

**IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

STATE OF OHIO,	:	
	:	Case Nos. 91CR040926, 95CR046753
Plaintiff,	:	
	:	JUDGE DONNA FREEMAN
v.	:	
	:	PETITION FOR POST-CONVICTION
JOHN AUSTIN EDWARDS,	:	RELIEF PURSUANT TO OHIO
	:	REVISED CODE §§ 2953.21/23 &
Defendant-Petitioner.	:	REQUEST FOR RULING ON
	:	CRIM.R. 33(B)
	:	
	:	EVIDENTIARY HEARING
	:	REQUESTED

NOW COMES Petitioner-Defendant John Edwards, by and through undersigned counsel, who respectfully requests that this Honorable Court grant him post-conviction relief pursuant to Ohio Revised Code §§2953.21/23. The basis for this request is that John Edwards is actually innocent and (i) alternative suspects Michael Rutherford and Kenneth Rivers have been implicated in the murder of Marsha Blakely, which is third party culpability evidence admissible under the due process and compulsory process clauses of the Federal and State Constitutions, (ii) after invoking his Fifth Amendment rights during the post-conviction hearing for Al Cleveland in 2008, William Avery Jr. made a declaration against penal interest (which is an indicia of reliability) outside the courthouse to a newspaper reporter; that declaration would be admissible in a new hearing, and (iii) cumulative evidence the trier of fact never heard proves John Edwards is actually innocent. The facts establish by clear and convincing evidence that no reasonable factfinder could have found John Edwards guilty but for the constitutional errors at his trial. Mr. Edwards further requests this Court rule on the merits of his prior motion, filed jointly with Lorain County Prosecuting Attorney J.D. Tomlinson pursuant to Crim.R. 33(B) on December 2, 2024. This Court vacated that motion on January 29, 2025, after Mr. Tomlinson's successor, Mr.

Cillo, asked for time to investigate the matter.¹ Almost two years have passed, and Mr. Edwards is entitled to a ruling on the joint motion, including consideration of the stipulation of facts since no new information has emerged on behalf of the state, and the matter was not decided on the merits. On March 18, 2025, the undersigned made a presentation to Mr. Cillo, containing all of the evidence used to substantiate the joint motion filed by his predecessor. After following up multiple times for an update on the status of the investigation promised by Mr. Cillo, his office has not responded to petitioner, nor has it updated this Court.²

John Edwards should have been home to spend the December 2024 holidays with his family, but he remains incarcerated nearly two years later due to political factors that are well out of his control. The merits of his case are being overlooked as a result of political infighting and partisan division. J.D. Tomlinson only filed the joint motion after a “...painstaking review of the evidence, testimony, and circumstances...” of this case.³ Nevertheless, because the filing of the motion coincided with the end of the prosecutorial term and a very contentious election, John Edwards and his co-defendants were used as pawns to exact political revenge. On just his second day in office, Tony Cillo withdrew the joint motion. On information and belief, Mr. Cillo feigned an interest in conducting his own investigation into the case. It appears he has taken no steps towards that end in the last nearly two years. Further, the former trial prosecutor on the case, Jonathan Rosenbaum, has taken hostile action against the defense team in the form of frivolous

¹ See Exhibit A. Joint Motion for Leave to File a Motion for a New Trial. As part of the December 2, 2024, joint filing, Mr. Edwards requests the Court rule on all parts of the filing, including the Joint Motion for Leave to File a Motion for a New Trial, Joint Motion for New Trial and Motion to Dismiss, and the Stipulations of Fact.

² See Exhibit A.1 Slide presentation, March 18, 2025; Unanswered communications from attorney Joshua Dubin to Lorain County Prosecuting attorney Anthony Cillo.

³ PCLJ at Cardozo Shares Statement from Ohio Prosecutor Tomlinson on Vacating Conviction of “Ohio 4,” Cardozo Law, <https://cardozo.yu.edu/news/pclj-cardozo-shares-statement-ohio-prosecutor-tomlinson-vacating-conviction-ohio-4>.

bar complaints, all of which have been found by Disciplinary Counsel for The Supreme Court of Ohio to be without merit.

Mr. Edwards is being held in the custody of the State of Ohio in contravention of his fundamental rights under the Federal Constitution and the Ohio Constitution. The legal and factual grounds which mandate that relief be afforded to Mr. Edwards are set out below.

Respectfully submitted,

/s/ Alasan M. Huff

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A handwritten signature in black ink, appearing to be 'Joshua Dubin', with a stylized, looped flourish at the end.

Joshua Dubin (PHV#: 32551 - 2026)

MEMORANDUM IN SUPPORT

Introduction

John Edwards was wrongfully convicted of the 1991 murder and felony assault of Marsha Blakely based on the fabricated story of a single eyewitness. Over a month after the crime, despite extensive investigatory efforts, law enforcement still had no perpetrator. In fact, Prosecutor Jonathan Rosenbaum stated that the investigation had hit a “dead end.”⁴ In an attempt to generate new leads, a \$2,000 reward for information about the crime was offered by the Prosecutor’s Office. Within days, alleged eyewitness William Avery Jr. (also known as “McArthur” and “B.B.”), under the influence of his father and frequent Lorain police informant William Avery Sr., came forward with what he claimed was information about the murder of Ms. Blakely. Avery Jr. identified four “New York drug dealers” as the perpetrators of Blakely’s murder: Alfred Cleveland (also known as “Al Monday”), Benson Davis (also known as “JR”), Lenworth Edwards (also known as “Will”), and John Edwards (also known as “Shakim”). Avery Jr. was a known associate of Cleveland, who he claimed to have received drugs from and owed money to at the time of the murders. His false narrative was quickly adopted by the Lorain Police Department, as it provided a solution to both their stalled homicide investigation and the problematic drug dealers in the area. Avery Jr.’s false testimony caused investigators to develop “tunnel vision.” They ignored exculpatory evidence, failed to collect evidence and subject it to forensic analysis, and disregarded the obvious connection to another homicide victim who was found within hours and was killed in the same way - Ms. Blakely’s own roommate Floyd Epps. All four men were individually tried and convicted of the murder of Marsha Blakely, based almost exclusively on Avery Jr.’s testimony. Despite the overwhelming link between the Epps

⁴ See Exhibit D.

and Blakely homicides, the Epps case was never properly investigated and remains unsolved.

William Avery Jr. has admitted he lied about witnessing John Edwards take part in Marsha Blakely's murder on multiple occasions. He was never a credible witness, and yet the state relied on him to convict Mr. Edwards despite knowing he was only telling them what they wanted to hear in exchange for reward money. His first recantation came prior to the 1991 trial of Lenworth Edwards, the first of the four men to be tried. Then, in 2005, wracked with guilt over falsely implicating the four men in a crime they did not commit, he walked into an FBI field office in Detroit and told a Special Agent that he made up the entire story about Mr. Edwards and his co-defendants committing the crime. The FBI contacted the Lorain County Prosecutor, but the office took no action whatsoever.⁵ Avery Jr. recanted again in 2006 through an oral deposition and a sworn affidavit. He denied everything he had told police, prosecutors, and jurors in all the trials. In a 2006 post-conviction proceeding for Alfred Cleveland, Avery Jr. was willing to testify that he had lied at all four trials. He was prepared to explain that he was subjected to threats and duress from his father, William Avery Sr., who wanted Avery Jr. to make up the story so he could collect the reward money to feed Avery Sr.'s drug habit. When the 2006 post-conviction proceeding for Alfred Cleveland commenced, Avery Jr. was essentially threatened with potential prison time for perjury. At that point, Avery Jr. invoked his right to silence on the witness stand. However, he then walked outside the courthouse and announced to the press that he lied about witnessing Blakely's murder, *a clear statement against his own penal interest that is now admissible*. Before withdrawing as a party in the joint motion to dismiss, the Lorain County prosecutor's office stipulated that Avery Jr.'s testimony in the trial of John Edwards and the three other men was not credible, and that if given a new trial, that office would

⁵ See Exhibit N at 4.

not be able to sustain a conviction for murder. Yet Mr. Edwards remains incarcerated.

While the prosecution built its case against Edwards on the fabricated testimony of a single paid informant, substantial evidence pointing to the actual perpetrators of these murders, Michael Rutherford and Kenneth Rivers, was either known to the Lorain Police Department before trial concluded or was subsequently developed through post-conviction investigation and suppressed or ignored by law enforcement. Mr. Edwards did not know of these alternative suspects at either the time of his trial or his direct appeal and only recently learned about them through reinvestigation. He now has evidence that over the years, both Rutherford and Rivers told numerous people about their involvement in the murder of Marsha Blakely. Many of those people spoke to detectives from Lorain County, only to be dismissed out of hand with virtually no investigation of their claims. Others were too frightened to go to law enforcement for fear of retaliation.

Mr. Edwards is entitled to a meaningful consideration of the motions he filed on December 2, 2024, which included a list of facts stipulated to by the Lorain County Prosecutor's office. Based on the information before this Court, his case should be dismissed. At the very least, an evidentiary hearing should be granted to explore the numerous violations of his federal and state constitutional rights.

I. Statement of the Case

On August 8, 1991, the body of Floyd Epps was discovered at 1:25 AM in Lorain, Ohio. At 9:18 AM, on a service road a quarter mile away, Marsha Blakely's body was discovered behind the Westgate Plaza shopping center. The two bodies had remarkably similar injuries and causes of death.⁶ Blakely and Epps were close friends who lived together. Further, the proximity

⁶ See Exhibit B. Examination of Dr. Robert Thomas, Coroner at 57-59 (noting that Epps and Blakely both had injuries consistent with being run over by a vehicle and thirteen-centimeter lacerations on their necks, with Epps's

in time and distance of their killings led Lorain homicide investigators to immediately link the two murders. The investigation consisted of interviews of approximately 25 people over the course of a month. Additionally, multiple articles about the case were in the local news.⁷ Yet, with no substantial leads, the investigation reached a dead end. On September 5, 1991, the Lorain County Prosecutor's Office sought to revive the case by offering \$2,000 for information about the murders.⁸

What followed was law enforcement's reliance on a sole witness that they knew or should have known was lying, to the exclusion of all other leads. The Lorain County detectives quickly figured out that William Avery Jr. was not a credible witness. He told a series of changing stories that evolved over time and his account of the crime scene conflicted with the physical evidence. Regardless, law enforcement relied on Avery Jr.'s version of events because it solved a problem for the Lorain County Police Department (LCPD)—it provided them with an opportunity to rid their streets of who they referred to internally as “the drug dealers from New York.” Prior to William Avery Jr. ever walking into the police station with his implausible version of how Marsha Blakely was murdered, the LCPD listed Al Cleveland, John Edwards, Lenworth Edwards, and Benson Davis as potential suspects – without any evidence whatsoever to suggest they were involved. To put it plainly, the LCPD targeted Al Cleveland, John Edwards, Lenworth Edwards, and Benson Davis for the murder of Marsha Blakely, and would stop at nothing to make even a concocted, completely unreliable, alleged eyewitness in Avery Jr. their star witness in the trial of all four men.

time of death established at 12:15 AM and Blakely's sometime after 12:00 AM.) *See also* Exhibit C. Examination of Detective Richard Resendez at 116-120.

⁷ *See* Exhibit D (Elyria Chronicle Telegram, September 5, 1991) (“WEWS-Channel 5 will interview family members and police and show photographs of Marsha Blakely and Floyd Epps, who were found dead Aug. 8. Blakely, 22, was found behind Westgate Plaza with about 15 stab wounds in the neck, police said.”)

⁸ *See* Exhibit D.

September 10, 1991

Five days after the reward was offered, on September 10, 1991, well-known police informant William Avery Sr. came forward claiming to have information about the deaths of Blakely and Epps.⁹ However, upon realizing that Avery Sr. did not possess first-hand knowledge of the crime, Detective Geno Taliano encouraged him to reveal the source of his information.¹⁰ The next day, on September 11, 1991, he returned with his son, William Avery Jr., whom he claimed was an eyewitness to the crime. Avery Jr. provided the first of many different and conflicting versions of the alleged events that took place leading to the death of Ms. Blakely.¹¹

A. William Avery Jr.'s Original Story to Police

According to Avery Jr., he met with Al Cleveland on the night of August 7, 1991, to pay him back over \$4,000 he owed for drugs that had allegedly been fronted to him.¹² Avery Jr. told Cleveland, "If he needed someone beat up or something I could work my debt off." According to Avery Jr., when he asked to purchase more drugs, Cleveland took him to Epps's apartment after 11:00 PM.¹³ Upon arriving, Avery Jr. contended that he recognized three other drug dealers associated with Cleveland in a car out front: Lenworth Edwards, Benson Davis, and John Edwards. Avery testified that they "busted" into the apartment and a man named "Supreme" was at the door while Blakely was seated on the bed. Avery Jr.'s first account was that Cleveland

⁹ See Exhibit E. Examination of Detective Geno Taliano at 362; See also Exhibit F. Avery Jr. Interview, Sept. 11, 1991 at 1.

¹⁰ *Id.* Ex. E at 363 (discussing how when he [Detective Taliano] first spoke with Avery Sr. it was "evident ... he didn't have any firsthand information, and that in fact he was, he had talked to somebody else who had provided the information that he was trying to give me.").

¹¹ See Exhibit D (Elyria Chronicle Telegram, February 1, 2008) ("William Avery Jr. says Alfred Cleveland is innocent of murdering 22-year-old Lorain woman in 1991, but he isn't willing to risk jail himself to set Cleveland free ... According to his deposition, he accused prosecutors of threatening him when he tried to back out of his testimony during one of the trials.")

¹² See Exhibit G. Examination of Avery Jr. at 254-56.

¹³ *Id.* at 254-256, 307.

instructed him to beat up Ms. Blakely to clear his debts, but Avery Jr. refused because she was a childhood friend.¹⁴ The other four men allegedly began beating Blakely for 15-to-20 minutes. The last time Avery Jr. claimed he saw Ms. Blakely was after 12:00 AM, when she was being dragged unconscious by her arm and hair by Benson Davis into a car.¹⁵ When Avery Jr. left Epps's apartment it was vacant and "messed up," with "everything ... thrown everywhere" and "everything turned."¹⁶ As discussed in detail below, law enforcement knew or should have known that this initial story was implausible and completely made up. It conflicted with virtually every aspect of what was known to them at that stage of the case.

B. Why William Avery Jr. Came Forward

According to Avery Jr.'s story, he did not confide in Avery Sr. about the incident until a day or two later.¹⁷ He did not want to come forward, but Avery Sr. had "turned him in . . . for the 'reward money.'"¹⁸ Avery Sr. also attended and participated in the initial interview with the police, answering questions directly and whispering in his son's ear to "remind him of things he forgot".¹⁹ Avery Sr.'s meddling and overbearing presence even prompted Detective Taliano to remark (in reference to Avery Jr.), "He's a man. He can talk for himself."²⁰ The meeting concluded with Avery Jr. asking, "What about the reward money?" to which Detective Taliano responded, "We're going to turn off the tape and talk about that."²¹ Ultimately, the police

¹⁴ *Id.* at 275, 390 (defense counsel pointing out numerous inconsistencies by Avery); *see also* Exhibit F at 3.

¹⁵ *Id.* at 259; *See also* Exhibit F at 3.

¹⁶ *See* Exhibit F at 4-5.

¹⁷ *See Exhibit G* at 264-65.

¹⁸ *Id.* at 265-266; *see also* Exhibit H Avery Jr. Interview, January 23, 1992) at 2 ("[H]e had went down there and talked to the detectives about what I had told him and that I didn't have no choice but to go down there cos [*sic*] they wanted to come out and pik [*sic*] me up but he had promised them he was gonna bring me in."

¹⁹ *See* Exhibit F at 13, 16-17, 20-21.

²⁰ *Id.* at 28.

²¹ *See* Exhibit G at 309.

decided that because Avery Jr.'s testimony pertained only to Blakely's assault at Epps's apartment and not her murder, he would not receive the reward money.²²

September 20, 1991

Armed with the knowledge that in order to collect the reward money, he would need to provide more details about the murder itself, Avery Jr. returned to the police on September 20, 1991, to provide "forgotten" information relating to the murder.²³ During Avery Jr.'s second interview, he revealed that he first learned Ms. Blakely was dead when Cleveland returned to his house an hour or two later that night and told him, "We took care of that junkie, we knocked her off."²⁴ Avery Jr. insisted that he had shared everything he knew and only withheld the part about Cleveland's statement until the police had Cleveland in custody.²⁵ Unsatisfied, Detective Resendez responded, "Ok, cause you know, I mean two people are dead and that ain't right and, we got to solve this. You know. If you, if you were there when it happened, you know, why don't you just tell us that."²⁶ But Avery Jr. remained adamant that he was not there when the murder occurred, and he was at his girlfriend's house.²⁷

After this September 20, 1991, version, Avery Jr. was paid the \$2,000 reward money. He also received an extra \$1,000 relocation fee to move to Detroit. However, his family in Detroit forced him to move back to Ohio because they feared that Avery Jr. would "rat" on them for selling drugs.²⁸

December 1991 – Trial of Lenworth Edwards

²² *Id.* at 264.

²³ *See* Exhibit G at 299-302.

²⁴ *See* Exhibit I Avery Jr. Interview, September 20, 1991 at 2-3; *See also* Exhibit G at 266.

²⁵ *Id.* Ex. I at 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* Exhibit G at 271-72 ("Q: How long did you stay in Detroit? A: About a month, I think... They didn't want me down there...my family... Because they all selling dope and stuff, and they was scared I was going to rat on them. Q: So you were an informant. A: Right. Q: And they were afraid you would turn them in for money as well? A: Right.")

In December 1991, Avery Sr. convinced his son to demand an additional \$10,000 from the prosecution in exchange for his testimony.²⁹ The prosecution rejected Avery Jr.'s attempted extortion, which led to his refusal to testify. The trial court held Avery Jr. in contempt and sentenced him to ten days of incarceration.³⁰ After his release, he admitted to the court, "I only done it for the money, and everything was not true."³¹ Avery Jr.'s recantation led the judge to declare a mistrial and charge him with perjury for lying in the September 26, 1991, deposition.³²

January 1992

In January 1992, Avery Jr. claimed for the first time to have witnessed the murder of Blakely behind Westgate Plaza.³³ While incarcerated on charges of lying under oath related to Lenworth Edwards's first trial, Avery Jr. contacted police with additional information.³⁴ During the subsequent interview, Avery Jr. told detectives he saw Ms. Blakely get stabbed repeatedly with a shiny object by a man named "Justice" behind Westgate Plaza before running home in fear for his own safety.³⁵ Although detectives initially believed that Avery Jr. had knowledge

²⁹ See Exhibit N.

³⁰ *Id.* at 266 ("Q: Was your father satisfied with that? A: No. Q: What did your father want? A: He wanted the \$10,000...He told me, don't go in there and say nothing, unless they give it to you. Q: Go in where? A: The Courtroom.").

³¹ See Exhibit G at 269, 311 ("I'll perjure myself. I'll lie about anything because I needed the money."); *Id.* at 269-70 ("Q: You were brought back to Court? A: Right. Q: What did you say in Court then? A: I said it was all a lie. Q: And you did it for the money? A: Right. Q: And why did you do that? A: Because, I had nobody on my side. Why would I sit up there and go to jail with them?")

³² See Exhibit D (Elyria Chronicle Telegram, February 22, 1992) ("Avery has been held on a perjury charge since Dec. 18 when the trial of Lenworth Edwards, 19, of New York, ended in a mistrial after Avery testified that he lied in a Sept. 26 deposition linking Edwards to the murder of Marsha Blakely, 22.")

³³ See Exhibit G at 265 (Avery admitting he first claimed to have left Epps's apartment after Blakely was beaten and did *not* go with the four assailants to the Westgate Plaza, before later changing his story in January 1992 that he was, in fact, behind the plaza at the time of the murder); See also Exhibit H at 8.

³⁴ See Exhibit G at 345-46. ("Q: Why didn't you tell Det. Taliano that at your first meeting you were behind Westgate and saw the stake with the shiny object before you ran? A: Because I was scared that I was going to be locked up with them, being locked up with them because I was back there."); See also, *id.* at 285 ("Q: It's true that you never said anything about being in the plaza, behind the plaza until later January 1992 when you are in the Lorain County Jail, isn't that right? A: Right."); see also Ex. D at 1-2.

³⁵ See Exhibit G at 262-63.

regarding *both* the murders of Epps and Blakely, he only provided information as to the latter. During Lenworth Edwards's retrial, Avery Jr. testified that he had lied about not being a witness during Edwards's first trial and that he had seen part of the second assault that eventually caused Ms. Blakely's death before he ran away. Avery Jr. repeated this version of events at the trials of Davis, Cleveland, and John Edwards, who was tried last.

In total, Avery Jr. made \$5,073 as a witness throughout the trials, leading him to admit that it was "one of the best paying things [he'd] done in the past 10 years."³⁶ In his attempt to continue to use his informant status as his full-time job, Avery Jr. was working as an informant for both the LCPD and the United States Secret Service during the course of both the investigation of the Blakely murder and the trials of John Edwards and his co-defendants. However, the Federal government terminated their relationship with him in 1996 because he had failed a polygraph test, and they realized he was lying only to collect reward money.³⁷ Avery Jr.'s reputation as an inveterate liar was highlighted by Special Agent Robert Wyche of the Secret Service, who sent a letter to Prosecutor Jonathan Rosenbaum in December 1996, warning of Avery Jr.'s financial motives to lie: "After further questioning regarding this incident, [William Avery Jr.] admitted he had fabricated the story believing it would bring an end to the case. [Avery Jr.] believed that once the case had ended, *he would be able to collect reward money*, which would enable him to leave town."³⁸ At John Edwards trial, Special Agent Wyche further testified that the use of Avery Jr. as an informant ceased because of his lies which jeopardized the safety of some agents.³⁹

³⁶ *Id.* at 339.

³⁷ See Exhibit J Letter to ADA Rosenbaum.

³⁸ See Exhibit J Letter to ADA Rosenbaum at 2.

³⁹ See Exhibit K Examination of Robert Weiss [sic] at 536.

C. William Avery Jr. Recanted His Testimony in All Respects

In 2005, Avery Jr. tried to set the record straight when he told the FBI field office in Detroit that he had lied when he testified in Al Cleveland's trial, and that he had not actually seen who killed Marsha Blakely.⁴⁰ Avery Jr. then contacted Al Cleveland's father which led to his next efforts to come clean. On February 9, 2006, Avery Jr. took responsibility for the fabricated story that led to the convictions of John Edwards and his co-defendants. He swore in an affidavit that he had not seen any of the four men kill Blakely or Epps.⁴¹ Instead, he admitted that he had fabricated the story after being threatened by his father, as Avery Sr. wanted the reward money to fuel his drug habit. As Avery Jr. admitted in the affidavit that the story he told police and testified to before four separate juries: "All of this was a lie. I never witnessed the murder of Marsha Blakely, was not with her or Cleveland on the night she was murdered."⁴² He also admitted that he only knew John Edwards, Benson Davis, Alfred Cleveland, and Lenworth Edwards as drug dealers from New York and that he "never saw any of them with Marsha [sic] Blakely or heard that she had been with any one of them."⁴³ Avery Jr. further explained, "I knew these men because I sold drugs for them. There came a time when I owed Al 'Monday' money for drugs. Monday never asked me to beat anyone or do anything to anyone as a way of paying off my debt. I never saw Monday act or threaten violence."⁴⁴

Avery Jr. conceded that his father pressured him to concoct these lies to obtain the reward money.⁴⁵ He stated that at the time of Blakely's murder, he "did not know who had done this, did not know anyone who was involved." However, his father convinced him to lie to the police for

⁴⁰ See Exhibit N.

⁴¹ See Exhibit N.

⁴² See Exhibit N Avery Recantation Affidavit at 1.

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ See Exhibit N at 1.

the \$2,000 reward—an amount of money that was ten times greater than the \$200 he made in a year as a “hustler.”⁴⁶ Acting as a paid informant for the police for money was not new to the Averys; in fact, it was turning into a family enterprise. Avery Jr. knew his father was a “paid informant for the Lorain Police Department,” and, “in return for his information, the police let him do what he wanted.”⁴⁷ The double homicide was nothing more than a financial opportunity to Avery Sr., and he forced Avery Jr. to exploit the investigation for a sizeable payday. Avery Jr. swore in his affidavit:

My Dad said that if I testified to what he told me, he was going to get money. They [the police] would get me a new identity, give me money, relocate me to another place. He told me that I should say I just witnessed the beating of Marsha Blakely. He said he was going to try to get more money from the police and that to do this, he wanted me at some point to say I saw Marsha Blakely being taken from Epps’s apartment to behind Charlies Bar where a guy named “Justice” was, a guy with green eyes and gold teeth, as well as Al Monday and the others.⁴⁸

Avery Jr. further provided details regarding the initial story concocted by his father, stating:

My Dad came over to Charlotte’s house and told me Marsha was dead and they were going to kill me too. He said he would tell me how you can get out of all this. He told me that I could say I was a witness. He pulled out some crack and we smoked. He then told me I had to memorize a story. This continued throughout the day and into the next. The story he told me to tell was that Al Monday came to get money, that Al said to go with him, that we went in car together to Floyd Epps, that the rest were there (Will, JR, Shakeem). He said to say that Al wanted me to beat Marsha up and then did.⁴⁹

This exchange between father and son was referenced during Avery Jr.’s 2006 deposition in which he recalled his father telling him to smoke crack to “calm down” after threatening him into memorizing the false narrative.⁵⁰ Soon after, Avery Sr. contacted the police for him and his son to

⁴⁶ See Exhibit G at 292 (quoting Avery’s testimony from Benson Davis’s trial).

⁴⁷ See Exhibit N at 2.

⁴⁸ See Exhibit N at 4.

⁴⁹ *Id.* at 2.

⁵⁰ See Exhibit O (2006 Deposition of Avery Jr.) at 12.

provide the fabricated information. Avery Jr. admitted that during the interview, he was shown pictures of Epps's apartment and asked to describe what had happened.⁵¹ He then "made up a story of what happened in the apartment, based upon the pictures." The Lorain police interview of Avery Jr. on September 11, 1991, makes clear that he was being shown photographs of the apartment as he was describing the scene.⁵² Avery Jr. later confirmed that he had never been inside Epps's apartment. When asked whether he had ever been in the apartment before viewing the photographs, he unequivocally answered, "No."⁵³

Avery Jr.'s own testimony demonstrates that the account he gave police was completely fabricated. Avery Jr. described the apartment as being in complete disarray, stating that "Everything's thrown everywhere" and "Everything was just messed up in there."⁵⁴ Specifically, he agreed with the detective that the furniture had been overturned.⁵⁵ He repeated this account in January of 1992, saying, "The bed got moved out of place and the table got knocked over."⁵⁶ At trial, however, Avery Jr. changed his description, testifying that the table was not "knocked over" but was instead tilted on its side.⁵⁷ Defense counsel pointed out this discrepancy, asking, "So you lied ... ?", Avery Jr. ultimately agreed, saying, "We might as well" call it a lie. The photographs of Epps's apartment bear no resemblance to the scene Avery Jr. described.⁵⁸ Rather than an apartment where "[e]verything's thrown everywhere," the photographs show an orderly apartment, with the furniture, table, and other items in place.⁵⁹

⁵¹ See Exhibit N at 3.

⁵² See Exhibit F at 4.

⁵³ See Exhibit O at 13.

⁵⁴ See Exhibit F at 4.

⁵⁵ *Id.* at 5.

⁵⁶ See Exhibit I at 7.

⁵⁷ See Exhibit G at 319.

⁵⁸ See Exhibit A.2.

⁵⁹ *Id.*; see also Exhibit F at 4.

Detective Resendez testified at John Edwards's trial that the "first time [he was] at Floyd Epps's apartment with anyone from BCI" was "*on the 6th of September.*"⁶⁰ Detective Taliano also gave contradictory testimony regarding when photos of the Epps apartment were taken, testifying during cross examination that photos of the apartment depicted the interior "[a]s we saw that on August—excuse me, **September 1st** of 1991 [emphasis added]." Neither Resendez nor Taliano provided testimony that established the dates the photos were created with any certainty. Despite this contradictory testimony, the evidence presented at trial was that Epps's apartment was secured the morning the bodies were discovered, when Lieutenant Taliano arrived to the apartment on August 8th.⁶¹ In securing Epps's apartment, all locks to the apartment were changed and detectives retained the only key providing access to the apartment.⁶² Furthermore, the evidence establishes that photographs of Epps's apartment were taken before Avery Jr. provided his first eyewitness statement on September 11, 1991.⁶³ The transcript of Avery Jr.'s first interview clearly shows that he was pointing at photographs while describing furniture in Epps' apartment.⁶⁴ While detectives at trial tried to suggest photographs were never taken before Avery Jr.'s first interview, that is simply incredible given the above.

After his first interview with the police, Avery Jr. realized that he had created a tangled web of lies that was impossible to extricate himself from. In the 2006 Recantation Affidavit, he

⁶⁰ See Exhibit C at 144. ("Mr. Duff [Defense]: Well, when was the first time you were at Floyd Epps's apartment with anyone from BCI? Det. Resendez: On the 6th of September. Mr. Duff: So is that the first date a forensic scientist had access to that apartment? Det. Resendez: Floyd Epps', that's correct. Mr. Duff: So that's a forensic scientist. Was he from Lorain County Crime Lab or Richfield? Det. Resendez: This gentleman was from BCI. Mr. Duff: That's the first one from either facility? Det. Resendez: That's right. Mr. Duff: All right. You were there with him? Det. Resendez: Yes, sir. Mr. Duff: And did you dust for prints? Det. Resendez: He did. Mr. Duff: **And that's the time the photos were taken, right?** Det. Resendez: **Yes, sir.**"); See also Exhibit C at 148 (Q: "When did that take place?" A: **September 8th.**").

⁶¹ See Exhibit C at 149.

⁶² *Id.*

⁶³ See Exhibit E at 438-39.

⁶⁴ See Exhibit F at 4.

describes his attempts to tell his father that what they were doing was wrong—that “Al was [his] friend, that [he] had no reason to think he would hurt [him].”⁶⁵ Avery Jr. stated, “My Dad then said I had to go to the police and continue to tell this story or he would kill me, my son, and Charlotte [his girlfriend], if I told anyone about his plan. I believed him.” These threats would become reality when Avery Jr. explained how someone came and shot at Charlotte’s house. Despite calling the police and trying to show them the bullet hole, the officers conducted no investigation, and nothing came of the incident. Avery Jr. adamantly stated, “I believed that my Dad was behind this shooting as a warning which increased my fear of my Dad.”

In addition to greed, Avery Jr.’s fear of his father was the driving force throughout the investigation and his subsequent interviews. Avery recalled telling Detective Taliano that he did not want his father around, but the detectives ignored him. Avery Jr. knew that his father “wanted all the reward money.” Eventually, the \$2,000 reward was not enough for Avery Sr., and—after seeing just how easy it was to exchange lies for money—he crafted a plan to elicit more money from the police. He coerced Avery Jr. into asking for \$10,000 in return for his testimony at the first trial of Lenworth Edwards. Avery Jr. requested additional money from Prosecutor Rosenbaum: “I told Prosecutor Rosenbaum that I was lying for the money. We were alone in a room at the courthouse. He got very upset at me and scared me. He told me if these dudes don’t go down for this, that I would. When I then asked him for the \$10,000, he got more upset.”⁶⁶

With no financial incentive to continue lying about the murders, Avery Jr. decided to tell the truth in court just prior to the commencement of Lenworth Edwards’s trial: that he had lied for money. He explained to the court, “I’ll perjure myself. I lied about everything. I lied because

⁶⁵ See Exhibit N at 3.

⁶⁶ *Id.* at 2-3.

I needed the money. I wanted it . . . [I lied] through everything. It was all a lie.”⁶⁷ He stated in his affidavit that, “this was true” and “also because [his] Dad had threatened [him], which [he] did not mention in [his] testimony.”⁶⁸ After this confession, Avery Jr. further explained, “I was then charged with perjury, although it was true that I lied for the money and because I was afraid. I was afraid at the time because of what my Dad told me of how these New York guys would be after me—or *he would be* [emphasis added].” Avery Sr. continued to manipulate his son after his refusal to testify at Lenworth Edwards’s trial, which ended in a mistrial due to Avery Jr.’s perjury. Despite the perjury charge, Avery Sr. refused to let his son ruin his chances of making easy money and ordered him to talk to the police and tell them he was willing to cooperate. During Avery Jr.’s time in jail for the perjury, he met with Detective Resendez and expanded his fictitious tale once again.⁶⁹ Now he told them he was actually at Westgate Plaza with the four men and witnessed Blakely’s murder.⁷⁰ With an immunity agreement promised to him, Avery Jr. ultimately agreed to testify at Lenworth Edwards’s second trial, and subsequently at the trials of Alfred Cleveland, Benson Davis, and John Edwards “because [his] father made [him]” and “[he] was threatened by [his] father.”⁷¹

Avery Jr. attempted to admit his lies in 2005 when he met with the FBI. This meeting arose from Avery Sr. convincing Avery Jr. to sell his medical card to a doctor to help with his father’s “efforts as an informant with the FBI in Detroit.”⁷² Avery Jr. described in his affidavit

⁶⁷ See Exhibit T First Trial of Lenworth Edwards at 246-47.

⁶⁸ See Exhibit N at 4.

⁶⁹ See Exhibit H.

⁷⁰ See Exhibit H at 8.

⁷¹ See *Davis v. Bradshaw*, 2016 U.S. Dist. LEXIS 184081 at 73-75 (N.D. Ohio 2016) (discussing that Avery’s perjury charge was dropped as a result of his claims that he was threatened by a CO officer and/or Lenworth Edwards at the county jail where he was being held. A subsequent investigation by the prison determined that “a check of the pod log revealed that [Lenworth] Edwards never left the housing area.” Additionally, the Prison Hearing Board did not find any evidence to substantiate Avery Jr.’s accusations).

⁷² See Exhibit N.

how he believed the contact with the FBI “might be [his] way out from under all [of] this.” He explained his attempts to come clean: “I went to the FBI and told them about the murder and my false testimony against [Al Cleveland] in Lorain. The agents said they would check it out and get back to me. I never heard from them again. I told my mother I had told the FBI as it had been bothering me since I testified and I wanted to tell the truth because of the threats.” According to Avery Jr., his disclosures to the FBI resulted in yet another series of threats from his father. He stated:

After I told the FBI I had lied against Al [Cleveland] in Lorain, Ohio at [Cleveland’s] trial, I was at a funeral for my sister’s boyfriend’s son. My father was there and told me he wanted to talk with me outside. I went with him. He said: “I see you have been running your mouth. Somebody’s going to go down and it ain’t going to be me.” He told me the FBI had been checking things out in Lorain. He made clear that the FBI had told him what I had told them about my false testimony and he again threatened me.⁷³

It was only after Avery Jr. no longer feared his father that he told the truth about his false testimony. In his affidavit, he wrote, “I want to make this right. This has been bothering me since I did this. I feel I have to come clean and tell the truth. It is only now that I finally feel I can do this without being intimidated or killed by my own father.”⁷⁴ As an impressionable man who would once do or say anything for money and drugs, or due to threats from his father, the only incentive he needed to be honest was his own conscience. After confiding in his mother that he had disclosed his false testimony to the FBI, his mother told him that, “[he] was doing real good with [his] life and that [he] could not go on in a good way until [he] came forward and told the truth.” His newfound faith was also an incentive to confess, with Avery Jr. acknowledging that unless he admitted to lying his “spirit can’t be good with God.” Rather than money controlling

⁷³ See Exhibit N at 4-5.

⁷⁴ *Id.* at 5.

the words that came out of Avery Jr.'s mouth, his guilty conscience weighed heavily on him. In his April 2006 deposition, when asked by Private Investigator Paul Ciolino why he decided to come forward, Avery Jr. stated, "Because I done changed my life. I'm no longer into selling drugs, dealing with drugs. No kind of way. And it's been bothering me. I've been in and out of psych hospitals, you know, and I want it off my mind. I'm trying to get my life straight with God now. That's the only thing in my way."⁷⁵

As explained in the affidavit, Avery Jr. was prepared to testify during Al Cleveland's post-conviction hearing about his false testimony in the previous trials. On January 31, 2008, he was afforded that opportunity. John Edwards's co-defendant, Alfred Cleveland, was granted an evidentiary hearing before the Hon. Christopher Rothgery to evaluate Avery Jr.'s recantation.⁷⁶ At the hearing, Judge Rothgery instructed Avery Jr. that his testimony could "incriminate [him] with some criminal liability." When asked by the court if he had conferred with an attorney, Avery Jr. stated that he had not. Judge Rothgery advised Avery Jr. of his right to an appointed attorney to discuss his exposure to criminal liability resulting from his admission to false testimony. Avery Jr. acknowledged that he understood his rights and did not need an attorney. When asked by the Judge whether he understood what he was facing with his testimony today, Avery Jr. replied, "*Nothing but the truth coming out* [emphasis added]."⁷⁷ Despite his repeated commitment and willingness to reveal the truth, Avery Jr. was *once again* warned about the

⁷⁵ See Exhibit D (Elyria Chronicle Telegram, Feb. 22, 1992) (noting statements in newspaper articles published during the trials that support Avery's claims of mental anguish. For instance, one article titled, "Witness in murder case injures himself in city jail" describes how while being held on the perjury charge, Avery was "rushed to St. Joseph Hospital and Health Center...after banging his head against the wall of his city jail cell."); *Id.* (reporting that Avery "lost consciousness... after striking his head on the cell wall." The article also describes potential concerns for his mental wellbeing: "A Nord Center examiner declared Avery was not suicidal, but recommended a careful watch and that Avery be given the opportunity to exercise. The examiner added that Avery was very depressed 'and could go at any time.'" While the hospital records did not indicate what the treatment for his injuries was, this corroborates his statements of being psychologically evaluated.); see also Exhibit O at 25.

⁷⁶ See Exhibit U 2008 Cleveland Hearing at 24.

⁷⁷ *Id.* at 25.

potential consequences of providing testimony at the evidentiary hearing that would contradict his prior statements, which included a charge of perjury - a felony in the third degree.⁷⁸ Avery Jr. accepted appointed counsel only after being informed of the possible prison sentence that could result from a conviction.⁷⁹

Even after speaking with counsel and being given his *Miranda* warnings by the Judge, Avery Jr. insisted on testifying and exonerating Cleveland.⁸⁰ Avery Jr.'s attorney tried to minimize his liability by requesting immunity from the Prosecutor's Office, but the request was denied by Assistant District Attorney Swansinger. [His attorney] requested judicial immunity, stating that the threat of perjury was a tactic intended to prevent Avery Jr. from providing exculpatory information.⁸¹ Instead of providing a safeguard for Avery Jr. to admit to his falsehoods, Judge Rothgery rejected the request on the ground that Avery Jr.'s conduct throughout the entire case was reprehensible: "Either he lied back in the '90s and put four men in prison for crimes they didn't commit, or he told the truth and he is trying to free at least one, and I assume if successful here, subsequently three other men, murderers from prison."⁸² Judge Rothgery reiterated Avery Jr.'s potential liability: "In either instance, if he were charged with perjury in those counts, it is about as serious a perjury offense as you could get. Whether putting people in prison for murders they didn't commit or trying to free murderers, either way, it certainly wouldn't be a situation where I would think judicial immunity is called for."⁸³

⁷⁸ *Id.*

⁷⁹ *Id.* at 25-26.

⁸⁰ *Id.* at 28-30.

⁸¹ *Id.* at 32-33 (stating "[W]e [Bruce Ellison and Cleveland's legal team] would submit that for an exculpatory witness like this, this man [Avery], when he tried to tell the truth the last time in 1991, he was threatened with perjury, he was charged with perjury, and as soon as he testified to the State's liking, the perjury charge was dismissed ... I just wanted to make that part of the record, because this case is replete with misconduct and the threatening and intimidation of this man by State authorities. We would submit that the threat of perjury today is nothing more than an effort to try and keep this man from testifying.").

⁸² *Id.* at 35.

⁸³ *Id.* at 35-36.

It was only after these repeated admonitions from the court that Avery Jr. chose to invoke his Fifth Amendment right against self-incrimination. Rather than being encouraged to tell the truth, Avery Jr. was forced into a lose-lose situation, which effectively prevented him from testifying truthfully without threat of criminal charges and imprisonment. This only served to prolong the original miscarriage of justice related to the murders of Blakely and Epps.⁸⁴ Following the hearing, Avery Jr. admitted to a reporter as he was leaving the courthouse that the threat of incarceration prevented him from coming clean. He said, “Dude’s innocent. But I don’t feel I have to go to jail for 30 years.”⁸⁵ Alfred Cleveland’s father, Leon, who attended the hearing, explained how “they scared that boy [Avery Jr.] to death.”⁸⁶ For Avery Jr., the guilt he felt for the false statements that incriminated four men decades earlier was outweighed by the possibility of being incarcerated. However, despite Avery Jr.’s failure to testify at the evidentiary hearing, it is notable that he *never disavowed his recantation*.

Avery Jr.’s history of lying caused his 2006 recantation to be questioned by various courts in post-conviction motions. In a 2008 evidentiary hearing for Cleveland’s case, Detective Taliano attempted to undermine the credibility of Avery Jr.’s 2006 recantation. He said, “Yes, you’re

⁸⁴ Studies have shown that this “lose-lose” situation is not a new phenomenon; in fact, it is a tactic often used to dissuade informants from recanting in an open court. See Russell D. Covey, *Recantations and the perjury sword*, 79 Alb. L. Rev. 861, 864-71 (2015) (“For although the threat of perjury sanctions is undoubtedly a useful tool to encourage a recalcitrant or biased witnesses to disclose facts for the sake of truth that are harmful to themselves or those they care about, or that open them up to retaliation by others, in some cases the threat of perjury can be manipulated by the state in ways that undermine the reliability of criminal proceedings.”); “Often, the mere threat of charges is enough to dissuade witnesses from recanting. Such witnesses may decline to testify in post-conviction proceedings, severely hampering the ability of defendants to get potentially significant exculpatory evidence in front of courts”); See also Shawn Armbrust, *Reevaluating Recanting Witnesses: Why the Red-Headed Stepchild of New Evidence Deserves Another Look*, 28 B.C. Third World L.J. 75, 87 (2008) (“Regardless of how an initial statement is obtained, however, once a witness has provided a statement under oath, the game is on. The threat of perjury sanctions can be wielded to intimidate recalcitrant witnesses from diverging from the established script. Thus, a single coerced, sworn statement can be used to ensnare a witness like a bear in a trap, leading inexorably from midnight backroom interrogation, to grand jury, to trial. Later, after trial, some witnesses attempt to revoke their earlier testimony, but the perjury sword continues to threaten even then.”)

⁸⁵ See Exhibit D (Elyria Chronicle Telegram, Feb. 1, 2008) at 2.

⁸⁶ *Id.*

right, [Avery Jr.] would say anything for money, including changing his story and recanting.”⁸⁷ However, this observation only further supports the credibility of Avery Jr.’s recantation. Avery Jr. *would* change his story or say anything in return for money or drugs. But the 2008 hearing was the only time when Avery Jr. did not receive *anything* in exchange for his statements. As he explained to the court, his only incentive was to clear his guilty conscience and seek forgiveness from the four men he put in prison. He was never offered nor received compensation for appearing at the hearing and potentially revealing his prior perjury. Another court who evaluated Avery Jr.’s recantation – the United States Court of Appeals for the Sixth Circuit – found it credible. *Cleveland v. Bradshaw*, 693 F.3d 626 (6th Cir 2012). In that case, the Sixth Circuit determined that Cleveland had overcome a procedural bar relevant to timeliness and was entitled to an evidentiary hearing. *Cleveland v. Bradshaw*, No. 15-3029, 2016 U.S. App. LEXIS 23573 at 11 (6th Cir. Feb. 24, 2016). The Court further noted, “[T]he fact that Avery had no motive to recant his testimony but instead sought to do so on his own free will, and has not subsequently withdrawn that testimony, lends it credibility.” (emphasis added) *Cleveland v. Bradshaw*, 693 F.3d 626, 640 (6th Cir 2012).⁸⁸

D. Law Enforcement Failed to Disclose their Investigation of the Actual Perpetrators, Kenneth Rivers and Michael Rutherford

There is credible evidence that Lorain County detectives considered Kenneth Rivers and Mike Rutherford as suspects in the murders of Marsha Blakely and Floyd Epps in 1996, before

⁸⁷ See Exhibit V 2013 Cleveland Hearing at 299.

⁸⁸ While the district court determined after the evidentiary hearing that Avery was not lying at Cleveland's trial, the Sixth Circuit did not subsequently credit that finding, stating, "Regardless of whether Avery's trial testimony was truthful, Cleveland has not demonstrated that the prosecution knew or should have known that Avery was lying." Further, the Sixth Circuit noted that "Avery has changed his story multiple times, and courts have disagreed over which version of the story was truthful." *Cleveland v. Bradshaw*, No. 15-3029, 2016 U.S. App. LEXIS 23573 at 11 (6th Cir. Feb. 24, 2016).

John Edwards went to trial. That information was never disclosed to Mr. Edwards, either prior to, or after his trial. Even as late as 2010, detectives received an anonymous text tip that Rivers and Rutherford killed Blakely.⁸⁹ Detective Carpentiere spoke to Rivers and Rutherford for about ten minutes each and asked no substantive questions beyond whether they knew Blakely and/or whether they heard about her murder; he then dropped the issue and never followed up in any way.⁹⁰

Mr. Edwards has since learned, based on the affidavit of Tabitha Foster, the ex-wife of Kenneth Rivers, that Ohio detectives traveled to Tennessee in 1996 to question Rivers about the Blakely murder.⁹¹ According to Foster, Rivers's mother was there, and other witnesses were told about the visit at the time. That visit is not recorded in any of the police reports provided to John Edwards, who would have been able to investigate these leads prior to his trial and uncover the many people who had knowledge about Rutherford and Rivers's involvement at the time of the murder. Additionally, on the night of the murders, Rivers came home with blood on his clothing and told his then-wife, Dawn Jewell, that he and Rutherford had killed Blakely and another man, describing how they ran her over, stabbed her, stomped her, and cut her throat - an account that matches the coroner's findings in every material respect.⁹² Ms. Jewell also states that she met with Detective Resendez sometime in 1995 and told him about what she observed and what Rivers told her about the murders, but he responded that they had already caught the people responsible.⁹³

⁸⁹ See Exhibit X at 71. The tip read: "Lorain - marsha blakely murder, killers ken rivers & mike rutherford."

⁹⁰ See Exhibit X at 31-32.

⁹¹ See Exhibit X at 74, Tabitha Foster 2024 Affidavit.

⁹² See Exhibit X at 13; *see also* Exhibit B at 22.

⁹³ See Exhibit X at 13.

From the beginning of the investigation, both Rivers and Rutherford repeatedly admitted their involvement to people close to them. Rutherford appeared at the door of his sister, Raquel Rutherford, on the night of the murders, visibly shaking, and confessed the same thing that Rivers told Jewell, adding that they had cut Blakely's throat with a steak knife and thrown it down a drain behind Westgate Plaza.⁹⁴ Rivers separately confessed to his own sister, Sonnytta Moye, a lifelong friend of Blakely's, saying they killed her because she stole drugs from them.⁹⁵ Having committed to William Avery Jr.'s account, investigators never seriously pursued Rivers or Rutherford, never tested the physical evidence, and never disclosed any of this to the defense. The leads that pointed to the men who may have actually killed Marsha Blakely and Floyd Epps were ignored or set aside - a failure whose legal consequences are addressed in the Argument below.

E. Lack of Forensic Testing or Evidence

The sole reliance on Avery Jr.'s allegations resulted in the failure to collect corroborating evidence or conduct any forensic testing. To the contrary, Avery Jr.'s *recantation* is corroborated by the fact that there is no forensic evidence to support the false version of events he testified to at all four trials. Most notable is the failure of the State to collect a razor found near Marsha Blakely's body. The razor was not tested or turned over to the defense.⁹⁶ Additionally, there was a complete lack of luminol testing done in Epps's apartment. Multiple experts at trial testified that, based on Avery Jr.'s version of events, namely Blakely's beating, there likely would have been blood on the ground, walls, or ceiling of the apartment. Moreover, the absence of blood

⁹⁴ See Exhibit X at 16.

⁹⁵ See Exhibit X at 15.

⁹⁶ See Exhibit A.3

should have prompted investigators to employ luminol testing to reveal any traces of blood that may have been cleaned up.⁹⁷ The detectives claimed to have requested that the Ohio Bureau of Criminal Investigations (“BCI”) conduct luminol testing but then failed to provide any documentation to substantiate that request at trial despite a defense subpoena. Furthermore, the forensic scientists assigned to the case confirmed that it was never requested.⁹⁸ Avery Jr.’s trial testimony is completely contradicted by the lack of forensic and photographic evidence found at both scenes. Such glaring inconsistencies are a clear sign that his story was fabricated.

Further, there is absolutely no forensic evidence connecting Mr. Edwards to the murder of Marsha Blakely. No blood, fingerprints, DNA, or trace evidence links him to Epps's apartment or to the crime scene behind Westgate Plaza. The physical evidence, including the condition of Ms. Blakely's body and the state of Epps's apartment, is entirely inconsistent with the scenario described by Avery Jr. There was also a drink can left at the scene behind the plaza that was never tested for DNA that may be connected to a known or unknown alternative suspect, but police have failed to test it.

The police also failed to request DNA testing of Epps’s apartment. They also neglected to inquire whether DNA could be found on either of the victim's bodies.⁹⁹ While blood-typing was performed on Lenworth Edwards’s jacket, it was only cross-compared with Epps’s and Blakely’s

⁹⁷ Dale Laux agreed that he would have looked around for blood splatter on the walls if the alleged beating that Avery Jr. described had occurred. *See* Exhibit L at 194, 210. He also said that if he was presented with the wounds found on Blakely, he would have consulted the coroner about how much blood would have been lost to gauge the possibility that it was cleaned up. *Id.* at 210-11.

⁹⁸ *See* Exhibit E at 437-438 (Detective Taliano admitted that he never asked BCI to see if they could do luminol testing); *See also* Exhibit C at 126-128 (Detective Resendez claimed that a request for luminol testing was sent to BCI but he has no paperwork to confirm); *See also* Exhibit L at 192 (Dale Leux confirmed that he was not asked to do any luminol testing on Lenworth Edwards’ jacket).

⁹⁹ *See* Exhibit C at 132-33, 150 (noting that Detective Resendez believed that BCI did not have DNA testing in 1991 and did not know whether the FBI did, even though in his earlier testimony he conceded that the police department has used DNA analysis successfully in other investigations before, specifically in murder cases); *See also* Exhibit M at 516 (Larry Dehus testifying that he knew DNA fingerprinting and typing went back “15 to 20 years” and has been done with frequency starting about eight years ago.)

blood, both of whom were excluded as contributors. Otherwise, no blood or DNA was collected from any of the other named defendants or victims, such as hair samples,¹⁰⁰ trace fibers,¹⁰¹ prints,¹⁰² or fingernail scrapings.¹⁰³ Forensic experts for both sides testified at trial that fingernail scrapings would have been a crucial part of the investigation given Avery Jr.'s story that an assault occurred during which the victim fought back.¹⁰⁴ The only forensic testing that was done by BCI was dusting for fingerprints on the walls, doorways, and handles of Epps's apartment.¹⁰⁵ Not even Blakely's purse, which was found in Epps's apartment, was dusted for prints, or even vouchered for evidence, despite Detective Taliano's agreement that it was a "crucial piece of evidence."¹⁰⁶

Avery Jr. described a brutal assault which would have resulted in the victim suffering external bleeding and other indicia of such a lengthy and ruthless attack. While Ms. Blakely presented external injuries consistent with being run over by a vehicle, there was no evidence of injuries to her internal organs that would indicate a 15-minute assault.¹⁰⁷ The beating described by Avery Jr. would not only have resulted in injuries to Blakely but should have been apparent from the condition of Epps's apartment. It would have caused blood, DNA, or fingerprint evidence in the apartment. Yet, Detective Resendez agreed that the apartment was not in disarray

¹⁰⁰ See Exhibit C at 131.

¹⁰¹ See Exhibit L at 199 (confirming he [Dale Laux] collected items of clothing, jean jacket, jogging pants, blue shirt, blue jean shirt, button and underwear from victims and pants and belt and that only blood typing was done, no trace evidence was looked for.)

¹⁰² See Exhibit C at 140-44 (explaining the existence of video proof of a discussion between an officer and Detective Resendez at the scene of Epps's apartment which exposes the discovery of a bloody footprint, yet no prints or known photos were taken of it and Detective Resendez is unaware if BCI ever lifted the prints); *Id.* ("Hey Captain, there's a footprint over here," confirming the police had knowledge of the print.).

¹⁰³ See Exhibit C at 456, 503; See also Exhibit A12 at 63. ("Q: Well, assuming there would be testimony that there was a struggle, and she may have even been struck one of her attackers, it would be important to know whether she wound up with any skin that would be identified as being one of the attacker's, is that correct? A. I believe so.").

¹⁰⁴ See Exhibit B at 49 (testifying that he [Dr. Thomas] agrees that collecting scrapings Blakely's fingernail "would be a good thing to do.").

¹⁰⁵ See Exhibit C at 146.

¹⁰⁶ See Exhibit E at 359, 392.

¹⁰⁷ See, e.g., Exhibit M at 29-31.

upon his arrival on the morning of August 8.¹⁰⁸ Dale Leux, a BCI forensic scientist who testified for the prosecution, agreed he would have looked for blood— “most likely blood splatters on the walls, ceilings,” and in its absence, used luminol testing to “detect bloodstains cleaned up or altered and not visible to the naked eye.”¹⁰⁹ All of this known evidence and lack thereof was in stark contrast to Avery Jr.’s false version of events.

There was also no evidence found on Blakely’s body to corroborate the prosecution’s theory that she was dragged on her back by one arm. Dr. Thomas, the coroner and pathologist for the State, agreed that if Ms. Blakely were dragged on her back by one arm, as Avery Jr. described in his testimony, there would be abrasions on Ms. Blakely, as well as dirt and gravel stuck to her body. Yet, no such marks or materials were found on Blakely’s body.¹¹⁰ Moreover, when asked at Cleveland’s trial whether any abrasions on Blakely’s body were consistent with being dragged besides the one leaf, Dr. Thomas responded, “I don’t think so” and repeated this testimony at John Edwards’s trial. Dr. Thomas was not the only person who confirmed these inconsistencies.¹¹¹

Investigators’ overreliance on Avery Jr.’s story is further demonstrated in their abandonment of Epps’s case. The proximity in time and location of death, identical nature of their distinct injuries and their relationship as friends make the two cases unquestionably related. Yet, upon Avery Jr.’s assertion that he did not know anything about the other murder, Epps’s case was effectively closed and remains unsolved to this day.¹¹² In fact, Detective Resendez was

¹⁰⁸ See Exhibit E at 391 (explaining that when the police visited Epps’s apartment on the morning of August 8, they found that “[t]he apartment was unoccupied and in orderly fashion” and “no signs of a physical confrontation.”); See Exhibit C at 135.

¹⁰⁹ See Exhibit L at 194, 176.

¹¹⁰ See Exhibit B at 50-51.

¹¹¹ See Exhibit L; *see also* Exhibit M.

¹¹² See Exhibit F at 14.

shocked after being informed at John Edwards's trial that Epps had a 13-centimeter cut across his throat—identical to the slash wound on Ms. Blakely's neck. Detective Resendez further admitted he never read Epps's autopsy report despite knowing the pathologist, Dr. Robert Thomas, had decided to re-examine Epps's body due to the similarities.¹¹³

F. Exculpatory Evidence Not Used to Test Avery Jr.'s Stories

Several witness interviews were conducted in the early stages of the investigation. Detectives did not consult them once they decided to rely solely on Avery Jr. These interviews would have further corroborated accounts of Ms. Blakely's whereabouts and the identities of those she was with in the hours before her murder, none of which were consistent with Avery Jr.'s fabricated account. Specifically, the detectives and prosecutors apparently failed to reference the 71-page police report created in the beginning stages of the investigation. For example, Avery Jr. stated that Ms. Blakely was incapacitated from 11:00 PM on August 7th until 1:00 AM on August 8th. However, according to the police report, Blakely was seen throughout that evening at 11:00 PM, 11:30 PM, 12:00 AM through 12:10 AM, and as late as 2:00 AM.¹¹⁴ William Mincy, Ms. Blakely's boyfriend, saw her continuously, beginning at approximately 2:00 AM on August 7th, when she stopped by his mother's house.¹¹⁵ He attempted to follow her, but lost sight of her before seeing her in the rear of a white station wagon as he approached Epps's apartment. After entering the apartment and seeing no sign of Blakely or suspicious activity, Mincy waited in front of the apartment until returning to his mother's house after 12:00 AM. The obvious

¹¹³ See Exhibit C at 130, 153, 156.

¹¹⁴ See Exhibit P Police Reports.

¹¹⁵ *Id.* at 13-14.

implication of these witness recollections shows that Ms. Blakely was not in the apartment during the times Avery Jr. testified she was there.

Barbara Long, Blakely's friend, last saw her at around 10:30 PM that night prior to taking her to Epps's apartment around 11:00 PM.¹¹⁶ There were no cars parked outside when Long dropped her off at his apartment. Later that night, at 11:30 PM, Mary Jane Gonzalez was awoken when Blakely arrived at her apartment. Gonzalez then witnessed Blakely get into the "passenger side of a dark brown vehicle ... possibly an Oldsmobile ... [with] a lone ... black male, short hair, wearing a non-descript baseball hat" from her bedroom window.

Jerimiah Charlton, Blakely's friend, saw her that night at "11:30, quarter to 12:00" near Epps's apartment where she was looking to buy crack cocaine.¹¹⁷ Charlton last saw Blakely at 11:50 PM getting into the red car of "Little White Jeff" who had been looking to trade sex for drugs.¹¹⁸ Blakely was seen shortly thereafter by Julius Blackman, her half-brother, at 12:00 AM "near the phone booth of the Stop-N-Play store ... walking in a northwest direction."¹¹⁹ The last person to report seeing Blakely was Connie Ward, Mincy's stepfather, who saw her walking alone between 1:00 AM and 2:00 AM on August 8th.¹²⁰ According to the same report, Mincy believed he saw Blakely as late as 2:00 AM that morning as well. Overall, the timeline established by the witnesses as contained in the police report overwhelmingly proves that Avery Jr.'s account was a blatant lie.¹²¹

¹¹⁶ See Exhibit P at 38; See also Exhibit Q Benson Davis Trial, Examination of Barbara Long at 334.

¹¹⁷ See Exhibit R Examination of Jerimiah Charlton at 601.

¹¹⁸ *Id* at 603.

¹¹⁹ See P at 11; see also Exhibit S Examination of Mark Blakely at John Edwards' Trial at 243-245; Exhibit Q Examination of Mark Blakely at Benson Davis' Trial at 103 (noting that Mark Blakey also testified to seeing Blakely at 12:00 AM on August 7, 1991. When he tried to correct it to 12:00 in the afternoon at John Edwards' trial, the defense emphasized his statement at Davis' trial that he explicitly said, "12 o'clock in the evening on the 7th.")

¹²⁰ See Exhibit P at 15.

Taken together, the facts recounted above describe an investigation that fell egregiously short in almost every way possible. After the case reached a dead end, the Lorain County authorities staked everything on William Avery Jr., a paid informant coached by his father, who failed a polygraph,¹²² gave a series of shifting and mutually contradictory accounts, described a crime scene that the physical evidence flatly contradicted, and repeatedly admitted he had invented the entire story for money. Rather than test that account against what they already knew, investigators ignored the contradictions at every turn: they disregarded the many witnesses who placed Blakely elsewhere during the very hours Avery Jr. claimed she was being beaten, declined to collect or test the forensic evidence that would have confirmed or refuted his story, abandoned the plainly connected murder of Floyd Epps, and turned away the people who came forward to name Kenneth Rivers and Michael Rutherford as the real killers. What remains is a conviction built entirely on testimony the State itself has conceded is not credible, standing against a mountain of evidence - the Avery recantations, the alibi witnesses, the absent forensic analysis, and the confessions of two other men - that no reasonable factfinder could disregard.

II. Procedural Posture

A. Trial

<u>Number of Charges at Trial</u>	Two
<u>First Charge</u>	Aggravated Murder
<u>Second Charge</u>	Felony Assault
<u>Disposition</u>	Jury verdict of guilty ¹²³
<u>Sentence</u>	Life plus 15 years

¹²² See Exhibit P at 751.

¹²³ Mr. Edwards's conviction was affirmed on direct appeal.

B. Previous Appellate and Collateral Proceedings

In 2024, the Lorain County Prosecutor agreed in a joint filing submitted to this Court that Mr. Edwards's conviction should be vacated because the evidence presented at Mr. Edwards's trial was premised upon unreliable and insufficient evidence.¹²⁴ This consent filing followed the Lorain County Prosecution office's extensive review and determination that vacatur was necessary to correct this longstanding injustice. Mr. Edwards now seeks a decision on that motion.

III. REQUIREMENTS FOR RELIEF UNDER O.R.C. § 2953.21/23

A. Ohio Revised Code §§2953.21/23

The Ohio Revised Code affords an avenue of relief for petitioners such as John Edwards. Under O.R.C. §2953.21(A)(1)(a)(i), “[a]ny person who has been convicted of a criminal offense...and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States” may file a petition for postconviction relief.

B. Unavoidable Delay: Time Limitations in Filing O.R.C. §2953.21 Petitions, As Prescribed In §2953.23.

O.R.C. §2953.23 allows this court to entertain this petition (filed after the expiration of the relevant O.R.C. 2953.21 period)¹²⁵ since he has demonstrated that he was “unavoidably prevented from discovery of the facts upon which [he] must rely to present the claim for relief.” Further, Mr. Edwards has shown by clear and convincing evidence that “but for constitutional

¹²⁴ See Exhibit A, Stipulation of Facts December 2, 2025, ¶ 3.

¹²⁵ Mr. Edwards is not bound by the O.R.C. §2953.21 requirements that he must file a post-conviction petition within 365 days after the date on which (i) the trial transcript was filed in the court of appeals in the direct appeal of his judgment of conviction.

[*Brady*, *Napue* and *Glossip* see *infra*] error[s] at trial, no reasonable factfinder would have found him guilty of the offense of which [he] was convicted” and that he is actually innocent.

O.R.C. §2953.23(A)(1)(b.). His conviction cannot stand.

As discussed more fully below, Mr. Edwards was denied due process at his trial when the prosecution elicited and failed to correct its sole eyewitness, William Avery Jr.’s false testimony, failed to disclose favorable, material evidence, and failed to investigate third party culpability. See *Glossip v. Oklahoma*, 604 U.S. 226 (2025) (reversing a capital murder conviction where the prosecutor failed to correct his witness’s false testimony about his psychiatric care);¹²⁶ see also *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173 (1959) and see *Brady v. Maryland*, 373 U.S. 83 (1963). In 2025 in *Glossip*, the Supreme Court stated that analyzing the materiality of prosecutorial misconduct requires “a ‘cumulative evaluation’ of all the evidence, whether or not that evidence is before the Court in the form of an independent claim for relief.” *Glossip*, 604 U.S. at 251 (cleaned up). Pursuant to established Supreme Court law, the constitutional violations, including the above evidence of the third-party culpability (specifically Rivers and Rutherford) and Mr. Edwards’s actual innocence (*In Re Troy Davis*) (*Holmes v. South Carolina*) entitle him to vacatur, or at the very least to an evidentiary hearing, purported procedural bars notwithstanding.¹²⁷

LAW AND ARGUMENT: JOHN EDWARDS IS ENTITLED TO RELIEF UNDER O.R.C. §2953.21

¹²⁶ The *Glossip* Court declined to render a decision on the concurrent *Brady* claims after deciding the *Napue* claim was dispositive, leading to the conviction vacatur.

¹²⁷ See *House v. Bell*, 547 U.S. 518, 537 (2006) (State procedural bars can be overcome in federal habeas pleadings if there is a compelling claim of actual innocence. Petitioner may assert innocence as a gateway to other procedurally barred claims in light of new evidence if “it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt,” citing *Schlup v. Delo*, 513 U.S. 298(1995)); *In re Troy Davis*, 557 U.S. 952 (petitioner entitled to evidentiary hearing where the claim of actual innocence has never been considered by a court even if procedurally barred); *Holmes v. South Carolina*, 547 U.S. 319 (2006) (evidence of third party culpability is admissible if it raises a reasonable inference as to defendant’s innocence).

A. Mr. Cillo cannot prevent this Court from ruling on the stipulation entered into by his predecessor in good faith after years of investigation and arm's length negotiation. Ohio Const., art. 1, § 16 and U.S. Const. Amend. XIV.

"A stipulation in law is . . . [an] agreement as to the *veracity of a fact in issue*". *State v. Tate*, 4 N.E.3d 1016, 1020 (Ohio 2014) (quoting Black's Law Dictionary 1550 (9th Ed. 2009) (cleaned up) (finding that the defendant stipulated that he was the subject of prior adjudications) (emphasis added). Here, it is beyond dispute that in 2024, then Lorain County Prosecutor J.D. Tomlinson agreed that Mr. Edwards (and his co-defendants) was wrongfully convicted for Ms. Blakely's murder, and that if given a new trial, that office would not be able to sustain a conviction.¹²⁸ This agreement followed an extensive reinvestigation and was memorialized in a stipulation filed with this Court in support of vacatur. As the acting prosecutor, J.D. Tomlinson sought to correct this longstanding injustice in keeping with his obligations to faithfully perform the duties of his role and dispense justice on behalf of the people of Lorain County.¹²⁹ However, when Mr. Cillo assumed the role of Lorain County Prosecutor in 2025, over our objection he hastily withdrew the joint motion ostensibly to allow his office the opportunity to investigate the matter.¹³⁰ Yet nearly two years have passed since Mr. Cillo withdrew the joint motion. There is no evidence whatsoever that he has conducted an investigation. He has stopped communicating with counsel despite our concerted efforts. Mr. Cillo's decision to withdraw the joint motion and

¹²⁸ See Exhibit A.

¹²⁹ "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded justice . . ." Prof.R. 3.8, Comment 1. The responsibility is ongoing: "A prosecutor's responsibility for pursuing justice extends beyond the date of conviction." Ohio Prosecuting Attorneys Association, Conviction Review Best Practices, available at <https://www.ohiopa.org/ocrbp.pdf> (accessed Dec. 5, 2024).

¹³⁰ The Court in *Byrd v. United States* held that a stipulation entered into is controlling and may not be withdrawn without showing that such withdrawal "stemmed from fraud, accident, mistake, inadvertence, surprise, or excusable neglect." 485 A.2d 947, 947 (D.C. 1984). The court notes that there is a dearth of judicial authority . . . on this matter, probably because very few trial lawyers fail to honor commitments made in open court with opposing counsel. *Id.*

his continued opposition to it are not grounded in fact or law. On the contrary, on the facts available, it appears that Mr. Cillo withdrew this motion for purely political and personal reasons.

The joint motion of the Lorain County Prosecutor, John Edwards, Al Cleveland, Benson Davis, and Lenworth Edwards mentioned throughout was filed on December 2, 2024. Just three days later, prior to even taking office, Mr. Cillo was quoted in the Chronicle-Telegram as follows: "Four juries said they did this and listened to the evidence independently and that's how our system works. I don't understand the rush. ... This has been reviewed by how many courts, four different juries, and in a matter of weeks, (Tomlinson says) 'Everyone else is wrong and we're right.'" Mr. Cillo's comment to the press appears to reveal a personal issue with Mr. Tomlinson rather than a pursuit of the truth. Mr. Cillo was well aware at the time he made that comment that none of the juries at these men's trials could have been aware that Avery Jr., of his own volition, again admitted in 2005 to the FBI and 2006 that he falsely implicated all four men.

An Ohio court confronted a similar scenario as the one herein described below. In *State v. Malone*, the court held that the *successor* prosecutor's attempt to reinstitute charges that had been dismissed pursuant to a negotiated agreement between the *predecessor* prosecutor and defense counsel violated "the sense of justice and fair play encompassed by the due process clauses of both the Ohio and the Federal Constitutions". *State v. Malone*, 471 N.E.2d 892 (Van Wert Municipal Court, Ohio June 18, 1984). The court found that the:

reinstitution of the dismissed charges was transparently the result of a campaign promise made to the electorate by the present prosecutor in the political arena. Such a promise pales in significance to that which his predecessor made to the defendant in the calm and dispassionate atmosphere of the judicial forum.

Id. at 896. Here, in Mr. Edwards's case, the former prosecutor J.D. Tomlinson, who entered into the stipulation to vacate, did so acting in good faith. And the evidence herein "is singularly lacking any suggestion of egregious behavior on his part". *Id.* The *Malone* court correctly refused to be a pawn in the new prosecutor's political theater by second-guessing the predecessor prosecutor's good faith decision. *Id.*

We urge this Court to consider the analogous political backdrop in the instant matter and to follow the above court's reasoning. It is undisputed that Mr. Cillo ran a contentious political campaign, in his successful bid to unseat J.D. Tomlinson. It was widely believed that Mr. Tomlinson's 2022 decision to vacate the 1990 child sex abuse conviction of Nancy Smith (a matter wholly unrelated to this case) was one of Mr. Cillo's chief reasons for challenging Mr. Tomlinson in this heated contest. Following Ms. Smith's vacatur, she filed a civil lawsuit against Lorain County, the city of Lorain, several former Lorain police officers, the mother of one of the children in the case, and former prosecutor Rosenbaum for wrongful conviction.¹³¹ Mr. Cillo worked in the Lorain County prosecutor's office for many years and, upon information and belief, Jonathan Rosenbaum was Cillo's mentor. Rosenbaum coincidentally was both Ms. Smith's and Mr. Edwards's (and his codefendants') trial prosecutor, who as a result is implicated in their wrongful convictions. Mr. Cillo's significant personal and professional ties to Mr. Rosenbaum, coupled with his hasty decision to withdraw the joint motion and his subsequent inaction cast doubt on whether he ever planned to investigate this matter at all and on his ability to objectively review his office's work.

¹³¹ [Tony Cillo elected Lorain County Prosecutor over former boss J.D. Tomlinson | Chronicle Telegram Lorain County voters installed a new county Prosecutor come 2025, as Republican Tony Cillo defeated incumbent Democrat J.D. Tomlinson in Tuesday's election.](#)

Mr. Cillo has a vested interest in maintaining Mr. Edwards's conviction to protect his friend and former colleague Mr. Rosenbaum.¹³² Mr. Cillo does not wish to hold him or his office accountable. Mr. Rosenbaum's defiance was evident when in retaliation for Ms. Smith's vacatur and without any legal basis, he filed a series of frivolous bar complaints all found to be without merit. And again, in an effort to avoid accountability for his role in Mr. Edwards's wrongful conviction, Mr. Rosenbaum resorted to the same unfair and nefarious tactics. Mr. Rosenbaum has filed bar complaints against not only former Prosecuting Attorney Mr. Tomlinson, but also counsel for Mr. Edwards, lawyers from the Ohio Innocence Project, the Ohio Public Defender, and private counsel involved in this post-conviction investigation and litigation. All of those frivolous bar complaints have been dismissed by the state of Ohio.

Additionally, Mr. Cillo had a role in the 2010 purported reinvestigation of the Blakely murder when evidence of Mr. Edwards's and his codefendants' innocence was provided to Lorain County tip line. Specifically, Detective Taliano "conferred with then Chief Assistant Lorain County Prosecutor Tony Cillo" regarding his detailed interview with Daniel Smith mentioned herein, whereby Mr. Smith shared that Mr. Rutherford had confessed to him that he and Mr. Rivers committed the Blakely and Epps murders.¹³³ Mr. Cillo also admitted as much in conversations with counsel in December 2024 that he listened to recordings of post-conviction phone conversations between Mr. Edwards's codefendant Al Cleveland and his father. This conversation took place before he even took office as the Prosecutor. This makes clear that he has a stake in maintaining the *status quo*. Mr. Cillo has not identified any circumstance, nor has

¹³² [She Was Absolved of a Heinous Crime. Why Won't They Leave Her Alone? - The New York Times](#), Aug 25, 2026.

¹³³ See A.8 at 20.

he offered evidence of any development that would justify his withdrawal of the joint motion to vacate the convictions.

The state's purported desire to conduct an investigation rings hollow and is belied by their lack of communication regarding their efforts or findings. Mr. Cillo has not responded to phone calls and letters, nor has he provided updates. He has had a more than reasonable period of time to do so. It certainly appears that he is not acting in good faith. The time to correct this injustice is long overdue. *See State v. Malone*, 471 N.E.2d 892, 893 (1984) (“To allow a successor prosecutor to second-guess a predecessor’s good faith decision or renege on a predecessor’s promise based thereon would eviscerate the entire system of plea bargaining, ignore civilized standards, and pervert the entire criminal justice system”). *See also State v. Stanley*, 2002-Ohio-3007, ¶ 49 (7th Dist.) (“[T]he promise of a state official in his public capacity is a pledge of the public faith and . . . [t]he public justifiably expects the State, above all others, to keep its bond”); *Santobello v. New York*, 404 U.S. 257 (1971) (holding that a prosecutor’s office has a duty to be aware of and honor commitments of its predecessor). Because of Mr. Cillo's unjustified decision to withdraw and delay this motion, Mr. Edwards's innocence and evidence of third-party culpability have been unjustifiably ignored, and Mr. Edwards has been left to languish in prison for a crime he did not commit.

B. Mr. Edwards is entitled to a new trial because the State relied on Avery Jr.’s testimony it knew to be false, before, during, and after the trial.

Mr. Edwards is entitled to vacatur pursuant to *Napue* and *Glossip supra*. The Due Process Clause of the Federal Constitution prohibits the prosecution from utilizing perjured testimony against the accused. *Glossip*, 604 U.S. 226; *Napue*, 360 U.S. at 269-72. Also, under Ohio law “[t]he State may neither suborn perjury . . . nor introduce testimony it knows or should know is

false without correcting it." *State v. Sanders* (2001), 92 Ohio St.3d 245, 271 (citing *Napue, supra* and *Mooney v. Holohan*, 294 U.S. 103 (1935)). Reversal is required if the misconduct "in any reasonable likelihood could have affected the judgment of the jury." *Glossip*, 604 U.S. at 246 (cleaned up). In assessing the materiality of the false testimony, this Court must consider whether the case, or an essential witness's testimony, already was weak. *Id.* While the revelation that a witness "was willing to lie to [the jury] under oath . . . would be significant in any case," this is "especially [true] where [a witness much like Avery] was already 'nobody's idea of a strong witness.'" *Glossip*, 604 U.S. at 248–49 (emphasis added). Without question, this one witness case was a weak one. Avery Jr. was essentially the prosecution's entire case.

That Avery Jr.'s trial testimony was unreliable is beyond dispute.¹³⁴ There was no physical or forensic evidence corroborating Avery Jr.'s account. On the contrary, the physical evidence contradicted his account. The prosecution built its entire case on Avery Jr.'s credibility even though they either knew or should have known that his testimony was false, and they elicited it anyway, depriving Mr. Edwards of a fair trial. When false testimony is at issue, the knowledge of law enforcement officials can be imputed to the prosecution. *People v. Ellis*, 735 N.E.2d 736, 741-42 (2000).

Avery Jr. admitted many times that he lied to the LCPD *and* the Prosecutor before and after Mr. Edwards's (and his codefendants') trial. Avery Jr.'s lies were apparent to detectives at the outset of their investigation when he gave multiple incomplete and inconsistent statements to detectives. They were aware that his statements were inconsistent with the physical evidence and that he had failed a LCPD polygraph.¹³⁵ He provided materially different versions of events in his initial September 11, 1991, interview, his September 20, 1991, interview, and his January

¹³⁴ See Exhibit A, Stipulation of Facts December 2, 2025, ¶ 3.

¹³⁵ See Exhibit P at 751.

1992 interview—in which he claimed for the first time to have actually witnessed the murder, a claim he had specifically denied in both prior interviews and many subsequent statements.

As the case progressed, Avery Jr.'s deception became even more apparent when he admitted that he lied and refused to testify in 1992 in the first trial of Mr. Edwards's, codefendant, Lenworth Edwards, leading to a mistrial. At this very first trial in this series of proceedings – Avery Jr. admitted on the stand that he lied about when he told police that Mr. Edwards (and his codefendants) murdered Blakely. He disavowed his inculpatory statements in open court, admitting: "I only done it for the money, and everything was not true."¹³⁶ Avery Jr. had admitted under oath that his testimony was a complete fabrication. From that day forward, the prosecution was on actual notice that Avery Jr. was not credible. Avery Jr.'s deception and his motive for lying is explained in his 2006 deposition, where he swore that his false trial testimony was coerced by the assistant prosecutor handling the case, Jonathon Rosenbaum. Specifically, Avery Jr. explained that during the proceedings in the Lenworth Edwards trial when Avery Jr. refused to testify unless he was paid more money, he and prosecutor Rosenbaum spoke in private.¹³⁷ At that time, Avery Jr. emphasized to prosecutor Rosenbaum that his testimony was false and that he had not witnessed Ms. Blakely's murder. In response, the prosecutor told Avery Jr., "Hey, if they [the defendants, including Edwards] don't go down for it, you're going down for it. I'm going to make sure of that."¹³⁸ While his initial motivation for lying to the police was monetary, as soon as he crossed Rosenbaum, he persisted with the lies to save himself. Ordering a state's witness to commit possible perjury and threatening criminal prosecution if he refuses to comply is an extraordinary due process violation that goes to the very foundation of a fair trial.

¹³⁶ See Exhibit E at 378.

¹³⁷ See Exhibit O at 15-17.

¹³⁸ See Exhibit O.

Even if the prosecutor believed Avery Jr. was simply trying to sabotage the Lenworth Edwards trial in exchange for more money, that alone should have caused concern that Avery Jr. had lied for the reward money. At the very least, it should have prompted the prosecutor to scrutinize his witness's dubious credibility.

Also, as previously stated, the Lorain County Prosecutor was on notice that Avery Jr. was lying when he received a warning in a December 1996 letter from United States Secret Service Special Agent Robert Wyche (prior to Mr. Edwards's trial), that Avery Jr. had fabricated stories as a federal informant for financial gain and that the federal government did not find him credible or truthful.¹³⁹ Their findings that Avery Jr. lacked credibility stemmed from their work with him as a confidential informant for the U.S. Secret Service in relation to a federal food stamp investigation between 1994 and 1995. Despite all of the above red flags, the state put blinders on with their sole "star" witness through the course of five trials.

After it was clear the Lorain County officials would not correct this injustice, in 2005, Avery Jr. went to the FBI field office where he *again* admitted, this time to FBI officials, that he had lied at Al Cleveland's trial and that he had not actually seen who killed Ms. Blakely.¹⁴⁰ In 2006, he then signed an affidavit admitting yet *again* that "[a]ll of this was a lie. I never witnessed the murder of Marsha Blakely, was not with her or Cleveland on the night she was murdered."¹⁴¹ Following which, Avery Jr. was called to testify at Alfred Cleveland's post-conviction hearing that he lied at Mr. Cleveland's (and his codefendants') trial(s). However, after being threatened repeatedly with perjury charges and 20 – 30 years in prison, Avery Jr. invoked

¹³⁹ See Exhibit J. The December 1996 letter from Secret Service Special Agent Robert Wyche to Prosecutor Jonathan Rosenbaum indicates that the Lorain Police department was aware of Avery Jr.'s work as a federal confidential informant no later than July 27, 1995. This is nearly two years before Mr. Edwards' trial began.

¹⁴⁰ See Exhibit N.

¹⁴¹ See Exhibit N.

his Fifth Amendment right to be free from self-incrimination. Immediately after the hearing just outside the courthouse, though Avery Jr. admitted to a journalist that *all* of his testimony against Mr. Edwards and his codefendants had been a lie.¹⁴² In the Stipulation filed with this Court, the state now admits that Avery Jr. was not credible and that they would not be able to sustain a conviction against John Edwards if he is afforded a new trial.¹⁴³ Inexplicably, rather than pursue the third-party culpability leads, namely Rivers' and Rutherford's involvement in Blakely's and Epps's murders, known to the police and included herein, the prosecution proceeded against Mr. Edwards and his codefendants based on Avery Jr.'s specious word alone.

1. Avery Jr.'s statements outside Al Cleveland's post-conviction hearing that he lied at trial were against his penal interest and are, therefore, admissible as an exception to the hearsay rule.

When Avery Jr. announced to the gathered press outside the courthouse that all of his trial testimony had been a lie - "Dude's innocent. But I don't feel I have to go to jail for 30 years" - he made a statement against his penal interest which is now admissible in court.¹⁴⁴ Ohio Evid. R. 804(B)(3) requires the following framework: (1) declarant must be unavailable; (2) the statement must be against penal interest such that a reasonable person would not have made it unless believing it to be true; and (3) corroborating circumstances clearly indicate its trustworthiness.¹⁴⁵ All three prongs are satisfied here.¹⁴⁶

¹⁴² See *supra*, Exhibit D at 2.

¹⁴³ See Exhibit A.

¹⁴⁴ *Id.* at 2.

¹⁴⁵ Ohio Evid. R. 804(B)(3). Ohio three-part framework: (1) declarant unavailable, (2) statement against interest (pecuniary, proprietary, or penal – reasonable person would not have made it unless believing it to be true), (3) corroborating circumstances clearly indicating trustworthiness

¹⁴⁶ The decision whether to admit a hearsay statement under Evid. R. 804(B)(3) rests within the discretion of the trial court *State v. Sumlin*, 69 Ohio St.3d 105 (1994) *State v. Swann*, 119 Ohio St.3d 552 (2008). Appellate courts review a trial court's determination for abuse of discretion.

First, Avery Jr. is unavailable as a witness. When called to testify at Alfred Cleveland's post-conviction hearing, the court warned Avery Jr. that his testimony placed him in jeopardy of criminal exposure, at which point he invoked his Fifth Amendment right to silence and left the proceeding without testifying. Ohio courts consistently hold that a declarant who asserts the privilege against self-incrimination, whether exercised personally or through counsel, is properly deemed unavailable for purposes of Evid. R. 804(B)(3).¹⁴⁷ Avery Jr.'s in-person invocation before a sitting court, followed by his immediate departure from the proceedings, constitutes an unambiguous assertion of his Fifth Amendment rights. There is no plausible argument that the proponent "manufactured" his unavailability as Avery Jr. independently chose to refuse testimony the moment the court apprised him of the penal consequences of speaking truthfully, confirming that any future attempt to call him as a witness would be futile. Efforts to locate Avery Jr. have been unsuccessful.

Second, Avery Jr.'s declaration on the courthouse steps - that the defendants were innocent and that all of his prior trial testimony had been a lie - was squarely against his penal interest. Under Ohio Evid. R. 804(B)(3), a statement is against penal interest when it so far tends to subject the declarant to criminal liability that a reasonable person in his position would not have made it unless believing it to be true. Avery Jr.'s statement publicly acknowledged that he had committed perjury in the prosecutions of John Edwards and his co-defendants, which constitutes a felony carrying serious criminal consequences. When he told the gathered press, "Dude's innocent. But I don't feel I have to go to jail for 30 years," he was simultaneously admitting to having given false testimony and conceding that he understood the statement exposed him to exactly that jeopardy. Critically, this is not the kind of blame-shifting statement

¹⁴⁷ See *State v. Wade*, 225 N.E.3d 428 (2023); *State v. Baker*, 137 Ohio App.3d 628 (2000).

Ohio courts view skeptically, i.e., a declaration that minimizes the declarant's own role in the underlying crime while inculcating others.¹⁴⁸ Rather, Avery Jr.'s statement was a direct confession of criminal conduct with no apparent benefit to himself and with full awareness of the peril it created. No reasonable person would voluntarily announce to the press, outside of a courthouse, that he had committed perjury in a murder case unless he believed it to be true.

Third, the corroborating circumstances surrounding Avery Jr.'s statement clearly indicate its trustworthiness. The *Yarbrough* court identified several factors relevant to this inquiry, including the declarant's custodial status, the spontaneity of the statement, the absence of self-serving motive, and the absence of governmental pressure or promises. Each factor supports admission here. Avery Jr. was not in custody; he had just walked out of a courthouse of his own accord, and his statement was made to assembled members of the press, not to law enforcement, not in response to leading questions, and not pursuant to any plea agreement or offer of leniency. The statement was entirely spontaneous: having just invoked his Fifth Amendment rights to avoid testifying under oath, he voluntarily chose to make the same admissions publicly, suggesting that his motivation was not to help himself but to unburden himself of testimony he now acknowledged was false. Moreover, as previously stated, the physical evidence gathered after the crime contradicted Avery Jr.'s account, his many admissions that he lied when he implicated Mr. Edwards and his codefendants mentioned above, as well as the Lorain County Prosecution's Stipulation that his testimony was unreliable, are further indication of the trustworthiness of his above spontaneous statement. Taken together, these circumstances clearly indicate that Avery Jr.'s courthouse-steps declaration was not a fabrication designed to shift

¹⁴⁸ See *State v. Yarbrough*, 95 Ohio St.3d 227 (2002).

blame or curry favor, but a voluntary, spontaneous, and self-inculpatory acknowledgment of prior perjury - precisely the type of statement the 804(B)(3) exception was designed to admit.

2. John Edwards could not have discovered all of the instances in which William Avery Jr. confessed to lying about the murder of Ms. Blakely until well beyond the procedural time requirement had expired.

Avery Jr. did not recant his trial testimony or reveal that prior to trial, he told prosecutor Rosenbaum he was lying, until in or about 2004, well after Edwards's trial.¹⁴⁹ In 2004, Avery Jr. finally began to feel that he could tell the truth without his father retaliating against him. And by 2006, when Avery Jr. signed the sworn affidavit, he had significantly changed his life. He felt that the only way for him to stay on the right path was to tell the truth. As a result, as mentioned in great detail above, he recanted his pretrial statements and trial testimony. Until Avery Jr. was ready to tell the truth, Edwards had no hope of obtaining his recantation. Even if Avery Jr. had been willing to recant sooner, it would have been impossible for Edwards to locate him. Since his direct appeal, Edwards has been incarcerated and without the assistance of counsel for decades. He has diligently sought relief in state court; however, he has faced a great many obstacles when trying to locate evidence and witnesses. During the evidentiary hearing on Cleveland's *habeas* petition, Paul Ciolino described how difficult it was for him, a professional investigator, to locate Avery:

Q: Was he easy for you to find?

A: No, he was not easy at all to find.

Q: Why not?

A: He was not employed. He never had a permanent address. He wasn't receiving public aid or any other kind of public assistance that we could find. He

¹⁴⁹See Exhibit N at 108.

had no children that we could locate. We did find ex-girlfriends, and we interviewed them, but William was very difficult to locate. He's not like a traditional person who works, who moves, who has jobs, who has debts, you know, various - we checked jails, the Courts, et cetera, but [he] was very difficult to locate.

Q: How long did it take you to find him before you were able to speak with him?

A: It was a number of years. Probably close to *seven years*.

Q: And how would you compare your, you know, how easy it was to find Mr. Avery, you know, to other cases you've worked on where you tried to find key witnesses?

A: We consider Mr. Avery a street person, and street people are always difficult to locate because they're just not like regular people. They don't function like the rest of society. So the rest of society, you know, you could find in five minutes generally. People like Avery are months, I mean, in homeless shelters looking for them, and they often don't use their proper birth name. They use other identification. So a guy like Avery doesn't want to be found, it's very difficult to find him unless you [sic] have unlimited resources and money.¹⁵⁰

The prejudice to John Edwards is manifest. Avery Jr.'s testimony was the *only* evidence implicating him in the murder of Marsha Blakely. There was not a scintilla of corroborating physical evidence. The presentation of this testimony, which the State knew or should have known to be false, "undermines confidence in the outcome of the trial." *Bagley*, 473 U.S. at 682. Absent this false testimony, as the State concedes in their Stipulation, no reasonable factfinder would have found Edwards guilty of the offenses alleged.

C. Newly discovered evidence reveals that the State suppressed material evidence favorable to John Edwards that involved alternative suspects whose involvement could have been used in his defense.

¹⁵⁰ See Exhibit V at 35-36.

1. There is ample evidence to sustain the defense of third-party liability, much of which the State withheld.

Post-conviction investigation has uncovered compelling, multi-source evidence that the Blakely and Epps murders were committed by Michael Rutherford and Kenneth Rivers, not by John Edwards, Benson Davis, Lenworth Edwards or Alfred Cleveland, establishing a claim of third-party culpability that strikes at the constitutional core of his continued imprisonment.

Holmes v. South Carolina, 547 U.S. 319 (2006), which Ohio adopted through *State v. Swann*, 119 Ohio St.3d 552 (2008). A criminal defendant's federal constitutional rights are violated when evidentiary rules or the State's conduct deprive him of "a meaningful opportunity to present a complete defense," including evidence pointing to a third party as the actual perpetrator.¹⁵¹ Critically, a defendant need not prove that someone else committed the offense; it is sufficient that the evidence tends to create reasonable doubt.¹⁵² Third-party culpability evidence pointing to Rivers and Rutherford, detailed above, was known to Lorain County and withheld from the defense. Based on *Holmes* and *Swann*, Edwards's continued imprisonment violates the Compulsory Process and Due Process Clauses of the Sixth and Fourteenth Amendments. Had it been disclosed and presented - it would have created exactly the reasonable doubt the Constitution requires the jury to weigh.

Ms. Blakely knew Rivers and Rutherford for most of her life. She went to high school with both of them. Her and Rivers's families knew each other well. Dawn Jewell, Kenneth Rivers's then-wife, has come forward to state that on the night of the murders, Rivers arrived home with blood on his clothing and confessed to her that he and Rutherford had killed Ms. Blakely and another man. Rivers's description to Ms. Jewell that he ran Blakely over, stabbed

¹⁵¹ See *Napoleon v. Green*, 17 N.E.3d 49 (2014).

¹⁵² See *State v. Gillispie*, Not Reported in N.E. Rptr. (2012).

her, stomped her, and sliced her throat, is consistent in every respect with the pathological findings of the coroner.¹⁵³ Rivers, who was known for his violent temper, threatened Ms. Jewell: "If you tell anybody, I'll kill you."¹⁵⁴ Ms. Jewell also described that as Rivers disrobed and deposited his bloody clothing in the washing machine, he braced himself against the laundry room wall, leaving bloody marks on its surface.¹⁵⁵

Notwithstanding his threat, Ms. Jewell reported that at some point in 1995, she first went to Henry Marisco, who had been previously employed as an Investigator at the Lorain County Prosecutor's office to report that Rivers confessed to killing Ms. Blakely.¹⁵⁶ Mr. Marisco told her she needed to speak with Detective Resendez which she did.¹⁵⁷ Mr. Edwards was not notified by the prosecution about this meeting where Ms. Jewell reported that Rivers confessed to Blakely's murder in detail while covered in blood. Notably, in a sworn statement, Rivers's ex-wife Tabitha Foster stated that sometime between May 1995 and May 1996, detectives from Ohio, accompanied by local police, came to Rivers's home where he had relocated to in Tennessee after the murders to speak with him.¹⁵⁸ Mr. Edwards went to trial in 1997. That Rivers and Rutherford were being investigated for the Blakely murder was not disclosed to Mr. Edwards before trial. He only learned that Rivers and Rutherford, both violent men with criminal histories, were on the LCPD's radar for the Blakely murder through post-conviction investigation. Rivers's spontaneous post-crime admission, recounted by Ms. Jewell who has no

¹⁵³ See Exhibit W, Hamilton Affidavit; *see also* Testimony of Robert Thomas, John Edwards Trial Transcript at 18-24.

¹⁵⁴ See Exhibit X at 13.

¹⁵⁵ See Exhibit X.

¹⁵⁶ See Exhibit X.

¹⁵⁷ See Exhibit X.

¹⁵⁸ See Exhibit O.

motive to fabricate, and corroborated by contemporaneous forensic evidence, is among the most constitutionally protected forms of third-party culpability evidence.¹⁵⁹

Also, the night of the murders, according to his sister, Raquel Rutherford, Michael Rutherford appeared at her door visibly shaking and confessed that he and Rivers had killed Blakely over drugs she had stolen from Rivers's drug operation, where Rutherford served as "the muscle."¹⁶⁰ Raquel Rutherford's account also provided independently verifiable forensic detail: that Rivers and Rutherford cut Blakely's throat with a steak knife and threw it down a drain behind the bar at Westgate Plaza.¹⁶¹ The coroner's drawings of the throat wound depict ragged, jagged edges and tissue tearing consistent with a serrated-edge instrument such as a steak knife, and inconsistent with the straight-edge razor found at the crime scene but never taken into evidence, for which the prosecution presented no credible account of acquisition or disposal. The mutual corroboration between the confessions and the forensic evidence satisfies the trustworthiness analysis under *Chambers* and *Swann*, *infra*.

Kenneth Rivers also confessed separately to his own sister, Sonnytta Moye, a longtime friend of Marsha Blakely, that he and Rutherford had killed Blakely and Floyd Epps over drugs she had stolen from them.¹⁶² Rivers then made a thinly veiled public threat at a family reunion in Tennessee, stating in front of others that Sonnytta was "very good at keeping secrets" and knew what would happen if she did not keep them, leaving her in genuine and continuing fear of retaliation.¹⁶³ Rivers's pattern of extreme violence, including his habitual use of chokeholds, was documented by Dawn Jewell (who suffered permanent injuries to her throat and neck from

¹⁵⁹ See *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (holding that exclusion of testimony from witnesses who heard a third party confess to murder, under circumstances bearing substantial assurances of trustworthiness, deprived defendant of due process).

¹⁶⁰ See Exhibit X at 13.

¹⁶¹ See Exhibit X at 16.

¹⁶² See Exhibit X at 15.

¹⁶³ *Id.*

repeated choking during their relationship), confirmed by Sonnytta Moye, and independently corroborated by multiple other witnesses interviewed by the investigator.¹⁶⁴

Michael Rutherford also purportedly confessed to Daniel Smith at Belmont Correctional Institution in 1999.¹⁶⁵ Rutherford told Smith that he and a man he called "Kenny Davis" committed the murders of Blakely and Epps, and that "Kenny Davis" had placed Blakely in a chokehold until she lost consciousness - a detail not publicly known, not part of the prosecution's case, and independently consistent with Rivers's documented behavioral signature across decades of violence.¹⁶⁶ Daniel Smith's account also supplied, for the first time, the mechanism by which Floyd Epps was murdered: Rutherford told Smith that "the other guy" (Epps) came around the back of the shopping plaza and witnessed Blakely's murder in progress.¹⁶⁷ Mr. Epps's body was found a quarter of mile from where Ms. Blakely's body was discovered.¹⁶⁸ He was killed in the same manner as Ms. Blakely, his throat was slit and he had been run over by a car.¹⁶⁹ The obvious inference is that Rivers and Rutherford needed to get rid of Epps because he had witnessed the murder.

Further corroborating evidence includes Rutherford's ownership of a burgundy New Yorker he called "The Red Room," which he drove while drinking tallboy-style canned beer. This is significant because an empty tallboy beer can was found at the Epps death scene in a location where residents reported such litter was extremely unusual, and his setting of that vehicle on fire in October 1991, weeks after the murders, is consistent with an effort to destroy forensic evidence.¹⁷⁰ Additionally, our post-conviction investigation revealed that Rivers, after

¹⁶⁴ See Exhibit X at 12, 15, 23, 31.

¹⁶⁵ See A.8.

¹⁶⁶ *Id.* at 8.

¹⁶⁷ *Id.* at 11.

¹⁶⁸ See Exhibit E at 357.

¹⁶⁹ See Exhibit C at 130, 153, 156.

¹⁷⁰ *Id.* at 16-17.

confessing to his mother Nadine, took a large quantity of an over-the-counter pain reliever in what appeared to be a suicide attempt, prompting his mother to relocate the family to Tennessee.¹⁷¹ Rivers's conduct reflecting consciousness of guilt occurred while the investigation and prosecution of this very case were ongoing.

Moreover, when the post-conviction investigator confronted Michael Rutherford at Grafton Correctional Institution in January 2020 and stated her belief that he and Rivers had committed the murders, Rutherford did not deny involvement.¹⁷² He began to visibly tremble and shake, rose from his chair, called for the guard, demanded the investigator "cease and desist immediately" from investigating the murders, and subsequently posted a social media threat directed at anyone who spoke with her, "If you don't know about it, don't speak about it. Talking about shh [sic] you don't know is about to get you" This same investigator confronted Kenneth Rivers at his Tennessee residence in October 2022 and presented him with a copy of the anonymous text tip naming him and Rutherford as the killers. Rivers read it, threw it in the air, and said: "If you had anything, there would be police standing here, not you," a statement about the sufficiency of evidence, not a denial of guilt.¹⁷³ Here, the constitutional significance of Rivers's and Rutherford's responses is reinforced by *Holmes v. South Carolina*, 547 U.S. at 327–28, and *House v. Bell*, 547 U.S. 518, 554 (2006), both of which recognize that third-party culpability evidence, assessed holistically alongside the paucity of the State's evidence against Mr. Edwards, establish that no reasonable juror would have returned a conviction. Edwards is therefore entitled to relief on the ground that his imprisonment violates the Sixth and Fourteenth Amendments. Evidence that establishes alternative suspects, or possibly culpable third parties, is

¹⁷¹ See Exhibit X at 15.

¹⁷² See Exhibit X.

¹⁷³ See Exhibit X at 20.

exculpatory *Brady* material. *Gumm v. Mitchell*, 775 F.3d 345, 364 (6th Cir. 2014). Considered cumulatively, the evidence of multiple spontaneous confessions by both Rutherford and Rivers across independent witnesses, each corroborated by forensic evidence and crime-scene details known only to the perpetrators and law enforcement satisfies the trustworthiness standard of *Chambers v. Mississippi* and *State v. Swann*, and would have created compelling, if not dispositive, reasonable doubt in any jury presented with it.

2. The State's decision to withhold evidence about Mike Rutherford and Kenneth Rivers as suspects constitutes a *Brady* violation for which John Edwards should be afforded a new trial or to have his charges dismissed.

The Due Process Clause of the Fourteenth Amendment places an affirmative obligation on the State to disclose evidence that is favorable to the accused and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This obligation includes disclosure of evidence that could be used to impeach the credibility of a witness. *Giglio v. United States*, 405 U.S. 150, 154–55 (1972). This obligation further extends to exculpatory evidence and exists regardless of whether the defense has made a request for the evidence. *Kyles v. Whitely*, 514 U.S. 419, 432–34 (1995). Further, the prosecution must provide the defense with an explanation of the favorable information the witness has, as merely giving the defense the name of a potentially favorable witness is insufficient to satisfy the government's *Brady* obligation. *State v. Johnston*, 529 N.E.2d 898 at FN21 (Ohio 1988). The State's failure to disclose these obligations constitutes a *Brady* violation. *Id.*

Such evidence is considered "material" if "there is a reasonable probability that had the evidence been disclosed; the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682 (extending the *Strickland* standard to cases of prosecutorial failure to disclose evidence favorable to the accused). A reasonable probability of a different result exists where

"the government's evidentiary suppression undermines confidence in the outcome of the trial."

Id. Courts have uniformly held that direct evidence of suppression is not necessary to establish a *Brady* violation. Instead, the absence of material favorable evidence from the record is enough to infer it was undisclosed to the defense. *State v. Larkins*, 8th Dist. Cuyahoga No. 82325, 2003-Ohio-5928 at ¶28 ("[T]he most persuasive indication that the defense did not possess this evidence [may be] the fact that the defense never used this evidence at trial.").

Under Ohio law, the same standard applies regardless of the prosecution's good or bad faith. *See State v. Salinas*, No. 09AP-1201, 2010 WL 3820597 at *19 (2010); *State v. Wilburn*, No. 22CA16, 2023 WL 9097522 at *37 (2023). This duty also encompasses both exculpatory and impeachment evidence, including evidence known only to police investigators. *See Salinas*, 2010 WL 3820597 at *19; *State v. Azali*, No. 112299, 2023 WL 8827953 at *61. Accordingly, a *Brady* violation requires (1) the evidence at issue be favorable because it is exculpatory or impeaches the case against the defendant; (2) the state's suppression of the evidence, either willfully or inadvertently; and (3) prejudice. *Strickler v. Greene*, 527 U.S. 263, 281–92 (1999).

Evidence that establishes alternative suspects or possibly culpable third parties is exculpatory *Brady* material. *Gumm v. Mitchell*, 775 F.3d 345, 364 (6th Cir. 2014) (holding that potentially exculpatory evidence, including tips, leads, and witness statements relating to other individuals who had been investigated for murder, was material, and that the state's failure to disclose that evidence violated *Brady* in a capital murder prosecution). Here, the State suppressed information on alternative suspects, Kenneth Rivers and Mike Rutherford. Dawn Jewell and Tabitha Foster's statements demonstrate that Lorain Police Department had information that a bloody Rivers confessed to the Blakely murder just after the crime, and that they followed up on this and or other leads by traveling to Tennessee in or about 1995 – 1996 to

Speak with Rivers.¹⁷⁴ Further, this suppressed evidence of third-party culpability bears directly on Avery Jr's credibility; the witness whose testimony the prosecution relied on to convict Edwards.

3. Other Withheld Exculpatory Evidence

Overwhelming evidence points to Rivers and Rutherford having committed this crime as described in extensive detail in this submission. However, Mr. Edwards has obtained additional exculpatory evidence that points to other investigative leads post-conviction that were never disclosed. The *Brady* rule exists principally to protect a criminal defendant's right to a fair trial. *Bagley*, 473 U.S. at 675–676, quoting *Agurs*, 427 U.S. at 104. It cannot be said that Mr. Edwards received a fair trial as it has come to light that exculpatory evidence pointing at third party culpability from various sources was withheld. First, Mr. Edwards is in receipt of a report dated August 17, 1991, that contains a statement from Alan Smith who was held in the County jail at the time.¹⁷⁵ Upon information and belief, this police report was uncovered in or about 2018 by a post-conviction investigator, and only recently provided to Mr. Edwards. The report states that Mr. Smith informed Sgt. Hammond (from the S.O.) that he saw Ms. Blakely the night of the murder enter a drug house looking to "score coke" from a dealer identified as "Squali".¹⁷⁶ She was accompanied by a white male. Mr. Smith also reported that "the deal went bad" and "Squali" threatened "to kill Ms. Blakely by cutting her throat."¹⁷⁷ The forensic findings indicate that among other injuries, Ms. Blakely's throat was cut (as was Mr. Epps's who was killed the same night as Ms. Blakely and whose case remains unsolved). Under both Ohio and federal law, the

¹⁷⁴ See Exhibit X at 22-23.

¹⁷⁵ See Exhibit A.5.

¹⁷⁶ See Exhibit A.5.

¹⁷⁷ See Exhibit A.5.

prosecution's suppression of Mr. Smith's statement which, on its face, is favorable to Mr. Edwards and undercuts the prosecution's trial theory, violated Mr. Edwards's due process, regardless of whether the prosecution withheld it in good or bad faith. *See Salinas*, No. 09AP-1201, 2010 WL 3820597 at * 19 (citing *Brady*, supra). This duty encompasses both exculpatory and impeachment evidence, including evidence known only to police investigations. *See Salinas*, No. 09AP-1201, 2010 WL 3820597 at * 19; *State v. Azali*, No. 112299, 2023 WL 8827953 at *61.

Additionally, in a sworn statement, Wayne Long, a Lorain Police Department patrolman who was familiar with Avery Jr. stated that Avery Jr. came to his house between 1:00 and 2:00 AM, the early morning hours of Blakely and Epps murders "pounding on his front door", "sweating, extremely nervous, frightened and out of breath."¹⁷⁸ Avery Jr. told Mr. Long that he was with a man named Ivan Gibson, also known as "New York" earlier that night when he saw "Jamaican Guys" beat Ms. Blakely. Mr. Long also reported that Avery Jr. told him that he heard one of the men say "get a knife" and that he [Avery Jr.] ran away.¹⁷⁹ Avery Jr. did not mention seeing Mr. Edwards or any of his co-defendants with Ms. Blakely.¹⁸⁰ Long said that later that day on August 8, 1991, he took Avery Jr. to the LCPD and delivered him to Detectives Taliano and Rivera.¹⁸¹ Significantly, Edwards was never made aware of this August 9th meeting between Avery Jr. and Lorain police. In fact, according to Avery Jr.'s testimony and the prosecution's theory, Avery Jr.'s first meeting with Lorain detectives was on September 11, 1991.

¹⁷⁸ *See* Exhibit A.4.

¹⁷⁹ *See* Exhibit A.4.

¹⁸⁰ *See* Exhibit A.4.

¹⁸¹ *See* Exhibit A.4.

Also, Mr. Edwards recently obtained a diagram from Ms. Blakely's crime scene under Local Report No 91-30603.¹⁸² This report was not turned over before Mr. Edward's trial. This report contains definitive information that a "knife" was recovered near Ms. Blakely's body.¹⁸³ Upon information and belief, this knife was not included in the list of evidence recovered in this case that was provided to the defense. This information could have been used to impeach the investigative officers and demonstrate they did not conduct a thorough investigation.

4. The State's failure to disclose impeachment evidence that it threatened to prosecute Avery Jr. with murder if he failed to testify in their favor constitutes a *Brady* violation requiring vacatur in this one witness case.

In 1992, after Avery Jr. informed prosecutor Rosenbaum that he would not testify on behalf of the State because his testimony was false and he had not witnessed Blakely's murder, Rosenbaum responded, "Hey, if they [the defendants, including Edwards] don't go down for it, you're going down for it. I'm going to make sure of that."¹⁸⁴ While Avery's initial motivation for lying to the police was certainly monetary, as soon as he crossed Rosenbaum, he persisted with the lies to save himself. There cannot be more powerful impeachment evidence where a prosecution witness, like Avery Jr. is implicated in and possibly subject to prosecution for the very crimes on which the defendant stands trial. *Giglio v. United States supra*. The gravity of the impact upon such witness' credibility cannot be understated. That Rosenbaum allegedly threatened to arrest Avery Jr. for the Blakely murder was not disclosed. Mr. Edwards's case mirrors the landmark U.S. Supreme Court case *Giglio v. United States* in key respects. Like Mr. Edwards's case, in *Giglio*:

“[t]he Government's case depended almost entirely on [one witness's] testimony; without it there could have been no indictment and no evidence to carry the case

¹⁸² See Exhibit A.6.

¹⁸³ See Exhibit A.6.

¹⁸⁴ See Exhibit O.

to the jury. [This witness's] credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it." *Giglio*, 405 U.S. at 154-155.

Here, defense counsel was not informed that Mr. Edwards's prosecutor told Avery Jr. that if he did not testify for the prosecution, he was going "down" for the murder. This threat created an additional incentive and motivation for Avery Jr. to lie to save himself. The failure to disclose this impeachment information deprived the jury of the ability to evaluate Avery Jr.'s credibility fully. *Id.*

D. John Edwards has established his actual innocence by clear and convincing evidence, entitling him to relief under both the Federal Constitution and the Ohio Constitution, or at the very least an evidentiary hearing.

John Edwards's innocence is supported by newly discovered evidence of the most compelling kind. Where such evidence establishes that no reasonable factfinder would have convicted Edwards had the evidence been available at trial, the conviction cannot stand. The prejudice standard applicable to such claims mirrors that articulated in *Strickland v. Washington*, 466 U.S. 668 (1984): there must be a reasonable probability that, but for the constitutional errors at trial, the result of the proceeding would have been different. *Id.*; *see also Bagley*, 473 U.S. at 682 (extending the *Strickland* prejudice standard to cases of prosecutorial failure to disclose evidence favorable to the accused). A reasonable probability is one sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694.

The sole witness has now recanted his trial testimony in its entirety, swearing under oath that his testimony was a fabrication motivated entirely by financial gain. This recantation is supported by multiple credible alibi witnesses who support Mr. Edwards's innocence. The alibi witnesses establish that Edwards was at Charlie's Bar from approximately 10:00 PM on August 7, 1991, until at least 2:30 AM on August 8, 1991, and thereafter returned home to sleep with his

infant son. Patricia Michele Obunse, Edwards' then-girlfriend, has attested that he was in her presence continuously from the afternoon of August 7, 1991, through the morning of August 8, 1991, and that he was with her at Charlie's Bar throughout the entire evening and never left her sight.¹⁸⁵ Gina Dalton, a Lorain County local, likewise testified at Edwards's trial that she encountered Edwards at Charlie's bar the night of August 7th, 1991. She and Edwards had engaged in "general conversation at Charlie's bar."¹⁸⁶ Dalton testified that she arrived at the bar between 11:00 p.m. and midnight and departed at 2:00 a.m.; and that "[Edwards] was there when I got there and he was there when I left."¹⁸⁷

Additionally, Alfred Cleveland, who was prosecuted in connection with the same matter, has consistently maintained that he was in New York City at the time of the crime. His alibi is corroborated by an official letter from the City of New York Department of Probation, documenting that, "Mr. Cleveland met with his probation officer in New York City on August 7, 1991."¹⁸⁸ Other documentary evidence likewise places Mr. Cleveland in New York between August 5 and 9, 1991, and the government has since conceded Cleveland's presence in New York at the time.¹⁸⁹ Cleveland's corroborated alibi further exposes the unreliability of Avery Jr.'s account because Avery Jr. placed Cleveland and Edwards together at the scene, despite evidence making it highly likely that Cleveland was not in Ohio at the time of the crime.¹⁹⁰

Standing alone, Avery Jr.'s recantation mandates relief. His recantation does not merely void his trial testimony implicating Edwards; it constitutes affirmative evidence of his innocence. Avery Jr. states in his affidavit: "All of this was a lie. I never witnessed the murder of Marsha

¹⁸⁵ See Exhibit Z.

¹⁸⁶ See Exhibit E at 423.

¹⁸⁷ See Exhibit Y at 88-90.

¹⁸⁸ See Exhibit A.7.

¹⁸⁹ *Cleveland v. Bradshaw*, 693 F.3d 626 (6th Cir 2012).

¹⁹⁰ See Exhibit F; see also Exhibit G.

Blakely, was not with her or Cleveland on the night she was murdered . . . I only done it for the money, and everything was not true." Avery Jr.'s 2006 sworn deposition further acknowledges that his trial testimony was false and that it was concocted under the direction of his father, William Avery Sr., to obtain the \$2,000 reward money offered by the Prosecutor's Office.

Evidence of Avery Jr.'s recantation and the multiple alibi witnesses who place Edwards at Charlie's Bar throughout the relevant window of time, stand in stark contrast to his alleged participation in a prolonged beating, the transportation of an unconscious victim to Westgate Plaza, his return to the bar, and the complete absence of any forensic evidence. Thus, there is no possibility that any reasonable juror would return a conviction against Edwards if this case were retried today. The confidence in the outcome of Edwards's trial is wholly undermined. *Bagley*, 473 U.S. at 682.

The actual innocence claim is further bolstered by the overwhelming evidence that Michael Rutherford and Kenneth Rivers - not Edwards and his co-defendants - murdered Marsha Blakely and Floyd Epps, as set forth in detail in above. Multiple independent confessions, corroborated by forensic detail and the documented patterns of violence characteristic of both men establish that Edwards was wrongfully convicted. The State's lead detective was informed of Rivers' bloody confession before Edwards's trial and failed to disclose this exculpatory, investigative lead. The suppression of this evidence - the identity of the actual perpetrators - is precisely the kind of constitutional deprivation that *Brady* was designed to prevent. 373 U.S. at 87.

Mr. Edwards is aware that Ohio courts have at times declined to recognize freestanding actual innocence as an independent ground for post-conviction relief, relying principally on the proposition derived from *Herrera v. Collins*, 506 U.S. 390 (1993), that a claim of actual

innocence based on newly discovered evidence does not state a basis for *habeas* relief absent an independent constitutional violation at trial.¹⁹¹ However, this reading of *Herrera* is not as settled as those decisions suggest, and subsequent authority from the United States Supreme Court requires this Court to revisit that question. Critically, *Herrera* itself did not categorically foreclose freestanding actual innocence claims. Rather, the Court expressly acknowledged that the execution of a truly innocent person would be unconstitutional and left open the question of what threshold showing of innocence would compel relief. 506 U.S. at 417. The Court did not hold that no such claim could ever succeed; it held only that the showing made in that particular case fell short of whatever threshold might apply. Ohio courts that read *Herrera* as categorically barring actual innocence claims went further than the Supreme Court itself was willing to go. *Herrera* left the door open, and indeed it has been widened, as confirmed by the United States Supreme Court's decision in *In re Troy Anthony Davis*, 557 U.S. 952 (2009), decided after the Ohio decisions upon which the State is likely to rely. In *Davis*, the Supreme Court transferred a *habeas* petition raising actual innocence directly to the district court for an evidentiary hearing, finding the case sufficiently exceptional to warrant full factual development where several of the State's key witnesses had recanted their trial testimony, others had implicated the State's principal witness as the actual perpetrator, and no court had ever conducted a hearing to assess the reliability of the post-conviction affidavits. The Court's transfer order was a direct rejection of the position that a credible actual innocence claim can be dismissed on paper without first receiving an evidentiary hearing.

The parallels between *Davis* and the case of John Edwards are striking and compel this Court to at the very least conduct a hearing. Like *Davis*, Edwards's conviction rested on

¹⁹¹ See, e.g., *State v. Davis*, 2008-Ohio-6841 at 138–142.

eyewitness testimony by someone who has since recanted and admitted to have lied for financial gain, and like *Davis*, no court has ever conducted a hearing to assess the reliability of the post-conviction evidence supporting Edwards's innocence, including the accounts of Dawn Jewell, Raquel Rutherford, Sonnytta Moye, and Daniel Smith, establishing that two other individuals independently confessed to these murders. Like *Davis*, the substantial risk that an innocent person remains incarcerated provides an adequate and compelling justification for a full evidentiary hearing. The case is no less exceptional here.

The concurring opinion in *Davis* further articulates the Constitutional stakes with clarity: the position that courts would be powerless to grant relief even to a petitioner who possessed new evidence conclusively proving innocence beyond any scintilla of doubt was one the Court correctly refused to endorse. This Court should likewise refuse to endorse that position here. The constitutional floor established by the Due Process Clause does not permit a court to turn away from compelling evidence of innocence without first hearing it. It would be an atrocious violation of the Constitution and the principles upon which it is based to continue confining a man for a murder committed by two other individuals who have each separately confessed to it.

The totality of this record: a sole eyewitness that has completely recanted on multiple occasions, countless alibi witnesses who never lost sight of Edwards for a sufficient period of time, the complete absence of forensic evidence linking him to the crime, multiple independent confessions by the actual perpetrators, and the suppression of evidence identifying those perpetrators, creates an inescapable conclusion: no reasonable factfinder, confronted with this evidence, would return a verdict of guilty. There is a reasonable probability, indeed, a certainty, that the result of Edwards's trial would have been different had the prosecution fulfilled its constitutional obligations. *Strickland*, 466 U.S. at 694; *Bagley*, 473 U.S. at 682. At the absolute

minimum, he is entitled to an evidentiary hearing at which this Court may assess the reliability of the post-conviction evidence supporting his innocence. *In re Davis*, 557 U.S. 952 (2009). John Edwards must be granted relief.

IV. CONCLUSION

For the foregoing reasons, John Edwards, by and through undersigned counsel, respectfully requests that this Court grant an evidentiary hearing and subsequent new trial pursuant to ORC 2953.21/23. Mr. Edwards has met all statutory requirements demonstrating why relief is required in this case. His conviction stands entirely devoid of integrity and fairness. John Edwards's claims of false testimony, suppression of material evidence, prosecutorial misconduct, and actual innocence are each supported by competent and credible evidence deserving of evaluation in open court.

WHEREFORE, Defendant-Petitioner John Austin Edwards respectfully requests that this Honorable Court:

1. Direct the State of Ohio to answer this Petition;
2. Set an evidentiary hearing in this matter so that John Edwards may further substantiate his entitlement to relief;
3. Grant John Edwards leave to utilize the process and subpoena power of this Court so that he may obtain further evidence; and
4. Render an Opinion and Order vacating John Edwards's conviction and discharging him from custody.
5. Decide his prior Rule 33 Motion that was vacated in anticipation of further investigation by the State that has not developed any new information since its Stipulation of Facts salient to many of the points herein.

Respectfully submitted,

/s/ Alasan M. Huff

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A handwritten signature in black ink, appearing to be 'JD' with a large, sweeping loop that extends to the right.

Josh Dubin (PHV#: 32551 - 2026)

Executive Director

Perlmutter Center for Legal Justice at Cardozo Law

Counsel for John Edwards