

COMMONWEALTH OF PENNSYLVANIA : **COURT OF COMMON PLEAS**
 : **PHILADELPHIA COUNTY**
 : **CRIMINAL DIVISION**

V. :
INDIA SPELLMAN :
_____ : **CP-51-CR-0001161-2011**
 : **CP-51-CR-0001160-2011**

ORDER

AND NOW, this _____ day of _____, 2021, upon consideration of India Spellman’s PCRA petition, it is hereby ordered and decreed that said petition is **GRANTED** and that Petitioner Spellman is granted an arrest of judgment; or in the alternative, a new trial, or in the alternative, an evidentiary hearing.

, J.

MOSSER LEGAL, PLLC
BY: TODD M. MOSSER, ESQUIRE
IDENTIFICATION NO: 87534
448 North 10th St., Suite 502
Philadelphia, PA 19123
215-567-1220
todd@mosserlegal.com

Counsel for Defendant
India Spellman

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_____	:	

**THIRD AMENDED PETITION FOR RELIEF UNDER
THE POST CONVICTION RELIEF ACT (“PCRA”)**

AND NOW, comes the Defendant India Spellman (“Defendant”), through her undersigned counsel, Todd M. Mosser, Esquire, and respectfully requests that this Court grant an arrest of judgment and dismissal with prejudice, or in the alternative, grant Defendant a new trial, or an evidentiary hearing, and in support thereof avers that she is entitled to relief under the PCRA as the result of ineffective assistance of counsel and after discovered evidence as follows:

I. PROCEDURAL HISTORY

1. On February 20, 2013, Spellman was convicted of second-degree murder, robbery, conspiracy, and violations of the Uniform Firearms Act. She was

subsequently sentenced to an aggregate of thirty years to life imprisonment by the Honorable Jeffrey P. Minehart.¹

2. Spellman is incarcerated at SCI-Cambridge Springs.
3. Spellman's judgment of sentence became final on October 26, 2017. Her initial PCRA petition was filed on November 14, 2017 and is thus timely.²

II. FACTS ADDUCED AT TRIAL

4. 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 roughly an hour after the robbery of Ms. Phillips.
5. Ms. Phillips described the perpetrators as a young juvenile black male with a teardrop tattoo under his right eye, and a 25 to 30 year old, size 18, 180 pound female wearing Muslim garb.³ *See*, Exhibit 'A' (statements of Shirley Phillips)(Spellman 001-005). At trial, Ms. Phillips acknowledged that the

¹ Spellman's co-defendant, V.C., had previously been convicted as a juvenile of the same crimes and sentenced to two years of imprisonment in a juvenile facility after testifying against Spellman.

² Spellman's first PCRA petition resulted in the restoration of her direct appeal rights *nunc pro tunc*.

³ Ms. Spellman has never been Muslim, rather, she had been raised as an Episcopalian.

female perpetrator was dark skinned, but that Spellman is not dark skinned. *See*, N.T. 2/14/13 at 32-38.

6. Roughly an hour after the robbery, George Greaves was shot and killed 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.
7. Ms. Kathy Mathis lived a few houses away from Mr. Greaves. She did not see who shot Mr. Greaves, but testified that she saw Spellman and V.C. running from the crime scene.⁴ She also testified that the female in question was “thick.” *See*, N.T. 2/14/13 at 121-123.
8. Ms. Spellman was skinny and light skinned.
9. Police investigation led to V.C., who eventually signed a statement taken by Detective James Pitts. In the statement he signed, V.C. stated that Spellman robbed Ms. Phillips, and then when the two were walking home, saw Mr. Greaves in his driveway, upon which Spellman supposedly said that she needed to “do one more.” According to V.C., Spellman then approached Mr. Greaves,

⁴ 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. Notably, Ms. Mathis’ ability to make an identification was arguably questionable, as she failed to pick V.C. out of a lineup. *See*, N.T. 2/14/13 at 128. Moreover, as has now been revealed, shortly before the preliminary hearing, she told the District Attorney’s Office that she did not see either of the faces of the perpetrators.

pointed a gun at him, a tussle ensued, and Spellman shot Mr. Greaves in the chest. V.C. testified consistent with this statement at trial.

10. Also introduced at trial was a statement that Detectives Glenn and Pitts supposedly took from Spellman. The statement she signed was nearly identical in all the details that V.C. had in his statement, except the names were switched and Spellman supposedly stated that V.C. robbed Ms. Phillips and shot Mr. Greaves.

11. Based on the above referenced facts, on February 20, 2013, Spellman was convicted of second-degree murder, robbery, conspiracy, and violations of the Uniform Firearms Act.

III. BASES FOR RELIEF

12. To be eligible for relief under the PCRA, a petitioner must plead and prove 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.

13. Spellman is entitled to relief based on the ineffectiveness of her trial counsel, Harry Seay, Esquire for failing to call available alibi witnesses; ineffectiveness for failing to present available phone records which show that Spellman was on the phone in her house during the times of both crimes; and after discovered evidence in the form of (i) the public revelation of Detective Pitts' routine habit, pattern and practice of illegally coercing false statements from witnesses and suspects, which, in this case, includes his physical assault on Spellman and the Homicide Unit's strategic refusal of Spellman's access to her legal guardians during her interrogation; and (ii) a *Brady* violation in which the DAO failed to furnish the defense with a statement from Ms. Mathis where she relayed that she couldn't see the faces of either of the perpetrators.

A. Trial counsel was ineffective for failing to present an alibi defense and exculpatory phone records.

14. The test for determining the ineffectiveness of counsel is the same under 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); *Commonwealth v. Yocham*, 397 A.2d 766 (Pa. 1979) (prior counsel was ineffective for failing to preserve the defendant's meritorious suppression claim for direct appeal). The burden of proving ineffectiveness rests with the petitioner. *Commonwealth v. Wilson*, 672 A.2d 293, 298 (Pa. 1996).

1. The alibi witnesses

15. Spellman was not at the scene of either of the crimes in this case.

16. Rather, she had been home with her grandfather, Mr. Bruce Stafford, Sr., who is a retired Philadelphia Police Officer. Mr. Stafford's address is 938 East Slocum Street, Philadelphia, PA 19150. Also present in the home was Spellman's Father, Bruce Stafford, Jr.

17. Both Messrs. Stafford Sr. and Jr. were available to testify at trial, and both of them and Spellman told trial counsel this.
18. Mr. Stafford Sr. was prepared to testify at trial⁵, and remains so willing, that when he came home on the afternoon on the day of the crimes, Spellman was sitting on his couch and V.C. was there as well. Stafford saw V.C. leave the house. Spellman remained behind and made several phone calls. Stafford remembers that Spellman was on multiple phone calls on both the house phone and her cellphone all day, as well as being on the computer on Facebook. *See*, Exhibit ‘B’ (affidavit of Bruce Stafford, Sr.)(Spellman 006-014).
19. Mr. Stafford Jr. further confirms that Spellman was home all day on August 18, 2010. *See*, Exhibit ‘C’ (affidavit of Bruce Stafford, Jr.)(Spellman 015-024).
20. Messrs. Stafford Sr. and Jr. pleaded with trial counsel to testify on Spellman’s behalf. Trial counsel told Mr. Stafford, Sr. that he did not call him as a witness because in the event of a guilty verdict, there “would be no issues for the appeal” if his testimony were not credited by the jury.
21. In establishing whether counsel was ineffective for failing to call a witness, a petitioner must demonstrate: (1) the witness existed; (2) the witness was available; (3) counsel knew of, or should have known of the existence of the

⁵ Mr. Seay sequestered Mr. Stafford, Sr. in anticipation of his fact-based testimony. *See*, Exhibit ‘A.’

witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony was so prejudicial to petitioner to have denied him or her a fair trial. *Commonwealth v. Clark*, 961 A.2d 80, 90 (Pa. 2008).

22. Here, Messrs. Stafford Sr. and Jr. exist; were available at trial (and are still available); trial counsel knew of their existence; and both Staffords wanted to testify.

23. The absence of the Staffords' testimony was incredibly prejudicial to Spellman. V.C.'s purported inculcation of her was bolstered by two eyewitness identifications, both of which were suspect. Ms. Phillips' identification of Spellman to police and at the preliminary hearing did not match in any way Spellman's physical features nor did the complexion she relayed (dark) match Spellman. Ms. Mathis' identification of the woman as "thick" does not match Spellman.

24. Spellman knows, and therefore avers, that V.C.'s statement implicating her was false. Spellman believes, and therefore avers, that V.C.'s true motive for giving his false statement was to protect himself and/or someone else.

25. Moreover, as detailed below, Spellman's "statement" that was taken by Detectives Pitts and Glenn was fabricated by them.

26. Trial counsel's articulated basis for refusing to call Mr. Stafford as an alibi witness was wholly unreasonable and incomprehensible.

27. Prejudice is pled. As averred above, an alibi defense should have been put forward in this case, and had one been proffered, it is more likely than not that a different verdict would have been reached.

28. As such, Spellman respectfully requests an arrest of judgement, or in the alternative a new trial, or in the alternative an evidentiary hearing.

2. Spellman's phone records

29. Prior to trial, Mr. Seay met with various members of Spellman's family. During the meeting, he told the family not to worry about the case because he had subpoenaed, and received, both landline and cellphone records that showed that Spellman was on the phone, in the Staffords' house, during the time of the crimes.

30. Members of the family⁶, including Spellman's mother and aunt, actually saw all of these phone records.⁷

31. Mr. Seay never used any of these records at trial or put on any evidence that Spellman was on the phone during the crimes.

⁶ Present at the meeting were: Bruce Stafford Sr. and Jr.; Catherine Stafford; Sukona Davis; Keshia Spellman; Morkea Spellman; and trial counsel Harry Seay.

⁷ Mr. Seay also had in his possession a letter that V.C. had written to Spellman in which he apologized for falsely implicating her in the crimes. This was not used at trial. Mr. Seay has passed away, and all of Spellman's subsequent counsel (except the undersigned) have also passed away and nobody can locate Spellman's file, which would have contained this letter.

32. Mr. Seay has passed away, and his son, a lawyer with a practice in New Jersey, cannot locate Spellman's file.⁸
33. At a minimum, Spellman's cellphone records⁹ substantiate her alibi defense and exonerate her. In particular, between 1:30 P.M. and 4:00 P.M. on August 18, 2010, Spellman was on twenty-three (23) phone calls from her personal cell phone, including a twenty-five (25) minute phone call from 3:33 P.M. to 3:58 P.M. *See*, Exhibit 'D' (Spellman cellphone records)(Spellman 037). Mr. Greaves' homicide was reported at approximately 3:48 P.M. *See*, Exhibit 'E' (PPD homicide record)(Spellman 068).
34. Thus, in order for Spellman to have committed the homicide, she would have had to have been walking and talking on her phone for over twenty minutes and then attempted to rob Mr. Greaves while holding her cellphone in one hand while on a phone call and shooting him with the other.
35. The twenty-five-minute phone call was with Shoshana Christmas, who confirmed that this was her phone number and that it was Spellman's normal routine to call her from home. *See*, Exhibit 'F' (affidavit of Shoshana

⁸ Spellman's subsequent appellate lawyers never obtained the file according to their former staff; and both have passed away.

⁹ The undersigned received a copy of Spellman's cellphone records after reviewing the PPD's "H" file in this case. Therein, Detective Cummings had subpoenaed the records and received them. It is unknown whether the DAO ever had a copy of these records prior to trial.

Christmas)(Spellman 069-077). This jives with Mr. Stafford, Sr.'s description of Spellman as a "homebody." *See*, Exhibit 'B' at Spellman 011.

36. Spellman's cellphone records were not introduced as evidence at trial nor was any evidence about her being on the phone at the time of the crime.
37. Given that everyone told trial counsel that Spellman was at home on the phone during the times of the crimes; trial counsel should have used these cellphone records (and apparently the landline records as well) as evidence at trial. His failure to do so was not borne of any reasonable strategic decision, and the absence of these phone records, which would have substantiated Spellman's defense and exonerated her, was unduly prejudicial to Spellman.
38. As such, Spellman respectfully requests an arrest of judgement, or in the alternative a new trial, or in the alternative an evidentiary hearing.

B. Spellman is entitled to a new trial as a result of the after discovered evidence.

39. 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).

1. After discovered evidence in the form of the revelation of Detective Pitts' judicially confirmed routine habit, practice and custom of coercing witnesses and suspects into signing false statements.

40. Spellman did not say the things that Detectives Glenn and Pitts say she said.

41. The facts surrounding Spellman's interrogation reflect an outrageous course of conduct that demonstrates the homicide unit's improper tactics relative to Spellman, a meek seventeen-year-old female suspect with reading comprehension problems.

42. Spellman was arrested at her home (where Messrs. Stafford lived) on August 19, 2010. She was placed in handcuffs and transported to the Roundhouse by police.

43. Mr. Stafford, Sr., began calling around trying to find a lawyer. *See*, Exhibit 'B' at Spellman 010.

44. Mr. Stafford, Jr. followed behind with the police and went to the Roundhouse, and called Spellman's mother, Morkea, and she indicated she was on her way. *See*, Exhibit 'C' at Spellman 020.

45. 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. *Id* at Spellman 021.

46. While waiting, Mr. Stafford, Jr.'s phone was taken away from him. *Id.*

47. 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 police had confiscated his phone. *See*, Exhibit 'G' at Spellman 080-081.

48. Shortly after 5:00 p.m., Mr. Stafford, Jr. was told that his daughter gave a confession. He was brought downstairs and escorted outside with Morkea Spellman. *See*, Exhibit 'C' at Spellman 022.

49. Once outside with Detectives Glenn and Omar Jenkins, Morkea was given a form to sign. The form was a consent form which she was being asked to retroactively sign to approve the detectives' interview of Spellman without either of her guardians being present. Morkea Spellman refused to sign the form. Several witnesses observed this interaction. Ms. Spellman and the people who were with her were told they could not see Spellman because Spellman had confessed to robbery and murder, that she had been placed in

custody and was being transported for booking. *See*, Exhibits ‘H’ through ‘J.’ (affidavits).

50. All of the foregoing occurred before 6:00 p.m.

51. After tricking Spellman’s family to leave, Detectives Glenn and Pitts commenced Spellman’s first interview at approximately 6:10 p.m. *See*, Exhibit ‘J’ (*Miranda* waiver of Spellman).

52. When Spellman was interviewed by Detective Glenn, she specifically asked why she was brought into the homicide division, in handcuffs. Detective Glenn called her a liar.

53. Spellman, then seventeen years old, repeatedly asked to have her father present during the interrogation. Her requests were repeatedly denied and she was told that he went home.

54. After Spellman repeatedly explained that she had no idea what was going on, and after Detective Glenn couldn’t get anywhere with her, he left the room.

55. Detective Pitts then came into the interrogation room.

56. Detective Pitts was immediately loud and abusive with Spellman and repeatedly called her a liar. He showed her V.C.’s statement, which she had to have read to her because at the time she had reading comprehension problems. When she told him that the statement was false, Detective Pitts struck her in her mouth and screamed at her that she was a damned liar. Detective Pitts then left

the room and returned with a statement that implicated her (with details that were remarkably identical to V.C.'s statement) and told Spellman that if she signed the statement she could go home. Spellman signed the statement and then asked to have it read back to her because of her reading comprehension difficulties. Both detectives refused to do so, and Spellman was then immediately sent to booking.

57. After Spellman's trial, it has been revealed that Detective Pitts has a habitual pattern, practice, and routine of coercing witnesses into signing false statements.

58. Specifically, 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 conviction and ordered a new trial in light of Detective Pitts' pattern, practice, and routine habit of coercing false witness statements.

59. 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 a four-day evidentiary hearing before the Honorable M. Teresa Sarmina, the following witnesses testified¹⁰:

¹⁰ The notes of testimony referred to relative to these 10 witnesses are from Thorpe's PCRA hearing in June 2017 and can be supplied to the Court when necessary.

Raffinee Taylor: Taylor's three statements were a crucial part of the Commonwealth's case against Kyle Reed. At the evidentiary hearing, Taylor testified that her first statement was given to a white male detective, who she explained treated her "fairly" and was "nice." Taylor explained that this first statement in which she demonstrated little to no knowledge of the crime at issue was true and accurate. N.T. 6/19/17 at 183, 208. Shortly thereafter, Detective Pitts initiated "questioning" of her by telling her he would need to handle her "in a different way."

Taylor was handcuffed to a chair, held in custody for two days, denied food even though she asked Detective Pitts for it, and was not allowed to call anyone, including a lawyer, her young children, or her family members. Detective Pitts screamed and cursed at her repeatedly over "hours and hours and hours," and told her that he was obtaining a warrant for her and she would be charged with murder. N.T. 6/19/17 at 185-93.

As she did at Reed's trial, Taylor testified that she watched Detective Pitts typing an interview form with answers that she did not give. When Taylor specifically informed Detective Pitts that the answers were not her words, he responded by claiming that he had to treat her differently. N.T. 6/19/17 at 189-91. After two days at the police station, Taylor relented and signed the falsified

statement because she was “scared” and “didn’t know when it was going to end.” Once she signed the statement, she was released. N.T. 6/19/17 at 190.

Shaquille Rainey: In the case of Amin Speaks, Shaquille Rainey gave a statement implicating his cousin Speaks in a homicide. However, Mr. Speaks was acquitted after the jury watched video evidence that placed both Speaks and Rainey twenty minutes away from the crime scene at the time of the murder. Obviously, the statement Detective Pitts “obtained from” Rainey was entirely false. Rainey was sixteen years old when he was brought to homicide by Detective Pitts. He was scared and intimidated by the Detective. On numerous occasions, Rainey asked to contact his aunt, however, all of his requests were denied. N.T. 6/20/17, 49-51. Not only was he denied that phone call, even though he was a juvenile, but he was also threatened that he would go to jail for the rest of his life for the homicide. When Mr. Rainey told the Detective that he knew nothing about this killing and put his head in his hands, Detective Pitts smacked his hands away from his face, pushed him numerous times and told him to sit up straight. Id. at 51-53.

After several hours of interrogation, Mr. Rainey signed a statement that falsely inculpated Mr. Speaks. He only signed the statement because Detective Pitts promised him he could leave if he did. Id. at 53-54. He testified that he

was scared and intimidated by Detective Pitts who told him that he was going to spend the rest of his life in jail. Id. at 55. During his testimony, he denied telling the police he was at the scene of the murder, Id. at 70-71; denied knowing who shot the decedent Id. at 71-82; denied giving answers as to what he saw when the shooting occurred Id. at 73; denied knowing the number of gunshots Id. at 75-76; and generally denied knowing anything about how the shooting happened. Id. at 76-79.

The truth was that at the time of the crime, Rainey and Speaks had gone to Center City to drop off his aunt's work vehicle and then to a McDonald's thereafter. Id. at 93-103. The statement that Detective Pitts had Rainey sign was thus patently false and fabricated by Pitts.

Keith Tolbert: Keith Tolbert was arrested in September 2013. Detective Peterman initially attempted to question Tolbert and was aggressive and threatening in doing so. Tolbert refused to give a statement. N.T. 6/20/17 at 142-143. Detective Pitts then resumed questioning Tolbert for about three hours, even though Tolbert refused to give any statements and repeatedly asserted his Miranda rights. Pitts told Tolbert that he himself was "from North Philly" and that he knew Tolbert's "type." Detective Pitts told Tolbert that if he did not talk, he would send him to Hahnemann Hospital. He then struck

Tolbert in his left cheek/ jaw area. After Tolbert further refused to answer any questions, Detective Pitts moved his chair close to Tolbert and he put his knee into Tolbert's penis for roughly twenty minutes while he continued to question him. Tolbert testified at the PCRA hearing that he still feels shame from this particular incident. Id at 143-147.

Ronnie Bradley: Mr. Bradley was eighteen years old when he was arrested on or about October 6, 2008. He was taken to homicide by Detective Pitts, who never informed him that he could contact an attorney. At that point in his life, Bradley had a third or fourth grade reading level, was diagnosed as bipolar-schizophrenic, fetal alcohol syndrome, and ADD/ADHD. In fact, he had been hospitalized at Norristown State Hospital for quite some time. Id at 180-181.

Mr. Bradley testified that he was brought into a small room for about two hours when Detective Pitts came storming in and accused him of killing someone. He was handcuffed to a chair that was bolted to the floor. After Mr. Bradley denied killing anybody, Detective Pitts slapped him in the mouth which caused him to start crying. Thereafter, the Detective got close up to Mr. Bradley's face and screamed at him. Bradley was given the distinct impression that if he didn't say what the detective wanted him to say, he would be struck again. In fact, the other detective in the room attempted to calm Detective Pitts

down and suggested that the interview should be video recorded. Id at 181-185, 198.

During the interview process, Bradley told Detective Pitts what he overheard on the street about the homicide. Detective Pitts did not write Bradley's answers down or take notes during the interrogation. Id. at 178-179. Detective Pitts eventually left the room and subsequently returned with typed sheets of paper. Detective Pitts did not explain anything to Bradley, but rather instructed him to sign the statement. Detective Pitts told Bradley that he would call Bradley's mother to come pick him up after he signed the statement. Though he was incapable of reading nearly all of the content of the statement that Detective Pitts had typed, Bradley was able to sign his name where necessary and initial the statement and the Miranda warnings. Id at 182-185, 190-196. Once Bradley signed what Detective Pitts put in front of him, the detective forcibly swabbed Bradley's mouth and smirked at him while telling him, "you're going to jail." Id. at 195-96. Indeed, the statement that Bradley signed directly implicated himself in the homicide. Id at 195-196.

Bradley has since learned how to read. He testified at Thorpe's PCRA hearing that the statement he signed was almost entirely fabricated by Detective Pitts. Most notably, the statement that Detective Pitts concocted claimed the victim's name was "Marquel Bradley" in at least five separate locations.

Bradley testified that if he had actually had the capacity and the chance to read the statement after his interrogation, he would have told Detective Pitts that there was no such person as Marquel Bradley. Id at 188, 202.

Samuel Scruggs: Samuel Scruggs was allegedly involved in a fatal-shooting with multiple codefendants in March 2007. Scruggs was charged with murder and related charges but was found not guilty of all charges except REAP and weapon's offenses. During this incident, he was shot in the abdomen and ultimately hospitalized for nearly 30 days. Several days after the shooting, he was taken out of the hospital and brought into Homicide. He was brought to an interview room or a holding cell and left for an estimated 9-10 hours until his pain medicine had worn off. He was in a wheelchair and could not sit up straight because of the wound. N.T. 6/22/17 at 6-8.

While Scruggs was hunched over in his wheelchair, Detective Pitts entered the room and hovered over him and told Scruggs that he had a "box of information" about him and that he should simply confess to committing murder. Scruggs refused to cooperate and demanded that he be allowed to call an attorney. This apparently angered Detective Pitts, who refused Scruggs' request and instead told him that he was going to jail for the rest of his life;

called him a “black motherfucker;” and told him that if he did not cooperate his family would be imprisoned. N.T. 6/22/17, 8-11.

After further attempts at obtaining a statement proved fruitless, Scruggs went through the booking process. In that process, the nurse on duty was mortified that Scruggs had been sitting at homicide with an open gunshot wound to the abdomen and ordered that Scruggs be immediately re-hospitalized. Of course, when Detective Pitts and his colleague were asked to wheel Scruggs into the police van, they played bumper cars with Scruggs’ wheelchair and bounced him off the walls all the way down the ramp at 8th and Race. Id at 11-12.

Jaeneya Thomas: Thomas was involved in the same case as Mr. Scruggs. She was also in the hospital because her boyfriend had just been shot. Detective Pitts apparently believed that she knew about the shooting and had two Detectives bring her to the Homicide Unit. She arrived at about midnight on March 26, 2007 and was not to leave for days.

After she was initially interviewed and provided no information, Detective Pitts played the “bad cop.” He was arrogant and belligerent and told her she was still there because she failed to cooperate with the police. Detective Pitts refused to honor her request to call her lawyer. He called her a ‘whore’ and a

‘dumb bitch’ and terrorized her with threats that she was going to prison for the rest of her life, a threat repeatedly invoked by him. Detective Pitts threatened to have DHS take her children away, and also threatened to ensure that she would lose her Section 8 housing. Detective Pitts also told her that she would never be intimate with her boyfriend again because he had been shot in the penis. N.T. 6/22/17, 29-32.

Eventually after three days at Homicide Thomas signed a statement that had been prepared by Detectives. She had not been able to use the bathroom or eat during those three days. The statement was not in the usual question and answer format, nor was it in her words. She was asked questions in an interview room and nowhere did Detective Pitts take any notes. Thomas was handcuffed to a chair bolted to the floor, not in the room where the statement was being typed. She was eventually escorted down the hall and presented with a typed statement that she was ordered to sign.

Thomas succumbed to the pressure after seventy-two hours in custody during which she had not been allowed to call anyone, including her mother or three small children. *Id.* at 32-44. Once Thomas signed the statement, two detectives escorted her to her sister’s house. Subsequent to her release, Detective Pitts kicked in her door without a warrant, continued to threaten her with a life sentence, and harassed her children. *Id.* at 32-34, 77-78.

Rosalind Wood: Wood was picked up by Detective Pitts on June 2, 2013 in the investigation of Eric Hovington after she told him that she did not see the shooting. Detective Pitts was so outrageously and ridiculously abusive toward her that Wood originally thought that he was either crazy or joking. For example, he had repeatedly called her a ‘bitch’. He wanted information about a shooting on her block, and she denied any knowledge of those events. He said to her, “Bitch you know what the fuck you saw.” He believed that she was outside when the shooting occurred. N.T. 6/22/17 at 96-99, 112.

Wood was held at homicide for hours, during which time she was concerned about the wellbeing of her nine-year-old daughter and she was also worried about losing an important contract for facility maintenance; which was her career that she obviously works very hard at. Detective Pitts threatened to take her nine-year old daughter away during his third round of questioning. He threatened that if she did not tell him what he wanted to hear, her daughter would be gone forever. However, she had already told the police everything she knew about the incident. Id. at 96-102, 112.

Eventually, Wood was constrained to repeat everything that Detective Pitts said to her so that she could be set free. She thus signed the statement that Detective Pitts fabricated, which again was not in the typical question and

answer format. Id. at 102-106, 114. After her will was overborne by Detective Pitts' tactics, Wood was set free after she signed the false statement. She recanted the statement that Detective Pitts made her sign at the preliminary hearing for Eric Hovington. N.T. 6/19/17 at 99.

Zshani Al-Rasul: Al-Rasul was picked up by Detective Pitts and another detective from the airport where she worked and was taken to Homicide in June 2013. She was detained all weekend and forced to sleep on a metal bench-like chair in an interview room. During the three days she was there, she was only allowed to have a pretzel and a Pepsi. Detective Pitts insisted that Al-Rasul had information about a shooting on her block and she maintained that she did not. Detective Pitts threatened to take her thirteen-year old son away. He told her she was going to prison. Detective Pitts also grabbed Al-Rasul by her arm and ordered her to remove her jewelry and shoe laces. In light of these threats, she requested to make a phone call, which was denied. Despite Detective Pitts' efforts, Al-Rasul never signed a statement. She was released after three days in custody. Id at 122-129, 136-140. With the assistance of counsel, Ms. Rasul filed an Internal Affairs Complaint in or about November 2013. Id at 140.

Raymond Mooney: The Thorpe PCRA Court admitted the prior testimony of Raymond Mooney. He is deceased and therefore the Court admitted his trial testimony because he was unavailable for the hearing and because the Commonwealth had previously had an opportunity to cross examine him about his allegations regarding Detective Pitts.

Mooney was a manager of a bar in Port Richmond. The decedent was found in the basement of the bar by his family and the police were called. Mooney was the bar's manager and on scene when the body was found. Mooney was the most critical Commonwealth eyewitness in its case against John McLoughlin. His testimony was over 400 pages long and he was on the stand for over two days. Mooney was Mirandized because police initially considered him a suspect since he was in the bar when the body was found in the basement and the victim's family was accusing him because he was acting so nervously. N.T. 2/21/12 at 85-90. In fact, Mooney was chain smoking and drinking shots of whiskey before he was taken to the Roundhouse. N.T. 2/17/12 at 14.

In his first statement, he did not implicate the defendant, Mr. McLaughlin. Indeed, he claimed he left the bar hours before the incident occurred. N.T. 2/21/12 at 98-100. However, three days later Detective Pitts placed him in handcuffs on the street, and threatened to arrest him for murder and lock up his

seventy-five-year old sister for harboring a fugitive if he didn't tell the Detective what he wanted to hear.

Specifically, Mooney testified that Detective Pitts had nothing to do with the first statement that he signed. However, Detective Pitts ratcheted up the pressure, first threatening to put him in handcuffs and take him to a cell in the Roundhouse or CFCF if he did not start cooperating. He also threatened to charge him with the crime, and as aforementioned, to lock up his seventy-five-year-old sister. After many hours of abuse, Mooney succumbed and implicated McLaughlin. Id. at 102-103, 126, 198-99; N.T. 2/22/12 at 10-12, 54-59.

Unique Drayton: At Thorpe's evidentiary hearing, the Commonwealth agreed to the admission of Unique Drayton's prior testimony from a motion to suppress. *See, Commonwealth v. Unique Drayton*, CP-51-CR-00137942-2009. According to Drayton's testimony, Detectives Pitts interrogated her for approximately forty hours without having Mirandized her. During this period, she was repeatedly threatened; cursed at; assaulted twice by Pitts; thrown into a bolted chair twice by Pitts; handcuffed to that chair; forced to intermittently sleep on a cold floor and then cursed at by Pitts when she was observed doing so; and not allowed to call a lawyer despite her request for one.

Only after enduring forty hours of this treatment, when she finally succumbed to Pitts' tactics and agreed to sign the statement he fabricated, did

Pitts read Ms. Drayton her Miranda warnings. N.T. 10/22/10 at 28-138. The Court subsequently suppressed Drayton's "confession." The Court specifically found that multiple witnesses were held by Detective Pitts for days on end; that Drayton's "statement" to Detective Pitts was the result of "psychological coercion" and that Detective Pitts was simply "incredible."

60. The revelation of the shocking details of the *Thorpe* case serves as a basis of relief for Spellman because it is now established that Detective Pitts has a pattern, habit, and practice of abusing people into signing false statements.

61. Evidence of these prior instances of Detective Pitts' abuse is admissible pursuant to Pa.R.E. 406 (Habit; Routine Practice) and does not serve the purpose of merely impeaching Detective Pitts.

62. The evidence is neither corroborative or cumulative.

63. Spellman's "statement" that Detective Pitts fabricated sealed her fate at trial because it directly implicated her in a robbery and a murder.

64. Evidence of Detective Pitts' habitual abuse and coercion serves as a basis to suppress Spellman's "statement;" and also serves as substantive evidence of Detective Pitts specific illegal coercion of her into signing a false confession.

65. The evidence of Detective Pitts' tactics was not available under any theory of diligence prior to or during Spellman's trial. Many of the above related

instances occurred after her trial, others were revealed in the media after her trial, and others required extensive investigation by the undersigned.

66. Had this evidence been available prior to or during trial, Spellman's "statement" would have been suppressed as inherently unreliable; or alternatively, if it had remained admissible, it would have been deemed wholly incredible by the jury in light of Detective Pitts judicially recognized routine habit and pattern.¹¹ Under either circumstance, Spellman would have been acquitted.

67. All of the above mentioned witnesses have already been extensively cross examined by the Commonwealth at Thorpe's PCRA hearing. Thus, this Court can take judicial notice of their testimony.

68. Alternatively, these witnesses will be subpoenaed at an evidentiary hearing to testify consistent with their prior testimony. Detective Pitts will also be subpoenaed for testimony (again). The Commonwealth already has all of these witnesses contact and biographical information.¹²

69. As such, Spellman respectfully requests an arrest of judgement, or in the alternative a new trial, or in the alternative an evidentiary hearing.

¹¹ Notably, Ms. Mathis testified that at least one detail she provided to detectives did not appear in her written statement. *See*, N.T. 2/14/13 at 124-125.

¹² Further witness certifications from additional witnesses will be forthcoming.

2. After discovered evidence in the form of a *Brady* violation.

70. After Spellman filed her First Amended PCRA petition, the DAO searched its files and uncovered a note that should have been furnished to defense counsel prior to trial.
71. Specifically, Ms. Mathis called the DAO on September 13, 2010, prior to the preliminary hearing. Someone from the DAO spoke with her and recorded the message she left. The message specifically says: “Got my letter. Never saw faces. Didn’t see the face. Did not see a picture.” *See*, Exhibit ‘K.’
72. Thus, well before Spellman’s trial in 2013, the District Attorney’s Office knew that Ms. Mathis was unable to make any identifications. Indeed, Ms. Mathis was not called as a witness at Spellman’s preliminary hearing.
73. The defense was never made aware of this statement from Ms. Mathis.
74. At trial, for some strange reason Ms. Mathis was asked if she could identify Spellman, and she positively identified Spellman. In doing so, she completely contradicted what she had told the DAO two and a half years’ prior.
75. 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).

76. 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).

77. 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) (reserving 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).

78. "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).

79. Here, the evidence in question- Mathis’ statement to the DAO that she did not see any faces- is undeniably favorable to Spellman because it directly impeaches her contrary testimony at trial.

80. Moreover, this evidence was suppressed by the prosecution, and in fact was never revealed until recently after the instant PCRA litigation commenced.

81. Spellman was prejudiced. Ms. Mathis’ identification of Spellman at trial was crucial, but it was also suspect. The female she described running from the scene in no way resembles Spellman. Had the defense been aware that Ms. Mathis denied being able to identify the female as far back as a month after the crime, the defense could have completely and definitively refuted her identification testimony at trial.

82. After the defense received the phone message at Exhibit ‘K,’ Ms. Mathis was interviewed by a defense investigator.

83. Ms. Mathis has provided context to her interactions with the DAO. *See*, Exhibit ‘L.’ Therein, Ms. Mathis explained that she could only see the female from the nose to her forehead; that she told the prosecutor this; that she spoke to the prosecutor in the hallway before going into the courtroom; and that the

prosecutor told her the suspect was “sitting right there with her attorney;” and that this is why she identified Spellman in court. *Id* at Spellman 111-114.

84. As further evidence of Spellman’s innocence; Ms. Mathis was shown a complexion chart. *See*, Exhibit ‘L’ at Spellman 129. She circled the darkest complexion possible.¹³ Ms. Mathis went on to explain that when she saw Spellman at trial, “her skin was radiant and she was much lighter than the female I saw on the day Mr. Greaves was killed.” *Id* at Spellman 112.
85. Ms. Mathis also described the female perpetrator as wearing a size 14 jean, and explained in her statement that at trial Spellman “was smaller and she looked good like she loss [sic] weight.” *Id* at Spellman 110, 112.
86. Ms. Mathis’ statement at Exhibit ‘L’ provides crucial context as to why the *Brady* violation is important in this case. In particular, had the defense known of her September 2010 statement, Ms. Mathis could have been asked the same questions she was asked in Exhibit ‘L,’ and in turn the defense would have been armed with the details therein which would have even further debunked her in-court identification of Spellman.
87. As such, Spellman respectfully requests an arrest of judgement, or in the alternative a new trial, or in the alternative an evidentiary hearing.

¹³ This is consistent with Ms. Phillips’ testimony.

IV. CONCLUSION

88. Spellman had nothing to do with either the robbery of Ms. Phillips or the murder of Mr. Greaves. V.C.'s statement implicating her is false, as is demonstrated by the available alibi evidence that Spellman's trial counsel failed to present. Spellman's "statement" implicating herself in both crimes is the classic work of a now disgraced detective who has been exposed as a serial procurer of false confessions and witness statements. And the in court identification of Spellman by Ms. Mathis is utterly unreliable given what is known now.

89. Spellman is innocent of all crimes for which she was convicted, and, based on the foregoing, is entitled to an arrest of judgment or a new trial, or, at a minimum, an evidentiary hearing.

WHEREFORE, Spellman respectfully requests an arrest of judgement, or in the alternative a new trial, or in the alternative an evidentiary hearing.

Respectfully Submitted:

_____/s/TMM_____

TODD M. MOSSER, ESQUIRE

Counsel for India Spellman

DATE: 12/7/20

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: 12/7/20