STATE OF INDIANA
BARTHOLOMEW COUNTY CIRCUIT COURT

JASON HUBBELL,	)	
	)	
PETITIONER,	)	**Cause No. 03C01-2312-PC-006184**
	)	
v.	)	
	)	
STATE OF INDIANA,	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITION FOR POST-CONVICTION RELIEF AND AWARDING A NEW TRIAL

The Petitioner, Jason Hubbell (hereinafter "Hubbell") filed an *Amended Verified Successive Petition for Post-Conviction Relief and DNA Testing* (hereinafter, "Petition") on August 20, 2024. An evidentiary hearing ("ED") was held on the *Petition* on February 10-14, 2025. Hubbell appeared by counsel, Eliot Slosar, Kevin Murphy, and Brent Westerfeld. The State appeared by its Prosecuting Attorney, Lindsey Holden-Kay. Testimony was heard and evidence was presented. The parties were granted until April 11, 2025 (later extended to June 11, 2025) to submit proposed *Findings of Fact and Conclusions of Law*. Based on the testimony and evidence admitted at the February 10-14, 2025 evidentiary hearing, the arguments of the parties, and the filing by both parties of their respective proposed *Findings of Fact and Conclusions of Law*, this Court now enters the following *Findings of Fact and Conclusions of Law*, and ***Orders*** as follow:

As set out below, the Court finds that Hubbell has met his burden of showing that he is entitled to post-conviction relief. The Court therefore **GRANTS** Hubbell's *Amended Verified Successive Petition for Post-Conviction Relief*, vacates Hubbell's convictions for the murder and criminal confinement of Sharon Myers in Bartholomew County Case No. 03C01-9808-CF-1191, and awards Hubbell a new trial.

GROUNDS FOR RELIEF

Hubbell's *Petition* asserts three legal grounds for post-conviction relief in seeking a new trial:

1. The State withheld material exculpatory evidence in violation of Hubbell's rights under *Brady v. Maryland*, 373 U.S. 83 (1963) and the *Fourteenth Amendment* of the *U.S. Constitution*. Petitioner alleged the following:
    a. The State withheld evidence provided by Melissa Holland ("Holland) implicating Michael Dean Overstreet ("Overstreet") in the murder of Sharon Myers ("Myers");
    b. The State withheld evidence provided by John Roberts that Overstreet was – or was believed to be - having an affair with a woman named Sharon from Columbus;
    c. The State withheld evidence provided by Dawn Martin that Overstreet knew Sharon Myers;
    d. The State withheld evidence that Overstreet was collecting newspaper articles about the Sharon Myers and Kelly Eckart murders;
    e. The State withheld Columbus Police Department ("CPD") Det. Dennis Knulf's (hereinafter "Knulf") extensive notes that contained information implicating Overstreet in the Myers murder;
    f. The State withheld evidence provided by John Mascoe that he saw Overstreet and Myers arguing on a boat ramp in Atterbury in May 1997;
    g. The State withheld evidence provided by Glenn Allee implicating Overstreet in the Myers abduction and murder;
    h. The State withheld evidence provided by Nathan Burbrink that he saw a suspicious white man (inconsistent with Hubbell's description) on top of another person in a white electrician's van (inconsistent with Hubbell's van but consistent with one being owned by Overstreet's brother, Scott) around the time Myers was abducted;
    i. The State withheld other evidence implicating Overstreet in the Myer's murder:
        i. Evidence regarding the full extent of similarities between the Myers and Eckart abductions and murders;
        ii. The State withheld evidence from Jim Rominger that he saw two men at Atterbury picking up a sweatshirt.
        iii. The State withheld evidence from Ruth Straugh about her sons seeing a red sweater and white underwear near bones at Atterbury;
        iv. The State withheld evidence of incriminating statements that Overstreet made to Mark Steven Hefley;

v. The State withheld evidence that Michael Dean Overstreet's brother, Scott Overstreet, owned a 1987 white Ford Econoline van;

vi. The State withheld evidence that in November 1997 Overstreet spoke to a coworker named Nicholas Davis about cheating on his wife and his van guzzling gas when he drove to Columbus;

vii. The State withheld evidence provided by Laura Tearman regarding an incident in which she was driven around by two men and one of them had a brother named Dean;

viii. The State withheld evidence provided by Roy Carver that he had once towed Overstreet's van out of a mud hole in Atterbury;

ix. The State withheld evidence that law enforcement collected items from Overstreet's residence that could have connected him to the Myers murder;

x. The State withheld evidence that Overstreet was a regular smoker.

j. The State withheld evidence that David Myers interfered with the investigation into the Sharon Myers murder by conducting his own investigation, and David Myers suggested to others that he knew "what really happened" to Sharon Myers and that "a second person" was involved.

2. There is newly discovered evidence of Hubbell's innocence:

a. Evidence provided by Melissa Holland implicates her husband, Michael Dean Overstreet, in the Myers murder (including that on the morning Myers was abducted, Overstreet left his house before sunrise in a white cargo van, told Holland that he was going to Arvin in Columbus, then returned home in the evening covered in blood);

b. Evidence provided by John Roberts that Overstreet was having an affair with a woman named Sharon from Columbus;

c. Evidence provided by Dawn Martin, that Ty Chaney told Dawn Martin, that Overstreet knew Sharon Myers;

d. Evidence that Overstreet newspaper articles about the Sharon Myers and Kelly Eckart murders were collected in Overstreet's house;

e. Evidence contained in Det. Dennis Knulf's notes that contained information implicating Overstreet in the Myers murder: Overstreet made incriminating statements to his wife about the Myers case; Overstreet's brother had a white van; Overstreet and his brother knew Myers, and Overstreet and his brother knew David Myers;

f. Evidence provided by John Mascoe that he saw Overstreet and Sharon Myers arguing on a boat ramp by a lake in Atterbury in May 1997;

g. Evidence provided by Glenn Allee seeing Overstreet tapping on a missing persons photo of Myers with a sick grin on his face right after Overstreet was arguing with his wife;

h. Evidence provided by Nathan Burbrink that he saw a white electrician van in which he saw a man on top of another person on the floor;

i. Evidence from Ruth Straugh about her sons seeing a red sweater and white underwear near bones at Atterbury;

j. Evidence provided from Jim Rominger that he saw two men at Atterbury picking up a sweatshirt;

k. Evidence of incriminating statements that Overstreet made to Mark Steven Hefley;

l. Michael Dean Overstreet invoked his *Fifth Amendment* right against self-incrimination when asked questions about the Myers murder in a recent deposition; and

m. Evidence regarding the extent of similarities between the Myers and Eckart murders.

3. The State relied on false testimony by Detective Knulf that could have impacted the jury in violation of *Napue v. Illinois*, 360 U.S. 264 (1959) and the *Fourteenth Amendment* of the *U.S. Constitution*.

BACKGROUND AND PROCEDURAL HISTORY

1. On May 13, 1997, Sharon Myers was abducted from her place of work, the Arvin Industries Gladstone plant in Columbus, Indiana ("Arvin"). On November 2, 1997, Myers' skeletal remains were discovered near Teal Marsh in the Atterbury Wildlife Preserve ("Atterbury") in Johnson County, Indiana.
2. On August 31, 1998, Hubbell was charged by grand jury indictment with murder and criminal confinement in Bartholomew County Circuit Case No. 03C01-9808-CF-1191.
3. Hubbell was tried before Judge Stephen Heimann starting on October 13, 1999. After a four-week jury trial, on November 4, 1999, Hubbell was convicted of murder and criminal confinement of Myers.
4. The Michael Thomasson and Associates firm represented Hubbell at his trial.[1]

[1] Sean Thomasson testified at the evidentiary hearing that he is an Indiana attorney who has been practicing law since 1995. *EH.* at 578:23-579:4. In August 1998, Thomasson was practicing law in Columbus, Indiana with the firm Michael Thomasson and Associates. *Id.* at 579:9-15. The other attorneys at the firm were Michael Thomasson,

5. On December 3, 1999, Hubbell was sentenced to 75 years in prison. Hubbell's conviction was affirmed on direct appeal. *See Hubbell v. State*, 754 N.E.2d 884 (Ind. 2001).

6. In May 2002, Hubbell filed a *pro se Petition for Post-Conviction Relief* ("PCR") in Bartholomew County Circuit Court. (*Exh. 83*, Oct. 15, 2015 *Order Denying Amended PCR* at 4.) At different times, Hubbell was represented by three attorneys, none of whom made any substantive filings. *Id.* at 4-5. Proceeding *pro se*, in April 2015, Hubbell filed an *Amended PCR*. *Id.* at 6. Hubbell alleged (among other things) that the State violated his *Brady* rights by failing to disclose information implicating Overstreet in the Myers' homicide. (*Exh. 83*, Sept. 22, 2015 *Petitioner's Proposed Findings of Fact and Conclusions of Law*, at 12-13). After an evidentiary hearing, Judge Heimann denied the PCR, but this decision was reversed on appeal to require the Court to obtain the direct appeal Record and permit Hubbell to question his witnesses and present arguments with the benefit of a certified Record of Proceedings. *See Hubbell v. State*, 58 N.E.3d 268, 278 (Ind. Ct. App. 2016).

7. On remand, Hubbell filed a *Second Amended PCR* that again alleged that the State violated his *Brady* rights by withholding information implicating Overstreet in Myers's homicide. (*Exh. 84*, Dec. 19, 2016 *Second Amended PCR* (R. at 27, 35)). During post-conviction proceedings, Hubbell sought discovery relating to Overstreet and DNA testing of the unidentified pubic hairs found at the Myers crime scene. (*Exh. 84*, Aug. 3, 2018 *Motion to Have DNA Entered into National Data Base and Ancestry.com* (R. at 101-03)); *Exh. 84, Dec. 8, 2018 Verified Motion for Discovery)*. The State opposed these motions. The motions were denied. (*Exh. 84*, Sept. 4, 2018 *State's Response to Motion to Have DNA Entered into National Data Bose* (R. at 105-06); *Exh. 84*, Sept. 20, 2018 *Order* (R. at 107); *Exh. 84*, Jan. 16, 2019 *Order*).

8. In February 2019, this Court held an evidentiary hearing on Hubbell's *pro se Second Amended PCR*. At the hearing, Bartholomew County Prosecutor's Office ("BCPO") prosecutor, Kathy Burns ("Burns"), who represented the State at Hubbell's trial, stated that "the Overstreet case . . . has nothing to do with this case." *Id.* at 40:14-17. After the hearing, in *Proposed Findings of Fact*, Burns stated that the Overstreet case was simply "another unrelated homicide in another county." (*Exh. 84*, June 3, 2019 *State's Proposed Finding of Facts and Conclusions of Law*, ¶ 21 (R. at 69)). The Court denied Hubbell's PCR. (*Exh. 84*, Aug. 9, 2019 *Order Denying PCR* (R. at 87-88)).

Sean's late uncle, and Rod McGillivray. *Id.* at 579:16-25. All three worked on the Hubbell case, but Sean was lead attorney. *Id.* at 580:11-19. Thomasson also hired a private investigator named Thomas Laugh to work on the case. *Id.* at 580:20-25.

9. On appeal, the State told the Indiana Court of Appeals that, "there is no evidence connecting Overstreet to this case whatsoever," and the two cases were "unrelated." *Exh. 84, Brief of Appellee*, at 23. The State further called Hubbell's efforts to discover information about Overstreet a "fishing expedition" (*Id.* at 22). The State represented that Overstreet was "thoroughly investigated at the time" and "ruled out as a suspect" by "the police." *Id.* at 23. The Indiana Court of Appeals agreed and affirmed, noting, "There was no basis for the court to allow Hubbell to engage in a fishing expedition fueled by his speculation or hope that there is relief to be found." *Hubbell v. State*, Court of Appeals Case No. 19A-PC-2058 (Trial Court Cause No. 03C01-1504-PC-1915), 147 N.E.3d 1037 (Ind. Ct. App. May 4, 2020) (unpub.).
10. In August 2020, Hubbell filed a *pro se* habeas petition in the U.S. District Court for the Southern District of Indiana in Case No. 1:20-cv-2217-JPH-KMB. *See Ex 85*. Hubbell was appointed counsel and was subsequently granted leave to:
    a. Serve subpoenas *duces tecum* on the Franklin Police Department ("FPD"), Johnson County Prosecutor's Office ("JCPO"), Indiana State Police ("ISP"), Columbus Police Department ("CPD"), and BCPO seeking information about Overstreet's involvement in the Myers homicide; and
    b. Depose Melissa Holland, who had provided an affidavit implicating her ex-husband, Overstreet, in the Myers homicide. *Exh. 85,* June 8, 2023 *Order Granting Motions for Leave to Conduct Discovery*.
11. On September 29, 2023, Hubbell filed an agreed motion for stay and abeyance of his federal habeas case pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005) to allow Hubbell to exhaust, in Indiana state court, claims based on new evidence uncovered in federal discovery. *See Exh. 85,* September 29, 2023 *Agreed Motion for Stay and Abeyance*. On October 10, 2024, U.S. District Court Judge James Patrick Hanlon granted this motion. *See Exh. 85*, Oct. 10, 2023 *Order Granting Agreed Motion for Stay and Abeyance*.
12. On September 27, 2023, Hubbell filed a motion for leave to file a successive PCR with the Indiana Court of Appeals. On December 1, 2023, the Indiana Court of Appeals granted Hubbell leave to file his successive PCR. *See Hubbell v. State*, No. 23A-SP-2279.
13. On December 5, 2023, Hubbell filed a *Verified Successive Petition for Post-Conviction Relief and DNA Testing* with this Court.

14. On January 5, 2024, the State filed its *Response to* Hubbell's successive petition. In its response, the State offered a blanket denial of the allegations in the PCR and raised the affirmative defenses of laches, res judicata, collateral estoppel, and waiver.
15. On February 21, 2024, the Court granted Hubbell's unopposed request to take the depositions of Dennis Knulf, John Borges, and Michael Dean Overstreet. The Court then set an evidentiary hearing for September 24-27, 2024.
16. On August 2, 2024, the State filed a *Motion for Summary Judgment as to the Issue of Disclosure of Detective Knulf's Investigative Summary*.
17. On August 7, 2024, the State made an oral request to continue the September 2024 evidentiary hearing. The Court granted the request and set the evidentiary hearing for February 10-14, 2025.
18. On August 20, 2024, Hubbell filed an *Amended Verified Successive Petition for Post-Conviction Relief* ("Petition") pursuant to *Indiana PCR Rule 1(4)(c)*. The *Petition* is the operative PCR in this matter. That same day, the State filed an objection to and motion to strike all of the exhibits from the *Petition*.
19. On August 22, 2024, the Court issued an order denying the State's motion. The State did not file an answer to Hubbell's *Petition*.
20. On August 30, 2024, Hubbell filed a response to the State's August 2, 2024 *Motion for Partial Summary Judgment*. On January 29, 2025, the Court denied the State's *Motion for Partial Summary Judgment*.
21. On February 10, the evidentiary hearing on Hubbell's SPCR began. Hubbell presented testimony from the following live witnesses: John Borges, Lynnette Gray, Melissa Holland, Michael Dean Overstreet, Johnny Roberts, Dan Londeree, Dennis Knulf, Sean Thomasson, and Ken Hardwick. The State then presented testimony from Jack Bedan. Hubbell did not put on rebuttal evidence. Both parties were given an opportunity for closing arguments on February 14.

PRE-TRIAL DISCOVERY ISSUES PRIOR TO HUBBELL'S TRIAL AND TRIAL STRATEGY BY HUBBELL'S ATTORNEYS

Pre-Trial Issues:

1. Sean Thomasson ("Thomasson") testified that he employed a "no-stone-unturned approach" on the case. *EH*[2]. at 581:15-16. According to Thomasson: "[B]asically we had a theory at the time if

[2] "EH" refers to the Evidentiary Hearing transcript.

something had a one percent chance of success; a motion, we'd file it. We explored every avenue. We did a lot of the investigation, the attorneys did; I did and Rod did, on our own. We also had Thomas Laugh who we hired to do an investigation of witnesses, crime scenes, everything." *Id.* at 581:8-14. Thomasson continued to employ this approach up to and throughout the trial. *Id.* at 581:17-19.

2. Thomasson testified that he actively pursued discovery from the State in Hubbell's case, filing an "abundant amount of pre-trial motions," to try to obtain evidence with the bottom line goal of creating a reasonable doubt in the minds of the juror's as to Hubbell's guilt and obtaining an acquittal. *EH.* at 581:22-582:5 and 600:8-14.
3. On September 3, 1998, Thomasson filed a *Motion for Discovery* requesting, among other things, "all police and FBI reports" and "notes." *Exh. 82, Sept. 3, 1998 Motion to Produce*, ¶ 2, R. at 48-49. Although Thomasson sent their "usual form" for discovery that the State had "never objected to previously in other cases, or probably since that time," in this case, the State objected. *EH.* 582:18-21. More specifically, the State responded by raising a blanket claim of work product as to all "investigative police reports" based on *Goudy v. State*, 689 N.E.2d 686 (1997). *Exh. 82, Sept. 18, 1998 Response to Motion to Produce*, ¶ 2, R. at 132; *EH.* 582:24-26.
4. On September 24, 1998, Judge Heimann ordered the State to produce, among other things, **all witness statements** and "**police and FBI reports relating to witness statements.**" *Exh. 82, Sept. 24, 1998 Order*, R. at 143-44; *EH.* 584:21-25 (emphasis added). Thomasson interpreted this to mean that the State was to "turn over any report that contained any witness statements or has references to witness statements." *EH.* 584:25-585:2. Judge Heimann did not, however, order the State to produce all investigative police reports. *Exh. 82, Sept. 24, 1998 Order*, R. at 143-44. Judge Heimann did not conduct *in camera* review of the State's files as requested by Thomasson. *EH.* 590:14-15. Judge Heimann was not required to do so.
5. On September 30, 1998, Thomasson filed another motion for discovery seeking, among other things, exculpatory evidence and police notes relating to the questioning of alternate suspects. *Exh. 82, Sept. 30, 1998 Motion to Produce*, ¶¶ 6-9, R. at 182-84; *EH.* 585:3-8. In its response, the State told Hubbell and the Court: "The State of Indiana is aware of its obligation to produce exculpatory evidence pursuant to *Brady v. Maryland* ... and intends to supply any such exculpatory evidence in its discovery response." *Exh. 82, Oct. 15, 1998 State Response to Motion to Produce*, R. at 192; *EH.* 585:9-17. Judge Heimann granted Hubbell's request that the State produce exculpatory materials. *Exh. 82, Oct. 29, 1998 Order*, R. at 201.

6. As the case progressed, Thomasson began to develop concerns that the State was not complying with *Brady*. *EH.* 585:20-22. In one instance, Thomasson received a report from the State containing about 7-8 pages that had been prepared by conservation officer Tony Wilson "Wilson"). However, Thomasson had earlier obtained Wilson's report directly from Wilson and the actual report was 15 pages in length. Missing from the State's report was information from a witness named Cassius Bennett that was favorable to Hubbell. *Id.* at 585:25-586:23.
7. Thomasson considered Knulf to be the lead investigator on the case. *Id.* at 587:19-22. In late 1998, Thomasson served a deposition subpoena on Knulf that asked Knulf to bring his entire case file with him to his deposition. *Id.* at 587:23-25. Knulf showed up at the deposition without his case file. *Id.* at 587:26-588:2. Instead, Knulf had in his possession one document titled "Supplementary 97-13061" that he stated was approximately 22 pages long and had been given to him by the prosecutor's office. *Exh. 34* at 3823-3832. This document is consistent with *Exhibit 36* (the version of Knulf's notes produced by the BCPO) but inconsistent with *Exhibit 24* (Knulf's full 54-page Investigators Notes that were produced by the CPD). Knulf referred to the supplementary report in his testimony, and Thomasson requested a copy of it. *EH.* 588:9-15; *Exh. 34* at 3827-3829. Prosecutor Burns directed Knulf not to provide a copy to Thomasson citing "work product." *Exh. 34* at 3828-3832; *see EH.* at 588:13-20. Knulf testified that he believed the report was a supplementary report **he prepared** of his entire involvement with the Myers homicide investigation from May 13, 1997 to April 8, 1998, and that it had been compiled day by day. *Exh. 34* at 3829-3832 (emphasis added).
8. On January 5, 1999, Thomasson filed a motion to compel and continue trial relating to this issue. *Exh. 82, January 5, 1999 Motion to Compel*, R. 346-57. In that motion, Thomasson explained that he had been denied access to Knulf's supplementary report at Knulf's deposition. *Id.* ¶¶ 30-34. Thomasson asked that the State turn over its files to the Court "to conduct an *in camera* inspection of the files to determine if there are any other exculpatory reports or statements contained therein." *Id.* ¶ 29; *EH.* 590:10-13. Judge Heimann continued the trial but did not grant Hubbell's motion to compel or his request for an *in camera* review. *See Exh. 82, Jan. 19, 1999 Order*, R. at 476-77; *EH.* 589:15-17, 590:14-15.
9. In August 1999, Thomasson filed another motion to compel the production of (among other things) Knulf's report titled "Supplementary 97-13061." *Exh. 82*, at R. 815-17; *EH.* 591:8-11. The State responded with another blanket invocation of the work-product doctrine. *Exh. 82, Aug. 26,*

1999 State Response, at R. 849-50. The next day, Judge Heimann denied the motion. *Exh. 82, Aug. 27, 1999 Order*, at R. 861; *EH.* 591:17-592:2.

10. Thomasson testified that, prior to Hubbell's trial, the State never disclosed to him any version of Knulf's investigative notes or a supplementary report. *EH.* 589:15-17, 592:3-5.

Trial Strategy:

11. Thomasson testified that, at jury trial, he presented the theory that someone other than Hubbell abducted Myers. *EH.* at 602:5-7. He presented evidence to try and undercut the State's case by pointing to alternate suspects who had more motive to kill Myers than Hubbell and by highlighting that the physical evidence did not match Hubbell and that the witness statements made no sense. *Id.* at 600:15-21. He also "vigorously" attacked the integrity of the police investigation of the case, including their failure to adequately rule out alternate suspects. *EH.* 603:6-9.
    a. Thomasson presented evidence and argument at trial that Myers's actual assailant was a man that had collar-length hair that was longer than Hubbell's "military style haircut." *EH.* at 601:12-15. Several witnesses testified that they saw a white male with collar-length hair walking quickly up to Myers in the Arvin parking lot. *EH.* at 601:16-22.
    b. Another way that Thomasson tried to undercut the State's case was by presenting evidence and argument about a light-colored cargo van that was seen by multiple witnesses in the Arvin's parking lot on the morning Sharon disappeared. *Id.* at 600:22-25. Two witnesses—Emily Fivecoat and Byrd Napier—testified to seeing this light-colored cargo van. *Id.* at 600:26-601:4.
    c. Thomasson raised David Myers (Sharon Myers husband) as an alternate suspect in part based on evidence that Myers believed his wife was carrying on an affair and had told police that he had concerns that he was not the father of Sharon's child. *Id.* at 602:10-24.
    d. Thomasson raised Eddie Harrison as an alternate suspect who admitted to killing Myers, told people he did it, and threatened people. *Id.* at 616:4-7; 616:18-20; 617:17-22; 637:8-23; 663:8-9; 671:26-672:3.
    e. Prior to Hubbell's trial, Thomasson learned that a man named Michael Dean Overstreet had been arrested and charged with the rape and murder of Kelly Eckart in Johnson County. *EH.* 593:25-594:3.

i. Thomasson recalled learning that Eckart was a college student, that she was abducted from Wal-Mart, and that he believed she had been killed in Brown County. *Id.* at 594:4-8.

ii. Thomasson took steps to investigate Overstreet that he believed were reasonable based on the information that he had available to him, including pulling newspaper articles about the Eckart case, pulling vehicle registration information (including on Scott Overstreet's vehicle), and talking to one of Overstreet's attorneys. *Id.* at 618:22-619:8.

iii. Thomasson never received any discovery or disclosures of any kind from the State that could link Overstreet to the Myers's homicide. *Id.* at 594:9-23. He received no document discovery related to Overstreet and was provided no information related to Overstreet through "informal conversations" with the State. *Id.* at 603:18-26; *see also Id.* at 652:7-11. Thomasson stated that he did not present Overstreet as an alternate suspect at Hubbell's trial because, "based upon the information that I had, I had better alternate suspects." *Id.* at 603:3-5.

BRIEF FACTS SUPPORTING HUBBELL'S CONVICTION AS FOUND BY THE INDIANA SUPREME COURT
See, *Hubbell v. Ind. Supreme Court*, 754 N.E.2d 884, 887-888 and 890-892 (2001)

Sharon Myers left for work at the Arvin plant early on the morning of May 13, 1997. She never arrived. Another employee of Arvin, Sherry Young, saw a man and a woman leaving the Arvin plant as she arrived at work that same morning. The woman looked similar to Myers. Young described the man as having "blonde hair, probably five nine, six foot." The man had one hand on the woman's neck or back, and the two entered a white van and drove away. The police came to the plant later that morning to look for Myers. Young had "mentally" made note of the license plate number and gave the police the number and a description of the van. The police traced the license plate number to a white van owned by Hubbell. Hubbell worked at the Arvin plant with Myers and had called in sick on May 13. Young then identified a picture of the van as the one she had seen that morning. Less than 6 hours after first speaking with Young, police presented Hubbell to Young in a showup or single person lineup. At the showup, Young thought Hubbell was the man she had seen driving the van, although she was not positive. This testimony was corroborated by Steven Prosser, another witness at the showup. Two police officers testified that Young was not positive that Hubbell was the man driving the van.

In November 1997, skeletal remains were found in a marsh area in Johnson County and identified as Myers' through dental records. An autopsy showed a facture in the hyoid bone which, together with the size of a ligature found around Myers' neck, indicated that the cause of death was manual strangulation. Acrylic fibers found near the body were consistent with fibers found in Hubbell's van. Grass fragments found in the search of the van were consistent with grass samples from the marsh. The FBI obtained fingerprints from the van and also shot several rolls of film of fingerprints that might or might not be different from the fingerprints taken. No prints from Myers were identified, and the authorities lost the rolls of film.

On August 31, 1998, Hubbell was indicted by a grand jury on the charges of murder and criminal confinement. On September 28, Hubbell filed a notice of alibi, which he amended on October 15. The State did not respond. At trial, the State introduced parts of Hubbell's statements made following an examination to Sergeant Jeff Williams. The exact questions are not in the record because Williams' notes have been destroyed. However, in his report, Williams stated:

> When I stated to him that I believed that he was responsible for [Myers] disappearance he stated that it might be possible but he can't say that he did it. He stated that he has prayed to God every night since then that it isn't so. When I asked him to explain further he states he knows that he does things during his episodes that he can't remember so he always has doubts now about things he could have done.

The State also introduced testimony from a jail inmate, who Hubbell shared a cell with, testifying that Hubbell admitted the killing to him.

LEGAL FRAMEWORK

1. Post-conviction relief is a collateral attack on the validity of a criminal conviction, and the Petitioner carries the burden of proof, establishing his ground for relief by a preponderance of the evidence. *Timberlake v. State*, 7S3 N.E.2d 591, 597 (Ind. 2001), reh'g denied, cert. denied; *Ind. Post-Conviction Rule 1, Section 5*.
2. Post-Conviction proceedings do not grant a petitioner a "super-appeal" and are limited to those issues available under the *Indiana Post-Conviction Rules*. *Pace v. State*, 981 N.E.2d 1253, 1257 (Ind. Ct. App. 2013).
3. Hubbell seeks relief to be granted under three separate theories of law. First, Hubbell alleges that the State withheld exculpatory evidence in violation of its duty to disclose under *Brady v. Moryland*, 360 U.S. 83 (1963). Second, Hubbell alleges that he is entitled to relief due to newly

discovered evidence. Third, Hubbell alleges that the State relied on false testimony to secure Hubbell's conviction in violation of *Napue v. Illinois*, 360 U.S. 264 (1959).

Brady v. Maryland

4. The Court in *Brady* held that any suppression by the prosecution of evidence favorable to the accused violates due process where said evidence is material to either guilt or punishment. *Brady* at 1196-97.
5. In order to prevail on a claim under *Brady*, a Petitioner must show that: (1) the State suppressed evidence; (2) that the suppressed evidence was favorable to the defense; and (3) that the evidence was material, and therefore resulted in prejudice to the Petitioner. *Banks v. Dretke*, 540 U.S. 668, 691 (2004). Suppression of Brady evidence violates the U.S. Constitution and warrants a new trial. *Goudy v. Basinger*, 604 F.3d 394, 398-402 (7th Cir. 2010); *see also State v. Royer*, 166 N.E.3d 380 (Ind. Ct. App. 2021); *Bunch v. State*, 964 N.E.2d 274, 297-98 (Ind. Ct. App. 2012).
6. Under *Brady*, evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985); *Bunch*, 964 N.E.2d at 297. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Bagley*, 473 U.S. at 682. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. *Hayden v State*, 830 N.E.2d 923, 931 (Ind. Ct. App. 2005).
7. It is well established that exculpatory information must be disclosed under *Brady* even if the information would not be admissible at trial, at least as long as there is good reason to believe that disclosure of the exculpatory information would have led to the discovery of admissible evidence for ether substantive or impeachment purposes. *Watkins v. Miller*, 92 F. Supp. 2d 824, 844 (2000); *Giglio v. United States*, 405 U.S. 150, 154-55 (1972); *See, Sellers v Estelle*, 651 F.2d 1074, 1077 n.6 (5th Cir. 1981) (inadmissible hearsay might have assisted defense discover other evidence), cited in *Watkins*, 92 F. Supp. 2d at 845.
8. When dealing with multiple pieces of evidence alleged to have been suppressed by the State, the reviewing Court should, after determining which items of evidence were both suppressed by the State and favorable to the defense, then consider all of the items collectively when assessing

materiality. *Goudy, 604 F.3d at 399; Kyles v. Whitley*, 514 U.S. 419 at 434 (1995). Critically, *Brady* is to be considered in the cumulative and not in isolation. *Bagley*, 473 U.S. at 675.

Newly Discovered Evidence

Hubbell also seeks a new trial under a theory of newly discovered evidence. In order to succeed on a claim under this theory, Hubbell must show that:

1. the evidence has been discovered since trial;
2. the evidence is material and relevant;
3. the evidence is noncumulative;
4. the evidence is not merely impeaching;
5. the evidence is not privileged or incompetent;
6. due diligence was used to discover said evidence prior to trial;
7. the evidence is worthy of credit;
8. the evidence can be produced upon a retrial of the case; and
9. the evidence is likely to produce a different result at trial.

Carter v. State, 738 N.E.2d 665, 671 (Ind. 2000).

Napue v. Illinois

Finally, Hubbell seeks a new trial under a theory that the State relied on false testimony in violation of *Napue v. Illinois*, 360 U.S. 264 (1959). To succeed on this claim, a Petitioner must show that: (1) the prosecution's case included perjured testimony; (2) the prosecution knew or should have known of the perjury; and (3) there is a likelihood that the false testimony affected the judgment of the jury." *United States v. Saadeh*, 61 F.3d 510, 523 (7th Cir. 1995), *United States v. Freeman*, 650 F.3d 673, 678 (7th Cir. 2011).

FINDINGS OF FACT

Based on the evidence presented at the February 10-14, 2025 evidentiary hearing, the Court now makes the following findings of fact:

HUBBELL'S CLAIMS THAT THE STATE WITHHELD MATERIAL MATERIAL EXCULPATORY EVIDENCE IN VIOLATION OF HUBBELL'S RIGHTS UNDER BRADY, 373 U.S. 83

Evidence regarding Melissa Holland implicating Michael Dean Overstreet in the murder of Sharon Myers:

1. Holland was married to Overstreet before and at the time of the Myers and Eckart murders. Holland testified at the evidentiary hearing to the following:
    a. In 1997, there were times when Overstreet would disappear for extended periods of time. *EH.* at 209:18-20. When this happened, she thought Overstreet was cheating on her, because "he had done it in the past." *EH.* at 209:21-24.
    b. Overstreet had a brother named Scott Overstreet ("Scott") who was shorter than Overstreet with redder hair. *EH.* at 210:7-14. Scott lived in Greenwood, Indiana and was married to Stephanie Overstreet. *EH.* at 210:15-20. Scott passed away in November 2020. *See Exh. 118*, Scott Overstreet Death Certificate.
    c. Scott drove a "white cargo van." *EH.* at 210:21-26. The van had windows by the driver and passenger seats in the front, but no windows along the rest of the sides of the van. *EH.* at 211:2-6; *see also Exh. 18*, Nov. 14 at 3312 (ISP log - first entry - Scott owned a 1987 White Ford van); *Exh. 55 at 1066 (*Nov. 6, 1997 Michael Overstreet Recorded Statement describing Scott's van as a "big white van" that was a "Ford" that Scott uses for his work as an "electrician").
    d. Generally, Overstreet did not drive Scott's white cargo van, but she recalled Overstreet did drive it one time in May of 1997. *EH.* at 211:9-14.
    e. Referring to the day that Myers went missing, Holland testified that Overstreet got up when it was still "really dark" outside. *EH.* at 211:15-19. Holland did not recall the specific time, but recalled that "by the time he left it was just a little bit light, not much really, it was still dark." *EH.* at 211:15-212:3. Before he left, Overstreet told Holland that he was "going job hunting" and that "[o]ne of the places he was going was Arvin in Columbus." *EH.* at 211:20-212:11. Holland saw him go outside to Scott's van, which stuck out in her mind because it was "different." *EH.* at 211:25-212:5. After Overstreet left, he was "gone all day." *EH.* at 211:15-19, 213:16-19.
    f. The next time Holland saw Overstreet was later in the evening, when Overstreet returned in Scott's white cargo van. *EH.* at 212:12-213:2. At that time, Overstreet came in "with blood all over him" and looking "kind of out of place with all his clothing." *EH.* at 211:15-19, 212:15-19. Holland asked Overstreet what happened, and he told her that he had got in a fight at a bar. *EH.* at 212:24-25. Overstreet asked Holland to "wash his clothes for

him," but she refused. *EH.* at 211:15-19. Overstreet's mother was there, and she "chimed in and said she would do it." *EH.* at 213:10-13.

g. Prior to this night, Overstreet had never come home covered in blood. *EH.* at 212:20-21. This day stood out to Holland because this was "not normal." *EH.* at 213:23-25.

h. Holland testified that, just "a couple days afterwards," she saw news reports about a woman named Sharon Myers who disappeared in Columbus, Indiana. *EH.* at 213:26-214:12. Those news reports mentioned that Myers had disappeared "from the Arvin's in Columbus." *EH.* at 214:8-9. When Holland saw these reports, she realized that Myers disappeared on "the same day" that Overstreet said he was "going to Arvin's to job hunt and then he comes home with blood on him." *EH.* at 214:15-21.

i. Holland considered calling the police at that time, but she was "too scared." *EH.* at 214:24-26. She worried that if Overstreet "didn't get in trouble" then she would "have to live with him," and was scared that he "might hurt [her]." *EH.* at 214:24-215:3. Holland testified that, in 1997, Overstreet's personality was "scary." *EH.* at 209:2-4. "He would switch from like Dean and then Michael. He had like almost like a two personality demeanor to him." *EH.* at 209:5-12. As examples of the times when Overstreet was "mean," Holland described times when Overstreet shot a gun next to her head and held a knife to her throat. *EH.* at 209:13-15. These sorts of things scared Holland. *EH.* at 209:16-17. At the time, Overstreet was drinking "quite often," and "[a]lcohol would make him mean." *EH.* 209:25-210:6. Some of Holland's testimony is corroborated by her statements back in 1997:

    i. Holland informed Chief Harry Furrer ("Furrer") of the FPD on November 6, 1997, and Detective Sgt. Roy West ("West") of the ISP and Detective Pete Ketchum ("Ketchum") of the FPD, of the violent temper and abusive nature and actions of Overstreet throughout the years. *See Exh.* 111 at 265-266; *Exh.* 112 at 3474; *EH.* 207:26-208:10; and *Exh.* C at 4238-4239. (violent temper; threatened to kill his parents; killed cats by hanging them; killed dogs buy slitting their throats; punched Holland in face twice in one summer; broke car windshield; held bone knife to Holland's throat; strangled Holland; banged Holland's head against a wall; pointed a firearm at Holland and fired it next to her head; hit her in the head twice with a fist; tried to tackle her; banged head against the ground; he always carries a firearm.)

ii. Overstreet pointed a gun at her, and then fired it right next to her head, a couple weeks before the death of Eckart. *Exh. C* at 4239.

iii. Holland was fearful of Overstreet at times. *Exh.* C at 4239.

j. After Myers was missing, Overstreet's behavior was "off and on, different." *EH.* at 215:4-6. Overstreet was "constantly looking at newspapers and things like that." *EH.* at 215:16-18.

k. On one occasion, Holland and Overstreet "got into a fight at Walmart." *EH.* at 215:4-8.

i. During the fight, Overstreet "pointed at a picture of Sharon Myers that was up on the wall for being missing and made a mean face to me with that" then "kept walking." *EH.* at 215:4-8. Holland took that to mean "[t]o keep my mouth shut or else." *EH.* at 215:9-10. She was "very scared." *EH.* at 215:11-12. Holland believed this occurred "probably a couple weeks" after the disappearance of Myers, but she didn't know for sure.

ii. Ketchum from the FPD took a report and recorded statement from a witness, Glenn Allee ("Allee") on November 14, 1997, reporting that he observed Overstreet in Walmart in June or July 1997, arguing with his wife (Holland). *Exh.* 38 at 4050, 4054, 4056, 4058 and 4060. Overstreet pointed his finger and tapped the glass to a missing person bulletin of Myers, and made a facial gesture to Holland. *Id.* Allee is now deceased.

iii. The State did not disclose to Hubbell, prior to Hubbell's trial, Ketchum's report, Allee's recorded statement, or any information regarding the Wal-Mart event. **The above information (*Exh. 111* at 265-266, *Exh. 112* at 3474, *Exh. C* at 4238-4239, and *Exh. 38* at 4050, 4054, 4056, 4058 and 4060) was suppressed by the State and is favorable to Hubbell.**

l. Later in 1997, Holland was asked by Scott to pick Overstreet up late at night in Atterbury. *EH.* at 216:21-217:2. She picked him up at approximately 3:30 a.m. *EH.* at 217:5-6. Shortly thereafter, Holland saw news reports about Eckart's disappearance. *EH.* at 217:11-17. Once again, she "thought Dean had something to do with that" because "all the timelines matched." *EH.* at 217:20. After Eckart disappeared, like after Myers disappeared, Overstreet was "obsessed" with news reports on the case and "had to watch every little minute of it." *EH.* at 218:8-15. Again, Holland considered calling the police,

but she was "scared that he would not get in trouble" and would hurt her. *EH.* at 218:18-22.

m. Holland stated she provided all this information to the FPD November 6-7, 1997 when she was brought in for questioning about Overstreet's role in the Eckart homicide. *EH.* at 218:23-219:6, 231:7-9. Holland spoke with several police officers including Furrer. *EH.* at 219:7-10. Holland told Furrer "[a]bout all the events that happened in May" along with those in September. *EH.* at 219:13-15. In particular, as it relates to the Myers case, she told Furrer about the day that Overstreet came home "covered in blood" and included "[e]verything from the time he left to the time he got home." *EH.* at 219:16-20. She also told him about the vehicle Overstreet was driving that morning and the comments that Overstreet made to her about where he was going. *EH.* at 219:21-25. Holland claims that she was as complete in describing these events to Furrer in 1997 as she was testifying before the Court at the evidentiary hearing. *EH.* at 220:6-8.

n. When Holland told this information to Furrer, she heard Furrer ask another officer "if anybody had contacted the CPD about that information." *EH.* at 220:9-11. They had not, so "he told them to do it." *EH.* at 220:10-11. Just "a couple hours later," "detectives came back in to let him know that *Columbus wasn't interested in any of the information that ... they had on the van and [Overstreet] coming home with blood.*" *EH.* at 220:12-21 (emphasis added); *see also EH.* at 282:15-21 ("They already had somebody."). Furrer was "exasperated" and "[d]idn't understand why." *EH.* at 220:22-23, 244:2-5. Holland was "upset because [she] really believed [Overstreet] had something to do with it." *EH.* at 220:24-25.

o. Holland recalled being at the police station for "most of the night" that night. *EH.* at 221:2-3. She recalled that, at times, the police recorded things she was saying, though she did not know what was or was not recorded. *EH.* at 221:4-10. She was certain that she provided all of this information to the FPD on November 6-7, 1997. *EH.* at 221:14-16.

p. No police officer from the CPD or prosecutor from the BCPO ever spoke to Holland about the information she provided regarding the Myers homicide. *EH.* at 223:12-17. Had a police officer or prosecutor come to speak with her about this information, she would have provided the same information. *EH.* at 223:18-20.

q. Holland never heard from an attorney or investigator working on behalf of Hubbell until recently in 2021. *EH.* at 244:13-14, 284:24-26. Had an attorney or investigator working

with Hubbell spoken to her about these issues in 1998, she would have told them what she knew, and had she been called to testify at Hubbell's trial, she would have done so. *EH.* at 285:2-7.

r. Holland has come forward with this information because "it was the right thing to do." *EH.* at 224:25-225:2. Holland still believes that her husband was involved in what happened to Myers. *EH.* at 225:3-5.

2. Other existing evidence from 1997 that helps to corroborate some of Holland's current evidentiary hearing testimony regarding the above information, include the following:

   a. Holland gave a recorded statement to Ketchum and Sgt. Steve Byerly ("Byerly") on November 6, 1997, and Ketchum and Furrer on November 7, 1997, noting that at times she believed Overstreet was cheating on her and she didn't trust him. *See Exh. A at 3398, 3406, 3410 and 3413, and Exh. C at 4227 and 4243, and Exh. 21* at 3648, 3653, 3654, and 3656.

   b. Officer John Borges ("Borges") from the FPD was a sergeant in investigations at FPD in 1997. *EH.* at 40:8-11. Borges testified at the evidentiary hearing that during the investigation of the Eckart murder in 1997, Holland (then Melissa Overstreet) provided information to Furrer during interviews related to the Myers case. Borges learned this information shortly after Furrer interviewed Holland in November 1997. *EH.* at 121:14-23. Borges testified that he learned in 1997 that:

      i. On the day Myers went missing, Holland informed Furrer something to the effect that "Overstreet had gone away during the day, driving a white van, had been gone all day, then had came home covered in blood." *EH.* at 121:24-26 to 122:1-4. Borges further believed that Holland specifically said that Overstreet was going to Arvin's in Columbus on that same day. *EH.* 122:6-10. However, Borges also then testified he was not certain whether he learned all the above information from Holland during the Eckart investigation or due to the current pending proceedings. *EH.* at 158:23-26; 175: 4-6 and 176:17-25. Borges agrees there were times when witness conversations would be recorded and other times when they were not, depending on officer's discretion, and he does not know what information from Holland was recorded or not recorded. *EH.* at 177:3-14. Borges agreed that something so important would be documented in either statements or investigative reports and if it was not, it would not be something they knew

back then. *EH.* 158:1-10. However, Borges went on to testify and explain that he was not certain in this case because when he went to the archives at the FPD, he discovered that at least three of the five murder books (in regard to the Eckart investigation) were gone, the files were disheveled, and his notes are missing. *EH.* at 176: 26; 177:2; 182: 13-18; 184:17-21; 185:9-11; 186:2-8.

ii. Borges specifically recalls Furrer directing him to pass the information they gained from Holland regarding the Myers disappearance onto the CPD. Borges delegated that responsibility to another, who then did pass the information on to CPD. *EH.* 122: 11-18. He could not testify as to who he delegated to pass on the information to CPD as he did not have his notes (they are now missing as he testified above). *Id.* 122: 13-18.

iii. Both Holland and Borges had a specific recollection of Furrer directing that the information Holland provided relating to the Myers disappearance be passed on to Columbus investigators. *Id.* at 121:14-122:18 (Borges); 220:9-16 (Holland). The Court finds that information was passed on to CPD.

c. Dennis Knulf ("Knulf") testified at the evidentiary hearing. He was the lead investigator at the CPD for the Myers murder investigation starting on May 13, 1997, the day Myers went missing. Knulf testified that CPD, during their follow-up investigation prior to Hubbell's trial, did check to see if Overstreet had been to Arvin's and applied for a job on the day Myers went missing. Knulf agrees that such information should be documented in a report or investigative file, but he did not know if it was. *EH.* 431:24-26; 432:2-10.

i. Knulf admitted that it was fair to say that some of the information he received implicating Overstreet in the Myers homicide was never put into any report or shared with Hubbell's defense. *EH.* 411:23-412:8; 417:2-4; 420:22-421:5.

ii. When asked whether he learned that Overstreet went job hunting at Arvin's on the day Myers went missing, Knulf testified "Yes. I knew that definitely, yes." *EH.* 429:16-20.

iii. When Knulf was asked about information suggesting that Overstreet disappeared on the day Myers disappeared and returned home covered in blood, Knulf testified, "in the back of my mind; I thought we had that." *Id.* at 429:16-430:7, 431:12-23 (reaffirming that his prior testimony on this point was true), *Id.* at 565:14-17 (reaffirming this again).

d. An investigative narrative from Furrer with FPD in 1997 included the following description of information Furrer received from an unrecorded interview with Holland:

> "Melissa said that during the (Eckart) murder investigation her husband watched all the news surfing back and forth between the news stations to watch the coverage of the investigation. She said that he read all the newspaper articles that were written about the case. Melissa said he never commented on the case except one time. She said that she commented several times to him that she thought that the boyfriend killed Kelly Eckart. He wouldn't respond. She said that after bones had been found belonging to Sharon Myers, he said to her that the shoes and socks were missing from both of the women and do you still think it's the boyfriend. Melissa said that also during this time Dean acted strangely by peaking out the window holding his gun." *Exh.* 111 at 268. (The note narrative does not give the specific date Holland offered this information to Furrer, but was while the Myers investigation was still continuing. See *Exh.* 111 at 269.)

Consistent with testimony that information was shared between law enforcement agencies, this information was passed from the FPD to the CPD. *Exhibit 24* is a 54 page "Investigators Notes" prepared by Knulf of the CPD regarding the Myers murder investigation and states the following on page 44:

> "11-10-97 Knulf...Lt. Jarrard had contact with the investigators on the Eckart case. He was told that their suspect had made a comment to his wife, while watching TV coverage of these cases, about both women being found without their shoes, and then asking her if she still thought that the boyfriend had done it. He was also told that their suspects brother was wearing a Columbus Regional Hospital sweatshirt when he was talked to, and that this brother works for Olsen Temporary Services and drives a white van."

The State never disclosed the above information in Furrer's investigative narrative or *Exhibit 24* to Hubbell before his trial. That information, within those two documents, was unknown to Hubbell until produced from CPD files and to Hubbell's counsel, by subpoena, in 2023.

Furrer's above investigative narrative and the entry of 11-10-97 from page 44 of *Exhibit 24*, is information suppressed by the State and favorable to Hubbell.

e. Similarly, investigative notes from Furrer's unrecorded conversation with Holland on November 6, 1997, were produced from the FPD files on the Eckart case, per Hubbell's subpoena in 2023. Holland informed Furrer of conversations with Overstreet regarding news coverage relating to the Myers murder. Furrer's notes include the following:

   i. "Meyers thing came up, flipped channels, Dean (Overstreet) said 'Tiel [*sic*] Marsh', I knew that was the place. He fished there a lot." *Exh. 112* at 3474-3475.

ii. "News coverage, Dean (Overstreet) commented on shoes of both & said to Melissa, 'now do you think it was the boyfriend.'" *Exh. 112* at 3475; *Exh. 111* at 268.

iii. Holland testified at the evidentiary hearing that she and Overstreet were familiar with the Atterbury Wildlife Preserve, and specifically Teal Marsh and Stone Arch Lake because they used to take their children fishing and biking there and Overstreet would go down there and shoot his guns at the shooting range. *EH.* at 215:19-26 to 216:2-20. She also noted this in her Nov. 6, 1997 taped statement to Ketchum and Byerly (*Exh. A* at 3407-3408) and Nov. 7, 1997 taped statement to Ketchum and Furrer (*Exh. 21* at 3659).

f. **Furrer's above investigative narrative above presented in *Exh. 112* at 3474-3475 and *Exh. 111* at 268 and Holland's information provided to Ketchum, Byerly and Furrer above in *Exh. A* at 3407-3408 and *Exh. 21* at 3659, was information suppressed by the State and favorable to Hubbell.**

3. Evidence that may contradict some of Holland's evidentiary hearing testimony regarding the above include the following:

a. There were three (3) recorded and transcribed statements taken of Holland during the 1997 Eckart investigation:

i. November 6, 1997 interview from 6:50 p.m. to 8:52 p.m. with Ketchum and Byerly (*Exh. B* and *Exh. 21*)

ii. November 7, 1997 interview from 2:39 a.m. to 3:34 a.m. with Ketchum and Furrer (*Exh. D* and *Exh. 21* at 3642-3660)

iii. November 18, 1997 interview from 3:23 p.m. to 4:55 p.m. with West and Ketchum (*Exh.* C).

iv. Holland admitted that she did not know if the information she provided to Furrer regarding the Myers case was in any of these recordings, but insisted that she did tell Furrer, and it was "a very big deal to them when I did tell him." *EH.* at 233:13-17, 235:11-13, 236:23-237:13.

v. Nowhere in any of the three transcribed statements does Holland specifically tell the police that she suspected her husband to be involved in the Sharon Myers homicide. However, the three taped statements of Holland were specifically related to questions surrounding the disappearance and murder of Eckart that

FPD was investigating at that time. *See Exh. A* at 3405 and 3418, and *Exh. C* at 4262-4265.

vi. During the November 7, 1997, interview (*Exh. D* at 3653 and *Exh. 21* at 3653), Holland stated the following when explaining concerns with how Overstreet dressed at times:

> "Cause, usually it was kind of like, you could see little signs of things, you know, like, well he'd say, "Well, I got in a fight," and stuff like that and cause one time he come home without his wedding ring. I think that was the time he come home with blood on his clothes and he come home without his wedding ring. I accused him up one side and down the other for cheatin' on me and everything and I was like . . . he was like, no. Finally he told me, "I had to take my ring off to wash the blood off my hands. I got in a fight." I'm like, whatever. I still didn't believe him. I don't know why. I guess I was just . . .
>
> Ketchum then asks her how long ago this happened and Holland replies:
>
> . . . "it's been (sigh), a while back. Uhm, his mom was there at the time. Cause he . . . he come home. He wanted me to wash his clothes and stuff for him, because he had blood on them. I said, "No, I ain't messin', I'm going' to bed." So his mom did it,I "well, here I'll do it . . . "

Holland does not reference or further explain during this portion of her taped statement that this "one time he come home" was the day she believed Myers went missing, as she testified to at the evidentiary hearing (*See, EH.* at 231:10-20). She simply refers to it as "a while back."

vii. During Holland's November 18, 1997 statement to FPD (*Exh. C* at 4260), Holland is specifically asked if she ever recalls Overstreet driving Scott's van and she responds, "Uhm, no. Scott wouldn't let him drive." The detective asks again, "Do you ever recall Dean (Overstreet) driving Scott's van?" and Holland again responds in the negative. When asked during the evidentiary hearing why she would have said that in her November 18, 1997 statement, yet testify at the evidentiary hearing that Overstreet did borrow the van on the day Myers went missing, Holland responded, "I don't know." *EH.* at 239:17-23.

viii. Holland is also asked during the November 18, 1997 interview if she, Overstreet, Scott or Stephanie Overstreet were familiar with Sharon Myers and whether any of them had any connection with Arvin's in Columbus, Indiana. Holland responds "no," that she is not. *Exh. C* at 4259. At the evidentiary hearing, Holland was asked

why she would say these things in 1997 while she is now claiming that, at that time, she suspected her husband was involved in the Myers' homicide. Holland responded, "I have no idea." *EH.* at 240:18-26; 242:2-7.

b. Holland agrees that she made assertions in her recorded statements in 1997 that are in direct contradiction to her testimony at the evidentiary hearing. *Id.* at 245:11-15. She admitted at the hearing that she has no explanation for those contradictions. *Id.*

c. Holland agreed at the evidentiary hearing that her memory was better back in November 1997 than it was today. *Id.* at 240:15-17.

4. The court finds that Holland did inform Furrer, that Overstreet left the morning of the day Myers disappeared, stating he was going to Arvin's for a job interview, and returning home later that night with blood on him. There was a 6-hour lapse between the first and the second interview of Holland at FPD, giving time for Furrer and Holland to talk. *See Exhibits B* and *D*; *EH.* at 280:19-281:19. During the recorded interview of Holland that Furrer was involved in, Furrer clearly references that he and Holland had been talking earlier before the recording. *See Exh. D* at 3644. FPD was specifically investigating the Eckart murder on November 6-7, 1997, but making sure to inform CPD of any information they were obtaining in reference to the Myers disappearance. As Knulf testified, he did not document all the information he received implicating Overstreet to the Myers disappearance and murder. The court finds Knulf was not interested in the information.

5. Borges, from FPD, appeared somewhat uncertain as to when he obtained the information that Holland testified to regarding Overstreet. Knulf from CPD testified he knew the information back in 1997. However, both Borges and Knulf admitted they learned the information back during the investigation in 1997. *EH. at* 121:24-122:10; *EH.* at 429:3-431:23; *EH.* at 565:14-17. The court finds that the only way Knulf could have obtained the information regarding Holland's statements regarding Overstreet and Myers, is if FPD passed the information on to him. Knulf has never spoken to Holland. In addition, the information from Furrer's notes and *Exhibit 24* (Knulf's notes) set forth above, corroborate Holland having spoken to Furrer about her concerns with Overstreet's demeanor and statements back in 1997 referencing Sharon Myers, as well as Overstreets' familiarity with Atterbury Wildlife Preserve and specifically Teal Marsh where Myers's body was found.

6. Holland's testimony at the evidentiary hearing is also consistent with her 2021 recorded interview with investigator Mark Mabrey on Hubbell's behalf. *See Exh. 149.* That interview was the first time Holland ever spoke to any attorney or investigator representing Hubbell (*EH.* 284:13-16). In

the interview, Holland provided information linking Overstreet to Myers's abduction that was consistent with her current testimony before this Court.

7. The Court finds Holland, both her demeanor and testimony, to be credible. Holland has no reason to be untruthful.

8. **The information that Holland provided to Furrer on November 6-7, 1997 (that on the day Myers went missing, Overstreet had left in the morning driving a white van, had been gone all day, and then had come home covered in blood) was suppressed by the State and is favorable to Hubbell, regardless of the two possible contradictory comments made by Holland in her taped interviews in 1997, which were focused on the Eckart murder.**

Testimony of Johnny Roberts and Related Evidence

9. Johnny Roberts ("Roberts") testified at the evidentiary hearing. Roberts is an employee of the U.S. Government in the Department of Defense, where he has worked for 12 years. *EH.* at 315:15-20. From 1995 to 1998, Roberts worked at European Tanning Systems ("ETS"), where he came to know Overstreet. *EH.* at 316:2-10. Overstreet worked at ETS at the time, interviewed Roberts for the job and then was Roberts's direct supervisor. *EH.* at 316:2-10. During his employment at ETS, Roberts developed a friendship with Overstreet based on their common interests, including their past military service. *EH.* at 316:11-25.

10. While Roberts worked at ETS, he observed Overstreet "looking at porn" on his work computer and using a website that Overstreet stated he used to "meet women." *EH.* at 317:26-318:7 Overstreet also told Roberts that he knew of remote places in Atterbury that nobody could find. *EH.* at 330:7-9.

11. Roberts and Overstreet had a "couple of conversations" about how Overstreet was unfaithful to his wife and "had a girlfriend" named "Sharon" who was from the Columbus area. *EH.* at 316:26-317:7-11. Overstreet told Roberts that he met his girlfriend online, that she was from the "Columbus area" and that they had "hooked up" in the Columbus area. *EH.* at 317:8-11; 325:10-18; 326:14-20. These conversations happened sometime in 1996, to the best of Roberts's recollection. *EH.* at 324:23-325:5.

12. On one day, Roberts observed Overstreet "on edge" and "just not himself." *EH.* at 318:26-319:10. Roberts asked what was on his mind, and Overstreet said, "Well, I got a girl pregnant." *EH.* Roberts asked "Who? The girl you messing around with?" Overstreet responded: "Yeah." *EH.*

13. In November 1997, Roberts saw news reports about the recovery of Myers's body. *EH.* at 319:16-19. Shortly thereafter, he learned that Overstreet was arrested for Eckart's abduction and murder. *EH.* at 319:20-22. When he heard about Overstreet's arrest in the Eckart case, he remembered that Overstreet's girlfriend's name was "Sharon" and that she was from the "same geographical area" as Sharon Myers. *EH.* at 319:23-320:8. This led him to believe that Overstreet may have been involved in what happened to Myers. *EH.* at 319:23-320:8 and 331:2-4.

14. Roberts then reached out to the FPD in 1997 to tell them what he knew and that Overstreet "may have or is involved" in Myer's disappearance/murder. *EH.* at 320:2-14. He informed FPD of the information he testified to at the evidentiary hearing which is set forth above. The conversation (back in 1997) with FPD lasted approximately 5-10 minutes. *EH.* at 320:15-16.

15. Roberts's evidentiary hearing testimony was corroborated in part by an investigative lead file that was produced from the FPD and JCPO files on the Eckart homicide. *See Exh.* 28 at 743 and *Exh.* 110 at 3992, Nov. 12, 1997 John Roberts Investigative Lead File. The investigative lead sheet shows that, on November 12, 1997, Borges received a tip from a "Source" named "Jon Roberts." *Id.* The tip reads: "Worked with Dean ETS, talked about hunting target shooting. Thinks female quit ETS 'Julie'? Because of harassment by Dean. May have displayed guns on the job. Also communicated on the Internet over sexually explicit acts. *Thinks girl in Columbus (Sharon Meyers) is related due to talking on Internet."* *Id.* (emphasis added). Other documents from the investigative lead file relating to Roberts show that police investigated and confirmed that Roberts was in fact employed at ETS. *Id.* at 3994 to 3995. Borges confirmed that the handwriting in *Exhibit 110* was his own but that he had no independent recollection of the contents of the investigative lead sheet. *EH.* at 146:19-147:11.

16. In addition, documents from the FPD and JCPO files confirm that Overstreet was employed at ETS from approximately February 17, 1995 to July 18, 1997. *See Exh.* 58 at 4806-4807; *EH.* 148:5-21. This corroborates Roberts's testimony regarding the timing of his friendship with Overstreet.

17. One of the papers seized from Overstreet's wallet when he was arrested in November 1997, listed several individuals who were Overstreet's "Most Important Numbers," and "Johnny Roberts" was included on this list. *See, Exh.* 148 at "Item 1S02"; *Exh.* 30 at 6150; *EH.* at 145:15-146:5. This corroborates Roberts's testimony regarding his friendship with Overstreet prior to Overstreet's arrest.

18. After Roberts's conversation with FPD, no police, prosecutors, or defense attorneys ever came to take a statement from him. *EH.* at 320:17-24. He was not asked about this information again

until decades later, when members of Hubbell's current legal team reached out to him. *EH.* at 321:21-23.

19. Roberts testified that, had law enforcement or private investigators interviewed him in 1997 or 1998, he would have been as forthcoming as possible with them. *EH.* at 322:4-7.

20. The Court finds Roberts's testimony to be credible and uncontroverted. The State did not make Hubbell aware of this witness (Roberts) or information Roberts provided to FPD, prior to Hubbell's trial. *See EH.* at 609:4-8.

21. Thomasson testified he would have interviewed Roberts, investigated the information, tried to corroborate it, and "[a]bsolutely" called him to testify at trial if Robert's information was consistent with what he told police. *EH.* at 609:22-610:9. Thomasson noted, "that would've been big." *EH.* 609:4-8.

22. In addition, Thomasson agreed that given some of the similarities he was aware of between the Myers and Eckart murders, finding a personal link between Myers and Overstreet, who was charged with Eckart's murder and had a DNA hit, would have been important evidence. *EH.* 609:9-17. If Thomasson had this evidence, Overstreet "definitely would've been an alternate suspect we would've put forth to the jury." *Id.* at 610:10-13. In addition, Thomasson would have used this evidence to further call into question the State's failure to adequately rule out other suspects, which is an argument he raised at trial. *Id.* at 610:14-20 The Court finds and agrees that this would have been critical evidence to support Overstreet as an alternate suspect, and to question the State's failure to investigate and rule out other known suspects.

23. Robert's information provided to law enforcement back in 1997, as well as Exhibit 29 at 743, Exhibit 110 at 3992 and 3994-3995, Exhibit 58 at 4806-4807, Exhibit 148 Item 1502, and Exhibit 30 at 6140, was suppressed by the State and is favorable to Hubbell.

Evidence Provided by Dawn Martin Regarding Overstreet Knowing Sharon Myers

24. An Investigative Lead file on Dawn Martin ("Martin") was produced from the FPD and JCPO files on the Eckart case. *See Exh. 104* (JCPO) and *Exh. 114* (FPD).

25. Martin was re-interviewed on November 19, 1997 by Byerly of the Johnson County Sheriff's Department ("JCSD"). *Exh. 114* at 03741. Martin is the mother of two children of Ty Chaney ("Chaney") who was her ex-boyfriend, and, the critical informant in the Eckart case who provided information that led to Overstreet's arrest. *Id.*; *EH.* at 71:25-72:11.

26. During the interview, Martin revealed that Chaney told her that Overstreet knew "the girl from Columbus"—*i.e.*, Sharon Myers:

> Q: Okay. Also, I think that you ... when I first got here I'd asked ya some information I had heard that, uh, you had possibly told somebody or you did tell somebody that the ... reference the girl in Columbus . . .
> A: Uh-hum (affirmative).
> Q: Or from Taylorsville, that you seemed to think that the Overstreet's knew them ... knew her?
> A: I asked Ty if he had anything to do with that or if he knew that girl and like said this morning, he said "Yeah", and that he didn't know the Kelly girl. But, he knew the girl from Columbus.
> Q: Who knew, Overstreet's or Ty?
> A: Uhm, Michael Dean.
> Q: Did he say how he knew that?
> A: No. He just, (inaudible) said that he had to get off the phone and he had phone calls coming in and stuff like that.
> Q: Okay. So, you're pretty sure that's what he said?
> A: I'm pretty sure he said that. I'm like . . . I was talkin' to him the other day about too and he was like, "No, I never said that." (Inaudible.)
> Q: Okay. But you're more convinced that he did say that then he's not?
> A: Yeah.
> Q: Not convinced that he didn't say that?
> A: Yeah, uh-huh (affirmative).

Exh. 114 at 3744, *Exh.* 104 at 1272.

27. Borges testified that he would have reviewed this information in his capacity as the Task Force Commander of the Eckart homicide. *EH.* at 119:23-25, 120:25-121:4.

28. Information regarding Martin and Chaney was not disclosed to Hubbell prior to his trial. *EH.* at 614:7-14. Thomasson was not aware that Chaney was the original informant in the Eckart case who led the police to Overstreet. *EH.* at 614:15-17.

29. Thomasson testified he would have talked with Chaney and Martin and searched for other witnesses that could corroborate any link between Overstreet and Myers, noting, "We spent a lot of time trying to work on the alternative suspects." If this evidence held up, Thomasson would have used it at Hubbell's trial to support a theory that Overstreet was the true assailant and to support the argument that the State did not adequately rule out suspects that did not point to Hubbell. *EH.* at 614:7-615:17.

30. The information regarding Martin and Chaney set forth above, and specifically Exhibit 104 at 1272 and Exhibit 114 at 3741 and 3744, was suppressed by the State and favorable to Hubbell.

31. With the information withheld by the State and set forth above, there are three unrelated sources providing some information linking Overstreet to Myers: Holland, Roberts and Martin/Chaney. The State failed to make Hubbell aware of any of them. This Court finds Thomasson would have used the information at trial as he testified.

Evidence that Overstreet was collecting newspaper articles about the Sharon Myers and Kelly Eckart murders

32. On November 7, 1997, the ISP conducted a search of Overstreet's residence, and ISP prepared a Property Record & Receipt from that search. *See Exh. 109 at 8286-8289*. This property record showed that, during the search, the ISP collected a total of four (4) full *Daily Journal* newspapers:
    a. An October 31, 1997 *Daily Journal* newspaper that contained no information about either the Myers or Eckart murder. See *Exh.* 32 at 6986.
    b. A November 3, 1997 *Daily Journal* newspaper. One article is titled "Skeletal remains found at Atterbury" noting that "police believe the remains are those of Sharon Myers." *Exh. 109* at 8288 and *Exh. 32* at 6987.
    c. A November 4, 1997 *Daily Journal* newspaper. One article is titled "Grim news: Body identified as missing Arvin employee" stating that "[d]ental records had confirmed that the body found Saturday near Camp Atterbury is that of Sharon Myers." *Exh 32.* at 6991 to 6992. The article also addresses authorities examining the possible connection between the Myers and Eckart murders, noting similarities between the two, and also setting forth that the police were "definitely going to compare notes." *Id.*
    d. A November 6, 1997 Daily Journal newspaper. One article is titled "County coroner fulfills responsibility to the public" which noted that the coroner had determined that "Sharon Myers of Taylorsville was murdered by strangulation" and "[h]er death is a homicide." *Exh. 32.* at 6989.
33. Photos were taken during the execution of the search warrant and entered at the hearing as *Respondent's Exh.*'s F, G, H, I, and J. The newspapers were found scattered throughout Overstreet's very cluttered home in different areas of the home and no specific articles had been clipped out of the newspapers. *EH.* at 720-725; *EH.* at 126-129.
34. Borges could not recall whether FPD conveyed to the CPD that these newspapers were recovered from Overstreet's residence, but that it would be the practice to do so. *EH.* at 129.

35. There is nothing to suggest the newspapers that were dated within one week of the search, were kept by Overstreet specifically due to articles referring to Myers or Eckart, and simply had not been thrown out yet, given the cluttered nature of the home.

36. **Information that ISP collected the above four newspapers from Overstreet's residence on November 7, 1997 is not material exculpatory evidence to Hubbell.**

Detective Knulf's Investigative Notes

37. CPD Detective Knulf testified at the hearing. Hubbell alleges that Knulf's Investigator's Notes contain material exculpatory evidence and were not produced to Hubbell's trial counsel prior to Hubbell's trial.

38. Two separate versions of Knulf's investigation notes were entered into evidence during the evidentiary hearing.

    a. *Exhibit 24* is a 54-page document titled "Investigator's Notes 97-13061." It is a document Knulf prepared containing information that he learned during the course of the Myers homicide investigation. *EH.* at 357:22-359:3.[3] The document contains dated entries with the first entry dated May 13, 1997, the day Sharon Myers went missing. The final entry is dated March 16, 1998.

    b. *Exhibit 36* is a 24-page document titled "Supplementary 97-13061." The document contains dated entries with the first entry dated May 13, 1997, the day Sharon Myers went missing. The final entry of *Exhibit* 36 is dated April 8, 1998.

    c. The entire first page of *Exhibit* 24 and *Exhibit* 36 are identical, with the exception of the title.

39. Knulf was the lead investigator on the Myers homicide from the start of the investigation until he was removed from the case nearly a year later. *EH.* 346:17-25, 412:15-26, and 413:2-9.

40. Knulf testified that the CPD conducted the investigation jointly with other law enforcement agencies, including the FBI, the ISP, the Bartholomew County Sheriff's Department ("BCSD"), FPD, and the Department of Natural Resources ("DNR"). *EH.* at 347:18-349:7 and 349:3-12. Knulf also acknowledged that the CPD also contacted and shared information with other law enforcement agencies, including the FPD and other Johnson County law enforcement. *EH.* at 349:3-12.

[3] The State stipulated that *Exihibit* 24 was produced from the CPD files in 2023 in response to a subpoena from Hubbell in connection with his federal habeas case. *EH.* at 706:2-14. It was not found in the BCPO files.

41. As lead investigator, all information learned by other CPD officers was passed on to Knulf. *EH.* at 350:6-10. Knulf acknowledged it was his responsibility to gather information received by other police officers and compile that into his report. *EH.* at 374:9-16. Knulf took handwritten notes during the Myers investigation and then converted those notes into a typed report as the events happened in the investigation. *EH.* at 372:3-17. Knulf followed these practices in preparing *Exhibit 24*. *EH.* at 372:18-20.

42. Knulf agreed at the evidentiary hearing that *Exhibit* 24 showed that he received information implicating or connecting Overstreet to Myers's abduction and death. *EH.* at 387:2-8. He understood that this information would be exculpatory if someone other than Overstreet was charged with Myers' homicide. *EH.* at 387:15-17. He knew that this was information that needed to be turned over to the prosecutor's office, and knew that withholding this information from Hubbell would be a violation of Hubbell's constitutional rights. *EH.* at 387:18-24.

43. It is undisputed that neither *Exhibit 24* nor *Exhibit 36* were produced to Hubbell's trial counsel during the discovery process or before Hubbell's jury trial. A review of the record shows that investigative notes, including Knulf's, were zealously litigated at the trial level and ultimately determined by Judge Heimann not to be subject to discovery. However, such ruling did not absolve the State of its duty to disclose exculpatory evidence under *Brady v. Maryland,* which the state agreed it would do. The State was required to turn over any exculpatory evidence within the documents to Hubbell and prior to trial.

44. Knulf admitted that Hubbell was a suspect in the case from the first day of the investigation in May 1997, and any evidence implicating Overstreet in the Myers murder would not be useful in charging Hubbell with Myers' death. *EH.* at 413:24-26; 415:7-13.

    a. During one of the first contacts by FPD with CPD regarding the Overstreet investigation, Jarrard from CPD informed Officer Tennell of FPD that they had a suspect in the Sharon Myers case, and that he was "WM 5'8 shaved or military hair cut. Suspect – Jason Hubbell. They no (know) he did it but can not prove it without a body." *See, Exh.* 23 at 5997.

    b. Knulf admitted that one of the eyewitnesses, Steve Prosser, described a man walking behind Myers in the Arvin parking lot as having "reddish-blonde" hair. *EH.* at 401:18-402:2. Knulf admitted that Hubbell did not have reddish-blonde hair and did not match Prosser's description of this man. *EH.* at 402:7-20.

    c. Knulf admitted that, during his investigation, he learned of many similarities between the Myers and Eckart homicides.

i. Eckart and Myers were both abducted in a van. *Id.* at 395-96.

ii. Eckart and Myers both had their shoes removed during their abduction. *Id.* at 385:1-4.

iii. Eckart's abduction had a connection to her place of work at Wal-Mart. *Id.* at 396:7-9. Myers was abducted from her place of work at Arvin.

iv. Both Eckart's body and Myers's body were discovered in a wooded area. *Id.* at 369:15-370:12.

v. Both Eckart and Myers were believed to have been killed in Atterbury. *Id.* at 396:25-370:7

vi. Eckart's cause of death, like Myers's cause of death, was ligature strangulation. *Id.* at 378:10-12.

vii. The ligature used to kill Eckart, like the ligature used to kill Myers, was from each woman's own clothing. *Id.* at 378:13-15, 386:6-11.

d. Knulf admitted that he believed these similarities were "striking." *EH.* at 408:18-23. Due to these similarities alone, Knulf agreed that Overstreet should be considered as an alternate suspect in the Myers case. *Id.* at 426:26-427:4.

e. This Court finds that there were striking similarities between the Myers and Eckart murder, however and critically, beyond that, the State suppressed from Hubbell, evidence it had in its possession that could link Overstreet to Myers and/or her murder.

45. Consistent with Knulf's admissions, Hubbell alleges the following entries in *Exhibit 24* contain exculpatory evidence linking Overstreet to Myers that should have been turned over to Hubbell, prior to his trial and pursuant to *Brady*, but were not disclosed to Hubbell by the State:

a. First, on November 10, 1997, Knulf wrote that:

> "11-10-97 Knulf ...Lt. Jarrard had contact with the investigators on the Eckart case. He was told that their suspect had made a comment to his wife, while watching TV coverage of these cases, about both women being found without their shoes, and then asking her if she still thought that the boyfriend had done it. He was also told that their suspects brother was wearing a Columbus Regional Hospital sweatshirt when he was talked to, and that this brother works for Olsen Temporary Services and drives a white van."
> *Exh. 24* at 44.

i. Knulf admitted that, as an experienced law enforcement officer, he found Overstreet's comment to his wife to be suspicious. *EH.* at 426:13-16. Nevertheless, Knulf admitted that he did not recall interviewing Overstreet's wife

or having knowledge of any follow-up on this information/lead. *EH.* at 427:15-428:9.

ii. Similarly, Knulf admitted that the fact that Overstreet's brother, Scott, wore a Columbus Regional Hospital ("CRH") sweatshirt and drove a white van would have been important to his investigation. *EH.* at 433:2-5. Knulf admitted that any reasonably trained law enforcement officer would have attempted to interview Scott. *EH.* at 443:16-18. Nevertheless, Knulf made no attempt to interview Scott and did not direct anyone to do so. *EH.* at 433:17-24, 443:24-25.

iii. Thomasson testified this entry was "significant" and never disclosed. He stated that had he known the above information, he would have talked with people at Olson Temporary Services agency that employed Scott to corroborate the above information. *Id.* at 642:13-643:3.

iv. Knulf never disclosed *Exhibit 24* to Thomasson, but did briefly testify to this information in his pre-trial deposition in October 1998, prior to the Hubbell trial, when Thomasson asked if there was any information associating Overstreet to the Myers' investigation. Knulf noted this as the only information he had, but did not specify Scott or Mike Overstreet. Thomasson further noted officers did not speak to the right employer for Overstreet, and Thomasson would have. *See EH.* at 641:14-26 to 643:2-3.

b. Second, on November 18, 1997, Knulf wrote:

i. "Lt. Jarrard mentioned to me that Jack Bedan had said something about Scott Overstreet, their suspects brother, knew Sharon Myers. He also said that Bedan would be talking with a female that may have some information for us." *Exh. 24* at 46.

ii. Knulf admitted that any reasonably trained law enforcement officer would have spoken with Bedan (an ISP detective) about his information, but admitted that he did not do so. *EH.* at 443:13-15, 22-23.

c. Third, on November 19, 1997, Knulf wrote:

i. "I received a call from Steve Byerley ... of the Johnson County Sheriff Department. He said that he was interviewing Dawn Martin at 1:00 PM, and he wanted to know what type of jewelry Sharon Myers was wearing at the time she

was abducted. I informed him that as far as we knew; all of her jewelry was recovered with the body." *Exh. 24* at 46.

ii. As discussed above, Martin provided the FPD with information from Ty Chaney suggesting that Overstreet personally knew Myers. *See Exh. 31* at 4304. Knulf did not interview Martin or Chaney. *EH.* at 453:15-454:6.

d. Fourth, on November 19, 1997, Knulf wrote:

i. "I received a voice mail from Terry Nicholson of Johnson County Sheriff Department. He informed me that the Eckart suspect had worked with Sharon Myers husband at one time; at the European Tanning Systems." *Exh. 24* at 46 to 47.

e. Fifth, on November 19, 1997, Knulf wrote:

i. "I called Byerly later in the day but he was out. I talked with John Borges of Franklin PD. I am to call him back tomorrow morning about talking with the individuals that are giving them this information." *Exh. 24* at 46.

f. Sixth, on November 20, 1997, Knulf wrote:

i. "I talked with John Borges and Steve Byerly about the possibility that Overstreet knows David Myers. Ty Chaney, the original informant in the Eckart case, had said that he heard Scott Overstreet say that he knew David Myers. Scott Overstreet worked at CRH as an electrician or maintenance person. They are going to look into this further, and contact me if anything comes up." *Exh. 24* at 47.

ii. Knulf admitted that he was aware from communications with Byerly that Chaney was the original informant in the Eckart case and that any reasonably trained law enforcement officer would have interviewed Chaney. *EH.* 453:15-17; 55:25-456:12. He did not attempt to interview Chaney or direct anyone to do so. *EH.* 453:18-23.

iii. On November 20, 1997 Knulf further wrote:

1. "I checked with David Myers about this information. He had never heard of European Tanning Systems, or the Overstreets. I left a message for Steve Thomas at CRH to check and see if Scott Overstreet ever worked there." *Exh. 24* at 47.

2. "I talked with Steve Thomas of CRH. He does not remember an Overstreet working in his area. He said that he may have worked with a contractor that has done some work for them, but he had no way to check that. I then checked with Human Resources. They stated that

there has never been an employee with the last name of Overstreet. *Exh. 24* at 48.

g. **The Court finds the above entries, cumulatively, was suppressed by the State and favorable to Hubbell.**

h. Thomasson testified that Terry Nicholson and Ty Chaney were not listed on any Witness or Exhibit List provided by the State to Hubbell. This information was significant to Thomasson as it placed a connection between Sharon Myer's husband and Overstreet, and Thomasson would have investigated all this information. *See EH.* at 643:12-645:16. Thomasson further testified that, if he had this information, he would have interviewed Chaney and Scott. *Id.* at 644:14-20

i. Thomasson further testified this information would have been helpful and presented at trial, and that Knulf omitted a lot of information answering questions at his pre-trial deposition than was in his 54 page notes. *EH.* at 645:13 to 646:18.

j. Thomasson took a pre-trial deposition of Knulf on October 21-22, **1998** (after Knulf had been removed from the case and his reports were complete) Mr. Thomasson asked Knulf:

   i. "Was any mention made of Kelly Eckart's murder during this investigation?" (referring to Myers' homicide). Knulf responded, "Sure." Thomasson then asked, "And Mr. Overstreet. Was there ***any information of any kind associating Mr. Overstreet with this murder***?" (emphasis added) Knulf responded, "Yes." Thomasson asked Knulf, "Where did that come from?"

   ii. Knulf then only testified to information received from Johnson County that Overstreet "once worked at Columbus Regional Hospital and possibly was connected somehow to David Myers because he works there." Knulf testified he "***checked and checked and double-checked but could never come up with any connection of any involvement he ever had.***" *Exh. 34* at 3907-3908; see also EH. 500:7-18 (emphasis added).

   iii. Knulf now admits he did **not** inform Thomasson of any of the other information he was aware of linking Overstreet to Myers that he obviously was aware of, including information provided by Holland implicating Overstreet to Myers'. *EH.* at 502:17-503:10, 509:19. According to Knulf, "he didn't notice at the time (of the deposition) that it wasn't brought up." *EH.* at 503:7-10.

   iv. This Court does not find Knulf credible. With the amount of information pertaining to Overstreet that Knulf was made aware of, and Knulf's admission

that he did not follow up an any of it, and considering his "redrafted" investigative notes from *Exhibit 24* to *Exhibit 36* (showing all information pertaining to Overstreet in *Exhibit 24* was removed from *Exhibit 36*), it would have been impossible for Knulf not to "notice." Knulf had his sight on one suspect only and that was Hubbell. This tunnel vision led to Knulf and CDP withholding material exculpatory evidence that either implicated Overstreet in the Myers' homicide and/or linked Overstreet to Myers.

v. Knulf admitted that, as to the majority of the information he did receive that implicated Overstreet in Myers' abduction, he "neither checked nor double checked the reliability of that information." *EH.* at 509:25-510:2.

vi. The State refused to produce a copy of the report Knulf brought with him to the pre-trial deposition (*Exhibit 36*); however, the report (*Exhibit 36*) Knulf brought with him had all the information pertaining to Overstreet removed. This Court does not find that to be a coincidence.

vii. Thomasson assumed Knulf was being as forthcoming and truthful as possible with his responses under oath (at the pre-trial deposition) and assumed that if the State had any information within their possession that linked Overstreet to the Myers' homicide, Knulf would have provided it. *EH.* at 596:23-26 to 597:2-6.

viii. The Court finds that Knulf intentionally failed to truthfully inform Thomasson of the information he was aware of linking Overstreet to Myers and implicating him in Myers' murder as an alternate suspect. The one piece of information offered during the pre-trial deposition referred to Scott Overstreet and not Dean Overstreet. Knulf's testimony was misleading and was a significant barrier to Thomasson in gaining information, or being able to investigate information, that could be material and substantive to the presentation of his alternate suspect theory, two-person suspect theory, or used to impeach witnesses ... such as Knulf.

ix. Thomasson was making an ongoing and diligent effort to obtain any information in law enforcement's investigation to link Overstreet. Knulf was a center stone of hiding this information from Thomasson and, it appears, the BCPO.

k. **The Court finds that the *Exhibit 24* entries set forth, and the entirety of *Exhibits 24* and *36*, was suppressed by the State and favorable to Hubbell.**

i. The two exhibits themselves, showing that Knulf (or another State representative if a person believes Knulf was not responsible for it) deleted the information found in *Exhibit 24* pertaining to Overstreet, from *Exhibit 36*, is material exculpatory evidence itself. The obvious, intentional deletion of the Overstreet information from one report to the other, calls into question the thoroughness of the State's investigation, the failure of the State to investigate alternate suspects as the State claimed to have done, and the State's knowledge that Overstreet was a viable alternate suspect.

ii. The specified entries above from *Exhibit 24* are material and would have led to evidence supporting a connection between the Overstreets' and the Myers that would have been admissible at trial or used to show the State failed to investigate alternate suspects (specifically Overstreet). In addition, the information may have led to further evidence assisting Hubbell's defense regarding David Myers as an alternate suspect. It was not for Knulf and/or the State to determine which of these statements within the report may have been important to Hubbell's defense.

46. In addition to the specific entry's in Knulf's investigative notes (in *Exhibit 24*) set forth above making reference to information concerning the Myers murder, Knulf's notes included other information Hubbell believes should have been disclosed pursuant to *Brady*, but was suppressed:

a. *Exh. 24* and *128* at 8 (May 17, 1997): "I had heard that Sharon Myers had been seen in Lowes just days ago, and had been in an argument with a male. David confirmed that they had been in there just prior to this incident. He was not sure what day it was, but he did become angry with her and raised his voice."

i. Thomasson noted this information would have been helpful at trial to support his theory of David Myers having potential involvement in his wife's disappearance. Thomasson stated he did not know if this information was significant but was another fact in trying to create reasonable doubt. *EH.* at 628: 15-26 to 629:2.

ii. This specific entry was suppressed by the State and favorable to Hubbell.

b. *Exh. 24* and *128* at 50 (December 9, 1997):

i. "12-9-97 Knulf ... I returned a call to Sherry Herron (phone number redacted). She told me she had heard a male, that she would not identify, make the statement that he was having an affair with a woman, and she came up missing and murdered after her husband found out about it." *Exh. 24* and 128 at 50.

ii. The remainder of the entry states as follows:

"Ms. Herron thinks that this statement was made in February or March of this year; at a local bar. I told her that our victim did not come up missing until May 13th. She then said that she may be incorrect on the month that she heard this. I told her to think about it, and if she could remember the correct date or any thing further; to contact me. *Exh. 24* and *128* at 50.

iii. Thomasson testified he did not receive any statements on Sherry Herron from the State and she was not disclosed as a witness. Thomasson would have "definitely" followed up with Herron, as this information fit with one of the Hubbell defense theories presented at trial, that David Myers believed that at the time his wife disappeared, she was carrying on an affair. *See EH.* at 647:12-26.

iv. This specific entry was suppressed by the State and favorable to Hubbell.

c. *Exh. 24* and *128* at 9: "There was a cleo report of a truck in Arvins parking lot with Kentucky plates on 5-13-97. Filed in leads to be followed up on."

i. Thomasson does not recall getting this information. *EH.* at 629: 15-16.

ii. It is noted that the information was in reference to a "truck" and not a "van."

iii. **This specific entry is <u>not</u> material exculpatory evidence.**

d. *Exh. 24* and *128* at 17: "I received a call from Judy burbrink in reference to her seeing a white van in a wooded area off of US 31 at the overpass. See tip sheet."

i. Thomasson found this information to be significant but not disclosed to him. *EH.* at 629: 16-22.

ii. This specific entry was suppressed by the State and favorable to Hubbell.

e. *Exh. 24* and *128* at 18: "I received an audio cassette tape from Lt. Jarrard. I was told that this was the tape from ISP Seymour on a 911 call that was received by them. This was from a request that the FBI had made after reviewing the phone records that had been subpoenaed. The tape was marked 5-12-97 7:47 PM."

i. Thomasson did not know anything about this information or whether it had anything to do with the case or not. *EH.* at 629:22-26 to 630:2-3.

ii. Thomasson testified he believed that the State, at their discretion, would determine what evidence to produce or not produce, which is a separate standard than producing material that is exculpatory under *Brady*. *EH.* at 630:4-11.

iii. No evidence was presented to show that this specific entry was favorable to Hubbell. **This entry is <u>not</u> material exculpatory evidence.**

f. *Exh. 24* and *128* at 19: "In reference to a fight in '95 with Cravins. Hubbell received a three (3) day suspension, and Cravins received a five (5) day suspension.

i. Thomasson thought Cravins was the name of a young man at a bus stop who testified at trial about a timeframe of when Hubbell drove into his house, and that Cravins' mom was a significant influence. Thomasson did not know whether there was a connection between the Cravins who was a witness and the one mentioned in Knulf's notes. *EH.* at 630:22-26 to 631:2-3.

ii. This information was not disclosed to Thomasson, and therefore the opportunity to investigate whether there was a connection or whether the witness had a motive to testify was lost. *EH.* at 631:4-9. However, considering the testimony, **this information is <u>not</u> material exculpatory evidence.**

g. *Exh. 24* and *128* at 33:

i. From an 8-20-97 Knulf entry: "I had received a call a few days ago about a Tim Scroghen possibly having some information on seeing a white van near a lake. The CLEO caller started that Tim had a moving business and had seen the white van twice at this lake. She had no further information but was afraid that Tim would not call us. I had not been able to reach Mr. Scroghen until this morning. He told me that he had seen a white Chev. van near Neimillers pond on south Marr. behind LNP. The drive was a W/M approximately 35 years old. He was wearing sunglasses and asked a worker to move a piece of equipment so that he could get to the pond. Then van had no windows on the sides. Mr. Scroghen said that he had come on station about 2-3 weeks ago and gave this information to the front desk officer. This information was never forwarded to me. I have asked Mr. Scroghen to come in and look at the pictures in the front lobby to see if he can identify the officer. Mr. Scroghen has a family member that knows the parents of David Myers. This information was given to them. This apparently is the reason that Myers searched this area without notifying us. He knew that we had received this information and did not act on it."

ii. "9-3-97 Knulf...I phoned Tim Scroghen to see if he had come in and looked at the officers photos in the lobby. He state that he had, not but he had looked at pictures of white vans. When I asked who was showing him pictures of white vans; he responded that they didn't want him to tell me who they were. He also added that they know a second person that was involved and what really happened. He said that the van he pointed out had no windows on the sides."

iii. Thomasson testified this information would have been important to know as a defense attorney as it discusses a white panel van and two people being involved. *EH.* at 631:11-26 to 632:2-6 and 15-18, and 634:20-26 to 635:2-4.

iv. Thomasson explained the defense always speculated that more than one person was involved in the Myers homicide but they could not prove that there were two people involved in the abduction. *EH.* 632:2-10.

v. Knulf admits that the information he and other officers received from Scroghen, that he saw a white van that had no windows and believed this was related to the Myers investigation, would be exculpatory to Hubbell. *EH.* 567:13-20.

vi. **This information was suppressed by the State and favorable to Hubbell.**

h. Knulf admitted at the hearing that, during his investigation, he learned that Scott Overstreet had been implicated as assisting Overstreet (his brother) in the Eckart abduction and murder. *EH.* at 470:3-6. However, when Knulf received the above information from Scroghen, he "wasn't real concerned on the tip or location," as it "didn't match his theory of the case." *Id.* at 471:17-472:23. Instead, he was "concerned that information may have been received at the front desk and it wasn't passed on" to him. *Id. 471:4-11*; *Id.* at 472:15-16; *Id.* at 568:2-6. ***Knulf admitted that he was "receiving information from other departments" as well as his own, "implicating the Overstreets' in the Myers investigation."*** *Id.* at 473:14-16 (emphasis added). Knulf admitted that any reasonably trained law enforcement officer should have interviewed Scroghen to determine what information he knew tying a second person or white van to the Myers homicide. *Id.* at 473:21-26. ***Knulf admitted that he did not do so, and did not recall directing anyone to do so.*** *Id.* at 474:2-6 (emphasis added).

47. Thomasson testified he was not made aware at any time that the investigators from the Myers and Eckart murders were in frequent ongoing communication. Thomasson testified that had he known, he would have "pushed even harder" to find out what the conversations between the investigators were and what the similarities were between the two murders. *See EH.* at 636:18-637:7. In addition to the above entries from *Exhibits 24 and 128*, Thomasson pointed out the following information from *Exhibits 24* and *128* that he believed would have been important to know in preparing Hubbell's defense, and that he would have investigated further; however, none of the information was given or disclosed to him by the State (*See, EH.* at 637: 8-23):

a. *Exhs. 24* and *128* at 35: "10-2-97 Knulf... There was an abduction last week in Franklin, In. of an 18-year-old female. Her body was discovered a couple of days ago in a wooded area in Brown County. Lt. Jarred and myself met with the investigators this morning. There is no reason at this time to suspect that there is any connection to our case or suspect, but *we will stay in touch with them and keep an open mind.*" (emphasis added)

b. *Exhs. 24* and *128* at 36: "10-17-97 Knulf...Richard Jefferies a security guard at Arvins 17th Street Plant (378-1540) reported a older white van following two female employees in their parking lot. This occurred at approximately 5 AM on 10-14-97. The driver was W/M with long greasy black hair. There were no passengers in the van. They thought the van was a '79 or older and may have been a Ford. I do not suspect that this is involved in this case, but a request for extra patrol was sent to third shift.

    i. Thomasson testified that some witnesses had described the male approaching Myers' in the parking lot the morning of her abduction had longer hair and in addition, this description is consistent with Eddie Harrison, who Thomasson presented as an alternate suspect in the Hubbell jury trial. *EH.* at 663:2-9.

    ii. Eddie Harrison was called "Crazy Eddie" and had admitted to killing Myers, told people that he did it, and threatened people. *EH.* at 616:7-8.

c. *Exhs. 24* and *128* at 37: "10-27-97 Knulf...I went to Arvins and talked with Shannon Furgeson and Greg Edwards. They told me that Mark Williams had missed a couple of days of work recently. When asked why; he responded something about a homicide and killing someone. He was referred to Quinco for counseling. He told them that he was only kidding. They gave him a clean bill of health and sent him back to work.

    i. Thomasson was aware that Shannon Ferguson and Greg Edwards worked in Human Resources at Arvin with Myers. *EH.* at 637:14-23.

d. Call from Ruth Straugh:

    i. *Exhs. 24* and *128* at 41 (from 11-4-97): "5:00 PM...I received a call from Ruth Straugh (********) and was told that her two teenage sons had been fishing at Teal March back in June or July. They had walked up into the woods and found some bones. They assumed they were deer bones and they started crushing them. They then saw a red sweater and some white panties. They then got scared and left the area. She is afraid that this may have been human bones. Her sons will take to this area tomorrow. We will turn is over to ICO and ISP."

    ii. *Exhs. 24* and *128* at 42 (from 11-5-97): "There have been rumors going around about another body being found near Teal Marsh. This is apparently from the bones found by the Straugh kids. I was later advised by Jack Bedan that they were located and found to be animal bones. No clothing was found."

iii. Knulf testified that all of Sharon Myers clothing was recovered with the remains. *EH.* at 545-46.

iv. Thomasson testified that the State never disclosed to him information from Ruth Straugh about how her two teenage sons found a red sweater and white panties near bones in Teal Marsh and started crushing the bones. *EH.* at 638:7-19. Thomasson testified that the State presented evidence of red fibers against Hubbell and that, if he had known there was a piece of red clothing in the vicinity of Myers's body, he "[a]bsolutely" would have used that to call into question the fiber evidence. *Id.* at 638:14-26. Thomasson further testified that evidence that the crime scene could have been contaminated would have been "huge" at trial. *Id.* at 639:7-11. He testified that, if he had learned this information, he would have interviewed both Straugh and her two teenage sons. *Id.* at 664:25-665:26. And if the boys said that they had seen a red sweater and panties at Teal Marsh, Thomasson would have "put them on" to "create doubt" about the fiber evidence against Hubbell. *Id.* at 665:25-666:5.

v. Ruth Straugh is deceased.

e. Knulf noted on "11-6-97: We received a FAX from Lt. Doug Cox of Johnson County Sheriff Dept. In reference to a subject named Jim Rominger. Jim had recently seen some subjects pick up a black sweatshirt with roses on it in the Teal Marsh area. No reason to think that this is involved with this case." *Exh. 24* at 43.

i. The full Investigative Lead Sheet dated 11-4-97 received by Ofr. Cox stated the following:

"Jim Rominger of Franklin called me here at the Sheriff's office. He advises that he fish's a lot in the Teal Marsh area. He remembers a foul odor near the marsh in May of 97. He further advises that he was fishing recently at the Teal Marsh. He was attempting to catch a couple cats to take them home. He found a sweatshirt under some brush. The sweatshirt was black with roses on the front. Recently while fishing he saw two white males pull up in a white utility truck. One white male was 6'2" and was wearing gray coveralls. The second subject was 5'6". Both are white males. The subjects picked up the sweatshirt and took it with them when they left." *Exh.* 42 at 3335 and *Exh.* 44 at 3248.

ii. The description of the two individuals could be consistent with the appearance of the Overstreet brothers; Overstreet was 6'1" tall, and his brother Scott, was

roughly 5'3." *See, Exh. 55* at 1060 and *Exh. 43*. Knulf did not interview Rominger. *EH.* at 455:13-21.

iii. Jim Rominger is deceased. *See Exh. 131* (Death Certificate). Doug Cox did not testify at the evidentiary hearing.

f. *Exhs. 24* and *128* at 42 (from 11-5-97): "5:35 PM...I received a phone call from Anna King (***-**** **** S. US 31 Edinburg) and was informed that she had purchased a white '88 Chevrolet Astro from Jan Martin. The purchase was made on 9-23-97, but she had possession of it for about a week before. She believes Eddie used to drive the van to work at Arvins. VIN – 1GNCM15Z4JB115681 A check on that VIN number shows that van to have had a '96 plate number of 41H5703 and issued to Daniel &or Janice Martin."

i. "Eddie" refers to Eddie Harrison, an alternate suspect Thomasson presented to the jury. Thomasson testified he would have spoken to these witnesses and is another piece of evidence toward alternate suspects. *EH.* at 640:5-16.

g. *Exhs. 24* and *128* at 43: Top of the page and dated 11-6-97 is a list of witness names.

i. Thomasson was only provided two names from that list, Charlene Bryant and Mary Webbington.

ii. The witnesses were mostly related to information on Eddie Harrison, an alternate suspect Thomasson presented at the jury trial.

iii. Thomasson "knows" he would have "definitely followed up and talked to these people."

See EH. at 640:20-26 to 641:2-9.

f. *Exhs. 24* and *128* at 45: One entry discusses an interview by ICO Tony Wilson with Cassius Bennett. Thomasson found this important as it referenced the report Wilson had prepared that was 15 pages, which Thomasson obtained directly from Wilson, but when the State produced it to Thomasson, it had only 7-8 pages. Missing from the State's report was information from Cassius Bennett that was favorable to Hubbell. *EH.* at 585:25-586:23. This information was discussed in *Hubbell v. Ind. Supreme Court*, 754 N.E.2d 884, 893 (2001), where the Indiana Supreme Court determined that the full conservation report was discovered at least ten months prior to the actual trial giving Hubbell adequate opportunity to investigate the witness and alter trial strategy accordingly. Thomasson's point is that if he had not received the report directly from Wilson, he never would have known about Cassius Bennett or information provided by Bennett because the State did not disclose the information.

h. *Exhs. 24* and *128* at 48 (from 11-25-97): "3:50 PM...I talked with Phillip Burton, (redacted), about the tip called into Franklin PD with the four (4) Amos Hills employees. Mr. Burton told me that Eddie Harrison had said something about the Myers disappearance, but he could not remember what it was that he said, and he was sure that he was joking. He could not remember when this was, but it was sometime during the summer."

    i. Thomasson testified he never received any information on Phillip Burton from the State and Burton was not listed as a State's witness. Thomasson stated he would have investigated the above because "it could've definitely went towards one of our alternate suspects of Eddie Harrison." *EH.* at 646:18-22.

i. *Exhs. 24* and *128*:
    i. At 49 (from 12-5-97): "I received a phone call from Tammy Gillespi, the manager of Olson Staffing. She told me that she had hired a Carl Cavaneff of (redacted), and sent him to Arvins 17th street plant. While there he told several Arvins employees that he was the suspect in this case. He said that he could not help it that the police had talked to him, or the fact that his last day at the Gladstone plant was the day that she disappeared, or that his sister owned a white van that he drove. Arvins personnel called Ms. Gillespi and asked that he be removed from the plant. She called him to her office, and confronted him about this. He denied making the statements. Later in the conversation it was learned that he had lied on his application. He was terminated at that time. He told tammy that some one would pay if he was fired. Tammy said that he does not drive, but walks. He is approximately 5'10", thin, reddish blond hair and a beard. I went to his apartment, but was unable to locate him."

    ii. At 50 (from 12-10-97): "I phoned Greg Edwards about Mr. Cavaneff. He is going to check for his dates of employment at the Gladstone plant, and the conditions that he left under. He told me off the record that he was bad news. He allegedly has told other people that he was not only questioned, but that we had dug up his yard."

    iii. At 50: "12-12-97 Knulf...I was informed that Mr. Cavaneffs last day at Arvins Gladstone plant was May 8th of this year. Mr. Edwards said he was strange and did not put much faith into anything he would say. He did not feel that he would be a suspect in this incident, and has not heard of him being around the plant since he left."

j. *Exhs. 24* and *128* at 50 (from 12-18-97): "Lt. Jarrard gave me a taped conversation between Liz Mathis and himself. She was suspecting Donald Burton of this murder. He was involved in a large theft at Arvins, and allegedly said something about Sharon that worked at Arvins, that got him arrested. I spoke with Greg Edwards, and this is the theft that occurred at the Franklin plant. There is no reason to suspect that Sharon Myers had anything to do with this incident. Greg is going to attempt to see if an employee named Sharon was involved in this at the Franklin plant."

i. Thomasson testified there was no information or disclosure about Liz Mathis or Donald Burton. *EH.* at 648:3-19.

k. The specific entries set forth above were suppressed by the State and favorable to Hubbell (Exhibits 24 and 128 at 35, 36, 37, 41, 42, 43, 45, 48, 49, 50; Exhibit 42 at 3335; Exhibit 44 at 3248; Exhibit 55 at 1060; and Exhibit 43).

48. Thomasson testified that had he had all this information, it would have made a difference in how he represented Hubbell. EH. at 648:23-649:2. He would have "absolutely" investigated every lead and would have looked into any information connecting Overstreet to Myers. If any information was corroborated or panned out, he would have "absolutely" presented it at trial. *EH.* at 648:23 – 649:14. In Thomasson's view, the evidence that was not disclosed to him would have made Overstreet "an extremely strong alternate suspect." *Id.* at 649:21-26. This court agrees.

49. As noted earlier above, Knulf admitted that it was fair to say that some of the information he received implicating Overstreet in the Myers homicide was never put into any report or shared with Hubbell's defense. *EH.* at 411:23-412:8; 417:2-4; 420:22-421:5.

50. Knulf believes that there were several pieces of information that were brought to him during the course of the Myers investigation that connected Overstreet to the abduction and murder of Sharon Myers, and several pieces of information connecting Overstreet to Myers generally. *EH.* at 495:13-19.

51. Knulf did not follow up on leads that had the potential to connect Overstreet to the Myers abduction and homicide and did not alert Hubbell's attorney to the information:

    a. Knulf admitted that, based on the information he received, any reasonably trained law enforcement officer would have attempted to interview Overstreet. *EH.* at 404:17-18, 424:11-18, 443:19-21. Knulf admitted that he did not attempt to do so. *Id.* at 443:26-444:2, 563:16-19.

    b. Knulf did not ask the FPD for materials, including things like recorded interviews that had been generated through their investigation. *Id.* at 413:10-18.

    c. Knulf admitted that, outside of doing "some investigation" to determine whether Scott worked at CRH, he did not conduct any investigation into the tips that connected Overstreet or his brother to the Myers abduction and homicide case. *Id.* at 493:23-494:1. Knulf further admitted that he was not able to conclusively determine whether Scott worked at CRH through a temporary agency, and could not "rule that out." *Id.* at 451:12-24.

d. Knulf admitted that, based on his Investigators Notes, he had "documented several pieces of information connecting Mr. Overstreet to Ms. Myers." *Id.* at 495:17-19, 497:4-7. However, as to the majority of this information, he conducted no investigation whatsoever and did not "check that information to see if it was reliable or not." *Id.* at 496:20-23, 497:8-12, 497:25-498:5.

52. Knulf focused on Hubbell as the only suspect. Knulf was removed from the Myers homicide investigation prior to Hubbell being charged because he chose to speak to *The Republic* about the investigation. *EH.* at 510:14-21. At this time, the BCPO elected prosecutor had told him that he had concerns whether there was even probable cause to charge Hubbell with anything relating to Myers's death. *EH.* at 511:11-18. Knulf admitted that he spoke to the media because he was upset that the prosecutor's office would not charge Hubbell, and he wanted charges to be filed. *EH.* at 511:23-512:7 and 514:3-4.

53. *Exhibit 36* is the 24-page document titled "Supplementary 97-13061" with a sub-heading of "D. Knulf." *See Exh. 36.*[4] Knulf testified that, although everything in this document came from his Investigators Notes, and even though the document bore his first initial and last name, he "did not create" *Exhibit 36* "in this form in this length." *EH.* at 477:17-478:10. He further testified that he did not know who created *Exhibit 36* and had no knowledge of how it was created. *EH.* at 478:11-14.

    a. However, in Knulf's pre-trial deposition with Thomasson on October 21, 1998, Knulf stated that he believed the report was a supplementary report ***he prepared*** of his entire involvement with the Myers homicide investigation from May 13, 1997 to April 8, 1998, and that it had been compiled day by day. *Exh. 34.* at 3829-3832.

    b. Knulf admitted—and the State stipulated—that *Exhibit 36* did not mention Overstreet's name. *Id.* at 480:2-18. As Knulf reviewed *Exhibit 36*, he admitted that all of the information relating to Overstreet that was contained in *Exhibit 24* had been omitted from *Exhibit 36*. *EH.* at 481:19-490:23. Knulf agreed that this omitted information was exculpatory of Hubbell. *Id.* at 483:14-18, 485:7-8, 487:9-10, 490:17-18, 490:24-491:2.

54. "If" Knulf did not prepare *Exhibit 36* as he now claims, no evidence was presented at the evidentiary hearing as to who prepared it or when it was prepared. This Court again does not find Knulf credible and believes he did prepare *Exhibit 36*.

[4] The State stipulated that *Exh.* 36 was produced in 2023 from the BCPO file on the prosecution of Hubbell in response to a subpoena from Hubbell in connection with his federal habeas case. *EH.* at 706:16-23.

55. Knulf testified because he was removed from the Myers case he did not know what materials were provided to the BCPO from the CPD's file. *Id.* at 399:23-400:5 and 514:22-24.

56. Neither *Exhibit 24* nor *36* were provided to Hubbell's attorneys before Hubbell's jury trial.

57. Former CPD officer Ken Hardwick testified at the evidentiary hearing and the transcript of his November 11, 1998 pre-trial deposition was admitted. *See Exhibit 66*.

    a. Beginning in May 1998, Hardwick took over as the lead detective on the Myers homicide investigation after Knulf was removed. *EH.* at 691:20-692:6. Even though Knulf had been the lead detective on the case for a year, and Hardwick testified he would rely on the work that detectives did prior to Hardwicks involvement in the case, Hardwick never once talked to Knulf about the case. *Id.* at 692:9-26.

    b. When Hardwick took over on the case, he took two weeks to review the reports that were made available to him and discussed the case with CPD Lt. Bob Jarrard and Prosecutor Kathy Burns. *Id.* at 692:11-693:4. None of the reports he reviewed contained information relating to Overstreet, and neither Lt. Jarrard nor any other CPD detective provided him with information relating to the Eckart homicide. *Id.* at 693:11-694:8. Hardwick's belief, in May 1998, based on information others at the CPD provided him, was that the CPD had ruled out all alternate suspects. *Id.* at 698:6-7 and 17-23; 702:20-23, 703:13-20.

    c. The only information Hardwick received and informed Thomasson of at the pre-trial deposition that implicated anyone other than Hubbell, was reference to another person "they ran on the polygraph" (referring to Gary Burgess). *Exh. 66 at* 4053 to 4054 and *EH.* 529:21-23. Otherwise, Hardwick did not mention any evidence linking Overstreet to Myers's homicide. *Id.* at 4053.

    d. Hardwick testified that had he been aware of any information linking or connecting Overstreet in any way to the disappearance and murder of Myers, he would have disclosed that to Thomasson, and knew Thomasson would rely on his answers. *EH.* at 699:3-10.

    e. Hardwick believed that the entire file he had on the Myer's investigation was at the Prosecutor's office. *EH.* at 701:2-11 and 703:21-24. BCPO has admitted that, prior to Hubbell's filing of his petition for post-conviction relief, the BCPO did not have the full version of Knulf's investigative notes that contains information on Overstreet (*Exhibit 24*) in its possession. *See Exh. 77* at ¶¶ 7-8.

58. There is no evidence presented as to why *Exhibit 24* (Knulf's investigative notes setting out reference and information regarding Overstreet) was not provided to the Prosecutor's office. Everyone who testified claims not to know.

59. **The cumulative information discussed above contained in *Exhibit 24* was suppressed by the State and is favorable and material to Hubbell, other than that which is noted as not favorable to the State. The exculpatory evidence should have been disclosed to Hubbell.**

Evidence from John Mascoe, Regarding the Boat Ramp in Atterbury in May 1997

60. Petitioner alleges that John W. Mascoe ("Mascoe") provided information to law enforcement that he saw Overstreet and Sharon Myers arguing on a boat ramp in Atterbury in May 1997.

61. Mascoe passed away in August 2019. *See Exh.* 116, John Mascoe Death Certificate.

62. On January 15, 1998, Borges of the FPD received information from Pastor Jerry Hillenburg. *See, Exh. 93* at 4993 (Investigative Lead Sheet produced from FPD on the Eckart case) and *EH.* at 105-106. Borges notes on the sheet that Mascoe reported seeing Overstreet and Kelly Eckart talking in a checkout line at Walmart on August 15, 1997. *Exh. 93 at 4993.* A handwritten investigative supplement authored by Det. C. Tennell of FPD on January 20, 1998, notes that, "On 1/20/98 I went to WalMart and checked the archive report for 08/15/97. The report showed that Kelly Eckart did not work on that date." *Id.* at 4994.

63. Borges further notes on the lead sheet that Mascoe reported seeing "Michael (referring to Overstreet) + Sharon Myers talking on a boat ramp on Atterbury Fish & Wildlife Area." *Exh. 93* at 4993. The investigative lead file includes a transcript of a recorded interview of Mascoe four days later on January 19, 1998.

64. In that interview, Mascoe described two occasions in May 1997 where he saw Overstreet in Atterbury. On the first day, which Mascoe believed was May 21, Mascoe was fishing at Pisgah Lake in Atterbury. *Exh. 93* at 5005. As he was backing out of his parking spot, he saw a man driving a light, two-tone green van, pull into the parking lot. *Id.* Mascoe watched him to make sure he didn't drive into him. *Id.* Although Mascoe did not recognize Overstreet at the time, he later "saw his picture on TV during his arrest" and "recognized him as the person" he had seen. *Id.* at 5004. Mascoe provided FPD Det. Tennell with a diagram of Pisgah Lake and where he saw Overstreet in the light green van. *Id.* at 4998.

65. Two days later, Mascoe was entering the Driftwood Lake Area, another portion of Atterbury, to go fishing. *Exh. 93.* at 5006-07. He explained:

> I saw over on a, at a boat ramp there was a light colored van with three people outside of it. And I saw to the left of me, somewhat before I had passed or anything like that a black pickup truck with a boat trailer and then a small white vehicle that looked like a small white Bronco, I don't know what it was. I decided, well, be . . . I started coasting or stopping momentarily before deciding which route to take. I saw three people outside of the van that was facing downward on the boat ramp of uh, right side door open. They were, there was a man standing with his back to the van, a woman standing in front of him, facing east and then another man facing her just east of her, close and he was shaking his hand, finger in front of her face and uh, basically talking to her or shouting perhaps, I don't know I couldn't hear. But my car windows rolled up and gravel under the tires. I later recognized the women to be the person of Sharon Meyers who was found uh, dead and later also learned that the blonde head man who was shaking her finger, his finger in her face, I learned he was Michael Dean Overstreet and had also been arrested for another killing, uh, of Kelly Eckart. *Id.* at 5007.

66. Mascoe described the man who he later came to know as Overstreet as having "lighter hair, sort of blonde hair, who was towering over [the woman] by almost a head." *Exh. 93* at 5008. He was wearing "blue jeans" and a "flannel shirt of you know various checkered colors." *Id.* at 5009. The other man had "dark hair" that was "stringy down the sides" and came "close to the shoulders," and Mascoe believed him to be Scott, though he admitted that he "didn't look as much at the guy with the dark hair." *Id.* at 5008. Mascoe drew Tennell a detailed diagram showing where he saw the van parked on the boat ramp. *Id.* at 5000.
67. The FPD's investigative lead file also included Mascoe's employment records. These records show that Mascoe had taken "Vacation Leave" on both May 21 and May 23, 1997—the two days that he said he reported seeing Overstreet in Atterbury. *Exh. 93* at 5002.
68. This Court admitted into evidence a January 16, 2025 affidavit from Christopher Tennell confirming that the transcript of the recorded interview was accurate, to the best of his recollection, and that Mascoe had provided the drawings in the investigative lead file. *See Exh.* 143, Jan. 16, 2025 *Affidavit of Christopher Tennell*, at 1-2.
69. Borges further testified that he received this information as part of his work on the Eckart investigation and was "certain" that this lead was shared with the CPD. *EH.* 112:20-25.
70. The investigative lead file also contains a letter from Mascoe dated Dec. 21, 1998—11 months after his recorded interview and after Hubbell had been charged—in which Mascoe reaffirms his identification of Overstreet but claims that the other man he saw on the boat ramp "look[ed] more like" the "man currently charged with the Meyers woman's death"—*i.e.*, Hubbell (although Mascoe states he believes the man's name to be Hubbard). *Exh. 93* at 5016.

71. Thomasson was not made aware of the Mascoe information prior to trial. *EH.* 610:24-611:2. Thomasson testified that he would not likely have used all this information provided by Mascoe at trial in light of the subsequent letter Mascoe wrote implicating Hubbell. *EH.* at 612-13. However, he would have interviewed Mascoe and searched for other witnesses and evidence to corroborate Mascoe's account. *EH.* at 611:21-23 and 611:26-612:6. If Hubbell were found not to be at the boat ramp, Thomasson definitely would have used the information at trial. *EH.* at 610:24-611:8.

72. **Mascoe's subsequent letter 11 months later did not relieve the State of its obligation to disclose the initial information it received from Mascoe, to Hubbell, in a timely manner. The initial information was suppressed by the State and favorable to Hubbell.**

Evidence from Glenn Allee

73. This Court also admitted into evidence an investigative lead file on Glenn Allee that was produced from the FPD file on the Eckart case and a deposition transcript of Allee that was produced from the JCPO file on the Eckart case. *See Exh.* 38, Nov. 14, 1997 Investigative Lead File on Glenn Allee; *Exh.* 39, Jan. 22, 1999 Glenn Allee Deposition Transcript. Allee passed away in July 2016. *See Exh.* 117, Glenn Allee Death Certificate.

74. The investigative lead supplement shows that, on November 14, 1997, "Glenn Allee came in & gave a taped statement indicating that he saw M. Dean Overstreet in Walmart in July 97. He was arguing w/ his wife and made reference to a missing person bulletin of Meyer a female before leaving." *Exh. 38* at 4050. The investigative lead file includes a transcript of this recorded interview, which was conducted by Ketchum. *Id.* at 4055.

75. In the interview, Allee explained that, sometime in June or July of 1997, he saw Overstreet and his wife at the Wal-Mart in Franklin having a "horrific argument." *Exh. 38* at 4055 to 56. As the argument was ending, Allee explained:

> "[Overstreet] turned to the billboard that is on the wall that has missing children and he got the sickest lookin' grin and just pointed his finger and tapped the glass and I would ... swear when I walked by I looked and he touched the Myers' girl's photo. It made you like, what was that all about."
>
> *Id.* at 04058.

76. Allee said that he believed Overstreet did this "to himself ... with a sick grin." *Id.*

77. Borges confirmed that this was information that the FPD received during the course of its investigation. *EH.* at 114:3-115:16.

78. In connection with the Overstreet prosecution, Allee was deposed. In that deposition, he testified consistent with his recorded interview. *See, Exh.* 39 at 2085 ("I was shocked when I saw that."), *Id.* at 2087 ("And he pointed at it, tapped the glass and just laughed real sick and went on.), *Id.* ("But where her picture was, there was, it was there exclusively almost by itself."); *Id.* at 2092 ("It was like he was pleased with her missing.").

79. Thomasson testified that the State never disclosed to him information from Glenn Allee. *EH.* at 607:23-608:2. Had he received this information, Thomasson would have interviewed Allee and presented his testimony at trial. *EH.* at 608:3-17.

80. The Glenn Allee information was suppressed by the State and is favorable to Hubbell.

Nathan Burbrink Sees a Suspicious White Man in a White Van Around Time Myers Is Abducted

81. Detective Londeree with the CPD received information from Nathan Burbrink ("Burbrink") in a June 2, 1997 interview. *Exh.* 41 at 2186 at 3:05 pm. In the interview, Burbrink stated that, while he was "planting the fields at 300 North and Marr Road at the bridge," he "noticed a white full size van, possibly Chevy, parked back on the lane in the field." *Id.* The van "looked as if it was a work van," and as he pulled up, "he could see that it had racks built inside like a electricians van or plumbing van ... no markings on the van." *Id.*

82. As Burbrink looked inside the van, "a guy jumped up off the floor and got into the drivers seat and drove through the field to 300 West and then north on Marr Road." *Id.* The man was "medium build, brownish-blonde hair shoulder length and curly," and he was "wearing a white tee shirt and white painter pants." *Id.* Burbrink "could see another person on the floor but was unable to identify that person." *Id.* Burbrink believed that this occurred around the last week of April 1997. *Id.*

83. Thomasson does not recall if the State disclosed any information to him about Burbrink. *EH.* at 620:12-18. Thomasson cannot recall seeing anything about Burbrink in his files. However, if Thomasson had received this information, he would have investigated it and possibly used it to support a theory at trial that Overstreet, and not Hubbell, abducted Myers. *EH.* at 620:12-621:6.

84. Information presented at the evidentiary hearing is insufficient to show whether Thomasson possessed this information and therefore **this information is <u>not</u> material exculpatory evidence.**

Other Evidence Petitioner Alleges the State Withheld Implicating Overstreet in the Myers Murder

Evidence Regarding the Full Extent of Similarities Between the Myers and Eckart Abductions and Murders:

85. Evidence of significant similarities between the May 13, 1997 abduction and murder of Myers and the September 26, 1997 abduction and murder of Kelly Eckart ("Eckart") was presented at the evidentiary hearing. This evidence is relevant in assessing the materiality of the evidence that Hubbell alleges the State failed to disclose to Hubbell and would have been favorable to Hubbell's defense. The Court describes this evidence below.

    a. At Hubbell's 1999 trial, the evidence showed that, in May 1997, 26-year-old Myers worked as a clerk in the H.R. Department at Arvin in Columbus. *Exh. 82, R. at 2520.* On Tuesday, May 13, 1997, Myers left home shortly after 5:30 a.m. for Arvin, where she usually began work at 6:00 a.m. *Id.* at 2024-25, 2079-80. Later that morning, Myers's co-workers realized that she was not in the office. *Id.* at 2082-83. Myers's two shoes were recovered in the Arvin parking lot, and an investigation began. *Id.* at 2091-93, 2099, 2102.

    b. On September 26, 1997, 18-year-old Eckart finished her shift at Wal-Mart in Franklin, Indiana at approximately 11:00 p.m. and left for home. *Exh.* 111 at 261; *see also Overstreet v. State*, 783 N.E.2d 1140, 1146-50 (Ind. 2003). At approximately 1:00 a.m., Eckart's car was found abandoned and the FPD began to investigate. *Exh.* 111 at 261.

    c. Columbus, Indiana and Franklin, Indiana are approximately 30 miles apart. *EH.* 85:6-7.

    d. Approximately three days later, Eckart's body was recovered in Brown County, Indiana. *EH.* at 62:4-9.

    e. Eckart's cause of death was determined to be ligature strangulation. *EH.* at 62:24-26. The ligature had been fashioned from Eckart's own clothing—namely, straps from her bib overalls, one of her shoelaces, and her necklace. *EH.* at 63:2-7. The ligature was left around her neck. *EH.* at 63:8-10, 64:14-19; *see Exh.* 124.

    f. Borges, the Commander of Investigations at the FPD at the time of Eckart's death and the Task Force Commander of the Eckart homicide investigation, testified that within his law enforcement career, other than the Myers and Eckart murders, he was not aware of any other homicide cases in which the cause of death was ligature strangulation. *EH.* at 65:3

    g. Further, Borges was not aware of any other cases in involving strangulation by a ligature that was fashioned from the victim's clothing. *EH.* at 65:14-17. Borges testified that this was a very "personal" and "controlling way to end someone's life." *EH.* at 65:9-13.

h. Certain items of Eckart's possessions—including her shoes, glasses, pager, earrings, and hair scrunchie—were not recovered with her body in Brown County. *EH.* 63:11-18.

i. On October 2, 1997, investigators from multiple law enforcement agencies met to discuss and share information on the Myers and Eckart death investigation. *Exh.* 57 at 1253, *EH.* 86:25-26; 87:2-22. Several meetings took place thereafter to share information and to assure no missing evidence was missed on either investigation and to discuss the similarities between the two murders. *Exh.* 85:12-26; *Exh.* 58 at 4735; *EH.* 86:25-26; 87:2-22; *Exh.* 58 at 4782.

j. FPD informed CPD that Eckart's shoes were missing from Eckart's body and shared her cause of death as ligature strangulation. *Exh.* 85:23-26; *EH.* 86:25-26; 87:2-22; 88:10-23.

k. On October 18, 1997, Eckart's shoes were found in a pit toilet in Johnson County Park located within Atterbury. *EH.* 67:10-14. Borges agreed that the removal of a victim's shoes could be a mechanism for controlling a victim. *EH.* at 66:25-26. In his career in law enforcement, aside from the Eckart and Myers cases, he was not aware of any other cases in which a victim's shoes were removed. *EH.* 67:7-9. Borges marked the approximate location where Eckart's shoes were found on *Exh.* 125, a map of Atterbury. *EH.* 69:26-71:21.

l. On November 2, 1997, Myers' remains were found in a remote area near Teal Marsh in Atterbury in Johnson County, Indiana. *Exh. 82, R.* at 4386, 4579, and 4863.

m. Myers' cause of death was determined to be strangulation by a ligature that was fashioned from her pantyhose with her underwear inside. *Exh.* 82, R. at 4764-67. The pantyhose ligature, which showed signs of cigarette burns, had been left around her neck. *Id.* at 5184; *see Exh.* 123; *EH.* at 94:2-4. Her unhooked bra and jewelry were also recovered from the crime scene. *Id.* at 4504, 4593-94.

n. Overstreet was a smoker. *EH.* 208:11-14.

o. In early November 1997, Eckart investigators received a tip from Ty Chaney that connected Overstreet to Eckart's abduction. *EH.* 71:25-72:11. Chaney told Eckart investigators that Scott Overstreet ("Scott")—Overstreet's brother—knew who killed Eckart. *EH.* 72:5-6. This was the first information that Eckart investigators received linking Overstreet to Eckart's murder. *EH.* 72:7-9.

p. Based on the information police received from Chaney, on November 6, 1997, Scott, Overstreet, and Holland were brought to the FPD and interviewed. *EH.* 72:12-73:6, 280:19-25.

q. On the night Eckart disappeared, Scott met Overstreet at the Days Inn and then dropped Overstreet off at Atterbury. *EH.* 73:21-74:4; *see also Overstreet*, 783 N.E.2d at 1146-50. Melissa told police that, in the early morning hours of the same night, she picked Overstreet up from Atterbury. *EH.* 74:7-14. Melissa said that she did not come forward with this information sooner because she was afraid of Overstreet. *EH.* 74:15-19.

r. That same night, Overstreet was interviewed by police and denied all involvement in Eckart's abduction and murder. *EH.* 74:23-75:5.

s. The morning after Melissa and Scott provided information to FPD, Scott drove with FPD Eckart investigators and showed them the location in Atterbury where he dropped Overstreet off on the night of Eckart's disappearance. *EH.* at 72:12-21, 78:7-18. Police conducted a shoulder-to-shoulder search of the area and recovered Eckart's hair scrunchie and missing items from Eckart's body. *EH.* at 72:12-21, 78:7-18.

t. Based on the information Scott provided, Eckart investigators concluded that Overstreet killed Eckart at the location in Atterbury where these other items were found. *EH.* at 72:12-21, 78:19-23. Borges circled the approximate location where his investigation determined Eckart had been killed and wrote a "2" next to this circle. *EH.* at 79:7-80:13; *Exh.* 125. The locations where Eckart was murdered, where Eckart's shoes were recovered, and where Myers's body was recovered (identified on *Exh.* 125 with a circle and a "3") are all within roughly two miles of one another. *EH.* at 92:18-26, 98:10-13, 101:16-24; *Exh.* 125. Atterbury is approximately 45,000 acres. *EH.* at 92:14.

u. Based on the information provided by Scott and Melissa, Overstreet was arrested. *EH.* at 78:2-6. DNA testing determined that Overstreet's DNA was consistent with DNA from semen collected from Eckart's body. *EH.* at 82:9-21. The DNA analyst determined that the DNA was that of Overstreet to a "practical certainty" because the profile would only occur in one in billions of individuals. *EH.* at 82:12-21.

v. In 2000, Overstreet was tried for the rape, murder, and criminal confinement of Eckart. *EH.* at 82:22-23. Borges—who was Chief of Police at the time of trial—assisted in trial preparation and attended the trial. *EH.* at 82:26-83:19. Melissa—among others—testified

on behalf of the State at the trial. *EH.* at 83:20-23; *see Overstreet*, 783 N.E.2d at 1146-50. Overstreet was convicted of all charges and sentenced to death. *EH.* at 83:24-25.

86. In sum, the evidence presented at the February 2025 evidentiary hearing showed several significant similarities between the Myers and Eckart homicides:

    a. Both involved abductions of young women;
    b. the women were abducted in nearby towns;
    c. both women were abducted after arriving at or leaving their place of work;
    d. both women's shoes were separated from their bodies;
    e. both women were strangled with a ligature that was made of their own clothing;
    f. both ligatures were left around the women's necks;
    g. both women were believed to have been killed in Atterbury;
    h. Eckart's and Myers' body were found within 2 miles of one another.

87. Both murders, and the majority of the similarities between them, were covered extensively by local media. A "Daily Journal" article dated November 6, 1997 noted:

    a. "Both women were abducted near their workplaces. Both died of ligature strangulation. Both of their bodies were found in remote, wooded areas, and the shoes of both women were not found with their remains. Eckart, who disappeared Sept. 27 on her way from the Franklin Wal-Mart, was found dead in rural Brown County Sept. 30. Myers was abducted May 13 from the parking lot of the Arvin Industries plant where she worked in Columbus; only her shoes were left behind. Myers' bones were found Sunday at Atterbury, about a mile and a half from the Johnson County park public restroom where Eckart's shoes were found Oct. 11. 'The other similarities are striking,' Furrer said, 'They are attention-getters.'" *See Ex.* E.

    b. Attorney Thomasson researched over forty public news articles in considering similarities between the two crimes before Hubbell's trial. *Ex.* K.

88. In light of these similarities, any other information **linking** Overstreet to Myers or her abduction would have been significantly favorable evidence for Hubbell prior to his trial.

Evidence that Jim Rominger saw two men at Atterbury picking up a sweatshirt and evidence from Ruth Straugh about her sons seeing a red sweater and white underwear near bones at Atterbury.

These findings are set forth on pages 41-43 above. **This information was suppressed by the State and favorable to Hubbell.**

Incriminating Statements Overstreet made to Mark Hefley.

89. Hubbell alleges that the State withheld evidence of statements Overstreet made to his cellmate at the Johnson County Jail, Mark Hefley, which implicated him in the Myers homicide. Mark Hefley is deceased.

90. The transcript of a December 29, 1997 recorded interview of Mark Hefley by Ketchum that was produced from the FPD's files on the Eckart case, was admitted at *Exhibit 46*.

91. During the interview the following exchange takes place between Det. Ketchum and Hefley:

> Ketchum: Okay. You mention last ... last time I was ... uh, I talked to you that he keeps re ... referring to the, uh, Arvins Columbus, uh, case that the girl down there, Myers last name, had the same M.O. as the Kelly Eckart case?
>
> Hefley: Yeah. He said that it's kind of odd that this girl that was, uh, taken before, uh, before ... God, before he got arrested he was talkin' about before he got arrested, that some girl from Arvins and a bomb threat and how it was the same basic, uh, murder, uh, concept and how he probably ... he'd probably end up ... windin' up gettin' ... if he gets out of this one, gettin' the same, uh ...same, uh, charge on that too.

Ex. 46 at 4867.

92. Hefley further informed Ketchum that Overstreet "often made reference to the Sharon Myers case having the same MO as the Eckart case." *Exh.* 45 at 1797.

93. Thomasson was not made aware of this information prior to Hubbell's trial. Had he known, he would have interviewed Hefley, investigated it, and possibly used it at trial in support of a theory of Overstreet as an alternate suspect, depending on corroboration. *EH.* at 616:21-617:10.

94. This evidence, cumulatively, was suppressed by the State and favorable to Hubbell.

State withheld evidence that Overstreet's brother, Scott, owned a 1987 white Ford Econoline van.

95. The State did not disclose to Hubbell's attorney the fact that Overstreet's brother, Scott, owned a 1987 white Ford Econoline van. *EH.* at 607:2-9.

96. However, Hubbell's attorney discovered on his own that Overstreet's brother, Scott, owned a white cargo van. *EH.* at 601:5-11. Hubbell's attorneys pulled Scott Overstreet's vehicle registration. *EH.* at 607:2-9.

97. Although the State did not disclose this information, it was discovered by Hubbell's attorneys prior to Hubbell's trial from other sources, and, therefore, **not material exculpatory evidence**.

In November 1997, Overstreet spoke to a coworker, Nicholas Davis, about cheating on his wife and his van guzzling gas when he drove to Columbus.

98. The Court admitted into evidence a transcript of a November 8, 1997 recorded interview, in reference to the Eckart investigation, of Nicholas Davis ("Davis") conducted by FPD Detective Tim O'Sullivan and O'Sullivan's handwritten notes from that interview. *See Exh. 49* and *Exh. 50*. In the interview, Davis said that he was a co-worker of Overstreet's at Musicland in Franklin, Indiana, in October 1997. *Exh. 49* at 3779. On October 29, 1997, Overstreet asked Davis for a ride home from work. *Id.* at 3781. On that ride, Overstreet told him that he had cheated on his wife "about a month ago," then his "voice" and "whole body got shaky" before he "changed the subject." *Id.* at 3782. Overstreet then began saying that his van had four-wheel-drive and he had "drove it to Columbus a while back and it guzzled gas." *Id.* The van was gray with a little bit of teal on it. *Id.* Overstreet also told Davis that he had been working in another "factory" "in Columbus maybe" and that he was "a computer genius." *Id.* at 3783. O'Sullivan's notes from his conversation with Davis include the notes "factory in Columbus" right next to "I cheated on my wife." *Exh. 50* at 6768. Davis did not testify at the evidentiary hearing.

99. Sharon Myers went missing on May 13, 1997 and was not alive in the fall of1997. Davis was not sure the factory Overstreet referenced was in Columbus; however, **the information that Overstreet drove to Columbus a while back and may have worked at a factory in Columbus was suppressed by the State and favorable to Hubbell.**

Evidence provided by Laura Tearman regarding an incident in which she was driven around by two men and one of them had a brother named "Dean".

100. Hubbell did not present any evidence at the evidentiary hearing to support this claim.

Evidence that Roy Carver once towed Scott Overstreet's van out of a mud hole in Atterbury.

101. A November 12, 1997 investigative lead sheet relating to Roy Carver ("Carver") was produced from the FPD's file on the Eckart case. *See Exh. 52*. This investigative lead sheet showed that Carver, who owned a towing company, told police that Overstreet, another male, and a female approached him on June 22, 1997 and asked him to "pull his van out of a mud hole in Atterbury." *Exh. 52*. Carver told police that he towed Overstreet's van out, and he provided records confirming the date of the towing. *Id.*

102. Thomasson testified at the evidentiary hearing that the State did not disclose this information to him. If Thomasson had the information, he would have interviewed Carver and used the information as additional evidence showing Overstreet's familiarity with Atterbury. *EH.* at 618:6-16.

103. Exhibit 54 was suppressed by the State and favorable to Hubbell.

Items (other than the four newspapers addressed above) from Overstreet's residence that were collected that could have connected Overstreet to the Myer's murder.

104. In addition to the newspapers that were collected during the search of Overstreet's residence on November 7, 1997, and discussed above, Hubbell further suggests the following evidence collected could have connected Overstreet to the Myers homicide:

a. 2 blankets of different colors (neither one red). *See Exh. 109* at 8287 (Item 1716-1717).

b. Burns security shoulder patches and security badges. *Id.* (Items 1720, 1722).

c. Several guns, knives, bullets, and casings. *Id.* (Items 1719, 1721, 1723, 1724, 1726, 1727, 1713). *Id.*

d. Books, including an "Unconventional Warfare Devices and Techniques" handbook (Item 1732) and an "Encyclopedia of the World's Greatest Unsolved Crimes" (Item 1733). *Id.*

i. No evidence was presented as to how each of the items would have been exculpatory or favorable specific to Hubbell and the Myers homicide.

105. The search and collection of the newspapers and other items were not disclosed to Hubbell before trial. If they had been Thomasson testified they would have "looked into it, possibly used it," ... depending "on the number of articles and a bunch of other factors." *EH.* 624:12-21.

106. The evidence collected from Overstreet's residence by ISP is not material exculpatory evidence.

Evidence that Overstreet was a smoker.

107. Evidence was presented that Overstreet was a smoker. See *EH.* at 75:23-26 and 208:11-14. There was no evidence presented as to whether or not Hubbell was aware of this fact. **This information is <u>not</u> material exculpatory evidence.**

State withheld evidence that David Myers interfered with the investigation into the Sharon Myer's murder by conducting his own investigation, and David Myers suggested to others that he knew "what really happened" to Sharon Myers and that "a second person" was involved.

108. At Hubbell's trial, Knulf admitted that David Myers was considered an alternate suspect in the case. *Exh. 82*, R. at 5618-19. At the time Sharon disappeared, David Myers believed that Sharon might have been cheating on him with another man. *EH.* at 449:23-450:5. On the day Sharon disappeared, David Myers drove past several hotels to see if Sharon was there with another man. *Id.* at 450:6-8, 533:2-8.[5] In addition, early on in the investigation, David Myers told Knulf that he questioned whether he was the father of Sharon's child. *Id.* at 452:3-9; See Exh. 24 at 6 ("David said that there was some concern that the baby was his.").[6] Because of this potential affair, Knulf admitted that he had to consider the possibility that David Myers had retaliated against Sharon. *Id.* at 450:9-12.

109. Knulf admitted that David Myers interfered with the Myers homicide investigation, even after Knulf told David Myers to stop. *Id.* at 566:22-567:2; *See also, Exh. 24* at 33. During the investigation, David Myers was conducting searches on his own and trying to interview people on his own. *Id.* at 460:25-461:3. Although Timothy Scroghen (as discussed above) said that "they know a second person that was involved in what really happened (emphasis added)," there is no evidence it was David Myers who was the person making that statement. *EH.* at 467:12-17; *Exh. 24* at 33. It was "someone." *See EH.* at 634:20-23. However, this information was not disclosed to Thomasson. *EH.* at 634:20-25. This information would have supported Thomasson's defense theory that there was more than one person involved in the Myers' disappearance. *EH.* at 631:20-632:18; and *EH.* at 634:17-635:4. **The information that there may be a second person involved was suppressed by the State and favorable to Hubbell.** That statement is unrelated to David Myers' individual investigation.

110. Knulf "conclusively" ruled out David Myers as a suspect in the Myers homicide by May 15, 1997. *EH.* at 531:25-532:5. CPD received evidence that Ty Chaney said David Myers knew Scott

[5] Although Knulf later testified that he believed that David "was convinced the affair [with Gary Burgess] was over" by the time Sharon disappeared (*EH.* 534:17-19), Knulf testified at the evidentiary hearing that he thought he had learned information about Sharon carrying on a different affair. *Id.* at 534:20-26.

[6] Although David told Knulf that he "does now think that it is his," Knulf's notes make clear that the basis of this changed belief was not any blood or DNA testing. *Exh. 24* at 6; *EH.* at 534:8-16.

Overstreet. *See, e.g., EH.* at 502:5-7 and *Exh. 24* at 47. David Myers denied knowing Overstreet. *Id.*

111. Thomasson testified that at trial, the defense raised David Myers as an alternate suspect along with Eddy Harrison. *EH.* at 602:8-9. Thomasson's reasons for suggesting David Myers as an alternate suspect at trial was based upon:

a. David not doing anything for 2-3 hours after finding out Sharon Myers was missing;

b. After 2-3 hours, when Sharon still did not show up to work, David cruised around hotel parking lots looking for Sharon instead of going to Arvin, suggesting something was wrong, and that he believed Sharon was carrying on an affair;

c. David Myers had a description of what Sharon Myers was wearing the day she disappeared, but he had not seen her that day;

d. David Myers told officers that he had concerns Sharon's child was not his.

EH. at 602:8-24.

112. Thomasson testified that he is not sure he would have used the information of David Myers conducting his own investigation into the Sharon Myers murder, at Hubbell's trial. Thomasson testified, "Honestly, I don't know. To be totally honest. It's . . . His wife had disappeared; he wasn't happy with what the police were doing. Yeah, I don't know." *See, EH.* 633:19-634:5.

113. **The information regarding David Myers individual investigation in Sharon Myers' homicide is not material exculpatory evidence.**

Thomasson testified that had he received "all of this information" (set forth as "favorable" above and <u>not</u> including the information in Knulf's notes) he would have "presented it all together in support of a theory that it was Michael Dean Overstreet who abducted and murdered Sharon Myers." *See EH.* at 624:22-26.

114. It was never disclosed to Thomasson that Holland informed Furrer that on the day Myers was abducted, Overstreet left his house early in the morning, said that he was going job-hunting to Arvin in Columbus, and returned home at the end of the day covered in blood. *EH.* at 604:6-8 and 17-22. Thomasson testified that this sort of information would have stood out in his mind as a criminal defense attorney had he learned it. *EH.* at 604:23-26.

115. Thomasson testified that, if he received this information in discovery, he would have interviewed Holland and spoken to other witnesses who could have provided corroborating information. *Id.* at 605:2-4 and 607:10-13. If Holland provided information consistent with what he received in discovery, he testified that he "would have absolutely used her" at Hubbell's trial. *Id.* at 605:5-9.

116. Thomasson further testified that he did not receive from the State any other information from Holland, including (a) information about her husband's connections to Atterbury and Teal Marsh; (b) incriminating statements her husband made; (c) Overstreet pointing at a Missing Persons photo of Myers at Wal-Mart after an argument. *Id.* at 605:10-606:26.

117. Thomasson testified that the State never disclosed to him any information suggesting that Overstreet personally knew Sharon Myers. *EH.* at 608:18-21.

118. Thomasson also testified that he would have sought to interview or depose Overstreet himself. *Id.* at 607:14-16. If Overstreet invoked his Fifth Amendment privilege, Thomasson would have attempted to present that to Hubbell's jury. *Id.* at 607:14-18. Thomasson testified that he would have used this evidence in support of his argument that the State failed to adequately rule out other suspects. *Id.* at 607:19-22.

119. Overstreet testified at the evidentiary hearing and declined to answer any question regarding the disappearance and murder of Myers, invoking his rights protected by the 5th and 6th Amendments to the United States Constitution, and his rights protected under Article 1, sections 13 and 14 of the Indiana Constitution. *EH.* at 256:13-278:11.

120. Thomasson testified about his reaction upon learning of all of the undisclosed information:

> Q: Mr. Thomason ... After going through this information; what's your reaction seeing this, and particularly as to Detective Knulf's notes and the materials that you were seeking decades ago?
>
> A: Disappointment.
>
> Q: Disappointment in who?
>
> A: The State, the Prosecutor's Office; for not disclosing this information, and I think a lot of it should've been disclosed."
>
> *Id.* at 650:17-23.

121. Thomasson's testimony was credible and uncontroverted.

Other Relevant Testimony and Evidence

1. The Court admitted into evidence a March 7, 2024 affidavit from Lynnette Gray ("Gray"), the City of Franklin's legal counsel. *See Exh. 73; EH.* at 195:11-22. Gray's affidavit authenticated the full set of documents produced by the FPD in response to a subpoena from Hubbell and identified those documents based on their Bates stamps as HUBBELL-FPD-00001 through HUBBELL-FPD-08959. Ms. Gray's affidavit stated that these records were (1) made at or near the time of the occurrence of the matters described in the record by a person with knowledge; (2) made in the course and scope of the FPD's regular activities; and (3) kept in the course of the FPD's regularly conducted activities. *Exh. 73.* Gray testified at the evidentiary hearing how she made available the FPD's case file on the Eckart homicide to Hubbell's counsel. *EH.* at 196:19-197:26. Hubbell's attorneys, on two occasions, were allowed to review and make copies of the documents in Gray's presence. *Id.* at 197:5-22. Gray testified that Hubbell's counsel's handling of the documents was appropriate and that, on both instances, the files were left in the same state they had been in prior to their handling of the documents. *Id.* at 197:8-26. This Court finds Gray's testimony to be credible.
2. The Court admitted into evidence a March 8, 2024 affidavit from Lance Hamner, the elected prosecutor of Johnson County who also prosecuted the Overstreet case. *See Exh. 74.* Hamner's affidavit authenticated the full set of documents produced by the JCPO response to a subpoena from Hubbell and identified those documents based on their Bates stamps as HUBBELL-JCPO-00001 through HUBBELL-JCPO-03680. Hamner's affidavit further stated that these records were (1) made at or near the time of the occurrence of the matters described in the record by a person with knowledge; (2) made in the course and scope of the JCPO's regular activities; and (3) kept in the course of the JCPO's regularly conducted activities. *Id.*
3. As a summary, Borges testified that, in 1997, when he received any information relating to another criminal investigation, it was his practice to share the information with the agency conducting that investigation. *EH.* at 51:7-26. Borges recalled sharing several specific pieces of evidence linking Overstreet to the Myers homicide with Columbus investigators. *See, e.g., EH.* at 50:17-19, 85:14-86:2, 138:20-139:12. As to other evidence linking Overstreet to the Myers homicide, Borges testified that he was "certain" it was passed on, even if he did not have a specific recollection of it. *See, e.g., EH.* at 112:23-26, 143:16-19. Similarly, Knulf testified that he was communicating with Eckart investigators throughout the Myers investigation and believed that

he had "50 or 60" conversations with them about their cases. *EH.* at 406:16-22, 549:5-7. Knulf testified that, in these communications, they were investigating the possibility that the same killer murdered both Eckart and Myers. *Id.* at 395:11-13, 397:12-15. Knulf admitted that, during those communications, he learned that Hubbell had been forensically excluded from Eckart's murder. *EH.* at 381:24-26.

4. This Court admitted into evidence many exhibits that revealed the extent and nature of the communications between the Eckart and Myers investigators, in addition to testimony presented at the evidentiary hearing:
    a. *Exh.* 23 at 5997: 5ept. 30, 1997 FPD Investigative Lead Files re: Jason Hubbell (notes from Det. Tennell's Sept. 30, 1997 communication with Bob Jarrard (from CPD) regarding Hubbell where Jarrard stated "They no [*sic*] he did it but can not prove it without a body." "He refers to Hubbell");
    b. *Exh.* 57 at 1253: Oct. 2, 1997 Meeting Sign-In Sheet (identifying "Dennis Knulf" and "Bob Jarrard" from "Columbus P.D." as participants in an October 2, 1997 meeting with Eckart investigators);
    c. *Exh.* 24:
        i. at 35, 38, 40, 42-44, 46-48 (showing communications between CPD and FPD, ISP, and JCSD discussing the two cases and suspects, including on Oct. 2, Nov. 2, Nov. 5, Nov. 6, Nov. 7, Nov. 10, Nov. 18, Nov. 19, and Nov. 20);
        ii. at 47 (showing that Knulf relied on Eckart investigators to "look into this further" regarding evidence linking Overstreet to Myers and "contact [him] if anything comes up");
    d. *Exh.* 58:
        i. at 4782: Dec. 17, 1997 ISP Supplemental Case Report – Bedan (showing Oct. 8, 1997 meeting between Eckart investigators, Johnson County prosecutor, and CPD to "discuss the similarities of the abduction of Sharon Meyers");
        ii. at 4799-4800 (showing Det. Bedan's presence at recovery of Myers's body and measurement of distance between Teal Marsh to location where Eckart's shoes were recovered);
        iii. at 4801 (showing Nov. 4, 1997 meeting between ISP, FPD, and CPD to discuss "the similarities between the Eckart and Meyers murder cases");

e. *Exh.* 59:

   i. at 4733: Dec. 8, 1997 ISP Supplemental Case Report – Allcron (showing Det. Allcron's presence at the Myers crime scene "in case the investigation may link to the ECKART case);

   ii. at 4734-4735 (showing Nov. 3 and Nov. 4 communications between ISP, FPD, and CPD about comparing Hubbell's DNA to the Eckart crime scene);

f. *Exh. 61*: Nov. 2, 1997 Sharon Myers Homicide Secure Entry Log (showing presence of Eckart investigators at Myers crime scene, including Lt. Doug Cox, Det. Steve Byerly, Chief Harry Furrer, Det. Jack Bedan, and Det. Bud Allcron).

g. The State stipulated that any evidence that was in the possession of the CPD, FPD, or ISP, and is exculpatory, is attributable to the State for purposes of Hubbell's claim under *Brady v. Maryland*, 373 U.S. 83 (1963). *EH.* 57:16-58:4. The ongoing communication between the law enforcement agencies is significant to the materiality of the evidence they collected.

h. The State admitted that, prior to Hubbell's 1999 trial, the State was in possession of but did not disclose to Hubbell any version of Knulf's investigative notes. *See Exh. 77*, ¶¶ 3-13. The State admits that *Exhibit 24* admitted during the evidentiary hearing, Knulf's 54 page investigative notes, contains information that is exculpatory to Hubbell. *Exh. 77*, ¶6. However, the Bartholomew County Prosecutor's Office was not in possession of *Exhibit 24* prior to the filing of Hubbell's PCR. *See Exh.* 77 at ¶7, and any Knulf notes that the Prosecutor's Office obtained from law enforcement did not include information connecting Michael Dean Overstreet to the Myer's murder. *See, Exh. 77* ¶¶ 8-9.

CONCLUSIONS OF LAW

The Court finds that Hubbell, by a preponderance of the evidence, has shown that he is entitled to a new trial. The State failed to disclose favorable and material exculpatory evidence to Hubbell in violation of *Brady*. This failure eliminated the ability of Hubbell's attorneys to obtain crucial evidence linking Overstreet to Myers and implicating Overstreet in Myers' murder, in order to include Overstreet as a viable alternate suspect. This failure also eliminated the ability of Hubbell's attorneys to challenge the integrity of law enforcement's investigation to rule out other suspects and discredit/impeach Knulf. The State's failure to disclose the material exculpatory evidence undermines the confidence in Hubbell's guilty verdict and deprived Hubbell of his right to a fair trial.

The State Violated Hubbell's Constitutional Rights Under *Brady v. Maryland*, 373 US. 83 (1963)

1. "There is no doubt that the State is required to disclose evidence that is favorable to the accused and material to the accused's guilt or punishment. *Hubbell v. Ind. Supreme Court*, 754 N.E.2d 884, 893 (2001), citing, *Williams v. State*, 714 N.E.2d 644, 648-49 (Ind. 1999). The State's failure to disclose such evidence violates the Due Process Clause regardless of the prosecutor's good faith. *See Brady*, 373 U.S. at 87. Under *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Kyles*, 514 U.S. at 437. *Brady* evidence must therefore be produced whenever it is "in the possession of some arm of the state." *Crivens v. Roth*, 172 F.3d 991, 997-98 (7th Cir. 1999); *see also Fields v. Wharrie*, 672 F.3d 505, 513 (7th Cir. 2012) (State must produce *Brady* material from all actors "assisting" with investigation). Suppression of *Brady* evidence violates the U.S. Constitution and warrants a new trial. *Goudy*, 604 F.3d at 398-402 (7th Cir. 2010); *see also State v. Royer*, 166 N.E.3d 380 (Ind. Ct. App. 2021); *Bunch v. State*, 964 N.E.2d 274, 297-98 (Ind. Ct. App. 2012).
2. The three elements of a *Brady* violation have been met.

The State Was in Possession of Evidence That it Failed to Disclose to Hubbell.

3. The undisputed evidence shows that the State was in possession of evidence that it failed to disclose to Hubbell in advance of his trial. The suppressed evidence is set forth in the *Findings of Fact* above, including but not limited to evidence from the following sources: Melissa Holland, Johnny Roberts, John Mascoe, Dawn Martin, Glenn Allee, Nicholas Davis, Jim Rominger, Sherry Herron, Nathan Burbrink, Mark Steven Hefley, Roy Carver, and the evidence contained in Detective Knulf's investigative notes (specifically *Exhibit 24*). The State admitted that no version of Knulf's notes was disclosed to Hubbell or his counsel prior to his trial. *See Exh. 77*, ¶¶ 3-13.
4. This evidence was in the possession of the FPD, CPD, and other law enforcement agencies. These law enforcement agencies were in regular communication for months regarding the Eckart and Myers homicide investigations and, among other things, shared information regarding the similarities between the two homicides as well as information linking Overstreet to Myers and or her murder. The State stipulated that evidence in the possession of any of these law enforcement agencies is attributable to the State for purposes of *Brady*. *See EH.* at 57:16-58:4.

The Undisclosed Evidence Was Favorable to Hubbell.

5. "The *Brady* rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur. Thus, the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial:

> For unless the omission deprived the defendant of a fair trial, there was no constitutional violation requiring that the verdict be set aside; and absent a constitutional violation, there was no breach of the prosecutor's constitutional duty to disclose. . . .

. . . But to reiterate a critical point, the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial." *See Bagley*, 473 U.S. at 675-676.

6. Evidence is "favorable" to a criminal defendant for purposes of *Brady* if it is evidence that is either exculpatory of a criminal defendant or impeachment evidence that could have been used to impeach State witnesses. *See Bagley*, 473 U.S. at 676.
7. The Court set forth in the *Findings of Fact* evidence it found favorable to Hubbell. The evidence from these sources is favorable to Hubbell because: (1) it implicated Overstreet in Myers' abduction and murder, which is exculpatory of Hubbell; (2) provided a personal connection between Overstreet and Myers, which is exculpatory of Hubbell; and (3) it is evidence that could discredit the State's investigation and be used to impeach both Knulf and the integrity and comprehensiveness of the State's investigation of the Myers homicide. *See Kyles*, 514 U.S. at 448 (explaining that *Brody* includes evidence that could have been used to "undermine the ostensible integrity of the investigation"); *Prewitt v. State*, 819 N.E.2d 393, 407 (Ind. Ct. App. 2004) (finding *Brady* violation based on evidence that could have been used to "show shortcomings" in the "manner, quality, and thoroughness of the investigation").
8. Noteworthy today, Knulf now admits he failed to meaningfully investigate leads or information connecting Overstreet to the Myers homicide or to Myers in any way. He failed to offer those leads and information to Hubbell's attorneys. He testifies, now, that any reasonable law enforcement officer would have done so and that the evidence is exculpatory.
9. The State's failure to disclose the "favorable" evidence noted above, took away a fair opportunity for Hubbell's defense attorney's to discover and talk with witnesses, 27 years ago, before trial. Had Hubbell's attorneys been able to interview witnesses and investigate the favorable evidence,

it would have offered the defense an ability to present substantive witnesses to provide exculpatory evidence supporting Overstreet as a viable alternate suspect, and to impeach and discredit the State's investigation.

10. Thomasson diligently, specifically, and vigorously sought any evidence or information regarding linkage between the Myers and Eckart homicides. Thomasson's investigation came up empty other than known similarities and discovering from Knulf that Scott Overstreet may have worked at CRH and owned a white van (which Thomasson discovered on his own). Hubbell's defense reasonably relied on the State's investigation and representations that no other evidence or information supported a link between Overstreet and Myers other than the publicly known similarities. *See Bagley,* 105 S. Ct. 15 3384 (incomplete response to specific request may effectively represent to defense that evidence does not exist and cause defense to abandon lines of independent investigation).
11. The State has admitted that Knulf's investigators notes in *Exhibit 24* included information that was exculpatory of Hubbell *See* Exh. 77, ¶ 6. However, the State argues that the evidence collectively fails to meet the materiality standard under *Brady*. This court disagrees.

The Undisclosed Evidence Was Material.

12. Under *Brady*, evidence is material "if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. To meet this standard, a petitioner need not show that the disclosure of suppressed evidence more likely than not would have led to an acquittal. *Kyles*, 514 U.S. at 434. Instead, a petitioner "need only show that the new evidence undermines confidence in the verdict." *Id.* citing *Bagley*, 473 U.S. at 678; *Goudy*, 604 F.3d at 399. When assessing materiality for *Brady* purposes, courts consider all of the *Brady* evidence together. *See Kyles*, 514 U.S. at 460; *Goudy*, 604 F.3d at 399. Here, as discussed below, the Court finds that the undisclosed "favorable" evidence discussed in the *Findings of Fact* above "undermines confidence in the verdict" against Hubbell.
13. In *Watkins,* 92 F.Supp. 2d at 843-844, the Court found that detailed notes of a witness that had not been disclosed to the defense, "as it clearly should have been," prohibited the defense from having a fair opportunity to talk with Barger fourteen years ago, before the trial. The Watkins court also cited *Bowen v. Maynard*, 799 F.2d 593, 712-13 (10th Cir. 1986) as a case in which the prosecution failed to disclose information that had a cumulative effect of casting strong suspicion on another suspect. The court noted that if the suppressed evidence had been "in the hand of the

defense, it could have been used to uncover other leads and defense theories and to discredit the police investigation of the murder. In Hubbell's case, had the favorable evidence found in the *Findings of Fact* been in the hands of Hubbell's attorneys, 27 years ago, there is no doubt it could have been used to uncover other leads and defense theories and used to discredit the police investigation.

14. Here, there were stunning similarities between the Myers' and Eckart murders. Their bodies and belongings were found within 2 miles of one another in a 45,000-acre area at Atterbury. Information from two other witnesses at Arvin stated that another person with longer, blondish red hair (which Overstreet has) was approaching Myers, and that there were other light colored vans in the Arvin parking lot at the same time as well. The defense looked for evidence that could corroborate an alternate suspect fitting that description and having access to a light colored van, or evidence that could prove two persons were involved. Holland offered statements to law enforcement in 1997 believing there was a connection between her husband (Overstreet) and the Myers murder and noting all the strange behavior, actions, and comments of Overstreet. Other evidence from 1997 suggests Overstreet was having an affair with a person named Sharon from Columbus. The State had all that information, and more, but suppressed it.

15. The Evidence Presented at Hubbell's Trial:

    a. At Hubbell's trial, the State presented no DNA, fingerprints, blood, or hair evidence that linked Hubbell to the crime scene. Law enforcement recovered several pubic hairs and head hairs at the crime scene, but Hubbell was excluded as their source. *Exh.* 82, R. at 5179-81, 5225. The searches of Hubbell's van and home produced no DNA, fingerprints, blood, or hair from Myers. *E.g.*, *Exh. 82*, R. at 3429-30, 3460, 3721-23, 3944-47, 3967-69, 4024, 4989, 4993, 5223-24, 5229. The State's theory of motive was that Hubbell abducted and brutally murdered Myers who was one of several Arvin's Human Resource ("HR") employees, because of frustration with HR-related issues, even though the evidence showed that Hubbell had never acted mean to or even agitated with Myers or anyone else in the Arvin HR department. *Exh. 82*, R. at 2297.

    b. The State's case against Hubbell was based on somewhat circumstantial evidence that had limitations and could be consistent with the possibility of another assailant. Thomasson made such arguments at trial.

        i. *First*, the State relied on the testimony of Sherry Young. Young testified that, on May 13, as she was pulling into the Arvin's parking lot for work, she saw a man

and woman walking away from her and the building toward the north end of the parking lot. *Exh. 82*, R. at 3052. Young saw the man and woman from behind. *Id.* at 3075. Young claimed that the woman looked like Myers (*Id.* at 3078)—and the man had "blondish" hair (*Id.* at 3174) and was a head taller that the woman. *Id.* at 3054. Hubbell's hair is dark brown. *Id.* at 5547. The man and woman "were up against each other" and the man had his hand "on her back" just "kind of below the base of her neck." *Id.* at 3054, 3186. As Young drove up the aisle, the man and woman turned out of her sight near a white van with a slanted windshield. *Id.* at 3056-57. Young kept driving and parked her vehicle. *Id.* at 3057, 3104. As she was exiting her car, she heard a sliding door close and then saw the white van pull out. *Id.* at 3058-61. Young noted the van's license plate—3F4184. *Id.* at 3067. Young did not see either the man or woman enter the white van and did not see a woman in the van as it drove off. *Id.* at 3066, 3174-76. The police traced the license plate number to a white van owned by Hubbell, who had called in sick on May 13. *Hubbell*, 754 N.E.2d at 887. Young had never seen or heard of Jason Hubbell prior to the morning of May 13, 1997. *Exh. 82*, R. at 3098-3099.

ii. Although Young could not positively identify Hubbell in a show-up conducted by Knulf on May 13, 1997, *Exh 82, R.* at 3642, at trial, she testified that Hubbell was the person driving the white van. *Id.* at 3098-3099. Later in Young's testimony, she admitted that she did not know if the man in the van (Hubbell) was the same man that was walking in the parking lot with his hand on the neck of the woman who looked like Myers (she had not seen them enter the van). *Id.* at 3173-74. Young told Knulf in an interview the day after Myers was abducted that "she didn't think that it was" the same man. *Id.* at 3975-76, 3980. Young's testimony, therefore, was consistent with the possibility that the man she saw walking with his hand at the "base of the neck" of a woman who looked like Myers was someone different from the man she saw driving the white van, or there were two men involved.

iii. *Second*, the State relied on fiber evidence. Law enforcement agencies collected "hundreds of fibers recovered from the crime scene." *Exh. 82* at 5220-5221, 5233-5234. These fibers were compared to the "numerous colors and numerous

types of fibers" found in Hubbell's van to see if any were similar in appearance. *Id.* at 5233. The State presented testimony from an FBI forensic examiner who testified that red fibers recovered from the crime scene were "consistent" in appearance with red fibers recovered from Hubbell's van. *Id.* at 5813. However, the examiner did not and could not say that these fibers came from the same source. *Id.* at 5240. The examiner admitted that such acrylic fibers were "fairly common" in manufactured products—"millions of pounds of fibers" would be made by such manufacturers and were found in everyday products like "[c]lothing," "sweaters," and "hats." *Id.* at 5240, 5277.

iv. *Third*, the State relied on testimony of Michael Loften and David Thomas—two convicted criminals. Loften testified that, shortly after he met Hubbell at work, Hubbell told him that "he was a suspect in a murder investigation" and that "the police would never catch him" because "he was smarter than they were." *Exh. 82* at 4663-64, 4715, 4721-33. The prosecutor then tried to prompt Loften to say that Hubbell actually confessed to him, but Loften said he did not recall those statements and had told a defense investigator that he didn't remember Hubbell saying that. *Id.* at 4670-71, 4704-06. Similarly, Thomas, who was facing his own criminal charges (*Id.* at 2646, 2664), testified that within two days of meeting Hubbell in jail, Hubbell spontaneously told him about his charges and said, "I might as well go on and tell you I killed her . . . I just did." *Id.* at 2687. Multiple witnesses testified as to Thomas's untruthfulness, including his own mother, who testified that Thomas "lies a lot" and admitted that Thomas told her he was paid money to testify against Hubbell. *Id.* at 5526, 5532-33, 5564.

v. *Fourth*, the State relied on statements that Sgt. Jeff Williams testified Hubbell made about his medical issues in an interview on May 19, 1997. *Exh. 82.* at 4037, 4057. Williams told Hubbell "point blankly that I believed he was responsible for the disappearance of Sharon Myers." *Id.* at 4058. In response, Williams claimed that Hubbell told him that, due to his sleep "episodes," it "might be possible" and that "he can't say that he did do it, but he has prayed to God every night since then that it isn't so." *Id.* at 4060. Williams said he took handwritten notes from this interview and left them at the CPD, but when Hubbell's lawyer tried to get them, the prosecutor told him they had been destroyed. *Id.* at 4062-63.

vi. *Fifth*, the State attempted to show that Hubbell was not in Columbus, Indiana at some point on the morning of May 13 because phone records showed that his calls at 8:51 a.m. and 8:55 a.m. were billed to cell phone towers in Indianapolis, Indiana. *Id.* at 4910, 4922. As the Indiana Supreme Court observed, this evidence was "unconnected and incomplete." *Hubbell*, 754 N.E.2d at 889. Both the State and its witnesses conceded that the cell towers reached far enough that the calls could have come from Bartholomew County, where Hubbell lived. *Exh. 82* at 4882-4883, 4903. Another call from Hubbell's phone billed to the Columbus tower just four minutes after the 8:55 a.m. call. *Id.* at 3018. There were several possible explanations for the roaming charges to other cell towers, including incorrect roaming charges, a tower outage, and overlapping tower ranges. *Id.* at 4932-4933, 4882. In short, the cell phone evidence was not probative of Hubbell's guilt.

vii. *Sixth*, the Indiana Supreme Court also noted that evidence of grass found near where Myers body was discovered in Teal Marsh was consistent with grass that was found in Hubbell's van. *Hubbell*, 754 N.E.2d at 887 and 890.

c. Other evidence presented at trial pointed to an assailant with "blondish" hair and a suspicious, light-colored cargo van that was in the Arvin's parking lot that morning—both of which could be consistent with a link to Overstreet.

i. Two Arvin employees saw a man with blondish hair down to his collar walking quickly up behind Myers near the spot where her shoes were eventually recovered.[7] Steve Prosser testified that he drove past Myers when she was walking into the building and saw a man walking quickly up behind her. *Exh. 82* at 3290-3291, 3331. The man was approximately 6 feet tall with "blond hair" that was "down to his collar" (*Id.* at 3327-3328, 3337)—unlike Hubbell's hair. Prosser observed Hubbell in a show-up later that day and said that Hubbell was not the man he saw walking quickly up to Myers. *Id.* at 3332, 3631-3632.

ii. Tom Henderson—another Arvin's employee—saw Myers in a similar area—near the Arvin's building and near where her shoes were later recovered. He saw a

[7] The location where Myers's shoes were recovered—which was near the Arvin's building—was nowhere near the location where Young testified seeing a man and woman walking together—which was near the North end of the parking lot. *Exh. 82*, R. at 6361, 6364, 6379-80, 6384, 6405.

man with blond or "sandy brown" hair to his collar behind her and closing on her quickly. *Exh. 82* at 5915-5916, 5920, 5925-5926.

iii. Unlike Young, both Prosser and Henderson saw the face of the woman in the parking lot and positively identified her as Myers. *Id.* at 3075, 3078 (Young), 3290 (Prosser), 5912-5914 (Henderson).

iv. Two other Arvin employees—Byrd Napier and Emily Fivecoat—testified that they saw a light colored cargo van parked suspiciously right outside the Arvin's parking lot.

v. Napier testified that he saw a "cargo van" that looked like a "work van" that was light-colored with windows in the front and no other windows. *Exh. 82* at 5962-5963. As Napier began walking across the parking lot, he saw a woman wearing "tan and white" and carrying a "white sweater" in the third aisle of the parking lot. *Id.* at 5965, 5981. Next to the woman he saw a man "with his arm extended out toward the . . . back of her neck." *Id.* at 5966. Napier saw the man coming up to the woman, but his attention was diverted by another car driving towards him. *Id.* at 5966-5967. When he looked back, he no longer saw the man or woman. *Id.* at 5968. According to Napier, it happened in a "flash" and he assumed there was some "pranking" or "horseplay" involved. *Id.* at 5968-5969. As Napier started his truck, he saw the light-colored cargo van "creeping real slow" across "the first aisle" of the parking lot. *Id.* at 5971. Napier began to drive out of the lot and then saw the van moving "extremely fast" from the third aisle to the exit. *Id.* at 5973-5974. The van then drove out of the parking lot quickly and turned north. *Id.* at 5975-5976. Napier caught up to the van at the stoplight but could see only "two white hands," because the driver "was pushing back in his seat as far as he could possibly get." *Id.* at 5975-5978.

vi. Like Napier, Emily Fivecoat, an accountant at Arvin, saw a light colored "cargo van" that was "next to the fence before you turn into the parking lot" at Arvin around 6:00 a.m. *Exh. 82* at 5712-13. The cargo van was pointing South towards the entrance of the parking lot. *Id.* at 5715. Fivecoat had never seen a vehicle parked in that spot before. *Id.* at 5714.

d. The trial evidence also showed that David Myers believed his wife was carrying on an extramarital affair and told police that he initially believed that Myers's child was not his.

Id. at 2617-24. After learning that Myers did not show up to work on May 13, David drove by local hotels and restaurants to see if he could spot Myers's vehicle as she was carrying on an affair. *Id.* at 2384, 2533-2534.

16. In closing argument, Thomasson made several arguments in an effort to create reasonable doubt as to Hubbell's guilt.

    a. First, Thomasson argued that Myers was abducted not in the white, slanted van seen by Young, but in the light-colored cargo van seen by Napier and Fivecoat. *Id.* at 6383-6385, 6388.

    b. Second, Thomasson argued, based on the testimony of Prosser and Henderson, that the actual person who abducted Myers had blond, collar-length hair that was longer than Hubbell's short, military-style cut. *Id.* at 6372, 6380-6381.

    c. Third, Thomasson relied on evidence about how David Myers believed that his wife was carrying on an affair and questioned the paternity of her child. *Id.* at 6327-6328, 6230.

    d. Thomasson also repeatedly attacked the police's investigation based on their failure to adequately rule out alternate suspects. *Id.* at 6327 ("Alternate suspects, ladies and gentlemen. The problem with this case, ladies and gentlemen, is there's too many alternate suspects that have not been legitimately or thoroughly researched or eliminated."); *Id.* at 6395 ("The State has put blinders on in this case and refused to follow any other leads. They've concentrated on Jason and nothing else but Jason."). Relatedly, Thomasson argued that the State was simply not interested in evidence that did not point to Hubbell. *Id.* at 6332 ("Why? Because they weren't interested. They weren't interested in anybody that would lead them away from Jason Hubbell. Period."); *Id.* ("They found hair on the victim's remains at Teal Marsh. Did they try to match it with David? No. They found a pubic hair on the remains found at Teal Marsh. Was it Jason's? No. Whose was it? We don't know. Why not? They didn't bother testing it. They didn't want to know. They didn't do their job. Anything that would lead them away from Jason, they didn't care. They had blinders on."); *Id.* at 6333 ("Byrd Napier never heard one word from anybody after he gave his statement. Neither did Cassius Bennett. Why? Lead them away from Jason Hubbell.").

b. The Withheld Evidence Is Material in Light of the Trial Evidence.

17. In light of Hubbell's jury trial evidence and Thomasson's presentation and closing argument, all the cumulative "favorable" suppressed evidence by the State is material and sufficient to undermine the confidence in the outcome of Hubbell's jury verdict. The State deprived Hubbell of a fair trial by suppressing evidence that clearly provided a link between Myers and Overstreet that Hubbell's attorneys should have been able to investigate and present at trial, to link Overstreet as an alternate suspect and to call into question the integrity of the investigation.

18. Multiple witnesses (including Melissa Holland, Johnny Roberts, John Mascoe, Glenn Allee, Nicholas Davis, Jim Rominger, Nathan Burbrink, Mark Steven Henley) provided law enforcement with information that linked Overstreet—a man charged with a murder with striking similarities to Myers's—to Myers and her murder.[8] This type of exculpatory information pointing to another suspect is "core *Brady* material, where the danger of a denial of due process of law is great." *Watkins*, 92 F. Supp. 2d at 846.

19. Holland's testimony shows that Overstreet left in a white cargo van on the morning Myers was abducted, said that he was going to the very place where she was abducted, was gone all day, and then came home covered in blood. Overstreet's general appearance is consistent with the appearance of the man that Prosser and Henderson described seeing walking quickly up to Myers in the Arvin's parking lot. This would have been compelling evidence of an alternate suspect, material for *Brady* purposes. *See Prewitt*, 819 N.E.2d at 402-03 (finding *Brady* violation where state withheld police reports implicating an alternate suspect, including report suggesting that alternate suspect had blood on him on night of crime); *Watkins*, 92 F. Supp. 2d at 848-49 (finding that there was "no doubt" that exculpatory police interview notes, including notes about how an alternate suspect "came home" with "blood all over him" on the night of the murder, should have been disclosed to the defense).

20. In addition, evidence from at least three witnesses—Johnny Roberts, John Mascoe,[9] and Dawn Martin—suggests that Overstreet personally knew Myers. Roberts's testimony fits with the

[8] For purposes of evaluating a *Brady* claim, courts presume individuals who provided information to police would give testimony in court consistent with their police statements. *See Watkins*, 92 F. Supp. 2d at 846.

[9] Mascoe's suggestion, nearly a year after his initial recorded interview, that Hubbell could have been the other man on the boat ramp with Overstreet and Myers does not relieve the State of its obligation under *Brady* to disclose the initial exculpatory information Mascoe provided. *See Smith v. Cain*, 565 U.S. 73, 76 (2012) (rejecting State's argument that witness's contradictory statements relieved the State of its

evidence and argument raised by Thomasson that Myers was carrying on an affair at the time of her disappearance. The information from John Mascoe not only suggests that Overstreet knew Myers, it suggests that he was with her at a location within Atterbury—where her body was eventually recovered—in May 1997—the month she went missing. Moscoe has now passed away and the State deprived Hubbell's attorneys of using his testimony 26 years ago at trial. Given the similarities between the Myers and Eckart murders, this evidence, would have been powerful evidence of an alternate suspect, material for *Brady* purposes. Martin's information provides hearsay information; however, Thomasson would have interviewed her and others to determine if her information could be corroborated. Thomasson was deprived of that chance 27 years ago.

21. Many witnesses (including Melissa Holland, Johnny Roberts, Glenn Allee, Nicholas Davis, and Mark Steven Hefley) show that Overstreet repeatedly made comments and engaged in conduct suggesting that he had a unique interest in the Myers and Eckart cases and in talking about the affair he had been carrying on in Columbus. Cumulatively, this evidence would have been significant evidence of Overstreet as an alternate suspect, which would have been exculpatory of Hubbell. Allee and Hefley have also passed away, again taking away Thomasson's ability to investigate and corroborate their information. However, Holland and Robert's testimony today is still incredibly critical to Hubbell's position that Overstreet is an alternate suspect.
22. In addition, there is no question that the exculpatory information contained in Knulf's Investigator Notes—including but not limited to the information relating to Overstreet—should have been disclosed to Hubbell under *Brady*. Knulf himself now admits that this undisclosed information was a violation of Hubbell's constitutional rights. *EH.* at 387:21-4, 491: 18-23. Knulf's notes would not only have provided a link between Overstreet and Myers's abduction, they would have showed repeated and ongoing communications with the Eckart investigators including information obtained by FPD regarding connections to the Myers murder that were passed on but not recorded or investigated because CPD only focused on Hubbell as the Myers' murder suspect.
23. Knulf's Investigators Notes would have also shown that Knulf failed to conduct any meaningful investigation into Overstreet's involvement in Myers's homicide. Knulf has now admitted as much. In addition, Knulf admitted that any reasonably trained law enforcement officer would have interviewed Melissa, Scott, Overstreet, Chaney, Martin, and others, but he took none of

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obligation to disclose an undisclosed, exculpatory statement); *see also Wotkins*, 92 F. Supp. 2d at 844 ("If the Barger information had been disclosed to the defense, as it clearly should have been, the defense would have had a fair opportunity to talk with Barger fourteen years ago, before the trial.").

these steps. CPD's unwillingness to investigate leads that pointed towards Overstreet would be confirmed by the testimony of Holland and additional documentary evidence. *See, e.g., EH.* at 220:12-16 ("Columbus wasn't interested in any of the information . . . ."); *Id.* at 282:15-18 ("[T]hey wasn't interested. They already had somebody."); *Exh. 23*, Sept. 30, 1997 FPD Investigative Lead Files re: Jason Hubbell, at 05997 ("They no [*sic*] he did it but can not prove it without a body."). This would have been significant material evidence that Hubbell's trial counsel could have used under *Brady* to "undermine the ostensible integrity of the investigation" conducted by the CPD. *Kyles*, 514 U.S. at 445-48 (finding *Brady* violation based on evidence that could have been used to attack "the thoroughness and even the good faith of the investigation" and suggest that the "police had been guilty of negligence"); *Prewitt*, 819 N.E.2d at 407 (finding *Brady* violation based on evidence that could have been used to "show shortcomings" in the "manner, quality, and thoroughness of the investigation").

24. This Court finds that Knulf's Investigators Notes in *Exhibit 24*, even if considered in isolation, would be material for purposes of *Brady*. The Court finds that it was particularly inexcusable that the State failed to disclose this exculpatory evidence in these notes as Thomasson repeatedly sought such discovery. Further, given the discrepancies between *Exhibit 24* and *36*, regarding information of Overstreet, or lack there of in Exhibit 36, both Exhibits are material for purposed of Brady to discredit Knulf and the investigation.

25. Knulf's testimony also proves that his answers at his 1998 pre-trial deposition to Thomasson's questions regarding Overstreet were false and misleading. This, too, would have been critical, material evidence that Hubbell's trial counsel could have used both to impeach Knulf and to "undermine the ostensible integrity of the investigation" conducted by the CPD. *See Kyles*, 514 U.S. at 447 (finding *Brady* violation based on undisclosed statements that would have refuted detective's testimony that an individual was "never a suspect"); *Prewitt*, 819 N.E.2d at 407-08 (finding *Brady* violation where detective "misled" defendant "under oath" by omitting information about witnesses he had interviewed and "erroneously testif[ying] that he was not aware of any exculpatory evidence").

26. Ultimately, when viewing all of the evidence discussed in the *Findings of Fact* together, the amount of evidence that was favorable to Hubbell, but withheld from him, is overwhelming. The evidence implicating Overstreet aligned with trial evidence. Thomasson would have used the evidence to present Overstreet as the alternate assailant with collar-length hair who drove a light-colored cargo van and had a connection to Myers ... a connection Thomasson sought but the State

withheld. Considering this evidence cumulatively, there is no question in this court's mind that this suppressed evidence is material and exculpatory. The failure by the State to disclose the evidence assured Hubbell could not present it and the jury could not consider it with all the other evidence. Such action on the part of the State undermines confidence in the verdict against Hubbell. *See Goudy*, 604 F.3d at 399. *See Kyles*, 514 U.S. at 430-31, 453-54 (holding that state's withholding of witness statements, including statements implicating another suspect, violated *Brady*, even though "four witnesses [had] positively identified [petitioner] in front of the jury" at trial); *Goudy*, 604 F.3d at 400 (holding that State of Indiana's withholding of three police reports implicating another suspect as one of the two shooters involved in a murder violated *Brady* even though eyewitnesses had identified the petitioner as one of the two shooters); *Prewitt v. State*, 819 N.E.2d 393, 402-03 (Ind. Ct. App. 2004) (finding *Brady* violation where state withheld police reports implicating alternate suspect, including report suggesting that alternate suspect had blood on him on night of crime).

4. Hubbell Could Not Have Located This Evidence with Reasonable Diligence Prior to Trial.

27. The U.S. Supreme Court has held that a criminal justice system in which "prosecutor may hide, defendant must seek" is "not tenable in a system constitutionally bound to accord defendant's due process." *Banks*, 540 U.S. at 696. Defense counsel is therefore not required to "scavenge for hints of undisclosed Brady material." *Id.* at 695.
28. Nevertheless, in some cases, the Indiana Courts have stated that a *Brady* violation cannot be based on evidence that would have been "available to a defendant through the exercise of reasonable diligence." *Bunch*, 964 N.E.2d at 297.
29. The evidence underlying Hubbell's *Brady* claim was not available to Hubbell or his counsel through due diligence because it was withheld from him by the State.
    a. Hubbell's trial attorney, Thomasson, aggressively pursued discovery from the State, including investigative police reports and *Brady* material. In response to these efforts, the State told Thomasson that it understood and would comply with its *Brady* obligations. The State failed to do so.
    b. At Knulf's pre-trial deposition, Thomasson asked the State to disclose Knulf's supplementary report. When this request was denied, he filed two motions to compel the production of the document and even asked the Court to conduct an *in camera*

inspection of the State's files to determine if they contained exculpatory information. Thomasson exercised more than reasonable diligence to obtain these materials. The State refused and/or failed to disclose them.

c. In addition, Thomasson specifically asked about information linking Overstreet to Myers' abduction in the depositions of both Knulf and Hardwick. Thomasson was provided with answers that were inaccurate, misleading, and omitted significant information linking Overstreet to Myers that was contained in Knulf's investigative notes and other law enforcement lead sheets.

d. For years, the State continued to represent to Hubbell and Indiana courts that there was no evidence connecting Overstreet to the Myers homicide, even though that exact evidence was sitting in the CPD and FPD files. At the 2019 PCR evidentiary hearing, Prosecutor Burns, based upon the information it appears she was given and not given, told this Court that "the Overstreet case ... has nothing to do with this case." *Exh. 84*, Feb. 20, 2019 PCR Transcript, at 40:14-17. In the State's proposed findings, Burns stated that the Overstreet case was just "another unrelated homicide in another county." *Exh. 84*, June 3, 2019 State Proposed Findings, ¶ 21. On appeal, the State assured the Indiana Court of Appeals that "there is no evidence connecting Overstreet to this case whatsoever." *Exh. 84*, Dec. 19, 2019 Brief of Appellee, at 23 (State claiming that Overstreet was "thoroughly investigated at the time" and "ruled out as a suspect" by "the police").

30. Under these circumstances, the Court finds that Hubbell and his attorneys could not have located this undisclosed evidence with "reasonable diligence." *Bunch*, 964 N.E.2d at 297. *See Banks*, 540 U.S. at 675-76 (when state withholds *Brady* material, it is "incumbent on the State to set the record straight"); *Michael Williams v. Taylor*, 529 U.S. 420, 432 (2000) (holding that petitioner is not at fault for failing to uncover evidence "when his diligent efforts to perform an act are thwarted, for example, by the conduct of another"); *Watkins*, 92 F. Supp. 2d at 842 (holding that petitioner did not fail to develop the factual basis of his *Brady* claim when the claim was based on undisclosed evidence in the files of a sheriff's department).

31. Accordingly, this Court finds that Hubbell's Constitutional Rights under the 14th Amendment's Due Process Clause and *Brady v. Maryland* were violated, that the material exculpatory evidence withheld by the State undermines confidence in Hubbell's verdict, and Hubbell is entitled to a new trial on this basis.

Hubbell Has Not Presented Newly Discovered Evidence of His Innocence That Entitles Him to a New Trial.

32. The Indiana Supreme Court has held that newly discovered evidence entitles a post-conviction petitioner to a new trial when the following requirements are met: (1) the evidence has been discovered since trial; (2) it is material and relevant; (3) it is noncumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the evidence is worthy of credit; (8) it can be produced upon a retrial of the case; and (9) it will probably produce a different result at trial. *See Carter v. State*, 738 N.E.2d 665, 671 (Ind. 2000); *Royer*, 166 N.E.3d at 398.[10] A sufficient probability of a different result on retrial is present when the new evidence "creates a reasonable doubt that did not otherwise exist." *Fox v. State*, 568 N.E.2d 1006, 1008-09 (Ind. 1991).

33. Although the court finds that the suppressed material evidence undermines the verdict in Hubbell's jury trial, the Court finds that Hubbell has not presented newly discovered evidence that meets the ninth requirement of the *Carter* standard. The Court does not find that the evidence presents a sufficient probability of a different result by creating a reasonable doubt that did not otherwise exist.

34. Still existing, even with the suppressed material exculpatory evidence, is the evidence the jury found was sufficient, beyond a reasonable doubt, to convict Hubbell:

    a. Young's statement that she believed she saw a man and woman walking toward a white van in the Arvin parking lot that caught her attention, that she heard the van door slam, and then believed she saw Hubbell driving away in the white van;

    b. Hubbell presented an alibi defense stating he was not at work that morning, but Young who did not know Hubbell at that time, took note of the white van's license plate number, gave it to law enforcement and it came back to a white van registered to Hubbell;

    c. Hubbell's incriminating statements to Williams and the cellmate;

[10] In opening statements, the State argued as to Hubbell's *Brady* and newly discovered evidence claim that "it can't be both." *EH.* at 14:5-7. This is incorrect. When a claim of newly discovered evidence is based on evidence that the State withheld from a defendant, that evidence can be the basis of both a *Brady* claim and a claim of newly discovered evidence, which focuses on whether the evidence is new to *the petitioner*, not the State. *See, e.g., Royer*, 166 N.E.3d at 405 (granting relief based on both theories).

d. Hubbell knew Myers from her position in the Human Resources department at Arvin, and Hubbell had been having contact with Myers regarding difficulties with Human Resources;

e. The connection to red fibers and grass, each located both in Hubbell's van and Teal Marsh where Myers' body was discovered.

35. The suppressed evidence does not directly affect the evidence that was presented by the State at jury trial, and which the jury relied on to convict Hubbell. However, the jury was deprived of being able to further consider Overstreet as an alternate suspect due to the failure of the State to disclose exculpatory evidence. There were facts presented at trial that two other Arvin employees saw a male who did not resemble Hubbell, approach Myers the morning she went missing. Both employees, Henderson and Prosser, positively identified Myers and said the male had blondish collar length hair. Two other Arvin employees, Fivecoat and Napier, saw a lighter colored van near the Arvin's parking lot which was not Hubbell's. The other additional suppressed evidence, including information provided by Holland, substantially increases Hubbell's ability to put a face and link to the "other" male that Hubbell's attorneys were not aware of but existed. It further links Overstreet to Myers. In addition, Holland offered information regarding Overstreet's behavior and actions during the time Myers disappeared. It would be for the jury to determine whether the additional suppressed evidence surrounding Overstreet as an alternate suspect raises a reasonable doubt as to whether or not Hubbell is guilty.

36. The State took away Hubbell's ability and due process right to present Overstreet as an alternate suspect at trial by suppressing material exculpatory evidence linking Overstreet to Myers or the Myers murder. The defense should have that ability. However, given the evidence that is still present against Hubbell, this court cannot say that there is a sufficient probability of a different result on retrial.

C. **Hubbell Is Not Entitled to a New Trial for a Violation of *Napue v. Illinois*.**

37. It is a violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution for the State to rely on false testimony to obtain a conviction. *See U.S. Const. amend. XIV*; *Napue v. Illinois*, 360 U.S. 264, 269 (1959). This principle includes cases in which the prosecutor fails to correct false testimony. *Id.*

38. The false testimony Hubbell alleges was relied upon was found in the direct examination of Det. Knulf by Mr. Thomasson during the defense's presentation of evidence at jury trial. *Exh. 82*, R. at

5646-5649. Defense counsel asks Knulf, "Dennis, did you...did you investigate any other alternate suspects in this case besides Eddie Harrison and David Myers?" Knulf responds that there was one other individual and eventually identifies the third person as Gary Burgess. *Id.* Defense counsel goes on to question Knulf about individuals named Jim Miller and Cassius Bennett. *Id.* Knulf testifies that he does not recall either of those names.

39. To obtain a new trial under *Napue*, a defendant must show that (1) there was false testimony; (2) the government "knew or should have known" it was false; and (3) a "reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v. Freeman*, 650 F.3d 673, 680-81 (7th Cir. 2011). This standard is a "lower threshold for determining materiality" because of the fact that "the knowing use of false testimony corrupts 'the truth-seeking function of the trial process.'" *Id.* (quoting *Agurs*, 427 U.S. at 104).

40. Although it is clear that Knulf received information regarding Overstreet as an alternate suspect during his investigation, he certainly did not "investigate" Overstreet. To the contrary, he ignored the information provided or linked to Overstreet, did no meaningful investigation, and went out of his way to hide it ... thus, possibly, the redaction of all information in *Exhibit 36* from *Exhibit 24*. Knulf was removed as the lead investigator for going to the newspaper after being told by the prosecutor's office that they did not know if there was enough evidence to file charges against Hubbell.

41. No evidence was presented that the prosecutor's office knew of Holland's statement to FPD or the other multiple references to Overstreet from other law enforcement lead sheets or statements. Knulf, as lead investigator was in charge for about one year to accumulate, prepare and provide that information to the prosecutor's office. This court is not convinced he did.

42. No evidence was presented that Prosecutor Burns, who is now deceased, had actual knowledge of any falsity of Knulf's testimony at trial or at his pre-trial deposition. No evidence was presented that Burns knew that *Exhibit 36,* which Knulf possessed at the pre-trial deposition, had been "redone" to exclude any information or reference to Overstreet. No evidence was presented that Burns knew about *Exhibit 24* or the information about Overstreet contained therein. This court cannot find that Burns knew or should have known Knulf's trial testimony regarding alternate suspects was false or misleading.

43. Hubbell is not entitled to a new trial based on Knulf's trial testimony.

The State's Affirmative Defenses Have Been Waived and, in any Event, Would Not Bar Hubbell's Claims.

44. In response to Hubbell's December 5, 2023 successive petition for post-conviction relief, the State raised the affirmative defenses of laches, res judicata, collateral estoppel, and waiver.

45. On August 20, 2024, Hubbell filed an amended successive petition for post-conviction relief. From that point, the State had 30 days to file an answer to Hubbell's allegations. See Indiana PCR Rule 1(4)(a). That same day, the State filed a motion to strike every exhibit that was attached to Hubbell's amended petition. On August 23, 2024, this Court denied the State's motion to strike. The State never filed an answer to Hubbell's Amended Petition for Post-Conviction Relief that raised affirmative defenses. In addition, at the February 2025 evidentiary hearing, the State did not reference any affirmative defenses in either its opening statement or closing statement.

46. Accordingly, the Court finds that the State has not adequately raised or preserved any affirmative defenses.

47. If this Court were to consider the affirmative defenses raised by the State in its earlier answer, the Court finds that none of those defenses bars Hubbell's claims.

    a. First, Hubbell's claims are not barred by the doctrine of laches. To prevail on a claim of laches, the State has the burden to prove by a preponderance of the evidence (1) that the petitioner unreasonably delayed in seeking relief and (2) that the delay prejudiced the State. *Williams v. State*, 716 N.E.2d 897, 901 (Ind. 1999). Where the State makes no showing that a petitioner had actual knowledge of a defect in their conviction yet did not pursue relief, laches does not apply. *Perry v. State*, 512 N.E.2d 841, 844 (Ind. 1987) (noting that laches requires "conscious indifference" by a petitioner). Here, the factual basis for Hubbell's claims is evidence that was not in Hubbell's possession because it was withheld from him by the State for decades. The State—not Hubbell—is responsible for this delay.

    b. Second, Hubbell's claims are not barred by principles of res judicata or collateral estoppel. Res judicata and collateral estoppel could bar a claim when an issue was "expressly adjudicated" in a prior proceeding or where a party had a "full and fair opportunity to litigate" an issue in a prior proceeding. *Indianapolis Downs, LLC v. Herr*, 834 N.E.2d 699, 703-05 (Ind. Ct. App. 2005). Here, neither Hubbell, nor the BCPO, nor the Court were aware of the full version of Knulf's investigators notes. Judge Heimann did not (and could not) determine whether the State had an obligation to disclose the exculpatory information contained in Knulf's notes under *Brady*. Further, Hubbell has presented

exculpatory evidence from other sources beyond Knulf's investigators notes. Accordingly, neither res judicata nor collateral estoppel bar Hubbell's claims.

c. Third, for similar reasons, Hubbell has not waived any of his claims. Indiana's PCR Rules bar post-conviction claims that were "knowingly, voluntarily and intelligently waived" in prior proceedings. See Indiana PCR Rule 1(8). Here, as this Court explained in its order denying the State's Motion for Partial Summary Judgment, Hubbell did not knowingly, voluntarily, or intelligently waive any of the claims he brings in this case because the State was withholding the factual basis for these claims.

48. Accordingly, even if the State had properly raised its affirmative defenses, those defenses would not bar Hubbell's claims.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the *Indiana Rules of Post-Conviction Remedies*, this Court finds and concludes that Hubbell is entitled to a new trial. Hubbell's *Amended Successive Petition for Post-Conviction Relief* is hereby **GRANTED** and his convictions in this matter are **VACATED and a new trial is ORDERED**. The court further Orders that unless the Petitioner is held on other cases, that he be transported to the Bartholomew County Jail to be held with no bond. This matter is reset for a pretrial conference on October 2, 2025 at 1:30 p.m.

SO ENTERED this 11th Day of September, 2025.

Hon. Kelly S. Benjamin
Bartholomew County Circuit Court

CC:
Bartholomew County Prosecutor's Office
Attorneys Eliot Slosar, Kevin Murphy, and Brent Westerfeld