IN THE COURT OF COMMON PLEAS
CRAWFORD COUNTY, OHIO

State of Ohio,

Plaintiff,

vs.

Kevin Keith,

Defendant.

CASE NO. 94 CR 0042

Judge Sean Leuthold

MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE AND/OR POST-CONVICTION RELIEF UNDER OHIO REV. CODE § 2953.23

Kevin Keith moves the Court, pursuant to Criminal Rule 33(A)(6) and/or Ohio Revised Code § 2953.23, for a new trial based on newly discovered evidence. Keith's constitutional rights were violated when the State failed to disclose that the BCI forensic analyst who testified against Keith was known to her colleagues and superiors as someone who "will stretch the truth to satisfy a department." Ex. 1, p. 2. This information, as well as additional information about this expert, would have made a significant difference in the outcome of Keith's trial had it been known to Keith.

A memorandum in support follows.

Respectfully submitted,

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Memorandum in Support

I. Introduction

Kevin Keith was wrongly convicted for the aggravated murders of Marichell Chatman, Linda Chatman, and Marchae Chatman, and the attempted aggravated murders of Quanita Reeves, Quentin Reeves, and Richard Warren. The State relied heavily upon the testimony of G. Michele Yezzo, forensic analyst with Ohio's Bureau of Criminal Investigation (hereinafter "BCI"), to provide the crucial link between Keith and the crime scene. But Yezzo's employment personnel file demonstrates that her forensic conclusions were untrustworthy, and her superiors were aware of that at the time of trial. Unbeknownst to Keith until only recently, Yezzo was not only mentally unstable but she had a "reputation of giving dept. answer wants if stroke her" [sic] and was known to "stretch the truth to satisfy a department." Ex. 1, p. 2; Ex. 2, p. 12.

Keith now also has learned that Lee Fisher—the Ohio Attorney General at the time of Keith's trial—would not have "permitted Ms. Yezzo to provide testimony against Kevin Keith" had he been aware of the information about her that was in her personnel file. Ex. 3, p. 3. If a proper forensic analysis had occurred, the analyst would have concluded that Ms. Yezzo's conclusions were wrong, and Keith would have powerful evidence exonerating him and incriminating Rodney Melton. *See* Ex. 4, affidavit of William Bodziak.

Because Keith was never informed about the very troubling information contained in the personnel files of State's witness G. Michele Yezzo, he was deprived of the opportunity to use it to challenge her and her conclusions. Keith was convicted with forensic evidence that is wholly unreliable, and he is entitled to a new trial.

II. Statement of Facts

On the evening of February 13, 1994, at some time shortly after 8:45 p.m.[1], a gunman entered a Bucyrus Estates' apartment and shot all six people inside. Three were killed: Marichell Chatman; her five-year-old daughter, Marchae; and Marichell's aunt, Linda Chatman. The other three victims survived: Marichell's boyfriend Richard. Warren, and Marichell's young cousins, Quanita and Quinton Reeves.

A. Police believe Keith is the perpetrator and build a case around him.

The surviving adult, Richard Warren, escaped from the crime scene to a nearby restaurant where he told no less than four different witnesses—including a police officer—that he did not know who shot him. *See* Tr. 240, 305, 620, 623. The hospital security guard report, created the next day at 1:00 p.m., reflected Warren's description of the shooter: "The perpetrator *whos* [sic] *name is still unknown* is still at large. The *only description* of the perpetrator is that it is a black male approximately 6'3" in hiegth [sic] and about 260 lbs." Ex. 5 (emphasis added).

After Warren came out of surgery, the police called him and gave him four or five "Kevins" from which to choose. Tr. 353. Despite having initially told four witnesses that he did not know who shot him, Warren ultimately recalled that his shooter's name was "Kevin." It is unclear as to when or how he recalled the name, however. His nurse, John Foor, testified that Warren wrote the name down immediately upon coming out of surgery, at five a.m. the day after he was shot. Warren denied that he wrote the name down; his hands were strapped down. Also, Warren admitted on cross-examination that he did not know whether he or the police first mentioned the name "Kevin" as the person who was the shooter. *See* Tr. 372 (Defense Counsel:

[1] Richard Warren testified that Linda Chatman arrived at the apartment at "about 8:45," and the shooter arrived after that. Tr. 337-38.

"So you don't recall whether you mentioned the name to them or they mentioned it to you; do you?" Warren: "No, sir, I do not.").

But the police had immediately committed themselves to the fact that Keith was the shooter. One of the officers even testified that he brought up Keith's name at the crime scene that night. Tr. 790.

At first, the suspicion was at least logical. The victims' family member, Rudel Chatman, was the informant for a cocaine drug raid that had occurred a couple weeks before, and Keith had been one of the eight people arrested in that raid.[2] Also, five witnesses told the police that they had seen a "large black man"—described as about 6'1", 350 lbs.—in the area. Keith was 6', 300 lbs and one of the few black men in the small city of Bucyrus.

The police acted quickly: on February 15, less than two days after the shootings, Kevin Keith was arrested at his home in Crestline, Ohio. Bucyrus Chief of Police conducted a press conference after Keith's arrest, and he referenced carpet fibers, shoe prints, and shoes that had been collected as evidence and submitted to BCI. The Chief continued, "I don't want to say that we've made an arrest and now we're going to make the case, but we're still very interested in putting a lot of this evidence together." Ex. 6, Clip 1. Chief Beran explained, "What we have is some evidence that we have collected that we *hope* we will be able to link him to the crimes." Ex. 6, Clip 2.

B. Evidence contradicts police theory, but Keith was already arrested.

Weeks after Keith's arrest, however, the police discovered that the "large black man" described by those five witnesses was *not* Kevin Keith. *See* Tr. 752-53 (Captain Corwin acknowledged that they "determined it was Karie Walker," not Keith). And none of the

[2] Keith was charged with selling what equaled to less than 3 grams of crack cocaine.

witnesses had actually seen that man do anything criminal; they had all been describing a man who was simply a bystander at the scene. That bystander—Karie Walker— had just moved in to the apartment complex a few days earlier.

This was not the only reason that should have given the police pause about their quick decision to arrest Keith. Two days after Keith's arrest, seven-year-old surviving victim Quanita Reeves told her nurse that the person who shot them was "Bruce," who was "Daddy's friend." Tr. p. 735. Quanita then reiterated to detectives that "Daddy's friend Bruce" was the man who shot them. Tr. 715. The detectives showed her the photo lineup containing Keith's picture, and she was clear that "none" of the pictures were of the man who shot them. She was also clear that Keith was not the man she knew was named Bruce. *Id.* at 721.

Then in March, BCI completed its analysis of the evidence collected by the Bucyrus Police. Despite Chief Beran's "hope" that the police-collected carpet fibers, shoe prints, and shoes would "link [Keith] to the crimes," none of that evidence implicated Keith. Tr. 481, 489-90; Yezzo deposition, p. 19-21, 26. As defense counsel later told the jury, there was "not a piece of fiber," "fingerprint," or "blood spec or a piece of blood" that pointed to Keith. Tr. 843.

Keith had an alibi that was supported by several people, including an uninterested party. Judith Rogers, the neighbor of Keith's girlfriend Melanie Davison, happened to notice Keith and Davison leaving Davison's apartment in Mansfield at about 8:45 p.m. that evening. Tr. 691. In other words, Rogers saw Keith at a location over a half an hour away from the crime scene at the same time the shootings occurred. Rogers was clear about the timing, because she recalled the television show she was watching and knew it came on at 8:30 p.m. *Id.*

Around 9:00 p.m., Keith and Davison arrived in Crestline at the home of Keith's aunt, Grace Keith. Grace Keith testified to seeing Keith at her house around 9:00. Tr. 685. Yolanda

Price, who was also at Grace's house at that time (*see* tr. 684), confirms Keith was there. Ex. 7. Price also saw Davison waiting outside in the car. *Id.*

Davison recalls that she and Keith were at Gracie Keith's house in Crestline for about ten minutes and arrived back at Davison's Mansfield apartment at 9:25 p.m. *Id.* The sheer distance involved makes it impossible for Keith to have been the shooter. Keith was accounted for before, during, and after the shootings that took place at 8:45 p.m.

C. The crucial car evidence and the "043" that implicated Keith

The night of the shooting, Nancy Smathers told police she saw the person who was probably the shooter get into a car. She reported that the shooter got his car stuck in a snow bank and had to push the car out to escape. Tr. 381-85. She described the color of the car as "a white, cream, light yellow." Tr. 389. Based on her report, the police took impressions from the snow of the tire treads and a partial license plate print in the snow. Tr. 474-77.

The Bucyrus Police Department determined that the partial license plate in the snow was "043." Keith's girlfriend Melanie often drove the car that belonged to her grandfather, Alton Davison, and Davison's license plate was "MVR043." Approximately three weeks after the shootings, the police impounded Davison's Oldsmobile Omega as the car used in the crime, despite the fact that it was not the color described by Smathers, the one eyewitness to the getaway car. (Davison's car was described by BCI as "gray" (Tr. 509), and by Davison as green (Tr. 448, 449). *See also* Exh. 4 (Color photo of Alton Davison's car)). Smathers was never shown a photograph of Davison's car to see if it was the car she saw that night. *See* tr. pp. 379-402.

The police determined the impression was a "043" before BCI rendered its conclusions. Crestline Police Patrolman Edward Wilhite testified that it was on March 5, 1994 (tr. 423) when

he spotted Davison's car with "the last three numbers on the plate matched the ones that the Bucyrus Police Department had wanted." Tr. 424. *See also* tr. 817 (Captain Blankenship testified that it was "[a]bout a week prior to March 5th" that he received a printout "of the 043 registered vehicles in Crawford County and Richland County."). BCI analyst Michele Yezzo provided her conclusions eleven days later, after the Bucyrus Police provided her with the information about Davison's car. She concluded that the snow impression "bears the numbers '043' and is set toward the driver's side of the car with spacing and orientation similar to the license plate 'MVR043' on [Davison's car]." State's Trial Ex. 1, attached here for convenience as Ex. 8.

The tire-track impressions from the scene did not match the tires on Davison's car, but because Alton Davison recalled putting different tires on the car in August, Yezzo compared the impressions to the car's previous brand of tires. Yezzo did not actually physically examine a tire to make this comparison; she relied on a picture from a brochure to make her determination. Dep. Tr. 22. Yezzo testified that the tread designs from the tires that were previously on Alton Davison's car were similar in tread design to the tire imprints left at the crime scene. Dep. Tr. 23.

Yezzo also conducted forensic testing on the inside of Davison's car, and yet there was not a scrap of evidence inside the car linking it to Keith or the scene. Yezzo Deposition, pp. 18-19, 27. Still, the prosecution maintained that Keith's association to Davison's granddaughter meant Keith had access to Davison's car. Davison's granddaughter never testified. Keith denied ever being in Davison's car.

The tire and license plate imprints in the snow were the key forensic evidence that allegedly linked Keith to this crime. The State also argued that a spent bullet casing, found outside the home of Fernelle Graham, pointed to Keith as the shooter. Graham lived in the house across from the General Electric plant, and because this is where Keith picked up his girlfriend

Zina Scott on the night of the murders, the State used it to link Keith to the crime. But the record refutes the purported link to Keith.

Ms. Graham testified that it was "a quarter to ten" when she looked out of her window and saw the trash on her sidewalk. Tr. 430. According to her testimony, the bullet casing was found with that trash. But Zina Scott testified that Keith picked her up at the GE plant 11 p.m. that night. If the trash and casing were outside Graham's house at 9:45, and Keith picked up Zina at 11 p.m., then the trash and bullet casing were there *before* Keith was in the area.

Furthermore, the initial report received by police was that Graham found the casing at McDonalds. According to the Bucyrus Police radio dispatch logs (at 0842 on 2-14-94), when the woman reported the found casing, she reported that she "thinks she may have found it in the McDonalds area." Exh. 5, p. 3. Significantly, the State never disclosed these logs and this information that is inconsistent with Graham's testimony. The radio logs were exhibits in a case wholly unrelated to Keith's, and they were discovered by Keith's current counsel—16 years after Keith was convicted and sentenced to death.

From crime to sentencing, only three-and-a-half months passed. Ultimately, Keith's death sentence was never carried out. On September 2, 2010, Governor Ted Strickland commuted Kevin Keith's death sentence to a life sentence, citing doubts about Keith's guilt as his reasoning for the commutation.

D. Newly discovered evidence

In January 2016, counsel for Keith saw an article in the Cleveland Plain Dealer that referenced BCI analyst Yezzo, the expert who had linked Davison's car to the crime scene. Ex. 9. The article quoted from a memo written by a state supervisor about Yezzo: "Yezzo's 'findings and conclusions regarding the truth maybe [sic] suspect. She will stretch the truth to

satisfy a department.'" *Id.* This triggered Keith's counsel to obtain Yezzo's personnel file from Yezzo's time at BCI. That file revealed the following:

In January 2009, Yezzo received the last of many verbal reprimands of her career as a forensic scientist with Ohio's Bureau of Criminal Investigation. It referred to her "interpretational and observational errors" as "failures that could lead to a substantial miscarriage of justice." Ex. 10. Yezzo tendered her resignation the following month. Ex. 11.

2009 was not the first time Yezzo's forensic conclusions were questioned by her superiors and peers. One example was in May 1989: a memorandum from the Assistant Superintendent to the Superintendent documented that the "consensus" was that Ms. Yezzo's "findings and conclusions regarding evidence may be suspect. She will stretch the truth to satisfy a department." Ex. 1, p. 2.

Yet another example occurred in summer of 1993. In the notes detailing the investigation of Yezzo for "threatening co-workers and failure of good behavior" (Ex. 12, p. 2), it was noted that Yezzo had a "reputation of giving dept. answer wants if stroke her." Ex. 2, p. 12. In the same notes, it was recorded that the analysts reworking Yezzo's cases questioned with Ms. Yezzo's conclusions on a blood analysis and a partial footprint analysis. *Id.*

Other documents indicate that Yezzo did not respond well to "peer review." Ex. 13. Yezzo had demonstrated hostile behavior on more than one occasion with more than one co-worker, and at least one of those occasions came about during discussions of a peer review. Ex. 14. She was abusive verbally and physically to her co-workers, actually having attempted to physically assault at least two of her colleagues. *Id.* at 2, 3. She used racial slurs ("nigger bitch," "nigger in a woodpile") when addressing an African-American co-worker. *Id.* at 5, 7. By 1989,

it was the "consensus of opinion" in her section at BCI that she "suffers a severe mental imbalance and needs immediate assistance." *Id.* at 8.

Then in 1993, less than a year before Yezzo testified against Keith, she was placed on Administrative Leave for "threatening co-workers and failure of good behavior." Ex.12, p. 2. Yezzo had threatened that she was going to "kill some co-workers" on multiple occasions, which led to her suspension. A hearing to determine the extent of Yezzo's suspension was stayed until May 26, 1994. Ex. 15.

In the meantime, Keith's trial came up. Yezzo testified against Keith on May 12, 1994.

Keith's counsel brought this information to the attention of the current Crawford County Prosecutor and met with him in April. Prosecutor Crall indicated he wished to look into the information he was provided, and Keith's counsel agreed not to file a new trial motion until Crall had some time to look into it.

In June, Keith's counsel met with former Ohio Attorney General (and former Lieutenant Governor) Lee Fisher. Fisher was the Attorney General during the time period that Keith was indicted, tried, and convicted. In his role as Attorney General, he was the "chief legal officer and chief law enforcement officer for the state of Ohio." Ex. 3, p. 1 He was, effectively, the person in charge of Yezzo, as BCI is a section under the Office of the Attorney General. *Id.* Fisher "also hired and supervised the Superintendent of BCI." *Id.* at 2.

Keith's counsel provided Fisher with documents from Yezzo's personnel file. Before that, Fisher had not known about this troubling information regarding Yezzo, because he had "relied upon the chain of command" and those in supervisory positions to appropriately handle personnel *Id.* at 2. On July 1, Fisher provided an affidavit with his conclusions from reading

about Yezzo and from reviewing information about Keith's case. *See* Ex. 3 (incorporated herein in its entirety as if rewritten.)

Fisher found the information about Yezzo "very troubling," and "concerning due to the fact that the opinions of BCI's forensic analysts are relied upon by law enforcement, judges, and juries. The character of the analyst is important." *Id.* He expressed his belief that "Ms. Yezzo's opinions were very likely wrong and that the prejudice in [Keith's] case is very significant." *Id.* at 3. Fisher is "deeply concerned that Ms. Yezzo's conclusions and testimony led to a miscarriage of justice in Mr. Keith's case." *Id.*

Fisher would not only have prevented Yezzo from testifying against Keith, but he would have ordered another analyst to re-examine the evidence submitted to Yezzo. *Id.* Fisher recognized that the State had a duty to disclose to Keith this information about Yezzo: "Because Ms. Yezzo did testify as a witness for the State against Mr. Keith, the defense should have been notified about the information in her personnel file. It is my opinion that the State had a duty to disclose this information because it severely impacts Ms. Yezzo's credibility." *Id.*

Keith provided Prosecutor Crall with a copy of Fisher's affidavit on July 21. Counsel for Keith has left messages with and sent emails to Prosecutor Crall regularly since that time, but has not heard back.

On August 19, 2016, counsel for Keith met with Attorney General Mike DeWine and several members of his staff in order to discuss what was discovered in Yezzo's personnel file and how it impacted Keith. In advance of that meeting, Keith provided a copy of his prepared but unfiled new trial motion to Stephen Schumaker, Deputy Attorney General for Law Enforcement, for distribution to the meeting's attendees. The meeting concluded with the Attorney General's indication that he wished to look into it, and Keith's counsel agreed not to file a new trial motion

until the Attorney General had some time to do so. The day following the meeting, counsel exchanged emails with members of the Attorney General's Office, indicating that they would be in touch. Since that time, Counsel for Keith has not heard from the Attorney General's Office on this matter, and emails sent by Keith's counsel have been unanswered.

Keith remains willing to meet with and assist the Crawford County Prosecutor and/or the Ohio Attorney General in righting this wrong. But counsel for Keith must be diligent to protect Keith's interests and to avoid an unreasonable delay. Accordingly, Keith is now filing this matter with the Court.

III. Kevin Keith is entitled to a new trial.

Keith did not commit the crimes for which he stands convicted. Because of newly-obtained evidence, Keith is entitled to a new trial pursuant to either Criminal Rule 33 or Ohio Rev. Code § 2953.23.

A. Standard for relief under Crim. R. 33(A)(6)

Criminal Rule 33(A)(6) and R.C. §2945.79(F) provide that a defendant's motion for a new trial may be granted "[w]hen new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial." Ohio R. Crim. P. 33(A)(6). Because Keith is filing this motion for new trial beyond "one hundred twenty days after the day upon which the verdict was rendered," Keith has also filed *instanter* a Motion for Leave to File a Motion for New Trial Based on Newly Discovered Evidence.

Because the State suppressed evidence favorable to the defense, Keith needs only to demonstrate that the violation was material to his case. The Ohio Supreme Court delineated the usual standard for granting a new trial based on newly discovered evidence in *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947). But in cases where the State suppresses evidence favorable

to the defense, the Ohio Supreme Court held that "the usual standards for new trial are not controlling because the fact that such evidence was available to the prosecution and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial." *State v. Johnston*, 39 Ohio St. 3d 48, 60, 529 N.E.2d 898, 911 (1988) (internal citations omitted). *See also* R.C. § 2945.79(F) and Ohio R. Crim. P. 33(A)(6).

Keith "does not have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal, the standard generally used to evaluate motions filed under Crim. R. 33." *Id. See also Agurs*, 427 U.S. at 111. Keith merely needs to show that the evidence is material. *Id.* ("[T]he key issue in a case where exculpatory evidence is alleged to have been withheld is whether the evidence is material.")

B. Standard for relief under Ohio Rev. Code § 2953.23

According to Ohio Revised Code § 2953.23(A)(1), a court may consider an otherwise untimely postconviction petition if both of the following criteria apply: (1) the petitioner establishes that he was unavoidably prevented from discovering the facts upon which he must rely for a claim for relief; and (2) the petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact-finder would find him guilty of the offense for which he is convicted.

IV. Grounds for Relief

Kevin Keith is entitled to a new trial, because the State violated Keith's constitutional rights by suppressing favorable evidence that was material to Keith's guilt.

A defendant's constitutional rights are violated when the State suppresses favorable evidence that is material to his case. *Brady v. Maryland,* 373 U.S. 83, 87 (1963). "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have

been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene,* 527 U.S. 263, 281-82 (1999). When determining prejudice, "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley,* 514 U.S. 419, 434 (1995).

The "*Brady* duty extends to impeachment evidence as well as exculpatory evidence." *Youngblood v. West Virginia*, 547 U.S. 867, 869 (2006) (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)). The Supreme Court has "disavowed any difference between exculpatory and impeachment evidence for *Brady* purposes." *Kyles,* 514 U.S. at 433. "Brady suppression occurs when the government fails to turn over even evidence that is 'known only to police investigators and not to the prosecutor.'" *Youngblood*, 547 U.S. at 869-70(internal citations omitted).

Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Johnston*, 39 Ohio St. 3d at 61 (citing *United States v. Bagley*, 473 U.S. 667, 682 (1984)). Keith merely needs to show that the suppression of the newly discovered evidence undermines confidence in the outcome. *See id.* (citing *Bagley*, 473 U.S. at 678) ("*Bagley*'s touchstone of materiality is a 'reasonable probability' of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence"). Although "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal," it is likely that Keith would not have been convicted had this violation not occurred. *Kyles*, 514 U.S. at 434.

Moreover, in determining whether undisclosed evidence is material, the suppressed evidence is considered collectively, rather than item-by-item, to determine if the "reasonable probability" test is met. *Kyles,* 514 U.S. at 436; *Schledwitz v. United State*s, 169 F.3d 1003, 1012 (6th Cir.1999). In other words, the suppressed evidence Keith discovered in 2004, 2007, and 2010 should be factored into this Court's analysis of materiality.

A. The evidence is favorable and would have been strong impeachment material.

G. Michele Yezzo provided critical forensic findings that implicated Keith. But Yezzo was entirely unreliable, and that is demonstrated by the information recorded in her personnel file with BCI. Keith could have impeached Yezzo and created grave doubts about her credibility with the information from her superiors and co-workers that was contained in her personnel file.

On May 12, 1994, Ms. Yezzo provided the critical testimony against Keith. Yezzo issued her report two months earlier, linking Keith's girlfriend's grandfather's car to the crime scene by tire tracks and a partial license plate impression. Yezzo rendered her conclusions after receiving input from Bucyrus Police Captain Michael Corwin. Ex. 16. There was no peer review of her findings.

In August 1993, less than a year before Yezzo testified against Keith, she was placed on Administrative Leave for "threatening co-workers and failure of good behavior." Ex. 12, p. 2. A hearing to determine the extent of Yezzo's suspension was stayed until May 26, 1994—a couple of weeks after her testimony at Keith's trial. Ex. 15. In the investigation of the complaints against Yezzo, it was noted that Yezzo had a "reputation of giving dept. answer wants if stroke her." Ex. 2, p. 12. The same notes recorded that the analysts reworking Yezzo's cases questioned with Yezzo's conclusions on a blood analysis and a partial footprint analysis. *Id.*

In other words, there was no way for the State to have concluded by Keith's trial that it was past any credibility issues with Yezzo. Yezzo had not changed her ways since the documented "consensus" in 1989 that her "findings and conclusions regarding evidence may be suspect" because she "will stretch the truth to satisfy a department." Ex. 1, p. 2. At all times during Yezzo's involvement in Keith's case—February 14, 1994 to May 12, 1994—the State knew Yezzo's credibility was suspect. Yet no one told the defense.

The State knew that the "consensus of opinion" in her section at BCI was that she "suffers a severe mental imbalance and needs immediate assistance." Ex. 14, p. 8. It knew she had been abusive verbally and physically to her co-workers, actually having attempted to physically assault at least two of her colleagues. *Id.* at. 2, 3. And it had documented her use of racial slurs ("nigger bitch," "nigger in a woodpile") when addressing an African-American co-worker. *Id.* at. 5, 7.

Lee Fisher, who served as the Ohio Attorney General during the time of Keith's trial, stated that the information in Yezzo's personnel file is "troubling" and "severely impacts Ms. Yezzo's credibility." Ex. 3, p. 2, 3. Because BCI was—and still is—a section under the Office of the Attorney General, and Fisher supervised the Superintendent of BCI, Fisher would have had the power to prevent Yezzo's testimony. *Id.* at 1. That is precisely what he would have done: "Had I known in 1994 what I know now, I would not have permitted Ms. Yezzo to provide testimony against Kevin Keith. I also would have ordered the submitted evidence to be reanalyzed by a separate analyst." *Id.* at 3.

Judge Thomas J. Pokorny recently addressed this evidence concerning Yezzo in another, unrelated case. For that defendant, the judge rightly concluded that the information in Yezzo's personnel file is favorable impeachment evidence. He found that "[u]nquestionably this

evidence could have been very useful to the defense in its cross-examination of Ms. Yezzo." Ex. 17, Judgment Entry in *State v. Parsons*, Case No.: 9300098 (Huron County), p. 2.

The impeaching nature of the evidence does not change with the defendant. Keith could have unquestionably made use of the information in Yezzo's personnel file. He could have demonstrated that Yezzo's bias in favor of law enforcement and against African-Americans "might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party." *United States v. Abel*, 469 U.S. 45, 52, 105 S. Ct. 465, 469 (1984).

B. The evidence was available to the State and not submitted to the defense.

Keith was never given the opportunity to confront Yezzo about her biases, because he was never informed about the information in Yezzo's personnel file. BCI supervisors and Yezzo's colleagues knew that Yezzo's findings were "suspect" and that she could be influenced by law enforcement in her conclusions. Ex. 1, p. 2; Ex. 2, p. 12. But no one from the State prevented her testimony, and the State did not inform the defense. The State had an obligation to disclose this impeaching information about Yezzo.

As Judge Pokorny found recently in *State v. Parsons*:

> The State was under a duty to disclose this impeachment evidence to the Defendant as part of the discovery in the case. The Court finds the evidence was improperly suppressed by the State. The suppression of this evidence deprived Mr. Parsons of his right to due process, specifically his right to confront his accusers at trial through a meaningful cross-examination of Ms. Yezzo.

Ex. 17, Judgment Entry in *State v. Parsons*, Case No.: 9300098 (Huron County).

Former Attorney General Fisher also concluded that the State had a duty to disclose this information to the defense in Keith's case. BCI is a section under the office of the Attorney General, and Fisher hired and supervised the Superintendent of BCI: "Because Ms. Yezzo did testify as a witness for the State against Mr. Keith, the defense should have been notified about

the information in her personnel file. It is my opinion that the State had a duty to disclose this information, because it severely impacts Ms. Yezzo's credibility." Ex. 3, p. 3.

It was the State's obligation to provide this information to the defense. In *Banks v. Dretke*, 540 U.S. 668 (2004), the Supreme Court rejected "a rule thus declaring prosecutor may hide, defendant must seek," as it is "not tenable in a system constitutionally bound to accord defendants due process." *Id.* at 696 (internal citations omitted). Defense counsel cannot be required to "scavenge for hints of undisclosed *Brady* material...." *Id.* at 695.

It makes no difference if the individual prosecutor was actually aware of this information in Yezzo's personnel file. "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). *See also Strickler v. Greene*, 527 U.S. 263, 280-81 (1999) ("[T]he rule encompasses evidence known only to police investigators and not to the prosecutor."); *Youngblood*, 547 U.S. at 869-70 ("Brady suppression occurs when the government fails to turn over even evidence that is 'known only to police investigators and not to the prosecutor.'")

C. The evidence is material.

The prosecution's evidence linking Davison's car to the crime scene, as well as linking Davison's car to Keith, strengthened its case considerably. The police had found no fingerprint, blood, or DNA evidence that linked Keith to the car or crime scene. Reviewing courts have also relied upon the evidence regarding the car and its license plate, the car's link to Keith, and the license plate imprint in the snow at the crime scene. *See State v. Keith*, 684 N.E.2d 47 (Ohio 1997); *Keith v. Bobby*, 551 F.3d 555, 558 (6th Cir. 2009); *Keith v. Mitchell*, 455 F.3d 662, 667 (6th Cir. 2006); *State v. Keith*, 1996 Ohio App. LEXIS 1720, *7 (Ohio Ct. App., Crawford

County Apr. 5, 1996); *State v. Keith*, 891 N.E.2d 1191, 1196 (Ohio Ct. App., Crawford County 2008). Yezzo's findings were critical.

The information about Yezzo, had it been disclosed to the defense, would have allowed Keith to demonstrate the unreliability of Yezzo's conclusions. It would have demonstrated that the police incorrectly ruled out Rodney Melton as the person who drove his car into the snow bank. In fact, it may have prevented Keith's trial altogether and led to the indictment of Melton. Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Johnston*, 39 Ohio St. 3d at 61 (citing *United States v. Bagley*, 473 U.S. 667, 682 (1984)).

1. Keith could have demonstrated that Yezzo's biases made her conclusions unreliable.

Keith is African-American, and Yezzo's documented use of racial slurs—in a professional environment, no less—would certainly have been used to establish Yezzo's bias and unreliability. *See* Ex. 14, p. 5, 7. That Yezzo's coworkers perceived her as having a "severe mental imbalance" and in need of "immediate assistance" would also have undoubtedly led Keith's jurors to doubt the conclusions reached by Yezzo. *Id.* at 8. But some of the best fodder for cross-examination would have been these observations about Yezzo and her work, noted by her superiors:

- "The consensus is that Michele's perceived problems affects her overall performance. Her findings and conclusions regarding evidence may be suspect. She will stretch the truth to satisfy a department." Ex. 1.
- She had a "reputation of giving dept. answer wants [sic] if stroke her." Ex. 2, p. 12.

The Bucyrus Police Department could not link Keith to the crimes through the carpet fibers, shoe prints, or shoes it collected, nor it have fingerprints that implicated Keith. Tr. 481, 489-90; Yezzo deposition, p. 19-21, 26. Linking Keith by the car was crucial.

On March 9, 1994, Captain Corwin faxed Yezzo a receipt for the type of tires purchased by Alton Davison the previous year and put on his car, and he also sent her a brochure picture of the tires. Ex. 16. Corwin specifically pointed out to her which tire picture in the brochure was the tire previously put on the car. *Id.* at. 3-5. He wrote a note to Yezzo, dated March 11, 1994, that he "hope[d] this will do the trick for us." *Id.* at 6. Five days later, Yezzo rendered her conclusion—based upon the brochure pictures of tires—that the tires formerly on Davison's car were similar in tread design to the tire tracks at the scene. Ex. 18.

Yezzo also confirmed what the Bucyrus Police believed: the license plate impression in the snow was a "043." She concluded that it had "spacing and orientation similar to the license plate 'MVR043' on the vehicle submitted as item #E1." Ex. 8. Item #E1 was Davison's car.

The Supreme Court of the United States has recognized the risk that "[a]forensic analyst responding to a request from a law enforcement official may feel pressure--or have an incentive--to alter the evidence in a manner favorable to the prosecution." *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 318 (2009). Defense counsel could have cross-examined Yezzo about just that, as the information in Yezzo's personnel file would have enabled Keith to demonstrate Yezzo's bias in favor of law enforcement and against African-Americans.

"Forensic evidence is not uniquely immune from the risk of manipulation. *Melendez-Diaz*, 557 U.S. at 318. A bias like Yezzo's "might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party." *United States v. Abel*, 469 U.S. 45, 52, 105 S. Ct. 465, 469 (1984). Confrontation is one means of ensuring accurate forensic analysis."

Melendez-Diaz, 557 U.S. at 318. Keith did not have the opportunity to confront Yezzo and discredit her analysis.

2. Yezzo's conclusions were wrong.

Former Attorney General Fisher explained that, had he known in 1994 what he knows now about Yezzo, he "would not have permitted Ms. Yezzo to provide testimony against Kevin Keith." Ex. 3, p. 3. In fact, Fisher "would have ordered the submitted evidence to be reanalyzed by a separate analyst." *Id.* Another analyst would have discovered that Yezzo's conclusions were unsupported or, simply, wrong.

William Bodziak is a retired FBI Special Agent who specializes in forensic examinations of footwear and tire tread impressions. Ex. 19 (Curriculum Vitae). He has testified as an expert witness concerning footwear and tire tread impressions in courts throughout the country, mostly on behalf of the government.[3] He is highly regarded and has been described by prosecutors elsewhere as an "internationally renowned" and "world class" expert in impression evidence. *State v. Jones*, 681 S.E.2d 580, 583 (2009). *See also Frankenfield v. State*, 2008 Tex. App. LEXIS 7920, at *34 (App. Oct. 16, 2008) ("William Bodziak, recognized by both parties as a 'nationally known authority' in the discipline of shoe impressions.") Perhaps most significantly, Bodziak was one of the people from whom Yezzo and other BCI analysts received their training. Ex. 20.

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[3] *See e.g. People v. Kraybill*, 14 N.E.3d 1131, 1139 (2014) (State's witness); *Burkett v. Thaler*, 2010 U.S. Dist. LEXIS 83905, at *18-20 n.123 (S.D. Tex. 2010) (State's witness); *People v. Sutherland*, 860 N.E.2d 178, 220 (2006) (State's witness); *State v. Smith*, 807 A.2d 500, 504 (2002) (State's witness); *People v. Cunningham*, 773 N.E.2d 682, 688 (2002) (State's witness); *Layton v. Johnson*, 2001 U.S. Dist. LEXIS 13976, at *23 (N.D. Tex. Sep. 6, 2001) (State's witness); *State v. Williams*, 1991 Ohio App. LEXIS 3883, at *31 (6th Dist 1991)(State's witness); *Davis v. Commonwealth*, 147 S.W.3d 709, 728 (2004) (State's witness); *Tillman v. State*, 2010 Tex. App. LEXIS 4013, at *41-42 (2010) (State's witness); *People v. Ahmad*, 2010 Cal. App. Unpub. LEXIS 1385, at *15-16 (2010) (State's witness).

Bodziak's conclusions about Davison's car and the crime scene, rendered after reviewing the same evidence that Yezzo reviewed, are quite different than Yezzo's. Ex.4, pp. 1-2. The State would not have had the car and license plate evidence implicating Keith if the forensic analysis been conducted properly.

Yezzo determined that the numbers in the partial license plate left in the snow at the crime scene were "043", and were set toward the driver's side of the car with spacing and orientation similar to the license plate "MVR043" on Alton Davison's car. Dep. Tr. 13. Bodziak stated he could find no evidence of any numeral "3" from the license plate imprint. Ex. 4, p. 3. Bodziak found no other reference points visible on the license plate to determine from what portion of the license tag the numerals "4" and "0" would be, since no other numerals or reference areas appear in the photographs. *Id.* "[B]ased on the limited detail, a distinction could not be made between a license plate that reads 'MVR043' versus others that have '04' somewhere on the plate." *Id.* at 4.

Bodziak noted that Yezzo did not follow the correct procedures, because "the actual license plate was never removed to physically compare it to a scaled photograph taken of the impression in the snow." *Id.* at. 4-5. "Standard laboratory procedure is to use the original evidence when making a comparison." *Id.* Also, "none of the photographs taken of the license plate impression were taken with a scale properly positioned." *Id.* "Therefore, even if the license plate was removed for comparison, none of the photographs could later be enlarged to a natural size for a direct physical comparison to the license plate." *Id.*

Bodziak determined that Alton Davison's car bumper was **not consistent** with the car bumper impressions left in the snow bank at the crime scene. "The photographs referred to by the State as the bumper impressions in the snow bank are not consistent with the profile of the

front of Alton Davison's car." *Id.* at 2. "The license plate on Davison's car was mounted fairly flush with the bumper." *Id.* "Contact with the license plate to the degree that it pushed the snow enough to produce an impression, would also have produced impressions of the remainder of the bumper." *Id.* "No evidence of the other areas of the bumper appear in the photographs; instead, the snow is undisturbed in those areas." *Id.*

As for the tires, Yezzo opined that the tires that were previously on the Oldsmobile Omega were "similar in tread design" to the tire imprint left in the snow based on a picture of the tire in a brochure. Dep. Tr. 14. She explained her conclusion of "similar" like this:

> Sir, what you have is a partial tread design deposited in the snow, and as a result of that, the portions that are sufficiently registered to examine are the same as the tire that I have. However, not all of the tire is registered and within our agency the results are what we call similar.

Dep Tr. 23. Her explanation implied that the tire track impression she examined was indeed a *match* with the tire tread from the brochure. She indicated that her inability to label it conclusively a match was only due to the agency policy that the word "similar" must be used if not all of the tire is registered in the impression. *See* Dep. Tr. 24-25 ("The reason it is stated as being similar and as I stated previously is that when one has not an entire design, one can only speak of what is present and what was deposited in the snow that I have are the same, however for the sake of, again, conservatism, I will state are similar with the tread design because it is not completely registered.") *See also id.* at 25 ("[I]t's similarity is it would have originated from the Triumph 2000.").

Bodziak disagreed with Yezzo's unsupported conclusions. He pointed out that "the forensic use of the word similar has no further meaning than it would for a layman in that it can only attest to a visual likeness of sorts." Ex.4, p. 6. Also, "the term 'similar in tread design'

does not include the tread dimension and that particular tire was made in many different sizes." *Id.*

Moreover, Yezzo could not have concluded that the partial tread design in the snow was the "same" as the tire from the brochure. Dep. Tr. 23, 25. As Bodziak explained, "In order to be able to make any relevant examination with regard to tread dimensions... a successful detailed cast of that impression would be needed and would need to compared [sic] to full circumference tire impressions from a Firestone tire of that size." Ex. 4, p. 5. Without performing this type of test there was no way to determine whether this was actually a "P185 80 R13" tire (tires previously on Davison's car) or another size. *Id.* Furthermore, "the nature of the impression and improper position of the scale would not permit any dimensional analysis to be made with the photographs taken by the State agent." *Id.*

Bodziak's contradictions of Yezzo's conclusions go further: With the information available , "it is not possible to conclude whether the license tag and tire impressions represent one simultaneous event or two unrelated and independent events." *Id.* at 6.

A proper analysis of the evidence would not have produced the forensic connection between the crime scene and Davison's car. Discrediting Yezzo's conclusions would have cast serious doubt on the case against Keith. In addition, it would have implicated another suspect: Rodney Melton.

3. Yezzo's findings caused the Bucyrus Police Department to ignore evidence implicating Rodney Melton.

There is a strong case to be made against Rodney Melton. The Bucyrus Police Department never investigated him, as they quickly settled on Keith as their suspect. It was Yezzo's conclusions, however, that allowed them to disregard one of the biggest pieces of

evidence against Melton: his light yellow car with the license plate 043LIJ. *See* Ex. 21, pp. 11, 31.

As noted earlier, neighbor Nancy Smathers had seen the shooter get into a cream or light yellow car and then get stuck in the snow bank, and the police later found what they determined to be a "043" impressed in the snow bank from the car's license plate. Tr. 388, 389. According to confidential informant working with the Galion Police Department, Rodney Melton insisted on using his Chevy Impala with a new yellow paint job in their criminal transactions. Ex. 21, p. 11. This car had two license plates registered to it: JKL218 and 043LIJ. *Id.* at 31.

But the Bucyrus Police Department quickly ruled out Melton's car because the numbers came before the letters in Melton's license plate. Yezzo had concluded that the snow impression of the license plate had "spacing and orientation similar to the license plate 'MVR043' on [Davison's car]." State's Trial Ex. 1, attached here as Ex. 8. Based on that, the police officers determined it could not have been a license plate in which the numbers came first.

Captain Corwin testified, "I discounted that plate within a day.... I discounted Rodney Melton's plates. The 043 on Rodney's plates and the 043 in this case with the letters are different." Tr. 745. Captain Blankenship also testified about ruling out Melton's plates, because "[t]he one imprinted at the scene, you know, the numbers and letters were just the opposite." Tr. 822. He testified that the imprint in the snow would have been a "new plate with the unknown letters and 043 imprint which indicated it was a new or current plate in use today." Melton's was an old plate that "had the numbers first and then the letters." Tr. 823. See also tr. 793(Lieutenant David Dayne testified that "[t]he difference being the 043 in this plate is on the right side and Rodney Melton's older registration, the 043 would be on the left or come first as you are reading left to right.")

Had the police not relied upon Yezzo's analysis as to the "spacing and orientation" of the numbers, they would not have been able to rule out Melton's car by the organization of the numbers and letters. Bodziak's findings demonstrate that the police were wrong to exclude Melton's car as the getaway car. As Bodziak concluded, "[B]ased on the limited detail, a distinction could not be made between a license plate that reads 'MVR043' versus others that have '04' somewhere on the plate." Ex.4, p. 4.

Had the Bucyrus Police not wrongly excluded Melton's car as the car that left the snow impression, they may have investigated Melton further. Rodney Melton and his brother Bruce were being investigated before, during, and after the date on which the murders occurred, and the information that came out of that separate, parallel investigation paints a damning picture about Melton's involvement in the Bucyrus Estates shootings.

4. Evidence against Rodney Melton

In 1993-94, Detective Jerry Hickman and Lieutenant David Dayne of the Galion Police Department were involved in a statewide investigation of pharmacy burglaries that ultimately resulted in the arrest and conviction of five men: Bruce Melton, Rodney Melton, Demetrius Reeves, Russell Gardner, and Milton James Parker. Ex. 22. Bruce Melton was suspected to be the ring leader of this pharmacy burglary ring. The Galion Police had informants inside the inner circle of the Melton burglary ring. Ex. 21, p. 7. The Galion Police had also spent "a large sum of money to purchase heroin from sources also connected with the Meltons." *Id.* at 8.

Rudel Chatman—Marichell Chatman's brother—was acting as a police informant regarding the Meltons' drug activity. Rudel Chatman had purchased morphine from Rodney Melton on August 31, 1993. Ex. 23. The Meltons became aware of Rudel's role as an informant. Although Rodney Melton was not indicted until 4/11/94 for the 8/31/93 drug sale to

Rudel (Ex. 24), word had gotten out about Rudel's role as an informant. When Milton James Parker—the first of the five pharmacy burglary suspects—was arrested, he told Detective Hickman, "we know about Rudell [sic], you know? You might as well just keep him under wraps or whatever you're gonna do with him, Jerry[4], you know? 'Cause he's done around here." Ex. 25, p. 16.

In January 1994, the Meltons had "spread the word that anybody that snitches on them would be killed." Ex. 21, p. 8. On January 21, 1994, nine people (including Keith) in Crestline, Ohio were arrested for selling crack cocaine. Tr. 591. Rudel Chatman was the police informant. *Id.* at 588-589.

On January 31, 1994, Rodney Melton told a woman who was a confidential police informant that "he had been paid $15,000 to cripple 'the man' who was responsible for the raids in Crestline, Ohio last week." Ex. 21, p. 11. Bruce Melton told another confidential informant that Rodney Melton was paid to kill Rudel. Ex. 25, p. 16. On February 13, 1994, before the Meltons were indicted for any of their criminal activities, a man entered the apartment of Rudel Chatman's sister and attacked those inside. He killed Rudel's sister Marichell Chatman, his aunt Linda Chatman, and his niece Marchae Chatman. Quanita Reeves, Quentin Reeves, and Richard Warren were also shot, but they survived.

Following the shootings, at the hospital, Rodney was overheard stating that this happened because of Rudel's "narcing." Ex. 26.

When the shooter escaped from the apartment complex, neighbor Nancy Smathers saw him get into a cream or light yellow car and attempt to speed out of the parking lot. Tr. 388-89. That car got stuck in a snow bank at one point as the driver tried to get away. According to the State, the getaway car left a license plate impression in the snow bank – "043". Tr. 478, 818.

[4] "Jerry" is Detective Jerry Hickman.

A confidential informant stated that Rodney Melton insisted on using his Chevy Impala with a new yellow paint job in their criminal transactions. Ex. 21, p. 11. *See also* Ex. 27, p. 7. The Pharmacy Board investigator identified this car as having two license plates registered to it: JKL218 and 043LIJ. Ex. 21, p. 31.

Two of the three[5] survivors described that the shooter was wearing a mask over his face that covered his mouth completely. Tr. 348, 716. A confidential informant has described that it was Rodney Melton's practice to wear a mask that covered his mouth during his criminal activities, because Rodney has an identifiable gap between his teeth. Ex. 27, p. 7, 8.

Melton's mugshot from when he was arrested on March 26, 1994, shows that he was 6'2" and 214 pounds. Ex.28. Survivor Richard Warren had described the shooter as "six to six/two, 250, 275." Tr. 359. Another witness, who was never called to testify, saw the shooter from the waist down and described him as wearing clothing that was very large – "like they were insulated or the person was wearing something underneath them." Ex. 29. Insulated clothes or layers of clothing would make a person appear heavier than he is.

One of the three survivors was Quanita Reeves, a 7-year-old little girl. While Quanita was in the hospital being treated for her injuries, she told her nurse that she was shot by "Bruce," who was her "Daddy's friend." Defense Trial Ex. 23, attached here as Ex. 30. Quanita's father was one of the five men arrested along with Bruce and Rodney Melton for the pharmacy burglary ring. Ex. 22. Quanita then told the police that "it was Bruce," her "Daddy's friend." Tr. 715. When they showed her the photo lineup they had put together (Defense Trial Ex. 7, attached here as Ex. 31), she excluded Kevin Keith's picture because the shooter did not have a "lump" on top of his head like Keith has. Tr. 720.

[5] The third survivor was a 4-year-old child and provided no physical description.

Rodney Melton had been seen around the Bucyrus Estates area shortly after the shootings Tr. 670. He knew the type of ammunition used in the shootings. *Id.* He affirmatively brought up to the police that his car (which fits the physical description of the car seen at the crime scene) was broken down. *Id.* at 671. When Rodney told police where he was during the time of the crime, he gave two conflicting alibis to the individual officers. Ex. 32, Ex. 33 Tr. 673-74.

During the middle of Kevin Keith's trial, Rodney Melton's own family members contacted Keith's trial attorney to express that they believed Melton was responsible for the shootings. Tr. 698-701. They told him that Melton is a "psychopathic killer." *Id.* at 700. Melton had previously been convicted of murder and other violent crimes. *See, e.g.* Ex. 34; *State v. Melton,* 1982 Ohio App. LEXIS 14948, 1-2 (Ohio Ct. App. Crawford County) (Prosecutor told the court that "the aggravated robbery, what this man did to his friends in my opinion, is a very vicious crime, using a loaded 12 gauge shotgun.") The weapon he used in the murder for which he was convicted is the same gun used in another unsolved murder in Crestline, Ohio. Ex. 34.

After the Meltons were convicted for their role in the pharmacy burglaries, Melton again demonstrated his *modus operandi* of retaliating against "anybody that snitches on them." Ex. 21, p. 8. Rodney Melton found himself in the same prison as his co-defendant, Milton James Parker. Parker had expected a court-ordered separation in prison from Melton due to the fact that Parker had worn a wire to help the police get evidence on the Meltons. *See* Ex. 35. According to Parker:

> I remember that I was in the prison chapel one day, and Rodney came into the chapel. I remember he was wearing a state-issued winter coat. Rodney opened his coat as he confronted me, and I saw that he had a big shank. Right at that moment, the chaplain walked up beside me, and I hit the chaplain on the leg to signal him to get me out of there. I believe that Rodney would have killed me if the chaplain hadn't have saved me.

Ex. 36, p. 1-2. *See also* Ex. 37 (Adult Parole Authority Update Presentence Investigation)("Defendant was confronted in the prison chapel by Rodney Melton").

The majority of this evidence implicating Melton was obtained by Keith in 2007 and was suppressed from him at the time of trial. *See* Exs. 38, 39. While it is clear that at least two of the police officers involved in Keith's case knew about the evidence implicating Melton, those two officers were members of the Galion Police Department—not the Bucyrus Police Department. It is not known whether the Galion officers shared the evidence they had against Melton with the Bucyrus Police.

Regardless of whether the Bucyrus Police knew about the evidence against Melton, the law holds the prosecutor responsible for the failure to disclose the information to the defense. "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles*, 514 U.S. at 437. *See also Strickler*, 527 U.S. at 280-81; *Youngblood*, 547 U.S. at 869-70. The evidence against Melton must be considered in this Court's materiality analysis because materiality is defined in terms of suppressed evidence "considered collectively, not item by item." *Kyles*, 514 U.S. at 436.

Yezzo's conclusions enabled the police to "discount [Melton's license] plate within a day." Tr. 745. But her desire to please law enforcement ultimately proved a disservice. As her superiors noted in one of the last reprimands Yezzo received before retiring, her "interpretational and observational errors" were "failures that could lead to a substantial miscarriage of justice." Ex. 10. Her errors in Keith's case almost led to the execution of an innocent man, and have so far enabled the true murderer to escape justice for over 22 years.

Conclusion

The police made a rush to judgment and arrested Keith, building the case against him after his arrest. BCI analyst Michele Yezzo rendered conclusions that were baseless and unreliable, but supported the police theory. Had the forensic analysis been honest and reliable, perhaps the police would have investigated further and discovered all of the incriminating evidence against Rodney Melton.

But even if the State continued to pursue only Keith as their suspect, the information in Yezzo's personnel file would have enabled Keith to impeach Yezzo and discredit the State's forensic evidence. The suppressed documents demonstrate that Yezzo was biased and unreliable. A proper forensic analysis would have demonstrated that her conclusions were just wrong.

Because Keith was never provided with this information about Yezzo, he was deprived of the opportunity to use it as impeachment evidence at his trial. There is a reasonable likelihood that the outcome of Keith's proceedings would have been different had the defense been provided that information, and Keith is entitled to a new, fair trial. At the very least, Keith is entitled to an evidentiary hearing on this *Brady* claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the forgoing MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE AND/OR POST-CONVICTION RELIEF UNDER OHIO REV. CODE § 2953.23was served by hand to the office of Matthew Crall, Crawford County Prosecutor, Crawford County Courthouse, 112 East Mansfield Street, Room 305, Bucyrus, Ohio 44820 on this the 28th day of October, 2016.

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