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Post Trial Unit
By: K. JOH

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CRIMINAL TRIAL DIVISION

Commonwealth of Pennsylvania, Respondent, v. Tracy Jordan, Petitioner.	CP-51-CR-0305001-2005

COMMONWEALTH'S ANSWER TO PETITION FOR POST-CONVICTION RELIEF

JESSICA ATTIE GURVICH
Assistant District Attorney

MICHAEL GARMISA
Supervisor

Conviction Integrity Unit
District Attorney of Philadelphia
Three South Penn Square
Philadelphia, PA 19107
215-686-5703
Jessica.Attie@phila.gov

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INTRODUCTION

On November 15, 2004, Harold Wexler was shot and killed inside his check-cashing store located at 8000 Ogontz Avenue. The sole eyewitness to the crime was Wexler's employee, Terrance Crawford, who was sweeping outside the store when he first saw the assailant. Crawford told detectives that the assailant was carrying a dark-colored bag over his shoulder. When detectives asked Crawford about two bags that had been found in the store—a white plastic Sneaker City bag and a brown plastic bag—Crawford responded that they belonged to "the bad guy."

Officers processed the scene two hours after the shooting. They lifted a set of latent fingerprints off an interior door handle in the store and a latent thumbprint off the Sneaker City bag. The prints on the door handle matched Frank Bagley, a 41-year-old man who had prior convictions for forgery, drug possession, and other offenses. Bagley told police that a week or two before the shooting, he had taken his girlfriend to a jewelry store that was accessible through Wexler's store. Bagley's girlfriend largely corroborated his account.

The thumbprint on the Sneaker City bag matched Tracy Jordan, a 39-year-old man with no criminal record who lived a few blocks from Wexler's store. In a voluntary statement, Jordan told detectives that he had visited Wexler's store two days before the shooting to play the lottery and had not returned since. Jordan also told detectives that his wife, Nanette, who worked for the Philadelphia Housing Authority, kept a service weapon in their home.

Police seized Nanette's service weapon, a 40 S&W caliber Model 4043 Smith and Wesson, which was the same caliber as the murder weapon, and which contained the same make of ammunition found at the crime scene, .40 S&W Federal Hydrashock. After the Philadelphia Police Department's Firearms Identification Unit ("FIU") reported to homicide detectives that the weapon matched the fired cartridge casing ("FCC") recovered from the scene and the projectile that struck and killed Wexler, Jordan was arrested and charged with murder and robbery.

The ballistics match turned out to be incorrect. In the year leading up to trial, five different firearms examiners analyzed the ballistics evidence and could not replicate the results from the original exam. An FBI examiner also observed individual differences between the firearm and the FCC. As for the sole eyewitness, Terrance Crawford, he did not identify Jordan from a photo array or in-person at the preliminary hearing. Apart from the latent print on the Sneaker City bag, no other evidence directly linked Jordan to the crime.

As the date of trial approached, the prosecutor grew concerned about the lack of evidence in the case. Six weeks before trial, he wrote to his supervisors: "There are no new developments on the case and I think it will be a not guilty. The FBI … cannot match the gun either. Their reports find markings inconsistent with the wife's service weapon…. The only evidence is the defendant's thumb print on the bag." Commonwealth Ans. to PCRA Pet. ("Ans."), Ex. A. Three weeks before trial, the prosecutor wrote to his supervisors again: "If

[defense counsel] were smart, he'd call no witnesses except character, and we'd be dead in the water…. Over the past few weeks, we've tried to strengthen the case, but have gotten no where [*sic*]." The prosecutor warned his supervisors that if they tried the case, they might "tick [the judge] off by wasting her time." Ans., Ex. B.

The case proceeded to trial. In addition to the fingerprint on the Sneaker City bag, the Commonwealth relied heavily on what remained of the ballistics evidence. In closing, the Commonwealth portrayed the case as a binary choice between Jordan and Bagley. The Commonwealth argued that Jordan, who had been unemployed in the year preceding the shooting, committed the crime out of financial desperation. The Commonwealth then presented the jury with alibi evidence to rule out Bagley, leading the jury to believe that Jordan was the only viable alternative.

Jury deliberations lasted almost three days—as long as the trial itself. The jury warned the court several times that it was in danger of deadlocking. On the final day of deliberations, after asking to be re-instructed on the definition of reasonable doubt, the jury convicted Jordan of second-degree murder, robbery, and related charges. On November 8, 2006, Jordan was sentenced to a mandatory term of life in prison.

In early 2023, the Conviction Integrity Unit (CIU) began investigating Jordan's case. In its review of the homicide file, the CIU discovered that the Commonwealth did not disclose the following information:

First, within hours of Wexler's murder, FBI and IRS agents and a family member each alerted homicide detectives that Wexler had recently pleaded guilty to participating in a money-laundering scheme operating out of his store and was now a cooperating witness. As part of the scheme, Wexler's employees structured wire transfers into smaller amounts to help drug dealers disguise millions of dollars in payments to Jamaica and other locations. Although the U.S. Attorney's Office described Wexler's cooperation as "proactive and substantial," homicide detectives never investigated whether there was a connection between Wexler's cooperation and his murder.[1]

Second, on the same day Wexler was murdered, his family gave detectives the name of a former store manager, [redacted] referred to here as "K." In 2024, CIU prosecutors interviewed K. She said that in about 2002, federal agents showed up at her house and urged her to "save herself" by cooperating with the investigation. K. agreed, and after Wexler learned she was cooperating, he fired her. K. was never interviewed in connection with Wexler's murder.

Detectives were also informed by a former employee that Wexler ran an illegal numbers operation in his store. Detectives did not investigate the employee's allegation.

Third, detectives received an anonymous tip that a man named Warren

[1] At the request of the U.S. Attorney's Office, and with the permission of this Court, Jordan's attorneys filed documents from Wexler's federal case under seal. The Commonwealth has redacted certain references to those documents and to other sensitive information from this Answer and will be filing an unredacted version under seal.

Wright was the shooter. Wright had three burglary convictions and matched Crawford's description of the shooter. When detectives searched Wright's car, they discovered a fully loaded .9 mm gun with obliterated serial numbers. Detectives do not appear to have interviewed Wright about Wexler's murder or shown his mugshot to Crawford.

Jordan has now filed a consolidated amended PCRA petition. Based on its investigation, the Commonwealth agrees that Jordan is entitled to relief.[2] The case against Jordan was weak even without the undisclosed evidence to undermine it further. Had counsel been aware of the undisclosed evidence, he could have used it to challenge the prosecutor's binary theory of the case, create a compelling counter-narrative that involved more viable alternative suspects, and impeached the thoroughness and integrity of the investigation into Wexler's murder. By withholding this evidence, the Commonwealth violated Jordan's right to due process under the Pennsylvania and United States Constitutions. Accordingly, the Commonwealth respectfully requests that this Court grant Jordan's PCRA petition, vacate his conviction, and grant him a new trial.[3]

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[2] In the interest of judicial economy, the Commonwealth has only responded to Claims I, II and X of Jordan's petition. If the Court grants relief on one or more of those claims, Jordan's remaining claims will be moot. Should the Court wish to address Jordan's other claims, the Commonwealth would respectfully request the opportunity to supplement this response.

[3] The Commonwealth recognizes that agreement alone cannot obligate a court to set aside a verdict in a criminal case. *See Commonwealth v. Brown*, 196 A.3d 130, 145 (Pa. 2018) (noting that "the PCRA requires judicial merits review

STATEMENT OF FACTS

I. Investigation into Harold Wexler's murder

On the morning of November 15, 2004, Harold Wexler was shot and killed as he opened the door his check-cashing store, Cash Plus, located at 8000 Ogontz Avenue. When police arrived at the scene, they found Wexler on the floor with a single gunshot wound to the head. The only eyewitness to the shooting was Wexler's employee, Terrance Crawford, whose job was to clean up the trash inside and around the store on Monday mornings. N.T. 3/15/05 at 8. Crawford, who was questioned briefly at the scene, told police that he saw two men running southbound on Ogontz Avenue and provided descriptions of both men. Ans., Ex. C at 2.

Crawford was transported to Homicide but was not questioned until about fourteen hours after the shooting. PCRA Pet., Exs. A, B. At the time, Crawford was undergoing chemotherapy for colon cancer and had substance-abuse problems. N.T. 3/15/05 at 7; PCRA Pet., Exs. AA–AD. He told detectives that he arrived at the store at about 8:30 a.m. and began taking trash from the back of the store to the side. PCRA Pet., Ex. A at 1. A few minutes later, a man approached and asked him if he worked there. Crawford answered "no." *Id.* The man then "walked off and walked to the bus stop with another dude." *Id.*

Wexler arrived about ten minutes later. *Id.* According to Crawford, Wexler had a "bodyguard"—a man who wore a uniform and carried a gun—but

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favorable to the petitioner before any relief may be granted.").

the bodyguard was late that day and didn't arrive until after the shooting. *Id.* at 3. Wexler unlocked the front door to the store and was about to walk inside when the man from earlier reappeared and put a gun to Crawford's head. *Id.* at 1. Crawford asked the man what was going on, to which the man replied, "You know what this is!" *Id.* The man shoved Crawford and Wexler into the store, causing the glass in the door to shatter. *Id.* at 1–2. Wexler pushed Crawford aside and began to struggle with the man. *Id.* at 2. A moment later, Crawford heard a gunshot and the sound of more glass shattering. *Id.*

Crawford's statement to detectives at Homicide differed in some respects from the information he provided at the crime scene. Whereas he told police at the scene that he saw two men running southbound on Ogontz Avenue, Crawford told detectives that he saw one man running northbound on Ogontz. Ans., Ex. C; PCRA Pet., Ex. A. When detectives at Homicide asked him whether the second man was "out there after the robbery," Crawford responded that he hadn't paid attention. PCRA Pet., Ex. A at 2.

Crawford described the shooter as dark-skinned, about 5'8 or 5'9, 210 pounds, with a "full beard" that was "trimmed but … bushy." *Id.* He added that the shooter "had an old-looking face. He wasn't a young buck or anything." *Id.*[4]

[4] Jordan matched Crawford's general description of the shooter insofar as Jordan was Black, dark complected, stocky, and 39 years old. But at 6'0" or 6'1", Jordan was about four inches taller than the man Crawford described. Ans., Ex. E. At the preliminary hearing, Crawford, who was 6'2", described the shooter as 38 or 39 years old but also testified that the shooter only came up to his shoulders. N.T. 3/15/05 at 21–22.

Crawford also said that the shooter "had a dark-colored bag over his shoulder that he had the gun in." *Id.* Detectives then told Crawford that two bags were found in the store—a white Sneaker City bag and a brown bag—but they did not tell Crawford that the bags were plastic or show him a photograph of the bags. *Id.* at 3. When detectives asked Crawford who owned the bags, he responded, "They're both the bad guy's. I guess he dropped them when him and Mister Harold were tussling." *Id.*

Two days after the shooting, detectives interviewed Crawford at Hahnemann Hospital. PCRA Pet., Ex. AF. They asked Crawford if Wexler was carrying anything when he arrived at work. *Id.* Crawford told them that Wexler had a coffee cup and a black or brown briefcase. *Id.* Detectives then asked when the shooter took the briefcase. Crawford responded, "It must've been when him and Mister Harold were tussling." *Id.* Detectives later showed Crawford a photo array with Jordan's photo. Crawford did not make an identification. N.T. 11/2/06 at 204–06.

On the day of the murder, officers with the Crime Scene Unit processed the scene and placed four items from the store on property receipts: (1) a creased plastic bag with the logo "Sneaker City" printed on the front, a drawstring closure at the top, and significant ripping around the top of the drawstring closure;[5] (2) a Dave & Busters towel that was found inside the Sneaker

[5] Young's Sneaker City is a popular, independently owned sneaker store, which has been located at 2735 Girard Avenue since the mid-1980s.

City bag; (3) a metal door handle from the interior front door; and (4) a .40 S&W caliber FCC. Ans., Ex. D. The towel had several light brown, medium brown, and dark brown hairs on it, but the hairs lacked sufficient DNA for testing.[6] N.T. 11/3/06 at 87–93.

CSU officers lifted a latent thumbprint from the Sneaker City bag and several fingerprints from the door handle. They did not develop any prints from the brown plastic bag (alternately referred to as the black plastic bag), which they did not retain as evidence. N.T. 11/2/06 at 94–95, 97, 210–11. They also did not retain several other items from the crime scene, including a white plastic trash bag and what appears to be a pizza menu. N.T. 11/2/06 at 94. There is no indication that either of those items were checked for prints.

Clifford Parsons, a fingerprint technician with the Latent Print Unit, matched the prints on the door handle to a 41-year-old man named Frank Bagley. N.T. 11/3/06 at 101–05. Bagley, who had prior convictions for forgery, criminal trespass, and writing bad checks, was questioned one week after the shooting. N.T. 11/3/06 at 29–30; PCRA Pet., Ex. L. He told detectives that about three weeks earlier, he had taken his girlfriend, Angelina Satchell, to a jewelry store at 8000 Ogontz, which was only accessible through a door inside Cash Plus. PCRA Pet., Ex. L. Detectives also interviewed Satchell, who largely

[6] At the CIU's request, the Office of Forensic Sciences, through a contract with Bode Technology, conducted new DNA testing on the hairs and on touch DNA from the Sneaker City bag. Apart from identifying a CSU officer as one of the contributors to the touch DNA, the testing did not yield any new information.

confirmed Bagley's account. PCRA Pet., Ex. M.

Parsons matched the print on the Sneaker City bag to Tracy Jordan, a 39-year-old man who lived with his wife and children on Michener Avenue, just a few blocks from Wexler's store. N.T. 11/3/06 at 110–11. Jordan did not have a criminal record, but his prints were in the Automated Fingerprint Identification System (AFIS) because he had previously served in law enforcement.[7] N.T. 11/2/06 at 194–95; Ans., Ex. E.

On November 18, 2024, detectives visited Jordan at home and asked him to accompany them to Homicide for an interview. Jordan agreed. Ans., Ex. E. Jordan told detectives that he visited Cash Plus on occasion to play the lottery, pay bills, and use Western Union, and that he had been there on Saturday, two days before the shooting, when he went with his three-year-old daughter to buy lottery tickets. PCRA Pet., Ex. C at 2. Jordan did not know Wexler personally but had seen him in the store. *Id.* at 1. Asked to describe his activities on the day of the shooting, Jordan told detectives that he was at home in the morning with his wife, son, and daughter. *Id.* He put the trash out between 7:30 and 8:00 a.m. and left home before 12:00 p.m. to go to the Police & Fire Credit Union at 9th and Arch Streets. *Id.* at 3–4. Jordan was also asked whether there were any weapons in his home. He responded that he owned a

[7] Jordan served in the Marines for four years and received an honorable discharge. N.T. 11/3/06 at 140. In 1990, he began working as a PHA officer, and in 2002, he was elected president of the Fraternal Order of Housing Police. *Id.* at 138. One year later, Jordan was fired after being accused of using excessive force in effectuating an arrest.

Beretta pistol and that his wife, Nanette, a PHA officer, had a PHA-issued firearm. *Id.* at 3. With Jordan's permission, police searched his home for Wexler's laptop and carrying case. Neither item was found. Ans., Ex. G.

During the search, detectives interviewed Nanette about her activities on the day of the shooting. Ans., Ex. H. She told officers that she got up and showered before her daughter woke up. *Id.* at 1. She heard her husband come into the house in the morning but did not know what time it was. *Id.* at 2. Several days after questioning Nanette, detectives brought Jordan's 18-year-old son, Tracy Jr., to Homicide for questioning. A detective asked Tracy Jr. what he was doing at about 8:45 a.m. on the day of the shooting. PCRA Pet., Ex. D. Tracy Jr. responded that he was sweeping up the trash in the back of the house with his father. *Id.*

On November 20, 2004, officers seized Nanette's .40 S.&W caliber Smith and Wesson service weapon and Jordan's Beretta pistol pursuant to a search warrant. Four days later, the FIU reported to detectives that Nanette's weapon matched the FCC from the crime scene and the projectile that struck Wexler.[8] Ans., Exs. I, J. After receiving the report, detectives obtained a warrant for Jordan's arrest. PCRA Pet., Ex. E. The affidavit of probable cause cited the fingerprint and ballistics evidence. *Id.* Later that day, Jordan turned himself

[8] The projectile was recovered by the Office of Medical Examiner during the autopsy and given to the FIU for examination. N.T. 11/3/06 at 15–16; Ans., Ex. J at 11.

in at police headquarters. Ans., Ex. I.

Around the same time, the Police Marine Unit informed detectives that police divers were investigating an unrelated case when they noticed a partially submerged briefcase in the Schuylkill River. PCRA Pet., Ex. J; Ans., Ex. I. The briefcase contained Wexler's laptop computer, computer hardware, several disks, and documents addressed to Wexler. PCRA Pet., Ex. J. Officers were unable to obtain DNA or fingerprints from the items.

II. Preliminary hearing

The Commonwealth struggled to find Terrance Crawford before the preliminary hearing. In December 2004, Crawford's sister told officers that she had kicked him out of her house because of his drug use. PCRA Pet., Ex. AA. The following month, the prosecutor informed his supervisor that Crawford had stopped receiving chemotherapy and was living in an abandoned house on Market Street.[9] PCRA Pet., Ex. AD. Around the same time, Detective James Griffin wrote to Crawford's doctor and asked for assistance in locating Crawford. He told the doctor that "it is my intention, once I locate Mr. Crawford, to assist him in being placed in some kind of housing/care facility. Once that is accomplished I will assist Mr. Crawford in obtaining the treatment he needs." PCRA Pet., Ex. AB. On March 14, 2005, the day before the preliminary

[9] This contrasts with the evidence at trial, where the prosecutor asked Detective Griffin, "up until he testified at the [preliminary] hearing he had actually been in the hospital under treatment, correct?" Detective Griffin responded, "Absolutely." N.T. 11/3/06 at 116.

hearing, police found Crawford in a homeless shelter on Ridge Avenue and arranged for him to testify. PCRA Pet., Ex. U.

Crawford was the only witness to testify at the preliminary hearing. Given his poor health, the prosecutor arranged to have his testimony preserved on video. It is evident from both the video and the transcript that Crawford was unwell. On the video, Crawford can be seen struggling and ultimately failing to spell his own name. When defense counsel asked Crawford how long the gunman was in the store, Crawford responded, "About a half hour, an hour. I don't know. I never been experiencing this. I was on pain pills. I was coming out of chemo. You know, maybe my mind I wasn't really…." N.T. 3/15/05 at 28–29.

Crawford offered contradictory accounts about the perpetrator's bags. On the day of the shooting, Crawford told detectives that the perpetrator had a "dark-colored bag over his shoulder that he had the gun in." PCRA Pet., Ex. A at 2. When detectives asked about "two bags in the store, a white 'sneaker city' bag and a brown bag," Crawford responded that they were "both the bad guy's" and "I guess he dropped them" during the struggle. *Id.* at 3. At the preliminary hearing, however, Crawford testified that the shooter had a gun in his hand, and that he was only carrying two bags: a black "carrying bag" and the Sneaker City bag. N.T. 3/15/05 at 12–13. Upon further inquiry by the prosecutor, Crawford testified that the shooter was carrying the Sneaker City bag and the brown plastic bag (i.e., not the black shoulder bag). *Id.* at 15–16.

Crawford was the only witness who linked the shooter to the bags but was never asked to explain the inconsistencies in his accounts.

On cross-examination, defense counsel asked Crawford if Jordan was the gunman. Crawford replied, "I don't know. I don't know him." N.T. 3/15/05 at 18. Crawford died four months after testifying at the preliminary hearing. The video of his testimony was shown at trial.

III. FIU and FBI firearms reports

The ballistics evidence in the case was examined multiple times. In the first examination, Officer William McKenzie opined that the FCC found at the scene and the bullet jacket from the decedent's autopsy were fired from Nanette's service weapon. N.T. 11/3/06 at 56; Ans., Ex. J. After the defense hired a retired law-enforcement ballistician to examine the evidence, and the original examiner retired, the trial prosecutor asked the FIU to reexamine the evidence. N.T. 11/3/06 at 68–69; Ans., Ex. K. On the question of whether the FCC and bullet were fired from Nanette's gun, the co-examiner on the original report, Officer Robert Stott, determined that the answer was inconclusive. N.T. 11/3/06 at 68; Ans., Ex. J at 6. This was because he did not identify the individual markings—those made by a particular firearm that form the basis to conclude a match—that he had previously relied on. N.T. 11/3/06 at 75–76. Officer John Cannon and civilian firearms examiner Kenneth Lay also examined the ballistics evidence and agreed that the results were inconclusive. Ans., Ex. J at 8. As a result, prior to trial, the court ordered the Commonwealth to send the firearm to the FBI for analysis. N.T. 4/28/06 at 3.

On March 24, 2006, the trial prosecutor sent a letter to the FBI requesting assistance. Ans., Ex. L. The prosecutor informed the FBI that "[t]here are no identifying witnesses" and that two pieces of evidence linked the defendant to the murder: a fingerprint on a bag and a ballistics match. He then wrote that "[b]ecause the assigned ballistician retired, and because the defense is using an outside expert, the ballistics match, or lack thereof, will be a critical issue in the case."[10] *Id.*

The FBI reported that it could not determine whether the FCC or bullet fragment was fired from Nannette's gun. PCRA Pet., Ex. W. However, the FBI did observe "slight differences in the individual microscopic marks" on the FCC, as compared to a test-fire FCC from Nanette's firearm. *Id.* Despite these differences, the FBI did not exclude Nanette's gun from firing the FCC. This is because the FBI, as a matter of its standard operating procedures, will not make an exclusion based on "individual" characteristics. Rather, the FBI only will only exclude if the "class" characteristics are different. FBI Laboratory Quality Systems Documents, Firearms and Toolmarks, FTD-121-01 at 6, https://fbilabqsd.fbi.gov/file-repository/firearms--toolmarks/ftd-121-01-records-results-reporting-and-reviews.pdf/view.[11]

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[10] To avoid any unconscious bias on the part of the examiner, FBI protocols likely would have ensured that the examiner did not see the information in the letter.

[11] Class characteristics are "measurable features of a specimen which indicate a restricted group source. They result from design factors and are determined prior to manufacture." Ass'n of Firearm & Tool Mark Examiners, *Glossary*, 6th

Officer Stott and the other FIU examiners also reported that the Federal FCC at the scene exhibited the same bunter marks as nine of the twelve unfired Federal cartridges in Nanette's gun at the time it was seized. Ex. J at 4. (Bunter marks are headstamps on cartridges that typically denote the name of the manufacturer.) However, when the FBI analyzed the evidence, it offered no opinion as to bunter marks, merely noting the FCCs were stamped with the brand, Federal. In about 2010, the FIU determined that it would no longer offer opinions about whether bunter marks mean that ammunition was made from the same manufacturing batch. PCRA Pet., Ex. AE.

IV. Pre-trial witness interviews

Six weeks before trial, the prosecutor warned his supervisors that "[r]ight now the only evidence is the defendant's thumb print on the bag." Ans., Ex. A. The prosecutor explained that the "gun evidence is no longer present"; the "FBI cannot match the gun"; and "[the FBI's] reports find markings inconsistent with the wife's service weapon." *Id.* He told his supervisors that he was "at a loss as to what to do." *Id.*

After sending the email, the prosecutor sought new evidence to support the case. At the prosecutor's request, Detective Griffin interviewed Adrienne

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Ed. at 38 (June 25, 2001), https://shorturl.at/nFFVP. As such, all firearms having the same manufacturer and model will have the same class characteristics. Individual characteristics, by contrast, are "marks produced by random imperfections or irregularities of tool surfaces…. They are unique to that tool to the practical exclusion of all other tools." *Id.* at 65. As such, firearms of the same manufacturer and model may exhibit different individual characteristics.

Byrd, a manager at Cash Plus who closed up the store on the last business day before the shooting—the same day that Jordan had been in the store to buy lottery tickets.[12] PCRA Pet., Ex. AH. Byrd stated that her routine when closing the store was to brush trash off the counters and sweep and pick up trash from the floor. *Id.* at 4. When Detective Griffin showed Byrd a photo of the Sneaker City bag and brown plastic bag and asked, "did you see these bags on the floor when you left on Sat 11-13-04?", Byrd responded, "No. If they were there, I would have picked them up and put them in the trash." *Id.* She was not asked about the white plastic bag or pizza menu, which were also found on the floor.

One week before trial, detectives interviewed Jordan's friend Julius Peurifor, who had exchanged about seven phone calls (most unanswered) with Jordan on the morning of the shooting. PCRA Pet., Ex. AI. At the time, Peurifor was wanted on a pair of two-year-old bench warrants for drug-related offenses. N.T. 11/2/06 at 129–30. One week before trial, officers arrested Peurifor and brought him to Homicide. *Id.* at 129–31. Peurifor told detectives that on the morning of the shooting, he called Jordan and told him about a roofing job on 3rd and Girard. PCRA Pet., Ex. AI at 1. According to Peurifor, he and Jordan spoke several times that morning, and Jordan kept saying that he was on his way, but he never showed up.[13] *Id.* at 2. Peurifor also told detectives that he

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[12] According to the prosecutor's email, he told Detective Griffin that he "need[s] the person who closed up the store so they could state that the bag with the print was not there at closing." Ans., Ex. A.

[13] At trial, Peurifor testified that he "probably" only spoke to Jordan once that

used his boss's cell phone to communicate with Jordan. *Id.* In a separate interview, Peurifor's boss, Christopher Rodden, who did not know Jordan, told detectives that he allowed Peurifor and his other workers to use his cell phone while they were on the job. PCRA Pet., Ex. Z at 1–2. Phone records confirm that Jordan called Peurifor on Rodden's number.

V. Trial proceedings

At trial, the Commonwealth relied heavily on the fingerprint on the Sneaker City bag—the most significant circumstantial evidence linking the defendant to the crime. The case was presented to the jury as a binary choice between two suspects whose fingerprints were found in the store: Bagley and Jordan. The prosecutor called Bagley to explain his presence in the store and his girlfriend to corroborate his story. N.T. 11/3/06 at 20–31. Then, having ruled out Bagley as a suspect, the prosecutor told the jury that Jordan was the only other choice. But the Bagley/Jordan binary was logically fallacious because it failed to acknowledge the possibility that the perpetrator simply did not leave a detectable fingerprint at the scene. It also depended on Adrienne Byrd's questionable recollection that she did not see the Sneaker City bag on the floor when she locked up the store.

The prosecutor also argued that Jordan attempted to rob Wexler because he was out of work and had reached a "breaking point." N.T. 11/6/06 at

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morning but added, "I can't really remember that far back two years ago. N.T. 11/2/06 at 141–42.

60. The prosecutor questioned Jordan in excruciating detail about his finances, N.T. 11/3/06 at 163–69, 192–95, and in closing, he characterized Jordan as someone "who was getting desperate," N.T. 11/6/06 at 70. But apart from eliciting testimony from Jordan that money was "tight," N.T. 11/3/06 at 167, the prosecutor did not present any evidence that Jordan was desperate for money or that he had defaulted on his financial obligations. In fact, Jordan testified that his wife was employed, he received a pension and help from family members, he performed odd jobs, and he was not in danger of having his home or car repossessed. *Id*. at 147–50.

In the end, the evidence at trial that linked Jordan to the crime was:

- The fingerprint on the Sneaker City bag, along with Crawford's testimony that rendered the fingerprint probative;
- Crawford's vague description of the shooter, which partially matched Jordan; and
- The bunter marks testimony regarding the FCC, and the ammunition in Nanette's firearm, which were the same make and caliber.

A. Fingerprint evidence

The defense did not dispute that Jordan's fingerprint was on the Sneaker City bag. But given that Jordan had been in Wexler's store to play the lottery on the last business day before the shooting, and that Crawford had been sweeping up trash around the store when Wexler was shot, the Commonwealth sought to show that the Sneaker City bag belonged to the shooter. To that end, the prosecutor introduced Crawford's preliminary-hearing testimony, which was played by video. N.T. 11/3/06 at 120. As discussed above, however,

Crawford oscillated between saying that the shooter had two bags and three, and he appeared to confuse the black bag that the shooter carried over his shoulder with the brown plastic bag that was found on the floor of the crime scene. What's more, in his first statement, he told police that the shooter carried the gun in the shoulder bag, but at the preliminary hearing, he testified that the shooter was holding the gun in his hand. *See supra* pp. 13–14.

The Commonwealth also called Adrienne Byrd to testify about closing up the store on the business day preceding the shooting. Byrd testified that she was close to Wexler—she described him as a "good friend" and "confidant"—and that she was the only employee entrusted with the keys to the front door. N.T. 11/2/06 at 101–02, 107. Byrd knew what Wexler carried in his laptop bag, where he carried money, and when he needed to bring more cash to the store. *Id.* at 104–07, 110–11. As in her statement, which was not taken until almost two years after the shooting, she testified she did not see the Sneaker City bag in the store when she closed up, and that if she had, she would have thrown it away. *Id.* at 108–09. On cross-examination, the defense asked Byrd about a white trash bag that was found on the floor of the store after the shooting—a bag that the shooter was not alleged to have carried. *Id.* at 112–13. Byrd did not explain why this had not been thrown away when she closed up. *Id*. at 113.

B. Ballistics evidence

Officer Stott testified that he initially concluded that the FCC and projectile originated from Nanette's gun. He explained, however, that he changed

his opinion and could no longer say to a reasonable degree of certainty whether the FCC or bullet jacket came from Nanette's gun.[14] N.T. 11/3/06 at 56–60. Officer Stott was not asked about the fact that the FBI examiners found inconsistencies between the gun and the FCC at the scene. This potentially would have been significant because while the FBI will never exclude based on individual characteristics, the FIU will, in appropriate circumstances, exclude based on different individual characteristics. *See supra* p. 15.

Officer Stott also opined about the significance of the bunter marks. He testified that the bunter marks on the FCC at the crime scene matched the bunter marks on nine of the twelve cartridges in Nanette's gun, which indicated they came from a batch of about 120,000–150,000 other cartridges manufactured by Federal. *Id.* at 46–47, 63. In about 2010, the FIU stopped offering opinions based on bunter marks. PCRA Pet., Ex. AE.

Officer Stott further indicated that the bullet jacket from the victim's autopsy was a .40 S&W rifled with 6 grooves and a left-hand twist, which is consistent with this model of Smith and Wesson pistols as well as a pistol manufactured by Daewoo. N.T. 11/3/06 at 60–61.

Finally, Officer Stott testified about the lack of lint and lubricant and the presence of gunshot residue in the barrel of Nanette's gun, which was not mentioned in any of the expert witness reports in this case. In a somewhat

[14] The defense did not object to this testimony but instead cross-examined Stott about whether FIU changed its opinion only after the defense retained a qualified expert to examine the evidence. N.T. 11/3/06 at 68–69.

convoluted line of questioning, the prosecutor elicited testimony from Officer Stott that if Nanette had not fired her gun since May 2004, he would have expected to see "some trace of lint in the barrel." N.T. 11/3/06 at 53. This related to earlier testimony of a PHA officer, who testified that Nanette last reported firing her gun at a training in May 2004, about six months before Wexler's murder. N.T. 11/2/06 at 162–65.

After testifying at some length about the lint, Officer Stott's opined that he could not say when the gun had last been fired. N.T. 11/3/06 at 82. Despite this, the prosecutor argued in closing that "not only was this gun fired from powder fouling, but it was recently fired because the lint got burned out." N.T. 11/6/06 at 47.[15]

C. Julius Peurifor

The prosecutor called Jordan's friend Julius Peurifor as a witness, ostensibly to question him about the phone calls he exchanged with Jordan on the morning of the shooting. N.T. 11/2/06 at 137–43. But the prosecutor repeatedly questioned Peurifor about his bench warrants and suggested that he moved from Philadelphia to Lansdowne to avoid being arrested. N.T. 11/2/06 at 129–31, 146, 154–55. Peurifor responded that he moved from the projects in Philadelphia to Lansdowne so that his four children could attend better schools. *Id.* at 154–55. During cross-examination, the prosecutor interrupted

[15] The prosecutor was aware that Officer Stott did not want to make this argument. Ans., Ex. B ("Bob Stott won't give me recent firing because he wants to stay away from the lint aspect.").

defense counsel to suggest that Peurifor had acted as Jordan's accomplice:

DEFENSE COUNSEL:	Have you been charged with any crime in this case in connection to the death of Harold Wexler? Has he charged you with anything.
MR. PEURIFOR:	No.
PROSECUTOR:	*Not yet*.
DEFENSE COUNSEL:	Your Honor, I object to his comments and it's not appropriate.
THE COURT:	Counsel, that's stricken from the record. Mr. Cameron, please don't make any editorial comments.
DEFENSE COUNSEL:	He's been doing it since this witness was on the stand, Judge.

N.T. 11/2/06 at 149–50 (emphasis added). In closing, the prosecutor again suggested that Peurifor was Jordan's accomplice. N.T. 11/6/06 at 68–69. Peurifor was never charged with any crimes in connection with Wexler's murder, and the Commonwealth has not identified any facts that would support a reason to believe Peurifor was involved.

D. Jordan's testimony

Jordan was the only defense witness. He testified that on the day of the shooting, he woke up at about 6:00 or 6:30 a.m. and ate breakfast. N.T. 11/3/06 at 134, 142–43. At 6:59 a.m., he received a phone call from Peurifor. *Id.* at 144, 182. Peurifor told Jordan that he was starting a roofing job at 3rd and Girard and asked him if he wanted to "come down there, check it out and talk to the boss." *Id.* at 144–45. Peurifor gave Jordan a number where he could reach him. *Id.* at 145. Between about 8:15 and 9:00 a.m., Jordan and his son swept up

behind the house and took out the trash. *Id.* at 145–46. Jordan's wife was off that day and was planning to take care of a bill, but Jordan decided he would attend to it because their bank was close to Peurifor's roofing job. *Id.* at 147, 151. Jordan left the house between 9:00 a.m. and 9:30. Later that morning, Jordan went to 3rd and Girard but could not find the job site.[16] *Id.* at 185–86. He tried to call Peurifor several times but no one answered. *Id.* at 183–85.[17] At 10:42 a.m., Jordan made an $80 cash deposit at the Police and Fire Credit Union on 9th and Arch Streets. *Id.* at 124–25; N.T. 11/2/06 at 219. He offered no explanation about how his print was on the bag. N.T. 11/3/06 at 178.

E. Jury deliberations

The jury deliberated for almost three days—as long as the trial itself. On the second day of deliberations, the jury warned the court, "we're not making any progress in our deliberations," but they indicated that they were not ready to give up. N.T. 11/7/06 at 4–5. The following morning, the jury advised the court that "we have made no progress this morning and dissenting views are, if anything, hardening. The word badgering has been used." N.T. 11/8/06 at 3. After asking to be instructed on reasonable doubt, the jury convicted

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[16] Jordan testified that he did not intend to start work that day but instead wanted to speak to Peurifor's boss to see if the job made financial sense. He explained that if he worked during the daytime, he would have to pay $140 for his daughter to go to day care. N.T. 11/3/06 at 152.

[17] As noted above, phone records show that Jordan made several calls to Peurifor on a cellphone number belonging to Peurifor's boss, Christopher Rodden. In a statement, Rodden confirmed that he allowed Peurifor to use his cellphone while Peurifor was on the job. *See supra* p. 18.

Jordan of second-degree murder, robbery, and related charges. *Id.* at 3–4. On November 8, 2006, Jordan was sentenced to a mandatory term of life in prison.

PROCEDURAL HISTORY

After Jordan was convicted, appellate counsel filed a 1925(b) statement based on the sufficiency and weight of the evidence. The trial court rejected Jordan's claims. In their briefs to the Superior Court, counsel and the Commonwealth incorrectly stated that Terrance Crawford identified Jordan as the shooter. Br. for Appellant at 4; Ltr. Br. for Appellee. The Superior Court relied on this misstatement in its decision to deny Jordan's appeal. *Commonwealth v. Jordan*, 2473 EDA 2007, at *5 n.1 & 6 (Pa. Super. Aug. 4, 2008). Counsel did not file a petition for allowance of appeal in the Supreme Court.

Jordan filed a pro se PCRA petition in 2008 and an amended, counseled petition in 2011, which the PCRA court dismissed. Jordan then filed a pro se appeal to the Superior Court, which remanded the case for a hearing on the claim that trial counsel was ineffective for failing to move to suppress Jordan's statement. *Commonwealth v. Jordan*, 82 A.2d 1063 (Pa. Super. 2013). After a hearing, the PCRA court denied his petition. The Superior affirmed the PCRA court's decision. *Commonwealth v. Jordan*, 2308 EDA 2014 (Pa. Super. Oct. 14, 2015).

In 2018, Jordan filed a pro se habeas petition in federal district court. After his petition was dismissed, Jordan filed a pro se appeal to the Third Circuit Court of Appeals. The Court granted a certificate of appealability on two

issues: (1) whether trial counsel was ineffective for not calling Jordan's son as an alibi witness; and (2) whether trial counsel was ineffective for not seeking an alibi instruction. Counsel was appointed, and after briefing, the Court denied relief. *Jordan v. Superintendent Coal Twp. SCI*, 841 Fed. Appx. 469 (3d Cir. 2021).

NEW AND PREVIOUSLY UNDISCLOSED FACTS

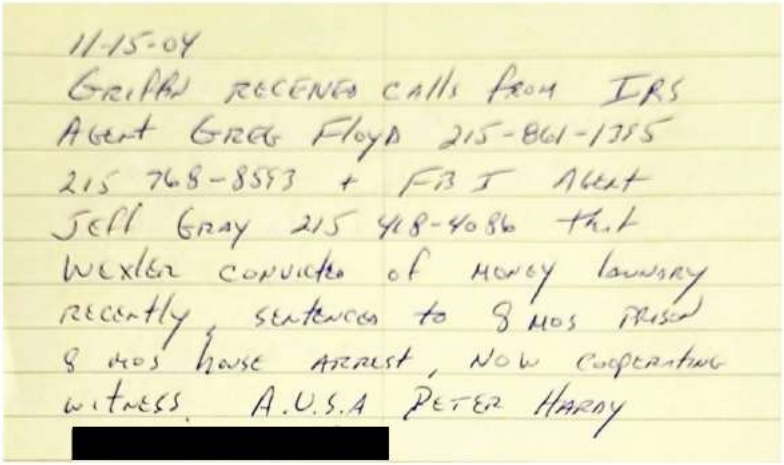
In early 2023, the Conviction Integrity Unit (CIU) began investigating Jordan's case. In its review of the homicide file, the CIU discovered evidence that was not memorialized in the prosecutor's file: (1) Wexler had recently pleaded guilty to federal money-laundering charges and was a cooperating witness against drug dealers and other individuals who may have had a motive to kill him in retaliation or to prevent him from cooperating further; (2) detectives were aware of this and failed to investigate whether his cooperation had any connection to his murder; (3) detectives also learned about and failed to investigate a former employee of Wexler's who was cooperating in the federal investigation; (3) another former employee told detectives that Wexler was running an illegal numbers operation from his store; and (4) detectives received a tip about an alternative suspect who matched the description of the shooter and was linked to the area of the shooting, but they did not show his photograph to Terrance Crawford.

The CIU reviewed the court record, the homicide file, the prosecutor's file, and discovery letters from the prosecutor to Jordan's trial counsel. The

CIU also reviewed non-privileged documents from trial counsel's file, which were provided to the CIU by post-conviction counsel. There is no indication that the Commonwealth disclosed the suppressed information, which was located exclusively in the homicide file. In addition, the CIU spoke with trial counsel, who stated that he did not receive any information about Wexler's criminal case, his cooperation in a federal investigation, or the employees who were aware of his cooperation. Trial counsel did not recall whether he received information about the alternative suspect. The trial prosecutor is deceased and could not be interviewed.

I. Wexler was cooperating with the federal government in its investigation into a money-laundering scheme operating out of his store.

The day Wexler was killed, detectives received calls from FBI and IRS agents advising them that Wexler had recently pleaded guilty to federal money-laundering charges. PCRA Pet., Exs. I, T. His cooperation was potentially out in the open. One of the agents told detectives that Wexler was scheduled to report to prison on January 7, 2005. PCRA Pet., Ex. G at 3.


11-15-04
GRITAN RECEIVED CALLS FROM IRS
AGENT GREG FLOYD 215-861-1755
215 768-8553 + FBI AGENT
JEFF GRAY 215 418-4086 THAT
WEXLER CONVICTED OF MONEY LAUNDRY
RECENTLY, SENTENCED TO 8 MOS PRISON
8 MOS HOUSE ARREST, NOW COOPERATING
WITNESS. A.U.S.A PETER HARDY
[redacted]

PCRA Pet., Ex. T. Detectives also received a phone call from the Wexler family attorney, who advised them that Wexler was an "FBI witness." PCRA Pet., Ex. I.

Two weeks after Wexler was killed, AUSA Peter D. Hardy filed an ex parte application in *United States v. Wexler*, 04-cr-332 (E.D. Pa. Nov. 26, 2004), to disclose sealed documents, including the government's sentencing memorandum and Section 5K1.1 motion for a downward departure, to Philadelphia homicide detectives. PCRA Pet., Ex. G. AUSA Hardy informed the court that the government wanted to help local police "investigate the existence or lack of existence of any link between the death and [Wexler's] cooperation." *Id.* AUSA Hardy also noted that "it may be necessary" to disclose possible grand-jury materials, including "memoranda of witness interviews compiled by federal agents." *Id.* After the court granted the application, AUSA Hardy faxed the sealed documents (but not the grand-jury materials) to homicide detectives.[18] PCRA Pet., Exs. F, H.

The documents reveal that Wexler was charged in 2004 with conspiracy to commit an offense against the United States in violation of 18 U.S.C. § 371 and structuring a currency transaction in violation of 31 U.S.C. § 5324(a)(3). PCRA Pet., Ex. F at 5–6. As financial institutions, Wexler's check-cashing

[18] The documents from Wexler's case are not available on PACER. In 2024, in response to a *Touhy* request, the U.S. Attorney's Office informed the CIU that the documents were destroyed in 2015 pursuant to the government's document-retention schedule. The CIU also interviewed former AUSA Hardy, but given the passage of time, he did not have a detailed recollection of the case.

stores were required to file currency transaction reports for all single cash transactions, including Western Union wirings, that exceeded $10,000. *Id.* at 6. Structuring involves making multiple cash transactions that are less than $10,000 each in order to avoid the reporting requirements. Between January 2001 and June 2002, Wexler's stores wired approximately $6.7 million in structured transactions to various locations, including Jamaica, California, Texas and Arizona.[19] *Id.* at 6–7. As part of the scheme, some of Wexler's employees helped drug dealers use fictitious names and other identifying information to disguise the true sources and recipients of the cash being wired. *Id.* at 7. According to the government, Wexler knew about the scheme, profited directly from it, and routinely went to the bank to deposit large sums of structured cash. *Id.* at 11.

The illegal activity came to light after the Drug Enforcement Agency subpoenaed Western Union for "To Send Money" forms, which customers are required to fill out when wiring money. *Id.* at 8. When Western Union requested the forms from Wexler, he and an employee altered them to disguise their crimes. *Id.* at 8–9. Wexler did not realize that Western Union had requested the forms at the behest of the DEA, and even after altering the forms, he allowed the criminal activity to continue. *Id.* at 9.

After being informed that he was under investigation, Wexler

[19] The government indicated that Wexler was not charged with the "drug or money laundering activity of his various customers and/or employees." *Id.* at 12.

cooperated in his own case and in the government's investigation into multiple out-of-state targets. *Id.* at 13–14. Wexler's cooperation included speaking with law-enforcement agents about ongoing money laundering at his store, providing documents and videotape, and meeting with an ICE agent to identify photographs of convicted felons who may have reentered the country after being deported. *Id.* The government characterized Wexler's cooperation as "proactive and significant" and noted that [redacted] PCRA Pet., Ex. F at 14. The government informed the court that the information provided by Wexler against other individuals was "reliable and corroborated by other law enforcement sources, as well as in part by information provided by other participants in the crimes discussed." *Id.* at 15.

Based on Wexler's cooperation, the government recommended a substantial departure from the applicable sentencing guidelines. Accounting for Wexler's acceptance of responsibility, his sentence range was 46–57 months in prison. *Id.* at 10. The court granted the government's motion for a downward departure and sentenced Wexler to eight months in prison and three years of supervised release. *Wexler*, 04-cr-332, ECF No. 12 (Oct. 29, 2004). Wexler was scheduled to report to prison on January 7, 2005.

The undisclosed evidence of Wexler's cooperation casts his murder in a

new light. The targets of the government's investigation included Wexler's employees and drug dealers wiring money to Jamaica and other locations. Each of them would have had a motive to kill Wexler, either as retribution or to prevent him from cooperating further.

II. Detectives were given the name of former employees who knew about and participated in the criminal activity in Wexler's store, including one employee who was a cooperating witness.

On the same day Wexler was killed, one of his family members gave detectives the name of a former Cash Plus employee named K. PCRA Pet., Ex. I. Later that day, detectives received a call from a former employee named Juanette Williams, who worked at Cash Plus until 2002. According to a note in the homicide file, Williams told detectives that Wexler was involved in "illegal #'s" when she worked at the store. PCRA Pet., Ex. I. The note further states, "Knows K. – B/F – African – past MGR." PCRA Pet., Ex. T.

In April 2024, CIU prosecutors identified K. and interviewed her at her home. PCRA Pet., Ex. V. K. was [redacted] Cash Plus from [redacted] She told CIU prosecutors that she was involved in the money-laundering scheme at Wexler's store, as were Wexler's other employees. *Id.* K. explained that she learned about the government's investigation when federal agents showed up unannounced at her house. *Id.* One of the AUSAs on the case urged her to "save herself and bring proof." *Id.* K. took papers from the store, hid them under her bed for three months, and then delivered them to federal authorities. *Id.* After Wexler learned she was cooperating, he fired her. *Id.*

K. said that she was never interviewed in connection with Wexler's

murder. *Id.* There is no indication in the file that detectives investigated any other employees of Wexler's or that they interviewed Juanette Williams about her allegations concerning an illegal numbers operation at Wexler's store.

III. Detectives received an anonymous tip about an alternative suspect who matched the description of the shooter.

About two weeks after Wexler was killed, police received an anonymous tip that an Upper Darby man named Warren Wright was the shooter. PCRA Pet., Ex. N. The caller told police that she was with Wright when the shooting occurred. *Id*. She added that Wright carried his gun in a black bookbag—a detail that was consistent with Terrance Crawford's then non-public account of the crime. *Id.*; PCRA Pet., Ex. A at 2. Detectives pulled Wright's criminal history and learned that he had prior convictions for burglary, theft, and trespass. PCRA Pet., Ex. R. They also discovered that Wright—who was Black, 34 years old, 5'9" and stocky—matched Crawford's description of the shooter. PCRA Pet., Ex. Q.

Detectives tracked Wright down and obtained his consent to search his car "for evidence of firearm/murder." PCRA Pet., Ex. O. According to the Consent to Search form, detectives found a fully loaded semi-automatic pistol with obliterated serial numbers in Wright's car but did not find the murder weapon. *Id.* It is not clear whether the search took place in Upper Darby or Philadelphia, but there's no indication that Wright was arrested for unlawful gun possession or that his gun was seized. Detectives also found a business card for an office manager at an H&R Block located 0.3 miles from Wexler's store and 17

miles from Wright's home. PCRA Pet., Ex. P. Detectives prepared a photo array with Wright's photo, but there is no indication that it was shown to Crawford or any other potential witnesses. PCRA Pet., Ex. Q at 2.

DISCUSSION

I. *Brady* requires the government to disclose exculpatory and impeachment evidence that is material to the outcome of the case.

The Commonwealth violated Jordan's due process rights under *Brady* by withholding material, exculpatory evidence that would have undercut the Commonwealth's case against Jordan and impeached the investigation into Wexler's murder. The prosecution has an obligation to disclose information that is favorable to the guilt or punishment of the defendant. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This obligation extends to information that is exculpatory as well as impeaching, *Dennis v. Sec'y, Pa. Dep't of Corr.*, 834 F.3d 263, 284 (3d Cir. 2016) (en banc), and information that could be used to "attack... the thoroughness and even the good faith of the investigation," *Kyles v. Whitley*, 514 U.S. 419, 445 (1995). A criminal defendant need not demand favorable evidence before trial; instead, the prosecution has "an affirmative duty" to disclose it. *Id.* at 432–33.

The *Brady* rule encompasses evidence known only to the police. "To comply with *Brady*, prosecutors must 'learn of any favorable evidence known to the others acting on the government's behalf…, including the police.'" *Dennis*, 834 F.3d at 284 (quoting *Strickler v. Greene*, 527 U.S. 263, 281 (1999)); *accord Commonwealth v. Burke*, 566 Pa. 402, 413 (2001) ("The prosecution's *Brady*

obligation clearly extends to exculpatory evidence in the files of police agencies of the same government bringing the prosecution.") Additionally, the *Brady* rule "applies irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87.

A new trial is required where the suppressed evidence is material, i.e., where there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *Cone v. Bell*, 556 U.S. 449, 469–70 (2009). A reasonable probability does not mean the defendant would more likely than not have received a different verdict, only that the likelihood of a different result is great enough to undermine confidence in the outcome of the trial. *Kyles*, 514 U.S. at 434; *see also Hull v. Kyler*, 190 F.3d 88, 110 (3d Cir. 1999) (the "undermines confidence" standard "is not a stringent one. It is less demanding than the preponderance standard."). In addition, the materiality test is not concerned with the sufficiency of the evidence. *Kyles*, 514 U.S. at 434–45 & n.8. Thus, a defendant "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 435. 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.*

When conducting a materiality analysis under *Brady*, the Court must consider the "cumulative effect" of all the suppressed information. *See Kyles*,

514 U.S. at 436 (the materiality of the suppressed evidence must be "considered collectively, not item by item"); *Commonwealth v. Johnson*, 64 A.3d 621, 622 (Pa. 2013) (per curiam) ("in assessing *Brady* materiality, the court is reminded of the requirement to consider the 'cumulative' or 'collective' effect of all of the relevant undisclosed evidence."). The court also must evaluate the suppressed evidence "in the context of the entire record," and "if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient" to satisfy the materiality standard. *United States v. Agurs*, 427 U.S. 97, 112–13 (1976).

II. The suppressed evidence would have undermined the prosecutor's binary theory of the case, enabled defense counsel to point to more viable alternative suspects, including drug dealers, and impeached the investigation into Wexler's murder.

A. The Commonwealth suppressed favorable evidence.

In its review of the homicide and prosecutor's files and non-privileged documents from trial and post-conviction counsel, the CIU did not find any indication that the Commonwealth disclosed the new evidence described above *See supra* pp. 26–27. That evidence is favorable to Jordan for at least five reasons.

First, the evidence of Wexler's cooperation in a money-laundering investigation would have enabled counsel to challenge the Commonwealth's binary theory of the case—i.e., that the jury had to choose between Frank Bagley and Tracy Jordan—and point to other, more viable suspects, including drug dealers and employees at Cash Plus. Indeed, the prospect that Wexler was killed by a

drug dealer, an employee, or other target of the government's investigation could have been used to create a compelling counter-narrative, especially in a case where the only alleged motive was financial. *See Mendez v. Artuz*, 303 F.3d 411, 414 (2d Cir. 2002) (per curiam) ("Suppressed information is exculpatory and thus 'favorable' to the defense for *Brady* purposes when it directly contradicts the motive theory testified to by prosecution witnesses."); *cf. House v. Bell*, 547 U.S. 518, 540 (2006) ("when identity is in question, motive is key.").

Second, counsel could have used the suppressed evidence to question Adrienne Byrd about the illegal activity in Wexler's store. Byrd was close to Wexler—she described him as a "friend" and "confidant"—and worked at Cash Plus during the same period that Wexler was cooperating with the government's investigation. Counsel could have asked Byrd which employees were involved in the illegal activities at Cash Plus, who helped Wexler alter the Western Union forms, whether Wexler had received threats, whether anyone else was prosecuted for participating in the scheme, and whether those individuals had the motive or inclination to retaliate against Wexler. Additionally, given Byrd's potential involvement in Wexler's crimes, counsel could have cross-examined her about whether she sought to curry favor with law enforcement when they interviewed her two years after Wexler's murder.

Third, counsel could have used the suppressed evidence to question Juanette Williams about the money-laundering scheme and illegal numbers operation. Like Byrd, Williams may have had valuable information about who

participated in the illegal activity and whether those individuals were viable alternative suspects. Williams also could have shared information about K.—information that would have enabled counsel to locate and interview K. or present K. as an alternative suspect.

Fourth, K. herself would have been a fount of information about the illegal activity at Cash Plus. Not only did K. participate in the criminal activity at Cash Plus, but she cooperated in the federal investigation, in part by secretly removing documents from the store and turning them over to federal agents. At trial, K. could have been questioned about the criminal activity at Cash Plus, the extent of other employees' involvement, and whether any employees or other individuals (including drug dealers) were aware of Wexler's cooperation or faced prosecution.

Fifth, the suppressed evidence would have thoroughly impeached the thoroughness of the investigation into Wexler's murder. *See Kyles*, 514 U.S. at 446 (holding that the thoroughness and good faith of a police investigation is a factor to be considered in determining whether withheld evidence is exculpatory); *Dennis*, 834 F.3d at 302 (finding that defense counsel could have used the suppressed information to "highlight the investigatory failures for the jury, which could have supported Dennis's acquittal"). On the very day Wexler was killed, two federal agents and a family member each told detectives that Wexler was a federal informant. AUSA Hardy disclosed sealed documents from Wexler's case to detectives and offered to make grand-jury materials available

to further assist in the investigation. Yet detectives did not follow up on any leads; they never questioned *a single witness* about Wexler's federal case; and they failed to request the grand-jury materials, which have since been destroyed.

In addition, nothing in the record indicates that police interviewed key employees about the federal case, including K., who cooperated with the government; Juanette Williams, who alerted detectives that Wexler was running an illegal numbers operation; and Wexler's confidant, Adrienne Byrd. Finally, detectives failed to question Warren Wright about the murder or show his photograph to Terrance Crawford, even though he matched Crawford's description of the shooter.

B. The suppressed evidence is material.

The substantial weaknesses in the Commonwealth's case against Jordan—weaknesses that almost caused the jury to deadlock—leave little doubt that the suppressed evidence was material. *Cf. Agurs*, 427 U.S. at 113 ("if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.").

By the trial prosecutor's own admission, "the only evidence" linking Jordan to the crime was his fingerprint on a plastic bag—a bag found in a store that Jordan had visited two days earlier. Ans., Ex. A. Terrance Crawford told police that the shooter was carrying the bag, but Crawford was gravely ill, and at the preliminary hearing, he could not remember how many or which bags

the shooter was holding.[20] Nor did he identify Jordan as the shooter. Adrienne Byrd, who closed up the store on the previous business day, testified that she did not see the bag on the floor, and if it had been there, she would have picked it up. But Byrd was not questioned until almost *two years* after the shooting, and she did not explain why there was another plastic bag on the floor that she did not pick up.

The prosecutor elicited extensive testimony from the Commonwealth's ballistics expert, including testimony about the original FIU report. Ultimately, the Commonwealth's expert did not testify that there was a match between Nanette's gun and the ballistics evidence at the scene. And although both the FCC and Nanette's gun had .40 S&W Federal ammunition, that was not evidence of a unique match.

That the jury deliberated for multiple days underscores the weakness of the evidence. *See Leka v. Portuondo*, 257 F.3d 89, 91, 107 (2d Cir. 2001) (the fact that jury almost hung after two days of deliberations weighs in favor of a finding that the suppressed evidence was material); *cf. United States v. Velarde-Gomez*, 269 F.3d 1023, 1036 (9th Cir. 2001) (en banc) (holding that prolonged jury deliberations "weigh against a finding of harmless error" because

[20] Had the Commonwealth disclosed the evidence about Crawford's drug use, trial counsel could have used it to challenge his ability to observe and describe the shooting accurately. *Cf. Commonwealth v. Conforti*, 303 A.3d 715, 730 (Pa. 2023) (evidence of a witness's mental health is material if it "undermines the witness's reliability or calls into question his ability to perceive, remember, and narrate perceptions accurately.") (cleaned up).

they suggest "a difficult case"). Twice the jury warned the court that it was in danger of deadlocking, and on the last day of deliberations, the jury asked to be re-instructed on reasonable doubt.

The case was so weak, in fact, that it might not have survived a sufficiency-of-the-evidence challenge had the Superior Court been presented with an accurate recitation of the facts. But both appellate counsel and the Commonwealth incorrectly stated in their briefs that Terrance Crawford identified Jordan as the shooter, and the Superior Court relied on this fact in denying Jordan's sufficiency claim.

For present purposes, although the materiality test under *Brady* is not concerned with sufficiency of the evidence, *see supra* pp. 34, it is nevertheless instructive to consider sufficiency-of-the-evidence case law when evaluating the strength of Jordan's case. Courts have consistently held that fingerprint evidence is insufficient to sustain a conviction unless the prosecutor can prove that "the fingerprint could have only been impressed at the time and place the crime was committed," *In re M.J.H.*, 988 A.2d 694, 698 (Pa. Super. 2010) (citation omitted); *see also Commonwealth v. Cichy*, 323 A.2d 817, 818–19 (holding that fingerprint evidence "loses all probative value if the time of impression is not reasonably limited to the time of the crime, and the prints are found in a generally accessible location.") For example, in *Travillon v. Superintendent Rockview SCI*, the court held that the defendant's fingerprints, which were found on a manila folder that the perpetrator left at the crime scene, were

insufficient to sustain the conviction. 982 F.3d 896, 903 (3d Cir. 2019). In the Court's view, it was immaterial that the victim saw the perpetrator with the manila folder in his hand because there was no evidence about when his prints were impressed on the folder. *Id.* at 902–904; *see also United States v. Collon*, 426 F.2d 939 (6th Cir. 1970) (evidence insufficient where the defendant's fingerprints were found on a map in the getaway car, and he matched a general description of the perpetrator).

The evidence in Jordan's case was arguably weaker than in *Travillon*. First, as in *Travillon*, there was no evidence about when Jordan's fingerprint was impressed on the Sneaker City bag. But here, the Sneaker City bag was a reusable shopping bag with many creases, a drawstring closure, and a significant rip on the top, suggesting that it been heavily used. What's more, Jordan had visited the store (a publicly accessible location) just two days earlier and had frequented other business in the neighborhood, making it impossible to exclude his innocent presence in the store. *See Cichy*, 323 A.3d at 484 (evidence is sufficient if prosecutor can show that the prints were impressed at or about the crime was committed, and the defendant's innocent presence is excluded); *In re M.J.H.*, 988 A.2d at 699 (fingerprint lifted from a publicly accessible part of a retail store was insufficient to establish burglary, where the juvenile respondent had previously shopped at the store, and where the location from which the print was lifted was cleaned on a regular basis).

Against this backdrop, the new and undisclosed evidence would have

put the case in a different light, enabling defense counsel to challenge the Commonwealth's theory that Jordan was the only viable suspect and point to more viable alternative suspects, including drug dealers who may have killed him in retribution or to prevent him from cooperating further. Indeed, the suppressed evidence would have had an even greater impact than it did in *Kyles*. In that case, the suppressed evidence provided additional support for the defendant's alternative-suspect defense, which he presented at trial. *Kyles*, 514 U.S. at 430–31. Here, by contrast, the suppressed evidence deprived counsel of the opportunity to present any alternative-suspect defense at all. This was especially prejudicial in a case where the prosecutor presented the case as a binary choice between two suspects: Jordan and Frank Bagley. *See DiLosa v. Cain*, 279 F.3d 259, 265 (5th Cir. 2002) (holding that suppressed evidence was material where the prosecution presented the case as a choice between two theories and then refuted one theory based on the non-existence of evidence it knew existed).

In addition, the suppressed evidence could have been used to challenge the thoroughness of the Commonwealth's investigation, which "resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense." *Kyles*, 514 U.S. at 441, 443; *see also Lindsey v. King*, 769 F.2d 1034, 1042 (5th Cir. 1985) (evidence was material where, among other things, it "carried within it the potential ... [for] the discrediting, in some degree, of the police methods employed in assembling the case").

When viewed cumulatively, as it must be, it is apparent that the

suppressed evidence would have further weakened an already weak case, such that it undermines the Commonwealth's confidence in the verdict. Accordingly, the Commonwealth agrees that Jordan's due process rights under *Brady* were violated and that he is entitled to relief.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Court grant the petition for a new trial.

/s/ Jessica Attie Gurvich
JESSICA ATTIE GURVICH
Assistant District Attorney

/s/ Michael Garmisa
MICHAEL GARMISA
Supervisor, Conviction Integrity Unit

LAWRENCE S. KRASNER
District Attorney of Philadelphia

Three South Penn Square
Philadelphia, PA 19107
215-686-5703
Jessica.Attie@phila.gov

Dated: October 11, 2024

CERTIFICATE OF SERVICE

The undersigned certifies that I am this day serving the foregoing document upon the persons by first class mail, postage prepaid:

/s/ Jessica Attie Gurvich

Date: October 11, 2024

VERIFICATION

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

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Cases Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ *Jessica Attie Gurvich*
Assistant District Attorney

Date: October 11, 2024