STATE OF MARYLAND	*	IN THE
v.	*	CIRCUIT COURT FOR
ADNAN SYED	*	BALTIMORE CITY
Defendant	*	Case No. 199103042-046

* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF LINE WITHDRAWING MOTION TO VACATE JUDGMENT

Table of Contents

Introduction

In September 2022, the previous State's Attorney, Marilyn Mosby, and an Assistant State's Attorney filed a Motion to Vacate Judgment ("MVJ") in the case of *State v. Adnan Syed*. The MVJ was granted and subsequently appealed by Young Lee, the brother of Hae Min Lee ("Ms. Lee," "the victim").

On October 11, 2022, while this appeal was pending, SA Mosby dropped the charges against Mr. Syed.

The Supreme Court of Maryland made the following determination on August 30, 2024:

> In an effort to remedy what they perceived to be an injustice to Mr. Syed, the prosecutor and the circuit court worked an injustice against Mr. Lee by failing to treat him with dignity, respect, and sensitivity and, in particular, by violating Mr. Lee's rights as a crime victim's representative to reasonable notice of the Vacatur Hearing, the right to attend the hearing in person, and the right to be heard on the merits of the Vacatur Motion.
>
> The entry of the nol pros did not moot Mr. Lee's appeal because we are able to provide an effective remedy to Mr. Lee for the violation of his rights as the crime victim's representative without violating Mr. Syed's constitutional right to be free from Double Jeopardy. That remedy is to reinstate Mr. Syed's convictions and to remand the case to the circuit court for further proceedings relating to the Vacatur Motion, consistent with this opinion. Those proceedings will go forward before a different circuit court judge. On remand, Mr. Lee shall be afforded reasonable notice of a new vacatur hearing; that is, notice sufficient to provide Mr. Lee with a reasonable opportunity to attend such a hearing in person. At a new vacatur hearing, Mr. Lee and/or his counsel shall be permitted the opportunity to be heard, among other things, on the merits of the Vacatur Motion after hearing the entirety of the parties' presentations in support of the motion.

Syed v. Lee, 488 Md. 537, 629–30 (2024).

The Supreme Court also determined that "the lawful vacatur of Mr. Syed's convictions was a condition precedent to the State's Attorney regaining the authority it had prior to entry of final

judgment to nol pros the charges against Mr. Syed." The Court concluded: "Because [] the vacatur was flawed, by operation of law the conviction stood, and the State's Attorney did not have the authority to nol pros such a final disposition." *Syed v. Lee*, 488 Md. 537, 582-583 (2024).

The Court also observed that "the effect of the nol pros was to thwart Mr. Lee's effort on appeal to vindicate his rights as the victim's representative." The Court continued: "We reject the argument that a prosecutor may use the nol pros power to divest a victim of the right to appeal what the victim contends is an unlawful vacatur order[.]" *Syed v. Lee*, 488 Md. 537, 582-583 (2024).

With this conclusion, the Supreme Court remanded this case back to the Circuit Court for Baltimore City to "begin where they were immediately after the State's Attorney filed the Vacatur Motion on September 14, 2022." *Syed*, 488 Md. at 629. The Circuit Court for Baltimore City (The Honorable Judge Jennifer B. Schiffer presiding) then ordered the Baltimore City State's Attorney's Office ("the State"; "BCSAO") to file any supplemental pleadings with respect to the MVJ no later than February 28, 2025.

On September 23, 2024, the State met with Mr. Syed's attorneys, Erica J. Suter and Brian Louis Zavin ("defense team"). The State continued to regularly communicate with Mr. Syed, through counsel, from September 2024 through February 2025.

On September 27, 2024, the State met with Mr. Lee and his attorneys, David Sanford, Sharon Kim, and Savannah Shepherd.[1] The State continued to regularly communicate with Mr. Lee, through counsel, from September 2024 through February 2025.

[1] The State had previously met with Mr. Lee and his former counsel, Steven Kelly, on February 3, 2023.

The Supreme Court of Maryland issued its Opinion on August 30, 2024. On September 30, 2024, the Mandate was issued by the Supreme Court of Maryland.

On October 2, 2024, Deputy State's Attorney Thomas Michael Donnelly, Deputy State's Attorney Catherine Flynn, and Assistant State's Attorney Clara H. Salzberg entered their appearances as counsel for the State.

After some delay when an outbreak of legionella closed down the main office of the Maryland Office of the Attorney General ("OAG"), the State received the trial file on October 15, 2024. The file comprises 26 boxes of materials.

At a scheduling conference on November 22, 2024, The Honorable Jennifer B. Schiffer instructed the State to submit any supplemental filings by no later than February 28, 2025. The defense team and the victim's family unanimously consented to this timeline.

From September 2024 through February 2025, the State conducted an extensive review of the facts, circumstances, and law underlying the MVJ and SA Mosby's subsequent decision to drop the charges against Mr. Syed. The State identified three BCSAO attorneys, supervised by SA Mosby, who conducted this investigation and contributed to the BCSAO decisionmaking process. The State refers to those three BCSAO attorneys collectively as the **"Syed Review Team" ("SRT")** and individually as "SRT member." The State also identified other BCSAO staff occasionally assisted with or were consulted about this investigation but did not meaningfully contribute to the decisionmaking process. The State refers to these staff members as **"BCSAO staff member."**

The State's review included the following:

- The State interviewed the Baltimore Police Department ("BPD") personnel assigned to the Homicide Cold Case Unit, Lieutenant T.M. and Detective J.B.,[2] on December 30, 2024. (Ex. 1).[3] The State continued to regularly confer with the BPD about this case from September 2024 through February 2025.

- The State spoke with ASA Kevin Urick,[4] one of the trial prosecutors, on December 13, 2024, and interviewed him on December 31, 2024. (Ex. 2, 3). The OAG had previously interviewed ASA Urick regarding the MVJ. On the other hand, The SRT made no effort to speak with ASA Urick before filing the MVJ in September 2022. ASA Urick advised the State that he would have gladly spoken with the SRT in 2021-2022 during their review of this case; instead, he only learned about the MVJ from the press after it was already filed.

- On January 3, 2025, Peter T. Kandel, Esq., counsel for one SRT member, advised the State that the member was unwilling to speak directly with the State but had offered "to prepare a written report detailing all of her investigative efforts and findings." (Ex. 4). The SRT member provided this "report" and accompanying materials to the State on January 30, 2025 ("January 2025 report"). (Ex. 4-9).

- The SRT failed to preserve many of the records related to their investigation in the State's case file – either the physical file or the electronic file. The State performed a search of BCSAO emails which yielded most of the records that inform the State's current understanding of the SRT's investigation and the representations made in the MVJ.[5]

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[2] Unless they have already been identified in publicly available court filings or proceedings, the State refers to all police and civilian witnesses using abbreviations.

[3] The State has compiled the documents that support these findings and conclusions as numbered exhibits that are available for the Court's *in camera* inspection if the Court so orders.

[4] In the interest of clarity, the State will refer to all individuals with the titles that they held at the time of their involvement in this case.

[5] There were some exchanges of information and documents between Ms. Suter and an SRT member that were not preserved on the BCSAO email server. For example, one SRT member indicated that when the member went through the State's file, the member "photographed various documents" and then "scanned the documents and sent them to defense counsel." (Ex. 10). The State has found no record of this email or which documents, specifically, the SRT member sent to Ms. Suter.

Additionally, email records reveal that an SRT member and Ms. Suter shared a Dropbox folder named "AS SIU." (Ex. 11, 12). This Dropbox folder is no longer accessible to the State and, as far as the State can determine, the SRT did not preserve a list of the documents shared in this Dropbox folder in the State's case file nor share such a list with anyone else at BCSAO or BPD.

- In particular, the State's search unearthed investigative memoranda and case notes that the SRT prepared in December 2021 (Ex. 13); January 2022 (Ex. 14, 15); March 2022 (Ex. 16); May 2022 (Ex. 17); and August 2022 (Ex. 18, 19). This search also yielded drafts of various pleadings. The State also managed to recover case notes related to interviews that the SRT or Ms. Suter conducted with several individuals:

  - Detective E.H. (January 27, 2022) (Ex. 20).
  - N.A. (July 6, 2022) (Ex. 21).
  - Sa.A. (July 7, 2022) (Ex. 22).
  - S.M. (July 7, 2022) (Ex. 23).
  - Bilal Ahmed (July 25, 2022) (Ex. 24).
  - Dr. J.S. (September 1, 2022) (Ex. 25).
  - C.D. (October 17, 2022) (Ex. 26).

- An Assistant State's Attorney ("ASA") signed an affidavit that affirmed "under the penalties of perjury that the contents of this document are true to the best of [the ASA's] knowledge, information, and belief" on September 19, 2022. This document was admitted into evidence at the September 19, 2022, hearing on the MVJ. (T. 9/19/2022 at 31).

- On February 6, 2025, the State spoke with Thiru Vignarajah, who oversaw the post conviction litigation in this case first as a Deputy Attorney General ("DAG") and then as a Specially Assigned Assistant Attorney General. (Ex. 27). DAG Vignarajah reported that the SRT made no effort to speak with him before filing the MVJ in September 2022.

- On February 14, 2025, the State spoke with ASA Kathleen C. Murphy,[6] the other trial prosecutor. (Ex. 28). ASA Murphy reported that the SRT made no effort to speak with her about her recollections of trying this case before filing the MVJ in September 2022.

- The State contacted former State's Attorney Marilyn Mosby to set up a meeting and discuss the MVJ; in a letter to the State dated December 12, 2024, Ms. Mosby declined that invitation.

[6] ASA Murphy is now The Honorable Kathleen C. Murphy, Associate Judge of the District Court of Maryland, District 8, Baltimore County. As with all of the individuals referenced in this memorandum and in the interest of clarity, the title that Judge Murphy held at the time of her involvement in this case is the one that the State uses in this memorandum. No disrespect is intended to Judge Murphy.

The State has limited the scope of this Memorandum to addressing what was contained in the original MVJ and the relevant evidence and law pertaining to that MVJ. The State has redacted this public filing to protect the identities of individuals who have not been publicly associated with this case. The State has compiled the documents that support these findings and conclusions as 159 enumerated exhibits that are all available for the Court's *in camera* inspection if the Court so orders. These exhibits contain sensitive personal information and records that are protected by attorney work product and deliberative process privilege, and so the State has deemed them unsuitable for public inspection.

The State is providing this public filing to the Court as a "reasonable remedial measure[]" to correct what the State has concluded were false and misleading statements in the MVJ. *See* Maryland Rule 19-303.3(a)(4).

ARGUMENT

Did the State Violate *Brady v. Maryland*, 373 U.S. 83 (1963)?

In the MVJ, BCSAO identified two handwritten notes that it allegedly failed to disclose to the defense. These notes form the primary basis for vacating Defendant Syed's convictions in the MVJ. BCSAO alleges in the MVJ, repeatedly, that the State committed "*Brady* violations." (MVJ, pp. 1, 6, 7, 12, 20). As BCSAO details in the MVJ (p. 8), *Brady* violations have three components: "the petitioner must establish that the undisclosed evidence: (1) would have been favorable to the defense at trial; (2) was suppressed or withheld; and (3) was material." *Blake v. State*, 485 Md. 265, 304 (2023), *citing Yearby v. State*, 414 Md. 708, 717 (2010).

a. Unattributed Note.

The State's file includes an undated, unattributed, handwritten note which references divorce proceedings. It states, in small part:

> Prior to murder – Bilau was upset that this woman was creating so many problems for Adnan[.]
>
> He told her that he would make her disappear; he would kill her[.]

(Ex. 29).

The note then provides details that are consistent with the State's trial theory, including that Jay Wilds was "involved" in burying the victim's body.

stated in her Affidavit: "Based on other related documents in the file, it appears that this interview occurred in January, 2000." (Ex. 10 at ¶ 10). She did not, however, identify the source of that information, nor is this date reflected in the note. The January 2025 report stated that all members of the SRT reviewed this note and unanimously "concluded that the note should have been turned over to the defense as it indicated another person threatened the victim." (Ex. 5).

ASA Urick recalled that he wrote this note while speaking with a female caller who did not identify herself. He cannot recall when the conversation took place. He recalled that the woman "did not want to get involved" in the case but did want to make the State aware that there were other people besides Mr. Syed implicated in the murder. (Ex. 2, 3).

The defense team has suggested to the State that this note might have memorialized a conversation between ASA Urick and J.R., divorce attorney for Sa.A. In an affidavit signed December 9, 2022, Sa.A. speculated that "the note was made sometime in late 1999 – November or December – or January 2000 when [her] divorce proceeding with Bilal [Ahmed] was at its most contentious period." (Ex. 30). As further detailed below, there is reason to doubt the veracity of Sa.A.'s affidavit.

The State, after careful examination of these various theories and of the State's trial file, was not able to conclusively determine the source of the information contained in the note; it does, however, appear likely that the note's reference to "Bilau" is actually a reference to Bilal Ahmed.[7,8]

b. Note Reflecting a Call with So.A.

A "While you were out" message dated October 20, 1999, is directed to ASA Urick and has "[A.]" written in the "from" field. (Ex. 31). This message is attached to a handwritten, undated note titled "[So.A.]" that discusses Mr. Ahmed. During their investigation, the SRT verified that So.A. is the brother of Mr. Ahmed's ex-wife, Sa.A. The note states that Mr. Ahmed "threatened woman in front [of] some people[.] His wife[.]" It then states: "Guesses – Adnan one of his boyfriends."[9]

Notes prepared by the SRT reflect that this is the "separate document" that the BCSAO referenced in the MVJ "in which a different person relayed information that can be viewed as a motive for that same suspect to harm the victim." The September 2022 Affidavit affirms that this person "relayed a motive for that same suspect to harm the victim." (Ex. 10 at ¶ 11).

[7] Bilal Ahmed was an associate and confidante of Mr. Syed who served as a youth director at Mr. Syed's mosque.

[8] Mr. Ahmed separated from Sa.A. on October 19, 1999, signed a document effectuating their divorce "religiously" on October 31, 1999, and filed for divorce from Sa.A. in Howard County Circuit Court in December 1999. (Ex. 113; Howard County Circuit Court Case No. [###redacted###]).

[9] ASA Urick has recalled to the State that this was So.A.'s "guess." (Ex. 2, 3). This is consistent with an SRT member's statement, in an undated document titled "Probable Cause – Bilal Ahmed," that "Ahmed's brother-in-law, So.A., surmised to the prosecutor that Syed was one of Bilal's boyfriends." (Ex. 18).

1. Would either of these notes have been "favorable to the defense at trial?" *Blake*, 485 Md. at 304.

Evidence is "favorable to the defense at trial" if it is exculpatory or impeaching. *Yearby*, 414 Md. at 717, *citing Strickler v. Greene*, 527 U.S. 263, 281-282 (1999). Exculpatory evidence is evidence that is "highly probative of innocence." *Yearby*, 414 Md. 708, 716 (2010), *quoting United States v. Agurs*, 427 U.S. 97, 110 (1976) (additional citations omitted). Impeachment evidence is evidence that can be lawfully used to cross-examine a trial witness regarding "prior bad acts which are relevant to an assessment of a witness' credibility." *Fields v. State*, 432 Md. 650, 673 (2013), *quoting State v. Cox*, 298 Md. 173, 179 (1983); *see also* Maryland Rule 5-608. As Mr. Ahmed did not testify at trial, these notes are indisputably not impeachment evidence for *Brady* purposes.

a. Unattributed Note.

As the State has publicly said, ASA Urick's notes are "difficult to read because the handwriting is so poor." (T. 9/19/22 at 29). The OAG has observed that the supposedly incriminating sentence in this note – "He told her that he would make her disappear; he would kill her" – is "subject to multiple interpretations" and that "it is hard to imagine how anyone could conduct a neutral and unbiased investigation without asking ASA Urick for his recollections surrounding the notes or, at least, to interpret his own handwriting." (State's Response to Motion to Disqualify Office of the Attorney General as Counsel for the State of Maryland or Strike the State as Party to the Appeal ("OAG Response") (Ex. 32), p. 16). The State agrees with the OAG. ASA Urick's interpretation of this note is that in the presence of Mr. Ahmed, Mr. Syed stated an intent to kill Ms. Lee. The State credits ASA Urick's recollection as the best available evidence.[10]

[10] The January 2025 report dismisses this as a "ridiculous interpretation" that "does not make sense in the context" or "grammatically." (Ex. 5). Quibbles about context and grammar are

This note would not have been "favorable to the defense at trial." *Yearby*, 414 Md. at 717. Indeed, the State's review suggests that this note further implicates Mr. Syed because it alleges that Mr. Syed said that he intended to kill Ms. Lee.

Mr. Syed disputes these facts. According to his defense team, Mr. Syed personally obtained an affidavit from Sa.A. that she signed for him on December 9, 2022, in which she speculated that "the note was made sometime in late 1999 – November or December – or January 2000 when [her] divorce proceeding with Bilal was at its most contentions period." (Ex. 30). She further stated: "I unequivocally say that the note is about Bilal, not Adnan. The man I am describing in the note is Bilal, not Adnan Syed."

There are materials in the State's trial file that reflect that ASA Urick spoke with and exchanged documents with J.R. in early January 2000, but there is nothing in the State's file to support Sa.A.'s interpretation that ASA Urick wrote this note during a conversation with J.R.[11]

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unconvincing because this note, like many other handwritten notes in the State's trial file, was hastily written in shorthand. The report also reasons that "if Mr. Urick had a witness who heard someone say that Mr. Syed threatened to kill Ms. Lee, then he would have certainly tried to get that evidence in at trial." But ASA Urick cannot have been expected to follow up on a phone call from an anonymous caller.

[11] The State's file contains a "While you were out" message for ASA Urick dated January 3, 2000, reflecting a call from J.R., "[Sa.A.]'s atty." (Ex. 33). In another part of the file, there is a fax dated January 7, 2000, from J.R. to ASA Urick regarding "Bilal Ahmed [and] [Sa.A.]" that states: "Enclosed are the documents you requested." (Ex. 34). In another part of the file, there is a fax dated January 10, 2000, from J.R. to Detective Ritz containing records related to "Y.K.," an individual who appears to be mentioned in both notes. (Ex. 35).

There is also a fax cover from ASA Urick to J.R. reflecting that ASA Urick faxed J.R. five pages of unknown materials on an unknown date. (Ex. 36). None of these materials were found in the same trial file box as the handwritten note. The January 2025 report suggested that two of the 5 pages in this fax were "a police report from 1998 in which Ahmed was investigated for shooting his own gun in his own apartment." (Ex. 5). The State has been unable to verify this.

ASA Urick reported that he has no recollection of speaking with J.R. (Ex. 2, 3).

ASA Urick explicitly denies this and these records were recovered in different parts of the State's trial file.

Additionally, the State regards Sa.A.'s December 9, 2022, affidavit with deep skepticism. In the affidavit, Sa.A. opines on the provenance and meaning of a handwritten note that ASA Urick wrote approximately 23 years earlier, and which Sa.A. had never seen before, reflecting a conversation to which Sa.A. was reportedly not a party. The defense team has advised the State that Sa.A. refused to speak to Mr. Syed's defense attorneys, and so Mr. Syed himself went to Sa.A's current home with an investigator to obtain this affidavit. The defense team represented to the State that Mr. Syed sat at Sa.A.'s kitchen table with her while she reviewed and signed the affidavit. The circumstances under which this affidavit was obtained raise troubling questions about its reliability.

Sa.A. also spoke with an SRT member on July 7, 2022 and made statements that directly contradict this affidavit that Sa.A. signed a mere five months later. (Ex. 22). According to the SRT member's contemporaneous notes from that conversation: "I asked if he [Mr. Ahmed] ever admitted to her that he hurt or strangled anybody. She said no … She did not recall any threats against HML [Ms. Lee]." The SRT member found Sa.A. to be credible: "My impression is that she was being honest and helpful … I am not currently of the impression that Bilal made any threats in front of her regarding HML [Ms. Lee]."

In her conversation with the SRT member, Sa.A. also reported an awareness of Mr. Syed's case and a desire to "help" Mr. Syed. Specifically, she told the SRT member: "Bilal was very deceptive, manipulative. Anyone living a double life would have skeletons in his closet. She would not put it past him to be involved in this case. She listened to the podcast so she is familiar with it." And she also reportedly said: "I wish I could help because I know the Syed family. [I know]

about the mother's cancer. As a mother to mother – I wish I could help." These statements suggest a possible motive for Sa.A. to lie in her affidavit five months later.

The State cannot, therefore, adopt the statement in the MVJ that "one of the [alternate] suspects … had threatened to kill the victim in the presence of another individual." This statement is based on a misinterpretation of the note and a misunderstanding about the circumstances under which it was written.

b. Note Reflecting a Call with So.A. (Ex. 31).

The MVJ characterizes this note as "a separate document in the State's trial file, in which a different person relayed information that can be viewed as a motive for that same suspect to harm the victim." The "motive" to which the MVJ refers is, apparently, So.A.'s "Guess[]" that Mr. Syed was "one of [Mr. Ahmed's] boyfriends." The SRT apparently imagined that Mr. Ahmed killed Ms. Lee out of jealousy or loyalty to Mr. Syed.[12]

This characterization is misleading in several ways. The note does not allege that Mr. Ahmed killed Ms. Lee – only that he was "involved," apparently because he assisted in obtaining a cell phone for Mr. Syed. (A fact that was well known to the defense and the State.) While the note alleged that Mr. Ahmed threatened a woman, it specifies that the woman was "His wife" – not Ms. Lee. And the note makes it clear that So.A.'s suggestion of a sexual relationship between Mr. Ahmed and Mr. Syed is only a "Guess." Indeed, it implies that Mr. Ahmed may have had multiple "boyfriends."

[12] In an internal memorandum detailing the evidence against Mr. Ahmed, an SRT member stated: "RATIONALE FOR KILLING HML [Ms. Lee] – Ahmed was grooming Syed to be a boyfriend. Ahmed became jealous of the relationship with HML and decided she had to go. He is an extremely manipulative and disturbed individual. He had access to money and resources."

The State cannot, therefore, adopt the MVJ's misleading representation that there exists "a separate document in the State's trial file, in which a different person relayed information that can be viewed as a motive for that same suspect to harm the victim."

This note would not have been "favorable to the defense at trial." *Yearby*, 414 Md. at 717. Read with a neutral and unbiased point of view, it does not identify any alternate suspects in the murder.

2. Were either of these notes "suppressed or withheld" by the State? *Blake*, 485 Md. at 304.

ASA Urick's general practices, evident in the discovery filings and correspondence preserved in the State's trial file, demonstrate that he was well aware of his discovery obligations and that he meticulously met and usually exceeded those obligations.[13]

ASA Urick may have provided the undated note to Mr. Syed's trial defense counsel, Christina Gutierrez, as part of his Amended State's Disclosures. On July 21, 1999, Ms. Gutierrez filed a "Supplemental Response Based On State's Disclosures Received By The Defendant Subsequent To The July 9 Hearing On The State's Motion To Disqualify His Counsel Of Choice." (Ex. 37). In this response, Ms. Gutierrez reported that sometime between July 9 and July 21:

[13] The January 2025 report justified the decision not to speak with ASA Urick about his handwritten notes by accusing ASA Urick of "several instances of unethical behavior in this case" – specifically, "withholding Asia McClain information in post-conviction and deliberately misleading his cell phone expert by removing the limiting language on the phone records" – and suggesting that "he could not be trusted with the information, nor could we trust whatever he would say about the note." The report also accused ASA Urick of "leak[ing]" the note to the Baltimore Banner.

The State is not aware of any evidence that ASA Urick has ever unlawfully withheld evidence from a criminal defendant or deliberately misled an expert witness. The State has no reason to believe that ASA Urick leaked this note to the Baltimore Banner. These accusations against ASA Urick appear to lack any evidentiary support whatsoever.

> [The defense had] received disclosures from the State which consist of, among other things, many reports of the statements made by witnesses who were interviewed around the time of Hae Min Lee's reported disappearance on January 13, 1999, including reports of the statements of witnesses who were interviewed concerning the past relationship between Ms. Lee and Adnan Syed, the cessation of their dating, the status of their relationship, and their behavior toward each other after the breakup up and until January 13, 1999.

The unattributed note may have been one of the "statements" referenced in this response.

On August 2, 1999, ASA Urick filed an Amended State's Disclosure that included references to "Misc. notes" and a "Misc. note." (Ex. 38). ASA Urick has advised the State that this is how he sometimes described handwritten notes in discovery disclosures. (Ex. 2, 3). The unattributed note may have been one of the "Misc. notes" that ASA Urick referenced in this filing.

Even if ASA Urick did not include these notes in his Amended State's Disclosures to the defense, both should still have been available through open file discovery. Open file discovery is a common practice that is well-understood within the legal community, during which a defense attorney reviews the State's entire trial file (an "open file review") and obtains copies of any desired materials. In an interview with the State on December 31, 2024, ASA Urick confirmed that consistent with the State's policy in 1999 (and today), he practiced open file discovery in this case. (Ex. 2, 3). It was ASA Urick's practice to include his handwritten investigative notes in open file reviews.[14]

[14] ASA Murphy advised the State that it would have been her practice to withhold her handwritten notes during open file reviews but to always make affirmative disclosures of any potentially impeaching or exculpatory information contained therein. (Ex. 28). Because both trial prosecutors agree that this note was created and maintained by ASA Urick, it is reasonable to conclude that ASA Urick followed his own practice of allowing the defense to review his handwritten notes.

ASA Urick recalls that Ms. Gutierrez, personally, conducted at least one "general" file review during which she reviewed all of the documents in the State's trial file. He recalls that she, or possibly another attorney or paralegal working under her direction, conducted at least one other open file review to "clarify something." He reported that the State's trial file was available to the defense throughout the trial process – including between the first and second trials – and it is possible that Ms. Gutierrez conducted additional open file reviews at her discretion. Consistent with ASA Urick's general practices, both notes would have been made available to the defense during these open file reviews.

ASA Urick's recollections are corroborated by many contemporaneous records from the court filings, the State's trial file, and the trial transcripts, which reveal that the other prosecutor in this case, ASA Murphy, conducted an open file review with Ms. Gutierrez and other members of Mr. Syed's defense team on October 28, 1999:

1. On July 1, 1999, ASA Urick filed a State's Disclosure that stated, in pertinent part: "Upon reasonable notice to the State, the defendant may inspect the file of the office of the State's Attorney for Baltimore City, subject to the exceptions set forth in Rule 4-263(c)." (Ex. 39).

2. In a letter to ASA Urick dated October 22, 1999, Ms. Gutierrez stated: "Pursuant to Maryland Rule 4-263(b)(5) and Rule 4-263(b)(6), I would like to arrange a time for a viewing of all evidence you intend to use at trial, any evidence collected from Mr. Syed or his home, and all evidence collected in connection with this case." (Ex. 40).

3. In a letter dated November 17, 1999, Ms. Gutierrez stated: "On Thursday, October 28th, I met with Kathleen Murphy and Detective Ritz to review items of physical evidence in the above referenced matter" and asked for further information about "a spiral notebook with a flower cover." (Ex. 41).

4. In an undated series of notes from the defense file, which appear to have been prepared sometime in or around November 1999, the defense makes reference to an "inspecti[ion]" of the "file of SA subject to [Maryland Rule] 4-263(c)." (Ex. 42).

5. In a letter dated November 30, 1999, Ms. Gutierrez again referenced a "review[]" of evidence "with Ms. Murphy in the States Attorney's Office" and asked for copies of

"homework assignments and other school papers of Hae Lee and Adnan Syed" that the defense had apparently reviewed and requested during that file review. (Ex. 43).

6. On December 1, 1999, in response to the November 30 letter, ASA Urick advised:

> As the rules require, we supplied for viewing all the physical evidence in the case and provided a full opportunity to the defense to make copies of anything it wanted at that time; the defense did not make any requests of the State to make and provide copies of any of the evidence viewed. The State has no idea what the Defense may or may not want. If the Defense desires copies of some item, please contact K. C. Murphy to arrange for a time for a member of the defense team to come by and copy the desired item(s).
>
> (Ex. 44).

7. The trial transcript from February 8, 2000, includes a lengthy discussion about whether the State had met its discovery obligations, during which the State reported that Ms. Gutierrez and two other members of her defense team conducted an open file review. (T. 2/8/2000 at 68-69). During that same exchange, Ms. Gutierrez confirmed that the defense team had conducted an open file review which lasted "the bulk of a day or at least half a day" and that they had access to a copy machine during that review. (T. 2/8/2000 at 77). (Ex. 45).

On August 28, 2022, Ms. Suter emailed an SRT member a document titled "Syed, Adnan State Disclosures" and an "Index of State Disclosures." (Ex. 46-48). These documents contain approximately half of the Amended State Disclosures that ASA Urick made to Ms. Gutierrez over the course of the trial litigation. Importantly, Ms. Suter's compilation did not include the July 1, 1999 open file review invitation and August 2, 1999 disclosures regarding miscellaneous notes, although both are file stamped by the Circuit Court for Baltimore City, reflected in CaseSearch and Maryland Judiciary Records Search, and included with the other discovery filings in the State's trial file.[15]

[15] Ms. Suter's failure to include the July 1, 1999 disclosure in her index and compilation is surprising in light of a July 6, 1999 internal memorandum from the defense file that specifically references this document and the disclosures contained therein. (Ex. 49). This and other omissions of relevant discovery documents, including correspondence and internal memoranda referencing an open file review, is strong evidence that the defense's trial file has degraded over time.

On August 29, 2022, the day after receiving this compilation from Ms. Suter, the SRT member emailed a draft of a motion to reopen the post conviction proceedings to another SRT member. (Ex. 50). The State could not recover this draft, but two days later, on August 31, 2022, a third draft of this document contained the following statement: "This information was not contained in the defense's file, nor was it included in any of the various discovery pleadings the State produced each time it disclosed new information to the defense." (Ex. 51, 52). The MVJ repeats this statement verbatim.

The timing and substance of these emails and drafts suggests that the SRT accepted at face value Ms. Suter's incomplete list of discovery filings and failed to thoroughly review the State's own trial file or the trial transcripts before representing in the MVJ that ASA Urick did not disclose these notes to the defense. If true, this oversight is inexcusable. The September 2022 Affidavit affirmed that an ASA reviewed the State's entire trial file on June 22 and 27, 2022. (Ex. 10). That same ASA then "re-reviewed all of the boxes on July 29 and August 11, 2022," specifically concerned about potential *Brady* violations. The SRT repeated these assertions in an email to a reporter at the Baltimore Banner on September 17, 2022. (Ex. 53). An SRT member also stated in an internal memorandum: "I read the entire trial transcript – all 25 days of it." (Ex. 13). The State cannot explain on what basis the SRT concluded that ASA Urick did not disclose the two notes when the SRT had seen extensive evidence that the State made numerous disclosures and that the defense reviewed the entirety of the State's file prior to trial.

The apparent incompleteness of the defense's trial file may be, at least in part, attributable to its problematic chain of custody: At the very least, the file has been the possession of the Attorney Grievance Commission, Syed family friend Rabia Chaudry, blogger Susan Simpson, post conviction attorney Justin Brown, and Mr. Syed's current defense team. 25 years after the trial it is impossible to know the contents of the defense's trial file in 1999-2000.

The SRT was also aware of an interview that ASA Urick gave to The Intercept on January 7, 2015[16] where ASA Urick stated: "We provided open file discovery in the case, that is, anything we had we provided to the defense … There was nothing [Ms. Gutierrez] was not aware of and nothing that was a surprise." Yet the SRT failed to consider this statement or even contact ASA Urick before filing the MVJ. The OAG has observed that "it is hard to imagine how anyone could conduct a neutral and unbiased investigation without asking ASA Urick for his recollections surrounding the notes or, at least, to interpret his own handwriting." (OAG Response (Ex. 32), p. 16). The State agrees with the OAG.[17]

Finally, with respect to the note reflecting a call with So.A., the State's file contains a small portion of the defense file which was disclosed to the State by court order during post conviction litigation. This portion of the defense file includes an internal memorandum dated November 9, 1999 that reflects a jail visit with Mr. Syed. This visit took place after police detained Mr. Ahmed in a sexually compromising position with a young boy.[18] (Ex. 55). The memorandum states, in pertinent part:

> Adnan came into the attorney visiting room speaking of Bilal, before he even sat down. I did not mention Bilal, but Adnan was eager to discuss him. He stated Bilal had a history of sexually deviant behavior when he was in Hagerstown a couple of years ago. He knew his behavior in Hagerstown consisted of homosexual behavior, but was not sure if this behavior involved children.

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[16] The MVJ quotes this interview. (p. 16; *citing* The Intercept, Prosecutor in 'Serial' Case Goes on the Record, January 7, 2015, available at: https://theintercept.com/2015/01/07/prosecutor-serial-case-goes-record/).

[17] The SRT did attempt, unsuccessfully, to access ASA Urick's "network drive" from "1999-2000." But the SRT did not attempt this until September 22, 2022 – a week after the MVJ was filed. (Ex. 54).

[18] ASA Urick disclosed this incident to the defense in an Amended State Disclosure on October 14, 1999. (Ex. 56).

> Bilal never made any inappropriate advances towards Adnan. Adnan has been questioning why Bilal would help Adnan and lie for Adnan to Adnan's mother. Adnan stated that Bilal had assisted a young Arab guy who attended the Mosque, [Y.K.], age 21. When [Y.K.] arrived in the U.S. from Egypt he had nothing. Bilal helped him finance his house and car (he co-signed for both). Bilal possibly also gave [Y.K.] money. Adnan questions whether Bilal's actions in assisting [Y.K.] were purely friendly or whether he had ulterior motives.

This memorandum reflects that Ms. Gutierrez had ample evidence – from her own client – that would have allowed her to pursue the exact argument that the MVJ advanced: that Mr. Ahmed killed Ms. Lee out of sexual jealousy or loyalty to Mr. Syed. A prosecutor "cannot be said to have suppressed evidence for *Brady* purposes when the information allegedly suppressed was available to the defendant through reasonable and diligent investigation." *Yearby*, 414 Md. at 723, *quoting Ware v. State*, 384 Md. 19, 39 (1997). "[T]he necessary inquiry is whether the defendant knew or should have known facts that would have allowed him to access the undisclosed evidence." *Ware*, 384 Md. at 39. Even if, therefore, this note had been suppressed by the State, this still would not have satisfied the second prong of *Brady*.

The MVJ alleges, repeatedly, that the State committed "*Brady* violations." (MVJ, pp. 1, 6, 7, 12, 20). But there is evidence that ASA Urick did disclose both notes to the defense. Even if ASA Urick only made these notes available to the defense in an open file review, they were not "suppressed or withheld" by the State. Indeed, six days after the MVJ was filed, on September 19, 2022, Maryland Attorney General Brian Frosh declared that there were "serious problems" with the MVJ, including with the MVJ's conclusion that the State had committed *Brady* violations:

> Among the other serious problems with the motion to vacate, the allegations related to Brady violations are incorrect.
>
> Neither State's Attorney Mosby nor anyone from her office bothered to consult with either the assistant state's attorney who prosecuted the case or with anyone in my office regarding these

> alleged violations. The file in this case was made available on several occasions to the defense.

(Ex. 57).

The State's review of the available evidence compels us to agree with the OAG and conclude that the MVJ's statements to the contrary are not supported by the evidence.

3. Were either of these notes "material?" *Blake*, 485 Md. at 304.

For evidence to be material, there must be "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.'" *Byrd v. State*, 471 Md. 359, 375 (2020), *quoting United States v. Bagley*, 473 U.S. 667, 682 (1985); *see also Yearby*, 414 Md. at 717.

Initially, the State is mindful of the Supreme Court of Maryland's finding in 2019 that the State presented "substantial direct and circumstantial evidence pointing to Mr. Syed's guilt" at trial. *State v. Syed*, 463 Md. 60, 97 (2019).[19] While the Supreme Court drew this conclusion in the context of an ineffective assistance of counsel analysis (*see Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984)), "the same legal standard applies to the prejudice prong when analyzing an ineffective assistance claim under *Strickland* and the materiality standard necessary to establish a *Brady* violation." *Blake*, 485 Md. at 276.[20] The Supreme Court's conclusion is, therefore, highly

[19] It is shocking and indefensible that the MVJ relies on and extensively quotes findings to the contrary from the Appellate Court (then the Court of Special Appeals) without noting that a higher appellate court, the Supreme Court of Maryland (then the Court of Appeals), thereafter expressly overturned those findings. (MVJ at p. 9, *citing State v. Syed*, 236 Md.App. 1983 (2018)). *See Syed*, 463 Md. at 96 ("We agree with the post-conviction court, and in doing so, depart from the view of the Court of Special Appeals that the State's evidence failed to establish Mr. Syed's criminal agency."). This legal precedent binds us as well as the Baltimore City Circuit Court.

[20] The MVJ muses: "If this information was indeed provided to defense, then minimally, the failure to utilize this evidence would constitute ineffective assistance of trial counsel." (MVJ,

relevant to the State's *Brady* analysis. The fact that the Supreme Court concluded that an overlooked alibi defense was not enough to overcome the other evidence of Mr. Syed's guilt strongly suggests that these other potential defenses, based on speculation and rumor, would also not have been enough.[21]

a. Unattributed Note. (Ex. 29).

Even if this note reflects that Mr. Ahmed expressed an intent to kill Ms. Lee and that the note was suppressed by the State before trial – neither of which is accurate -- the note is still not material because there is not "a reasonable probability that, had [it] been disclosed to the defense, the result of the proceeding would have been different." *Byrd*, 471 Md. at 375.

There are several reasons that the contents of this note should be viewed skeptically. If this note was generated in early January 2000, as Sa.A. suggests, then it post-dates the first trial in mid-December 1999 where the State publicly presented the details contained in the note about the murder – for example, that Mr. Wilds assisted in burying Ms. Lee's body. Additionally, accepting Sa.A.'s interpretation, the note would be "quadruple-hearsay" – ASA Urick's memorialization of what J.R. told him that Sa.A. told him that Mr. Ahmed told her. Finally, Sa.A. reportedly conveyed

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p. 9, n. 13). This is difficult to square with the MVJ's categorical statements that the State committed "*Brady* violations." (pp. 1, 6, 7, 12, 20).

But in any event, the State disagrees that it was ineffective assistance of counsel for Ms. Gutierrez to pursue other trial strategies and, for the same reasons that these notes do not meet *Brady*'s materiality standard, they also cannot meet *Strickland*'s prejudice standard. *See Strickland*, 466 U.S. at 687-688, 694 (To prove an allegation of ineffective assistance of counsel, a defendant must show (1) deficient performance: "that counsel's representation fell below an objective standard of reasonableness"; and (2) prejudice: "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

[21] The MVJ suggests, incorrectly, that accusing Mr. Ahmed of Ms. Lee's murder "was consistent with the defense's strategy at trial." (MVJ, p. 8). In fact, the defense never argued at trial that Mr. Ahmed murdered Ms. Lee.

this information during what she herself describes as "contentious" divorce proceedings, in which she apparently accused Mr. Ahmed of physical and emotional abuse; she was hardly, therefore, an unbiased source of information about Mr. Ahmed. The January 2025 report allowed that "[d]iscrediting Ahmed in any way would be strategically helpful in a divorce." (Ex. 5).

This was a high profile case, even in 1999, and the trial file reflects that ASA Urick received many calls from individuals claiming to have information about Ms. Lee's murder. In light of the substantial evidence of Mr. Syed's guilt, there is no "reasonable probability" that the jury would have been convinced of Mr. Syed's innocence based on an accusation from a biased and/or anonymous caller – who also reported that Mr. Ahmed "makes grandiose statements" and has a "Very high opinion of himself – so she did not necessarily take him seriously."

b. Note Reflecting a Call with So.A. (Ex. 31).

Even if the SRT was correct that the second note was favorable to the defense and suppressed by the State before trial, the note is also not material because there is not "a reasonable probability that, had [it] been disclosed to the defense, the result of the proceeding would have been different." *Byrd*, 471 Md. at 375.

It bears repeating that, as previously detailed, the note does not state that any person "relayed information that can be viewed as a motive for that same suspect to harm the victim" as the MVJ reports – the suggestion that Mr. Syed was Mr. Ahmed's "boyfriend[]" was an unattributed "Guess[]." The State cannot agree with the MVJ's characterization of this note as supplying a "plausible motive" for Mr. Ahmed to kill Ms. Lee. (MVJ, p. 9).

It is true that several years after this trial, Mr. Ahmed was exposed as a sexual predator who targeted men.[22] There are, nevertheless, several additional reasons why this "motive" should be viewed skeptically. There is no evidence in the State's trial file that Mr. Ahmed sexually abused Mr. Syed. Mr. Syed, through his attorneys, has categorically denied this. Indeed, as noted above, Mr. Syed also categorically denied this to his defense team in 1999. (Ex. 55). Mr. Syed has never reported that he was sexually abused. In a 2021 Forensic Evaluation ordered by his defense team, he "denied any history of physical or sexual abuse or other trauma." The SRT noted this finding in an internal memorandum so they were aware of it when SA Mosby suggested otherwise in the MVJ. (Ex. 13).

So.A. also suffers from the same biases as Sa.A.: He is her brother, and she was going through a contentious divorce with Mr. Ahmed. Indeed, the defense team has advised the State that So.A. hired a private investigator in 1999 to follow Mr. Ahmed. The source of the defense

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[22] On May 15, 2017, Mr. Ahmed pleaded guilty to one count of First Degree Sexual Abuse of a Patient with Aggravating Circumstances, four counts of Second Degree Sexual Abuse of a Patient with Aggravating Circumstances, two counts of Misdemeanor Sexual Abuse with Aggravating Circumstances, and one count of Simple Assault. As outlined in the State's sentencing memorandum, the facts of that case were as follows:

> The criminal conduct occurred when the defendant was a practicing dentist at a dental office called Universal Smiles in West End, Washington, D.C. These counts reflect the defendant's sexual abuse of five former dental patients, sexual abuse of one former Universal Smiles employee, and his physical assault of another former Universal Smiles employee.

U.S. v. Bilal Ahmed, Super. Ct. of the Dist. Of Columbia, Crim. Div., case nos. 2016 CF1-1292; 2016 CMD 12658.

On September 6, 2019, Mr. Ahmed entered pleaded guilty to one count of Health Care Fraud, in violation of 18 U.S.C. § 1347. *U.S. v. Bilal Ahmed, DDS*, U.S. Dist. Ct., Dist. of Columbia, case no. 1:19-cr-000026.

team's information appears to be a phone conversation between Ms. Suter and Sa.A.'s other brother – N.A. – which is memorialized in the SRT's case notes.[23] (Ex. 21).

It appears that Sa.A. and some of her family members made extensive efforts to discredit Mr. Ahmed before and during the divorce proceedings. During her conversation with an SRT member on July 7, 2022, Sa.A. reportedly said: "because of his [Mr. Ahmed's] interest in boys, he had no interest in me. I was a 'façade' for the community. I was just a 'prop' for the community. I figured it out and my family stepped in." (Ex. 22). There is also a letter in the State's trial file dated December 9, 1999, in which Mr. Ahmed's divorce attorney, in pertinent part, admonishes N.A.:

> It is also my understanding that you have been threatening to copy and disseminate a police report concerning Mr. Ahmed to various individuals. Please be advised that such publication of a police report, especially one upon which no criminal charges are based, is actionable. Should you continue to pursue the course of action you have threatened, appropriate legal measures will be taken.

(Ex. 60).

According to a case note created by an SRT member on July 6, 2022, Ms. Suter spoke with N.A. (Ex. 21). While the SRT was not, apparently, a party to that conversation, the SRT member reported the SRT's understanding of its substance:

> Erica Suter talked to [N.A.] on the phone. [N.A.] is the brother of Bilal's then-wife, [Sa.A.]. He said that [So.A.] (the other brother) would have more information on Bilal. [So.A.] hired the private investigator.
>
> [N.A] believes that Bilal killed Hae. When they got their sister out of the house, they were scared he would kill her. He hired

[23] A Baltimore County police report dated October 12, 1999, states that it was Sa.A. who hired the private investigator. (Ex. 58, 59).

> security to retrieve her personal items. Bilal was at the police station all day long.
>
> He does not know the extent of the physical abuse, except for the knives. He didn't want to know about anything else.
>
> Bilal is capable of killing and pinning it on Syed.
>
> He told the IMAM about the molestation and asked the IMAM to warn the community. The IMAM said no.
>
> Bilal's uncle and parents would donate large amounts of money to the Muslim Student Association. But it was tax fraud. The parents were known to make $50,000 in donations.
>
> We do not know if the MSA is associated with ISB.[24,25]

This case note suggests several possible reasons why N.A., and possibly other members of Sa.A.'s family, were biased against Mr. Ahmed in 1999. N.A. feared for his sister's life and understood Mr. Ahmed to be physically abusing her. N.A. was also apparently concerned that Mr. Ahmed was victimizing children in the Muslim community and that community leaders were not addressing his concerns. N.A. also apparently reported his belief that members of Mr. Ahmed's family were committing tax fraud. Some or all of these might be reasons why N.A. – and perhaps also his brother, So.A. – might be motivated to lie about Mr. Ahmed's potential involvement in Ms. Lee's death.

Additionally, an SRT member reported in a case note that on July 7, 2022, a federal prosecutor who worked on Mr. Ahmed's criminal sexual abuse case, S.M., advised "that she got a call from the ex-wife's brother asking her to please look into Bilal for the murder of HML [Ms.

[24] The Islamic Society of Baltimore.

[25] The January 2025 report indicated that during his conversation with Ms. Suter, N.A. "was extremely protective of his sister and did not want the family involved in this case whatsoever because of their fears of what Ahmed could do, even from prison." (Ex. 5). That detail is not reflected in the SRT's case notes from 2022.

Lee] – He said that Bilal is a demon." (Ex. 23). This is further evidence that Sa.A.'s family members were engaged in an organized effort to incriminate Mr. Ahmed.

In light of the "substantial direct and circumstantial evidence pointing to Mr. Syed's guilt," (*State v. Syed*, 463 Md. 60, 97 (2019)), there is no "reasonable probability" that the jury would have been convinced of Mr. Syed's innocence based on a "Guess" from a biased caller, denied by Mr. Syed and without any evidentiary support whatsoever, that Mr. Syed was Mr. Ahmed's "boyfriend[]."

4. Conclusion

Maryland Rule 19-303.3(a) provides, in pertinent part:

> An attorney shall not knowingly:
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;
>
> …
>
> (4) offer evidence that the attorney knows to be false. If an attorney has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures.

As Maryland-barred attorneys and officers of the Court, the State cannot stand behind the false and misleading statements in the MVJ that the State committed "*Brady* violations." (MVJ, pp. 1, 6, 7, 12, 20). Indeed, as the moving party the State is required by the Maryland Rules to "take reasonable remedial measures" to address false statements in the State's legal filings – a responsibility that the State takes extremely seriously. As such, the State cannot adopt the falsehoods and misleading statements contained in the MVJ nor fail to bring them to the Court's attention.

The State is also mindful of its role as "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its

obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). *See also* Maryland Rule 19-303.8, cmt. [1] ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."). When the State fails to live up to these ideals, it is incumbent on the State to redress the injustice.

After reviewing the representations made in the MVJ and the source material underlying those representations, the State has concluded that these representations are not supported by the evidence. Indeed, even if one or both of these notes were "suppressed or withheld," the State is still unconvinced that either note constitutes *Brady* material. The State is, therefore, compelled to conclude that there was no *Brady* violation.

Has the State Identified Any Viable Alternative Suspects?

The MVJ alleged that "the parties have developed evidence regarding the possible involvement of two alternative suspects." (MVJ, p. 7). Contemporaneous notes prepared by the SRT reflect that the "alternative suspects" referenced in the MVJ are Bilal Ahmed and Alonzo Sellers. (Ex. 13, 14, 15, 18, 19). The January 2025 report also reflects this. (Ex. 5).

The State has been unable to find any support for the MVJ's suggestion that Mr. Ahmed and Mr. Sellers may have been "involved together."[26] (MVJ, p. 7). In an email between SRT members on August 15, 2022, an SRT member stated: "My current theory: Bilal hired Sellers to

[26] Identical language first appeared in a drafted, unfiled Writ of Actual Innocence that the SRT provided to SA Mosby via email that same day (August 15, 2022). (Ex. 61). This language persisted for the next several months in a drafted but unfiled Motion to Reopen and several drafts of the MVJ.

Although the MVJ is a document that can be filed by the State, it remains unclear why the State was drafting a Motion to Reopen or Writ of Actual Innocence that would be presumably filed by Mr. Syed.

kill. Or Bilal killed and Sellers helped clean up." (Ex. 62). But the State has found no evidence for either "theory" in a review of available records. Indeed, elsewhere in the internal memoranda, the SRT presented mutually contradictory theories as to how these two men could each have been "involved" in the murder. The State has found no evidence to suggest that Mr. Ahmed and Mr. Sellers have ever met, much less conspired to kill Ms. Lee "together."[27]

The MVJ failed to distinguish between the alternative suspects, calling them both "one of the suspects." (MVJ, pp. 7, 9, 10, 11). The State accepts the MVJ's representation that this was a well-intended effort to "protect the integrity of the on-going investigation" (MVJ, p. 7). But the practice of conflating factual representations related to these two suspects makes it impossible to assess the strength of the SRT's findings as it relates to either Mr. Ahmed or Mr. Sellers individually – and, therefore, to assess whether the State can meet our burden of proof to show that there was "new information after the … judgment of conviction that calls into question the integrity of the … conviction. Md. Crim. Proc. § 8-301.1(a).

To remedy these errors in judgment, the State has carefully and separately weighed the evidence against Mr. Sellers and Mr. Ahmed.

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[27] The January 2025 report managed to draw an extremely tenuous connection between Mr. Sellers and Mr. Ahmed:

> The team wondered whether there was any connection between Ahmed and Sellers. The only connection I was able to make is that Ahmed was in a leadership position at his mosque, in which [M.P.] was the leader. [M.P.] was in charge of the facilities division at Coppin State, and Sellers worked in the facilities division.

(Ex. 5).

1. Alonzo Novok Sellers

a. Background

It is well documented elsewhere, including in the trial testimony, that Mr. Sellers found Ms. Lee's body, partially buried, in Leakin Park on February 9, 1999. Mr. Sellers testified as a State's witness at trial. This was not a surprise to the defense team: Mr. Sellers' name and contact information were disclosed by the State and Mr. Sellers was listed repeatedly in the defense's case file as a potential witness.

Mr. Sellers was initially treated as a suspect in the State's investigation into Ms. Lee's murder. He was Mirandized and gave a statement to the police on February 9, 1999. Police administered a polygraph test to Mr. Sellers on February 18, 1999, and a second test on February 24, 1999.

The defense team also considered Mr. Sellers to be a possible alternative suspect. A case note in the defense file, dated September 4, 1999, tasked members of the defense team to "Obtain every police report in existence concerning Alonzo Sellers and Jay Wilds. Find the connection." (Ex. 63).The same note instructed: "Discover whereabouts of Alonzo Sellers on January 13th." A subsequent note from September 29, 1999, noted that Mr. Sellers "was escorted to headquarters for questioning." (Ex. 64). During a jail visit with Mr. Syed on October 6, 1999, Mr. Syed "wanted to know if [the defense team] found any connection between Jay and Alonzo Sellers." (Ex. 65). A case note dated February 2, 2000 reveals that the defense team was also attempting to obtain court records related to Mr. Sellers' previous criminal cases. (Ex. 66). The defense team successfully obtained records related to Mr. Sellers' prior conviction for indecent exposure. (T. 2/17/2000 at 197). The defense team also obtained records indicating that an unknown person, whom Ms.

Gutierrez believed to be Mr. Sellers, was observed removing his clothing and "streaking" at a traffic intersection. (T. 2/17/2000 at 197-198).

During the trial, Ms. Gutierrez told the jury in opening and closing arguments that the police considered Mr. Sellers a suspect but failed to properly exclude him. (T. 1/27/2000 at 143; T. 2/25/2000 at 100, 104, 105, 113). She told the jury: "They gave him a polygraph which he flunked." (T. 1/27/2000 at 143).[28] She told the trial court that the defense was pursuing a theory that Mr. Sellers was the murderer. (T. 2/17/2000 at 191-204). On February 22 and 23, 2000, Ms. Gutierrez called Mr. Sellers as a defense witness. Through her extensive questioning, she established that police initially considered Mr. Sellers a potential suspect in the murder and attempted to discredit his version of what occurred when he found the body on February 9, 1999.[29]

[28] The court sustained the State's objection to this comment and instructed the jury to disregard the remark.

[29] Specifically: Ms. Gutierrez established that one possible way to get from Mr. Sellers' home to the university where he worked passed the area on Franklintown Road where Mr. Sellers found Ms. Lee's body. She attempted to discredit Mr. Sellers' account that he drove home on February 9, 1999 to retrieve a tool for work. She suggested that it was implausible that Mr. Sellers would have to stop and urinate by the side of the road given the short distance between his home and work. She noted the "good distance" between the road and the area where Mr. Sellers discovered the body and noted that it was an overgrown area. She challenged why he drove all the way to work before reporting the body when there were bars, gas stations, and other businesses in the area. She wondered why Mr. Sellers told his work supervisor about the body instead of going immediately to the police.

Turning her attention to the police investigation, Ms. Gutierrez showed Mr. Sellers the Miranda form that he filled out when police interrogated him on February 9, 1999. She established that police questioned Mr. Sellers two more times, on February 18 and 24. She highlighted inconsistencies in his various accounts. She confirmed that police did not take Mr. Sellers' fingerprints, a hair sample, a blood sample, any of his clothing, his truck, or his picture. Despite a court ruling that Ms. Gutierrez was not allowed to reference the polygraph examinations, Ms. Gutierrez seized an opportunity to mention them when Mr. Sellers volunteered the information. She elicited that police had not asked Mr. Sellers if he knew any of the other people of interest in the investigation.

b. The SRT's Identification of Mr. Sellers as an "Alternative Suspect"

On December 7, 2021, an SRT member emailed a "first draft" of a "review of Adnan Syed conviction & sentence" to another SRT member and a BCSAO staff member. (Ex. 13).

This December 2021 memorandum included a section titled "Alternative Suspect: Alonzo Sellers." The memorandum began this section with a short introduction:

> Alonzo Novok Sellers was initially treated as a suspect because he is the one who found HLM's [*sic*; Hae Min Lee's] body in Leakin Park. However, he was dismissed as a suspect, and investigators focus on Syed, for reasons that are not entirely clear or sensible. In my opinion, all roads lead to Alonzo Sellers.

The December 2021 memorandum detailed a "working theory" of how and why Mr. Sellers murdered Ms. Lee:

> My working theory is that Sellers and HML intersected at some point when she left Woodlawn High School (around 2:30 PM) and before she arrived at her cousin's school (she was supposed to arrive between 3:00 – 3:15 PM). We do not know if she stopped somewhere en route, like a gas station or other place.
>
> …
>
> I suspect that after the interview with Coppin police, Sellers was starting to feel like things were starting to unravel. His job was in jeopardy. He clearly has sexual deviant behaviors that are fairly unexplainable. I cannot explain what happens next, whether he felt threatened by HML seeing him, or whether she took his picture, or reacted strongly. Or something else. We know that when he feels trapped, he will react with violence. Also, HML just got her drivers' license 4 months prior to this incident. She was a new driver, a young woman, and was overcome quickly by a much older, larger, stronger, and aggressive male.
>
> I think he reacted quickly and strongly, because there were not any defensive wounds noted by the ME [medical examiner]. If he was strangling her from the side or back, then the only things she could have grabbed onto where his hands and/or arms. If he was wearing clothes and/or gloves, he would not have shown wounds either (not that we would know because he was not interviewed by police until almost a month later).

> After it happened, he hid her car in the neighborhood. I do not know where he stored the body until it was buried. I do not know when he buried the body.
>
> He returns to Coppin to clock out at 4:03 PM to ensure that he has an alibi.

The December 2021 memorandum theorized that Mr. Sellers thereafter reported Ms. Lee's body to police to avoid detection or because he felt "tremendous guilt over what he had done."

This "working theory" was based on the following observations and suppositions:

- Mr. Sellers' home was located near Woodlawn High School, the school that Mr. Syed and Ms. Lee attended at the time of the murder.

- At the time of the murder, Mr. Sellers worked at Coppin State University as a maintenance worker; one possible way to get from Mr. Sellers' home to the university is "via Franklintown Road," where Mr. Sellers found Ms. Lee's body.

- Mr. Sellers' statement to police in 1999 that he left work that day to get a tool from home was reportedly implausible because "[t]here were no pending work orders on 2/9/1999" and, according to Mr. Sellers' supervisor, "it doesn't make sense that Sellers he [*sic*] would have went home for a tool."

- Mr. Sellers' statement that he discovered the body when he pulled over on Franklintown Road to urinate was reportedly implausible due to the short distance between his home and work, the long distance between the road and the body, and trial testimony from the medical examiner that the body was "very well camouflaged and "an average person walking over it wouldn't see it."

- Mr. Sellers was a "serial streaker" who was reportedly arrested several times for appearing in public in various states of undress; this included an incident in 2020 when he was arrested and convicted of 2nd degree assault for attacking a female mail carrier after she took his picture after she saw him standing in a wooded remote area naked, masked, and holding a pink jacket.[30,31]

[30] Baltimore County Circuit Court case no. [####redacted####].

[31] The December 2021 memorandum suggested that this information is relevant to this 1999 murder as propensity evidence: "He [Mr. Sellers] clearly has sexual deviant behaviors that are fairly unexplainable." The memorandum allowed, however, that "he has no history of violence, except when he is being arrested, or being photographed and snaps."

- Mr. Sellers was allegedly arrested for indecent exposure in 1998, and "was in the process of losing his job at Coppin in January, 1999" after a series of work related incidents. The memorandum surmised: "Things were falling apart."

- As a maintenance worker, Mr. Sellers "could disappear for an hour or two and no one would think anything of it."

- Mr. Sellers' sister, N.S., had a child with N.W., who owned a home at 302 Edgewood Road. This house was located near the grassy lot where police recovered Ms. Lee's car.[32]

- Mr. Sellers failed the first polygraph examination that police administered to him on February 18, 1999.

- It "seem[ed] odd" to this SRT member that during the second polygraph examination that police administered, in February 24, 1999, "the same questions, or similar questions, were not given."

To this day, at least one member of the SRT continues to suspect Mr. Sellers. The January 2025 report stated: "There is a lot of smoke around Alonzo Sellers." (Ex. 5).

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[32] The December 2021 memorandum speculated extensively about the implication of this finding. It stated, without any evidentiary basis, that "it's fair to assume that Sellers at least knew [N.W.] and where he lived." The memorandum also stated:

> *My working theory*: Sellers had to get HML's car away from his house to avoid a connection. He parked it at his sister's boyfriend's house for several reasons: 1) if he was seen in that area, he could easily explain why he was in the area; and 2) the ignition box fell off of HML's car, so it appears that someone made it look like the car was being stolen. If Sellers was caught driving the car, he could have claimed that he was in a stolen car.

As far as the State can determine, the SRT never confirmed any of these theories.

c. The SRT's Investigation of Mr. Sellers

The SRT sought evidence of Mr. Sellers' guilt in several different ways.

i. Mr. Sellers' Criminal Activity

The SRT obtained a copy of the Baltimore County "police file" for Baltimore County Circuit Court case no. [####redacted####] on January 19, 2022. (Ex. 67).

On January 27, 2022, an SRT member spoke with Detective E.H. of the Baltimore County Police Department. (Ex. 20). Detective E.H. was involved in a police search of Mr. Sellers's home that occurred in 2020 in connection with this matter. Of apparent interest to the SRT, during the search Detective E.H. recalled seeing "pornographic material and newspaper articles" in the downstairs area of Mr. Sellers's home. The January 2025 report states that when an SRT member "asked him what the newspaper articles were about, he could not remember."[33] Detective E.H. emailed an SRT member a "case file" related to this incident, comprising 56 pages of documents and 2 photographs. (Ex. 69, 70).

ii. "Project Trash Panda"

Also in January 2022, the SRT and the defense team collaborated on what they termed "Project Trash Panda" – an unsuccessful effort to obtain trash from Mr. Sellers' home or place of employment that might contain his DNA.

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[33] In an email to an SRT member and a BCSAO staff member on January 10, 2022, a second SRT member reported that Ms. Suter had advised the member that during this search, "the police found under [Mr. Sellers'] couch in the basement some newspaper articles on the HML [Hae Min Lee] murder, mixed in with his porn." (Ex. 68). When an SRT member spoke directly with Detective E.H., however, the detective did not corroborate Ms. Suter's representations.

Nevertheless, even after speaking with Detective E.H., the SRT continued to suggest in the January 25, 2022 memorandum "For Investigators" that the newspaper articles that police observed in Mr. Sellers' downstairs area were "from 1999 (possibly/probably about this case).

Specifically: On January 13, 2022, at the direction of the SRT, investigators conducted surveillance of Mr. Sellers' home and place of employment. (Ex. 71). The January 2025 report explained: "In 202[2],[34] we had one of our investigators sit on Sellers' house on the anniversary of the homicide to see if he did anything weird. He did not leave the house that day." (Ex. 5).

On January 20, 2022, an SRT member sent an investigator the "trash collection schedule" for Mr. Sellers's home and also advised the same staff member that "[Mr.] Sellers told the police that his wife works from home." (Ex. 72, 73). On January 21, 2022, one SRT member emailed another SRT member a picture of E.S., Mr. Sellers' wife, with famous actor J.T. The member reportedly located the photograph on Facebook. (Ex. 74). On January 30, 2022, a member of the SRT instructed an investigator to respond to Mr. Sellers' home the following day and determine "if Alonzo Sellers [] puts out his recycle [*sic*] for pick up and when the pick up truck comes." (Ex. 75). The email advised: "The defense will be using an innocence project investigator to pick up the recyclables next Monday. So I'd like to be able to give them a general timeline." The investigator complied.

The defense team then rented a storage facility and, on February 17, 2022, one SRT member emailed the other two SRT members, and one BCSAO staff member, and stated:

> Project Trash Panda was successful. The defense investigators picked up 4 bags of trash early this morning that were left out on the curb for pickup. The bag contains a number of bottles and cans, including O'Doul's and ginger ale. I feel very confident that we will be able to lift Sellers' DNA from these items

(Ex. 76).

[34] The report indicates that this surveillance occurred in "2023"; this is an obvious typo. In January 2023, SA Mosby had already dropped the charges against Mr. Syed and no member of the SRT remained employed by the State. The current administration certainly did not authorize any such surveillance of Mr. Sellers.

On February 23, 2022, Ms. Suter emailed an SRT member an "Evidence Submission Form" for the Forensic Analytic Crime Lab ("FACL") in Hayward, CA. (Ex. 77, 78). That SRT member apparently filled out this form and then forwarded the completed form to the other two SRT members and one BCSAO staff member. On March 30, 2022, at the request of BCSAO and in compliance with the court's order, the BPD sent several items to FACL for trace DNA testing.[35] (Ex. 79).

On April 5, 2022, Ms. Suter submitted the following additional items to FACL for testing, presumably items that the defense team recovered from outside Mr. Sellers' home during "Operation Trash Panda." (Ex. 80, 81).

- 3 light blue surgical masks
- A plastic fork, knife, spoon
- 2 crumpled Kleenex
- An O'Doul's glass bottle
- A green plastic Seagrams Ginger Ale Bottle
- A Deer Park Water Bottle
- A Dunkin Donuts coffee cup w/lid

FACL did not recover any usable DNA from any of these items.

iii. The Polygraph Examinations

Police administered polygraph examinations to Mr. Sellers on February 18 and 24, 1999. Mr. Sellers failed the first examination and passed the second. The defense team was well aware of the potential issue posed by the BPD's administration of two polygraph examinations within a short timeframe. Indeed, the defense's case file includes a heavily annotated draft letter to ASA Urick, dated August 3, 1999, which states: "it is the understanding of defense counsel that general

[35] The details of what was tested, the results of the testing, and the significance of those results is addressed below.

polygraph protocol precludes the administration of multiple examinations to one individual within a time period as brief as the six days in Alonzo Seller's case." (Ex. 82).

Although the court precluded the parties from talking about the polygraph examinations during the trial, Ms. Gutierrez still commented to the court about "how improper it would have been to give the second lie detector test to somebody who had already flunked one within the space of less than two weeks." (T. 2/23/2000 at 92). Ms. Gutierrez further advised: "I've had an expert on call in the event that that comes up, an expert in polygraphs by the name of Robert Brizentine (phon. sp.)." (T. 2/23/2000 at 92). She noted the "proximity" in time between the examinations and "when [police] stopped speaking to Mr. Sellers and turned their attention to Adnan Syed." (T. 2/23/2000 at 92-93). She told the jury in her opening statement: "They gave him a polygraph which he flunked." (T. 1/27/2000 at 143).[36]

The defense team's use of this issue at trial – and particularly their retention of an expert and focus on the same concern about sequential testing raised in the MVJ – makes it difficult to fathom how further exploration of these same issues over twenty years later could possibly undermine the trial result. This is particularly true because the polygraph examination results were not admitted in evidence at trial; the jury only heard from Ms. Gutierrez that Mr. Sellers had "flunked" a polygraph examination.

On May 5, 2022, Ms. Suter emailed an SRT member a "Summary of Convo with expert RE polygraph." (Ex. 83). This email purported to contain the "opinion" of J.H., a polygraph examiner, regarding "Sellers' 2nd lie detector test." The portion of J.H.'s findings that Ms. Suter included in this email span for approximately less than half a page.

[36] The court sustained the State's objection to this comment and instructed the jury to disregard the remark.

At some point the SRT retained D.K. to provide an expert opinion regarding the polygraph tests of Alonzo Sellers that were conducted by BPD in February 1999. On September 9, 2022, D.K. emailed an SRT member a "Report of an Independent Review" of these two polygraph examinations. D.K. opined that he would not "support the testing examiner's assertion that the first test results were influenced by the examinee's distraction, nor that a decision of No Deception Indicated can be defended in the second examination."[37] (Ex. 84, 85). The MVJ identified this opinion as "new information" and argued that the police "improperly cleared" Mr. Sellers as a suspect. (MVJ, p. 11).

Simply put, this was not "new information." As detailed above, the defense was well aware of the potential issues with the BPD's administration of these polygraph examinations and used this and other arguments to identify Mr. Sellers as an alternative suspect during the trial in 2000.

The State has also uncovered no evidence to suggest that the police "cleared" Mr. Sellers based on the results of these polygraph examinations. These polygraph examinations were administered on February 18 and 24, 1999. On February 28, 1999, the police conducted their first recorded interview with Mr. Wilds, who identified Mr. Syed as the murderer. (Ex. 87). During this interview, Mr. Wilds gave the police information about the murder that only a participant would know – including advising the police that Mr. Syed had "left [Ms. Lee's] shoes in [her] car." He also led police to the obscure area where Ms. Lee's car was parked. The police arrested Mr. Syed

[37] An undated and unattributed case note located in the State's trial file memorializes an "oral report":

> Per Det. MacGillivary, after the first polygraph test given to Alonzo Sellers, Det. [J.B.] reported that he could not rule out situational stress as the cause of the results.

(Ex. 86).

that same day. The timing of Mr. Wilds' interview and Mr. Syed's arrest suggests that it was this evidence – not the polygraph examination results – that caused the police to conclude that Mr. Syed was the murderer.

d. Conclusion

The actual evidence against Mr. Sellers can be reduced to unconvincing propensity evidence based on his largely nonviolent criminal history and the fact that Mr. Sellers, like countless other individuals, had access to the area where Ms. Lee's body was recovered in January and early February 1999 and family connections in the community in which they both lived. Additionally, the State is mindful that Mr. Sellers has been a target of the defense team's extensive efforts to identify alternative suspects since before the first trial in 1999. The State is not convinced that further investigation into Mr. Sellers would yield any additional evidence suggesting that he was involved in Ms. Lee's murder.

2. Bilal Ahmed

a. Background

As detailed above, Bilal Ahmed was known to Mr. Syed in 1999. It is also well documented in court filings that Ms. Gutierrez represented Mr. Ahmed in March 1999 during the Grand Jury proceedings in this case.

Mr. Syed hired Ms. Gutierrez to represent him in approximately April or early May of 1999.[38] Notes in the defense file indicate that the Syed family and Mr. Ahmed mutually canceled an "office mtg with Bilal" that was scheduled to take place on May 12, 1999. (Ex. 88, 89).

On May 13, 1999, Ms. Gutierrez entered her appearance on behalf of Mr. Syed.

[38] The State is not in possession of any retainer agreements between Mr. Syed and Ms. Gutierrez.

There was extensive litigation through the months of May, June, and July 1999 related to a potential conflict of interest between Ms. Gutierrez's representation of Mr. Syed and her previous representation of Mr. Ahmed. While the potential conflict raised by the State is of limited relevance to the MVJ, some of the statements made during this litigation by the persons involved, including Mr. Syed and Mr. Ahmed, provide contemporaneous insight into their understandings of Mr. Ahmed's role in this case.

On May 25, 1999, the State filed a Motion to Disqualify Defense Attorney M. Christina Gutierrez as counsel to Mr. Syed. (Ex. 90). In the Motion, the State alleged that Mr. Ahmed and another former client of Ms. Gutierrez, Saad Chaudry, were "material witnesses" in this case and that the State intended to call both Mr. Ahmed and Mr. Chaudry as State's witnesses at trial. The State asserted that Ms. Gutierrez's representation of Mr. Syed "represents obvious, blatant, actual conflicting interests" for which prejudice to the client is "presumed."

On June 11, 1999, Michael Millemann entered an appearance as counsel to Mr. Syed for purposes of representing him in the conflict litigation.

In a response filed June 28, 1999, Ms. Gutierrez asserted: "There is no reason to believe that either Mr. Chaudry or Mr. Ahmed are 'targets' of the State's investigation in this case, assuming *arguendo* it is continuing." (Ex. 91). She argued that "there is no direct or material adversity between the interests of defendant [Mr. Syed] and the potential State's witnesses [Mr. Ahmed and Mr. Chaudry]." Ms. Gutierrez alleged that Mr. Syed "stands ready" to "giv[e] his informed consent to Defense Counsel's continued representation of him." Ms. Gutierrez also submitted an affidavit in which she repeated that "Mr. Ahmed was not a 'target' of the State's investigation, according to [the prosecutor]." (Ex. 92). Ms. Gutierrez further detailed:

> When I was asked to represent Mr. Syed, I discussed the issue with Mr. Ahmed. Mr. Ahmed had no objection to my representation of Mr. Syed.
>
> I immediately disclosed to Adnan Syed and his parents that I represented Mr. Ahmed during the Grand Jury proceedings. Mr. Syed and his parents have no objection arising from my prior representation of Mr. Ahmed.
>
> Adnan Syed and his family have requested my continued representation in this matter as Mr. Adnan Syed's counsel of choice.

In the State's reply, filed July 2, 1999, the State asserted:

> Defense attorney, by her own actions, created the only necessary factual predicate for her disqualification. Defense attorney entered her appearance before the Grand Jury on behalf of Bilal Ahmed and Saad Chaudry. She filed motions to quash their Grand Jury subpoenas, claiming a Fifth Amendment privilege not to testify, and argued the motion for both before Judge Angeletti. **By her own actions defense attorney has proclaimed to the world that these two individuals have information material to the murder investigation, that this information may possibly incriminate them, and that she, as their attorney, is privy to this information by way of attorney client communication.**

(Ex. 93) (emphasis added).

The State's reply also provided additional details about Mr. Ahmed's role in the State's theory of the case against Mr. Syed. The State advised that Mr. Syed was "obsessed" with Ms. Lee and that "[w]hen she broke up with him, and took a new boyfriend, he killed her." The State indicated: "Both Mr. Chaudry and Mr. Ahmed provide crucial evidence going to motivation." The State expounded:

> But Mr. Ahmed played an even more crucial role. In a conversation with defense attorney Michael Millemann, the State was quite candid about the crucial facts. The defendant had a cell phone. That cell phone was an instrument of criminality necessary for the murder to have been conducted as it was. To carry out his plan, the defendant required a cell phone, not a regular telephone, but a portable phone. Telephone company records prove that it was the defendant's cell phone that was used in the murder. And it was

> Mr. Ahmed who procured the telephone for the defendant. Drawing upon Mr. Ahmed's good intentions, the defendant induced Mr. Ahmed to co-sign so that he could obtain a cell phone. The cell phone was obtained on January 11, 1999. Ms. Lee was murdered on January 13, 1999. That a necessary instrument of criminality was procured two days before the murder is evidence of premeditation, a necessary element in first degree murder. The very witness who proves premeditation against the defendant is Ms. Gutierrez' client, the one she filed a fifth amendment claim on behalf, the one she represented during his testimony before the Grand Jury.
>
> The right to confrontation implies the right to be confronted. The State has every right and fully intends to confront Mr. Syed with these two witnesses. Both will be difficult witnesses for him to confront, and the defense cannot reasonably anticipate the degree to which additional incriminatory information may come from these two clients of Ms. Gutierrez. Mr. Ahmed will be a particularly difficult witness for Mr. Syed to confront. Because of the nature of their student/teacher, initiate/guide, advisor/advisee relationship, and because of the religious values they share between them, the confrontation will be emotional for both parties. The materially adverse interests here are blatant, they are flagrant, they are obvious, they are apparent, and they are overwhelming.

The State also observed that that "the defense cannot reasonably anticipate the degree to which additional incriminatory information may come from these two clients of Ms. Gutierrez [Mr. Ahmed and Mr. Chaudry]." The State asserted that without a conflict waiver, Ms. Gutierrez should not be permitted to continue as counsel to Mr. Syed.

Mr. Syed and Mr. Ahmed signed separate conflict waivers. Mr. Syed's conflict waiver, signed on July 8, 1999, stated, in part:

> Ms. Gutierrez has informed me, as the legal papers also indicate, that she does not believe that a conflict of interest ever existed, now exists, or is likely to exist in the future. However, whether or not this is correct as a legal principle does not affect my decisions to waive any actual or potential conflict of interest and to consent to Ms. Gutierrez' continued representation of me. Ms. Gutierrez and Mr. Millemann asked me to assume that a conflict of interest does exist,

> or likely will exist, as a result of her past representation of Mr. Ahmed and/or Mr. Chaudry.[39]

(Ex. 94).

Mr. Ahmed's waiver, signed on July 9, 1999, stated, in part:

> Ms. Gutierrez initially asserted the Fifth Amendment privilege on my behalf, in response to the State's Grand Jury subpoenas, because police investigating this case suggested that I might be guilty of some crime, a suggestion that I believe has no basis.
>
> At a hearing on my request to quash the Grand Jury subpoenas, the State's Attorney stated that I was not a "target" of any criminal investigation, and that the State does not believe and/or intend to assert, based on any information that it now has, that I am guilty of any crime. I understand "non-target" to mean that the State does not now intend either to bring criminal charges against me or to focus any criminal investigation on me. (I repeat that I do not believe there would be any basis for the State to take either step.) The State's Attorney made these factual representations in support of her successful argument that I had no Fifth Amendment right to refuse to testify before the Grand Jury. In finding that I had no such right, Judge Angeletti adopted these factual representations. I then returned to the Grand Jury and answered all of the questions that I was asked, without asserting the Fifth Amendment.
>
> …
>
> Making all of the assumptions in para. 10, but with the additional/changed assumption that the State is still considering whether or not to charge me with a crime, and has not ruled me out as a "target," I still agree to waive any right that I may have, based on the alleged conflicts, to challenge Ms. Gutierrez' representation of Mr. Syed and I consent to that representation.

(Ex. 95).

[39] Mr. Syed's waiver also addressed the fact that Ms. Gutierrez had also briefly represented Saad Chaudry.

A hearing was held on July 9, 1999. As far as the State is aware, no recording of this hearing exists and this hearing has never been transcribed. Clearly, Ms. Gutierrez was allowed to continue as counsel to Mr. Syed.

In a letter to the court dated July 18, 1999, Mr. Ahmed further stated, in part:

> Due to my experiences with the State Attorney's office and the Police Department concerning this particular case, I asserted that I did not want to waive any privileges. I did so solely out of concern that a premature waiver of all my privileges would invite the prosecution or the police to further abuse me, as they have been very successful in doing so, by posing presumed questions and making extremely bold and harassing statements without actually looking into the matter at hand or even investigating the truthfulness of those statements, some of them even presented to the honorable court, despite having ample time and endless resources at their disposal, In addition to that one could clearly see the twist that was added by the prosecution or the police during the "investigation" to any statement presented to them. I never intended, in ANYWAY, to have any privilege, which attached with my relationship with M. Cristina Gutierrez, to impede her in cross-examining me on Anan Syed's behalf, if that becomes necessary in the trial of Adnan Syed.

(Ex. 96).

As previously discussed, on July 21, 1999, Ms. Gutierrez filed a Supplemental Response to the Motion to Disqualify after receiving additional disclosures from the State. (Ex. 37). Ms. Gutierrez noted that in her view, the State's disclosures merely "establish that Mr. Ahmed is not a critical witness to any fact or issue in dispute" and that the State "has not yet described any incriminating information provided by Mr. Ahmed." Ms. Gutierrez reiterated that her "relationship with Mr. Ahmed [] was brief and not long standing and was for a limited purpose."

Throughout the trial preparation process, both sides continued to anticipate that Mr. Ahmed was a potential witness in this case. His name and contact information appears repeatedly in the defense's case file as a potential witness. (Ex. 97, 98). According to the defense's trial file, he spoke with Mr. Syed's defense team at least twice in September 1999, once updating the defense

team about a conversation with ASA Urick in preparation for trial. (Ex. 99, 100) He is on the State's list of potential witnesses for Requested Voir Dire of jurors. (Ex. 101). The State's file contains a record of prosecutors' preparations to question Mr. Ahmed at trial – although he did not end up testifying. (Ex. 102).

Mr. Syed and his defense team were also aware before trial that Mr. Ahmed had been accused of sexually assaulting a young boy. ASA Urick disclosed this incident to the defense in an Amended State Disclosure on October 14, 1999. (Ex. 56). The defense's trial file contains an internal memorandum from October 17, 1999, detailing efforts that the defense team made to learn more about these accusations. (Ex. 103). As detailed above, a subsequent defense memorandum dated November 9, 1999, reveals that Mr. Syed himself discussed these allegations with the defense team and also alleged more broadly that Mr. Ahmed had a "history of sexually deviant behavior." (Ex. 55).

b. The SRT's Identification of Mr. Ahmed as an "Alternative Suspect"

The January 2025 report indicates: "Although Sellers was emerging as a possible suspect in this case, Bilal Ahmed later became a concerning figure to me as well after viewing the Brady note." (Ex. 5). The September 2022 Affidavit reported that the State located the two handwritten notes in the State's trial file on June 22, 2022. (Ex. 10).

On June 28, 2022, one SRT member emailed several documents related to Mr. Ahmed to another SRT member. (Ex. 104). These documents included phone records, a police report related to an arrest that took place on October 12, 1999, and a letter from ASA Urick to Mr. Ahmed, dated August 20, 1999, advising Mr. Ahmed of a scheduled trial date. (Ex. 105-108). It is unclear where the SRT member obtained these documents or why the member sent this email.

On August 3 and 4, 2022, an SRT member exchanged emails with S.L., an attorney. (Ex. 109). S.L. apparently represented Sa.A. during her divorce proceedings. On November 9, 2022, the State served, via email, a Grand Jury subpoena on S.L. (Ex. 110-112). The subpoena commanded S.L.:

> to produce any and all documents from the case file of [Sa.A.] v. Bilal Ahmed, Case No. [####redacted####], including any documents, notes, or information regarding conversations had with any member of the State's Attorney's Office for Baltimore City or Baltimore City Police Department from 1999-2000 and any documents provided to the State's Attorney's Office for Baltimore City or Baltimore City Police Department from 1999-2000.

S.L. did not comply with this subpoena, perhaps because the requested material related to a privileged client matter and the BCSAO did not obtain a signed waiver of attorney client privilege from Sa.A. Or perhaps the BCSAO did nothing to domesticate the subpoena in the receiving state, rendering it unenforceable. Nevertheless, the SRT did manage to uncover 59 pages of filings from these divorce proceedings.[40] (Ex. 113).

[40] These filings include allegations from Sa.A. that Mr. Ahmed committed "instances of physical abuse [against Sa.A.], forcible confinement [of Sa.A.], threats against the life of [Sa.A.]," and "two attacks with knives on [Sa.A.]." This appears to be the "evidence" referenced in the MVJ when it stated:

> The Defense located formally-documented evidence of allegations that one of the suspects had engaged in aggressive and/or violent acts toward a woman known to him and forcibly confined her. It was also alleged that this suspect made threats against the life of this person.
>
> These events happened prior to the trial in this case, and this information was known to the State.

(MVJ at p. 10).

Mr. Ahmed categorically denied these allegations in his divorce filings. (Ex. 113). As far as the State is aware, these allegations against Mr. Ahmed were never the subject of a criminal investigation and the divorce court made no findings regarding their veracity.

On August 25, 2022, one SRT member emailed another SRT member a document titled "Evidence re Bilal Adhmed [*sic*]." (Ex. 7). This document detailed that Mr. Ahmed was a sexual predator who targeted boys and men in the Muslim community. In addition to referencing the State's undated note and the note reflecting the October 20, 1999 call with So.A. (both discussed above), the SRT member asserted:

- "There is speculation that Ahmed was starting to groom Syed for himself."
- "Ahmed was very angry at Syed for putting girls phone numbers, and not his phone number, on his speed dial."
- After Bilal assisted the Syed family in hiring Ms. Gutierrez, "He tried to participate in all the attorney meetings. It got so bizarre that they had to tell him to stop coming."
- When Mr. Ahmed was arrested in October 1999, "He had a picture of Syed in his pocket."
- During the October 1999 arrest, "Detectives in Baltimore County talked to Detective Ritz about their arrest of Ahmed. Ritz allegedly explained that he really did not have anything to do with the case. One detective said that Bilal was trying to use his involvement in the HML [Hae Min Lee] case as a bargaining chip to get out of the charges."

With the limited exception of case notes from the defense file indicating that the Syed family and Mr. Ahmed mutually agreed that Mr. Ahmed would stop attending family meetings with Ms. Gutierrez (Ex. 88, 89), the State has been unable to identify the source of any of this information in the State's case file nor otherwise verify its accuracy.

Oddly, the SRT member accuses Mr. Ahmed of lies and deception several times in this document and accuses Mr. Ahmed of "starting to groom" Mr. Syed – yet also suggests that he was "Syed's alibi witness and would have testified that Syed was at temple during Ramadan on the day of the abduction/murder from 5:30-10:00 p.m." It is unclear if or why the SRT would have credited an alibi from Mr. Ahmed.

The SRT member summarized in this August 25, 2022 document:

> POSSIBLE RATIONALE FOR KILLING HML – Ahmed was grooming Syed to be a boyfriend. Ahmed became jealous of the relationship with HML and decided she had to go. He is an extremely manipulative and disturbed individual. He had access to money and resources.
>
> There was a lot of evidence that Syed's parents did not approve of the relationship because he should not be dating, and he definitely should not be dating a non-muslim [*sic*]. Ahmed agreed and may have thought of removing HML as some sort of deranged way of upholding the religion.

The SRT member also alleged in this document that Mr. Ahmed "hired Gutierrez's firm to represent him in his divorce (which began in October 1999, right after he was found in a compromising position with the Kosovo boy). This was a clear conflict of interest that was not disclosed to Syed."

As previously detailed, Mr. Ahmed filed for divorce from Sa.A. in December 1999. According to publicly available records, his divorce attorneys were L.R. (12/9/1999-8/16/2000) and M.S. (8/18/2000-8/2/2013) (Howard County Circuit Court Case No. [###redacted###]).[41] (Ex. 113, 114).

On February 19, 2025, Mr. Syed filed a Supplement to Defense Response to State's Motion to Vacate. In this filing, Mr. Syed notes that L.R. was, at the time that he represented Mr. Ahmed in his divorce proceedings, Ms. Gutierrez's law partner. Mr. Syed alleges that the State's purported *Brady* violations prevented the defense from identifying Mr. Ahmed as a viable alternative suspect and recognizing a potential conflict of interest. Mr. Syed presents letters from two attorneys

[41] The January 2025 report recalled that one SRT member "was convinced the conflict rose to the Strickland standard for prejudice." (Ex. 5). This sentence is nonsensical, as conflict of interest is one of the few areas where *Strickland* prejudice is presumed. *See Ramirez v. State*, 464 Md. 532, 563 (2019) (prejudice in a *Strickland* context is only presumed in cases of "actual or constructive denial of counsel and actual conflict of interest"); *quoting Bowers v. State*, 320 Md. 416, 425 (1990).

deemed "nationally renowned ethics experts," Professor Stephen Gillers of the New York University School of Law and Professor Bruce A. Green of Fordham University School of Law.

Initially, both of the defense's proffered experts based their opinions on incorrect facts. Professor Gillers incorrectly characterized the unattributed note as "information that an alternative suspect may have been involved in the murder of Hae Min Lee." He also wrongly described the note reflecting October 20, 1999 call with S.A. as "information from a different source that the same alternate suspect stated that he would kill Hae Min Lee and his motive for doing so." Similarly, Professor Green incorrectly described the unattributed note as information "that the same alternative suspect stated that he would kill a women, evidently referring to Hae Min Lee." He inaccurately characterized the note reflecting October 20, 1999 call with S.A. as stating that "the alternative suspect had threatened a women in front of his wife." Both "ethics experts" also assume that these notes were not disclosed to the defense; an assumption that, as extensively detailed above, is not supported by the evidence.

Regardless, the opinions of both "ethics experts" are fatally undermined by the fact that neither note constituted *Brady* material. Both professors emphasize that their conclusions are premised on the notion that the State committed *Brady* violations. Professor Gillers stated: "I am assuming that failure to disclose the alternate suspect information violated *Brady v. Maryland*, 373 U.S. 83 (1963) and later cases addressing *Brady*." Similarly, Professor Green stated: "I have been asked to assume that, for the reasons expressed in the State's subsequent Motion to Vacate Judgment, filed in September 2022, the prosecution had a constitutional obligation under *Brady v. Maryland* to disclose its information about the alternative suspect[.]" Because the MVJ's finding of *Brady* violations is not supported by the facts or the law, these opinions are baseless.

Additionally, as detailed above and below, the available evidence does not support Mr. Ahmed's viability as an alternative suspect.

c. The SRT's Investigation of Mr. Ahmed

The SRT sought evidence of Mr. Ahmed's guilt in several different ways.

i. Mr. Ahmed's Federal Prosecution and Conviction

As previously discussed, on May 15, 2017, Mr. Ahmed pleaded guilty to one count of First Degree Sexual Abuse of a Patient with Aggravating Circumstances, four counts of Second Degree Sexual Abuse of a Patient with Aggravating Circumstances, two counts of Misdemeanor Sexual Abuse with Aggravating Circumstances, and one count of Simple Assault. On September 6, 2019, Mr. Ahmed entered pleaded guilty to one count of Health Care Fraud, in violation of 18 U.S.C. § 1347. *U.S. v. Bilal Ahmed, DDS*, U.S. Dist. Ct., Dist. of Columbia, case no. 1:19-cr-000026.

An SRT member spoke with S.M., a federal prosecutor who worked on Mr. Ahmed's criminal sexual abuse case, on July 7, 2022. S.M. told the SRT member "that she got a call from the ex-wife's brother asking her to please look into Bilal for the murder of HML [Ms. Lee] – He said that Bilal is a demon."[42] (Ex. 23). Also on July 7, 2022, S.M. emailed the SRT member several documents related to these criminal matters. (Ex. 115-119). On October 11, 2022, the SRT member provided S.M.'s contact information to the BPD. (Ex. 120).

ii. Sa.A.

As previously detailed, N.A., Sa.A.'s brother, spoke with Ms. Suter on July 6, 2022. Sa.A. spoke with an SRT member on July 7, 2022. The SRT memorialized these conversations in case

[42] As previously discussed, there is reason to doubt the credibility and motivations of Sa.A.'s brothers.

notes. (Ex. 21, 22). These individuals are also the apparent sources of information in the two handwritten notes in the State's file that the MVJ deemed "Brady material."

For the reasons detailed above, the State does not believe that Sa.A. or either of her two brothers – N.A. and So.A. – can provide credible evidence that Mr. Ahmed is a viable alternative suspect.

iii. Interview with Mr. Ahmed

After the MVJ was filed, on September 22, 2022, Ms. Suter sent an SRT member "Interview Notes" from a conversation that she had with Mr. Ahmed on July 25, 2022. (Ex. 24). Mr. Ahmed repeatedly told Ms. Suter that he did not remember anything about the case. During this interview, Ms. Suter reportedly asked Mr. Ahmed if he believed that Mr. Syed was innocent. Mr. Ahmed responded: "Correct."

d. Conclusion

The actual evidence against Mr. Ahmed can be reduced to propensity evidence that Mr. Ahmed was a sexual predator who targeted boys and young men – evidence with no significance to this case since Mr. Syed has conclusively and repeatedly maintained for decades that Mr. Ahmed did not sexually abuse him – and statements from Sa.A. and her brothers that are not credible. The State is not convinced that further investigation into Mr. Ahmed would yield any additional evidence suggesting that he was involved in Ms. Lee's murder.

Was the Trial Evidence Otherwise Sufficient?

The State begins its review with the Supreme Court of Maryland's finding in 2019 that the State presented "substantial direct and circumstantial evidence pointing to Mr. Syed's guilt" at trial. *State v. Syed*, 463 Md. 60, 97 (2019).

The SRT identified a number of concerns that they believed required further investigation and/or consideration. The January 2025 report recalled: "I communicated these concerns to the front office [BCSAO executive staff], who advised me to continue to investigate." (Ex. 5). It is important to note that the SRT's concerns regarding the trial evidence did not themselves provide legal grounds for vacating the conviction; some of these concerns did, however, factor into the conclusion in the MVJ that the two handwritten notes met *Brady*'s materiality requirement.

The SRT first raised concerns about Mr. Syed's conviction in a December 7, 2021 "first draft" of a "review of Adnan Syed conviction & sentence." (Ex. 13). To prepare this document, an SRT member reportedly reviewed the BPD's investigative file (a 2,362-page document obtained on November 11, 2021; Exhibit 121), as well as the trial transcripts of both trials. The SRT had not yet received the State's trial file from OAG. The SRT independent investigative efforts to this point appear to consist of performing a search of publicly available property records; driving to Mr. Sellers' home to "observe the scene"; reviewing locations on Google Maps; and emailing BCSAO investigators to obtain a contact card for Mr. Sellers' sister, generate criminal history reports for Mr. Sellers and Mr. Wilds, locate vehicle registration information for Mr. Sellers and his wife, E.S., and confirm whether Mr. Sellers' fingerprints are available in AFIS. (Ex. 13, 122-124).[43]

[43] A federal fingerprint-based identification system.

On January 25, 2022, an SRT member created two revised memoranda: one labeled "For Investigators" (Ex. 14) and another labeled "Working Draft." (Ex. 15). As far as the State can determine, there are no subsequent versions of these memoranda.

On or about August 15, 2022, an SRT member created a 3-page document titled "Probable Cause – Bilal Ahmed." (Ex. 18). On or about August 23, 2022, an SRT member created a 2-page document titled "Do we have enough probable cause to request a search warrant to search Alonzo Sellers' home?" (Ex. 19).

There are many unattributed assertions in these memoranda that the State has been unable to substantiate with the records in the State's case file. The State is forced to conclude that the SRT did not preserve many of the documents that informed these memoranda.

The January 2025 report advised that when one of the SRT members started to review this case, that person "had no preconceived opinion, except leaning toward the conclusion that Defendant Syed was guilty." (Ex. 5). On the contrary, a fair reading of the SRT's memoranda and case notes reveals an outcome bias **in favor of a conclusion that Mr. Syed was innocent or, at least, wrongfully convicted**. This bias is most apparent in the December 2021 memorandum where a member of the SRT details a list of "possible legal issues & pathways" consisting solely of the following options:

1. Newly-discovered evidence (Writ of Actual Innocence)

2. Prosecutorial Misconduct & IAC (Post-Conviction and/or JRA)

3. Reviewing evidence again, in light most favorable to the State, **and it indicates innocence of Syed** (JRA or Writ of Actual Innocence (*but not newly discovered*) [hanging parenthesis in original] [emphasis added]

4. Reviewing evidence again, in light most favorable to the State, **and it shows that Sellers is more likely the killer** (Writ of Actual Innocence, but would keep info confidential from public) [emphasis added]

5. Recantation (Writ of Actual Innocence)

(Ex. 13) (emphasis added).

The SRT member does suggest that the State could "[s]upport a Juvenile Restoration Act motion" – a proceeding that would not result in a vacatur of Mr. Syed's conviction – but with the caveat that "Syed would still need to pursue a separate writ of actual innocence." Nowhere in any of the contemporaneous memoranda, case notes, or written communications does any member of the SRT allow any possibility that Mr. Syed was correctly convicted of murdering Ms. Lee.

Outcome bias is deeply troubling in a prosecutor, under any circumstances – but certainly in a case where a jury convicted a defendant beyond a reasonable doubt and that conviction withstood extensive post conviction litigation and appellate review. The SRT's biased approach to reviewing and investigating this case infected every aspect of their findings and the conclusions of the MVJ, including their assessments of the strength and reliability of the trial evidence.

b. Specific Issues

ii. DNA Testing

In 2018, the BPD tested various items. That testing yielded no significant results.

As previously detailed, on February 23, 2022, Ms. Suter emailed an SRT member an "Evidence Submission Form" for the Forensic Analytic Crime Lab ("FACL") in Hayward, CA. [44]

[44] According to their website, FACL's DNA Evidence and Forensic Biology section "is accredited by ANAB [American National Standards Institute ("ANSI") National Accreditation Board] to the current ISO/IEC [International Organization for Standardization/International Electrotecnical Commission] 17025 international standard and FBI QAS [Federal Bureau of Investigation Quality Assessment Standards] for biological screening and autosomal and Y-chromosome STR analysis in forensic casework." However, FACL is not a National DNA Index System ("NDIS") participating laboratory. Section 17.2.1 of the FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories states:

> A vendor laboratory that is performing forensic DNA analysis for a law enforcement agency or other entity and generating

(Ex. 77, 78). The SRT member apparently filled out this form and then forwarded the completed form to the other SRT members and one BCSAO staff member.

On March 10, 2022, the BCSAO and the defense team filed a Joint Petition for Post Conviction DNA Testing of Ms. Lee's clothing and other items, requesting that the items be sent to FACL.

On March 14, 2022, the court granted the Joint Petition for Post Conviction DNA Testing and ordered the BPD to mail FACL the items assigned to the following property numbers:

- 99004666
- 990[0]8996
- 99004672
- 99004674

On April 1, 2022, pursuant to the court's order, the BPD sent several items to FACL for trace DNA testing:

- Victim's clothing: white jacket, short sleeve t-shirt, black skirt, undergarments (panties, bra, panty hose, headband) (Property #99004666)
- Hairs recovered from victim's body and/or clothing (Property #99004666)
- Black dress shoes (Property #08996)
- Victim's pubic hair combed, head hair (Property #99004672)
- Oral swabs, rectal swabs, vaginal swabs (Property #99004672)
- Victim's left fingernails, right fingernails (Property #99004672)
- Vial of victim's blood (Property #99004674)

(Ex. 80, 81).

> DNA data that may be entered into or searched in CODIS [Combined DNA Index System] shall not initiate analysis for a specific case or set of cases until documented approval has been obtained from the appropriate NDIS participating laboratory's technical leader of acceptance of ownership of the DNA data.

As far as the State can determine, FACL did not obtain such prior documented approval before performing trace DNA testing in this case. Consequentially, their testing results cannot be uploaded to CODIS and could only be compared against the known samples in its possession. The failure to get such prior approval, and its consequences for the future usability of these items, reflects the SRT's goal to make a case against Sellers at any expense.

On April 5, 2022, Ms. Suter submitted the following additional items to FACL for testing, presumably recovered from Mr. Sellers' home during "Operation Trash Panda." No usable DNA was recovered from any of these items.

- 3 light blue surgical masks
- A plastic fork, knife, spoon
- 2 crumpled Kleenex
- An O'Doul's glass bottle
- A green plastic Seagrams Ginger Ale Bottle
- A Deer Park Water Bottle
- A Dunkin Donuts coffee cup w/lid

(Ex. 80, 81).

During a call between Ms. Suter and FACL on May 3, 2022, they created a "DNA Testing Plan." Ms. Suter later "briefed" the SRT about this plan, which an SRT member then outlined in an email to SA Mosby and a BCSAO staff member on May 4, 2022. (Ex. 125, 126). The plan consisted of two "phases," plus a possible third phase:

> **Phase I**
>
> 1. The victim's bra will be swabbed for DNA. They will focus on the perimeter of the front facing material, and the inside of the bra.
>
> 2. The victim's underwear will be swabbed in the crotch area for DNA. (Note: the underwear was tested for sperm in 1999. However, the testing lab commented that the slides were not properly mounted at that time in order to test for sperm.)
>
> 3. The victim's tee-shirt will be swabbed in the front bottom area.
>
> 4. The combed pubic hair sample will be tested.
>
> 5. The victim's fingernails were tested in 2018 (pursuant to an AG request). However, the testing lab commented that the testing was not properly done. The BPD lab apparently cut the fingernails in half (which is against procedure) and did not test the clippers. So, the testing lab will retest these items.

Phase II

> If we do not develop a DNA profile from those materials, then we have more to test. Those items include:
>
> 1. The victim's jacket
>
> 2. The victim's skirt
>
> 3. The victim's boots
>
> 4. Hair samples (there were a number of hairs recovered from the victim's clothing. In 1999, BPD tested 2 of those hairs and excluded Syed and Jay Wilds. However, there are no notes as to which 2 hairs they tested. The lab will review all hair samples.)

The SRT member also suggested a "Phase III?" in which 2 items that were tested by the BPD in 2018 could be re-tested by FACL "due to concerns that the BPD was not properly testing items." The 2 items that the SRT member identified were (1) a whiskey bottle found at the scene which was confirmed to contain epithelial cells; and (2) a shirt found in Ms. Lee's car that had blood on it.

There is ample evidence that the black dress shoes (or "boots") submitted to FACL were not found on or with Ms. Lee's body; instead, police recovered them from her car on February 28, 1999.

1. The Office of the Chief Medical Examiner ("OCME") autopsy report listed the clothing recovered from Ms. Lee's body and did not list any shoes. (Ex. 127). This is also reflected in the OCME Body Receipt Record and Receipt for Property & Evidence, dated (respectively) February 9 and 10, 1999. (Ex. 128, 129).

2. Mr. Wilds testified at the first trial that when he saw Ms. Lee's body in the trunk, she was not wearing any shoes. (T. 12/15/1999 at 140).[45]

[45] Mr. Wilds also testified at the first trial that Ms. Lee was wearing "taupe" pantyhose, a "skirt," and a "white blouse." (T. 12/15/1999 at 140).

3. Mr. Wilds' testimony was consistent with his recorded statement to police on February 28, 1999, during which the following exchanges occurred:

> Det. Ritz: So you see her in the trunk of the car, you said she's blue, do you recall what type of clothing she's wearing?
>
> Mr. Wilds: Um a black skirt, um some like [inaudible] stockings um and ah a white blouse.
>
> Det. Ritz: Okay, does she have her shoes on?
>
> Mr. Wilds: No.

Tr. 2/28/1999 at 8. (Ex. 87).

> Det. Ritz: When Adnan put her in the shallow grave did you see her shoes?
>
> Mr. Wilds: No.
>
> Det. Ritz: What happened to her shoes?
>
> Mr. Wilds: He told me he left them in the car.
>
> Det. Ritz: He told you he left them in the car?
>
> Mr. Wilds: Uh huh.

Tr. 2/28/1999 at 17. (Ex. 87).[46]

4. On February 28, 1999, Mr. Wilds directed the police to Ms. Lee's car, which they searched and inventoried. (T. 1/27/2000 at 202). A BPD Evidence Inventory Sheet dated that same day reflects that Officer Gregory MacGillivary recovered a "pair of black dress shoes." (Ex. 130). A BPD Evidence Room inventory report reflected a "pair of black dress shoes recovered from back seat area" of Ms. Lee's car. (Ex. 131).

Mr. Wilds was not asked any questions about Ms. Lee's shoes during the second trial. In fact, Ms. Lee's shoes were not discussed at all during the second trial.

[46] The credibility of Mr. Wilds' account is bolstered by the fact that this description of Ms. Lee's clothing matched what she was wearing when police recovered her body, including that she was not wearing any shoes.

On July 6, 2022, an SRT member emailed the SRT and SA Mosby and advised that the amounts of DNA that FACL could recover from the fingernails and shirt were too small to allow FACL to develop a DNA profile. The SRT member reported that FACL would attempt to test these items for YSTR mitochondrial DNA. Six days later, the SRT member reported that the YSTR test also yielded no usable results; "[s]o, no testable DNA recovered this round." (Ex. 132).

On August 18, 2022, FACL issued a "Laboratory Report" for the first of two rounds of trace DNA testing. (Ex. 80). FACL emailed this report to Ms. Suter, who provided it to an SRT member on August 22, 2022. (Ex. 133). The SRT member emailed this "case summary" to the BPD and another SRT member on September 23, 2022. (Ex. 134).

On September 22, 2022, during an email exchange with an SRT member and two BCSAO staff members about whether to release the handwritten notes referenced in the MVJ to the Baltimore Banner, SA Mosby stated:

> Releasing this note may be problematic for not only the pending investigation against the alternative suspects but also against Syed, should we elect to try him.
>
> It's actual evidence in an open and pending investigation. We haven't cleared Syed yet.

(Ex. 135).

On September 26, 2022, a reporter from the Baltimore Sun emailed a BCSAO staff member asking SA Mosby about her statement to WJZ "that she would certify Mr. Syed's innocence if the DNA pointed to another person or is inconclusive." SA Mosby responded to the BCSAO staff member, copying two SRT members: "The verification would be based off of all the other questionable issues in the case." An SRT member responded: "Is this inconsistent with our messaging that we have requested BPD to investigate?" (Ex. 136).

The SRT "received the verbal results" of a "second round" of testing on October 7, 2022. Like the testing in 2018 and March 2022, the FACL testing yielded no significant results. In an email to SA Mosby, an SRT member, and a BCSAO staff member on October 10, 2022, an SRT member summarized the results of both rounds of "testing [] for touch DNA":

> Round 1: Testing items that were previously tested.
>
> - Bra
> - Underwear
> - Tee-Shirt
> - Pubic Hair
> - Rape Kit
> - Fingernails
> - Fingernail Clippers
>
> Results: Trace-level male DNA was detected on the victim's right fingernail swabs, the right fingernail clippers swabs, and the victim's shirt swabs. The swabs from the right fingernail and shirt were then analyzed with a genotyping kit that targets male Y-chromosome STR DNA. However, no useful typing results were obtained from this analysis. Another shirt swab and the right hand fingernail clippers were not analyzed because it was determined the amount of male DNA was so minimal it would not likely produce any results. Only female DNA was recovered from: pubic hairs, left hand fingernail swab, left hand fingernail clippers swabs, anal swabs, vaginal swabs, bra swabs, and underwear swabs.
>
> Round 2: Testing items that were NOT previously tested.
>
> - Skirt
> - Pantyhose
> - Shoes
> - Jacket
>
> Results: No DNA was recovered from the skirt, pantyhose or jacket swabs. A DNA mixture of 4 people was identified on both shoes (the same 4 people for both shoes). The following people were excluded:
>
> 1. Adnan Syed
> 2. Jay Wilds

3. Victim, Hae Min Lee

(Ex. 137).

Also on October 10, 2022, about 40 minutes after the email regarding DNA testing, an SRT member sent an email to SA Mosby, the other SRT members, and several other BCSAO staff members, in which the member documented described "Issues that point to innocence and/or unreliability of evidence at trial." That email stated:

> DNA – the lack of DNA on the other pieces was not helpful in determining guilt or innocence. But the lack of Defendant's DNA on the shoes is somewhat helpful. Keep in mind that a lot of person's DNA could be on anybody's shoes at anytime. **So, the lack of DNA is not conclusive of innocence**.

(Ex. 138) (emphasis added).

That same email stated: "**The most helpful evidence that would lead to a conclusion of innocence is the evidence that other suspects were the actual perpetrators**." [emphasis added].

On the morning of the following day, October 11, 2022, SA Mosby held a press conference and made the following statement:

> This morning, I instructed my office to dismiss the criminal case against Adnan Syed following the completion of a second round of touch DNA testing of items that were never tested before. Those items include skirt, pantyhose, shoes, and jacket of Ms. Hae Min Lee.
>
> Although no DNA was recovered from the skirt, the pantyhose or jacket swabs, there was a DNA mixture of multiple contributors on both Ms. Lee's shoes, the same multiple contributor [*sic*] for both of Ms. Lee's shoes. And most compellingly, Adnan Syed, his DNA was excluded.
>
> My office received notice of these results on Friday. This morning, I personally reached out to the victim's attorney to inform Ms. Lee's family of the DNA findings and my decision to dismiss the case. We attempted to wait for confirmation of notice before releasing anything publicly, but we still at this point have not heard back from that attorney.

> As we communicated to the family before, we stand ready and willing to provide whatever counseling or support services that may be needed for that family, who has had to relive an unimaginable nightmare over and over again.
>
> Equally heartbreaking is the pain and the sacrifice and the trauma that has been imposed not just on that family, but Adnan and his family, who together spent 23 years in prison for a crime as a result of a wrongful conviction.
>
> The fundamentals of the criminal justice system should be based on fair and just prosecution, and the crux of the matter is that we are standing here today because that wasn't done 23 years ago. Although my administration was not responsible for neither [*sic*] the pain inflicted upon Hae Min Lee's family, nor was my administration responsible for the wrongful conviction of Mr. Syed, as a representative of the institution it is my responsibility to acknowledge and to apologize to the family of Hae Min Lee, and Adnan Syed.
>
> As the administrator of the criminal justice system, it is my duty to ensure that justice is not delayed, justice is never denied, but justice be done. Today, justice is done. And that means today, tomorrow, and until my administration ends, we will continue to utilize every available resource to prosecute whoever is responsible for the death of Hae Min Lee.
>
> Because this is an open and pending investigation, we will not be disclosing anything else at this time.

The January 2025 report emphasized that the decision to drop the charges against Mr. Syed "was made solely by Ms. Mosby." (Ex. 5). The author opined: "Although I did not agree with dismissing the case so quickly, I believe the end result was correct and just."

Other people also questioned SA Mosby's decision to drop the charges against Mr. Syed.

On October 25, 2022, the OAG expressed concern that in dropping the charges, "Ms. Mosby did not offer any evidence that the perpetrator handled Ms. Lee's shoes or provided any other reason to believe that the absence of Mr. Syed's DNA on Ms. Lee's shoes exonerated him." (OAG Response, pp. 25-26).

On October 27, 2022, The Honorable Wanda K. Heard (Ret.), who presided over Mr. Syed's trial in 2000, took the extraordinary step of executing an affidavit in which she affirmed:

> As the trial judge in this matter, I would direct the court to the transcript of the trial as I recall no evidence or testimony that Mr. Syed handled the shoes of Hae Min Lee. The absence of touch DNA on her shoes would seem to be an unusual basis to eliminate Mr. Syed as Ms. Lee's killer in the face of other overwhelming and riveting testimony of the eyewitness of Jay Wilds, who testified that he assisted Mr. Syed in the burial of her body.

(Ex. 139).

Judge Heard executed this affidavit "[a]t the request of the victim and in the interest of justice."

FACL issued a "Supplemental Laboratory Report" on October 19, 2022, reflecting the previously described results. (Ex. 81). FACL sent the report to Ms. Suter and she emailed it to an SRT member on October 20, 2022. (Ex. 140). The SRT member emailed the Supplemental Laboratory Report to BPD on November 14, 2022. (Ex. 141).

On November 2, 2022, a BCSAO staff member made note of a discussion with an SRT member concerning the FACL report and the lack of DNA recovered from "Operation Trash Panda." The staff member wrote:

> **[The SRT member] didn't see how the DNA on the shoes made a difference since they were found elsewhere.** [The SRT member] didn't think the DNA results exonerated Syed. [The SRT member] said that [the SRT member] thinks the murderer would have touched it.

(Ex. 142) (emphasis added).

The note continues: "[The SRT member] also mentioned that [the SRT member] was fine with the new trial but was not aware the office was going to proclaim innocence."

After thoroughly reviewing the DNA testing results from 2018, March 2022, and October 2022, the State does not believe that any of these results are significant to the question of whether

Mr. Syed is guilty or innocent of murdering Ms. Lee. The State declines to adopt SA Mosby's public statements to the contrary.[47] The State also concludes that after several rounds of DNA testing, no further meaningful DNA testing can be performed on the physical evidence in this case.

v. Cell Phone Records

The MVJ did not identify the cell phone evidence, or indeed any individual component of the State's trial evidence, as justification for the vacatur in and of itself. Instead, the MVJ included the trial evidence as part of its determination that the two handwritten notes met *Brady*'s materiality requirement. The MVJ adopts the conclusion of the post conviction court that trial counsel rendered ineffective assistance of counsel for failing to sufficiently challenge the State's cell phone evidence.

[47] It is unclear whether SA Mosby was aware that the shoes were not found on or near Ms. Lee's body when she decided to drop the charges against Mr. Syed.

On March 23, 2022, one SRT member emailed another SRT member a "Forensic Testing Spreadsheet" that inaccurately stated that these shoes were recovered "On [Ms. Lee's] body." (Ex. 143, 144). The SRT never corrected this spreadsheet. In fact, the January 2025 report included a document labeled "Forensic Testing History – Spreadsheet – SAO" that **still** reflected, inaccurately, that the shoes were recovered "On [Ms. Lee's] body." (Ex. 16).

On October 11, 2022, an SRT member sent a BCSAO staff member edits to a press release which added the following clarifying language: "The victim's shoes that she was last seen wearing were removed prior to her burial and left in her vehicle." (Ex. 145, 146). One minute later, the staff member sent a draft of this press release to the other two SRT members for their review, stating: "Attached is the press release today for your review, [another SRT member] has reviewed." The draft that the staff member sent mistakenly did not include the clarifying addition, nor any of the other redlined edits. (Ex. 147, 148). The final press release provided no details about where the shoes were recovered. (Ex. 149).

The January 2025 report noted that these shoes were recovered from Ms. Lee's car. The report speculated: "This could be something or it could be nothing. Her shoes were removed from her body and placed neatly in her vehicle, so the person who killed her likely handled her shoes." (Ex. 5).

Trial counsel's ineffectiveness for failure to challenge the cell phone evidence was raised for the first time in a motion to reopen the post conviction proceedings in 2015. The issue was litigated before The Honorable Martin P. Welch (Ret.), Associate Judge for the Circuit Court for Baltimore City, who determined that Ms. Gutierrez was constitutionally ineffective for failing to challenge the reliability of the cell tower location evidence by cross-examining the State's expert about the fax cover sheet disclaimer on State's Exhibit 31,[48] which stated: "Outgoing calls only are reliable for location status. Any incoming calls will NOT be reliable information for location." (Ex. 150). The Appellate Court,[49] and, ultimately, the Supreme Court[50] reversed, deeming this issue procedurally waived because Mr. Syed had failed to raise it during previous post conviction litigation.[51]

Mindful that Mr. Syed's post conviction challenge to the cell phone evidence was rejected by the courts for procedural reasons and not on its merits, the State conducted a careful review of this evidence. The State's review revealed that during the previous post conviction proceedings, the subject of the cell tower evidence became convoluted with other arguments and opinions by multiple experts. A fair and accurate review of the evidence and testimony actually presented at

[48] State's Trial Exhibit 31 was introduced to evidence by way of stipulation on January 28, 2000. (T. 1/28/2000 at 19-20). This exhibit did not include the fax cover page.

[49] At that time the Court of Special Appeals of Maryland.

[50] At that time the Court of Appeals of Maryland.

[51] Judge Welch issued a decision in January 2014 denying the post conviction petition. Mr. Syed appealed this decision and the Appellate Court remanded the matter for additional fact-finding in 2015. After a hearing in 2016, Judge Welch granted Mr. Syed a new trial. This judgment was affirmed by the Appellate Court in 2018. *Syed v. State*, 236 Md. App. 183 (2018). In 2019, the Supreme Court reversed the Appellate Court's decision and reinstated Mr. Syed's conviction. *State v. Syed*, 463 Md. 60 (2019).

trial reveals that the post conviction court's opinion would not survive legal scrutiny on the merits, even if the issue had not been waived, and that the cell phone evidence presented at trial had not been discredited.

Mr. Waranowitz, testified on February 8 and February 9, 2000. (T. 2/8/2000 at 6).[52] He was accepted by the trial court as an expert in AT&T wireless network design and function. (T. 2/8/2000 at 32). Mr. Waranowitz testified that he was employed by AT&T as a radio frequency engineer who worked in the Baltimore and Washington D.C. areas. (T. 2/8/2000 at 9-11). He testified he designed the AT&T network around Baltimore from the "ground up from scratch," including the cell towers themselves. (T. 2/8/2000 at 19). Mr. Waranowitz testified he was familiar with the geographical coverage area[53] of the cell sites of AT&T within the Baltimore/Washington market. (T. 2/8/2000 at 24).

The State asked Mr. Waranowitz to conduct some independent testing of cell tower coverage at specific locations around the Baltimore area. (T. 2/8/2000 at 63). Specifically, he "was asked to visit a number of places (13 in total) in the area located on [a] map and take readings and make phone calls to fin[d] out what cell site [he] would originate at certain locations." (T. 2/8/2000 at 64) (T. 2/9/2000 at 173). State's Exhibit 44 was a map of the locations to which Mr. Waranowitz drove and the cell sites that he measured from the different locations. (T. 2/8/2000 at 84). He used a global positioning system (GPS) to pinpoint his location when he conducted tests on the AT&T network and used equipment that measured specific frequencies to identify a specific cell site. (T.

[52] Ms. Gutierrez also noted Mr. Waranowitz as the defense's own witness; the trial defense team had spoken with him and received documentation from him. (T. 2/8/2000 at 12).

[53] He testified "[c]overage are[a] is where the signal is strong enough to send and receive phone calls." (T. 2/8/2000 at 51).

2/8/2000 at 86). **He testified that he could not tell where a cell phone was physically when it made a call; rather, he could only testify about where he was standing while he conducted his independent testing.** (T. 2/9/2000 at 142, 145-46, 150-51, 185). He further testified that if someone else made a call on the AT&T network from the same location he was standing, he would expect it to connect to the same cell site that he connected to during his test. (T. 2/9/2000 at 142).

Mr. Waranowitz was asked to compare the physical cell site addresses in State's Exhibit 34 to the cell site addresses he measured when conducting his independent testing of various locations.[54] (T. 2/8/2000 at 94; T. 2/9/2000 at 54). He testified that when he got to a location, he would test the signal to towers in the area. (T. 2/8/2000 at 98). He called the test an "origination test." (T. 2/9/2000 at 89). Specifically, when he was taken to the Leakin Park location, he originated a phone call and connected with cell site L689B, with the address of the tower at 2122 Windsor Park Lane. (T. 2/8/2000 at 98; T. 2/9/2000 at 121). He was asked to do a simple **comparison** from his test and testified that this cell site is the same cell site listed on lines 10 and 11 on State's Exhibit 34. (T. 2/8/2000 at 98). Mr. Waranowitz further testified that if two incoming calls were received at the burial site in Leakin Park, and the cell phone records indicated that the calls went through "that particular cell site location," this would be **consistent with his testimony**. (T. 2/8/2000 at 100). Mr. Waranowitz further testified that the 689B cell site "**is the strongest and in most cases the only site that gets in [the Leakin Park] area regardless of where you are located. Only 689B gets into that burial area strong enough to make a phone call**." (T. 2/9/2000 at 136) (emphasis added). Again, not one time during his two days of testimony on direct examination did he rely upon the "location" information contained within State's Trial Exhibit 31

[54] State's Exhibit 34 was a slightly different version of State's Exhibit 31 with the physical location of the towers included.

for incoming calls. The only "location" information he relied upon during direct examination were the addresses of the physical cell phone towers when indicating which towers he was acquiring signals from during his independent testing.[55]

Mr. Waranowitz testified that computer cell phone records (generally) record interactions in the same way as State's Trial Exhibit 34 using a Nokia 6160. (T. 2/9/2000 at 44). He was first questioned about the records on cross-examination. (T. 2/9/2000 at 139). When Ms. Gutierrez addressed the accuracy of State's Trial Exhibit 31 on cross examination, she asked Mr. Waranowitz specifically about the subscriber information, phone number, dates, times and duration of calls. (T. 02/09/2000 at 139-40). Mr. Waranowitz testified that he did not conform his independent testing in any way to the information contained within Exhibit 31. (T. 02/09/2000 at 140-41). Ms. Gutierrez conducted a vigorous cross-examination of Mr. Waranowitz during which he conceded that he could not determine the location of someone when they made or received a call on a particular date, and that he could only testify to what his independent testing yielded as far as cell tower coverage at particular locations given to him by the State.[56] (T. 2/9/2000 at 184-186).

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[55] Notably, not one expert who testified after the trial has challenged the accuracy of his independent testing.

[56] The battery of questions regarding the cell records on cross-examination included the following exchange:

> Q: And [AT&T billing records] can't tell us the location of whoever it was that may have caused a phone call to be made –
>
> A: No.
>
> Q: From that particular phone, correct?
>
> A: Correct.

On redirect examination, Mr. Waranowitz testified that if someone was in Leakin Park with an AT&T wireless phone, those records would indicate the cell site for Leakin Park, which is L689C.[57] (T. 2/9/2000 at 192). That is again based upon his independent testing because the L689B cell site "**is the strongest and in most cases the only site that gets in [the Leakin Park] area regardless of where you are located. Only 689B gets into that burial area strong enough to make a phone call.**" (T. 2/9/2000 at 136) (emphasis added).

The cell phone evidence issue did not appear post-trial until a limited remand from the Appellate Court to "afford Petitioner [Mr. Syed] the opportunity to file a request to re-open the previously concluded post-conviction proceedings and supplement the record in light of the potential alibi witness's January 13, 2015 affidavit." (Ex. 151: Opinion II at 2). Mr. Syed did file a Motion to Reopen Post-Conviction Proceedings on June 30, 2015 regarding the alibi issue. (Opinion II at 2). In addition, Mr. Syed later filed, in contravention of the limited remand, a Supplement to the Motion to Reopen asking to raise additional allegations regarding the reliability of the "cell tower location evidence." (Opinion II at 2). It was at this point that the different pieces of cell tower-related evidence began to commingle, and the issue obscured. In the Supplement to Motion to Re-Open Post-Conviction Proceedings (Ex. 152: "Supplement"), Petitioner paints with a broad brush and alleges: "…**the State's misuse of cell tower location, and trial counsel's**

> Q: Just like your testing on your phone, that day that you don't remember, you can only tell us what your phone did according to you, right?
>
> A: Correct.

(T. 2/9/2000 at 186).

[57] The transcript in this one instance indicates L689C whereas the remainder of his testimony indicated L689B. It is unclear whether this is a typo in the transcript. The "B" versus a "C" designation indicates which side of the L689 tower provided coverage to that area.

failure to do anything about it, amounts to separate claims of ineffective assistance of counsel, prosecutorial misconduct, and a denial of Syed's due process – claims that Syed raises with this filing." (Supplement at 2) (emphasis added).

On September 29, 2015, fifteen years after he testified at trial, Mr. Waranowitz spoke to Defendant Syed's post conviction attorney, Mr. Brown, and the defense's "cell tower expert, Jerry Grant," on the telephone. (Ex. 153: Affidavit of Waranowitz 10/5/2015 at ⁋ 9). It is unclear whether Mr. Waranowitz reviewed his trial testimony prior to speaking with them. Following the call, Mr. Waranowitz signed an Affidavit on October 5, 2015. (Affidavit of Waranowitz 10/5/2015). In it, Mr. Waranowitz stated that just prior to his testimony, the prosecutor showed him State's Trial Exhibit 31 for the first time. (Affidavit of Waranowitz 10/5/2015 at ⁋ 3). He also stated in his Affidavit that he had not seen the disclaimer that "Outgoing calls only are liable for location status. Any incoming calls will NOT be considered reliable information for location." (Affidavit of Waranowitz 10/5/2015 at ⁋ 5). Mr. Waranowitz concluded that "If I had been made aware of this disclaimer, it would have affected my testimony. I would not have affirmed the interpretation of a phone's possible geographical location until I could ascertain the reasons and details for the disclaimer."(Affidavit of Waranowitz 10/5/2015 at ⁋ 7).

On February 8, 2016, Mr. Waranowitz signed a second Affidavit for Mr. Brown. (Ex. 154: Affidavit of Waranowitz 2/8/2016). Again, it is unclear whether Mr. Waranowitz was provided a copy of his trial testimony before Mr. Waranowitz signed the second Affidavit. In the Affidavit Mr. Waranowitz states that "I have reviewed the cell phone documents at issue in this case, including Petitioner's exhibits PC2-15 and PC2-17; and Government's Exhibit B pp 0360-0378." (Affidavit of Waranowitz 2/8/2016 at ⁋ 3). In his second Affidavit, he states he was never shown the AT&T legend prior to testifying at trial. (Affidavit of Waranowitz 2/8/2016 at ⁋ 3). He

concludes in his second affidavit: "Had I seen the fax cover sheet and legend, I would not have testified that State's Exhibit 31 was accurate." (Affidavit of Waranowitz 2/8/2016 at ⁋ 8).

During Mr. Syed's trial, Mr. Waranowitz was only asked questions on cross examination regarding the subscriber name, phone number, dates, times and durations of calls and testified that he would expect "those records to be accurate" on State's Trial Exhibit 31. (T. 2/9/2000 at 139-140). Also, Mr. Waranowitz never "affirmed the interpretation of a phone's possible geographical location" based on the cellular records during his testimony. (Affidavit of Waranowitz 10/5/2015 at ⁋ 7). Instead, he was solely asked to provide the results of his independent testing and what cell towers would provide coverage to specific geographic locations. It is abundantly clear that he did not rely on an exhibit that he was only shown moments before his testimony.

During the post conviction proceeding, instead of calling Mr. Waranowitz – the most direct source to testify about how the disclaimer and legend might have impacted his testimony – the defense called a different expert, Mr. Grant, to opine on how these records would have impacted Mr. Waranowitz's testimony. (T. 2/4/2016 at 180). Mr. Grant testified that he is an expert on computer forensics and historical cell site analysis. He has a private consulting business and works part time for the Federal Public Defender's Office. (T. 2/4/2016 at 181). Mr. Grant, throughout his testimony, discussed State's Trial Exhibit 31. (T. 2/4/2016 at 189). Mr. Grant incorrectly stated during his testimony that Mr. Waranowitz affirmed the reliability of State's Trial Exhibit 31 and how it was used for incoming calls. (2/4/2016 at 189-90). To be clear, Mr. Waranowitz answered a simple comparison question that the cell towers listed on **State's Exhibit 34** (for the time when Mr. Wilds testified he and Defendant Syed were in Leakin Park) were the same cell towers he made contact with from Leakin Park during his independent testing. (T. 2/8/2000 at 98-101). If anything, the testimony bolstered the reliability of information contained in State's Trial Exhibit

31, but it did not blindly adopt – or rely upon – State's Trial Exhibit 31 at all. The remainder of Mr. Grant's testimony simply maintained that Mr. Waranowitz should not have relied upon State's Trial Exhibit 31 during the trial without further investigation of the disclaimer.[58]

The State called Special Agent Chad Fitzgerald from the Federal Bureau of Investigation ("FBI") to testify as an expert during the post conviction proceedings. (T. 2/5/2016 at 166). Agent Fitzgerald is on the FBI's Cellular Analysis Survey Team ("CAST") (T. 2/5/2016 at 168). Agent Fitzgerald opined that Mr. Waranowitz did a fairly thorough job during his independent testing and testimony. (T. 2/5/2016 at 182). Agent Fitzgerald conducted his own independent analysis and did not find that Mr. Waranowitz inaccurately represented any information in his trial testimony. (T. 2/6/2016 at 183-84). Agent Fitzgerald concluded that he would have made the same conclusions today that Mr. Waranowitz made during the trial with respect to the cell towers. (T. 2/6/2016 at 184). Agent Fitzgerald testified that he spoke with AT&T personnel and believes the disputed disclaimer applies only to phones that are off the network or turned off, wherein the calls are routed to the home switch instead of the closest tower. (T. 2/6/2016 at 190-93; 2/9/2016 at 55).

The post conviction court, when addressing the cell phone evidence, first addressed Mr. Syed's *Brady* claim and found that because the documents at issue were contained in trial counsel's file, the issue could have been raised at trial, on appeal, or at the first post conviction hearing and, therefore, was waived. (Ex. 151: Opinion II at 30-31). The court further found that if it considered

[58] No expert ever testified that the cellular records were wrong. The defense experts simply concluded that further investigation should have occurred prior to any reliance being placed on those records.

On September 6, 2022, Ms. Suter emailed an SRT member an "Affidavit of Gerald R. Grant Jr." (Ex. 155, 156). On September 13, 2022, Ms. Suter emailed an SRT member a document titled "Gerald R Grant Jr CV." (Ex. 157, 158). In this affidavit, Mr. Grant merely reiterates his previous position.

the merits of the *Brady* violation, it must fail because the State did not commit a *Brady* violation with respect to the cell phone records. (Opinion II at 31). These rulings disposed of Mr. Syed's prosecutorial misconduct and due process claims.

The post conviction court next turned its attention to "Ineffective Assistance of Counsel – Reliability of **Cell Tower Location Evidence**." (Ex. 151: Opinion II at 34) (emphasis added). Contrary to its previous findings regarding waiver, the post conviction court found that this claim was not waived by the failure to raise it previously.[59] (Opinion II at 36). The post conviction court then articulated the precise issue it endeavored to answer regarding the "cell tower location evidence" when it stated: "Accordingly, the Court shall consider the merits of **the allegation that trial counsel rendered ineffective assistance when she failed to cross-examine the State's cell tower expert about the reliability of the cell tower evidence**." (Opinion II at 37) (emphasis added). Ultimately the court found deficient performance under *Strickland v. Washington*, 466 U.S. 668 (1984), because Ms. Gutierrez "fail[ed] to cross-examine Waranowitz about the disclaimer." (Opinion II at 56). As stated by the post conviction court, the basis of the argument "about the reliability of the cell tower evidence" was State's Trial Exhibit 31 and the disclaimer on the fax cover sheet. (Opinion II at 37, 40).

The inartful framing of the cell phone evidence issue culminated in this erroneous ruling by the post conviction court. In fact, the State's expert was not asked a single question on direct examination about State's Trial Exhibit 31. Nor did Mr. Waranowitz rely in any way on State's Trial Exhibit 31 in drawing the conclusions that he detailed in his direct testimony. (*See* Exhibit 153: Affidavit of Waranowitz 10/5/2015, ¶ 3 (Affiant states he was first shown State's Trial Exhibit 31 right before trial); Exhibit 154: Affidavit of Waranowitz 2/8/2016, ¶ 6 (Affiant states

[59] This finding was reversed on appeal.

he was first shown State's Trial Exhibit 31 while in the courthouse waiting to testify)). Instead, the trial prosecution restricted Mr. Waranowitz's testimony to the independent testing he did for the State at the locations provided for him by the State and the physical location of the cell phone towers provided on State's Exhibit 34.[60] (*See* Exhibit 151: Opinion II at 39). The post conviction court's finding that trial counsel was ineffective for failing to cross-examine the State's expert about something he was never asked about on direct examination was error. *Thomas v. State*, 301 Md. 294, 313 (1984) (matters not raised in direct examination are not the proper subject of cross-examination). *See also Commission on Medical Discipline v. Stillman*, 291 Md. 390, 422 (1981) ("We have long held that cross-examination can relate only to the facts and incidents connected with matters stated in direct examination of the witness…").

A similarly flawed premise also undermined Mr. Syed's and the SRT's conclusions that the State's cell tower evidence, taken as a whole, was unreliable. The "cell tower evidence" is actually made up of multiple components[61] that were improperly interwoven together throughout the post-verdict proceedings, which likely caused an erroneous finding by the post conviction court.[62]

[60] The physical location of the cellular towers at the time of the offense have not been the subject of any debate during the post-trial proceedings in Mr. Syed's case.

[61] The "cell phone evidence" was made up of, at a minimum: (1) Mr. Waranowitz's testing at multiple locations independent of any other testimony or any cell phone records; (2) the physical location of cell phone towers; (3) the coverage area of individual cell phone towers; (4) witness testimony concerning who either called or was being called by Mr. Wilds and Mr. Syed; (5) multiple sets of cell phone records and certifications; (6) Mr. Wilds' testimony regarding he and Defendant Syed's location throughout the day; and (7) State's Trial Exhibit 31.

[62] The post conviction court was forced to limit from the tangled argument a precise issue to attempt to answer during the post conviction proceedings. (Exhibit 151: Opinion II at 37 n.17)

Ultimately, the appellate courts did not assess the merits of the ineffective assistance of counsel finding by the post conviction court since they found that the claim had been waived for post conviction purposes. However, the findings of the post conviction court do not survive legal scrutiny because Mr. Waranowitz did not rely on State's Trial Exhibit 31 and was never asked about this exhibit during direct examination. Mr. Waranowitz's testimony not only independently supports the reliability of State's Trial Exhibit 31; his conclusions are also corroborated by Mr. Wilds' testimony, as well as others who had either spoken with or seen Mr. Wilds and Mr. Syed throughout that day.

The MVJ appears to rely entirely on the post conviction court's erroneous findings regarding the cell phone records and a "doubling down" on defense expert Mr. Grant's opinions regarding the disclaimer in those records. (MVJ, p. 14) ("Based on the post-conviction[] court's lengthy assessment of the issue and its findings, the State's confidence in the reliability of the incoming calls is also shaken."). The SRT apparently failed to conduct any independent review of the underlying records whatsoever. Indeed, the post conviction proceeding transcripts from after the remand were not present in the physical boxes retrieved from the OAG or the electronic file maintained by BCSAO. The State had to specifically request these records from the OAG in electronic format during its review of the issue as it pertained to the MVJ.

The MVJ proffered that the State "has consulted 2 additional non-trial expert witnesses whose expertise include advising the Government on the development, set up, and operation of cellular networks and the operations use of the Global System for Mobile Communications ("GSM") to track and locate cell phones." (MVJ, p. 15). It is unclear to the State who these two undisclosed experts were. The only relevant references the State could locate were a reference to

one SRT member's husband and an online article written by Susan Simpson.[63] An SRT member stated in the December 2021 memorandum:

> I also review a blog by Susan Simpson, a defense associate, who analyzed the cell site information . . . She also noted that only a few of the cell site tower information actually corresponded with Wilds' testimony. I also talked to my husband, who was an RF engineer for the marines, and is currently in a position involving . . . electronic transmissions. He explained how the cell towers worked, covered a large area, and that it was "idiotic" to try to pinpoint a location based on cell phone tower pings.[64]

(Ex. 13).

The January 2025 report stated:

> I contacted four expert witnesses from the telecommunications industry and the Department of Defense to determine if the information submitted by the cellular provider would have been sufficient to provide actionable target quality information. These individuals agreed to speak with me on the condition that they remained unidentified and non-trial experts because of their security clearances and unwillingness to be involved in public litigation. All four experts opined the information was inadequate to state with any degree of specificity that Defendant Syed's phone was located in the vicinity of Ms. Lee's body. Accordingly, the defense should have made its own pre-trial assessment that the cell phone location lacked sufficient probity and reliability to be offered at trial and challenged it.

(Ex. 5).

The State has been unable to identify any of the "four expert witnesses" described in this report. Indeed, these individuals cannot even be called "witnesses" if they are unwilling to identify

[63] The internal Memo where this information was located directs the reader to the following website: https://viewfromll2.com/2015/01/12/serial-the-failure-of-the-prosecutions-cellphone-theory-in-one-simple-chart/ (last visited 1/28/2025).

[64] Because the use of an anonymous "expert" is problematic and since neither of these individuals have provided testimony in this case, the State will restrict any further analysis on this issue to the evidence.

themselves and offer testimony. But in any event, these "four expert witnesses" are under the same misimpression that has infected this issue since it was litigated in the post conviction proceedings – that the "information submitted by the cellular provider" formed the underlying basis for Mr. Waranowitz's conclusions. As previously detailed, this is not consistent with the State's trial evidence and Mr. Waranowitz's trial testimony that he based his conclusions on his own independent testing in 1999 of cell tower coverage at specific locations around the Baltimore area.

The MVJ concludes the cell phone evidence issue with: "[u]pon review of the totality of information now at the State's disposal, the State does not believe the incoming call location evidence is reliable." (MVJ, p. 15). This conclusion is not supported by the record; rather, it appears to be based on an adoption of opinions from unidentified "experts," a rejection of two State's experts, and a mischaracterization of Mr. Waranowitz's trial testimony. The State must, therefore, reject this conclusion.

vi. Detective William Ritz

In the December 2021 memorandum, an SRT member also discussed the matter of Malcolm Bryant, a man who was convicted of assault and murder and then exonerated through DNA evidence. (Ex. 13). One of the officers involved in that case was Detective William Ritz, who was also involved in the BPD investigation into this murder. The memorandum suggested that the Bryant case involved "allegations of withholding exculpatory evidence" against Detective Ritz that were "concerning."

The MVJ repeats these concerns about Detective Ritz. The State is convinced by the OAG's assessment that the statements in the MVJ about Detective Ritz are themselves "concerning" in that the "proof of Detective Ritz's misconduct in the Malcolm Bryant case consisted of a block quote summarizing the plaintiff's unproven claims in a federal lawsuit filed

by the estate of Malcolm Bryant." The OAG also noted: "Tellingly, the other document cited by the State's Attorney, the Report of the Baltimore Event Review Team on State v. Malcolm Bryant, did not find that Detective Ritz committed misconduct." (Exhibit 32: OAG response, p. 18). The OAG raised a valid concern that the MVJ's statements about Detective Ritz were misleading, in that they "described the allegations of misconduct against Detective Ritz" but "did not make it clear that [the MVJ] was citing the plaintiff's unproven claim from a federal lawsuit." (OAG response, p. 20). The State feels compelled to agree with the OAG that the MVJ "offered nothing to support [its] serious allegation of purposeful misconduct by Detective Ritz." (OAG response, p. 21).

vii. Jay Wilds' Credibility

The January 2025 report stated: "Jay Wilds' testimony was the most ridiculous and unbelievable testimony I had ever read in my career." (Ex. 5). This is consistent with statements that an SRT member made in a December 2021 memorandum, which suggested that Mr. Wilds, a key State's witness against Mr. Syed, had "4 possible motives to lie." (Ex. 13). The SRT member admitted: "I made some headway with a few, but nothing has been corroborated." As the SRT was explicitly aware, none of the "4 possible motives" are proven by credible evidence:

1. Mr. Wilds might have been trying to avoid criminal charges in an unrelated matter. The SRT member reportedly tried and failed to find any "evidence of an arrest that was not prosecuted." The sole support for this "possible motive" was a hearsay statement from Mr. Wilds' ex-girlfriend in an HBO miniseries[65]:

> And he [Mr. Wilds] broken down [*sic*] to me, and was like he basically ratted out the guy to get

[65] The MVJ briefly referred to statements from this same HBO miniseries as evidence that Kristi Vinson, who testified that she saw Mr. Wilds and Mr. Syed on the night of Ms. Lee's murder, provided false testimony. (MVJ at p. 16). According to the December 2021 memorandum, Mr. Syed's defense team attempted to obtain an affidavit from Ms. Vinson confirming the suggestion that she provided false testimony. (Ex. 13). Tellingly, it appears that the defense team was not successful.

> himself out of jail with the police … He said he got caught with a whole bunch of weed, and um it was so much they tried to pin it on him, and so basically he ratted the man [*sic*] and gave them a bigger story to get him locked up."

This memorandum also asserted, generally:

> Giving police information about another pending case is a typical and common way for police to find actual (and fake) witnesses. And sometimes arrest paperwork disappears when "witnesses" start to cooperate in other cases.

2. "[Mr.] Wilds testified, albeit inconsistently, that police threatened to charge him with murder."

The State disagrees with this interpretation of the trial evidence. The following exchanges took place during cross examination, when Mr. Wilds discussed the recorded interview with police on February 28, 1999:

> Ms. Gutierrez: When [the police] hauled you down at 1:30 at night and took you to police headquarters they threatened you with arresting you, did they not?
>
> Mr. Wilds: They told me it was a possibility.
>
> Ms. Gutierrez: Yes. And you believed them, did you not?
>
> Mr. Wilds: Yes, ma'am.
>
> Ms. Gutierrez: That it was possible that you would get arrested, right?
>
> Mr. Wilds: Yes, ma'am.

(T. 2/11/2000 at 88-89; *see also* T. 2/14/2000 at 40-41; T. 2/15/2000 at 27).

> Ms. Gutierrez: When they threatened you about being arrested on the very first occasion they made it clear that there was a way out of the arrest, did they not?
>
> Mr. Wilds: No, ma'am.

Ms. Gutierrez: Well, they made it clear, did they not that if you talked to them and you were forthcoming they you [*sic*] had nothing to fear, did they not?

Mr. Wilds: Yes, they told me that.

T. 2/11/2000 at 100.

Mr. Wilds also testified that the police told him that the maximum penalty for murder in Maryland is life imprisonment. (T. 2/15/2000 at 28-29).

Mr. Wilds denied that during his second recorded interview on March 15, 1999, the police "threatened" that he would be charged with murder or "anything." (T. 2/15/2000 at 35-36).

This is apparently the testimony to which this memorandum referred in stating: "[Mr.] Wilds testified, albeit inconsistently, that police threatened to charge him with murder."

There was nothing "inconsistent[]" about Mr. Wilds' testimony on this point. Mr. Wilds testified at the first trial on December 14 and 15, 1999, and at the second trial on February 4, 10, 11, 14, and 15, 2000. At both trials, Mr. Wilds admitted that he pled guilty to being an accessory after the fact to the murder. (T. 12/14/1999 at 185; T. 12/15/1999 at 29, 186; T. 2/4/2000 at 162-163, 164-174, 191-195, 211-220; T. 2/10/2000 at 14, 155; T. 2/15/2000 at 27-28, 70-84, 115-131). His testimony was consistent that the police threatened to charge him with murder on February 28, 1999, and did not make the same threat on March 15, 1999. Mr. Wilds also repeatedly and consistently testified that detectives considered him a "suspect" and that he was "worried about getting arrested for this offense." (T. 12/15/1999 at 93, 97, 100, 118-119, 121, 133, 142, 152, 169-171, 185; T. 2/11/2000 at 89, 92, 99-100; T. 2/14/2000 at 47-48, 72).

Additionally, Mr. Wilds' testimony, quoted above, was that the police "told [him] that [being arrested] was a possibility" and that he had "nothing to fear" if he was "forthcoming" – providing a motive to tell the truth, not a motive to lie. The record, therefore, undermines the

suggestion that the police motivated Mr. Wilds to lie by threatening to charge him with murder if he did not falsely identify Mr. Syed as the murderer.

3. This memorandum guessed, without evidentiary support, that perhaps Mr. Wilds was the source of an anonymous tip to Crime Stoppers and/or an anonymous call to the BPD Homicide Division, both of which identified Mr. Syed as the murderer. The SRT member suggested that Mr. Wilds made these calls but "in order to get the [reward] money, he needed an arrest to be made, which may have provided motive for the false statement to police."

4. This memorandum prefaced the fourth proposed motive: "I know this sounds crazy …" The SRT member went on to suggest that perhaps police gave Mr. Wilds money to purchase a motorcycle from a soccer coach at Woodlawn High School. It continued:

> "I was able to determine that the motorcycle was sold shortly [after March 24, 1999], but to someone who does not appear to have any association with Jay Wilds (that I could find). Wilds was known to drive/borrow motorcycles.

The memorandum also said: "I cannot corroborate that Wilds received a motorcycle for his participation, or was the recipient of award money. But I do think it is VERY possible."

The January 2025 report suggests a possible 5th motive for Mr. Wilds to lie: Perhaps he was the victim of a Baltimore City "culture of beating down witnesses (not physically, but using threatening language) to get them to say what they wanted." (Ex. 5). This proposal, like the others, is mere speculation with no evidentiary support.

Finally, the January 2025 report suggested that police may have administered a polygraph examination to Mr. Wilds. (Ex. 5). The State has not located records of any such examination in the State's trial file.

Mr. Wilds' testimony was subjected to extensive adversarial testing: Ms. Gutierrez cross examined Mr. Wilds for a day during the first trial and for five days during the second. The credibility of Mr. Wilds' account was bolstered by the fact that his description of Ms. Lee's

clothing to police on February 28, 1999, matched what she was wearing when police recovered her body. In addition, Mr. Wilds led police to the obscure location of Ms. Lee's parked car and testimony from Ms. Vinson (discussed above) and Jennifer Pusateri corroborated critical parts of Mr. Wilds' account. Finally, Mr. Waranowitz matched details of Mr. Wilds' testimony with data from his own independent testing in 1999 of cell tower coverage at specific locations around the Baltimore area. In contrast with the many and varied ways that the State corroborated Mr. Wilds' account, the SRT failed to identify any actual evidence that Mr. Wilds testified falsely – although it is true, and was well known to the parties at trial, that Mr. Wilds told various lies to the police during the murder investigation.

The MVJ suggested that "the State cannot rely on Jay Wilds' testimony, alone." (MVJ, p. 16). The State has never attempted to do so. The extensive evidence presented at trial of Mr. Syed's guilt – judged "substantial direct and circumstantial evidence" by the highest Court of this State – was multifaceted and has survived repeated challenges on appeal and in post conviction proceedings. *State v. Syed*, 463 Md. 60, 97 (2019). (*See also* OAG Response, pp. 7-11).

Conclusion

Pursuant to Md. Crim. Proc. § 8-301.1(a):

> On a motion of the State, at any time after the entry of a probation before judgment or judgment of conviction in a criminal case, the court with jurisdiction over the case may vacate the probation before judgment or conviction on the ground that:
>
> (1) (i) there is newly discovered evidence that:
>
> 1. could not have been discovered by due diligence in time to move for a new trial under Maryland Rule 4-331(c); and
>
> 2. creates a substantial or significant probability that the result would have been different; or
>
> (ii) the State's Attorney received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction; and
>
> (2) the interest of justice and fairness justifies vacating the probation before judgment or conviction.

Subsection (g) provides: "The State in a proceeding under this section has the burden of proof."

Taking into account the numerous false and misleading statements in the MVJ, and after fairly and dispassionately reviewing the available evidence, the State is forced to conclude that we are not able to meet our burden of proof under Md. Crim. Proc. § 8-301.1. As such, we have no choice but to withdraw the MVJ.

Just as in the MVJ the State did "not assert[] … that Defendant is innocent," the State does not now make any factual assertions about Mr. Syed's guilt or innocence. We are simply unable to conclude that there is "newly discovered evidence" that undermines the trial result, nor that there is "new information … that calls into question the integrity of the … conviction." As such,

we also cannot conclude that "the interest of justice and fairness justifies vacating the … conviction." Md. Crim. Proc. § 8-301.1.

In making this determination, the State has weighed all of the assertions made in the MVJ, as well as all available memoranda and records that informed the preparation of that filing. The State has also inquired of the trial and post conviction prosecutors, spoken extensively with the defense team, and carefully reviewed an additional memorandum prepared by an SRT member.

Additionally, the State has considered statements from others in the criminal justice community with important and relevant perspectives. In particular, the State found useful an affidavit executed on October 27, 2022 by The Honorable Wanda K. Heard (Ret.), who presided over Mr. Syed's trial in 2000. In that sworn affidavit, Judge Heard states:

> A reading of the trial transcript will show that the jury verdict was supported by substantial direct and circumstantial evidence. However, transcripts do not always reflect the tone, manner and delivery of witness testimony. I heard the evidence and all testimony. The verdict and the swift manner of the verdict being reached made it clear to the court that the jury weighed the credibility of the witnesses who testified and were subject to vigorous cross examination. The jury appeared to have considered all of the evidence, the witness testimony, followed the law in instructions given by this Court, applied the law to the facts and reached their verdict.

(Ex. 139).

Additionally, six days after BCSAO filed the MVJ, on September 20, 2022, Maryland Attorney General Brian Frosh declared that there were "serious problems" with the MVJ.[66] (Ex. 57).

[66] The OAG litigated various aspects of this case from when the direct appeal was initiated in June 2000 through when the latest appeal was decided in August 2024.

The State is aware of the substantial public attention and extreme passions aroused by this case. But as our esteemed colleagues, the other State's Attorneys of Maryland,[67] once observed:

> [C]ontrary to the suggestion by Mr. Syed's supporters, neither a retrial nor a resolution on appeal will end the public debate among the masses; one side or the other will inevitably complain but assessing who is louder and answering public opinion is not the goal of the criminal justice system. We are elected to pursue justice in every case by looking closely at the facts and faithfully applying the law, without passion or prejudice, and regardless of one side's public-relations campaign or the publicity swirling around a case on the internet, on television, or in the papers. Sometimes we have to confess an error at trial or on appeal; sometimes we have to file charges, or decline to file charges, or drop charges, even when it is unpopular. Each of us has done this, and so has the Attorney General of Maryland. But when we do so, it is because it is the right thing to do, not to satisfy the masses or because of public opinion. That is what we are elected (or appointed) and sworn to do, and that is what our courts are bound to do as well.

(Ex. 159).

The State is also mindful that Mr. Syed's conviction stands today after a trial, a direct appeal, a post conviction proceeding, a reopened post conviction proceeding, and careful reviews by the Maryland Office of the Attorney General and the Baltimore City State's Attorney's Office. Today, Mr. Syed is released from confinement. Yet this case continues to torment the Lee family. As Mr. Lee stated during the previous hearing on the MVJ in September 2022:

> I've been living with this for 20 plus years and every day when I think it's over, when I look and think it's over or it's ended, it's over. It always comes back. And it's not just me, killing me and killing my mother and it's really tough to just going through this again and again and again.

[67] This statement is from an *amicus* brief in support of the State's Application for Leave to Appeal filed on October 4, 2016. The State's Attorneys of Baltimore County and Baltimore City were exempted because this murder took place in Baltimore County and the victim's body was found in Baltimore City. All other State's Attorneys in Maryland joined this filing, save for the State's Attorney of Cecil County.

> I believe in the justice system, the Court, the State, and I believe they did a fine job of prosecuting Mr. Syed. And I believe the Judge did make the right decision, but just going through it again it's living a nightmare over and over again. It's tough.

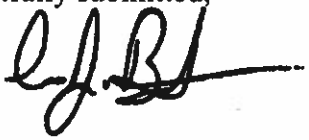
Mr. Lee's experience should trouble all who seek justice. In remanding this case for our further review, the Supreme Court of Maryland pointedly commented on the importance of finality in criminal matters:

> It is no small matter for a court to undo a final judgment of conviction. In multiple contexts, the United States Supreme Court and this Court have emphasized the importance of finality in criminal cases. Finality of criminal judgments furthers several interests, including the retributive and the deterrent functions of criminal law, enhancement of the quality of judging, and the execution of the State's moral judgment in a case. Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out. To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike.

Syed v. Lee, 488 Md. 537, 585 (2024) (citations and quotations omitted).

With deep concern for the Lee family, and for all crime victims, and with the ultimate goal of pursuing justice without regard for politics or public sentiment, the State is no longer actively investigating this case. We hope that our decision to withdraw this motion will achieve finality for the Lee family and allow all parties, including Mr. Syed himself, to find closure and some measure of peace.

Respectfully submitted,



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