



AlaFile E-Notice

05-CC-2004-001112.61

Judge: SCOTT P. TAYLOR

To: MAXWELL LEROY JR
maxwell@mxlawfirm.com

COURTESY NOTICE

IN THE CIRCUIT CRIMINAL COURT OF BALDWIN COUNTY, ALABAMA

STATE OF ALABAMA V. LAWRENCE MURRAY #241380
05-CC-2004-001112.61

The following matter was FILED on 11/27/2023 2:58:16 PM

PETITION FOR RELIEF FROM CONVICTION AND SENTENCE PURSUANT TO RULE 32
[Filer: MAXWELL ADAM CHARLES]

Notice Date: 11/27/2023 2:58:16 PM

This copy is being provided as a courtesy copy only. Providing this copy is not required by law and is not intended to constitute service.

BRENDA Q. GANEY
CIRCUIT COURT CLERK
BALDWIN COUNTY, ALABAMA
312 COURTHOUSE SQUARE
SUITE 10
BAY MINETTE, AL, 36507

251-937-0280
brenda.ganey@alacourt.gov

Lawrence was found guilty of capital murder by intentionally killing Gary Brandon Hastings during the commission of a robbery in the first degree and not guilty of conspiracy to commit robbery in the first degree. *Id.* at 9. Mr. Lawrence was subsequently sentenced to life without the possibility of parole on May 13, 2005. *Id.* at 10; (Ex. B: Doc. 1, 1).

On direct appeal, the Alabama Court of Criminal Appeals upheld Mr. Lawrence's conviction on September 22, 2005, and provided its Certification of Judgment on January 12, 2007. (Ex. B: Doc 1, 2-20); (Ex. C: 2007 Cert. of J). It is not clear from ACIS records whether writ of certiorari was filed with the Alabama Supreme Court. Mr. Lawrence later filed a Rule 32 Petition alleging ineffective assistance of counsel, which was ultimately dismissed. (Ex. D: Rule 32 Order). This Petition followed.

FACTS

On April 8, 2003, Brandon Hastings' gold 1997 Honda Acura was located in Mobile, Alabama at the State Docks, but Hastings himself was missing. (CR-04-1864 R. Trial Tr. at 901, 1571). The car was stripped of its tires, rims, and stereo system, and the trunk was open and full of water due to rain, which caused significant damage. *Id.* at 902-03. On April 11, 2003, Donna Ford ("Ford") called authorities in Jackson County, Mississippi to report a skull in the road near her home. *Id.* at 670, 682. Investigators located the rest of the body on a nearby dirt pathway, which had no signs of blood. *Id.* at 675, 681. The body was facedown with the arms stretched out, as if it had been dragged by the ankles. *Id.* at 675. Authorities contacted the Foley,

Alabama Police Department after noticing the body had a Foley High School class ring with Hastings' name on it. *Id.* at 680. Alabama authorities traveled to Mississippi to observe the scene, and the remains were later determined to be those of Hastings. *Id.* at 675, 681. Items found at the scene included Hastings' jaw/mandible, which was in near perfect shape; a broken knife blade; loose change; a golden chain; and the clothes and jewelry on Hastings' body. *Id.* at 701-05. Authorities additionally found some loose "neck bones" that had fallen off the spine. *Id.* at 711. One of these vertebrae were C1, the top-most cervical vertebrae on the spine, and the lower 5 cervical vertebrae were still attached to the rest of the spine, meaning this would be vertebrae C3-C7. *Id.* at 710, 858.

A subsequent investigation ensued, and Jarius McNeil ("McNeil") and Mr. Lawrence were developed as suspects. *Id.* at 1591, 1646, 1670. McNeil had known Hastings for approximately six to seven years and had known Mr. Lawrence since they were young children. *Id.* at 1423, 1463. However, Mr. Lawrence and Hastings did not know each other. *Id.* at 1426-27. Eventually, McNeil accepted a plea bargain reducing his charge to Felony Murder from Capital Murder in exchange for telling what allegedly happened to Hastings, avoiding the death penalty. *Id.* at 1421. McNeil led authorities to the site where Hastings was allegedly killed, where the car was found, and where Hastings' body was found on August 31, 2003. *Id.* at 675, 791, 805, 901, 1684, 1733.

McNeil alleged that he and Mr. Lawrence came up with a plan to rob Hastings of his car to sell its speaker system, rims, and tires. *Id.* at 1424. He stated that he

and Mr. Lawrence planned for Mr. Lawrence to act as if he needed a jump start to his car and that, as far as Hastings knew, Mr. Lawrence was a friend of McNeil's needing help. *Id.* at 1429-30. He stated that Mr. Lawrence was on the side of County Road 49 in Baldwin, County, Alabama, near Foley in a gold Kia Optima, which belonged to his girlfriend Tonya Mixson, that was "disabled," facing north. *Id.* at 805, 1430. McNeil stated that he was in the car with Hastings, in his gold Acura, going north. *Id.* He stated that, when Hastings went to get jumper cables, Mr. Lawrence, standing between the cars, pulled out a gun. *Id.* at 1431, 1686-87. He stated that Hastings backed up toward the road and looked to his right at McNeil and that Mr. Lawrence fired one shot, hitting the left side of Hastings' head/neck area, and dropped immediately. *Id.* McNeil provided several conflicting answers during trial as to where Hastings was shot, going back and forth between saying the head or neck, but he said for certain that the gunshot trajectory was not through the front of Hastings' neck. *Id.* at 1431, 1466, 1517-1518, 1520. However, the initial Mississippi autopsy stated that Hastings was killed by strangulation by ligature. *Id.* at 1431; (Ex. E: Mississippi Autopsy, 1-2).

McNeil further stated that there was lot of blood because of the gunshot wound. (CR-04-1864 R. Trial Tr. at 1432). According to McNeil, they removed speakers from the trunk of the Acura, placed Hastings' body in the trunk, and drove to the site where his body was eventually found. *Id.* at 1482. However, the trunk liner from Hastings' car was not found to have blood on it. *Id.* at 1715. He stated that Lawrence was carrying the upper half of Hastings, which was very bloody, but Mr. Lawrence was

not observed with blood on him at any point throughout the night. *Id.* at 1074, 1166, 1168, 1520-21. Further, there were prints inside the car from McNeil and his relative, Damiene Heard (“Heard”), but none of Lawrence’s fingerprints or DNA were ever found in or on the car. *Id.* at 1591, 1653, 1655, 1675. Heard’s prints were also found on the wheels. *Id.* at 1563. Further, the only blood found in or on the car was not matched to anyone. *Id.* at 1668, 1671, 1726. Additionally, no shell casings were ever found after a very thorough search, including searches using dogs and metal detectors. *Id.* at 1583-84. McNeil was seen in the following days appearing nervous and restless, whereas Mr. Lawrence appeared to be completely normal. *Id.* at 1013, 1074, 1027, 1280.

Additionally, Hastings’ autopsy reports were conflicting. Dr. Paul McGarry performed the initial autopsy in Mississippi. *Id.* at 831-32. Dr. McGarry stated that the body was in an advanced state of decomposition, particularly in the head and neck area. *Id.* at 835. McGarry noted in his autopsy report that the C1 and C2 vertebrae were missing, as well as the hyoid bone. (Ex. E: Mississippi Autopsy, 4). He returned to the scene where the body was found and located pieces of the hyoid bone. (CR-04-1864 R. Trial Tr. at 840). The lower five cervical vertebrae (C3-C7) were still attached to the spine. *Id.* The C1 was allegedly collected at the scene by Grant Graham, who also noted that C3-C7 were attached to the spine, but there is not a clear chain of custody to determine when it went missing or why it was not given to Mississippi authorities. *Id.* at 710-11. Because of the damage to the neck and lack of obvious signs

of gunshot wounds, Dr. McGarry's provisional diagnosis for Hastings's death was strangulation by ligature. (Ex. E: Mississippi Autopsy, 2,7).

At trial, Dr. McGarry provided multiple reasons why he believed the cause of death was strangulation, such as the neck injury, blood in the stomach indicating the swallow reflex still working, collapsed lungs, bloodstained bones in the neck, hemorrhaging at the base of the skull, and indication that the organs were deprived of oxygen. *Id.* at 849-50. When asked if it is possible for a gunshot to have knocked out the middle of the hyoid bone, Dr. McGarry said it would be a "unique situation." *Id.* at 861, 896. Dr. McGarry was questioned heavily about whether a gunshot could have caused this injury, and he repeatedly said that while it was possible, he did not have sufficient evidence to say it was the scenario in this case. *Id.* at 853, 860-62, 863, 977, 896. McGarry stated that "all [conclusions] statistically would be more in favor . . . of ligature strangulation than gunshot wound." *Id.* at 895-96. He noted that there were no obvious signs of a gunshot wound in the skull, and the teeth were nearly perfect. *Id.* at 841, 860-62. The jaw was found separate, but also was in good condition. *Id.* at 672, 701. There were signs of post-mortem animal activity on both parts, as evidenced by Ford witnessing animals with the skull. *Id.* at 707, 724.

When presented with a picture of the C1 vertebrae, which he had never seen before, he noted that it looked like it could be fractured. *Id.* at 871. However, for the back part of the bone to be fractured, to be a gunshot wound destroying the C2 vertebrae, part of the C1, and part of the hyoid bone, it likely would have had to gone through the back of the neck. *Id.* at 876-77. Despite this, the State continued to argue

that Hastings was shot in the front of his neck, destroying the middle piece of the hyoid bone and the C2 vertebrae. *Id.* at 853, 860, 875-76. This created the main issue in the case: whether the alleged cause of death was strangulation or gunshot wound. *Id.* at 606, 665.

Later after Hastings was buried, unbeknownst to the Defense as discussed below, Alabama authorities moved to disinter his body for another autopsy. (Ex. F: Public Records Release, 16-17). Pam Morrison, Hastings' mother, wrote a letter giving permission for exhuming the body. *Id.* at 18. The State claimed that the reason for this was because there were no blood or tissue samples from the Mississippi Autopsy, even though those samples had been taken. *Id.* at 16-17. The motion also stated they wanted these samples in case Mississippi authorities would be difficult to contact to testify at trial. *Id.* at 16. The motion was signed by District Attorney Whetstone. *Id.* at 17. The order was signed by Judge Wilters, who presided over the case. *Id.* at 15.

In this autopsy, because the body was in such a late stage of decomposition, the medical examiner was unable to make any definitive determinations of the cause of death. *Id.* at 2. They assumed the manner of death was a homicide because of the circumstances surrounding the case and found nothing that supported the gunshot wound theory. *Id.* at 2-3. When they received the body, there were two unidentified cervical vertebrae loose in the body bag with post-mortem fractures. *Id.* at 4. There were five more vertebrae missing, including the C1 and C2 vertebrae. *Id.* at 5. They additionally did not have the hyoid bone. *Id.* at 6. This autopsy was never mentioned

during trial and the Defense was not aware that the exhumation had taken place or that an additional autopsy report existed. (Ex. G: Attorney Willie Huntley Affidavit).

GROUND FOR RELIEF UNDER RULE 32

Mr. Lawrence seeks relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Specifically, the Constitutions of the United States and the State of Alabama require postconviction relief. In support of this claim, Petitioner asserts the following:

ARGUMENT

I. Newly discovered evidence, an autopsy report that was never disclosed to the Defense, establishes Mr. Lawrence's innocence.

Rule 32.1(e) of the Alabama Rules of Criminal Procedure allows a court to provide a petitioner relief based upon newly discovered evidence so long as the requirements of the rule are met. Ala. R. Crim. P. 32.1(e). In *Boyd v. State*, the Alabama Court of Criminal Appeals explained:

Under Rule 32.1, Ala.R.Crim.P., subject to the preclusions in Rule 32.2, a remedy is afforded to a Defendant when the grounds supporting the requested relief are based on newly discovered facts (1) that were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of due diligence; (2) that were not merely cumulative to other facts that were known; (3) that were not merely amounting to impeachment evidence; (4) that if they had been known at the time of trial or of sentencing, the result probably would have been different; and (5) that establish that petitioner should not have been convicted or should not have received the sentence that petitioner received. Rule 32.1(e)(1) through (5), Ala.R.Crim.P. Rule 32.3 places the burden on the Defendant to plead and prove facts necessary to obtain relief. Rule 32.6(b) requires that the petition itself disclose the facts relied upon in seeking relief. Rule 32.6(b), Ala.R.Crim.P. When this is done, the burden

shifts to the State to plead preclusionary grounds meriting summary dismissal. Rule 32.3, Ala.R.Crim.P. The burden then shifts to the petitioner to disprove a preclusionary ground plead by the state.

746 So. 2d 364, 405-6 (Ala. Crim. App. 1999).

For a Rule 32 petition to properly allege a claim for relief based on newly discovered evidence, it must meet all five requirements of Rule 32.1(e). *See Tarver v. State*, 769 So. 2d 338, 340-41 (Ala. Crim. App. 2000) (“We have repeatedly stated that before a claim may be considered as newly discovered evidence, the claim must meet the definition of newly discovered evidence found in Rule 32.1(e)”). These five criteria are met in this instance, as detailed below.

On June 5, 2023, a representative of Mr. Lawrence obtained an autopsy report performed prior to trial by the Alabama Department of Forensic Sciences (“ADFS”) on the exhumed body of Hastings. (Ex. F: Public Records Release, 1). Mr. Huntley, Mr. Lawrence’s trial counsel confirmed that he was never made aware of the autopsy. (Ex. G: Attorney Willie Huntley Affidavit). Further, this autopsy was never discussed at trial. The accompanying ADFS autopsy report notes new forensic evidence that significantly negates the State’s theory and therefore, directly relates to the determination of Mr. Lawrence’s guilt or innocence. Further, the autopsy report meets the criteria under Alabama Rule of Criminal Procedure 32.1(e) for the following reasons:

A. The autopsy report qualifies as newly discovered evidence under 32.1(e)(1) because the newly discovered evidence was not known by Mr. Lawrence or his counsel.

Under Rule 32.1(e)(1), the grounds supporting the requested relief must be based on newly discovered facts “that were not known by petitioner or petitioner’s counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of due diligence.” Ala. R. Crim. P. 32.1(e)(1). To demonstrate that the new evidence could not have been discovered through reasonable diligence, a petitioner is “required to show a reasonable effort was made.” *Ex parte Ward*, 89 So. 3d 720, 725-726 (Ala. 2011); *Ex parte Burgess*, 21 So. 3d 746, 754-755 (Ala. 2008); *Stamps v. State*, 380 So. 2d 406, 409 (Ala. Crim. App. 1980). However, while a petitioner must “exhaust the probable sources of information concerning his case,” he is not placed under the burden of “interviewing persons or seeking information in places where there is no indication of any helpful evidence.” *Ward*, 89 So. 3d at 725-26. Accordingly, a petitioner is not required to prove he sought evidence where “he had no reason to apprehend any existed.” *Id.*; *Stamps*, 380 So. 2d at 409.

In June of 2023, Mr. Lawrence became aware of an undisclosed ADFS autopsy report detailing the examination of Hastings’ exhumed body. (Ex. G: Attorney Willie Huntley Affidavit; Ex. F: Public Records Release, 1). In a signed affidavit, Willie Huntley, who acted as Mr. Lawrence’s trial attorney, has stated that he became aware of the ADFS autopsy performed on Hastings’ exhumed body and the

accompanying report after it was disclosed by Dr. Brian Pierce on June 5, 2023, eighteen years after Petitioner's conviction. *Id.* Additionally, Huntley detailed he was never notified of the ADFS autopsy or the report by the State or anyone else. *Id.* Huntley further stated that he had no recollection of the autopsy performed on Hastings' exhumed body and, in searching his files, did not find the ADFS autopsy report. *Id.* Further, the autopsy was never mentioned at trial.

Moreover, the ADFS autopsy and report could not have been discovered by exercising reasonable diligence, as Petitioner nor his counsel had any reason to apprehend such evidence existed. *See* Ala. R. Crim. P. 32.1(e); *Ward*, 89 So. 3d at 725-726; *Stamps*, 380 So. 2d at 409. At the time of trial and sentencing, Huntley was only aware of the autopsy performed by Mississippi forensic pathologist, Dr. Paul McGarry on April 12, 2003. Nevertheless, in retroactively searching for any indication of the ADFS autopsy performed on Hastings' exhumed body or the report, both the trial testimony and ADFS laboratory results fail to provide sufficient information as to provoke Petitioner and Huntley to exercise further diligence. At no point in the trial was the ADFS autopsy or the report introduced as evidence, even when the State and its witness, Hoss Mack, Chief Investigator at the Baldwin County Sherriff's Department, referenced the "difficulty" in obtaining a DNA or blood sample now presumed from Hastings's exhumed body. (CR-04-1864 R. Trial Tr. at 1649, 1672). Despite this line of questioning, in petitioner and his counsel's perspective, this "difficulty" in obtaining samples was in reference to acquiring the urine, gastric contents, fingernail scrapings, rectal swab, bile (with residual digestive material

containing streaks of blood), and tissue samples retained by Dr. McGarry. *Id.* at 1672; State's Ex. 56 at 119-20). All this information should have been turned over according to the Defense's Motion for Discovery, which was granted by the Court. (Ex. A: Doc 2, 4-5, 8). Additionally, in looking to the ADFS laboratory results from October 17, 2003, referencing blood samples from Hastings, the document provides no indication or suggestion that the samples were a product of exhuming Hastings or an additional autopsy. (Ex. F: Public Records Release, 2). The lack of indication on the ADFS laboratory results allowed petitioner and his counsel to reasonably assume any analysis on Hastings' blood was supplied from Dr. McGarry's samples from the original autopsy. *Id.*; State's Ex. 56 at 119-20.

Accordingly, there is nothing to suggest in the trial proceedings or ADFS laboratory results to indicate to Petitioner or his counsel that, at the time of trial and sentencing or in time to file a posttrial motion or collateral proceeding, a second autopsy was performed on Hastings' exhumed body. *See Ala. R. Crim. P. 32.1(e)(1)*. Therefore, petitioner nor his counsel were required to exercise further diligence to find the ADFS autopsy or report since neither had any reason to apprehend such evidence existed. *See, Burgess*, 21 So. 3d at 754-755; *Ward*, 89 So. 3d at 726 (finding petitioner nor his counsel had any reason to suspect any additional forensic results existed on a cigarette butt found at the crime scene or that the prosecutor made a misleading jury argument contradictory to undisclosed evidence in the State's possession). The Defense filed for discovery, which would have included such evidence, and the Defense had no indication that this evidence existed. There is no

evidence to suggest Petitioner, or his counsel had any knowledge of ADFS conducting an autopsy on Hastings' exhumed body and compiling a report.

Since the report was not provided to Mr. Lawrence or his counsel until June 4, 2023, and the evidence could not have been secured through the exercise of due diligence, the autopsy report meets the requirements of Alabama Rule of Criminal Procedure 32.1(e)(1), and Mr. Lawrence is entitled to relief.

B. The autopsy report qualifies as newly discovered evidence under 32.1(e)(2) because the newly discovered facts are not merely cumulative to other facts that were known.

Rule 32.1(e)(2) states that the evidence cannot be “merely cumulative to other facts that were known.” Ala. R. Crim. P. 32.1(e)(2). Cumulative evidence is defined as “additional evidence that supports a fact established by the existing evidence” or “of the same general character” as evidence received during trial that, “proves the same probative fact.” *Black's Law Dictionary* 596 (8th ed. 2004); *Ex part Piece*, 851 So. 2d 606, 611 (Ala. 2000); *Morgan v. State*, 813 So. 2d 949, 955 (Ala. Crim. App. 2001) (Cobb, S., Dissenting); *Thompson v. State*, 444 So. 2d 899, 900-01 (Ala. Crim. App. 1984). Evidence that is not cumulative, however, tends to negate an inference that was created at trial to prove the guilt or innocence of the defendant. *Ex parte Ward*, 89 So. 3d 720, 726 (Ala. 2011); *Ex parte Robinson*, 565 So. 2d 664, 666-68 (Ala. 1990) (finding a suppressed pistol permit issued to the victim tended to negate the inference that the petitioner had greater access and control over the murder weapon especially where the physical evidence presented by the State was merely a pistol and permit issued to petitioner). Finally, the Supreme Court of Alabama has also held:

. . . in certain exceptional circumstances, even if the newly discovered evidence is cumulative or impeaching, if it appears probable from looking at the entire case that the new evidence would change the result, then a new trial should be granted.

The authorities generally recognize the rule that ordinarily such impeaching or contradicting testimony does not suffice for a new trial, *though there are exceptional instances where such proffered proof may justify a reconsideration of the cause . . .*

The authorities generally recognize the rule that ordinarily such impeaching or contradicting testimony does not suffice for a new trial, *though there are exceptional instances where such proffered proof may justify a reconsideration of the cause . . .*

[T]he overruling of a motion for a new trial based upon newly discovered evidence tending only to discredit the State's witnesses is not error *unless upon the whole case it appears probable that the new evidence would change the result.*

Ex parte Heaton, 542 So. 2d 931, 933-34 (Ala. 1989).

The ADFS autopsy report from the examination of Hastings' exhumed body is more than merely cumulative evidence, as the effect of the forensic evidence detailed therein negates the inferences upon which the State's theory relied and, consequently, petitioner's guilt. *See* Ala. R. Crim. P. 32.1(e)(2); *Ward*, 89 So. 3d at 726; *Robinson*, at 666-68. To allege petitioner shot Hastings, the State's theory relied entirely on forensic conclusions drawn from Hastings' decomposing body. (CR-04-1864 R. Trial Tr. at 857-60). The State discredited eyewitness testimony due to the complications of daylight savings or drug use and could not rely on the camera footage from the Pick N' Pay as Al Mattox's analysis was inconclusive. *Id.* at 1067, 1138-46; State's Ex. 145. Additionally, the State failed to recover any forensic evidence on relevant items and the alleged murder weapon, a 9-millimeter Smith & Wesson, or

Hastings's 1997 Acura to evidence petitioner's guilt. *Id.* at 731-32, 1583-84, 1655, 1672-77, 1714-15; (Ex. F: Public Records Release). Therefore, the State theorized the condition of the hyoid bone and C1 vertebrae, but most importantly, the absence of the C2 vertebrae, proved petitioner shot Hastings. (CR-04-1864 R. Trial Tr. at 857-60). The State purported a strict trajectory of petitioner's gunshot, where the bullet traveled in a straight line through the "body" of the hyoid bone and continued through two cervical vertebrae, C1 and C2. *Id.* at 859-60, 878-79. The shot allegedly fractured the hyoid bone and C1 vertebrae, while blowing out or destroying C2 vertebrae. *Id.*

The limited forensic evidence presented at trial, while contradictory to McNeil's confession, tended to evidence this trajectory and combined with Dr. McGarry's testimony that Hastings's injuries *could* have resulted from a gunshot, allowed the jury to reasonably conclude such a shot by petitioner was possible. *Id.* at 878-79. For instance, Dr. McGarry's recovery of the greater cornea or "wings" of the hyoid bone, and, Mississippi Crime Lab Supervisor, Grant Graham's, recovery of the C1 vertebrae fragment, combined with their dual observation of the lower five (C3-7) cervical vertebrae still attached to Hastings's spine, allowed the State to create narrow inferences or assumptions upon which the jury relied. *Id.* at 705-10, 840, 869.

For instance, the State altered their theory to align with evidence presented by the forensic pathologists, even when it negated the alleged trajectory. Initially, the State manufactured the inference that the "lost" C1 and C2 vertebrae, and the jagged edges of the hyoid bones' cornea or "wings" evidenced a bullet causing significant damage to Hastings's neck. *Id.* at 861-62. Then, when the C1 fragment was

introduced by Graham, and identified on cross-examination by Dr. McGarry, the State rationalized that the fragmented condition of the C1 vertebrae, with a fracture line on the left side and the back portion missing further evidenced petitioner's gunshot. *Id.* at 861-62, 872-73. Most importantly, though, the introduction of the C1 vertebrae fragment, made the absence of the C2 vertebrae the State's most persuasive evidence that demonstrated their purported trajectory and petitioner's guilt. *Id.* at 856-60, 898.

However, the ADFS autopsy report confuses the evidence presented by the State. The report notes that the hyoid bone's greater cornea or "wings," C1 vertebrae (atlas), C2 vertebrae (axis), and the lower five (C3-7) cervical vertebrae were not received. (Ex. F: Public Records Release, 3-7). The ADFS autopsy report also details "two loose cervical vertebrae" in the body bag, but are not identified by State Medical Examiner Leszek Chrostowski. *Id.* at 4. This noting of "two loose cervical vertebrae" confounds the findings of both Dr. McGarry and Graham, who testified to observing the lower five (C3-7) cervical vertebrae still connected to Hastings's spine and are responsible for the recovery of the greater cornea or "wings" of the hyoid bone and the C1 vertebrae fragment. *Id.*; (CR-04-1864 R. Trial Tr. at 711, 722-23, 840).

Yet, the presence of the "two loose cervical vertebrae" may clarify testimony from Graham. Graham testified that he not only found "other vertebrae off the side of the road," but simultaneously observed neck vertebrae "kind of fall[ing] down to the ground," off Hastings's body while, like Dr. McGarry, noted the lower five (C3-7) vertebrae still attached to Hastings' spine. *Id.* at 707-11. Therefore, in analyzing the

ADFS autopsy report, paired with Graham's testimony evidence of not one, but "two loose cervical vertebrae," is asserted for the first time. *Id.*; (Ex. F: Public Records Release, 4). The ADFS autopsy report negates the State's inference and assumption that the C2 vertebrae was destroyed by a gunshot fired by petitioner. (CR-04-1864 R. Trial Tr. at 707-11, 861-62, 898); (Ex. F: Public Records Release, 4).

Accordingly, the ADFS autopsy report noting the presence of "two loose cervical vertebrae" amounts to more than merely cumulative evidence. *See Ala. R. Crim. P. 32.1(e)(2)*. The most central question in petitioner's case was the way Hastings was killed, demonstrated by the prosecutor's statement, "it's really strangulation versus gunshot, that's the issue." (CR-04-1864 R. Trial Tr. at 665). For the State's theory, the assumption that the C2 vertebrae was destroyed is the most persuasive evidence that Hastings was killed by, as the State alleged, petitioner's gunshot, instead of strangulation by ligature, as concluded by Dr. McGarry. (State's Ex. 56 at 115; CR-04-1864 R. Trial Tr. at 852). If the C2 vertebrae is one of the "two loose cervical vertebrae" in the body bag, the ADFS autopsy report would not, "support a fact established by the existing evidence," but instead negate the inferences upon which the State's theory relies, specifically, the absence of the C2 vertebrae which, compounded with McGarry's testimony, directly informed the jury's determination of petitioner's guilt. (Ex. F: Public Records Release, 4); (CR-04-1864 R. Trial Tr. at 859-60, 861-62, 898); *See Ward*, 89 So. 3d at 726; *Robinson*, 565 So. 2d at 666-68; *Piece*, 851 So. 2d at 611; *Morgan*, 813 So. 2d at 955. Thus, the ADFS autopsy report is not merely cumulative evidence of "the same general character" as evidence

received during trial that “proves the same probative fact.” See Ala. R. Crim. P. 32.1(e)(2); *Morgan*, 813 So. 2d at 955; *Thompson*, 444 So. 2d at 900-901. On the contrary, the ADFS autopsy report notes, for the first time, the presence of “two loose cervical vertebrae,” not noted in Dr. McGarry’s autopsy report, but potentially referenced in Graham’s testimony, and if found to evidence the C2 vertebrae, would negate the State’s most crucial inference that petitioner’s gunshot destroyed the C2 vertebrae. See *Ward*, 89 So. 3d at 726; *Robinson*, 565 So. 2d at 666-68.

The ADFS autopsy report generated from the examination of Hastings’s exhumed body amounts to more than merely cumulative evidence, as it presents new evidence that was not previously disclosed that shows Petitioner’s innocence. Therefore, the evidence qualifies as newly discovered evidence under Rule 32.1(e)(2), and Mr. Lawrence is entitled to relief.

C. The autopsy report qualifies as newly discovered evidence under 32.1(e)(3) because it does not merely amount to impeachment evidence.

Rule 32.1(e)(3) states that evidence cannot “merely amount to impeachment evidence.” Ala. R. Crim. P. 32.1(e)(3). Impeaching testimony is designed to discredit a witness, or to reduce the effectiveness of such testimony by bringing forth evidence to show why faith should not be afforded to the testimony. *Shepherd v. Southern R. Co.*, 256 So. 2d 883, 892 (Ala. 1970). Moreover, evidence is “impeaching” if it attacks “the character, motives, integrity, or veracity of the witness who gave the testimony.” *Id.* However, where newly discovered evidence “tends to destroy or obliterate the effect of the evidence upon which the verdict rested,” it is more, “than impeaching for

its tendency would be to defeat the verdict returned.” *Ex parte Ward*, 89 So. 3d 720, 726 (Ala. 2011); *Register Propane Gas Co. v. Whatley*, 688 So. 2d 225, 229 (Ala. 1996).

Further, the Supreme Court of Alabama has held:

. . . in certain exceptional circumstances, even if the newly discovered evidence is cumulative or impeaching, if it appears probable from looking at the entire case that the new evidence would change the result, then a new trial should be granted.

The authorities generally recognize the rule that ordinarily such impeaching or contradicting testimony does not suffice for a new trial, *though there are exceptional instances where such proffered proof may justify a reconsideration of the cause . . .*

The authorities generally recognize the rule that ordinarily such impeaching or contradicting testimony does not suffice for a new trial, *though there are exceptional instances where such proffered proof may justify a reconsideration of the cause . . .*

[T]he overruling of a motion for a new trial based upon newly discovered evidence tending only to discredit the State's witnesses is not error *unless upon the whole case it appears probable that the new evidence would change the result.*

Ex parte Heaton, 542 So. 2d 931, 933-34 (Ala. 1989).

The ADFS autopsy report generated from the examination of Hastings' exhumed body amounts to more than merely impeachment evidence. The “two loose cervical vertebrae” noted in the ADFS autopsy report, if found to evidence the C2 vertebrae, would tend to destroy or obliterate the effect of the absence of such vertebrae upon which the State's theory relies and, consequently, the verdict. (Ex. F: Public Records Release, 4; CR-04-1864 R. Trial Tr. at 856, 859-62, 898); *See Ward*, 89 So. 3d at 726; *Register Propane Gas Co.*, 688 So. 2d at 229. The predominant evidence supporting the State's theory was petitioner's gunshot allegedly fracturing the hyoid

bone and C1 vertebrae, but, most importantly, destroying the C2 vertebrae thereby explaining its absence. (CR-04-1864 R. Trial Tr. at 869, 875-79, 898). As previously stated, the State discredited eyewitness testimony due to daylight savings or drug use and the camera footage from the Pick N' Pay was inconclusive. *Id.* at 1067, 1138-46, 1351; State's Ex. 145. Additionally, the State failed to evidence petitioner's involvement and guilt through forensic evidence on relevant items, the alleged murder weapon, and Hastings's 1997 Acura. *Id.* 731, 1005, 1583-84, 1672-73, 1714-15; (Ex. F: Public Records Release, 3).

Therefore, the State relied on proving the strict trajectory of petitioner's gunshot that allegedly killed Hastings, detailing that it must travel in a straight line through the center of the hyoid bone and follow through two cervical vertebrae, C1 and C2, effectively fracturing the hyoid bone and C1 vertebrae while blowing out or destroying the C2 vertebrae. (CR-04-1864 R. Trial Tr. at 856, 869, 873, 878-79). During trial, this trajectory was deemed as being feasible, despite being completely contradictory to McNeil's confession and testimony. *Id.* at 1431, 1466, 1518-20. The jury was presented with the jagged edges of the hyoid bones' cornea or "wings" and the C1 vertebrae with a fracture line on the left side and the back portion missing, but, most importantly, never introduced to any evidence the C2 vertebrae existed. *Id.* at 873-76. The State's focus on the condition and absence of each bone, instead of circumstantial or additional forensic evidence, effectively placed these bones at the forefront of the jury's deliberations, and the effect of the missing C2 vertebrae was

the most convincing and persuasive evidence of the State's purported trajectory. *Id.* at 861-62, 898.

However, the ADFS autopsy report detailing "two loose cervical vertebrae," if proven to evidence the C2 vertebrae, would tend to negate or destroy the effect of the absence of the C2 vertebrae upon which the State's theory relies and, consequently, the jury's verdict. (Ex. F: Public Records Release, 3); *See Ward*, 89 So. 3d at 726; *Register Propane Gas Co*, 688 So. 2d at 229. Due to the inability to fully rely upon eyewitness testimony or camera footage and the failure to corroborate McNeil's confession through significant amounts of forensic evidence, the State's theory rested on the fracture of the hyoid bone and C1 vertebrae and, most importantly, the absence of the C2 vertebrae. (CR-04-1864 R. Trial Tr. at 856, 861-62, 875-79, 898, 1339-40; State's Ex. 145; Ex. F: Public Records Release, 3). Therefore, if the "two loose cervical vertebrae" in the body bag evidence the C2 vertebrae, the ADFS autopsy report would "destroy or obliterate the effect of the evidence upon which the verdict rested" and would amount to "more than impeaching [evidence] for its tendency would be to defeat the verdict returned." (Ex. F: Public Records Release, 3); *See Ala. R. Crim. P.* 32.1(e)(3); *Ward*, 89 So. 3d at 726; *Register Propane Gas Co*, 688 So. 2d at 229.

Accordingly, the ADFS autopsy report suggesting the existence of the C2 vertebrae amounts to more than merely impeachment evidence and provides new evidence pointing to Petitioner's innocence. Therefore, the report satisfies the third requirement of Rule 32.1(e), and Mr. Lawrence is entitled to relief.

D. The autopsy report qualifies as newly discovered evidence under 32.1(e)(4) because if it had been known at the time of trial, the result probably would have been different.

Rule 32.1(e)(4) states that the new evidence must show that “[i]f the facts had been known at the time of trial or of sentencing, the result probably would have been different.” Ala. R. Crim. P. 32.1(e)(4). This rule’s calculation is based on the probative value of the newly discovered evidence and its relationship to other evidence presented to the jury. *Ex parte Ward*, 89 So. 3d 720, 728 (Ala. 2011); *Ex parte Frazier*, 562 So. 2d 560, 571 (Ala. 1989); *Moody v. State*, 95 So. 3d 827, 857 (Ala. Crim. App. 2003). Hence, newly discovered evidence satisfies the requirement of Rule 32.1(e)(4) if there is a significant chance that “if the jury had been afforded the opportunity to consider the new information in conjunction with all other evidence introduced,” it would have reached a different result. *Frazier*, 562 So. 2d at 571.

If the ADFS autopsy report was known at the time of the trial or sentencing, the result probably would have been different. If the ADFS autopsy report had been known at the time of trial or sentencing containing evidence of additional cervical vertebrae, the result probably would have been different due to the probative value of such findings and its relationship to other evidence presented. *See* Ala. R. Crim. P. 32.1(e)(4); *Ward*, 89 So. 3d at 728; *Frazier*, 562 So. 2d at 571; *Moody*, 95 So. 3d at 857. The most central question of petitioner’s trial was whether Hastings was murdered by strangulation by ligature, as concluded by Dr. McGarry, or, as the State alleged, by petitioner’s alleged gunshot. (CR-04-1864 R. Trial Tr. at 665, 852; State’s Ex. 56 at 115). Yet, in attempting to prove petitioner’s guilt, the State faced an

overwhelming amount of eyewitness testimony contradicting McNeil's allegations of petitioner's involvement and a significant absence of forensic evidence incriminating petitioner. (CR-04-1864 R. Trial Tr. at 731, 1005, 1039, 1046, 1067, 1583-84, 1672-73, 1714-15). Therefore, due to the lack of circumstantial or forensic evidence, the State attempted to prove petitioner's guilt by relying on the assumption that petitioner's alleged gunshot fractured the hyoid bone and C1 vertebrae, while destroying the C2 vertebrae. *Id.* at 856, 875-79, 861-62, 898.

However, the ADFS autopsy report's note of the "two loose cervical vertebrae," suggests the presence of the C2 vertebrae, casting doubt on the most persuasive evidence of the State's theory and bullet trajectory. (Ex. F: Public Records Release, 4). Therefore, the ADFS autopsy report's significance cannot be understated. If presented and placed in relation to other evidence, including petitioner's discredited alibi, a significant lack of forensic evidence, the State's alleged bullet trajectory that is wholly contradictory to McNeil's testimony, the fracture of the hyoid bone and C1 vertebrae but, most importantly, the absence of the C2 vertebrae would have probably changed the result. *See Ala. R. Crim. P. 32.1(e)(3); Frazier*, 562 So. 2d at 571.

Despite the complications of daylight savings at the time of the incident, Petitioner, through multiple eyewitnesses presented an alibi for the majority of April 5, 2003, and into the early hours of April 6, 2003. For instance, petitioner's girlfriend, Tonya Mixson's testimony established an alibi for petitioner during the evening of April 5, 2003, and into the early morning of April 6, 2003. (CR-04-1864 R. Trial Tr. at 1138-45). This testimony effectively placed petitioner at Mixson's home instead of at

County Road 49 shooting Hastings or traveling to Mississippi to dispose of his body. *Id.* Specifically, Mixson testified that petitioner was at Mixson's house at 1:00 or 1:30 AM, placing him at her home either before the Pick N' Pay call at 1:20 AM allegedly from petitioner to Hastings or shortly thereafter. *Id.* at 1140. The State attempted to evidence petitioner making the Pick N' Pay call but, Al Mattox, an agent with the Alabama Department of Safety, who specialized in video enhancement, could not confirm the camera footage documented petitioner in Mixson's Kia Optima making the call. *Id.* at 1339-40; State's Ex. 145. Additionally, Mixson testified that she and petitioner woke up to the sound of McNeil tapping on her window at 2:30 or 3:30 AM on April 6, 2003, when McNeil brought the speakers from Hastings' 1997 Acura inside the house and afterwards left alone. (CR-04-1864 R. Trial Tr. at 1141-45, 1171). Mixson then testified both her and petitioner went back to sleep and woke up together on April 6, 2003. *Id.* at 1145.

The testimonies of Stacey Giambrone and Crystal Lindsey provided further eyewitness accounts of petitioner's location on April 5, 2003, also contradicting McNeil's allegations of petitioner's involvement. Giambrone additionally testified that petitioner was at Mixson's house at 1:00 or 2:00 AM, effectively putting him at the house either before the Pick N' Pay call or during the alleged shooting at County Road 49. *Id.* at 1073. Moreover, Lindsey's testimony places petitioner at Mixson's house at 3:30 AM, when, by McNeil's account, petitioner would be traveling to Mississippi to dispose of Hastings' body. *Id.* at 1003-04. Unfortunately, as with Mixson, Giambrone and Lindsey's testimonies were discredited due to drug use and

an inability to recall specific details. *Id.* at 1005, 1067. As a result, the State's theory, due to the lack of reliable eyewitness accounts or camera footage, narrowed and relied nearly exclusively on forensic evidence to convict Petitioner.

However, the forensic evidence collected on physical items and at the crime scene(s) offered very little to incriminate petitioner and provide clear indications of guilt or innocence. Amongst other relevant items, neither petitioner's fingerprints nor the presence of blood was on the alleged murder weapon, the 9-millimeter Smith & Wesson handgun, including the two empty cartridges. (Ex. F: Public Records Release, 3). Additionally, investigators did not locate the shell casing from the alleged gunshot on County Road 49, even when utilizing dogs, dispatching twelve officers, and spending half a day searching. (CR-04-1864 R. Trial Tr. at 1583-84). Moreover, petitioner's fingerprints were not found on the interior or exterior of Hastings's 1997 Acura, and the DNA analysis of the stain in the trunk excluded petitioner and Hastings as the contributor. *Id.* at 1655, 1672-77. The trunk liner inside Hastings' 1997 Acura, allegedly drenched and sticky with blood according to McNeil, failed to indicate the presence of blood visually or when forensically tested. *Id.* at 1714-15. Additionally, the accompanying bloody t-shirt was never found. *Id.* at 731-32.

Further, the jury heard conflicting testimony from McNeil and forensic pathologists regarding the bullet's trajectory. McNeil stated in police reports and testified that Hastings was shot on the "left side of the head [and] face" and when asked if he was shot in the front of the neck responded, "from what I could tell, no." *Id.* at 1431, 1466, 1518-20. However, the skeletal forensic findings do not evidence a

bullet entering the left side of the head. State's Ex. 45; CR-04-1864 R. Trial Tr. at 671-72). Both Dr. McGarry and Graham found little injury to the skull, with Dr. McGarry finding no fractures through the base of the skull and Graham generally observing no injury to the skull. (CR-04-1864 R. Trial Tr. at 724-25, 886). Additionally, the mandible was mostly unaffected other than bite marks from animal activity and exhibited perfectly aligned teeth with no fractures or damage. *Id.* at 724-25; State's Ex. 56 at 116).

Therefore, to overcome this forensic impossibility, the State presented their contradictory and strict bullet trajectory where the bullet had to travel through the hyoid bone and the C1 and C2, effectively fracturing the hyoid bone and C1 fragment, but, most importantly, destroying the C2 vertebrae. (CR-04-1864 R. Trial Tr. at 856, 869, 873, 878-79). During trial, this trajectory was hypothetically possible due to Dr. McGarry's recovery of the jagged cornea or "wings" of the hyoid bone, Graham's collection of the C1 fragment, and their simultaneous observation of the lower five (C3-7) cervical vertebrae still attached to Hastings' body. *Id.* at 705-10, 840, 869, 873-76). Each of these findings, especially the absence of the C2 vertebrae, allowed Dr. McGarry to conclude Hastings' injuries *could* have resulted from petitioner's alleged gunshot. *Id.* at 860-61. However, the newly discovered ADFS autopsy disrupts the State's reliance on the absence of the C2 vertebrae, by noting, for the first time, the presence of "two loose cervical vertebrae" instead of only the C1 fragment. (Ex. F: Public Records Release, 4). Therefore, its effect or probative value in relation to other circumstantial and forensic evidence, if presented to the jury, would have likely

caused the result or verdict to be different. *See* Ala. R. Crim. P. 32.1(e)(4); *Ward*, 89 So. 3d at 728; *Frazier*, 562 So. 2d at 571; *Moody*, 95 So. 3d at 857.

If the jury had been afforded the opportunity to consider the ADFS autopsy report in conjunction with all other evidence introduced, it would have likely reached a different result, as the absent C2 vertebrae was the State's most persuasive evidence of petitioner's gunshot. The State's theory depended on the assumption that Petitioner's alleged gunshot destroyed the C2 vertebrae, while fracturing the hyoid bone and C1 vertebrae, as there was no other supporting circumstantial or forensic evidence to incriminate petitioner. (CR-04-1864 R. Trial Tr. at 856-60, 873-76, 898). Therefore, if the jury was afforded the opportunity to consider the ADFS autopsy report detailing "two loose cervical vertebrae," due to the probative value of such evidence, the jury could have considered inferences that dismantle the State's entire theory, which likely would have changed the result. *See* Ala. R. Crim. P. 32.1(e)(4); *Ward*, 89 So. 3d at 728; *Frazier*, 562 So. 2d at 571; *Moody*, 95 So. 3d at 857.

For instance, the jury heard testimony from both Dr. McGarry and Graham that Hastings's lower five (C3-7) cervical vertebrae were still connected to the rest of his spine, and only the C1 vertebrae fragment was recovered, while the C2 vertebrae was never found. (CR-04-1864 R. Trial Tr. at 710-11, 861-62, 898). Therefore, one possible inference is that the lower five (C3-7) cervical vertebrae were damaged significantly mere weeks after Dr. McGarry's autopsy was performed. (State's Ex. 56 at 117; ADFS Autopsy Report at 2). However, another possible inference is the "two loose cervical vertebrae" evidences the allegedly "blown out" or destroyed C2

vertebrae in despite of Chrostowski's note that the "atlas and axis are not received." (CR-04-1864 R. Trial Tr. at 898; ADFS Autopsy Report at 2). This inference, in conjunction with Graham's testimony of observing the lower five (C3-7) cervical vertebrae still connected to the Hastings's spine, while simultaneously noting some neck vertebrae had "fallen down to the ground" off Hastings's body and the C1 vertebrae fragment was "found off the side of the road" potentially indicates more than merely the C1 vertebrae fragment being discovered. (CR-04-1864 R. Trial Tr. at 707-11). Additionally, if the jury was presented with evidence the C2 vertebrae existed, they could call into question the State's argument that the C1 vertebrae's fracture certainly resulted from petitioner's gunshot. *Id.* at 860-61. Graham even hypothesized an animal could have swallowed the missing back portion of the C1 vertebrae since the bone fragment exhibited bite marks. *Id.* at 722-23. Therefore, any opportunity for the jury to consider the presence of additional cervical vertebrae in relation to pre-existing circumstantial and forensic evidence potentiates a different result beyond the narrow forensic evidence presented by the State to incriminate petitioner. *Id.*; See Ala. R. Crim. P. 32.1(e)(4); *Ward*, 89 So. 3d at 728; *Frazier*, 562 So. 2d at 571; *Moody*, 95 So. 3d at 857.

Additionally, the jury's knowledge of the ADFS autopsy report noting the absence of the hyoid bone and its greater cornea or "wings" provides inferences that could have produced a different result or, at a minimum, raise significant questions. (Ex. F: Public Records Release, 4). For instance, the absence of the hyoid bone's cornea or "wings" from the exhumed body of Hastings calls into question the location and

condition of such important evidence. *Id.* Moreover, it raises significant questions as to why the State, who sought the exhumation of Hastings' body, did not ensure the hyoid bone's greater cornea or "wings" underwent further examination by Chrostowski.¹ *Id.*; (Ex. F: Public Records Release, 16). Therefore, if the jury was afforded the opportunity to consider the absence of the hyoid bone's cornea or "wings," and the State's neglect in obtaining further analysis, it may have caused them to reach a different conclusion as to the fracture on the hyoid bone upon which the State's theory relied. *See Ala. R. Crim. P. 32.1(e)(4); Ward*, 89 So. 3d at 728; *Frazier*, 562 So. 2d at 571; *Moody*, 95 So. 3d at 857.

Accordingly, if the jury was provided the opportunity to consider the information within the ADFS autopsy report in relation to all other evidence presented, there is a significant chance the result probably would have been different, satisfying the fourth requirement of 32.1(e), as such information would have provided the jury with significant reasonable doubt as to Petitioner's guilt. This reasonable doubt would have been compounded by the lack of physical evidence against Petitioner in this case, as no forensic evidence whatsoever indicated his involvement, and McNeil's testimony was incredibly inconsistent. Further, the autopsy report found that a cause of death could not be determined. Additionally, if the report would have been made available to the Defense, the Defense would have had the opportunity to present evidence and expert opinions that contradicted the State's

¹ As noted in Dr. Kyle Shaw's forensic pathology expert report, there are alternative explanations for the damage to the hyoid bone's greater cornea. Dr. Shaw details that the damage to the greater cornea or wings could be due to decomposition or animal activity instead of a gunshot. (Ex. H: Dr. Shaw Report, 4).

evidence, such as the report analyzing the prior autopsy reports from Dr. Shaw, which found that the manner of death would be best classified as undetermined. (Ex. H: Dr. Shaw Report, 3); *See* discussion of findings beginning on page 42. If the jury would have had access to the autopsy report, it is highly likely that the result would have been different, satisfying Alabama Rule of Criminal Procedure 32.1(e)(4). Therefore, Mr. Lawrence is entitled to relief.

E. The autopsy report qualifies as newly discovered evidence under 32.1(e)(5) because it establishes that petitioner is innocent of the crime for which he was convicted.

Rule 32.1(e)(5) states that newly discovered evidence should establish that “the petitioner is innocent of the crime for which the petitioner was convicted.” Ala. R. Crim. P. 32.1(e)(5). This rule does not require the newly discovered facts establish a petitioner is actually innocent, but that the facts go to and are “relevant of the issue of guilt or innocence,” as opposed to a “procedural violation not directly bearing on guilt or innocence.” *Ex parte Ward*, 89 So. 3d 720, 727 (Ala. 2011). To be credible, a claim of actual innocence requires a petitioner to establish that, considering the new evidence, “it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt,” while presuming, “that a reasonable juror would consider fairly all of the evidence presented.” *Calderon v. Thompson*, 523 U.S. 538, 541 (1998); *Schlup v. Delo*, 513 U.S. 298, 327-29 (1995).

Considering the ADFS autopsy report and the findings therein, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt as it evidences petitioner’s innocence. *See* Ala. R. Crim. P. 32.1(e)(5);

Calderon, 523 U.S. at 541; *Schlup*, 513 U.S. at 327-29. As previously stated, the majority, if not all, of the eye or alibi witnesses were discredited either through drug use, inability to recall specific details, or simply by the complexity of daylight savings occurring on April 5, 2003. (CR-04-1864 R. Trial Tr. at 1005, 39, 46, 67). Therefore, the State forced a theory that rested upon forensic evidence because the circumstantial evidence failed to yield clear indications of guilt or innocence.

Yet, as previously detailed, the forensic analysis of relevant physical items failed to evidence petitioner's involvement and guilt. For instance, on the alleged murder weapon, a 9-millimeter Smith & Wesson, and on the accompanying empty cartridges, petitioner's fingerprints were not found nor was any tissue, blood, or other forensic evidence. (Ex. F: Public Records Release, 3). Additionally, the bullet or shell casing was not found at County Road 49 despite extreme efforts by law enforcement. (CR-04-1864 R. Trial Tr. at 1583-84). In Hastings' 1997 Acura, petitioner's fingerprints were not found on the interior or exterior and the trunk's stain failed to match the DNA profile of petitioner or Hastings. *Id.* at 1672-63. Moreover, the blood test on the trunk liner inside of the 1997 Acura was negative, despite testimony from McNeil that it was drenched and sticky with blood and the accompanying bloody t-shirt was not found. *Id.* at 731, 1714-15.

Accordingly, the State's theory narrowed to rely on the forensic analysis and examination Hastings' body. However, even here, the State had to adopt an alternative theory to align with the forensic analysis of Hastings' remains, as it could not evidence McNeil's alleged trajectory of a bullet traveling through the left side of

Hastings' head or neck. *Id.* at 861-62, 873-76, 898. The skull had little injury and no fractures through the base, while the mandible exhibited perfectly aligned teeth with bite marks from animal activity. (State's Ex. 45; State's Ex. 56 at 116; CR-04-1864 R. Trial Tr. at 671-72). Therefore, the only concrete evidence of a gunshot was the extreme decomposition to Hastings' neck area and the fractured condition of the hyoid bone and C1 vertebrae accompanied by the complete absence of the C2 vertebrae. (CR-04-1864 R. Trial Tr. at 856, 869, 873-79). As a result, the State's theory of the bullet trajectory was guided by these bones, where the bullet allegedly traveled through the hyoid bone, into the C1 vertebrae, and ultimately destroyed the C2 vertebrae. *Id.*

However, the State's witness, Dr. McGarry, who performed the initial autopsy, was adamant about refusing to conclude that Hastings' injuries were certainly a product of a gunshot, testifying that he could not "confidently say that [he has] evidence [of] a gunshot." *Id.* at 860-62, 871. In fact, Dr. McGarry testified that, "because of the location being high in the neck, complemented by the damage to the hyoid bone, complemented by the evidence of asphyxia death, all [conclusions are] statistically more in favor [of] ligature strangulation than [a] gunshot wound." *Id.* at 895-96. Dr. McGarry's conclusion of strangulation by ligature was informed by his internal examination of Hastings which indicated a lack of oxygen in the time before death including collapsed lungs, blood staining of the bones of his neck and base of the skull, hemorrhages in the base of the skull, and dark organs. *Id.* at 850-51. Additionally, Dr. McGarry observed blood in Hastings' stomach which suggested he

could breathe shortly before his death where the swallow reflex was triggered, despite McNeil's statement that Hastings dropped immediately after the gunshot and was dead in the trunk of the 1997 Acura. *Id.* at 850, 1439. Moreover, regarding the C1 vertebrae fragment, Graham suggested the fracture was potentially due to animal activity because of the bite marks on the vertebrae, even hypothesizing an animal could have swallowed the missing back portion. *Id.* at 722-23.

Yet, the State successfully used Dr. McGarry's suggestion that Hastings *could* have been shot and evidenced their theory with the fractured condition of the hyoid bone and C1 vertebrae but, most importantly, the absence of the C2 vertebrae. *Id.* at 860-61. However, the ADFS autopsy report notes, for the first time, the presence of "two loose cervical vertebrae," contradictory to the observations of both Dr. McGarry and Graham. (Ex. F: Public Records Release,4; CR-04-1864 R. Trial Tr. at 705-10, 840, 869, 873-76). Dr. McGarry and Graham both testified to observing the lower five (C3-7) vertebrae still connected to Hastings' spine. (CR-04-1864 R. Trial Tr. at 710, 840). Graham also testified to recovering the C1 vertebrae fragment "off the side of the road," and simultaneously noted some neck vertebrae "had actually kind of fallen down to the ground" from Hastings' decomposing body. *Id.* at 707-711. Therefore, in analyzing the ADFS autopsy report in combination with Graham's testimony, it becomes clear that there is a distinct possibility that one of the "two loose cervical vertebrae" in the body bag may have been the C2 vertebrae. (Ex. F: Public Records Release,4; CR-04-1864 R. Trial Tr. at 705-10, 840, 869, 873-76).

Thus, considering the ADFS autopsy report, it is likely that no reasonable juror would have found petitioner guilty beyond a reasonable doubt, as the most persuasive piece of evidence, the missing C2 vertebrae, may actually exist. *See Calderon*, 523 U.S. at 541; *Schlup*, 513 U.S. at 327-29. There was clear testimony presented to the jury that the lower five (C3-7) cervical vertebrae were still attached to Hastings' spine, that Graham collected the C1 fragment, and Dr. McGarry recovered the greater cornea or "wings" of the hyoid bone. (CR-04-1864 R. Trial Tr. at 705-10, 840, 869, 873-76). Accordingly, at the time of the trial and sentencing, the jury was under the impression the C2 vertebrae was destroyed by petitioner's alleged gunshot. *Id.* at 861-62, 898. However, the ADFS autopsy report noting the existence of "two loose cervical vertebrae" in the body bag, in relation to evidence and testimonies presented at trial, strongly suggests the existence of the C2 vertebrae, and if introduced "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *See Ala. R. Crim. P. 32.1(e)(5); Calderon*, 523 U.S. at 541; *Schlup*, 513 U.S. at 327-29; *Ward*, 89 So. 3d at 727 (Ala. 2011).

Therefore, if the ADFS autopsy report was introduced, the State's theory, which could not rely on eyewitness testimony and other forensic evidence, would potentially be completely discredited, demonstrating the report bears directly on the question of guilt or innocence. (CR-04-1864 R. Trial Tr. at 1005, 39, 46, 67); *See Ward*, 89 So. 3d at 727. Additionally, if the report would have been made available to the Defense, the Defense would have had the opportunity to present evidence and expert opinions that contradicted the State's evidence, such as the report analyzing the prior

autopsy reports from Dr. Shaw, which found that the manner of death would be best classified as undetermined. (Ex. H: Dr. Shaw Report, 3); *See* discussion of findings beginning on page 42. Accordingly, the ADFS autopsy report indicates petitioner's innocence or, at a minimum, demonstrates he should not have received the sentence he received, therefore, satisfying the fifth requirement of 32.1(e) and requires the court to vacate petitioner's conviction. Therefore, Mr. Lawrence is entitled to relief.

II. The State committed a *Brady* violation by not making the autopsy report and its contents available to the Defense.

In *Brady v. Maryland*, the United States Supreme Court stated that "the suppression by the prosecution of evidence favorable to an accused where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963); *See Banks v. Dretke*, 540 U.S. 668, 693 (2004) (holding that a Defendant "cannot be faulted" in failing to develop *Brady* claims "for relying on [the State's] representation that it would disclose all *Brady* material"). It is well-settled law that the withholding of favorable evidence in violation of *Brady* is grounds for the reversal of a conviction. *Ex parte Monk*, 557 So. 2d 832, 837 (Ala. 1989); *Ex parte Womack*, 541 So. 2d 47, 73 (Ala. 1988).

To fully comply with *Brady*, "the individual prosecutor has a duty to learn of favorable evidence known to others acting on the government's behalf," even if the prosecutor does not collect or possess the evidence. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Once the defense requests discovery, *Brady* imposes a continuing duty to disclose any newly discovered information. *Brady*, 373 U.S. at 87. Furthermore, the State must disclose that a witness has committed perjury at trial and may not allow

false evidence to go uncorrected at trial, even when it is not elicited by the State. *Mooney v. Holohan*, 294 U.S. 103 (1935) (per curiam); *Napue v. Illinois*, 360 U.S. 264, 265, 269-72 (1959).

To establish a *Brady* violation, a post-conviction petitioner must show that (1) the State or its agent possessed evidence that was suppressed; (2) the evidence was favorable to the defense as exculpatory or impeachment evidence; and (3) the evidence was material to either guilt or punishment. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *United States v. Bagley*, 473 U.S. 667, 667-75 (1985). With regard to the third prong requiring materiality, evidence is deemed material “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Kyles*, 514 U.S. at 433. This test does not require a reasonable probability of acquittal. Instead, it requires a showing that the suppression of the evidence undermines confidence in the outcome. *Bagley*, 473 U.S. at 678. Materiality must be evaluated by assessing the cumulative effect of all withheld evidence. *Kyles*, 514 U.S. at 436.

Furthermore, *Brady* claims that allege that the State failed to disclose exculpatory are cognizable in post-conviction proceedings pursuant to Rule 32.1(a) of the Alabama Rules of Criminal Procedure because State suppression of favorable evidence prevents defense attorneys from discovering any issues related to the withheld evidence at trial or on direct appeal. Consequently, Rule 32.2 of the Alabama Rules of Criminal Procedure does not preclude *Brady* claims because they could not have been addressed at trial or on appeal. See *McMillian v. State*, 616 So. 2d, 937,

943-49 (Ala. Crim. App. 1993) (reversing conviction and sentence in Rule 32 proceedings where the prosecutor suppressed evidence that impeached key witness's testimony).

Here, the ADFS autopsy is favorable to petitioner as it is exculpatory and impeaching, was either willingly or inadvertently suppressed by the prosecution, and is material to issues at trial, therefore, causing petitioner to suffer prejudice:

A. The Alabama Department of Forensic Sciences' autopsy report from the examination of Hastings' exhumed body is favorable to petitioner as it is exculpatory and denied petitioner the opportunity to impeach the credibility of witnesses called by the prosecution.

The ADFS autopsy report contains evidence favorable to petitioner that is exculpatory and impeaching as it denied him the opportunity to impeach the credibility of witnesses called by the prosecution. The first element of a *Brady* violation requires a petitioner to demonstrate the suppressed evidence "is favorable because it is either exculpatory or impeaching." *Brady v. Maryland*, 373 U.S. 83, 87-88 (1963); *United States v. Brester*, 786 F.3d 1335, 1339 (11th Cir. 2015); *Downs v. Sec'y, Fla. Dep't of Corr.*, 738 F.3d 240, 258 (11th Cir. 2013). Exculpatory evidence, "tends to negate the guilt of the accused or mitigate the offense charged," which would, in turn "tend to reduce the punishment of the accused." *Kyles v. Whitely*, 514 U.S. 419, 437 (1995). Regarding impeachment evidence, where the "reliability of a given witness may well be determinative of guilt or innocence" nondisclosure of evidence affecting such credibility falls within the general rule of *Brady*. *Giglio v. United States*, 405 U.S. 150, 154 (1972).

The ADFS autopsy report is exculpatory and impeaching as the findings therein negate petitioner's guilt and, without disclosure, denied petitioner the opportunity to attack the credibility of the prosecution's witnesses, whose reliability was determinative of petitioner's guilt or innocence. *See Brady*, 373 U.S. at 87-88; *Giglio*, 405 U.S. at 154; *Kyles*, 514 U.S. at 437; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. The ADFS autopsy report contains exculpatory evidence as it notes facts which negate the inferences upon which the State's theory relies and, consequently, petitioner's guilt. (Ex. F: Public Records Release, 4). The primary evidence the State relied upon to prove petitioner's guilt was the fracture of the hyoid bone and C1 vertebrae, and the absence of the C2 vertebrae all resulting from petitioner's gunshot that allegedly killed Hastings. (CR-04-1864 R. Trial Tr. at 856, 875-79, 861-62, 898). The State argued petitioner's gunshot traveled through the "body" the hyoid bone and the C1 and C2 vertebrae, resulting in a fracture the hyoid bone and C1 vertebrae, while "blowing out" the C2 vertebrae. *Id.* at 856, 869, 873-76, 878-79.

However, the ADFS autopsy report notes "two loose cervical vertebrae" suggesting the existence of the C2 vertebrae. (Ex. F: Public Records Release, 4). Therefore, the ADFS autopsy report is exculpatory as it negates the strength of the State's assumption that the loss or inexistence of the C2 vertebrae resulted from petitioner's gunshot, which directly informed the jury's consideration of petitioner's guilt or innocence. *See Brady*, 373 U.S. at 87-88; *Kyles*, 514 U.S. at 437; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. The strength of this inference is heightened by the inability of the State and jury to rely on camera footage or eyewitness testimony

due to the complication of daylight savings and drug use, compiled with the severe lack forensic evidence indicating petitioner's involvement in the plot to murder Hastings. (CR-04-1864 R. Trial Tr. at 731, 1005, 1039, 1046, 1067, 1583-84, 1672-73, 1714-15). Accordingly, the strongest evidence of petitioner's guilt was the absence of the C2 vertebrae. *Id.* at 856-60, 898. Yet, the ADFS autopsy report potentially evidences the existence of the C2 vertebrae, as only the C1 vertebrae fragment was recovered by Graham. (Ex. F: Public Records Release, 4; CR-04-1864 R. Trial Tr. at 707-11). Therefore, the ADFS autopsy, if noting the existence of the C2 vertebrae, is exculpatory, as it negates the State's most relied upon assumption, and, consequently, petitioner's guilt. *See Brady*, 373 U.S. at 87-88; *Kyles*, 514 U.S. at 437; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258.

Moreover, the ADFS autopsy report is impeaching as, if disclosed, would have allowed petitioner the opportunity to challenge the credibility of witnesses, whose reliability was determinative of petitioner's guilt or innocence. *See Brady*, 373 U.S. at 87-88; *Giglio*, 405 U.S. at 154; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. Specifically, the suppression of the ADFS autopsy report deprived petitioner the opportunity to impeach the credibility of McNeil fully and adequately. McNeil's confession and testimony, incriminating petitioner, which generally lacked forensic corroboration, is further impeachable by the ADFS autopsy report. (Ex. F: Public Records Release, 3; CR-04-1864 R. Trial Tr. at 731, 1583-84, 1672-73, 1714-15). McNeil testified repeatedly that Hastings was shot in the left side of the head or neck, and specifically stated that Hastings was not shot in the front of the neck, wholly

contradictory to the State's alleged trajectory of the bullet. (CR-04-1864 R. Trial Tr. at 1431, 1466, 1518-20). Therefore, the ADFS autopsy report allows for further impeachment as it not only negates McNeil's alleged trajectory, but additionally the State's trajectory, suggesting McNeil's allegation of petitioner's gunshot is false. See *Brady*, 373 U.S. at 87-88; *Giglio*, 405 U.S. at 154; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258.

More importantly, though, the suppression of the ADFS autopsy report prevented petitioner from adequately impeaching Dr. McGarry's reliability or credibility which was determinative of his guilt or innocence. *Id.* For instance, the State's failure to ensure the C1 vertebrae fragment collected by Graham was provided to Dr. McGarry for forensic analysis, forced Dr. McGarry to conduct an informal analysis of the vertebrae during cross examination and, therefore, produce unreliable conclusions. (CR-04-1864 R. Trial Tr. at 873). These conclusions, due to the fracture line on the left side of the C1 vertebrae and the missing back portion paired with the absent C2 vertebrae, included that Hastings's injuries *could* have resulted from petitioner's gunshot, which certainly informed the jury's consideration of petitioner's guilt or innocence. *Id.* at 862, 896; See *Giglio*, 405 U.S. at 154. If the ADFS autopsy report was disclosed to petitioner, he could have attacked Dr. McGarry's informal conclusion, as the "two loose cervical vertebrae" found in the body bag may evidence the missing C2 vertebrae. (CR-04-1864 R. Trial Tr. at 861-62, 898, 897; Ex. F: Public Records Release, 4). Moreover, if petitioner had been made aware of the ADFS autopsy report, he could have attacked the reliability of Dr. McGarry's statement that

he was never provided the C1 vertebrae fragment, as he noted in his autopsy a “curved bony structure” in a box which he failed to identify. (CR-04-1864 R. Trial Tr. at 873; State’s Ex. 56 at 118).

Additionally, due to the suppression of the ADFS autopsy report, petitioner was deprived of adequately impeaching the reliability and credibility of Graham who recovered the C1 vertebrae fragment. (CR-04-1864 R. Trial Tr. at 707-11). Like Dr. McGarry, Graham observed the lower five (C3-7) vertebrae still attached to Hastings’s spine, while also recovering the C1 vertebrae “off on the side of the road” away from the body. *Id.* However, Graham also noted neck vertebrae “kind of fall[ing] down to the ground” off Hastings’s decomposing body. *Id.* Due to the suppression of the ADFS autopsy report, this testimony does not obviously suggest the existence of the C2 vertebrae, especially since neither Graham nor Dr. McGarry ever testified to observing the vertebrae. However, now with the discovery of the ADFS autopsy report, this testimony suggests that Graham noted more than merely the C1 vertebrae fragment, and yet, failed to collect or document detached vertebrae disconnected from Hastings’ spine. *Id.* With disclosure of the ADFS autopsy report, petitioner could have impeached Graham on this inconsistency, attacked his reliability, and simultaneously negated the State’s theory upon which petitioner’s guilt is based, demonstrating the report is impeaching within the context of *Brady*. *See Brady*, 373 U.S. at 87-88; *Giglio*, 405 U.S. at 154; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258.

Finally, petitioner was completely deprived of the opportunity to impeach the credibility or reliability of the State Medical Examiner, Chrostowski, who conducted the autopsy on Hastings' exhumed body and compiled the report. (Ex. F: Public Records Release, 3-6). Due to the suppression of the ADFS autopsy report, petitioner could not ask any questions as to why the "two loose cervical vertebrae" in the body bag were not identified or question their relationship to other forensic evidence collected by Graham and Dr. McGarry. *Id.* at 2; CR-04-1864 R. Trial Tr. at 856, 875-79, 861-62, 898). Moreover, petitioner was unable to confront Chrostowski about what he expected to receive or analyze in examining Hastings' exhumed body from the "scene report" noted on page 2 of the report. Each of these questions not only directly reference the credibility or reliability of Chrostowski but diminish the strength of the inferences upon which the State's theory relies and consequently petitioner's guilt. (CR-04-1864 R. Trial Tr. at 856, 869, 873-76, 878-79); *See Brady*, 373 U.S. at 87-88; *Giglio*, 405 U.S. at 154; *Kyles*, 514 U.S. at 437; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258.

On November 2, 2023, a report analyzing both autopsies was created by Dr. Kyle Shaw ("Dr. Shaw"), a forensic pathology expert. (Ex. H: Dr. Shaw Report, 1). First, Dr. Shaw stated that he would expect post-mortem x-rays to be done when there is a body that is severely decomposed and there is suspicion of foul play. *Id.* at 2, 4. An x-ray can help determine any bone injury or foreign materials, such as projectiles. *Id.* at 2. He also mentioned that the deterioration of the hyoid bone could have explanations other than injury. *Id.* at 3. Decomposition can lead to the part

separating from each other, or even animal activity. It could be confused for being fractured when this happens. *Id.* In Dr. Shaw's opinion, there was insufficient information for the cause of death to be concluded as either asphyxia due to strangulation by ligature or a gunshot wound. *Id.* at 3. He also stated that a second autopsy should not have been needed, because there should have been sufficient sampling and documentation from the first autopsy that should have been handed over to the right authorities. *Id.* at 3-4. He determined that the manner of death would best be classified as undetermined. *Id.* at 3.

Accordingly, the ADFS autopsy report's suggestion of additional cervical vertebrae, the failure to identify such vertebrae, the absence of crucial forensic evidence, and indications of mishandling evidence is favorable to petitioner as it amounts to exculpatory and impeaching evidence within the context of *Brady*. Further, Dr. Shaw's report shows that the autopsy report that was not turned over to the Defense was exculpatory, as he determined that there was insufficient evidence to support a conclusion that Hastings' death occurred because of strangulation by ligature or a gunshot wound. For these reasons, the undisclosed autopsy report is exculpatory, and Mr. Lawrence is entitled to relief.

B. The prosecution willfully or inadvertently suppressed the Alabama Department of Forensic Sciences' autopsy report regarding the examination of Hastings's exhumed body.

There is significant evidence demonstrating the prosecution either willfully or inadvertently suppressed the ADFS autopsy report. The second element of *Brady* requires the petitioner demonstrate "the prosecution suppressed the evidence either willfully or inadvertently." *Brady v. Maryland*, 373 U.S. 83, 87-88 (1963); *United*

States v. Brester, 786 F.3d 1335, 1339 (11th Cir. 2015); *Downs v. Sec’y, Fla. Dep’t of Corr.*, 738 F.3d 240, 258 (11th Cir. 2013). To comply with *Brady*, the prosecutor has a duty to disclose favorable evidence that is in his possession as well as to seek out “any favorable evidence known to others acting on the government’s behalf.” *Parker v. Allen*, 565 F.3d 1258, 1277 (11th Cir. 2009). In the context of *Brady*, suppression is best evidenced or illustrated when there is no dispute that documents were known to the State but not disclosed to the accused’s counsel, *Strickler v. Greene*, 527 U.S. 263, 282 (1999).

The ADFS autopsy report was suppressed by the prosecution either willfully or inadvertently and was never disclosed to petitioner’s counsel. *See Brady*, 373 U.S. at 87-88; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. In a signed affidavit, Petitioner’s trial counsel stated that he became aware of the ADFS autopsy report regarding the examination of Hastings’ exhumed body when it was disclosed by Dr. Brian Pierce in June of this year. (Ex. G: Attorney Willie Huntley Affidavit). Petitioner’s counsel was never notified of the ADFS autopsy report by the State or anyone else. *Id.* Moreover, in searching his files, petitioner’s counsel did not find the autopsy report and has no recollection of the autopsy. *Id.* Interestingly, in a recent interview of the prosecutor, John D. Whetstone, he stated he did not recall the ADFS autopsy performed on Hastings’ exhumed body or the report but agrees it should have been turned over to defense counsel. (Ex. I: Rob Holbert, *Digging Deep: Advocates Discover Autopsy Never Included in Baldwin Man’s Murder Trial*, Lagniappe Excerpt).

Yet, there are multiple documents detailing the prosecutor and agents of the State's pursuance of the ADFS autopsy indicating knowledge and willful suppression. The Motion to Disinter the remains of Hastings bears the signature of Whetstone and details the reasons for seeking the autopsy. (Ex. F: Public Records Release, 16). The order granting the Motion to Disinter bears the signature of Judge Robert Wilters, who presided over the entirety of the trial proceedings. *Id.* at 15. Even the ADFS autopsy report notes that it was authorized at the request of Mr. Huey Mack Sr., the Baldwin County Coroner, under the "authority granted by the District Attorney's Office." *Id.* at 6. Moreover, even when the State and its witness, Hoss Mack, Chief Investigator with the Baldwin County Sherriff's Department, referenced the "difficulty" in acquiring samples from Hastings this "difficulty" was not disclosed as resulting from attempting to obtain a blood sample from Hastings's exhumed body. (CR-04-1864 R. Trial Tr. at 1672). Accordingly, there is little evidence to suggest the prosecution was unaware of the ADFS autopsy performed on Hastings' exhumed body or the report compiled, and instead, as best observed during trial, the prosecution willfully suppressed such evidence from petitioner and the jury. *See Strickler*, 527 U.S. at 282.

On the other hand, throughout the trial, the State exercised a general lack of care regarding safekeeping of extremely important evidence, suggesting the ADFS autopsy report could have been suppressed accidentally. For instance, in the beginning of the trial, the prosecution introduced the wrong trunk liner that was not the liner in Hastings' 1997 Acura, and, during Mack's direct examination, the correct

liner had to be obtained from the Robertsdale Sherriff's Office. (CR-04-1864 R. Trial Tr. at 1525, 1703). Additionally, during Mack's testimony it was revealed that the trunk liner McNeil alleged was drenched in Hastings' blood was missing from the second discovery meeting before trial and was, in fact, forensically tested for blood, yet the report, noting the negative result, was never provided to petitioner's counsel. *Id.* at 1664, 1709, 1714-15. Moreover, it was revealed during trial, the C1 vertebrae fragment collected by Graham was never disclosed to Dr. McGarry for forensic evaluation. *Id.* at 873. This previous *Brady* issue has already been introduced to this Court. (Ex. J: Willie Huntley 2008 Affidavit).

Therefore, petitioner's case was riddled with failures by the State to store and present the correct evidence, suggesting there may be a possibility that the ADFS autopsy report was suppressed inadvertently. *See Brady*, 373 U.S. at 87-88; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. However, the Motion to Disinter, transcript, and recent statements by the prosecutor, all suggest that the ADFS autopsy report was suppressed willfully rather than inadvertently, demonstrating there is no dispute that the ADFS autopsy and report was known to the State but not disclosed to petitioner's counsel. *See Id.*; *Strickler*, 527 U.S. at 282. For these reasons, Mr. Lawrence is entitled to relief.

C. The Alabama Department of Forensic Sciences' autopsy report from the examination of Brandon Hastings's exhumed body is material and the failure to disclose it caused petitioner to suffer prejudice.

The final element of a *Brady* violation requires petitioner to demonstrate the evidence is "material to the issues at trial," and its suppression caused him "to suffer

prejudice as a result.” *Brady v. Maryland*, 373 U.S. 83, 87-88 (1963); *United States v. Brester*, 786 F.3d 1335, 1339 (11th Cir. 2015); *Downs v. Sec’y, Fla. Dep’t of Corr.*, 738 F.3d 240, 258 (11th Cir. 2013). To establish materiality, and, therefore, prejudice a petitioner is required to demonstrate there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *United States v. Bagley*, 473 U.S. 667, 682 (1985). A “reasonable probability” is a probability sufficient to undermine confidence in the outcome. *Id.*; *United States v. Brester*, 786 F.3d 1335, 1339 (11th Cir. 2015).

The ADFS autopsy report is material to issues at trial and its suppression caused petitioner to suffer prejudice. *See Brady*, 373 U.S. at 87-88; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. The most pressing question of petitioner’s trial was whether Hastings’s manner of death was strangulation by ligature, as concluded by Dr. McGarry, or, as the State argued, by petitioner’s gunshot. (CR-04-1864 R. Trial Tr. at 665, 852; State’s Ex. 56 at 115). Due to the lack of circumstantial or forensic evidence incriminating petitioner, the State relied on proving petitioner’s alleged gunshot and, consequent guilt, by relying on the condition of the hyoid bone and absence of certain cervical vertebrae. (CR-04-1864 R. Trial Tr. at 856, 875-79, 861-62, 898). To prove Hastings was shot by petitioner, the State argued petitioner’s gunshot fractured the hyoid bone, leaving behind the jagged edges of the greater cornea or “wings” and a C1 vertebrae fragment, while obliterating the C2 vertebrae. *Id.* at 859-62, 873-76, 878-79, 898. This forensic evidence and the repeated assumption that the

C2 vertebrae was missing due to petitioner's alleged gunshot allowed for the jury to consider the State's bullet trajectory possible. *Id.* at 878-79.

However, the ADFS autopsy report detailing the existence of "two loose cervical vertebrae," effectively contradicts the State's alleged bullet trajectory, and potentially evidences the C2 vertebrae. (Ex. F: Public Records Release, 4). Therefore, the ADFS autopsy report is material, as if disclosed and placed in relation to other evidence collected would likely change the result and undermines confidence in the outcome. *See Bagley*, 473 U.S. at 682; *Brester*, 786 F.3d at 1339. The ADFS autopsy report alters the State's assumption that the C2 vertebrae was destroyed by petitioner's gunshot, as there was substantial testimony that the only vertebrae recovered was the C1 fragment by Graham. (CR-04-1864 R. Trial Tr. at 707-11; Ex. F: Public Records Release, 16-17). Accordingly, if the ADFS autopsy report was not suppressed and, instead, considered with all the other evidence introduced, the jury would have likely reached a different result. *See Bagley*, 473 U.S. at 682.

Further, Dr. Shaw's report shows that the autopsy report that was not turned over to the Defense was exculpatory, material, and caused prejudice, as he determined that there was insufficient evidence to support a conclusion that Hastings' death occurred because of strangulation by ligature or a gunshot wound. (Ex. H: Dr. Shaw Report, 1). In Dr. Shaw's opinion, there was insufficient information for the cause of death to be concluded as either asphyxia due to strangulation by ligature or a gunshot wound. *Id.* at 3. He also stated that a second autopsy should not have been needed, because there should have been sufficient sampling and

documentation from the first autopsy that should have been handed over to the right authorities. *Id.* at 3-4. He determined that the manner of death would best be classified as undetermined. *Id.* at 3.

Therefore, the forensic evidence within the ADFS autopsy report is material as it is sufficient to undermine the confidence in the outcome, and the State's suppression of the report caused petitioner to suffer prejudice. *See id.*; *Brady*, 373 U.S. at 87-88; *Brester*, 786 F.3d at 1339; *Downs*, 738 F.3d at 258. Given the information included in the undisclosed autopsy and the findings of Dr. Shaw, there can be no confidence in the outcome of this trial whatsoever, and Mr. Lawrence is entitled to relief.

CONCLUSION

This petition shows that there is newly discovered evidence under Alabama Rule of Criminal Procedure 32.1(e) that proves Mr. Lawrence's innocence. Further, imperative evidence was suppressed by the State in the form of an exhumation and additional autopsy, which disproves the State's theory of the crime and proves Mr. Lawrence's innocence. Due to these issues, there can be no confidence in Mr. Lawrence's conviction and sentence, and relief must be provided. The principle of justice demands a fair and transparent legal process, ensuring that all relevant information is available to both the prosecution and the defense. The recent discovery of material that should have been disclosed under *Brady*, coupled with the introduction of new exculpatory evidence, establishes reconsideration of the conviction. Considering the new evidence and *Brady* material, it is imperative that

this Court takes immediate action to rectify the injustice that has occurred. Mr. Lawrence has served twenty years for a crime for which he maintains his innocence. The evidence presented at trial against him was far from conclusive, and is now even more in doubt due to newly discovered evidence that was not disclosed in violation of *Brady*. For these reasons, Mr. Lawrence respectfully requests that this Court set this matter for an evidentiary hearing and subsequently that his conviction and sentence be vacated as a matter of law.

PRAYER FOR RELIEF

For all the above stated reasons and other such reasons as may be made upon amendment of this petition and a full evidentiary hearing, **Petitioner MURRAY LAWRENCE** respectfully asks this Court to grant him the following relief:

- a. enter an order relieving Petitioner of his unconstitutionally obtained conviction and sentence following a full and complete hearing; and
- b. grant Petitioner any such additional relief as is just, equitable, and proper under federal and state law.

Respectfully submitted,

/s/ Leroy Maxwell, Jr.

Leroy Maxwell Jr.
Counsel for Petitioner
Maxwell Tillman LLC
Birmingham, AL 35203

/s/ Gabrielle Humber

Gabrielle Humber
Counsel for Petitioner
Maxwell Tillman LLC
Birmingham, AL 35203

CERTIFICATE OF SERVICE

I certify that all required parties have been served a copy of the forgoing document on this day, November 24, 2023.

/s/ Leroy Maxwell, Jr.

Leroy Maxwell Jr.
Counsel for Petitioner
Maxwell Tillman LLC
Birmingham, AL 35203

COURTESY COPY