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

RALPH TRENT STOKES Petitioner, v. JEFFREY BEARD, Commissioner, Pennsylvania Department of Corrections; LOUIS B. FOLINO, Superintendent of the State Correctional Institution at Greene; and FRANK TENNIS, Superintendent of the State Correctional Institution at Rockview, Respondents.	CIVIL ACTION No. 04-CV-767 HONORABLE PETRESE B. TUCKER U.S.D.J. **THIS IS A CAPITAL CASE**

AMENDMENT TO
PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner, through undersigned counsel, pursuant to Rule 15 of the Federal Rules of Civil Procedure, hereby amends his previously filed Petition for a Writ of Habeas Corpus.[1]

[1]Since Respondent has yet to file a responsive pleading, this *Amendment* is made as of right pursuant to Rule 15, Fed.R.Civ.P. See 28 U.S.C. § 2242 and Riley v. Taylor, 62 F.3d 86, 89 (3d Cir. 1995) (each stating that amendment of a petition for a writ of habeas corpus is governed by Rule 15).

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PRELIMINARY STATEMENT

On May 25, 2004, this Court ordered that Petitioner's counsel be granted access to the files generated and maintained by the United States Postal Inspector and the Philadelphia Police Department regarding the killings at Smokin' Joe's Corner.

On Friday, May 28, 2004, counsel for Petitioner was able to review the Postal Inspector file and he included in his Petition for Habeas Corpus (hereafter, "*Petition*") claims that arose from review of those records. However, at the time that Petitioner was required to file the *Petition*, Respondents were unable to locate the police file. Respondents' counsel agreed to continue to search for the file, and agreed as well to waive any statute of limitations defense to claims promptly made after, and arising from, an inspection of the police file, if found, or from the determination that the file was lost.

At the time that the *Petition* was filed, counsel for Petitioner were under the impression that the police file may last have been in the possession of the trial prosecutor, Roger King.[2] However, on June 9, 2004, Petitioner's investigator located the "missing" police in the City of Philadelphia Archive. Respondents' counsel were notified and made arrangements for counsel to review and obtain copies of relevant portions of the file. Counsel for Petitioner have now been given access to that file, including audiotapes contained in it, and Respondents have agreed not to interpose a statute of limitations defense so long as this amendment is filed by July 20, 2004.

This *Amendment* to the *Petition* is based upon review of the police file. It includes both additional documentary support for claims already presented in the *Petition*, and claims that have been discovered for the first time that arise from additional exculpatory documents found in the

[2]See *Petition* at ¶ 37.

police file. The contents of the police file confirm the pattern of non-disclosure of exculpatory material that was apparent upon review of the Postal Inspector file and that is stunning in its scope. Among other things, the police file contains:

- the FBI's crime laboratory reports of blood and chemical testing performed on items taken from Petitioner's home, which state unequivocally that neither lead residue, blood or barbecue sauce were found on any of the items;
- evidence that the prosecutor, Roger King, asked for and was given the results of those tests;
- the previously undisclosed statement of a man named Eric Burrell that contradicted the testimony of both Commonwealth witnesses Donald Jackson and Eric Burley, because Burrell reported that, shortly after the murders occurred, co-defendant Donald Jackson was in possession of a .38 caliber revolver that he claimed was used in the robbery;
- more information calling into question the integrity of eyewitness Renard Mills' supposed identification of Petitioner's eyes as those of the shooter;
- evidence that the prosecutor's office indeed chose to give witnesses Eric Burley, his brother Leonard Wells, and their family favorable treatment by refusing to authorize his arrest for his complicity in these crimes, although the police requested permission to issue an arrest warrant for him; and
- that police subjected Commonwealth witness Gavin Coates to a polygraph test before they obtained a statement from him that implicated Petitioner in the crime.

The content of the police file highlights the gross prosecutorial misconduct that plagued Petitioner's trial, and which is set forth in the *Petition*. As these additional claims also show, Petitioner's trial constituted a gross violation of his right to due process of law, and to the effective assistance of counsel. The resulting guilty verdicts are not worthy of confidence and cannot stand.

AMENDMENTS

AMENDMENT TO CLAIM I.[3]

1. As addressed in Claim I of the *Petition*, pp. 13-21, during a search of Petitioner's family residence conducted in the early morning hours of March 12, 1982, Postal Inspector Douglas Ostwalt noticed in the family bathroom a pair of sneakers sitting in a tub of liquid that had the smell of chlorine. The Inspector claimed that the water was "kind of reddish-looking." He also noticed a bath mat or rug, which had a reddish stain on it. Inspector Ostwalt recalled that there was a substance of similar color spilled on the floor inside the refrigerator, around the body of Mrs. Figueroa. He also recalled seeing what appeared to be sneaker prints through this substance, and sneaker prints on the floor of the kitchen leading into the dining area and toward the rear door. Inspector Ostwalt therefore seized the bath mat, the sneakers, and a sample of the water. NT 3.92-94, 3.101-02, 3.110, 10.34. According to other prosecution evidence, only the shooter had actually stepped into the refrigerator, where the barbecue sauce and blood were present on the floor.

2. Inspector Ostwalt also testified to the seizure of a navy blue ski suit from a closet in the middle bedroom of the residence. NT 3.96. Eyewitnesses reported that the perpetrators had worn blue coveralls.

3. Property receipts cataloguing these seized items indicate that the items were sent for laboratory analysis, see Property Receipts 864356, 864357, 864358, 864363 (Exhibits C-19-A, B, C and F at trial). However, the results of these purported tests were never discussed on the record of the trial; they were not provided to trial defense counsel; and they were never presented

[3]Petitioner uses the same numbering system as used in the *Petition*.

to the jury.[4]

4. As noted in the *Petition*, pp. 13-21, although the prosecutor had no witnesses who could prove the actual connection of these items to the crime, the prosecutor, over defense objection, was permitted to introduce all of these items into evidence. What is more, the prosecutor did all that he could, both through his questioning and his summation, to encourage the jury to draw the inference that the shoes belonged to Petitioner, and that the items in the bathroom indeed contained the residue of the crime. The prosecutor thus powerfully argued that the seized items constituted a clear link between Petitioner and the offense, and that Petitioner had been caught in the act of trying to destroy this damning evidence.

5. As also addressed in Claim I of the *Petition*, that compelling and highly incriminating picture was a false one. Contained within the Postal Service file that was ordered disclosed by this Court on May 26, 2004, habeas counsel discovered the existence of previously undisclosed documents discussing the laboratory reports of testing done on items seized from Petitioner's home. These documents referenced the results of the lab reports that showed that the seized items contained neither blood nor barbecue sauce.

6. The Postal Service file also contained a notation, made shortly before trial, that the prosecutor, Roger King, had requested the Postal Service file. Thus, the prosecutor was

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[4]The files provided to habeas counsel by prior counsel did not contain these lab reports. Therefore, habeas counsel requested that Respondents' counsel provide them with these reports. Respondents' counsel related that there were **no** such lab reports in their current working file, and hence no such reports were provided. To be clear, habeas counsel do not suggest that the current prosecutor has suppressed these reports. Rather, the absence of these reports from current counsel for Respondents further supports Petitioner's contention that these reports were suppressed by the trial prosecutor, Roger King, and the police and inspectors who worked with him.

unquestionably in possession of the results of these reports when he made his misrepresentations to the jury.

7. Not surprisingly, the police file contained the actual laboratory reports. The first FBI Laboratory report is dated April 20, 1982.[5] *Appendix*, Vol. III, Tab J, page 1. It shows that the shoes, rug, plastic bottle containing an unknown liquid, and jumpsuit were hand delivered to the FBI Laboratory in Washington, D.C., on March 16, 1982. The examination requested was "Firearms - Chemical Analyses." The results were stated as follows:

> Specimen Q5 [jumpsuit] was microscopically examined and chemically processed for the presence of residue and none were found.
>
> **No blood was found in or on** specimens Q1 through Q5 [the shoes, rug and liquid].[6]

8. A May 24, 1982 letter from Postal Inspector Charles McManus to the FBI crime Laboratory acknowledges receipt of the April 20, 1982 response to the earlier request for examination of the shoes, liquid, ski suit and rug for blood and gunshot residues. McManus then requested additional testing of those same items for the presence of Bar-B-Que sauce components (a sample of the sauce from Smokin' Joes was submitted to the laboratory as "K-1"). Finally, Postal Inspector McManus asked for testing of the victims' clothing for blood and barbecue sauce. *Appendix*, Vol. III, Tab J, page 2.

9. The results of this latter testing are contained in an FBI Laboratory report dated July 13, 1982. *Appendix*, Vol. III, Tab J, Page 3. Blood was found on some of the clothing

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[5]All of the newly discovered documents from the Police File that are referenced in this *Amendment* are included in *Petitioner's Appendix*, Volume III, which is being filed with this pleading.

[6] As in the *Petition*, all emphasis is added, unless otherwise specified.

belonging to the victims, and "stains consistent with" the sample barbecue sauce were found on clothing belonging to victims Mary Figueroa and Eugene Jefferson. However, "**no traces of the K-1 [sample] Bar-B-Que sauce could be detected**" on the shoes, rug, liquid, or jumpsuit.

10. The FBI Laboratory Reports are contained in two of four binders found in the police file, which contain varying compilations of documents pertinent to the case.

11. The police file also contains more evidence proving the prosecutor's knowledge of these exculpatory lab results. First, the police file as a whole demonstrates that the police worked closely in this investigation with prosecutor Roger King and his office. The District Attorney's Office was consulted in regard to witnesses, search warrants and arrest warrants. Members of the District Attorney's Office were involved in determining the "strategy" of the investigation.[7] A number of documents suggest police and prosecutorial consultation regarding how the case would be presented and what loose investigative ends needed tying. Indeed, in one typewritten list entitled "THINGS TO DO ON SMOKIN JOE JOB FROM ROGER KING," one

[7] For example, the District Attorney's office was consulted about the issuance of both search warrants for Petitioner's house, Activity Sheet for Thursday, 3-11-82 (Lt. Lanzelotti); Activity Sheet for 3-16-82 (Lt. Lanzelotti/Westerman) (*Appendix*, Vol. I, Tab A, pages 285, 269). The detectives also asked the District Attorney's Office for a warrant to arrest Charlotte Gatewood (co-defendant Jackson's girlfriend, who shared the proceeds), and for arrest and search warrants for Eric Burley (who, according to Commonwealth evidence, shared the proceeds, disposed of the murder weapon, and harbored and assisted Donald Jackson in his flight) (*Appendix*, Vol. I, Tab A, page 279; Vol. III, Tab J, pages 6-7. In both instances, the District Attorney's Office directed the officers to proceed otherwise. In one police activity sheet entry related to Burley, it is indicated that prosecutor Roger King was working with Burley's mother to secure Burley's cooperation. See Activity Sheet dated 5/20/82 authored by Sgt. Strom and Lt. Hansen (*Appendix*, Vol. III, Tab J, page 8). In another entry, it is indicated that Assistant District Attorney Jeffrey Brodkin "elected to confer with Gatewood, as to the criminal charges to be placed on RAZE (DONALD JACKSON) if he was willing to cooperate in the investigation." (Activity Sheet for Friday, 3-12-82, Sheet #3 (apparently prepared by Detective Lynch) (*Appendix*, Vol. I, Tab A, page 279).

of the detectives (the document does not identify the author) wrote: "3. Get the lab report back on the blood from Washington." (*Appendix*, Vol. III, Tab J, pages 9-11). There is a check mark next to the number, indicating completion of the task. As noted in the *Petition*, the prosecutor requested the Postal Inspector Service file before trial, and that file included the results of *both* reports, if not the reports themselves. There can be no serious dispute that the prosecutor was aware of the results when he made his misrepresentations at the time of trial.

12. On May 24, 1982, the same day the second request was made to the FBI Laboratory, the case was listed in court. The docket entry for that day states, "Commonwealth's Discovery Complete." See Quarter Sessions File for Philadelphia CP # 82-03-4576 *et seq.*, Docket Entry for May 24, 1982.

13. As urged in the *Petition,* the prosecutor's failure to disclose to the defense the exculpatory laboratory results, while at the same time **making affirmative and false use** of the evidence – as if those exculpatory results did not exist – constituted an egregious violation of the prosecutor's obligation to do justice, and a plain violation of Petitioner's right to due process of law. Moreover, the prosecutor's misdeeds deprived Petitioner of his right to counsel and to the effective assistance of counsel under the Sixth Amendment, because his concealment was a manipulation of the defense and defense strategy. The prosecutor lay in wait while the defense presented witnesses and sought to deal with its false evidence, and then attacked the defense as incredible. Both Pennsylvania's rules of discovery, and the due process clause of the Fourteenth Amendment to the United States Constitution squarely prohibit precisely what the prosecution was able to achieve here. Mr. Stokes' trial was fundamentally unfair, and the Court can have no confidence in the reliability of the verdict. Accordingly, Claim I is amended to include the

above-described facts.

AMENDMENT TO CLAIMS III AND VII.

14. Claims III and VII demonstrate that significant exculpatory evidence was suppressed that could have been used to impeach the credibility of Donald Jackson (Claim III) and Eric Burley (Claim VII). Documents contained within the police file provide further support for each of these claims. Each of these witnesses was critical to the prosecution's case. Indeed, Jackson was the co-defendant turned state's evidence, who fingered Petitioner as the actual killer. Burley testified that Jackson and Petitioner came to his house after the robbery and killings. There, they split the proceeds and directed Burley to get rid of the murder weapon. Burley said that Jackson told him that Petitioner was the shooter, and that Petitioner, too, made incriminating statements.

A. The Statement of Eric Burrell.

15. On May 4, 1983, not long before trial began, police obtained a statement from a man named Eric Burrell. *Appendix*, Vol. III, Tab J, pages 12-16. Burrell, an acquaintance of "Razor" (Donald Jackson), told police that he had seen Jackson in the company of two other men. Jackson said he had some money and that if Burrell was in need of it, Jackson would give "a little something" to him. During the conversation, Jackson pulled a .38 caliber with a long barrel from his waistband and told him that it was the gun that "we got the money with." One of the other men had another .38 caliber, and the third man had a .45. They asked Burrell if he knew anyone who wanted to buy a brand new .45. Burrell said no. During the conversation, Jackson – without specifying which of the other men he meant – bragged that "we" had knocked off Smokin' Joe's; that he thought some people were dead; and that they had locked the victims

in the freezer. Burrell said he saw blood stains on Jackson and the man with the .45. Jackson also told Burrell that the man with the .45 had stolen a car, which Burrell assumed was the getaway car, but that it kept stalling out. Burrell told him they were crazy and walked away.

16. The next day, Burrell saw Jackson around 21st and Carpenter, "dressed like a lady." Burrell asked him why, and Jackson said that federal authorities were looking for him because one of the victims was a letter carrier.

17. Burrell's statement was never provided to any lawyer representing Petitioner. It only came to light when undersigned counsel inspected the police file pursuant to this Court's order. Burrell's statement is exculpatory because it places a .38 caliber revolver – a gun of the caliber and type of the murder weapon – in the hands of Donald Jackson shortly after crime. The statement is further exculpatory because it describes that gun as having a "long barrel." Leonard Wells, Eric Burley's brother, testified that the revolver he received from his brother had a long barrel – longer than the snub nose gun that Roger King showed to him during trial.

18. Burrell's statement is also exculpatory because it provides substantial impeachment of Donald Jackson's testimony. First, Burrell saw Donald Jackson in possession of a .38 **revolver**, when Jackson claimed at trial that he carried a .38 **automatic**. Second, Jackson told Burrell that this gun was used during the crime. However, the gun that Burrell described had a long barrel. Jackson, in contrast, had testified that but one revolver was involved in the crime, and that gun had a *snub nose.* Third, Burrell's statement flatly contradicts Donald Jackson's statements about the post-offense disposal of the guns. According to Jackson's testimony, he and Petitioner went to the home of Eric Burley, where they gave Burley the gun and Jackson directed Burley to dispose of it. Burrell's statement – that Jackson remained in

possession of the gun while in the company of two others – just does not "fit" Jackson's story.

19. Burrell's statement is also "exculpatory" in its contradiction of Eric Burley's testimony. As set forth in the *Petition*, Eric Burley, like Jackson, testified that, on the afternoon of the crime, the revolver was given to him to dispose of. He immediately bicycled to a vacant lot, where he hid the revolver under a rock. Burley said he later returned and retrieved the gun, and then gave it to his brother to hide for a while. Later still, he retrieved the revolver again and returned it to the hiding place under the rock. Again, Donald Jackson placed himself in continuing possession of the revolver used during the Smokin' Joe's robbery in his conversation with Burrell. Because Burrell's statement impeaches key prosecution witnesses, due process required that it be provided to the defense.

26. Eric Burrell's statement was not among the statements that habeas counsel was able to gather from the files of prior counsel. Nor, apparently, was Burrell's statement contained in the file which the District Attorney's Office presently possesses, because this statement was not among the witness statements that the presently assigned District Attorney was kind enough to provide to habeas counsel.[8] Even its placement within the police file shows that it was not provided to trial counsel. It is not located with any other witness statements and is certainly not contained with the statements that found their way into the police "binders" that are found within the homicide file. Burrell's statement, on the other hand, was found in a separate folder within the file, but it was not in a binder.

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[8]As with the lab reports, habeas counsel does not suggest that Respondents' current counsel suppressed the Burrell statement. Habeas counsel believes that Burrell's statement was not in Respondents' counsel's file, because the police and Roger King decided to suppress this statement by keeping it secreted in the police file.

B. Further Evidence Relating to Donald Jackson's Criminal History.

27. In the *Petition*, Petitioner demonstrated that the prosecutor violated his due process obligations by failing to disclose to the defense important impeachment material regarding Jackson's criminal history. The prosecutor went so far as to mislead defense counsel and the court about the true nature of that criminal history during argument regarding how the defense might use that criminal history to impeach Jackson at trial. See *Petition*, pp. 30-42. Petitioner also showed that although trial counsel could have gained some information about this prior history through independent investigation of court files, counsel provided ineffective assistance, in violation of Petitioner's rights under the Sixth Amendment to the United States Constitution by failing to do so.

28. Documents within the police file show that the police investigating this case were well aware that Jackson had at least one open county parole/probation, in addition to the open state parole that was discussed at trial. The police file contains a copy of a Philadelphia Court of Common Pleas Probation Department Detainer for Jackson, issued on October 9, 1980, for the "technical violation" of absconding on a sentence imposed by Judge Biunno on Bill of Information No. 7412-1536. Judge Biunno had sentenced Jackson to 6 years of probation in March of 1975.[9] *Appendix*, Vol. III, Tab J, page 17.

29. Even more significant is the information which the police files contain about robbery and gun charges that were open and outstanding against Jackson **at the time of the** Smokin' Joe's robbery, but which were dismissed by the time of trial. See *Petition,* p. 39. These

[9]It is mistakenly stated in the *Petition,* p. 40, ¶129, that the sentence was five years of probation.

charges were contained in Philadelphia Criminal Complaint Number 80-08-3084 and involved a complainant named Calvin Seaborough. Donald Jackson had not appeared for his preliminary hearing on those charges, and a bench warrant had been issued for his arrest.

30. The police file contains documents that prove that the Roger King and the police were aware of those charges. First, a number of documents specifically refer to the bench warrant, including: an activity sheet; a computer printout; handwritten notations; and a partial draft of a search warrant that apparently was being prepared to search the home of Jackson's ex-girlfriend, Diane Adams, where the police believed that Jackson might be hiding. *Appendix*, Vol. III, Tab J, pages 18-24.

31. As to this robbery, however, the police file also contains the investigation report, police form 75-49, prepared by Detective James Feldmayer, a Juvenile Aid Division officer. *Appendix*, Vol. III, Tab J, pages 25-28. Feldmayer reported the complainant's statement that Jackson, in the company of another male, pointed a pistol at him and tried to rob him. The complainant spotted the two males again hours later and contacted the police. Jackson was caught, but his partner escaped. Upon arrest, Jackson gave a false name, an apparently false address, and a false date of birth – in fact, Jackson, who was then 24 years old, claimed to be only 17 years old.

32. Due process of law required the prosecutor to reveal this police form 75-49 to defense counsel in this case. First, it contained information demonstrating Donald Jackson's propensity to lie: upon arrest, he gave false identifying information, undoubtedly motivated by the hope of securing more lenient treatment for himself. If he could successfully pawn himself off as a juvenile, Jackson not only might avoid harsher adult penalties, but he also would

continue to avoid detection as a state *and* county parole and/or probation violator on no less than three other matters. Jackson, as this 75-48 eloquently shows, was no novice at telling lies to police to avoid taking responsibility for his own actions. The prosecution was obliged to disclose just such telling impeachment material about a witness whose credibility it asked the jury to accept in a situation such as this: where Jackson was accusing Petitioner of murder in the first degree to avoid facing the possibility of a death sentence for himself.

C. Additional Information Demonstrating Donald Jackson's Motive to Lie.

34. In the *Petition,* Petitioner notes that police dealt extensively with Donald Jackson's girlfriend, Charlotte Gatewood, and his ex-girlfriend, Diane Adams, to secure his surrender and cooperation. *Petition,* pp. 42-44. A March 14, 1982 handwritten memorandum from Postal Inspector McManus, which was not contained in the Postal Inspector Service file, but was in the police file, provides another example of those dealings. *Appendix*, Vol. III, Tab J, pages 29-30. It confirms other memoranda, but it also offers insight into how the police hooked and eventually reeled in their star witness.

35. In the memorandum, McManus reports his conversation that day with Charlotte Gatewood:

> I said that we knew that "Trent" and "Raz" were the ones who did the robbery but since we think "Trent" did the shooting, **we want to talk to "Raz" to clear him.** She asked why we were bothering with "Raz" when we thought "Trent" did the shooting. We said that we had to talk to him **to clear him of the shooting and that he would have to give us details of what happened if he did not do it.** We then said that if Trent decided to come in an tell us that "Raz" did it, then "Raz" may take the weight for the whole thing. **She thought about this point and said that "Raz" was scared to come in because of other charges and his six years back time.** She said that he was running and has been since word went out that the police were looking for him. ... I asked her to leave that decision up to "Raz" and at least have him talk to me on the phone so he can decide for himself

> **whether or not he wants to meet.** She said she would call my office and find out where "Raz" could phone me at as soon as she hears from him.

36. The police file also contains two versions of a "MEMO TO FILE" signed by Postal Inspector Charles McManus on March 26, 1982, in both of which McManus's described in some detail Donald Jackson's surrender to the police. *Appendix*, Vol. III, Tab J, pages 31-32. McManus also recorded what occurred as Jackson completed his "eleven page statement." According to the postal inspector, Jackson read the statement and confirmed that it was true, but then he refused to sign it or record it. McManus wrote:

> He [Jackson] said that he would not sign it "because I want something to bargain with". He told us that if he signed it then it could be used in court against him. He was then told by Dan that it could be used anyway, since he had already voluntarily signed the warning and waiver and had stated that he would talk to us about the incident. He was then told that the statement only reflected what had happened and that it showed that he did not do the shooting. He still said that he did not want to sign it and also refused to read it onto a tape. …

37. These memoranda by Inspector McManus add new dimension to the information contained in the Postal Inspector Service file. See *Petition,* pp. 42-44. They not only show that Donald Jackson was encouraged to name Petitioner as the shooter, but they suggest that Jackson was encouraged to believe that, by doing so, he could be "cleared" of murder charges altogether. The March 14 memorandum also records, as Petitioner has urged in his *Petition*, that Jackson's prior crimes were an important part of his thought process during this period. Thus, because this memorandum provides compelling evidence that Jackson at least initially blamed Petitioner as the shooter in the hope that he would be altogether "cleared" in the shootings, it provides strong impeachment evidence of Jackson.

38. Also included in the police file is a third piece of information probative of

Jackson's motive to lie: a draft of a written plea agreement for Donald Jackson. The version in the police file is unsigned; counsel has never seen a signed version but is certainly entitled to one if it does exist. *Appendix*, Vol. III, Tab J, page 33. The unsigned version reads as follows:

> Defendant agrees to do the following: Plead to 3 counts of 2nd Degree Murder, Robbery, Conspiracy. Defendant to testify against co-defendant Ralph T. Stokes consistent with his statement given to the police (Stokes was the shooter and that Stokes killed the three (3) victims because they could identify Stokes)).
>
> Commonwealth agrees to do the following: Recommend that all sentences run concurrent with one Life Term.

39. Although it was brought out at trial that the deal offered to Jackson was on the condition that he testify consistently with his statement to police, this draft agreement is significant in that it emphasizes precisely what the Commonwealth wanted Jackson to say: that "Stokes was the shooter and that Stokes killed three (3) victims because they could identify Stokes."

40. With the disclosure of the information contained in McManus's memoranda of March 14 and March 26, 1982, and that contained in the draft plea agreement, counsel for Petitioner appears finally to have received the extent of the information (at least that which is recorded) that was known to the Commonwealth about Donald Jackson's motive to lie. *All* of this information constituted Brady material and should have been revealed to the defense at the time of trial. *All* of this information involves the credibility and reliability of Jackson's testimony, which was central to the Commonwealth's case. *All* of this evidence would have impeached Jackson's integrity as a witness. Petitioner's right to due process of law under the Fourteenth Amendment was therefore violated, as were his Sixth Amendment rights to confront and cross-examine Jackson, and to an attorney who was armed with the tools that would

effectively test the Commonwealth's evidence.

D. A Previously Unknown Witness Contradicted Donald Jackson's Testimony.

41. In Donald Jackson's confused and self-contradictory version of events, he fled from the restaurant with the money around the time shots were fired. Jackson got in the car, which seems to have been just outside the restaurant, but he had trouble starting it. Jackson had just managed to get the car started and was pulling away when Petitioner left the restaurant and jumped into the car. The two drove away.

42. A statement contained in a "Memorandum of Record" prepared by R.J. Kaszynski, a Postal Inspector, contradicts Donald Jackson's claims. *Appendix*, Vol. III, Tab J, pages 34-35. The postal inspector writes that, on March 11, 1982, he was sent to Smokin' Joe's and assigned to assist Detective John Peterson, and later Detective Dorsey Lay, apparently of the West Detectives Division of the Philadelphia Police Department. The three conducted a "neighborhood check for witnesses," during which they spoke to Tom Klara, a salesman who worked across the street from Smokin' Joe's. Mr. Klara reported to them that, as he returned from lunch, "he saw two black males running with their heads turned and looking back." They ran across City Line Avenue, about one block west of Smokin' Joe's. Both males were wearing red ski masks.

43. Habeas counsel has seen no formal, signed statement by Klara, and the contents of his statement does not appear in any of the materials previously made available by the Commonwealth.

44. As discussed more fully in the *Petition*, Jackson's testimony became suspiciously imprecise and confused when he attempted to give the details about the events immediately

surrounding the shootings. Klara's information about two masked men running together across the street plainly refutes Jackson's testimony that he left the restaurant ahead of Petitioner around the time the shots were being fired, and that Jackson immediately got into the car, alone. The statement could have formed the basis for pointed cross-examination of Jackson on this point. Further, had Klara's statement been made known to defense counsel at the time of trial, he could have been called as a witness to refute Jackson's claims.

45. With this statement, as with the other instances of suppressed exculpatory documents, information that could have assisted the defense and refuted the version of events that the prosecution wanted the jury to hear never made it into the hands of the defense. The prosecution again failed in its obligation to supply that information to the defense and thereby deprived Petitioner of due process of law.

E. The Prosecutor's Office Declined to Bring Charges Against Burley.

46. In the *Petition*, Petitioner argued that despite prosecutor King's representation that no deal had been made with Burley, Burley surely received the prosecutor's favor, inasmuch as he was never criminally charged for the role he admittedly played in knowingly receiving stolen money, discarding the murder weapon, and harboring the fleeing Jackson. The police file contains proof of that favorable treatment.

47. On March 27, 1982, the day after Jackson's arrest and statement, one detective (perhaps assigned detective Lynch) prepared a list of "SUGGESTED THINGS TO DO ON SATURDAY 3/27/82." *Appendix*, Vol. III, Tab J, page 6. At the top of the list was this:

> Review statement of JACKSON and others and consult with A.D.A. Joseph Murray as to Body Warrant for BUTTER and also for S & S Warrant to recover gun, sweat suits and ski masks. NOTE: In JACKSON'S statement he says that he

> hid gun under flower pot on Patton St. – Det's Cleary and Gibson checked area for gun with negative results. JACKSON also told us (not in statement) that BUTTER may have seen him hide gun.

In an undated handwritten memorandum directed to "Rich," apparently authored by Detective Lynch, the detective reports:

> Joe Murray won't give us a warrant to pick up this "Butter." We have enough to grab him on the street though. Could you hit these 2 houses [Charlotte Gatewood's and her mother's] at 6 AM – and play it by ear and try to get this kid in. You guys can have the guns for court. Butters mother knows we are trying to get him – So is she, also.

At the very top of the page is this additional note: "If picked up call ADA - Roger King anytime[.] Danny Lynch – any time." *Appendix*, Vol. III, Tab J, page 7.

48. These documents provide irrefutable evidence that a decision was made by the prosecutor's office not to charge Burley, although there was sufficient evidence to arrest him. That decision remained intact throughout all of the proceedings, even after Burley was "picked up" on August 10, 1982 and gave his first self-incriminatory statement to the police. That decision was maintained even after police secured a second, eve-of-trial statement from Burley that was even more self-incriminatory than the first. Burley himself claimed to have known that his actions were unlawful and that he could be arrested for them; he said this was why he hid from the police. NT 8.146.

49. Due process required the prosecution to disclose forthrightly its unyielding decision to forego viable criminal charges against Burley. The defense was entitled to have the jury made fully aware that Burley was testifying under what was essentially an implicit grant of immunity. Through the prosecution's violation of its constitutional obligation to disclose information in its possession that impeached its witness's credibility, and through defense

counsel's own lack of insight, the jury never heard that Burley could have been charged for his complicity, but he never was.

F. Police Suspected that Burley Was Jackson's Co-Conspirator in Another Robbery.

50. The Commonwealth also violated its obligation to disclose information favorable to the defense when it failed to reveal that homicide detectives suspected that Eric Burley might have been the person who assisted Donald Jackson in robbing Calvin Seaborough. At the time of the Smokin' Joe's robbery, Jackson had an outstanding bench warrant against him for failing to appear at his preliminary hearing on those charges. The second perpetrator of that crime was never apprehended.

51. Handwritten notations, apparently by Detective Lynch, show that the police intended to show complainant Seaborough a photographic array containing, among others, a picture of Burley. *Appendix*, Vol. III, Tab J, pages 21, 36-37. A positive identification would have allowed them to obtain the warrant that police obviously wanted for Burley. The police file does not contain any follow-up information indicating whether photos were ever shown or, if shown, the results. Even without that information, however, the police suspicion that Burley was complicit in the Seaborough robbery was relevant to impeach his credibility, as this suspicion was one more cudgel that the police used to secure Burley's cooperation. Thus, the suspicion provided another motive for Burley to lie by telling the police what they wanted to hear. The information, consequently, should have been made known to the defense so that counsel could conduct full and fair cross-examination of Burley's motives to lie.

G. The Prosecution Had Information Of Prior Joint Criminal Conduct By Burley and Jackson.

52. The police file reveals that Eric Burley's mother, Elphine Burley, was working with the police to locate her son and secure his cooperation with the police. She was first interviewed by the police on March 21, 1982 – the same day Burley's brother, Leonard Wells, gave his information to the police. In the signed statement that police took that day, Ms. Burley stated:

> Butter and Razor are close. Butter and Razor were locked up in a stolen car a short time ago, I think the car was stolen in Phila. And the cops locked them up going to Atlantic City.

Appendix, Vol. III, Tab J, pages 38-39.

53. Ms. Burley's statement was never disclosed to the defense, nor has any information been revealed that would suggest that either Jackson or Burley had any arrest in New Jersey. This is obvious from the absence of any such information in the police file, but also from the prosecutor's on-the-record discussions with counsel and the court about both Jackson's and Burley's criminal histories.

54. Once again, due process required that this information be provided to the defense prior to trial. Obviously, as a general matter, convictions that involved a crime of falsehood that could have been used to impeach Jackson and Burley. Given the circumstances of this case, however, no conviction would have been necessary to render the evidence probative, for the significance of such conduct by Burley and Jackson went far beyond proof of *crimen falsi*. According to the Commonwealth's evidence in this case, Jackson and Burley fled from Philadelphia to New Jersey. That they had done so in a stolen car was important for at least three

reasons. Such evidence showed Burley's and Jackson's continuing involvement *with each other* in criminal activity. Second, the information presented compelling impeachment both of Burley and Jackson. Counsel was entitled to cross-examine both witnesses as to whether this was the same car supposedly brought *by petitioner* to the criminal enterprise. Even if both Burley and Jackson denied that it was the same vehicle, their arrest in a stolen vehicle would have proved both the know-how and the initiative of these two important witnesses to steal a vehicle – thus making it more likely that one of them had been the person who arranged for the transportation to and from Smokin' Joe's. Counsel should have been made aware of this information so that it could be made available to the jurors, who had the job of assessing the credibility of these two suspect witnesses.

AMENDMENT TO CLAIMS IV, V AND VI.

55. In his *Petition,* Mr. Stokes raises a number of challenges to Renard Mills' outlandish identification of Petitioner's eyes as belonging to the shooter at Smokin' Joe's. *Petition,* pp. 44-63. The police file contains still more information relevant to Mills' identification of Petitioner's eyes that was not revealed to the defense: first, a draft of the Affidavit of Probable Cause supporting the warrant for Petitioner's arrest that eviscerates the truthfulness of the testimony surrounding Mills' identification of Petitioner as the shooter; second, an activity sheet that describes Mills' statement of identification, but bears a handwritten notation of "DI" next to the statement; and third, a formal statement obtained from Renard Mills' sister that not only reaffirms that police were investigating Mills, but also contains evidence of additional prior statements by Mills consistent with his *inability* to identify the perpetrators of the robbery. All of this information was exculpatory and due process required that it be provided to

the defense.

A. The Draft "Affidavit of Probable Cause."

56. As noted in the *Petition,* see pp. 53-56, Mills' eye-identification was outlandish on its face. Moreover, the evolution of this highly unlikely identification is recited in the *Petition*. It evolved from the equivocal version recited in Polygrapher Sandy Eason's report ("the eyes of the man with the gun were **very much like**" Petitioner's eyes), to the exaggerated and hyperbolic version given by Detective Lynch in the courtroom (e.g., "No, I did not, but I know it was him. It was his eyes. **I will never forget those eyes**. . . . It was Ralph Trent Stokes' eyes. He had the mask on, but we stared at each other and it was him." SH 6/22/83, 145).

57. Police later prepared and obtained their arrest warrant for Petitioner. The handwritten draft of the Affidavit of Probable Cause for that Warrant, however, provides very substantial evidence that would have impeached the Commonwealth's evidence, at both the suppression hearing and at trial, that Mills had definitively claimed to have recognized Petitioner's eyes. *Appendix*, Vol. III, Tab J, pages 40-48. The draft appears to be in the hand of Detective Lynch, with editing provided possibly by Detective Nespoli, who signed it.[10] The following statements are made in the drafter's hand, on the third page:

> Mills further related that the holdup man that ordered them into the refrigerator, the same man that fired a gun into the Refrigerator, was the same hight [sic] as Trent, had the same built as Trent, **and the color of his eyes were the same as "Trent."**

The editor struck the phrase "**the color of his eyes were the same as 'Trent'**"and replaced it

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[10] It is reported in an activity sheet of Sergeant Westerman that Detective Lynch "made up a ten page Probable Cause arrest." See Appendix, Vol. I, Tab A, pages 270. The handwriting also appears similar to that of handwritten notes of Detective Lynch contained elsewhere in the police file.

with "**was the male he knows as Trent**." The latter phrase appears in the final, signed Affidavit of Probable Cause that supported the arrest warrant against Petitioner.

58. This alteration is far from semantic. The editor significantly altered the author's original meaning, which reflected a **lack** of a definitive identification by Mills, and replaced it with a positive, unequivocal identification of Petitioner. The alteration is all the more significant because Detective Lynch, who chose the original language, was the detective who *took* the statement from Mills regarding Mills' supposed recognition of Petitioner's eyes. Lynch thus was well aware of what Mills had truly said – and was in a far better position than the editor to report it accurately.

59. The draft of the affidavit of probable cause was never previously made available to the defense. The document, however, should have been disclosed to the defense at the time of trial, both under Pennsylvania's rules of discovery and pursuant to the requirements of due process of law. The draft contains not only a prior statement of Detective Lynch, who testified at trial and, at the suppression hearing, was a key witness concerning whether Mills' identification testimony should be suppressed. Further, the draft should have been disclosed because it contains yet another and different version of Mills' alleged identification. As originally drafted, the statement is exculpatory: it reflects Mills' **failure** to make a positive, unequivocal identification of Petitioner. It reports that he noticed only a similarity of eye color. It was therefore valuable impeachment material, both of Mills and of Lynch.

60. Further, the alteration of the draft to reflect a definitive identification of Petitioner by Mills was itself Brady material. The editing reflects precisely the point Petitioner makes in his *Petition*: that Renard Mills' "eye-identification" is far-fetched and unreliable. It reflects the

willingness of the police to manipulate whatever it was that Mills actually said into a form that suited the Commonwealth's purposes. Once again, the Commonwealth's failure to disclose exculpatory evidence deprived Petitioner of his Constitutional right to due process of law, and of his Sixth Amendment right to confront the witnesses against him.

B. The Statement of Rebecca Mills.

61. On the evening of March 14, 1982, the same evening that Renard Mills' was polygraphed, the police also interviewed Renard Mills' sister Rebecca at their headquarters. She was questioned by Detectives Alexander and Brown about statements alleged made to her by her brother. *Appendix*, Vol. III, Tab J, pages 49-50. Ms. Mills' statement, which habeas counsel located in the police file, was not part of the discovery materials that habeas counsel had been able to collect independently, was not part of the discovery materials kindly provided by the District Attorney's Office during the preparation of the *Petition,* and is not included in the compiled witness statements contained in binders contained in the police file. It thus appears that the statement was not part of the materials provided to trial counsel.

62. Plainly, it should have been. First, the statement should have been disclosed because it shows that the police **were** conducting an investigation of Renard Mills. See *Petition* at ¶ 162. Second, under both Pennsylvania's rules of discovery and constitutional rules of disclosure, the statement should have been revealed because of its exculpatory content. Ms. Mills' reported the contents of prior statements of her brother, who was an important Commonwealth witness. For that reason alone, the statement was discoverable. Even more significant, however, is the fact that Ms. Mills reports statements that are **consistent** with her brother's earliest statements, in which Mills never claimed an ability to recognize either of the

perpetrators. Ms. Mills' statement thus contained exculpatory information that could have been used to by the defense at trial to impeach Renard Mills' subsequent claims that he recognized Petitioner.

C. The Annotated Activity Sheet.

63. The activity report of Lt. Lanzelotti and Sgt. Westerman for March 14, 1982, records that Detective Lynch had Sandy Eason polygraph Mills that day, and Mills stated that the man "holding the gun on him" had eyes that were the same as Trent's; height the same as Trent's; and build the same as Trent's. *Appendix*, Vol. III, Tab J, page 51. The report, however, also bears a small handwritten annotation of "DI" next to the statement about the gunman's eyes. In other documents, "DI" is used to report "deception indicated" on a polygraph test.

64. This annotation that the police thought Mills was deceptive on the critical question of his identification of the shooter's eyes is obviously exculpatory. Although the polygraph results themselves would not have been admissible, Petitioner's counsel would have been entitled to this information in order to conduct his own investigation and/or to question the police regarding the basis for their beliefs.

AMENDMENT TO CLAIMS VII AND VIII.

65. Several other documents retrieved from the police file are exculpatory as to the testimony of brothers Eric Burley and Leonard Wells.

A. The Reward.

66. The *Petition* shows the previously undisclosed fact discovered in the postal file that Leonard Wells came forward, at least in part, because of his desire to collect on a reward. See *Petition* at ¶ 231. A document found in the police file confirms this fact. This document is

another handwritten "to do" list, containing the notation: "Establish a sequence as to who was interviewed before and after REWARD was publicized." *Appendix*, Vol. III, Tab J, page 52. Although the document is undated, this sequencing would have been undertaken in anticipation of trial.

67. The notation demonstrates both that the prosecuting authorities were considering the question of rewards, and that they were aware that the promise of rewards would affect any assessment of their witnesses' credibility. As shown in the *Petition*, Leonard Wells not only came forward as a result of the offer of a reward, but he in fact *received* a reward. Given the notation in the police file, it appears all the clearer that the Commonwealth's failure to disclose the reward anticipated by and awarded to Leonard Wells was deliberate.

68. For all of the reasons set forth in the *Petition*, this additional document is exculpatory, and should have been disclosed.

B. The Favorable Treatment of the Wells/Burley Family.

69. Documents in the police file undercut the trial testimony of Detective James Alexander that the Wells/Burley home was searched. In reality, the family handed over evidence requested by the police as part of its overall cooperation in consideration of favorable treatment. Thus, these documents provide a further basis for challenging their credibility.

70. Several notations in the police file show that homicide detectives wanted to obtain a warrant to search the Wells/Burley home; one notation states the intent to discuss the possibility with a member of the District Attorney's Office. *Appendix*, Vol. III, Tab J, pages 6, 7, 53. Whether or not that occurred is not clear; it is clear, however, that no warrant for the house was ever secured. The police file does not even contain a draft of one.

71. What the police file does contain, however, are three different versions of "consent" forms involving the search/and or seizure of evidence involving Burle. Only two of these are signed. *Appendix*, Vol. III, Tab J, pages 54-56. The unsigned form is for consent to search the entire premises. The two forms that are signed – by Leonard Wells – reflect his agreement that police may seize the evidence he has already told them about. In one, Wells agreed that the police could seize specific pieces of evidence that he is provided to them: namely, two bullets and keys. In the other, Wells consented to the search of his own car, in which he was carrying Donald Jackson's holster.

72. The two consent forms signed by Wells show that what Alexander claimed was a "search" was in actually Wells' consent to transfer to the police property that the police already knew existed. There was *no* full-blown search or investigation of the home of Eric Burley, contrary to the impression created by Alexander's claim of having been part of a "search" of that residence. The police never conducted the comprehensive scrutiny of the Burley house for any evidence in addition to that which Leonard Wells agreed to give them – additional evidence which possibly could have exculpated petitioner but further inculpated Jackson, Burley, and Wells. Unlike the treatment of Ralph Trent Stokes and his family, whose home was thoroughly searched pursuant to warrant twice, the Burley family was spared even one such invasion.

73. What finally emerges with combined review of the Postal Inspector file and the police file is that prosecution witnesses received favors from the prosecution. For Elphine Burley's, who cooperated with prosecutor King to surrender her son, her house was spared from search. For Leonard Wells, there was money. For Eric Burley, who testified for the prosecution and largely corroborated Donald Jackson's version of events, there were no charges for his own

admitted criminal involvement. Detective Alexander's testimony helped disguise the true picture. Had the full picture been made available to defense counsel for use at trial, and had counsel had an opportunity to confront important Commonwealth witnesses with this material evidence of the advantages they expected and received, the jury may well have reached a far different conclusion about who was present, and who was responsible for the shootings, at Smokin' Joe's.

AMENDMENT T TO CLAIM XV.

74. The police file contains additional support for Petitioner's claims that Roger King engaged in misconduct, and proof of an instance of misconduct.

75. One of Petitioner's complaints in the *Petition* is that the prosecutor repeatedly introduced into evidence items that he was unable to prove had any connection to the crime. Ski suits found in petitioner's brothers' bedroom are one example. See pp. 114-15.

76. In the police file is a handwritten memorandum setting forth some follow up that should be undertaken regarding "Physical evidence from Ralph Stokes house." *Appendix*, Vol. III, Tab J, page 57. One item mentioned is: "Jump suit to be shown to witnesses." This notation is intriguing because King never showed the jump suit to any witness during the trial. This fact, combined with the notation, leads to the conclusion that when he introduced the jump suit into evidence he did so knowing that Mills would not identify the suit as one worn by either perpetrator.

77. The police file proves another example of prosecutorial misconduct. At trial, during the prosecutor's cross-examination of Petitioner's father, the prosecutor sought to discredit the senior Stokes' testimony about his ownership of a gun and a box that had once

contained bullets. Mr. Stokes had testified that the box of ammunition had been given to him. The prosecutor began to ask a question, as follows: "Mr. Stokes, if I tell you that checking with the governmental agency Alcohol Firearms and Tobacco, there records indicate that that ammunition was bought in 1975 or 1976 – " Counsel objected that the question presented facts not in evidence, and ultimately, the question is not posed again. NT 9.106-07.

78. This incident is yet another instance in which the prosecutor sought to mislead the jury and shade the truth. The police file contains proof that the prosecutor possessed no evidence that would establish when – let alone by whom – the ammunition was purchased. On Wednesday, June 22, 1983, shortly before trial, one of the detectives apparently undertook the task of attempting to identify the purchaser of the box of .38 caliber long Colt ammunition which police found, empty of ammunition, in the bedroom of petitioner's father during a search of the Stokes family residence. His investigation yielded no useful information – and all of it hearsay. The officer's handwritten notes report:

> Evidence custodian check P.R. #864359 Lot no. from Box of Wester .38 cal long colt ammunition purchased from Willis Sport Center Lindenwold, N.J. ($6.30).

Appendix, Vol. III, Tab J, pages 58-62. One may infer that this information was provided by the evidence custodian, and came from the box itself. What the officer learned as a result of his investigation was that Willis Sports Center went out of business in 1976. He was able to determine nothing more. New Jersey's "ATF offices" kept records of ammunition purchases only for two years, and they had no records of ammunition purchases at the defunct Willis Sports Center. All records had been destroyed.

79. This incident, thus, is yet another example of the prosecutor's intentional creation

of what would appear to the jury to be incriminating evidence, when in fact none existed. Like the sneakers, the ski suits, the masks, the rug, and the glove belonging to petitioner's brother, the prosecutor made one more attempt to create the appearance of guilt from the innocuous. This misconduct deprived petitioner of his constitutional rights to due process of law and to a verdict from a fair and impartial jury.

REQUEST FOR RELIEF

Based upon all of the above, and for the reasons stated in the *Petition,* and based upon the exhibits presented previously and with this *Amendment*, Petitioner respectfully requests that this Court grant the following relief:

A. That the Court entertain and grant such motions as Petitioner may file regarding discovery;

B. That Petitioner be afforded an opportunity to submit a *Memorandum of Law* in conformity with Local Rule 9.4;

C. That Respondents be compelled to respond to the *Petition* and *Memorandum of Law*;

D. That Petitioner be afforded evidentiary hearings as to every disputed material fact;

E. That upon conclusion of these proceedings, the Court grant the Writ and order that Petitioner either be released from his custody or resentenced to life imprisonment, or else retried (as to either guilt, penalty or both) within a reasonable time period to be set by the Court.

Respectfully Submitted,

Dated: Philadelphia, Pennsylvania
July 20, 2004

Certificate of Service

I, Michael Wiseman, hereby certify that on this 20th day of July, 2004 I caused a copy of the foregoing to be served on the following person by first class United States Mail, postage prepaid:

Thomas W. Dolgenos, Esq.
Chief, Federal Litigation
District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102

_____
Michael Wiseman