sup> The suppression court's conclusion that Spellman did not ask to see her father and he did not ask to be with her (*see*, N.T. 2/13/13 vol. I at 93-94), while in and of itself is nonsensical, was nevertheless made without the objective evidence that Spellman's parents left *before* she signed a "confession," contrary to the detectives' claims.

undisputed that it took *an hour and ten minutes* for Spellman to sign her waiver and then sign a two page statement. What happened all that time? In fact, it is also objectively undisputed that Spellman arrived at the roundhouse at around 3:00 P.M. (giving the Commonwealth the benefit of the doubt) and was exposed to homicide detectives, including Pitts, for over four hours- with no assistance from her parents or a lawyer. What happened in that time frame?

And, indeed, the “confession” is a particularly lazy fabrication, at best. The detectives already knew the scant details they typed on the paper before they met with Spellman. *See*, Commonwealth Answer, filed 6/24/22 at 17-18. The “confession” offers no additional details one would expect a perpetrator to be able to provide when voluntarily incriminating herself. By the time they got to Spellman, she had been positively (and falsely) implicated by Combs, and yet Detectives Pitts and Glenn didn’t think to ask her to confirm things like the caliber of the gun, where the gun was at that point, where she got the gun from, where she was before the crimes, where she went after the crimes, how and when she met up with Combs that day, what she was wearing (which are particularly crucial details), and the list goes on and on. *See*, PHB at 178-84.

Thus, what was known about Spellman’s “confession” in 2013 showed that this supposed “confession” was already suspect.<sup>12</sup> Had the defense been armed with the knowledge that Pitts had a history of abusive misconduct, this “confession” would have either been suppressed by a judge or discredited by a jury. Based on the foregoing, the Commonwealth’s failure to disclose Pitts’ history of misconduct deprived her of material impeachment evidence and caused prejudice. *See, e.g., Goodwin v. Wetzel*, 2022 U.S. Dist. LEXIS 107119 (E.D.PA. June 15, 2022)(Sitarski, M.J.)(identical undisclosed instances of Pitts’ misconduct violated *Brady* and required a new trial); *adopted at Goodwin v. Wetzel*, 2022 U.S. Dist. LEXIS 124492 (ED. PA. July 14, 2022)(Savage, J.)(adopting report and recommendation, granting habeas relief and ordering a new trial).<sup>13</sup>

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<sup>12</sup> It bears repeating that Spellman is not the only witness who signed a statement without knowing what was in it because detectives told her to sign it without ensuring she knew what she was signing. This happened with Ms. Mathis and Combs as well.

<sup>13</sup> Moreover, Pennsylvania appellate courts have recognized that “in determining the materiality of the omitted evidence we must, therefore, consider any adverse effect that the prosecutor's failure to disclose might have had on not only the presentation of the defense at trial, but the preparation of the defense as well. *See, United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)” cited in *Commonwealth v. Green*, 640 A.2d 1242, 1244-1245 (Pa. 1994). Here, had the defense known about Pitts’ prior abuse of authority and deception, it could have aided in the preparation of the defense in other ways. For example, had the defense been aware of this *Brady* material, it could have sought and secured adverse character witnesses to attest to Pitts reputation for dishonesty and violence.

Particularly in light of Spellman’s compelling and harrowing recounting of what happened to her, she is entitled to a new trial at a minimum.

C. The cumulative effect of the Commonwealth’s *Brady* violations undermined confidence in the verdicts.

Standing alone, each of the Commonwealth’s *Brady* violations warrants a new trial. Considered together, there is more than a reasonable probability that a properly formulated challenge to Ms. Mathis’ identification testimony, along with a properly executed challenge to Spellman’s false confession would have resulted in a different verdict. *Accord, Johnson v. Folino*, 705 F.3d 117 (3<sup>rd</sup>. Cir. 2013)(cumulative, item by item prejudice analysis grounds for a new trial); *Washington v. Beard*, 2015 U.S. Dist. LEXIS 5387 (E.D.Pa. 2015)(multiple *Brady* violations established cumulative prejudice). All that would be left to convict Spellman would be Combs’ self-interested testimony adopting a “statement” that is as suspect as Spellman’s was, and which he now recants. Relief is warranted.

**B. Trial counsel was ineffective for failing to present Spellman’s dispositive alibi defense to the jury.**

Any reasonable assessment of Spellman’s PCRA testimony, as well as her cellphone records, requires a conclusion that Spellman was at home when these

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*Accord, Green* at 1245-1246 (recognizing that withheld information could have “opened another avenue of investigation for the defense” ).

crimes were committed. This claim has merit, and Spellman was prejudiced by trial counsel's unreasonable failure to execute it.

1. Spellman's alibi cannot legitimately be disputed and thus has merit.

Spellman testified at the PCRA hearing that she was home, morning through nighttime, on the computer, her cellphone, and the house landline on August 18, 2010. This was corroborated by her grandfather, Bruce Stafford, Sr. (a retired police officer), as well as her father. Under normal circumstances, this Court would be left to grapple with the picayune details addressed during Spellman's and the Stafford's testimony, and a credibility judgment would be what Spellman's proffered defense depended on.

But this case presents compelling objective evidence that corroborates these witnesses' testimony. Spellman's cellphone records, at PHB 102-117, demonstrate that she was at home throughout August 18, 2010, having accessed her phone through texts and phone calls that day alone over one-hundred-sixty times.<sup>14</sup>

As a threshold matter, there ought not be any dispute that the cellphone attendant to the records in question belonged to Spellman- as she confirmed.

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<sup>14</sup> There are over fifty pings from the 18601 Tower, the relevance of which is discussed below.

There is no evidence to the contrary, so to infer that this phone belonged to someone else would be absurd.

Moreover, based on the unrefuted report by the Commonwealth's cell phone expert, Gerald Grant, Jr., (at PHB 043-052) it is clear that the "18601 Tower"- right near Spellman's house- is the overwhelmingly dominant tower for coverage of the Spellman residence. Indeed, three minutes before she was arrested at her house on August 20, 2010, Spellman's phone pinged off that very tower. As Mr. Grant notes, the 18601 Tower was pinged by Spellman's phone one-hundred-forty-six times in three days. *See*, PHB at 052; 102-117. The only logical conclusion then is that activity associated with the 18601 Tower happened at Spellman's house.

Notably, this tower is outside the one-mile radius that would have covered the scene of the Greaves murder, and there are three other towers closer to the Greaves' residence that were more suitable for transmitting cellular activity than the one right near Spellman's house. Thus, to surmise that Spellman's twenty-five minute phone call commencing at 3:33 P.M. on August 18, 2010 was made near the Greaves' residence would require one to conclude that her phone call skipped over three closer towers to magically ping off of the 18601 Tower over a mile (and a hill) away. One would also have to conclude that Spellman murdered someone and then just hung around in the Greaves area talking to her friend on the phone for

twenty-five minutes<sup>15</sup>, and then used her phone five more times in that same area over the course of the next hour. *See*, PHB at 108.

The idea that activity from the 18601 Tower originated from anywhere other than Spellman's residence is not tenable.

The question then, is whether Spellman's cellphone activity exonerates her, or at least corroborates her alibi. It does both. At 3:10 P.M., Spellman made a call using the 18601 Tower (i.e., from her home). *Id.* Twenty-three minutes later she had a twenty-five-minute phone call in her home on that same tower.

This Court can take judicial notice that Spellman's residence (938 East Slocum Street) is one mile (an approximately twenty minute walk) from the murder scene at 7901 Pickering Avenue.

The evidence developed during the PCRA hearings shows that at 3:37 P.M. the police received a call related to the Greaves murder. The caller apparently said that her and another neighbor couldn't get Greaves off the ground, and had been watching him for "fifteen minutes." *See*, Commonwealth Second Supplemental Answer filed 10/4/22, at p.2. Assuming that this person was correct inasmuch as they interacted with a motionless man, laying bleeding in his driveway, **for fifteen**

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<sup>15</sup> There were no reports of a female wearing Muslim garb walking around on a cellphone while holding a gun after the Greaves murder.

**minutes**, and *then* decided to call for help, that would place the timing of the Greaves murder at approximately 3:22 P.M.

Spellman was a mile away at 3:10 P.M., and also at 3:33 P.M. So, for her to have committed the Greaves murder, she would have had to spontaneously run about a twelve-minute mile to the murder scene while holding a gun, meet up with Combs, immediately murder Greaves, and then immediately turn around and run another twelve minute mile back home and jump on a twenty-five minute call with her friend, followed by at least five more phone events in the next hour.<sup>16</sup> No jury in their right mind would believe this.

Spellman's alibi is legitimate, and any conclusion to the contrary is not supported by any reasonable inferences.

2. Spellman was prejudiced by the omission of her alibi defense.

It is obvious that Spellman was prejudiced by counsel's failure to present her alibi defense. In assessing prejudice in an ineffective assistance inquiry, "prejudice is defined as a reasonable probability that the outcome of the proceedings would have been different. A reasonable probability is a probability that is sufficient to

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<sup>16</sup> This would have been a true feat of athleticism, given that the female was wearing all Muslim garb according to Ms. Phillips, N.T. 2/14/13 at 32-38, and Ms. Mathis, N.T. 2/13/13 at 26-27 (describing the female as wearing jeans *under* her Muslim garb). *See also*, PHB at 187 (Mathis describing the female as possibly holding her top up while running).



*undermine confidence in the outcome of the proceeding.” See, Commonwealth v. Postie, 200 A.3d 1015, 1023 (Pa. Super. 2018) (en banc)(emphasis added, citing Commonwealth v. Ali, 608 Pa. 71, 86-87, 10 A.3d 282, 291 (2010)).*

It is an absolute travesty that the jury was never presented with Spellman’s (and Messrs. Stafford Sr. and Jr.) alibi testimony and her cellphone records. Had this been done, Spellman would not have spent the last twelve-and-a-half years of her life in prison. Particularly given all the other weaknesses in Spellman’s case, her compelling alibi evidence would have resulted in an acquittal.

3. Trial counsel’s omissions were *per se* unreasonable.

This Court should find that trial counsel’s failures were *per se* unreasonable. Spellman and her family expected an alibi defense, her grandfather was sequestered in anticipation of his alibi testimony, and trial counsel had these phone records in his possession. *See, N.T. 8/24/22 at 70-72; 157-158.* By all accounts, trial counsel’s explanation for foregoing this defense (i.e. there would be no appeal viability if the alibi were rejected) is incomprehensible. *Id.*

Spellman was deprived of her federal and state constitutional rights to effective counsel by virtue of that lawyer’s failure to present Spellman’s compelling alibi evidence. A new trial is warranted on this basis, too.

**C. Combs' recantations render his false implications of Spellman to be useless.**

As with all recantations, Combs' present recantation (i) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; and (3) will not be used solely to impeach the credibility of a witness.

The after discovered evidence test also requires a showing that the new evidence "would likely result in a different verdict if a new trial were granted." *Commonwealth v. Pagan*, 950 A.2d 270, 292 (Pa. 2008). True as it may be that recanting witnesses must sometimes be viewed with a skeptical eye, the circumstances in this case lend strong support to Combs' admission that his implication of Spellman was false.

Combs testified at the PCRA hearing to a scenario with Pitts that is entirely believable given what is known now about this former detective. In particular, Combs explained, among other things, that: (i) he had already been primed to identify Spellman by the time he came home on August 20, 2010; (ii) he was fourteen years old when he was apprehended and incarcerated; (iii) he was fed the pertinent details of his "statement" (or "confession") by Detective Pitts; (iv) he was held for hours and bullied; (v) he was told he could only go home if he signed the statement put in front of him; (vi) much of what Pitts forced him to attest to,

including inculpatory Spellman, was false; and (vii) detectives made no effort to ensure he read what he signed, and instead he was told to just sign the document without reviewing it. N.T. 11/10/22 at 11-29.

Notably, Combs attempted to suppress this statement because it was not voluntary. The crux of this argument was that, although his mother was at the Roundhouse, he was not accompanied by an interested guardian. Combs' confession itself contains falsehoods, such as his claim that Spellman made calls from Ms. Phillips' cellphone. Subsequent investigation revealed that the phone calls made on this phone after Phillips was robbed were not associated in any way with Spellman, which is why evidence of these calls was not used against Spellman at her trial.<sup>17</sup> *See*, Commonwealth Answer, filed 6/24/22 at 19, para. 69. Interestingly, as the Commonwealth has pointed out, Combs' "statement" contains a turn of phrase in describing Spellman- "she's the type of person that does what she wants." *See*, PHB at 145. The person who recorded this statement, former Detective Pitts, used a similar turn of phrase when describing Combs' mother. *See*, N.T. 9/20/11 at 130 ("...she did what she wanted to do"). Finally, Pitts

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<sup>17</sup> Detectives had Phillips' cellphone records from the day of the robbery, so they already knew her phone was used to make calls from it when they interrogated Combs. *See*, PHB at 183.

supplied Combs with a motive to falsely implicate Spellman inasmuch as Combs sought, and received, more favorable treatment than her.

Combs' subsequent trial testimony is similarly unreliable. He was forced to testify against Spellman under use and derivative use (not transactional) immunity. He had been adjudicated delinquent and was serving an indeterminate detention, necessitating his frequent appearances before Judge Rebstock, and thus, he had a motive to continue his cooperation with the Commonwealth. *See*, N.T. 11/10/22 at 137-38.

Combs' trial testimony differs from what Detective Pitts made him sign, and the differences just so happen to be favorable to the Commonwealth. For example, he supposedly told detectives that Spellman was wearing a "black Kanye West scarf." *See*, PHB at 144. At Spellman's trial, after the Commonwealth's theory of the case had been developed, he told the jury that Spellman was wearing Muslim garb called a "khimar," *See*, N.T. 2/13/13 at 41, which all of a sudden matched what Phillips and Mathis described. He testified at Spellman's trial about tripping over the curb before Phillips was robbed, and her asking him if he's ok. N.T. 2/13/13 at 42. This is not in Combs' "statement" taken by Pitts, but Combs most certainly heard Ms. Phillips say this at his (and Spellman's) preliminary hearing, which was well before Spellman's trial. *See*, N.T. 1/26/11 at 25-26.

Of course, Combs' recantation of his implication of Spellman in his statement and trial testimony are not only credible because of the foregoing circumstances, but also because of all of the factual circumstances described above. There was no credible eyewitness identification of Spellman, and whatever description of the female there was, it didn't match Spellman; Spellman clearly signed a false confession; Spellman's alibi testimony and phone records are dispositive; and the calls made from Phillips' phone after the robbery are in no way connected to Spellman. Even if Combs' credibility with respect to certain portions of his confession is suspect, that should not affect this Court's judgment on whether his implication of Spellman was false. He says it was, and that exculpatory testimony is supported by a mountain of other evidence.

Consequently, Combs' after discovered recantations warrant a new trial for Spellman.

**D. The Commonwealth should be barred from re-trying Spellman because of its egregious misconduct.**

In *Commonwealth v. Graham*, 109 A.3d 733 (Pa. Super. 2015), the Superior Court observed that:

The Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and Article 1, § 10 of the Pennsylvania Constitution protect a defendant from repeated criminal prosecutions for the same offense. Ordinarily, the law permits retrial when the defendant successfully moves for mistrial. **If, however, the prosecution engages in certain forms of intentional misconduct, the Double Jeopardy Clause bars retrial. Article**

**I, § 10, which our Supreme Court has construed more broadly than its federal counterpart, bars retrial not only when prosecutorial misconduct is intended to provoke the defendant into moving for a mistrial, but also when the conduct of the prosecutor is intentionally undertaken to prejudice the defendant to the point of the denial of a fair trial.** An error by a prosecutor does not deprive the defendant of a fair trial. However, where the prosecutor's conduct changes from mere error to intentionally subverting the court process, then a fair trial is denied.

*Graham*, 109 A.3d at 736.

In *Commonwealth v. Adams*, 177 A.3d 359 (Pa. Super. 2017), the Superior Court observed:

[W]hether a dismissal is warranted turns on whether the *Commonwealth* intended to deprive the defendant of a fair trial. As the Court in *Graham* explained, dismissal is an appropriate remedy in such a case because a mistrial would be an inadequate remedy for systematic intentional prosecutorial misconduct:

By and large, most forms of undue prejudice caused by inadvertent prosecutorial error or misconduct can be remedied in individual cases by retrial. Intentional prosecutorial misconduct, on the other hand, raises systematic concerns beyond a specific individual's right to a fair trial that are left unaddressed by retrial. As this Court has often repeated, "a fair trial is not simply a lofty goal, it is a constitutional mandate, . . . and *where that constitutional mandate is ignored by the Commonwealth, we cannot simply turn a blind eye and give the Commonwealth another opportunity.*"

*Adams*, 177 A.3d at 371-72 (emphasis added) *citing Graham*, 109 A.3d at 736

(further citations omitted).

Moreover, the Superior Court has held that:

**Although we have found no instance in which we have held that intentional misconduct by the police also should warrant dismissal of the charges under a double jeopardy analysis, we see no reason to foreclose that possibility.** Prosecutors must perform their duties under Brady in conjunction with the police, and a *Brady* violation may occur where evidence in the possession of the police is not disclosed to the defendant, even if the prosecutor did not know about it. See *Burke*, 781 A.2d at 1142.29 Thus, the police violate Brady when they destroy or fail to preserve exculpatory evidence, regardless of intention. *Commonwealth v. Snyder*, 599 Pa. 656, 963 A.2d 396, 406 (Pa. 2009).<sup>18</sup> Police also violate a defendant's due process rights when they destroy "potentially useful" evidence, and do so in bad faith. *Id.* Police have an obligation to preserve evidence in "that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." *Id.* at 402 (quoting *Arizona v. Youngblood*, 488 U.S. 51, 57, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988)).

*Adams*, 109 A.3d at 374 (emphasis added). The foregoing authority makes it clear that intentional government misconduct- including by law enforcement- can violate a defendant's due process rights and warrant a complete dismissal of charges. That kind of misconduct is rampant in this case.

*First*, Detectives Glenn, Pitts and others intentionally deprived a scared, meek minor (who was unable to read ) access to her parents or a lawyer, even though Spellman and her parents were desperate to be in the room together when

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<sup>18</sup> The federal cases cited by the Court in *Snyder* generally refer to the prosecutor and the police together as "the government," "the prosecution," or "the State."

she was interrogated and repeatedly communicated that desperation to these detectives. The trickery that these detectives engaged in to accomplish this violation of Spellman's fundamental rights was unconscionable, intentional, and specifically designed to subvert the legal process.

*Second*, former Detective Pitts assaulted Spellman, lied to her by telling her she would go home if she signed the papers he put in front of her, and then Spellman was refused the opportunity to learn what she was actually signing. Here again, this misconduct was specifically engaged in to subvert the fundamental norms of the criminal justice process.

*Third*, law enforcement seized Spellman's cellphone but then mysteriously "lost" it. *See*, Commonwealth's Supplemental Answer filed 8/23/22 at p. 10. The significance of the physical phone itself is evident by the fact that law enforcement performed a forensic cell phone extraction that yielded a nineteen-page examination report. No electronic copy of this extraction is available. *Id.* Though it is not clear when the police "lost" the phone (pretrial, during trial, or post-trial), Spellman has been continuously contesting her conviction- through litigation- since she was convicted. Were the phone still available, a competent defense expert could perform his or her own extraction which would have aided the



defense.<sup>19</sup> For example, Spellman’s Facebook activity could have been recovered. This kind of “loss of evidence” inures toward a finding that Spellman’s due process rights were violated and would be violated again if the Commonwealth were permitted to re-try her. *Accord, Snyder*, 963 A.2d at 406 (police violate *Brady* when they destroy or fail to preserve exculpatory evidence, regardless of intention).

*Fourth*, as this Court noted during these proceedings, the black and gold scarf found in Spellman’s house was an important piece of evidence. But the Commonwealth obtained an *ex parte* order allowing for the destruction of this evidence. *See*, Commonwealth’s Second Supplemental Answer, filed October 4, 2022 at p. 9. The scarf was destroyed in 2022- *while Spellman’s publicized challenge to her convictions were pending*. This kind of evidence destruction is yet another example of why Spellman cannot be re-prosecuted. *Snyder, supra*.

*Fifth*, the Commonwealth violated *Brady* when it intentionally failed to disclose the evidence of Pitts’ misconduct. Apparently, it was the policy of the police department and the DAO to not turn over evidence of officers’ past misconduct at the time of Spellman’s prosecution. *See*, Commonwealth’s

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<sup>19</sup> It is notable that whatever forensic results were obtained by the Commonwealth’s examination of Spellman’s phone yielded no evidence used against her at trial.

Supplemental Answer filed 8/23/22 at 6-7. Abiding by this policy is obviously an intentional act, and thus represents an intentional *Brady* violation. *Accord, Adams*, 177 A.3d at 374 (Ransom, J., dissenting, stating that longstanding practice of violating police evidence preservation regulations is an intentional *Brady* violation).

*Sixth*, the Commonwealth violated *Brady* when it failed to disclose the Mathis Note. On this point, the Superior Court observed: "...we share Spellman's skepticism of the prosecutor's claim that he was unaware of what Mathis's answer would be when he asked her if the fleeing woman was in the courtroom..." *See, Commonwealth v. Spellman*, No. 3781 EDA 2015 (Pa. Super. 2017). Given the likelihood that the prosecutor obviously asked Mathis this question for a reason, he was duty bound to be aware of the Mathis Note. At best, then, the failure to furnish the defense with the Mathis Note was extremely reckless.

To summarize, this case comes with two *Brady* violations (one of them unquestionably intentional), the loss or destruction of two pieces of important evidence, and outrageous police abuse designed to frame a minor. It would be a violation of the Double Jeopardy Clause and Spellman's federal and state rights to Due Process to allow the Commonwealth to re-prosecute her. Under these circumstances, this Court should not "turn a blind eye and give the Commonwealth another opportunity." The charges against Spellman should be dismissed in their

entirety, with prejudice, so that the Commonwealth is barred from re-prosecuting her.

**E. Spellman's convictions should be vacated and the charges against her should be dismissed with prejudice because she is innocent.**

With what is known now, all of the evidence in this case points to one conclusion- Spellman is innocent. There is a reason that former Detective Pitts and others actively isolated Spellman, physically assaulted her, and forced her to sign what is now known to be a classic false confession. That reason is that detectives could conjure up no significant corroborating evidence of her guilt. They knew this from the outset because Spellman simply did not match the description that the two eyewitnesses provided. So, they had to do something. Enter Von Combs, a fourteen year old boy whose mother forced him to sit with detectives (including Pitts) for hours on end until he falsely implicated Spellman.

It is notable that police made no effort to show photo arrays to Phillips and Mathis and they were not asked to identify Spellman until they saw her in court for the first time (after her mugshot was shown in multiple media outlets and she was reported as having confessed).

It is notable that Andre Wooden, who was deceased by the time of trial, proactively went to see Detective Glenn four months after the crime. He saw Combs' and Spellman's mugshots on television. He told Detective Glenn that he

recognized Combs from the time of the robbery, but he did *not* recognize Spellman. *See*, PHB at 168.

It is notable that the three calls made on Phillips' phone after it was stolen bore no connection to Spellman whatsoever.

It is notable that the Commonwealth had performed a forensic analysis of Spellman's cellphone and obtained her phone records, but neither of those methods yielded any inculpatory evidence.

And it is notable that the Commonwealth failed to furnish the defense with crucial impeachment evidence that would have fatally undermined the testimony of a key eyewitness and a now disgraced former detective in this case.

It is tragic that Spellman's alibi defense was not proffered. Her testimony is corroborated not just by the people that were with her that day, but also by objective evidence in the form of her cellphone records. Any reasonable review of Spellman's alibi evidence requires a conclusion that she was sitting in her house on the phone with her friend, like she said she was. To conclude otherwise requires too much mental gymnastics.

Given all of these realities, the question remains as to why Spellman was ever involved in this case in the first place. The answer lies in the involvement of a woman who in her own right should have been considered a prime suspect.

The day after the crimes, Shawn Wyatt Combs, Von Combs' estranged mother, summoned police by feigning a strange mental breakdown that was so loud that it forced her neighbors to call the police. Upon arrival, Ms. Combs was dramatically screaming about how she lost her boy "to the streets" and that he was involved with the girl who was sneaking into her room at night and stealing her khimars. Ms. Combs actively summoned Von to come home the next day and submit himself to the police so he could tell them about Spellman.

How would Ms. Combs know enough about these crimes to report her son and Spellman to the police? Nobody ever asked her this question. In fact, no formal interview with Ms. Combs is recorded anywhere, though she specifically went to the Roundhouse to speak with former Detective Pitts and had extensive conversations with Officer Speaks. Detective Glenn, former Detective Pitts, and their colleagues were shockingly incurious about how Ms. Combs knew anything about her son's involvement in these crimes. There is no record anywhere that descriptions of the perpetrators were publicly available the day after the crime. So how would Ms. Combs know enough to summon the police to her residence to insinuate that her son was involved in a robbery and a murder?

Ms. Combs set the whole chain of events leading to Spellman's wrongful conviction in motion. Less than seven hours after Greaves' murder, Ms. Combs conveniently filed a police report claiming that someone stole \$900 worth of

clothing from her house, and she suspected it was her son Von. *See*, PHB at 166. A half day later she summoned the police to her house, wailing about Von and eventually mentioning his involvement with “that girl.”<sup>20</sup> Von was specifically instructed to come home by his mother and told to tell the police about the “tomboy female” (i.e., Spellman) that he hung out with. *See*, N.T. 11/10/22 at 10-12.

These circumstances alone are enough to cause any reasonable person to ask questions of Ms. Combs. What is known now about Ms. Combs, however, is particularly troubling.

As a threshold matter, Ms. Combs fits the description of the female perpetrator of these crimes, as she is Muslim, wore (and still wears) khimars, has darker skin, and weighed about one hundred fifty to one hundred sixty pounds (i.e., she was “thick”) at the time of the crimes. *See*, PHB 148-149 and N.T. 11/10/22 at 42-43.<sup>21</sup>

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<sup>20</sup> Ms. Combs manifestly did not like Spellman and disapproved of her son’s association with her. *See*, N.T. 11/10/22 at 57-58.

<sup>21</sup> The initial description of the female perpetrator was “30-35, 5’5”, 180 lbs, heavy build, black female wearing long religious type garment. *See*, PHB at 158. Another piece of flash information was that the female had dark skin. *See*, PHB at 159.

According to DHS records, Ms. Combs had a neglectful and violent history with Von Combs. Social workers reported twelve days after the crimes in this case that Ms. Combs had a history of mental health issues, narcissistic personality disorder, PTSD, and had previously attacked Von with a frying pan while he was asleep. *See*, PHB at 024. The reports go on to say that Ms. Combs was violent, passive aggressive, out of control, doesn't exhibit self-control, and that "serious harm will likely occur today, tomorrow, or within the next 60 days." *Id.* The assessment goes on to say: "Caretaker can quickly lose control of their behavior," "Caretakers mood can instantly change and become aggressive," "Out of control, Caretaker can become violent and aggressive when mood changes." *See*, PHB at 025. The report goes on to state that Ms. Combs was violent, physically aggressive, lacked impulse control, and cannot delay gratifying her own needs. *Id.*

Ms. Combs had previously been convicted of making false statements to police officers. That case included her false allegation of a man with a gun. *See*, PHB at 170-176.

Finally, it cannot be ignored that Ms. Combs made herself conspicuously present during Von Combs' PCRA testimony.<sup>22</sup> She was fidgeting, becoming

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<sup>22</sup> This is not the first time. During the hearing on Von Combs' motion to suppress his statement as having been involuntarily induced, despite being ordered to stay out of the courtroom per a sequestration order, she was soon caught sneaking back into the courtroom while on a phone and demanding something. *See, In re V.C.*,

angry, and said that the Court was getting on her nerves while Von was being questioned. N.T. 11/10/22 at 150. She chased Von down the hallway after he left the courtroom, was very agitated, was clearly worked up, and told an acquaintance that he (Von) “shouldn’t be talking.” *Id* at 155-56. She had an acrimonious encounter with Von while chasing him into the elevator. *Id* at 157-158.

Who is more likely to have been the perpetrator? A skinny, light skinned Episcopalian juvenile who spends nearly every waking hour on her phones and computer, and who has proof that she was at home on her phone when the crimes occurred; *or* a thick Muslim woman who wears khimars, has a frighteningly violent and impulsive profile, mysteriously knew about the crimes without having had to explain why, caused the skinny light skinned Episcopalian juvenile to be implicated in the first instance, has a track record of lying to the police, and couldn’t help herself from stalking her son whenever his implication of Spellman was at issue? This is not a hard question to answer.

## V. CONCLUSION

To deny Spellman relief would require one to make wholly unreasonable inferences at every opportunity. That is the opposite of what the PCRA requires.

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51JV00036672011, N.T. 9/20/11 at 42-43. Apparently, Ms. Combs was trying to hire another lawyer, ostensibly so Von’s public defenders would not be able to litigate the motion to suppress. *Id* at 58-60.



This case presents the Court with severe instances of police misconduct; two *Brady* violations; the destruction or loss of evidence; a recanting witness; a clearly false confession; and a substantiated alibi defense that was never provided to the jury in combination with the identification of an alternative suspect that fits the profile of the female perpetrator to a tee.

There can be no confidence in Spellman's convictions. At a minimum, a new trial is required. But true justice in this case demands that Spellman's charges be dismissed with prejudice.

**WHEREFORE**, Defendant India Spellman, through her undersigned counsel, respectfully requests that this Court VACATE her judgments of sentence and dismiss all charges against her with prejudice, or in the alternative, grant her a new trial.

Respectfully Submitted:

A handwritten signature in blue ink that reads "TODD M. MOSSER". The signature is stylized and cursive.

TODD M. MOSSER, ESQUIRE  
Counsel for India Spellman

DATE: 2/3/23

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this day the foregoing document was served upon the Philadelphia County District Attorney's Office via the e-filing system.

**/s/ TMM**

Todd M. Mosser, Esquire

Date: 2/3/23