IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| CHARLES J. GOLDBLUM, | : |
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| PETITIONER, | : |
| | : |
| v. | : |
| | : |
| THERESA DelBASO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE MAHANOY, | : |
| | : |
| RESPONDENT, | : |
| | : |
| and | : |
| | : |
| JOSH SHAPIRO, ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, | : |
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| RESPONDENT, | : |
| | : |
| and | : |
| | : |
| STEPHEN A. ZAPPALA, JR., DISTRICT ATTORNEY OF ALLEGHENY COUNTY, PENNSYLVANIA, | : |
| | : |
| RESPONDENT. | : |
| | : |

**SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C.A. § 2244 AND § 2254 – PETITIONER IN STATE CUSTODY (EVIDENTIARY HEARING REQUESTED)**

AND NOW, comes the Petitioner, CHARLES J. GOLDBLUM, by and through his counsel, ALEXANDER H. LINDSAY, JR., and files the within Successive Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.A. § 2244 and § 2254, and avers in support thereof as follows:

## INTRODUCTION

1. Petitioner, Charles J. "Zeke" Goldblum, has been unjustly serving a life sentence at SCI Mahanoy for a murder he did not commit, despite ample and compelling testimonial and physical evidence proving his innocence.

2. The Petitioner's 1977 murder conviction was obtained at the sole expense of the violation of his constitutional rights and through provable and fundamental miscarriages of justice which this Honorable Court is empowered to rectify.

3. Throughout the Petitioner's trial, the Commonwealth exhibited a pattern of deceitful and reckless behavior aimed solely at securing the Petitioner's conviction and without regard to the Petitioner's due process rights.

4. The Commonwealth did so largely through the withholding of exculpatory evidence and the knowing use of perjured testimony from the Petitioner's co-defendant, who was the Commonwealth's star-witness, Clarence Miller.

5. The Petitioner's claim of innocence is supported by world renowned forensic experts Dr. Cyril Wecht, Dr. Henry Lee, Dr. Herbert MacDonell, Dr. Michael Baden, Dr. Barbara Wolf, and then Chief Forensic Pathologist (who conducted the Wilhelm autopsy) Dr. Joshua Perper, as well as both the prosecuting Assistant District Attorney and Judge who presided over the Petitioner's trial.

6. However, due to rigid state procedural bars and the unwillingness of Pennsylvania Courts to recognize the Petitioner's claim of actual innocence as an exception thereto, the Petitioner has remained incarcerated for nearly forty (40) years for a crime he did not commit.

7. The Petitioner, therefore, comes before this Honorable Court a third time seeking the justice that has escaped him for nearly four (4) decades through the presentation of new and reliable evidence of his innocence.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8. Paragraphs 1 through 7 are incorporated by reference herein as though set forth in their entirety.

9. The extensive factual background of Petitioner's case is summarized below. The procedural history, spanning some 40 years, is incorporated by reference at *Exhibit "1."*

10. On the night of February 9, 1976, George Wilhelm was murdered on the roof-top of the Smithfield-Liberty Avenue parking garage in downtown Pittsburgh.

11. Petitioner Charles ("Zeke") Goldblum (hereinafter "Goldblum"), was charged and ultimately convicted of Wilhelm's murder. It is evident—now more than ever—that the only one responsible for Wilhelm's death was Goldblum's co-defendant, Clarence Miller.

12. Goldblum was first introduced to Wilhelm by Clarence Miller, on Sunday, February 8, 1976 at a meeting in a downtown McDonald's. The purpose of this meeting was to discuss repayment of a debt owed by Miller to Wilhelm, born of a fraud perpetrated against Wilhelm by Miller and an accomplice, Thaddeus Dedo. Wilhelm had been introduced to Miller by Fred Orlosky because Orlosky thought Miller's perceived political connections could help Wilhelm's desire to purchase government-owned land go smoother.

13. This fraud involved Miller and Dedo procuring money from Wilhelm in exchange for their promise to deliver to Wilhelm two deeds to Federal-owned land in North Carolina, which they could not possibly deliver.

14. Until shortly before the first meeting at McDonald's on February 8, 1976, Goldblum had no knowledge of the land fraud. Ahead of the meeting, Miller only told Goldblum that he (Miller) owed Wilhelm some money due to a phony land deal. Goldblum, a recently barred attorney, upon Miller's request, acted as a mediator between Miller and Wilhelm so that Wilhelm could be repaid.[1]

15. At the time of this meeting, Goldblum believed that Miller was going to promise and arrange repayment to Wilhelm of the monies he (Miller) received in the phony land deal.

16. As the meeting progressed, Goldblum slowly realized that Miller was not acting as previously discussed, and that Miller continued to lie to Wilhelm.

17. Upon realizing Goldblum's shock and displeasure, Miller thereafter agreed to adhere to the plan and asked Goldblum to again attend another meeting with himself (Miller) and Wilhelm at the same McDonald's.

18. Goldblum reluctantly agreed. They again met on Monday evening, February 9, 1976, to discuss Miller's repayment to Wilhelm.

19. Goldblum was under the impression that Miller intended to pay Wilhelm back the money he defrauded from him. However, this was not the case.

20. This second meeting ran longer than expected, and Wilhelm wanted to move his car from the downtown street parking meters.

21. To continue their conversation, Goldblum and Miller accompanied Wilhelm as he drove his vehicle into the Smithfield-Liberty Avenue parking garage.

[1] Goldblum agreed to attend this meeting at Miller's behest in that he (Goldblum) felt obligated to Miller due to the fact that Miller had been hired by Goldblum to burn down Goldblum's failing restaurant in order to collect the insurance proceeds.

22. With Miller in the front passenger seat and Goldblum in the rear driver's side seat, Wilhelm parked his car on the roof of the Smithfield-Liberty Avenue parking garage.

23. As recalled by Goldblum, when Wilhelm parked and shut off his engine, Miller finally told Wilhelm that he could not immediately repay the debt.

24. Inflamed by what he had just been told, Wilhelm struck Miller in the face.

25. Miller mentally blacked-out, and in a state of temporary insanity, he found a half of a grass shear in the car and retaliated by stabbing Wilhelm. Miller's mental condition at the time of the attack was corroborated in his 1980 PCHA. *(See Exhibit 2 – May 9, 1980 - Miller's PCHA, pg. 4, A-6).*

26. Goldblum recalls that Wilhelm was bleeding from the wounds inside the car and that Wilhelm exited the driver's side door.

27. It was at this point that Miller exited the front passenger seat, came around the vehicle, and continued stabbing Wilhelm.

28. In shock at what he had just observed, Goldblum then exited the left rear passenger door and ran in the direction of the exit.

29. As Goldblum turned around, he witnessed Miller lift Wilhelm over the short 28" high garage wall, from which Wilhelm fell onto the elevated skywalk below.

30. Goldblum then ran back toward Miller and looked over the wall, where he saw Wilhelm lying on the top of a skywalk below and believed that he was dead.

31. At this point, an elevator door opened and a man, later identified as Richard Kurutz, exited and saw Goldblum and Miller.

32. Goldblum, still in shock and panic from witnessing Miller's attack on Wilhelm, then proceeded down the exit ramp and Miller followed him.

33. After they left the garage, Miller removed his bloody gloves and discarded them. The gloves were later found by a bystander and recovered by the police.

34. Analysis by the Crime Lab showed that the hairs found within the bloodied gloves were similar to those of Miller, but not those of Goldblum. *(See Exhibit 3 – Feb. 26, 1976 - Crime Lab report of Miller's hair in bloody gloves; Report pg. 2, lines 20-27 & Report pg. 3 lines 3-7).*

35. Goldblum was beholden to Miller, who had committed arson for Goldblum by burning-down Goldblum's restaurant on November 30, 1975.

36. Fearing that Miller would get caught by police after the murder and subsequently tell them about the arson, Goldblum agreed to provide Miller with an alibi and, due to the amount of blood on Miller, drove him home.

37. Pittsburgh Police came to the scene, where they discovered Wilhelm on the top of the enclosed walkway connecting the Smithfield-Liberty Avenue parking garage to Gimbel's Department store.

38. Police Officer Thomas Pobicki climbed down to Wilhelm, who declared in his dying declaration, *"I'm gonna die, I'm gonna die"* and "*Clarence, Clarence Miller did this to me*."[2] . (See *Exhibit 4 – Feb. 10, 1976 - Supplemental Police Report, Police Interview of Officer Pobicki).*

39. The crime scene was processed by Pittsburgh Police. Evidence was gathered, inventoried, and protected.

[2] This dying declaration verified Miller's 1980 PCHA petition claiming he blacked-out due to a state of extreme mental stress and instability and could not recall or testify truthfully as to what happened on that rooftop.

40. The vehicle and crime scene were photographed by Crime Scene Detective Sal Crisanti.

41. During an interview with Investigator Jim Ramsey in 2011, Police Sergeant Joe Modispatcher, who administered a polygraph to Miller, recalled that in the days before the Goldblum trial, he saw interior photos of Wilhelm's vehicle, including those of blood spatter on the dashboard of the vehicle. These exculpating photos were not introduced at trial, were unknown to the defense, were not turned over to the defense, and have since gone missing, along with the entirety of the homicide division's investigative file.[3] *(See Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview).*

42. In a deposition of Miller taken on September 9, 2004 by Goldblum's attorney Mr. Markovitz, Miller stated that a "hand-shake" agreement was made between his attorney, Vincent Murovich, and Detective Ronald Freeman, who spearheaded the investigation, and Peter Dixon, the Assistant District Attorney who tried the case. (See *Exhibit 6 -- Sept. 9, 2004 - Attorney Lee Markovitz Deposition Transcript of Miller; pg. 31, line 14 to pg. 34, line 18).*

43. According to Miller, in exchange for his total cooperation, he would be pled-out as an accessory to homicide and given a sentence of 10-20 years.

44. In an April 24, 2008 deposition of Detective Freeman taken by Goldblum's attorney Stan Levenson, Freeman stated that if Miller had asked for a deal, he would have given him one. (See *Exhibit 7 -- Apr. 24, 2008 - Attorney Lee Markovitz, Attorney Chris Eyster, &*

[3] Without these photos, Goldblum's defense could not call expert witnesses to testify as to the location in the car of the individual who wielded the grass sheer inside the vehicle. This is important because the blood spatter would have revealed that the stabbing was committed by someone seated in the front-passenger seat, which was Miller.

*Attorney Stanton Levenson Deposition Transcript of Det. Freeman; Transcript pg. 92, line 10 to Transcript pg. 93, line 6).*

45. Once the police and prosecutors secured Miller as a cooperative witness, willing to falsely accuse Goldblum, they needed a motive.

46. In an April 2, 1976 interview of Miller, conducted by Detectives Freeman and Gorny, Miller was questioned by police regarding the land fraud scheme perpetrated against Wilhelm and falsely accused Goldblum as the mastermind behind the scheme. *(See Exhibit 8 – April 2, 1976 - Supplemental Police Report, Police Interview of Miller).* The questioning of Miller regarding the land fraud was occasioned by a discovery request by Goldblum's Attorney, David Rothman.

47. During the April 2nd interview, Miller cited this (the land fraud scheme) as a primary motive for Goldblum to attack Wilhelm.

48. Ironically, this was the first mention of the land fraud made by Miller, nearly 2 months into the investigation of Wilhelm's death.

49. Miller stated that in late 1973 or early 1974, he became a part of a conspiracy to defraud Wilhelm of money he gained from a worker's compensation settlement by selling Wilhelm falsified deeds to Federal land in North Carolina, using his "political connections."

50. Miller claimed that after Wilhelm expressed interest in purchasing land, he informed Goldblum who allegedly headed the scheme.

51. Miller testified that his friend Ted Dedo posed as Ken Manella, an aide to United States Senator Richard Schweiker, in order to further the fraud and misrepresent that the North Carolina land could be purchased through back-door political influence.

52. Miller falsely contended that Goldblum was the mastermind who called the shots, collected the money from Wilhelm, and distributed the money to the co-conspirators.

53. Pittsburgh Police found only one witness other than Miller, who provided hearsay testimony that Goldblum was acquainted with George Wilhelm in 1973 or 1974. This witness was William J. Hill, a friend of Wilhelm's.

54. Hill testified that he never recalled seeing Goldblum and Wilhelm together.

55. Despite the strong objection of Goldblum's defense attorney Rothman, that Hill's testimony was pure hearsay, it was ultimately admitted at trial. *(See Exhibit 9 -- William Hill Testimony, Goldblum Trial Transcript, Transcript pgs. 1316-1348).*

56. To make matters worse, during Goldblum's trial, Thaddeus Dedo, one of the co-conspirators in the land fraud perpetrated against Wilhelm, made it known that he would testify that Goldblum was not part of the conspiracy if given immunity by the prosecution or Court in his upcoming trial involving his role in the land fraud. *(See Exhibit 10 – Side Bar re: Dedo's proffered testimony, Goldblum trial transcript, Transcript pgs. 893, line 18 to Transcript pg. 899).* However, Dedo was not granted immunity and, as such, refused to testify. Dedo's proffered testimony would have exculpated Goldblum from the land fraud, thus imploding the prosecution's main motive for murder. Realizing the grave importance of Dedo's proffered testimony in exculpating Goldblum from the land fraud, defense attorney Rothman, explained such, and strenuously pleaded with the Court to find a way to immunize Dedo. *(See Exhibit 11 – Side Bar re: Dedo's proffered testimony, Goldblum trial transcript, Transcript pgs. 1080-1083).*

57. Indeed, not only was Dedo not offered immunity, but prior to Goldblum's trial, at the Coroner's Inquest convened on February 18, 1976 into the death of Wilhelm, Dedo was physically assaulted by Senior Detective Charles Lenz, acting head of the City of Pittsburgh

Homicide Squad. This unprovoked attack was corroborated in four different records: (1) a June 24, 1977 field investigator's report authored by the agent who personally served the trial subpoenas to Dedo and William Hill *(See Exhibit 12 -- June 24, 1977 - Investigator's Field Report re: Assault On Dedo)*; (2) an April 9, 1984 interview by private Investigator John Portella, of Thaddeus Dedo *(See Exhibit 13 -- April 9, 1984 - Investigator Portello's Interview With Dedo)*; (3) An April 18, 1984 interview of Fred Orlosky by private investigator John Portella with Attorney Charles Scarlata (See *Exhibit 14 -- April 18, 1984 - Investigator Portello's & Attorney Scarlatas's Interview With Orlosky, Item #20);* and (4) an Affidavit dated May 27, 2016 from Attorney Ernie Orsatti who was an eyewitness to the assault. *(See Exhibit 15 – May 27, 2016 – Attorney Ernie Orsatti Affidavit) & (Exhibit 16 -- Jan. 12, 2017 – Attorney Ernie Orsatti Amended Affidavit).* This incident had not been corroborated until very recently by Attorney Orsatti (who was present during the inquest and observed the assault).

58. The entire copy of the all-important Coroner's Inquest testimony has disappeared and is unavailable.

59. Petitioner Goldblum denied any involvement in the land fraud and conspiracy and denied knowing Wilhelm in 1973 or 1974. The only "evidence" which tied Goldblum to this land fraud scheme was Miller's false testimony.

60. Two of Miller's co-conspirators, Dedo and Orlosky, cleared Goldblum of participating in the land fraud. A recently discovered FBI report indicates that on September 29, 1976, Orlosky passed two polygraphs regarding the land fraud. *(See Exhibit 17 – Sept. 29, 1976 - FBI Report States Orlosky Passed 2 Polygraphs re: Land Fraud*). This corroborates Orlosky's claims in his two subsequent interviews with (1) Investigator John Portella dated April 10, 1984, *(See Exhibit 18 -- April 10, 1984 - Investigator Portello's Interview With Orlosky*, paragraphs 2

& 5*);* and (2) Charles Scarlata and John Portella dated April 18, 1984 that Goldblum was not involved in the land fraud, one of the prosecutions primary motives for murder. *(See Exhibit 19 - - April 18, 1984 - Investigator Portello's & Attorney Scarlatas's Interview With Orlosky, Item #16).* What Orlosky told investigators about Goldblum's non-involvement in the land fraud, was not available and thus not disclosed to the defense at the time of trial. A recently discovered and never-disclosed 1976 FBI report on Orlosky passing the two polygraphs about the land fraud and the entire FBI investigative file into the matter showed no mention of Goldblum's name. *(See Exhibit 17 – Sept. 29, 1976 - FBI Report States Orlosky Passed 2 Polygraphs re: Land Fraud).*

61. During a March 2, 1976 interview with Detective Ronald Freeman, Miller falsely told police that Goldblum recruited Wilhelm to burn down his restaurant for the insurance, despite the fact that Wilhelm had no criminal past or inclination.

62. Although nobody in the District Attorney's office believed Wilhelm was involved in the arson, this story was nevertheless presented at trial. In fact, it was widely believed that it was Miller who set the fire, as later admitted by members of the District Attorney's office.

63. The initial investigation into the November 30, 1975 fire yielded no suspicion of wrongdoing, and the case was closed.

64. At trial, Miller falsely testified that he had nothing to do with the fire, and that Goldblum and Wilhelm were the perpetrators due to the supposed debt Goldblum owed Wilhelm for "masterminding" the land fraud. *(See Exhibit 20 – Miller Testimony, Goldblum Trial Transcript, pg. 1033, lines 9-14); and (See Exhibit 21 -- Miller Testimony, Goldblum Trial Transcript, pg. 474, lines 4-8).* This false testimony was knowingly accepted by the prosecution in spite of the prosecution's knowledge of Miller's failure of a then unrecorded polygraph on May 25, 1976, in which polygraph operator Det. Joseph Stotlemyer claimed Miller lied when

asked if he was involved in the arson. *(See Exhibit 22 – Jan. 27, 1978 - Polygraph Report of Miller by Det. Stotlemyer, lines 17-19).*

65. The knowledge of and report documenting this polygraph interview was unknown to the defense and not put into Wilhelm's homicide file until January 27, 1978, well after Goldblum's trial concluded. *(See Exhibit 22 -- January 27, 1978 - Polygraph Report of Miller by Det. Stotlemyer).*

66. On February 13, 1976, Clarence Miller was given the first of three polygraphs. The first polygraph was administered by Sgt. Joe Modispatcher, who determined that Miller failed. Modispatcher told Det. Freeman that Miller was the lone assailant. *(See Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview).* This polygraph was properly entered into the Master Polygraph Log, however, similar to all of the other polygraphs that were administered to Miller, its existence was also not shared with Goldblum's defense. The three failed polygraphs confirm and verify that: (i) Miller was guilty of Wilhelm's murder, (ii) that Miller lied and falsely testified that Wilhelm was involved in the arson, (iii) that Miller lied and falsely testified about his own involvement in the arson, and, (iv) also corroborates Miller's 1980 PCHA Petition, wherein he confessed that his statements made against Goldblum were false. *(See Exhibit 2 – May 9, 1980 - Miller's PCHA, pg. 4, A-5, A-6, A-7).*

67. Two subsequent polygraphs were administered to Miller by Det. Joseph Stotlemyer on May 15, 1976 and May 25, 1976. Stotlemyer did not enter either polygraph into the Master Log, as required by procedure, and there were no disclosures of the polygraphs to Goldblum's defense. *(See Exhibit 59 – May 1976 - Master Polygraph Log showing no entries*

*for Miller's polygraphs).* Additionally, no report was prepared at the time the polygraphs were administered. *(See Exhibit 22 – Jan. 27, 1978 - Polygraph Report of Miller by Det. Stotlemyer).*

68. After the May 15, 1976, polygraph, Miller confessed to participating in the murder which starkly contrasted with his trial testimony. Both the existence of all three polygraphs and Miller's confession were kept from the defense at Goldblum's trial, and the prosecutor allowed Miller to testify that he had nothing to do with the murder and arson. The jury was allowed to hear this patently false and damning testimony.

69. The existence of all three polygraphs and the information contained therein were not turned over to Goldblum's attorney and remained a secret until Miller's trial some fifteen months later.

70. Through Miller's knowingly false testimony, the prosecutor identified Wilhelm as the arsonist of Goldblum's restaurant in order to provide false motive. Several years later, the District Attorney's office publicly apologized to the Wilhelm family for falsely portraying Wilhelm as an arsonist.

71. The false motive was planted in the jury's minds to help convict Goldblum. Both the police and prosecution knew on May 25, 1976, through Miller's third (undisclosed) failed polygraph, that Miller was lying about his involvement in the arson, but the prosecutor nevertheless allowed him to falsely testify before the court and jury.

72. Dixon, the prosecutor, by supplying a knowingly false motive, falsely argued during Goldblum's trial that Wilhelm assisted Goldblum in the arson (which was extremely damaging).

73. Several years after the trial, Goldblum admitted his involvement in the arson and named Miller as the person who set the fire, (which corroborates the impartial witness testimony

of Edith Wilson and once again disputes the false, but convenient, assertions of the police, prosecution, and Miller).

74. Miller blamed Wilhelm because he was dead and could not defend himself. The prosecutors later admitted their misrepresentation to the Wilhelm family and apologized to them during a 1999 Board of Pardons hearing for characterizing Wilhelm as an arsonist when he was a good and decent person (See *Exhibit 23 – May 6, 1999 - Board of Pardons Hearing Transcript, pg. 68, lines 1-9*).[4]

75. Furthermore, the blood-soaked gloves were examined by the Allegheny County Crime Lab and two hairs, consistent with Miller, were found inside the gloves. These hairs were not consistent with any hair-sample taken from Goldblum. The Crime Lab did not find any hair-evidence or other evidence that Goldblum wore the blood-soaked gloves. The Crime Lab also identified blood on the gloves as that of the victim, Wilhelm. *(See Exhibit 3 – Feb. 26, 1976 - Crime Lab report of Miller's hairs identified in bloody gloves; Report pg. 2, lines 20-27 & Report pg. 3 lines 3-7).*

76. In an interview on March 2, 1976, Miller told the police he disposed of bloody clothing in a City Garbage truck at the top of his hill. This was corroborated by a neighbor at trial, William Held, who testified that he saw Miller on the night of the murder, with "dark brown spots on his clothes," that looked like "dried-up blood," running into his house. This was the bloody clothing disposed of by Miller. *(See Exhibit 24 -- Held's Testimony, Goldblum Trial Transcript, Transcript pg. 2750, lines 13-20, and Transcript pg. 2765, lines 1-21).*

[4] Here, Goldblum seeks remand for an evidentiary hearing to develop the record's disturbing indication that the prosecutor failed to correct false testimony on the part of Miller, the government's principal witness.

77. The fact that Miller's clothing was covered in blood and that he felt the need to dispose of it, further corroborates Miller as Wilhelm's killer. The police reports verify that due to the amount of blood at the scene, anyone close to the victim would have had blood on them and their clothing. The Pathologist noted in his report approximately how much blood was spilt.

78. A separate report, along with photographs of the clothing Goldblum wore that night, showed that Goldblum had no blood on his clothing, further indicating that he was not involved in the murder. In his hand-written report detailing his examination of Goldblum's clothing and topcoat, Pittsburgh and Allegheny County Crime Lab Criminalist, Peter M. Marone noted that no stains were found. *(See Exhibit 25 – Feb. 1976 - County Crime Lab Criminalist, Peter M. Marone's hand-written report on Goldblum's clothing analysis, pg. 4, #16 & #17).* Furthermore, police photographs showed no blood on Goldblum's clothing. *(See Exhibit 26 – Feb. 11, 1976 - Police photographs of Goldblum's clothing).*

79. The morning after the murder, February 10, 1976, the police interviewed Miller at his home. The police report noted a "scratch on his nose, a small laceration on the second finger of his left hand, and several scratches on the arms and wrist", all indicative and consistent with a physical struggle. *(See Exhibit 27 -- February 10, 1976 - Supplemental Police Report - Attest of Clarence Miller, pg. 4, paragraph 4).*

80. Miller initially blamed his cat for the scratches; however, Goldblum would later confirm that there was a struggle between Miller and Wilhelm in the front seat of the vehicle prior to the initial stabbing, and that Miller was punched in the face by Wilhelm.

81. Goldblum's home and vehicle were searched yielding no evidence connecting him with any involvement in the Wilhelm homicide. *(See Exhibit 28 -- February 10, 1976 - Supplemental Police Report – Search of Goldblum's home).* This verifies Goldblum's

contentions and also corroborates Miller's statements in his 1980 PCHA petition. Furthermore, there were no scratches, lacerations or wounds on Goldblum; indicating that Goldblum was not involved in any altercation.

82. After arraignment, Miller called his attorney, Vincent Murovich. According to Miller, Attorney Murovich was present when Det. Ronald Freeman and ADA Peter Dixon made an informal plea-offer of a 10 to 20 year prison sentence if Miller provided information against Goldblum.

83. Miller's recollection clarifies why Murovich, an experienced litigator, allowed the police unfettered and unsupervised access to a client (Miller) accused of such a serious crime.

84. By February 13, 1976, Murovich had surrendered Miller to the police for cooperation. Murovich was not present during Miller's questioning by the detectives or prosecutors, a strange occurrence for an experienced lawyer representing a client charged with serious crimes, unless there was, in fact, an understanding that Miller would be given consideration at sentencing. There was no discussion concerning Miller pleading temporary insanity. Miller took advantage of this opportunity to reduce his sentence and began to weave false stories that would give false motive for Goldblum to injure or kill Wilhelm. *(See Exhibit 2 – May 9, 1980 - Miller's PCHA); and (See Exhibit 27 -- February 10, 1976 - Supplemental Police Report - Attest and Hospitalization of Miller).*

85. In sum, investigators and prosecutors used Miller to construct false theories that Goldblum was involved in the land fraud scheme and that Wilhelm was involved in the arson. This was done for the sole purpose of fabricating Goldblum's alleged motive to murder Wilhelm, all of which was untrue, uncorroborated, and wholly reliant on Miller's inconsistent and constantly evolving false statements.

86. Dedo and Orlosky, both members of the land fraud conspiracy with Miller, have independently claimed that Goldblum had nothing to do with the crime and, therefore, had no motive to harm Wilhelm. To make matters worse, Goldblum did not even know Wilhelm at the time of the land fraud.

87. In Miller's PCHA petition, dated May 9, 1980 *(See Exhibit 2 – May 9, 1980 - Miller's PCHA),* Miller stated: he became extremely ill at his home when the police questioned him. On the ride to police headquarters he blacked-out. While being interrogated at police headquarters, he again blacked-out two times and was subsequently taken to the hospital for treatment. He reported this illness to his attorneys Murovich and Harry Stump; Attorney Stump never told him that he could present a defense of not guilty by reason of temporary insanity; his mental state was not normal at the time of interrogation by the police; the statements that he gave to the police were not true and not of his making or his free will, but instead a product of the police interrogator's own design and personal conviction.

88. In his PCHA petition, Miller further stated:

> *"That the statements that I gave to the police and signed that I saw Charles Zeke Goldblum stabb [sic] George Wilhelm are not true because at that point I blacked out and remember nothing. I wasn't even aware of my own existence let alone anything that happened about George Wilhelm…Petitioner states that the statements the police gave him to sign were a product of their minds and not Petitioner's and further that the statement was signed under the threat of personal physical injury by the police and put Petitioner in a mental state of extreme fear that he blacked out at least twice during the police's intimidating interrogation and had to be hospitalized forwith [sic] for mental psychological stress…I did not knowingly know that I had a right under the law to plea not guilty by reason of temporary insanity and further my trial attorney did not explain this defense to me so I did not know it was available to me had I knew this I would have plead not guilty by reason of temporary insanity."*

*(See Exhibit 2 – May 9, 1980 - Miller's PCHA)* (emphasis added).

89. Miller's arguments in his PCHA have been corroborated by police reports showing his transfer to Southside Hospital for treatment after passing out multiple times during police interrogation. Miller was admitted to Southside Hospital on February 10th and released on February 12th. He then returned to police for further interrogation. *(See Exhibit 27 -- February 10, 1976 - Supplemental Police Report - Arrest and Hospitalization of Miller, pg. 4, paragraphs 5 & 6 to pg. 5).*

90. Miller's actions and false statements were the product of police suggestion. This is verified and corroborated by the mental health professionals who examined Miller, the police reports and the witness testimony, evidence, and admissions by representatives of the District Attorney's office all conflicting with Miller's testimony at Goldblum's trial. Miller reacted to the police the way he did because he suffered from a condition of medically-diagnosed confabulatory amnesia[5]; a condition that was brought on by a brain injury suffered when he was struck by a trolley as a child. Moreover, Miller was highly susceptible to manipulation, fearful of a lengthy prison sentence, and laboring under the assumption that a bargain was struck for a sentence of 10 to 20 years. Fabricating and telling lies were a way of life for Miller due to his mental illness. *(See Exhibit 29 – May 3, 1978 - Psychological Evaluation of Miller by Dr. Arthur Van Cara) and (See Exhibit 30 – April 28, 1978 - Neurologic Exam & Psychiatric Interview of Miller by Dr. James Merikangas).*

91. Since Goldblum's conviction, at least six experts have authored reports to the effect that Goldblum could not have been the assailant based on the dashboard blood spatter pattern.

[5] Confabulatory-amnesia is a medically-diagnosed condition involving the disturbance of memory, defined as the production of fabricated, distorted or misinterpreted memories about oneself or the world, without the conscious intention to deceive.

92. The Chief Forensic Pathologist at the time (who conducted the Wilhelm autopsy) Dr. Joshua Perper, issued a detailed report on May 22, 2013, stating that after reviewing all the available information in this case, in his medical opinion, the perpetrator was most likely the person to the right of Wilhelm in his vehicle – that person was Clarence Miller. *(See Exhibit 31 – May 22, 2013 - Report by Dr. Joshua Perper, pgs. 50-55 [Discussion of Evidence]).*

93. The then Coroner at the time, Dr. Cyril Wecht has issued affidavits stating that after reviewing all the available reports in this case, it is his medical opinion that it was the person to the right of Wilhelm who stabbed him – that person was Clarence Miller. *(See Exhibit 32 -- Feb. 7, 1996 - Affidavit of Dr. Cyril Wecht) and (Exhibit 33 – Sept. 14, 2001 - Affidavit of Dr. Cyril Wecht).*

94. Dr. Henry Lee, a forensic scientist and blood spatter expert, issued an affidavit which states that after reviewing all the available reports in this case, it is his professional opinion that it was the person to the right of Wilhelm that stabbed him – that person was Clarence Miller. *(See Exhibit 34 -- April 24, 1999 - Deposition of Dr. Henry Lee).*

95. Drs. Michael M. Baden and Barbara C. Wolf, both forensic pathologists, issued an affidavit which states that after reviewing all the available reports in this case, it is their professional opinions that it was the person to the right of Wilhelm that stabbed him – that person was Clarence Miller. *(See Exhibit 35 – Nov. 25, 1996 - Affidavit of Dr. Michael Baden & Dr. Barbara Wolf).*

96. Dr. Herbert L. MacDonell, a forensic scientist, and renowned blood spatter expert, issued an affidavit which states that after reviewing all of the available reports in this case, it is his professional opinion that it was the person to the right of Wilhelm that stabbed him – that

person was Clarence Miller. *(See Exhibit 36 – Dec. 13, 2000 – Affidavit of Dr. Herbert MacDonell).*

97. At trial, when questioned regarding photographs taken of the scene, Detective Crisanti testified that only one photo was taken of the vehicle's interior. This photograph, though made available to Goldblum's defense, did not capture the blood spatter on the vehicle's dashboard. Despite many of the investigating officers recalling the blood spatter, including a detailed description by Lead Detective Ronald Freeman during his trial testimony, only one photograph of the vehicle's interior has ever been made available. Additionally, reports by the Mobile Crime Unit, documented that blood spatters were scraped and preserved from the vehicle's dashboard. It was standard procedure to document such evidence with photographs before scraping and bagging it.

98. Post-trial interviews with Detective Crisanti established that he took numerous photographs of the interior of the vehicle, however, due to the failure of the prosecution, particularly ADA Dixon, to make all of the photographs available, Goldblum's defense was deprived of key evidence. It is noteworthy that at trial, Dixon showed Crisanti only one photograph of the interior of the vehicle which did not show the dashboard. *(See Exhibit 37 -- Det. Crisanti Testimony, Goldblum Trial transcript, Transcript pg. 1902); (See Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview); and (See Exhibit 38 – Jan. 2017 - - Investigator Jim Ramsey's Report of Det. Sal Crisanti Interview);*

99. Dr. Toby Wolson, of Miami Dade County, Crime Lab, who was brought into the case by Det. Freeman, claimed that after reviewing all the available reports in this investigation, he could not render an opinion because there is no photographic evidence to review. Dr. Wolson claimed that no blood spatter expert can render an opinion without photographic evidence

because they did not see the blood spatter personally and they would need the photographs to examine the blood spatter. However, Wolson did state that if the blood on the dashboard appeared as Det. Freeman described it in his trial testimony, then he would have to agree with the other doctors and experts that it was the person to the right of Wilhelm that stabbed him – that person was Clarence Miller. *(See Exhibit 39 – Dec. 18, 2000 - Wolson's testimony before Judge McDaniel, Transcript pg. 18, line 10 to Transcript pg. 19, line 12; and Transcript pg. 34, line 21 to Transcript pg. 35, line 8, and Transcript pg. 52, line 22 to Transcript pg. 53, line 4).*

100. Detective Freeman testified both at trial and in a deposition that he (Freeman) observed blood spatter on the dashboard in front of the front passenger's side in the victim's car at the crime scene.[6] Further, at trial, he gave a detailed description of the directional-pattern of the blood spatter which indicated a clear and discernable left-to-right trajectory. That meant that the blood came from the location of the person sitting in the driver's seat (Wilhelm) and moved in the direction of the assailant who was sitting to the right, in the passenger's seat. It was stipulated at trial that Miller was seated in the right-front passenger's seat.

101. Freeman later related in an October 19, 2001 interview with Investigators Barry Fox and William Myers that he may have seen dashboard photos, but could not recall when. *(See Exhibit 40 – Oct. 19, 2000 - Investigator William Myer's Report of Det. Ron Freeman Interview).* Freeman also related in an April 24, 2008 deposition with Attorney Chris Eyster that

[6] Freeman, a trained homicide detective, recalled that the blood spatter on the dashboard had traveled from left to right and the tail of blood was facing the passenger-side door. This is of great importance, as Freeman, being an experienced homicide investigator, should have understood that if the blood spatter tail is facing right, then the blood had to come from the left. Freeman had training and practical application of this scientific fact. He knew that if the blood spatter came from left to right, then the person to the right of the victim was the person who stabbed the victim. The person to the right of the victim in the vehicle was Clarence Miller, as stipulated to at trial. Freeman also knew that for a blood spatter expert to testify on what direction the blood came from and who the likely person was to have stabbed the victim, he (the expert) likely would want photographs because he would not have been at the crime scene and would not have viewed the blood spatter personally.

he was "sure" that photographs were taken of the interior of the Wilhelm vehicle. Freeman believed that Assistant District Attorney Dixon had seen the photographs of the blood spatter. *(See Exhibit 7 – April 24, 2008 - Attorney Lee Markovitz & Attorney Chris Eyster Deposition Transcript of Det. Ron Freeman; Transcript pg. 11, lines 22-23 to Transcript pg. 12, lines 1-15);* Dixon admitted during an interview with Investigator Jim Ramsey that he thought he had seen blood spatter photographs. Dixon never disclosed why he didn't produce the blood spatter photographs at trial or why he failed to turn them over to the Goldblum defense, despite obligations placed upon him by *Brady. (See Exhibit 41 -- Feb. 10, 2011 – Investigator Jim Ramsey's Report of ADA Dixon Interview, pg. 2 paragraph 3).*

102. A few days before trial, Modispatcher recalled seeing dashboard blood spatter photographs in the case file and indicated that they were never turned over to the defense (as required) prior to trial. Modispatcher related this to investigator Jim Ramsey during a 2011 interview. *(Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview).*

103. Freeman admitted in a 2008 deposition with Attorney Chris Eyster that he recalled seeing the photos, but could not remember where or when. In an October 19, 2001 interview with Investigator William Myers, Freeman admitted to testifying that he saw blood inside the Wilhelm vehicle and he may have seen photographs but he could not remember where or when. Freeman also stated that he believed he shared the photos with Pete Dixon, but that Dixon did not use them at trial, which corroborates Modispatcher's statements that photos of the blood spatter actually existed. *(See Exhibit 7 – April 24, 2008 - Attorney Lee Markovitz & Attorney Chris Eyster Deposition Transcript of Det. Ron Freeman; Transcript pg. 11, lines 22-*

*23 to Transcript pg. 12, lines 1-15); and (See Exhibit 40 – Oct. 19, 2001 – Investigator William Myer's Report of Det. Ron Freeman Interview).*

## CLAIMS FOR RELIEF

**a. The Petitioner is entitled to review of his successive habeas petition based on new and reliable evidence of the Petitioner's actual innocence pursuant to 28 U.S.C.A. § 2244 which, when viewed in light of all of the evidence in this case, is sufficient to establish by clear and convincing evidence that no reasonable juror would have found the Petitioner guilty beyond a reasonable doubt absent constitutional error.**

104. Paragraphs 1 through 103 are incorporated by reference herein as though set forth in their entirety.

105. Under 28 U.C.S.A. § 2244, a federal habeas petitioner is entitled to review of a successive application raising claims not presented in a prior application where:

> **(B)(i)** the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> **(ii)** the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

***28 U.S.C.A. § 2244(2)(B)(i)-(ii)***.

106. Furthermore, petitioners seeking relief pursuant to Section 2244(2)(B) must do so within one year from "the date on which the factual predicate of the claim presented could have been discovered through the exercise of due diligence." ***28 U.S.C.A. § 2244(d)(1)(D)***.

107. "The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." ***28 U.S.C.A. § 2244(d)(2)***.

108. Instantly, the Petitioner's claims for relief are premised on newly discovered evidence which, when viewed with the evidence as a whole, establishes by clear and convincing

evidence that, but for the Commonwealth's pattern of reckless and unconstitutional behavior and the ineffectiveness of the Petitioner's trial counsel, no reasonable factfinder would have found the Petitioner guilty of murder beyond a reasonable doubt.

109. The Evidence referred to in above paragraph 108 is comprised of:

(I.) A comprehensive report authored by then Deputy Coroner and forensic pathologist (who conducted the Wilhelm autopsy) at the time, Dr. Joshua Perper and dated May 22, 2013 confirming: (a) the existence of undisclosed photographs of blood spatter from the murder scene, which would have been exculpatory in nature, and (b) the unusual circumstances surrounding the disappearance of all police homicide files and coroner files from the Petitioner's case containing said photographs.

(II.) A January 2011 report filed by Investigator Jim Ramsey, detailing an interview with Police Sergeant Joe Modispatcher, wherein Modispatcher recalled that in the days before the Goldblum trial, he saw interior photos of Wilhelm's vehicle, including those of the blood spatter on the dashboard of the victim's vehicle. These crucial and exculpatory photos were hidden from the defense.

(III.) Miller's 1980 PCHA Petition, wherein he admits that his statements made against Goldblum were false, and that he lied to police and never saw Goldblum stab Wilhelm.

(IV.) An affidavit of Attorney Ernie Orsatti dated May 27, 2016, wherein Orsatti indicates that he observed an Assault & Battery and Witness

Intimidation by Senior Detective Charles Lenz, acting head of the City of Pittsburgh Homicide Squad, upon defense witness Thaddeus Dedo during the Coroner's Inquest prior to Goldblum's trial.[7] Orsatti's recent disclosure that he had witnessed this assault, corroborates this unprovoked attack as recorded in three other separate records:

(a) A June 24, 1977 field investigator's report authored by the agent who personally served the trial subpoenas to Dedo and William Hill,

(b) An April 9, 1984 interview by private investigator John Portella, of Thaddeus Dedo,

(c) An April 18, 1984 interview of Fred Orlosky by private investigator John Portella with attorney Charles Scarlata.

(V.) A recently discovered FBI report indicating that on September 29, 1976, Orlosky passed two polygraphs regarding the land fraud.[8] This is consistent with Orlosky's claims in his two interviews with investigator John Portella (April 10, 1984), and Charles Scarlata/John Portella (April 18, 1984) that Goldblum was not involved in the land fraud, one of the prosecutions main motives for murder. What Orlosky told investigators about Goldblum's non-involvement in the land fraud was not made available to the Petitioner and, thus, was not disclosed at

[7] This information was not discovered by the Petitioner until after the Pennsylvania Supreme Court denied the Petitioner's Petition for Allowance of Appeal.

[8] This information was not discovered by the Petitioner until after the Pennsylvania Supreme Court denied the Petitioner's Petition for Allowance of Appeal.

the time of trial. A review of the recently discovered FBI report regarding Orlosky's passing of two polygraphs about the land fraud, including the entire FBI investigative file on this matter, showed no mention of Goldblum's name. *(Exhibit 17 – Sept. 29, 1976 – FBI Report That Orlosky Passed 2 Polygraphs re: Land Fraud).*

(VI.) Three pre-trial failed polygraphs of Miller which inculpated him in the murder and arson and which the prosecution did not disclose to the defense. *(See Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview), and (See Exhibit 22 – Jan. 27, 1978 - Polygraph Report of Miller by Det. Stotlemyer).*

(VII.) Six mental and psychological examinations of Miller, *(See exhibits 29, 30, 45, 46 47, 48)* detailing mental illness and a medical diagnosis of "confabulatory amnesia" *(refer to footnote 5 on page 18)* all of which the prosecution did not disclose to the defense.

(VIII.) In a March 8, 2007 deposition, ADA Dixon confirmed that lead Det. Freeman was behind Miller's bond reduction and played an active role in soliciting funds from Miller's family's church to help pay Miller's bond.

(IX.) The "disappearance" of ALL files and photos related to this case; including the entire Police Homicide Case File, the Mobile Crime Unit file, and the Coroner's file on the Wilhelm murder.

(X.) The "disappearance" of the February 18, 1976 Coroner's Inquest testimony.

(XI.) Crime scene photographer Det. Crisanti recently indicated in a 2017 interview with Investigator Jim Ramsey that he would have taken several photos of the crucial blood spatter evidence on the dashboard prior to removing the blood for typing. *(See Exhibit 38 – Jan. 2017 - Investigator Jim Ramsey's Report of Det. Sal Crisanti Interview).* These photos were not shared with the defense. The dashboard blood spatter photos would have definitively identified the killer as the person to the right of the victim. That person was Miller. Goldblum was seated in the back seat.

(XII.) Det. Freeman related in an October 19, 2001 interview with Investigators Barry Fox and William Myers that he may have seen dashboard blood spatter photos, but could not recall when. Freeman also related in an April 24, 2008 deposition with Attorney Chris Eyster that he was "sure" that photographs were taken of the interior of the Wilhelm vehicle. Freeman believed that Assistant District Attorney Dixon had seen the photographs of the blood spatter. These photos were not shared with the defense.

(XIII.) In a 2011 interview with Investigator Jim Ramsey, ADA Dixon admitted that he thought he had seen blood spatter photographs. Again, these photos were not shared with the defense.

(XIV.) Fourteen hours after the murder, police interviewed Miller at his home and discovered defensive injuries on his body as described in the February 10, 1976 police report. These injuries were all indicative and

consistent with a physical struggle with the victim, but were inexplicably not photographed.

(XV.) In a March 8, 2007 deposition, ADA Dixon confesses his awareness of Miller's untruthfulness in his testimony.

(XVI.) Testimony from Thaddeus Dedo, the defense's most crucial witness, was purposely withheld by the prosecution in order to falsely shift motive and blame of the murder on to Goldblum.

(XVII.) In a June 17, 1998 affidavit of the trial prosecutor ADA Peter Dixon, he confesses that a miscarriage of justice had occurred and that Goldblum was not involved in the murder nor the land fraud. *(See Exhibit 49 -- June 17, 1998 - Affidavit of ADA Peter Dixon).*

(XVIII.) Over the years, the presiding trial Judge, the Honorable Donald Ziegler, wrote four letters to the Board of Pardons and one to the Governor, all expressing strong support of Goldblum and his "uneasiness with the verdict of the jury", his "concern that a miscarriage of justice may have occurred", and his opinion that Goldblum should be "released from confinement". *(See Exhibits 50, 51, 52, 53, 54 -- Letters from the trial judge, the Honorable Donald Ziegler).*

(XIX.) Just a few days after the murder, the police received the full FBI investigative report on the land fraud perpetrated against the murder victim Wilhelm. These reports made no mention of Goldblum in the land fraud, and these reports were not shared with the defense.

(XX.) In a December 10, 1995 in-depth Pittsburgh Post-Gazette newspaper report from Western Penitentiary, Miller (aka Boomer) yelled down from his cell to the reporter, "Crime pays!" "I love it here!". When the reporter asked what he's in for, Miller replied, "I killed a man." The reporter asked why. Miller replied, "For asking too many questions!" *(See Exhibit 42 – Dec. 10, 1995 - Pgh. Post-Gazette).*

(XXI.) The crime lab analyzed the bloody gloves used in the murder. Inside, two hairs were discovered that matched only Miller's hair sample but not Goldblum's.

(XXII.) The victim's dying declaration as spoken to Officer Pobicki: "I'm gonna die, I'm gonna die" and "*Clarence, Clarence Miller did this to me*." There was no mention of Goldblum or "some other guy".

(XXIII.) In a September 9, 2004 deposition, Miller stated that there was a "hand-shake" agreement between his attorney Vince Murovich, Det. Freeman, and ADA Dixon in which Miller would be pled-out as an accessory to homicide and given only a 10-20 year sentence. This was done to secure Miller as a cooperative witness, willing to falsely accuse Goldblum.

(XXIV.) At Goldblum's only Board of Pardons hearing in May 1999, the ADA confessed that the District Attorney's office never believed that Wilhelm was the arsonist. Still, they allowed the opposite to be presented at trial for the purpose of engineering false motive for Goldblum to murder Wilhelm.

(XXV.) Since Goldblum's conviction, at least six experts have authored reports to the effect that Goldblum could not have been the assailant based on the dashboard blood spatter pattern.

(XXVI.) In Dr. Perper's extensive May 22, 2013 report, he stated that at the time of his trial testimony in the Goldblum prosecution, he was never fully informed of all relevant facts surrounding the investigation of Wilhelm's murder, including, but not limited to, the dashboard blood spatter evidence and interior photographs of the car where the murder occurred.

(XXVII.) ADA Dixon, deliberately and intentionally withheld the existence of (6) negative Psychological reports on Miller, wherein the Psychologist reported that, he could not tell when Miller was lying or telling the truth and suffered from Personality Disorder and Low Intelligence. Dixon, unleashed Miller's lies to the jury without corroboration.

(XXVIII.) ADA Dixon, deliberately and intentionally Suborned Perjury when, he allowed Miller to testify that he was not involved in the murder when, in fact, he knew of the Miller confession on May 15, 1976 after the second polygraph.

(XXIX.) ADA Dixon, deliberately and with forethought, denied Goldblum his 6th Amendment Due Process Right when he confessed such in a 2011 interview with Investigator Jim Ramsey that he knew that defense witness Dedo would exculpate Goldblum from the land fraud if granted immunity and would have testified that Goldblum was not

part of the land fraud charge. Dedo's proffered testimony that Goldblum was not involved in the land fraud was also corroborated by Fred Orlosky in his recently discovered 2016 FBI polygraph report. ADA Dixon had other options to allow Dedo's testimony such as dismissing the charges against Dedo in the interest of justice or taking a plea bargain.

(XXX.) ADA Dixon, deliberately and intentionally withheld exculpatory blood spatter photographs from the defense to manufacture a false motive to convict Goldblum.

(XXXI.) ADA Dixon and Detective Freeman Conspired to offer a silent plea-bargain to Miller and his attorney for his cooperation. Dixon stated in a telephone conversation with Miller's attorney on or about June 24, 1976 quote "I told Clarence that, if he wanted to stay alive, he had to cooperate". There was no mention that his testimony had to be truthful. This amounted to taking the death penalty off the table and was never revealed to the defense.

(XXXII.) ADA Dixon and Detective Freeman conspired to have Miller's bond reduced and ADA Dixon suborned perjury when he later allowed Freeman to testify under oath that he never assisted Miller in his bond reduction.

(XXXIII.) Detective Freeman, knowingly and intentionally withheld Miller's exculpatory polygraph results from the defense until after Goldblum was convicted.

(XXXIV.) Detective Freeman, knowingly and intentionally withheld Miller's exculpatory May 15, 1976 post-polygraph confession (that he [Miller] was involved in the murder) from the defense until after Goldblum's trial had concluded.

(XXXV.) Detective Freeman corrupted the entire polygraph system by withholding the existence of Miller's polygraph examinations from the Master Polygraph Log.

(XXXVI.) Detective Freeman later perjured himself under oath that he did not assist Miller in his bond reduction and subsequent release from jail.

(XXXVII.) Detective Freeman, knowing and intentionally obstructed the administration of justice on December 31, 1976, by offering to help an inmate, Ronald O'Shea, in his criminal case in exchange for O'Shea's false claim wherein he accused Goldblum of solicitation to murder several police officers. *(See Exhibit 43 – Jan. 20, 1006 - Affidavit of Ronald O'Shea).*

110. When viewed in conjunction with all of the evidence in the Petitioner's case as a whole, this new evidence establishes the Petitioner's actual innocence and serves as a gateway for this Court to review the merits of the Petitioner's underlying constitutional claims.

111. Further, the instant Petition is timely filed under Section 2244, as the Supreme Court of Pennsylvania denied Goldblum's Petition for Allowance of Appeal from his most recent PCRA Petition on March 23, 2016 at Case No. 480 WAL 2015. *(See Exhibit 44 – March 23, 2016 - Order of Supreme Court of Pennsylvania dismissing Petition For Allowance of Appeal).*

**b. The Petitioner has come forward with new and reliable evidence of his actual innocence that, when taken with all of the evidence in this case, makes it more likely than not that no reasonable juror would have found the Petitioner guilty of murder beyond a reasonable doubt.**

112. Paragraphs 1 through 111 are incorporated by reference herein as though set forth in their entirety.

113. In ***Schlup v. Delo***, 513 U.S. 298 (1995), the Supreme Court of the United States recognized that in certain circumstances, a compelling showing of habeas petitioner's actual innocence enabled federal courts to consider the merits of a petitioner's otherwise defaulted claims.

114. In an actual innocence gateway case, a petitioner must demonstrate two things before his procedural default will be excused: first, a petitioner must present new, reliable evidence that was not presented at trial; second, a petitioner must show by a preponderance of the evidence "that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." ***Schlup***, 513 U.S. at 324, 327.

115. Under the actual innocence exception to otherwise procedurally barred claims, habeas petitioners asserting actual innocence as a gateway to defaulted claims must establish that, in light of new and reliable evidence, it is more likely than not that no reasonable juror would have found the petitioner guilty beyond a reasonable doubt. ***Id***.

116. In assessing an actual innocence gateway claim, the habeas court "must consider all the evidence *old and new*, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial." ***House v. Bell***, 547 U.S. 518, 537-538 (2006) (quoting ***Schlup***, 513 U.S. at 327-328) (quotation marks omitted) (emphasis added).

117. Further, a habeas petitioner asserting actual innocence is not required to prove his innocence with absolute certainty; rather, the petitioner's burden at the gateway stage is merely to demonstrate that it is more likely than not that no reasonable juror would find him guilty beyond a reasonable doubt. ***House***, 547 U.S. at 538.

118. If the district court finds that, "more likely than not, any reasonable juror would have reasonable doubt" as to the petitioner's guilt, then the petitioner has satisfied the *Schlup* standard and the district court *must* review the petitioner's procedurally defaulted claims. ***Id***.

119. If a petitioner passes through the *Schlup* gateway by satisfying this standard, the district court then considers, and reaches the merits of, all of the petitioner's procedurally defaulted claims. ***Teleguz v. Pearson***, 689 F.3d 322, 329 (4th Cir. 2012) (construing and applying *Schlup* in reversing the district court's denial of petitioner's habeas petition).

120. It is not required that a "causal relationship exist between a petitioner's evidence of actual innocence and a petitioner's procedurally defaulted claims." ***Teleguz***, 689 F.3d at 330.

121. Thus, "a district court's inquiry into a *Schlup* gateway innocence claim requires an examination of *all* of the evidence and a threshold determination about the petitioner's claim of innocence that is separate from its inquiry into the fairness of his trial." ***Id***.

122. As for the inquiry of what is "new evidence," it is well settled that "evidence is new only if it was not available at trial and could not have been discovered earlier through the exercise of due diligence." ***Houck v. Stickman***, 625 F.3d 88, 93 (3d Cir. 2010) (quoting ***Amrine v. Bowersox***, 128 F.3d 1222, 1230 [8th Cir. 1997]).

123. Instantly, based on *all* of the evidence of Petitioner's innocence, including both new and old, the Petitioner has established that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt.

124. The Evidence referred to in above paragraph 123 is comprised of, *inter alia*,:

(I.) A comprehensive report authored by then Deputy Coroner and forensic pathologist (who conducted the Wilhelm autopsy) Dr. Joshua Perper, and dated May 22, 2013 confirming: (a) the existence of undisclosed photographs of blood spatter from the murder scene, which would have been exculpatory in nature, and (b) the unusual circumstances surrounding the disappearance of all police homicide files and coroner files from the Petitioner's case containing said photographs.

(II.) A January 2011 report filed by Investigator Jim Ramsey, detailing an interview with Police Sergeant Joe Modispatcher, wherein Modispatcher recalled that in the days before the Goldblum trial, he saw interior photos of Wilhelm's vehicle, including those of the blood spatter on the dashboard of the victim's vehicle. These crucial and exculpatory photos were hidden from the defense.

(III.) Miller's 1980 PCHA Petition, wherein he admits that his statements made against Goldblum were false, and that he lied to police and never saw Goldblum stab Wilhelm.

(IV.) An affidavit of Attorney Ernie Orsatti dated May 27, 2016, wherein Orsatti indicates that he witnessed an Assault & Battery and Witness Intimidation by Senior Detective Charles Lenz, acting head of the City of Pittsburgh Homicide Squad, upon defense witness Thaddeus Dedo

during the Coroner's Inquest prior to Goldblum's trial.[9] Orsatti's recent disclosure that he had witnessed this assault, corroborates this unprovoked attack as recorded in three other separate records: (a) a June 24, 1977 field investigator's report authored by the agent who personally served the trial subpoenas to Dedo and William Hill, (b) an April 9, 1984 interview by private investigator John Portella, of Thaddeus Dedo, (c) an April 18, 1984 interview of Fred Orlosky by private investigator John Portella with Charles Scarlata;

(V.) A recently discovered FBI report indicating that on September 29, 1976, Orlosky passed two polygraphs regarding the land fraud.[10] This is consistent with Orlosky's claims in his two interviews with investigator John Portella (April 10, 1984), and Charles Scarlata/John Portella (April 18, 1984) that Goldblum was not involved in the land fraud, one of the prosecutions main motives for murder. What Orlosky told investigators about Goldblum's non-involvement in the land fraud was not made available to the Petitioner and, thus, was not disclosed at the time of trial. A review of the recently discovered FBI report regarding Orlosky's passing of two polygraphs about the land fraud, including the entire FBI investigative file on this matter, showed no

[9] This information was not discovered by the Petitioner until after the Pennsylvania Supreme Court denied the Petitioner's Petition for Allowance of Appeal.

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mention of Goldblum's name. *(Exhibit 17 – Sept. 29, 1976 – FBI Report That Orlosky Passed 2 Polygraphs re: Land Fraud).*

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(VIII.) In a March 8, 2007 deposition, ADA Dixon confirmed that lead Det. Freeman was behind Miller's bond reduction and played an active role in soliciting funds from Miller's family's church to help pay Miller's bond.

(IX.) The "disappearance" of ALL files and photos related to this case; including the entire Police Homicide Case File, the Mobile Crime Unit file, and the Coroner's file on the Wilhelm murder.

(X.) The "disappearance" of the February 18, 1976 Coroner's Inquest testimony.

(XI.) Crime scene photographer Det. Crisanti recently indicated in a 2016 interview with Investigator Jim Ramsey that he would have taken several photos of the crucial blood spatter evidence on the dashboard

prior to removing the blood for typing. *(See Exhibit 38 – Jan. 2017 - Investigator Jim Ramsey's Report of Det. Sal Crisanti Interview.)* These photos were not shared with the defense. The dashboard blood spatter photos would have definitively identified the killer as the person to the right of the victim. That person was Miller. Goldblum was seated in the back seat.

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(XVIII.) Over the years, the presiding trial Judge, the Honorable Donald Ziegler, wrote four letters to the Board of Pardons and one to the Governor, all expressing strong support of Goldblum and his "uneasiness with the verdict of the jury", his "concern that a miscarriage of justice may have occurred", and his opinion that Goldblum should be "released from confinement". *(See Exhibits 50, 51, 52, 53, 54 -- Letters from the trial judge, the Honorable Donald Ziegler).*

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what he's in for, Miller replied, "I killed a man." The reporter asked why. Miller replied, "For asking too many questions!" *(See Exhibit 42 – Dec. 10, 1995 - Pgh. Post-Gazette).*

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(XXII.) The victim's dying declaration as spoken to Officer Pobicki: "I'm gonna die, I'm gonna die" and "*Clarence, Clarence Miller did this to me*." There was no mention of Goldblum or "some other guy".

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(XXV.) Since Goldblum's conviction, at least six experts have authored reports to the effect that Goldblum could not have been the assailant based on the dashboard blood spatter pattern.

(XXVI.) In Dr. Perper's extensive May 22, 2013 report, he stated that at the time of his trial testimony in the Goldblum prosecution, he was never fully informed of all relevant facts surrounding the investigation of Wilhelm's murder, including, but not limited to, the dashboard blood spatter evidence and interior photographs of the car where the murder occurred.

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report. ADA Dixon had other options to allow Dedo's testimony such as dismissing the charges against Dedo in the interest of justice or taking a plea bargain.

(XXX.) ADA Dixon, deliberately and intentionally withheld exculpatory blood spatter photographs from the defense to manufacture a false motive to convict Goldblum.

(XXXI.) ADA Dixon and Detective Freeman Conspired to offer a silent plea-bargain to Miller and his attorney for his cooperation. Dixon stated in a telephone conversation with Miller's attorney on or about June 24, 1976 quote "I told Clarence that, if he wanted to stay alive he had to cooperate". There was no mention that his testimony had to be truthful. This amounted to taking the death penalty off the table and was never revealed to the defense.

(XXXII.) ADA Dixon and Detective Freeman conspired to have Miller's bond reduced and ADA Dixon Suborned Perjury when he later allowed Freeman to testify under oath that he never assisted Miller in his bond reduction.

(XXXIII.) Detective Freeman, knowingly and intentionally withheld Miller's exculpatory polygraph results from the defense until after Goldblum was convicted.

(XXXIV.) Detective Freeman, knowingly and intentionally withheld Miller's exculpatory May 15, 1976 post-polygraph confession (that he [Miller]

was involved in the murder) from the defense until after Goldblum's trial had concluded.

(XXXV.) Detective Freeman corrupted the entire Polygraph system by withholding the existence of Miller's polygraph examinations from the Master Polygraph Log.

(XXXVI.) Detective Freeman later perjured himself under oath that he did not assist Miller in his bond reduction and subsequent release from jail.

(XXXVII.) Detective Freeman, knowing and intentionally obstructed the administration of justice on December 31, 1976, by offering to help an inmate, Ronald O'Shea, in his criminal case in exchange for O'Shea's false claim wherein he accused Goldblum of solicitation to murder several police officers. *(See Exhibit 43 – Jan. 20, 1006 - Affidavit of Ronald O'Shea).*

125. This information and evidence was not presented at the Petitioner's trial, nor could the Petitioner have discovered the foregoing evidence sooner through the exercise of due diligence.

126. Furthermore, when viewed in conjunction with all of the evidence in this case, this new evidence establishes sufficient doubt regarding the Petitioner's guilt as to justify review of the Petitioner's otherwise defaulted constitutional claims.

127. The Petitioner, therefore, is entitled to an evidentiary hearing to explore this new evidence, which is discussed in more detail below.

i. <u>The undisclosed photographs of the blood spatter from the murder scene and the unusual disappearance of police and coroner case files.</u>

128. Paragraphs 1 through 127 are incorporated by reference herein as though set forth in their entirety.

129. All of the pertinent records in this case have inexplicably gone missing, including, all of the investigative files in this matter which were maintained by the Coroner's office, Mobile Crime Unit and the City of Pittsburgh Homicide Squad.

130. The unusual circumstances surrounding the disappearance of these case files had not been confirmed until recently. *(See Exhibit 31 – May 22, 2013 - Report by Dr. Joshua Perper, pg. 51, paragraph 4 and pg. 54, paragraph 4); and (See Exhibit 56 – Nov. 22, 2012 - Interview of Dr. Cyril Wecht, Transcript pg. 6, line 19 to Transcript pg. 8, line 5); and (See Exhibit 57 -- Nov. 1, 2004 - Letter From Dr. Cyril Wecht regarding missing files); and (See Exhibit 58 -- Jan. 3, 2005 – Report from Dr. Stephen Fienberg regarding missing files).*

131. Most notably, however, it has only recently been ascertained from Dr. Perper's recent report that there may have been photographs taken of the blood spatter inside of Wilhelm's car, which the Commonwealth failed to disclose prior to trial, and which the police alleged did not exist.

132. These photographs would have contributed greatly to establishing the Petitioner's innocence, as they would have confirmed that the assailant was sitting in the front passenger seat of Wilhelm's vehicle (it is undisputed that this is where Miller was seated).

133. Furthermore, Dr. Perper states in his report that at the time of his trial testimony in the Goldblum prosecution, he was never fully informed of all relevant facts surrounding the investigation of Wilhelm's murder, including, but not limited to, the dashboard blood spatter evidence and interior photographs of the car where the murder occurred.

134. Had Dr. Perper been able to review this evidence prior to his trial testimony, he would have agreed with the other expert reports that Miller, and not Goldblum, was the assailant.

135. When combined with all the exculpatory evidence in this case to date, including the perjured testimony of Miller, the incontrovertible physical evidence, Dedo's proffered testimony that Goldblum was not involved in the land fraud scheme, Orlosky telling investigators that Goldblum was not part of the land fraud scheme, and the dying declaration of Wilhelm, it is more likely than not that no reasonable juror would have found the Petitioner guilty beyond a reasonable doubt.

136. Accordingly, Dr. Perper's confirmation of these missing records, including the dashboard blood spatter photographs, provides sufficient grounds to grant the Petitioner a hearing to determine the circumstances under which these records disappeared and to what extent these missing records and undisclosed photographs contained exculpatory evidence.

ii. Eye witness testimony of Attorney Orsatti corroborating records of an assault by the police on defense witness Thaddeus Dedo prior to the Petitioner's trial.

137. Paragraphs 1 through 136 are incorporated by reference herein as though set forth in their entirety.

138. One of the primary factors leading to the Petitioner's conviction was his alleged motive to murder Wilhelm due to the land fraud scheme.

139. According to Clarence Miller's (false) testimony, the Petitioner masterminded the land fraud scheme perpetrated against Wilhelm.

140. As such, the prosecution relied on Miller's perjured testimony in this regard to manufacture a false motive for the Petitioner to kill Wilhelm and to wrongly shift blame for the murder onto the Petitioner.

141. However, Thaddeus Dedo, one of the actual participants in the land fraud scheme, knew that this was false and that the Petitioner, in fact, was not involved in the scheme.

142. Dedo, who would have been a material defense witness at the Petitioner's trial, was never offered immunity and, thus, elected not to testify to the fact that the Petitioner was not involved in the land fraud.

143. Even prior to the assistant district attorney's decision to deny Dedo immunity, both the police and prosecution were aware of the significance of his proffered testimony. Assistant district attorney Dixon later confessed that he knew he would be violating Goldblum's 6th amendment right if he didn't grant Dedo immunity, and he believed that if Dedo had testified, the jury would have found Goldblum innocent because they would have not have believed anything Miller told them. *(See Exhibit 41 – Feb. 10, 2011 - Investigator Jim Ramsey's Report of ADA Dixon Interview, pg. 2 paragraph 1).*

144. Intending to protect Clarence Miller's credibility as a chief witness for the prosecution, Senior Detective Charles Lenz, acting head of the City of Pittsburgh Homicide Squad, physically attacked and assaulted Dedo after the Coroner's Inquest in hopes of (and succeeding in) intimidating him.

145. Although this assault was documented in three separate reports plus a recent eyewitness affidavit, said incident was never known to the defense nor disclosed to the defense prior to trial.

146. Indeed, this assault was unknown to the Petitioner until it was recently discovered, on May 5, 2016 that Attorney Ernie Orsatti of Pittsburgh (hereinafter "Orsatti"), had witnessed the assault on Dedo while at the Coroner's Inquest. *(See Exhibit 15 – May 27, 2016 - Attorney Ernie*

*Orsatti Affidavit); and (See Exhibit 16 -- Jan. 12, 2017 - Attorney Ernie Orsatti Amended Affidavit).*

147. Orsatti was not in any way affiliated with the Petitioner's case, and, as such, did not realize the gravity of the assault at the time of occurrence at the Coroner's Inquest.

148. It was not until recently, when Orsatti was speaking with the Petitioner's legal/investigative team on or about May 5, 2016, that Orsatti realized the importance of what he had witnessed and disclosed the same to Jim Ramsey, Marc Simon, and David Bear.

149. In his Affidavit, Orsatti states that prior to May 5, 2016, he thought that the incident was unrelated to the Petitioner's case.

150. However, Orsatti recently realized that what he had observed on February 18, 1976 at the Coroner's Inquest, was likely related to, and also corroborated three separate records in the Petitioner's case: (1) a June 24, 1977 Field Investigators Report authored by the agent who personally served the trial subpoenas to Dedo and William Hill *(See Exhibit 12 -- June 24, 1977 - Investigator's Field Report re Assault On Dedo),* (2) an April 9, 1984 interview of Dedo by Investigator John Portella *(See Exhibit 13 -- April 9, 1984 - Investigator Portello's Interview With Dedo),* and (3) an April 18, 1984 interview of Fred Orlosky by Investigator John Portella/Charles Scarlatta *(See Exhibit 14 -- April 18, 1984 - Investigator Portello's & Attorney Scarlatas's Interview With Orlosky, Item #20).*

151. Therefore, the Petitioner and, indeed, Orsatti had no reason to know that he (Orsatti) had witnessed an assault on a defense witness, material to the Petitioner's case, until May 5, 2016.

152. More importantly, this is information which the Petitioner could not have discovered sooner through the exercise of due diligence.

153. When combined with the other documented instances of police and prosecutorial misconduct throughout the Petitioner's case, as well as all of the exculpatory evidence in this case, it is more likely than not that no reasonable juror would have convicted the Petitioner had this information been disclosed at trial.

154. Based on the foregoing, and pursuant to *Schlup*, the Petitioner is entitled to a review of his successive petition for habeas corpus relief and an evidentiary hearing on the constitutional violations discussed more fully below.

**c. This Court should grant the Petitioner habeas relief based on the misconduct and reckless behavior of both the police and prosecution in knowingly using Clarence Miller's perjured testimony and failing to disclose exculpatory and impeachable evidence, which denied the Petitioner's due process right to a fair trial.**

i. The prosecution's knowing use of Clarence Miller's perjured testimony.

155. Paragraphs 1 through 154 are incorporated by reference herein as though set forth in their entirety.

156. A conviction will be set aside when the prosecutor's misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." ***Darden v. Wainright***, 477 U.S. 168, 181 (1986).

157. "A conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is *any* reasonable likelihood that the false testimony could have affected the judgment of the jury." ***United States v. Agurs***, 427 U.S. 97, 103 (1976) (emphasis added).

158. "The same is true when the government, although not soliciting false evidence, allows it to go uncorrected when it appears at trial." ***United States v. Biberfeld***, 957 F.2d 98, 102 (3d Cir. 1992).

159. As it relates to perjured testimony, the rule pronounced in ***Brady*** applies when "the undisclosed evidence demonstrates that the prosecutor's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury." ***Agurs***, 427 U.S. at 120.

160. When the government obtains a conviction through the knowing use of false testimony, it violates a defendant's due process rights. To obtain a new trial, the defendant must establish: (1) that there was false testimony; (2) that the government knew or should have known it was false; and (3) that there is a likelihood that the false testimony affected the judgment of the jury. ***U.S. v. Freeman***, 650 F.3d 673, 678 (7th Cir. 2011).

161. Instantly, an abundance of evidence exists from which the conclusion can be drawn that: (1) Clarence Miller testified falsely at the Petitioner's trial; (2) the prosecution knew or should have known that Clarence Miller's trial testimony was false; (3) the prosecution made no effort to corroborate Miller's false statements despite knowing that he was mentally ill and of diminished intelligence; and (4) that Miller's false testimony affected the judgment of the jury.

162. More particularly, ADA Dixon knew or should have known that Miller's testimony was false based primarily on the following:

a. Wilhelm's dying declaration that "*Clarence, Clarence Miller did this to me"* just prior to his death;

b. The physical evidence implicating Miller as the killer and exculpating the Petitioner, including:

*i.* The fact that there was no blood discovered on the Petitioner's clothes he wore on the night of the murder (indeed, Miller confessed to police in a March 2, 1976 interview that after the murder, he discarded his bloody overcoat from that night because there was a large amount of blood on it. *(Exhibit 55 – March 2, 1976 - Miller Interview by Det. Freeman, pg. 6, lines 4-11);*

ii. Approximately 14 hours after Wilhelm's murder, the police report noted on Miller the existence of a scratch on his nose, a small laceration on the

second finger of his left hand, and several scratches on the arms and wrists; all indicative and consistent with a physical struggle;

iii. The absence of any defensive wounds (cut, scratches, etc.) on the Petitioner the day after the murder;

*iv.* Dashboard blood spatter evidence which was captured by photographs and would have shown that the Petitioner was not the attacker given the angle of the blood trail, but which inexplicably disappeared a week before trial. *(See Exhibit 41 – Feb. 10, 2011 - Investigator Jim Ramsey's Report of ADA Dixon Interview, pg. 2 paragraph 3);*

c. Three failed polygraph tests by Miller, wherein he confessed after the second polygraph that he was involved in the murder of Wilhelm (which is contradictory to his trial testimony that he wasn't involved);

d. Detective Stotlemyer, who performed the second and third polygraphs on Miller, opined in his January 27, 1978 Supplemental Report that he believed Miller was involved in the arson (Miller denied any involvement in the arson during his trial testimony);

e. Dixon's own admission during closing argument that Miller had a difficult time telling the truth and tended to lie unconsciously (from which it can be inferred that Dixon knew Miller was a medically-diagnosed confabulator – a fact which was never disclosed to the defense before the Petitioner's trial);

f. The lack of any evidence connecting Wilhelm to the arson, combined with Dixon's subsequent admission that he and ADA Gilmore never believed Wilhelm to be the arsonist (which was one of the primary motives the prosecution used to convict the Petitioner);

g. The fact that Dedo came forward to testify that the Petitioner had nothing to do with the land fraud scheme; this testimony, however, would have defeated the prosecution's second motivating factor for the Petitioner to have allegedly killed Wilhelm. (Dedo, of course, was not granted use-immunity to testify);

h. Dixon's confession of knowingly denying Goldblum his 6th amendment right to due process.

i. Dixon's own admission that he didn't believe Wilhelm was the arsonist; and

j. Recently discovered FBI report indicating that on September 29, 1976, Orlosky passed two polygraphs regarding the land fraud. This corroborates Orlosky's claims in his two interviews with: (1) Investigator John Portella (April 10, 1984) and, (2) Charles Scarlata/John Portella (April 18, 1984) that Goldblum was not involved in the land fraud, one of two false motives for murder advanced by the

prosecution. Further, this newly discovered report corroborates Thaddeus Dedo's proffered testimony that Goldblum was not involved in the land fraud.

163. Taken in conjunction, the foregoing circumstances and evidence provide more than enough information to have, in the very least, provided Dixon with constructive knowledge that Miller's testimony (that the Petitioner hired Wilhelm as the arsonist, participated in the land fraud scheme, and was the sole assailant) was false.

164. Furthermore, there is a very strong likelihood that this false testimony affected the judgment of the jury, as Miller's testimony was the bedrock of the Commonwealth's case; without it, the prosecution could not have established a motive for the Petitioner to murder Wilhelm. (*See, Graves v. Dretke*, 351 F.3d 143 [5th Cir. 2003]).

165. As such, Dixon's knowing use of Miller's perjured testimony to obtain the Petitioner's conviction, constituted a due process violation and stripped the Petitioner of his constitutional right to a fair trial.

ii. The prosecution's withholding of exculpatory evidence and numerous *Brady* violations.

166. Paragraphs 1 through 165 are incorporated by reference herein as thought set forth in their entirety.

167. In concert with Assistant District Attorney Dixon's knowing use of Miller's false testimony as discussed above, numerous *Brady* violations occurred throughout the Petitioner's trial that further violated the Petitioner's due process rights.

168. Pursuant to *Brady*, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." ***Brady v. Maryland***, 373 U.S. 83, 87 (1963).

169. Indeed, the duty to disclose such evidence is applicable even though there has been no request by the accused; said duty encompasses impeachment evidence as well as exculpatory evidence. ***Agurs***, 427 U.S. at 107; ***United States v. Bagley***, 473 U.S. 667, 675 (1985).

170. The rule in *Brady* has also been held applicable to evidence known only to police investigators and not to the prosecutor. ***Kyles v. Whitley***, 514 U.S. 419, 438 (1995).[11]

171. In order to comply with *Brady*, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." ***Kyles***, 514 U.S. at 437.

172. Instantly, much of the physical evidence in this case has disappeared under very unusual circumstances.

173. This trend began at the trial level, where both exculpatory and impeachment evidence was knowingly suppressed by the prosecution.

174. For example, no dashboard photographs of the blood spatter in the victim's car were disclosed to the defense prior to or after the trial, which would have provided visual evidence that the assailant was sitting in the front-passenger seat (and not in the back seat, where it is undisputed the Petitioner was located at the time of the murder).

175. Although Det. Crisanti, the police photographer, testified at trial that he believed that no additional interior vehicle photographs were taken (which would be an anomaly for a case of this magnitude), he has recently disclosed in a 2017 interview that blood spatter photographs of

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[11] In ***Kyles v. Whitley***, 514 U.S. 419 (1995), ***Curran v. Delaware***, 154 F.Supp. 27 (1957) and ***Commonwealth v. Hallowell***, 383 A.2d 909 (1978), the Supreme Courts of both the United States and Pennsylvania and the Third Circuit Court of Appeals, respectively, all concluded that a prosecutor was held to have constructive knowledge of what police or other prosecutors were aware of. Likewise, in ***Giglio v. United States***, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972), the Supreme Court held that even if the case-prosecutor did not have actual knowledge of the facts giving rise to a prosecution witness's testimony, that he had to be charged with the knowledge of another prosecutor.

the dashboard did exist due to the fact that he admitted his procedure to never removing blood prior to photographing it. *(See Exhibit 38 – Jan. 2017 - Investigator Jim Ramsey's Report of Det. Sal Crisanti Interview); and (See Exhibit 7 -- Apr. 24, 2008 - Attorney Lee Markovitz & Attorney Chris Eyster Deposition Transcript of Det. Freeman, Transcript pg. 11, line 10 to Transcript pg. 12, line 15);* and *(See Exhibit 41 – Feb. 10, 2011 - Investigator Jim Ramsey's Report of ADA Dixon Interview, pg. 2 paragraph 3)*

176. Lead police detective in the Petitioner's case, Ronald Freeman, has testified in a deposition that he saw the dashboard blood spatter photographs prior to trial.

177. Also a few days before trial, Sgt. Modispatcher recalled seeing dashboard blood spatter photographs in the homicide case file which indicated that they were never turned over to the defense (as required prior to trial). Modispatcher related this to Investigator Jim Ramsey during a 2011 Interview. *(Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview).*

178. Taking this testimony as true, these exculpatory photos which undeniably existed at the time of trial, leads to the conclusion that the prosecution, having been imputed with all information in the police's possession, committed an egregious *Brady* violation by suppressing these exculpatory photos.

179. Had these photos been disclosed, they would have substantiated the Petitioner's position that he could not have caused the injuries inflicted upon the victim from the back seat of the vehicle.

180. Additionally, the prosecution also withheld from Petitioner the results of all three of Clarence Miller's failed polygraph exams *(See Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview), and (Exhibit 22 – Jan. 27, 1978 - Polygraph*

*Report of Miller by Det. Stotlemyer)* as well as Sgt. Modispatcher's and Detective Stotlemyer's opinions contained therein. In the Modispatcher February 13, 1976 polygraph, Miller failed regarding his involvement in the Wilhelm murder. After the May 15, 1976 Stotlemyer polygraph, Miller confessed to participating in the Wilhelm murder.[12] During the May 25, 1976 polygraph, Miller failed regarding his involvement in the arson. None of these revelations were disclosed to the defense

181. Miller's confession after the second polygraph administered by Detective Stotlemyer on May 15, 1976 that he was involved in the murder; directly contradicted his testimony during trial that he played no part in the attack on Wilhelm. *See*, ***Scott v. Mullin***, 303 F.3d 1222 (10th Cir. 2002) in which Prosecution failed to disclose that prosecution witness had previously confessed to murder; *See also*, ***Carriger v. Stewart***, 132 F.3d 463 (9th Cir. 1997)(en banc) in which Prosecution failed to disclose that central prosecution witness had confessed to the murder and had previously been committed to a mental hospital.

182. Had the results of the three failed polygraphs and Miller's related confession to being involved in the murder been disclosed to the defense prior to trial, they would have been used to undermine Miller's credibility and inevitably would have damaged the prosecution's case.

183. Collectively, these due process violations and the otherwise reckless manner in which the Petitioner's case was prosecuted, stripped the Petitioner of his right to a fair trial and, thus, justify the granting of a new trial for the Petitioner.

[12] The prosecution ignored Miller's confession and hid it from the defense so Miller could falsely testify that he was not involved in the murder. Had this information come before the jury, there would have been doubt about Goldblum's participation because of the abundant amount of blood on Miller's clothing and the absence of any blood on Goldblum's clothing.

**d. This Court should grant the Petitioner habeas relief based on trial counsel's ineffectiveness in failing to adequately question Dr. Perper at trial, or any time prior to trial, as to his opinion regarding the assailant's identity in light of all of the overwhelming evidence implicating Clarence Miller as the sole assailant.**

184. Paragraphs 1 through 183 are incorporated by reference herein as though set forth in their entirety.

185. The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. ***U.S.C.A. Const. Amend. VI***.

186. That right is denied when a defense attorney's performance falls below an objective standard of reasonableness and thereby prejudices the defense. ***Wiggins v. Smith***, 539 U.S. 510, 521 (2003); ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

187. If a state court has already rejected an ineffective-assistance claim, a federal court may grant habeas relief if the decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." ***28 U.S.C. § 2254(d)(1)***.

188. In the case at bar, the Petitioner's most recent Petition for Post-Conviction Relief was denied on procedural grounds.

189. As such, the Petitioner's claim of ineffective-assistance of counsel as set forth herein has not previously been rejected by the state court.

190. Here, the Petitioner's trial counsel, David Rothman, was ineffective for failing to ask then Chief Forensic Pathologist (who conducted the Wilhelm autopsy) Dr. Joshua Perper at trial, or any time prior thereto, his opinion as to the identity of Wilhelm's assailant.

191. At trial, substantial testimony and evidence were presented implicating Miller as the assailant and contradicting his account of the attack.

192. Although much of this evidence was presented after Dr. Perper testified, it nevertheless provided a basis for trial counsel to recall Dr. Perper for a second opinion in light of this evidence.

193. However, his failure to do so, rendered him ineffective, as this decision fell below the objective standard set forth in *Strickland* and, consequently, prejudiced the Petitioner's right to a fair trial.

194. Accordingly, the Petitioner is entitled to relief on his claim of ineffective assistance of counsel. An evidentiary hearing must be held as it has not been adjudicated in state court.

**e. This Court should grant the Petitioner habeas relief based on the overwhelming evidence of his actual innocence which was overshadowed at trial by the Commonwealth's knowing use of Clarence Miller's perjured testimony and its perpetual withholding of exculpatory evidence.**

195. Paragraphs 1 through 194 are incorporated by reference herein as though set forth in their entirety.

196. The overwhelming majority of the evidence produced in this case establishes what many later came to realize, including both the presiding prosecutor and trial judge who opined in several separate documents: *the Petitioner is innocent of the murder of George Wilhelm.*

197. Had it not been for the chronic instances of police and prosecutorial misconduct that occurred throughout the Petitioner's trial, no reasonable factfinder would have found him guilty beyond a reasonable doubt.

198. Collectively, the following evidence, when viewed in conjunction with the constitutional violations committed against the Petitioner, justifies review of the instant Petition:

a. The interpretation of dashboard blood spatter evidence by the experts discussed herein;

b. The fact that Miller was a known medically-diagnosed confabulator;

c. That Miller confessed to his involvement in the murder;

d. That ADA Dixon did not believe Miller's false testimony that Goldblum was involved in the land fraud scheme. Even though he was aware of that fact, Dixon did not grant immunity to Dedo; thus the jury did not hear Dedo's exculpatory testimony; [13]

e. Dixon's confession of knowingly denying Goldblum his 6th amendment right to due process. *(See Exhibit 41 – Feb. 10, 2011 - Investigator Jim Ramsey's Report of ADA Dixon Interview, pg. 2 paragraph 1)*; and

f. That Senior Detective Lenz, the acting head of the Homicide Squad, in an effort to silence Dedo, attacked and assaulted him after the Inquest into the death of Wilhelm.

199. The government's duty to assure the accuracy of its representations has been well stated, many times before. This means that when the government learns that part of its case may be inaccurate, it must investigate. It cannot simply ignore that its witness is lying. ***Freeman***, 650 F.3d at 679.

200. If testimony is false and the government knew or should have known it was false, the issue becomes whether there was a "reasonable likelihood that the false testimony could have affected the jury." ***Freeman***, 650 F.3d at 681.

201. The question of prejudice in cases of knowing use of false testimony is whether there is a reasonable probability that had it not been for the improprieties, the defendant would have been acquitted. ***U.S. v. Boyd***, 55 F.3d 239, 245 (7th Cir. 1995).

[13] Indeed, if a hearing is granted, James R. Ramsey, Sr., the investigator retained by the Petitioner, would testify that during his investigation and conversations with ADA Dixon, he (Dixon) stated that he did not believe Clarence Miller when he claimed that the Petitioner was involved in the land fraud scheme. ADA Dixon related to Mr. Ramsey that if Dedo had testified that the Petitioner was not involved in the land fraud scheme, Miller's credibility would have been irreparably damaged and the jury would most likely not have believed anything Miller said from the witness stand. ADA Dixon made a similar statement in his 1999 Board of Pardons testimony.

202. As discussed *infra*, an abundance of evidence exists to conclude that the prosecution knew or should have known that Clarence Miller's trial testimony was false and that this false testimony affected the judgment of the jury.

203. What's more, the Commonwealth knew, but withheld from the Petitioner, that Miller was a medically-diagnosed confabulator, which information could have been used to impeach Miller's testimony at trial. *See* ***Wilson v. Beard***, 589 F.3d 651 (3d Cir. 2009).

204. In ***Wilson***, the Third Circuit held that evidence of the prosecution witness's visit to the emergency room following his testimony in a capital murder trial and his history of severe mental illness was material, for purposes of requiring disclosure under *Brady*. ***Wilson***, 589 F.3d at 665-666.

205. Similar to Miller's medically-diagnosed confabulation disorder, the witness in ***Wilson*** suffered from an "ingrained psychological need to impersonate a police officer, to be an aid to the Police, and to associate and attach himself to Police activities," which caused him to "go overboard trying to help the police, with poor judgment and distorted perceptions of reality." ***Id.*** at 665 (internal quotations omitted).

206. The Third Circuit explained in ***Wilson*** that "[t]his evidence could have been used to demonstrate [the witness's] impaired ability to perceive, remember and narrate perceptions accurately, which is clearly relevant to his credibility as a witness." ***Id***. at 666 (citing ***Cohen v. Albert Einstein Med. Ctr.***, 592 A.2d 720, 726 (Pa. Super. 1991) ("Evidence of mental illness or a disability which impairs a witness's ability to perceive, remember and narrate perceptions accurately is invariably admissible to impeach credibility…").

207. Here, the Commonwealth was aware prior to trial, that Miller, their chief witness, was as a medically-diagnosed confabulator.

208. Accordingly, as this information would have been admissible to impeach Miller's testimony at trial pursuant to ***Wilson***, *supra*, the Commonwealth violated *Brady* by failing to disclose it to the defense. *See also*, ***Browning v. Trammell***, 717 F.3d 1092 (10th Cir. 2013) in which the Prosecution withheld psychiatric records of the most important prosecution witness who blurred reality and fantasy and projected blame onto others. The *Browning* Court, quoting from *Smith v Cain, supra*, held that when the eyewitness testimony is the only evidence linking the defendant to the crime, and the impeachment evidence casts substantial doubt upon its reliability, it is material. *Further, see also*, ***Slutzker v. Johnson,*** 393 F.3d 373 (3d Cir. 2004) in which the state suppressed police reports showing the key prosecution witness had told police shortly after the killing that the man she saw was not the Defendant/Petitioner.

209. Based on the evidence set forth above, ADA Dixon knew or should have known that Miller's testimony was false based primarily on the following:

a. Wilhelm's dying declaration that "*Clarence, Clarence Miller did this to me"* just prior to his death;

b. The physical evidence implicating Miller as the killer and exculpating the Petitioner, including:

i. The fact that there was no blood discovered on the Petitioner's clothes he wore on the night of the murder (indeed, Miller confessed to police in a March 2, 1976 interview that after the murder, he discarded his bloody overcoat from that night because there was a large amount of blood on it). *(Exhibit 55 – March 2, 1976 - Miller Interview by Det. Freeman, pg. 6, lines 4-11);*

ii. Approximately 14 hours after Wilhelm's murder, the police report noted on Miller the existence of a scratch on his nose, a small laceration on the second finger of his left hand, and several scratches on the arms and wrists; all indicative and consistent with a physical struggle;

iii. The absence of any defensive wounds (cut, scratches, etc.) on the Petitioner the day after the murder;

iv. Dashboard blood spatter evidence which was captured by photographs and would have shown that the Petitioner was not the attacker given the angle of the blood trail, but which inexplicably disappeared a week before trial;

c. Three failed polygraph tests by Miller, wherein he confessed after the second polygraph that he was involved in the murder of Wilhelm (which is contradictory to his trial testimony that he wasn't involved);

d. Detective Stotlemyer, who performed the second and third polygraphs on Miller, opined in his January 27, 1978 Supplemental Report that he believed Miller was involved in the arson (Miller denied any involvement in the arson during his trial testimony);

e. Dixon's own admission during closing argument that Miller had a difficult time telling the truth and tended to lie unconsciously (from which it can be inferred that Dixon knew Miller was a medically-diagnosed confabulator – a fact which was never disclosed to the defense before the Petitioner's trial);

f. The lack of any evidence connecting Wilhelm to the arson, combined with Dixon's subsequent admission that he and ADA Gilmore never believed Wilhelm to be the arsonist (which was one of the primary motives the prosecution used to convict the Petitioner);

g. The fact that Dedo came forward to testify that the Petitioner had nothing to do with the land fraud scheme; this testimony, however, would have defeated the prosecution's second motivating factor for the Petitioner to have allegedly killed Wilhelm (Dedo, of course, was not granted use-immunity to testify);

h. Dixon's confession of knowingly denying Goldblum his 6th amendment right to Due Process;

i. Dixon's own admission that he didn't believe Wilhelm was the arsonist; and

j. A recently discovered FBI report indicates that on September 29, 1976, Orlosky passed two polygraphs regarding the land fraud. This corroborates Orlosky's claims in his two interviews with (i) Investigator John Portella dated April 10, 1984 and (ii) Charles Scarlata and John Portella dated April 18, 1984 that Goldblum was not involved in the land fraud, one of the prosecution's primary motives for the murder.

210. With respect to the materiality of the inconsistent statements made by Miller during his polygraph tests and interviews, instruction may be found in ***Dennis v. Secretary, Pennsylvania Dept. of Corrections***, 834 F.3d 263 (3d Cir. 2016).

211. In ***Dennis***, a suppressed police activity sheet revealed that two days after the murder in question, a key witness for the Commonwealth made a statement that was inconsistent with an earlier statement she had made to the police regarding the defendant's identity. ***Dennis***, 834 F.3d at 296-297.

212. The Third Circuit ruled in ***Dennis*** that the prosecution's failure to disclose the police activity sheet constituted a *Brady* violation, as evidence of the inconsistent statements possessed impeachment value and could have discredited the Commonwealth's key eyewitness. ***Id***. at 299-305

213. In doing so, the ***Dennis*** Court rejected the Commonwealth's argument that the inconsistent statements were immaterial, as the eyewitness was heavily cross-examined at trial on other grounds. ***Id.*** at 300 (citing ***Lambert v. Beard***, 633 F.3d 126, 134 (3d Cir. 2011) (stating that "it is patently unreasonable to presume—without explanation—that whenever a witness is impeached in one manner, any other impeachment becomes immaterial")).

214. The Court reasoned that "[t]he mere fact that a witness has been heavily cross-examined or impeached at trial does not preclude that additional impeachment evidence is not material under *Brady*." ***Id***. at 300.

215. This principle is equally applicable here, as Miller's many inconsistent pre-trial statements regarding his role in the murder were material for purposes of *Brady* and, thus, should have been disclosed prior to trial.

216. Moreover, pursuant to ***Dennis*** and ***Lambert***, the fact that Miller was nevertheless impeached with other evidence at trial does not alter the materiality of these inconsistent statements under *Brady*.

217. A recently discovered FBI report indicates that on September 29, 1976 Orlosky passed two polygraph examinations regarding the land fraud. *(See Exhibit 17 – Sept. 29, 1976 - FBI Report States Orlosky Passed 2 Polygraphs re: Land Fraud*). This corroborates Orlosky's claims in his two interviews with: (1) Investigator John Portella dated April 10, 1984 *(See Exhibit 18 -- April 10, 1984 - Investigator Portello's Interview With Orlosky*, paragraphs 2 & 5*)*, and, (2) Charles Scarlata/John Portella dated April 18, 1984 (*See Exhibit 19 -- April 18, 1984 - Investigator Portello's & Attorney Scarlatas's Interview With Orlosky, Item #16)* that Goldblum was not involved in the land fraud, one of two false motives advanced by the prosecution. Further, this newly discovered report corroborates Thaddeus Dedo's proffered testimony that Goldblum was not involved in the land fraud.

218. The foregoing circumstances and evidence collectively provide more than enough information to have put Dixon on notice that Miller's testimony (that the Petitioner hired Wilhelm as the arsonist, participated in the land fraud scheme, and was the sole assailant) was false.

219. Furthermore, there is a very strong likelihood that this false testimony affected the judgment of the jury, as Miller's testimony was the bedrock of the Commonwealth's case; without it, the prosecution could not have established a motive for the Petitioner to murder Wilhelm.

220. As such, Dixon's knowing use of Miller's perjured testimony to obtain the Petitioner's conviction, constituted a due process violation and stripped the Petitioner of his constitutional right to a fair trial.

221. Furthermore, much of the physical evidence in this case has disappeared under very bizarre, strange, and unusual circumstances.

222. This trend began at the trial level, where both exculpatory and impeachment evidence was knowingly suppressed by the prosecution, including the dashboard blood spatter

photographs discussed above, which would have confirmed that the Petitioner was not the assailant.

223. Significantly, the prosecution also intentionally withheld the results of all three of Clarence Miller's failed polygraph tests. *(See Exhibit 5 -- Nov. 2011 - Investigator Jim Ramsey's Report of Sgt. Joe Modispatcher Interview), and (See Exhibit 22 – Jan. 27, 1978 - Polygraph Report of Miller by Det. Stotlemyer).* In the Modispatcher February 13, 1976 polygraph, Miller failed regarding his involvement in the Wilhelm murder. After the May 15, 1976 Stotlemyer polygraph, Miller confessed that he was involved in the Wilhelm murder. As such, Miller's February 13, 1976 polygraph result in addition to Miller's May 15, 1976 post-polygraph confession that he was involved in the murder, when in fact he testified at trial that he was not involved, constituted *Brady* material, as there is a reasonable probability that, had this significant confession been disclosed and used by the defense at trial, the Petitioner would have been acquitted. During the May 25, 1976 polygraph, Miller failed regarding his involvement in the arson.

224. Miller's confession after the second polygraph administered by Detective Stotlemyer on May 15, 1976 directly contradicted his testimony during trial that he played no part in the attack on Wilhelm.

225. Directing the Court's attention to the United States Supreme Court's decision in ***Smith v. Cain***, 132 S.Ct. 627 (2012), there the Court held that the prosecution's failure to disclose contradictory statements of the prosecution's key eyewitness constituted a *Brady* violation and warranted a reversal of the Petitioner's conviction.

226. In ***Cain***, the Petitioner was convicted of first-degree murder based on the testimony of a single eyewitness. During the post-conviction proceedings, the Petitioner obtained police files

containing statements by eyewitness's that contradicted eyewitness trial testimony, but which were never disclosed to the defense.

227. In reversing the Petitioner's conviction, the Court reasoned that, pursuant to *Brady*, the statements were material because there was a "reasonable probability that, had the evidence been disclosed, the result of the proceedings would have been different." ***Smith***, 132 A.2d at 630.

228. Significantly, the Court made note of the fact that the eyewitness's testimony was the only evidence linking the Petitioner to the crime and, thus, eyewitness's contradictory statements were material to the determination of the Petitioner's guilt. ***Id***. (Citing ***U.S. v. Agurs***, 427 U.S. 97 (1976)).

229. Similarly, in the Sixth Circuit case of ***U.S. v. Tavera***, 719 F.3d 705 (6th Cir. 2013), the Petitioner learned after his conviction for a drug conspiracy that his co-defendant told the prosecution prior to the Petitioner's trial, that the Petitioner had no knowledge of the conspiracy.

230. The ***Tavera*** Court held that the statement was material for purposes of *Brady* as it not only corroborated the Petitioner's trial testimony, but directly contradicted the testimony of the prosecution's chief witness, who testified that the Petitioner knew the drugs were in the vehicle.

231. Considering that this witness's testimony was the only direct evidence of the Petitioner's intent, and that said witness had existing credibility issues, the Court concluded that it "[could not] say with any confidence that the outcome of the trial would have been the same" had the statement been disclosed. ***Tavera***, 719 F.3d at 713-714.

232. In the case at bar, akin to both ***Smith*** and ***Tavera***, Clarence Miller's testimony that the Petitioner was the sole assailant was the only direct evidence that the Petitioner murdered Wilhelm.

233. Indeed, much of the evidence presented at trial tended to exculpate the Petitioner, including, but not limited to, Wilhelm's dying declaration, a scratch on Miller's nose, a small laceration on the 2nd finger of his left hand and several scratches on the arms and wrist, all indicative and consistent with a physical struggle, and the absence of any defensive wounds on the Petitioner as well as the lack of any blood on the clothing of the Petitioner.

234. Miller's credibility and competency as a witness was already an issue as evidenced by his criminal record and ADA Dixon's admission during closing argument that Miller had a difficult time telling the truth.

235. As such, Miller's post-polygraph confession that he was involved in the murder, when in fact he testified at trial that he was not involved, constituted *Brady* material, as there is a reasonable probability that, had this significant confession been disclosed and used by the defense at trial, the Petitioner would have been acquitted.

236. In addition to the foregoing *Brady* violations, the Commonwealth also violated the Petitioner's right to a fair trial by failing to fully inform the then Chief Forensic Pathologist (who conducted the Wilhelm autopsy) Dr. Perper of all the relevant facts and evidence in the case, prior to his trial testimony.

237. If the Commonwealth had done so, it would have been Perper's opinion based on the totality of the evidence that Miller, and not the Petitioner, was the assailant.

238. The cumulative effect of this reckless and inexcusable conduct was the deprivation of the Petitioner's due process rights to a fair trial.

239. Absent such conduct, it is more likely than not that no reasonable juror would have found the Petitioner guilty of murder beyond a reasonable doubt.

**WHEREFORE**, and based on the foregoing, it is respectfully requested that this Honorable Court grant the Petitioner relief pursuant to 28 U.S.C.A. § 2254, including an evidentiary hearing, on the claims set forth above.

Respectfully submitted,

THE LINDSAY LAW FIRM, P.C.

/s/ Alexander H. Lindsay, Jr.

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ALEXANDER H. LINDSAY, JR.

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