

HAWAI'I INNOCENCE PROJECT
SETSUKE REGINA GORMLEY, #8860
JENNIFER LOUISE BROWN, #10885
L. RICHARD FRIED, JR., #764
2485 Dole Street, Suite 206
Honolulu, Hawai'i 96822
Telephone: (808) 956-6547
E-mail: ginagormleylaw@gmail.com
jenbrown@hawaiiinnocenceproject.org

Electronically Filed
SECOND CIRCUIT
2CSP-24-0000030
15-MAY-2024
05:07 PM
Dkt. 13 MES

Attorneys for Petitioner
GORDON CORDEIRO

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

GORDON CORDEIRO,

Petitioner,

vs.

STATE OF HAWAI'I,

Respondent.

S.P.P. No. 2CSP-24-0000030

2CPN-21-0000004 & 2PR06-1-000007
(*companion cases*)

MEMORANDUM IN SUPPORT OF
PETITION TO VACATE JUDGMENT AND
TO RELEASE PETITIONER GORDON
CORDEIRO FROM CUSTODY; EXHIBITS
“A”-“G”; DECLARATION OF COUNSEL;
NOTICE OF HEARING; CERTIFICATE OF
SERVICE

**MEMORANDUM IN SUPPORT OF PETITION TO VACATE JUDGMENT AND TO
RELEASE PETITIONER GORDON CORDEIRO FROM CUSTODY**

Petitioner GORDON CORDEIRO (“Cordeiro”), by and through his attorneys SETSUKE REGINA GORMLEY, and JENNIFER LOUISE BROWN of the HAWAI'I INNOCENCE PROJECT, respectfully petitions this Court to vacate Cordeiro's conviction and immediately release him from custody on the grounds that the judgments in cases Cr. Nos: 94-0522 and 97-0073 are unlawful, in light of new evidence of Cordeiro's actual innocence, the ineffectiveness of

Cordeiro's counsel which violates the United States and Hawai'i Constitutions, and prosecutorial misconduct which deprived Cordeiro of his due process rights under the United States and Hawai'i Constitutions.

This Petition is brought pursuant to Rule 40 of the Hawai'i Rules of Penal Procedure. Cordeiro requests access to any records or materials in the State of Hawai'i's possession that are material to this Petition, pursuant to H.R.P.P. Rule 40(d). Cordeiro should also be granted an immediate hearing on this Petition pursuant to H.R.P.P. Rule 40(f). The Hawai'i Supreme Court has stated that as "a general rule, a hearing should be held on a Rule 40 Petition for post-conviction relief where the petition states a colorable claim. Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999). To establish a colorable claim, the allegations of the Petition must show that if taken as true, the facts alleged would change the verdict." Id. (quoting State v. Allen, 7 Haw. App. 89, 92-93, 744 P.2d 789, 792-93(1987)). As stated in this Memorandum in Support of the Petition to Vacate Judgment and Release Petitioner Cordeiro from Custody, the Declaration of Counsel, all Exhibits attached, and any and all records and files previously submitted in this case, Cordeiro raises a colorable claim, outlined more fully below, that if taken as true would have changed the verdict in his case and as such Cordeiro is entitled to a hearing on this Petition.

I. INTRODUCTION

The facts of Cordeiro's two wrongful convictions are voluminous and complex. Cordeiro's wrongful convictions, as outlined more fully below, are a tragic case of injustice involving fabricated evidence, incentivized informants, ineffective assistance of counsel, and police and prosecutorial misconduct. Despite Cordeiro being actually and factually innocent of the charges for which he was convicted, he has spent over 30 years of a life sentence in prison for crimes he never committed and without the possibility of parole. To fully comprehend this

miscarriage of justice, it is important to first understand how the only known suspect in the murder, Michael Freitas, became the State's incentivized key witness against Cordeiro. Furthermore, after the first trial ended in a hung jury, with 11 out of the 12 jurors believed Cordeiro to be innocent, the State chose to rely on four additional incentivized witnesses, who were all jailhouse informants, that the State knew or should have known lied about Cordeiro in order to benefit themselves.¹

A. The Sole Murder Suspect, Michael Freitas, Becomes the State's Star-Witness.

On August 11, 1994, Michael Freitas ("Freitas") picked up Timothy Blaisdell ("Blaisdell") to take him to Kula, Maui, in an area known as "Skid Row", so that Blaisdell could purchase one pound of seeded weed. Blaisdell left his home with \$800.00 in cash and told his family that Freitas was picking him up so Blaisdell could purchase the weed. Three separate eyewitnesses saw Freitas that day, driving his white Ford Ranger pickup truck toward Skid Row with Blaisdell in his passenger seat. In addition to Freitas, these eyewitnesses would be the last to see Blaisdell alive. That evening, Blaisdell was shot and killed and his body was left at the bottom a ravine at Skid Row, covered with discarded items that were covered in bloody finger and palm prints. The blood found on those items was later forensically determined to be Blaisdell's blood, and the bloody finger and palm prints was forensically determined to belong to Freitas.

An investigation into Blaisdell's murder ensued, and Freitas was quickly identified as the last person with Blaisdell before he was murdered. Blaisdell's family and friends knew that Freitas was the last person with Blaisdell the night he was murdered, and Blaisdell's friends and

¹ The following Sections A – C outline a concise summary of the facts in Cordeiro's case. A detailed factual summary with citations to the records and files in this case, begin in Section II, beginning with the Section titled "Factual and Procedural Overview of Cordeiro's Case."

family immediately confronted Freitas. When Blaisdell's family confronted Freitas, he was incapable of committing to a single story. At first, Freitas denied even seeing Blaisdell on the day he was murdered. Freitas even lied to Blaisdell's family and friends and told them that he had never picked Blaisdell up that day, and named other people he claimed may have been with Blaisdell, all with the hope of diverting attention away from himself.

When Freitas realized that Blasdell's family and friends knew that he had picked up Blaisdell and that he was with Blaisdell before he was murdered, Freitas began to panic. At this point, Freitas knew he would be questioned by the police and needed to concoct a story to explain what he was doing with Blaisdell at the time he was murdered. Instead of protecting the integrity of the investigation into Blaisdell's murder, the Maui Police Department ("MPD") instead planted an inexperienced informant at Freitas' workplace. This confidential police informant, David Shevling ("Shevling"), told Freitas about all of the critical investigative information that MPD had uncovered in Blaisdell's murder and that Freitas was a suspect. For example, Shevling told Freitas that multiple witnesses had seen Freitas driving Blaisdell in his truck toward Skid Row on the day Blaisdell was murdered. Freitas also learned that the MPD had found a piece of paper in Blaisdell's pants pocket that had Freitas' name and number written on it. Freitas also learned that MPD had identified the bloody palm and fingerprints that were left on discarded items used to cover up Blaisdell's body as his. Freitas, now armed with the knowledge of all the evidence that MPD had against him, decided to fabricate a story that would explain all of MPD's incriminating evidence. Freitas used the knowledge he gained from Shevling about the MPD investigation, to concoct a story that he hoped would explain away the physical evidence tying him to Blaisdell's murder, allowing Freitas to go from the sole murder suspect into the State's key witness.

To explain away all of the incriminatory evidence that MPD had implicating Freitas in Blaisdell's murder, Freitas began to devise a story to exculpate him of Blaisdell's murder. Freitas admitted to MPD that he drove Blaisdell to Skid Row, but falsely claimed that another man had shot Blaisdell. Freitas then falsely stated that this man then forced Freitas, at gunpoint, to carry Blaisdell's body down a steep embankment at Skid Row and cover up Blaisdell's body with the discarded items at the bottom of the ravine. Despite the fact that Freitas now claimed that the man who killed Blaisdell was armed with a gun, miraculously this man left Freitas unharmed.

Unbeknownst to Cordeiro, in a desperate attempt to save himself, Freitas' fabricated story to MPD had shifted the blame away from the sole suspect, Freitas, onto an innocent Cordeiro. Prior to knowing all the evidence MPD had against him, Freitas had implicated other known drug dealers in Blaisdell's murder, people Freitas claimed Blaisdell may have purchased weed from. However, once Freitas was armed with all of the incriminating forensic and eyewitness evidence that MPD had against him, he decided to implicate Cordeiro, an innocent man. Freitas decided to falsely accuse Cordeiro because of his anger towards Cordeiro, who Freitas falsely believed had "snitched" on Freitas' friend in an unrelated drug case and caused his friend to be arrested.

Unlike Freitas, who was confirmed through forensic evidence and eyewitness testimony to be involved in Blaisdell's murder, Cordeiro had an actual alibi for the entire day that Blaisdell was murdered. On the day Blaisdell was murdered, Cordeiro was not with Freitas or Blaisdell nor was Cordeiro anywhere near Skid Row. Unlike Freitas, which crime scene evidence proved was with Blaisdell when he was murdered, twenty-two-year-old Cordeiro spent that day at his childhood home where he lived with his parents and sisters. As was typical for Cordeiro, he spent that day at home with his mother, who suffered from ALS and relied on Cordeiro to be her

primary caretaker. In addition to caring for his mother on that day as he did every day, Cordeiro also spent that day building a shelving unit in the family's open-air garage. Cordeiro was home the entire day on the day Blaisdell was killed, leaving only briefly to purchase more lumber for his garage shelving project, a quick errand that was corroborated by a salesman at the lumberyard. Cordeiro continued working on the shelving project throughout the remainder of that day until his sister, Denise Cordeiro ("Denise"), arrived home from work. After Denise arrived at the family home, Cordeiro remained outside in the driveway, where he installed a new stereo in Denise's car. Cordeiro and a friend worked outside on Denise's car until dinner. A few more friends joined the Cordeiro family that evening, where they then ordered pizza and enjoyed dinner together. At the time Blaisdell was murdered, Cordeiro was enjoying an evening at home with numerous members of his family and friends, nowhere near Skid Row where Blaisdell was murdered.

Despite having a multitude of evidence that Freitas had murdered Blaisdell or at a minimum was an accomplice to Blaisdell's murder, MPD detectives ignored this evidence and instead decided to buy into Freitas' fabricated story and eliminated him as a suspect in Blaisdell's murder. Due to MPD's tunnel vision or some personal desire to believe Freitas, caused them to ignore all of the overwhelming evidence of Freitas' guilt and turned Freitas into the State's key eyewitness instead of the State's sole murder suspect. MPD's failure to follow the crucial crime scene evidence and instead believe a fabricated story of their only murder suspect, had disastrous results. MPD's failure to follow the investigative and forensic leads in Blaisdell's murder and instead rely on the lies of their key suspect Freitas, who used Cordeiro as his scapegoat, caused Cordeiro - *an innocent man* - to be charged for Blaisdell's murder. Cordeiro went to trial to prove his innocence that he did not murder Blaisdell. At trial, the jury rejected

Freitas' fabricated story and overwhelmingly agreed that Cordeiro was innocent. Cordeiro's first trial ultimately ended in a hung jury, with only *one* juror voting to convict Cordeiro for Blaisdell's murder.

B. Desperate to Win the Second Trial, the State Uses Additional Incentivized Testimony of Four Jailhouse Informants to Convict Cordeiro.

With his first trial ending in a hung jury, with only one juror voting to convict Cordeiro, the State had to decide on whether to try Cordeiro again. If the State proceeded with a second trial, not only would they have to convince everyone on the jury that Cordeiro was guilty, but they would have to do so with even less evidence against Cordeiro than they had at his first trial. In Cordeiro's first trial, the State presented to the jury that the microscopic hair analysis they conducted on a single hair found on Blaisdell's body was consistent with Cordeiro's hair. However, before Cordeiro's second trial, that hair was submitted to a lab for DNA testing, which ultimately concluded that Cordeiro was not the source of that hair that was left on Blaisdell's body. This new DNA testing done on the hair found on Blaisdell's body which forensically excluded Cordeiro as the source, now directly contradicted the only physical evidence that was presented to the jury that the State claimed connected Cordeiro to the crime scene and thus to Blaisdell's murder.

Now aware of this powerful DNA evidence going into a potential second trial, the State knew that there was no physical evidence tying Cordeiro to Blaisdell's murder because Cordeiro was excluded as the source of the hair found on Blaisdell's body. Instead of recognizing that there was no physical evidence tying Cordeiro to Blaisdell's murder and that their key eyewitness, Freitas, was actually involved in the crime, the State shockingly decided to try an innocent Cordeiro yet again. To bolster the State's case in the second trial, the State contacted numerous individuals who were incarcerated in jail with Cordeiro while he waited for his second

trial to begin. The State, in an effort to convict Cordeiro in the second trial but lacking any valid forensic or other evidence against Cordeiro, incentivized these incarcerated individuals to become informants for the State in exchange for reductions in their sentences and other benefits. These four jailhouse informants, who were incentivized by the State to fabricate evidence against Cordeiro, created four separate elaborate fabricated murder-for-hire plots that falsely implicated Cordeiro, so they could benefit themselves. The jailhouse informants falsely alleged that Cordeiro hired them to escape from prison and then kill Freitas before Cordeiro's second trial started. The State relied heavily on these four jailhouse informants even though their stories made no sense, they got the basic facts of Cordeiro's case wrong, and had created fake documents to support their lies. For example, the jailhouse informants manufactured a hand drawn map to Freitas' house, which unbeknownst to them at the time they had erroneously drawn the map to the wrong Freitas' house. Unfortunately for Cordeiro, the State's use of incentivized jailhouse informants and their fabricated evidence and testimony about the murder-for-hire plots, was enough to convince a jury of his guilt in his second trial. The jailhouse informants incentivized and fabricated testimony falsely colored the jury's perception of Cordeiro, and tragically, as a result Cordeiro was wrongfully convicted of both Blaisdell's murder and one of the jailhouse informants' murder-for-hire plots.

C. Junk Science and Incentivized Fabricated Testimony Wrongfully Convicted Cordeiro, but Powerful New Evidence Proves that Cordeiro is Actually and Factually Innocent of All Charges.

Cordeiro was wrongfully convicted on the false words of an incentivized suspect turned State witness and numerous incentivized jailhouse informants. Cordeiro has been imprisoned for 30 years for two crimes he did not commit – Blaisdell's murder and one fabricated murder-for-hire plot. Cordeiro's wrongful conviction has been a tragedy for Cordeiro and his family, but his

wrongful conviction for Blaisdell's murder also means that there has never been justice for Blaisdell or his family because the true perpetrator has never been investigated, charged, or convicted. Through the Hawai'i Innocence Project ("HIP") investigation into Cordeiro's wrongful conviction, HIP has found powerful new evidence that proves Cordeiro is actually innocent of the crimes for Blaisdell's murder and the murder-for-hire plot. Post-conviction DNA testing conducted on multiple key pieces of physical evidence have all excluded Cordeiro as the source of the DNA on Blaisdell's body and other critical crime scene evidence. Key DNA testing on Blaisdell's clothing has found an unidentified DNA profile on the inside pockets of Blaisdell's jeans. Specifically, an unidentified DNA profile was found inside the left front pocket where Blaisdell put the \$800.00 in cash he planned to use to buy weed. The \$800.00 in cash was never recovered at the crime scene and at the time of Cordeiro's trial, the State told the jury that this money was stolen by the person responsible for Blaisdell's murder. If this new DNA profile obtained from Blaisdell's clothing is uploaded into the State's DNA database and compared to other suspect profiles, it could show who actually murdered Blaisdell and stole the \$800.00 from inside his front left pocket.

In addition to Cordeiro's critical new DNA evidence, Cordeiro retained a renowned gunshot residue ("GSR") expert who found that the GSR testing that the State relied upon in Cordeiro's trial is now considered invalidated "junk" forensic science. Since the GSR evidence that the State relied upon in Cordeiro's trial is now considered invalidated forensic science, it would not be admitted if Cordeiro was to go to trial today. Without this now invalidated GSR evidence, the jury in Cordeiro's second trial would likely have never wrongfully convicted Cordeiro in the first place. Furthermore, the incentivized jailhouse informants who testified for the State have also now recanted their lies they told about their fabricated murder-for-hire plots.

These recantations are further bolstered by Cordeiro's handwriting expert, Reed Hayes, who found the jailhouse informants' new recantations to be truthful based on his forensic review of the underlying documents in Cordeiro's case. Without the fabricated testimony of the incentivized jailhouse informants, Cordeiro would have never been convicted of the underlying murder charge or the murder-for-hire plots, nor would a jury convict Cordeiro now, based on this new evidence.

To this day, Cordeiro remains imprisoned for a crime he did not commit and will *still* continue to serve a life sentence without parole until this miscarriage of justice can be rectified. This Petition is the first step in correcting Cordeiro's tragic miscarriage of justice - by shining a light on the truth and finally bringing redress for the over three decades that Cordeiro has spent wrongfully convicted and incarcerated. Justice requires that Cordeiro's conviction be vacated for all charges that he has been wrongfully convicted for and that he be immediately released from custody, and into the loving arms of his family.

II. FACTUAL AND PROCEDURAL BACKGROUND OF CORDEIRO'S CASE

A. Freitas and the Victim, Blaisdell, Make Arrangements for Blaisdell to Purchase Marijuana

At around 9:30 a.m. on August 11, 1994, Michael Freitas ("Freitas") arrived at Kaya's Collision and Repair looking for Timothy Blaisdell ("Blaisdell"). Exhibit "A", Tr. at 4184. Blaisdell's co-worker Ken Tanouye ("Tanouye") told Freitas that Blaisdell had not yet arrived to work and gave Freitas Blaisdell's home phone number. Id. at 4184-85. Freitas called Blaisdell's home phone from the office phone. Id. Blaisdell arrived at work later that morning and told Tanouye that he was going to meet Freitas that afternoon to "do the deal" and pick up the seeded "weed" in "Upcountry." Id. at 4183, 4187, 4192. Tanouye expected to split the weed with

Blaisdell, so Tanouye withdrew \$800.00 from his bank account and gave it to Blaisdell before Blaisdell left work between 4:00 p.m. and 4:30 p.m. Id. at 4187-90.

Blaisdell arrived home from work at around 4:30 p.m. to the house he shared with his mother, Robyn Blaisdell (“Mrs. Blaisdell”) and his uncle Donald Michael Moor (“Moor”). Ex. “A”, Tr. at 4076-81. Blaisdell told Moor that he was going to meet somebody, and then told Moor that “I am going to call Mike. I am calling Mike...Freitas. You know Mike Freitas” and pointed to a house across the street where Jenny Nakama (“Nakama”), Freitas’ girlfriend lived. Id. at 4082. Blaisdell took a piece of paper out of his pant pocket that had the name “Mike” and a phone number written on it, then Moor heard Blaisdell say over the phone: “I am here. You ready?” Id. at 4082-83. After getting off the phone, Blaisdell showed Moor the \$800.00 cash Tanouye had given him and told Moor that he planned to use the cash to purchase weed. Id. at 4086. Blaisdell then put the \$800.00 cash in the front left pocket of his pants. Id. Moor told Blaisdell to be careful and Blaisdell replied: “Don’t worry about it. Everything is okay. I am with Mike. Id. at 4101-02. Blaisdell left the house wearing a cap and carrying a maroon-colored backpack. Id. at 4084-85. Although Blaisdell had a vehicle, he left that day without his car and did not say when he would be back. Id. at 4087. It would be the last time Blaisdell’s uncle would see him alive.

Blaisdell’s mother knew that Blaisdell had attempted to purchase weed for \$800.00 on at least two prior occasions in July 1994, and that “Mike Freitas” had found somebody Blaisdell could buy weed from just a few days before Blaisdell’s death. Ex. “A”, Tr. at 1177, 1179, 1181. When Blaisdell did not return home on the evening of August 11, 1994, Moor and Mrs. Blaisdell started calling Blaisdell’s friends, including Tanouye. Id. at 1202. When none of Blaisdell’s friends reported seeing him, they called the police. Id. Moor was searching for Blaisdell the following morning when he saw Freitas at Nakama’s house and asked Freitas where Blaisdell was. Id. at

1210. Freitas lied and denied ever picking up Blaisdell on August 11, 1994, even though Moor knew that Blaisdell had called Freitas, that Blaisdell was going with Freitas to purchase weed, and that Blaisdell had left home without his car. Id.

B. Blaisdell's Dead Body is Found at the Bottom of a Ravine at Skid Row

Paul Pimental ("Pimental") told police that on the night Blaisdell was murdered he went to Thomas Osborne's ("Osborne") house between 7:00 p.m. and 7:30 p.m. with his friend Zachary Zane. "Exhibit "B", MPD Report at 36. Pimental stated that Osborne told him that "Chris" shot and killed Blaisdell, robbed him, and then ran over his body. Id. Osborne denied making that statement the next day and instead said that Duane Ramos ("Ramos") told him Freitas had taken Blaisdell to Skid Row, where they met up with Freitas' unnamed cousin. Id. at 38.

Later that night at around 9:00 p.m., Pimental, Matthew Boyle ("Boyle"), Heather Butterfield ("Butterfield"), and Wisa Arquette ("Arquette") were hanging out with friends and joyriding when they decided to go to Skid Row with Ramos. Ex. "B", MPD Report at 36; Exhibit "A", Tr. at 3461-62. Ramos drove Michael Martin ("Martin"), Kala'e Vasconcellos ("Vasconcellos"), Sunny Medeiros ("Medeiros"), and Arquette to Skid Row in Pukalani, Maui off of Old Kula Road. Ex. "B", MPD Report at 110. Ramos turned onto Lower Kula Road, saw blood on the road, drove past it, and turned around. Id. at 399. Ramos alerted Boyle to the blood stain, and Boyle saw a foam cooler near the blood stain that appeared to have skin on it. Id. at 98. With a flashlight, Boyle followed the trail of blood from the road down into the ravine, where he found Blaisdell's dead body. Id. Blaisdell's body was hidden under various discarded items, twenty-five to thirty feet down a ravine, not visible from the road. Id. Boyle also saw a bullet hole in Blaisdell's face and a bloody Camel cigarette pack at the scene. Id. They all left, with some going to go to their friend Jered Santos' ("Santos") house. Id. Around 9:40 p.m. some of the juveniles met MPD

officers at the Pukalani Superette, and Boyle directed the responding officer to Blaisdell's body. Id. at 2.

C. All Physical Evidence and Eyewitness Testimony Points to Freitas as being Responsible for Blaisdell's Murder

On the morning of August 12, 1994, MPD notified Blaisdell's family that his body had been found. Exhibit "A", Tr. at 4090. That evening, some of Blaisdell's friends came over to the house, including Tanouye. Id. While everyone sat outside, Moor and Tanouye saw Freitas heading toward Nakama's house and confronted him. Id. at 4091-92. Freitas would not give them any information about Blaisdell's murder and would only give Tanouye the name "Doug Camanse." Id. at 4093, 4198, 4204. Freitas later claimed that he lied to Blaisdell's uncle and friends and that he gave the names of "Mark Cabral" and "Doug Camanse" to scare them off. See id. at 2931, 2933.

At the Old Kula Road crime scene, MPD recovered discarded items that were used to cover Blaisdell's body, including an E-Z Glider exercise machine which was covered with bloody finger and palm prints. Ex. "A", Tr. at 3408-09. A white envelope containing what appeared to be a small amount of weed and a pack of Camel Light brand cigarettes were also found at the scene. Id. at 3415. An "Ace Auto Glass Inc." stationary sheet of paper with the name "Mike Freitas" and a phone number were recovered from inside the front right pocket of Blaisdell's pants. Ex. "A", Tr. at 3675; Ex. "B", MPD Report at 125. Blaisdell's cap, backpack, and the \$800.00 he had placed in his front left pocket were not recovered from the crime scene. Ex. "A", Tr. at 675.

In addition to the physical evidence recovered from the scene, MPD also interviewed witnesses who had seen Freitas and Blaisdell on the day Blaisdell was murdered. Richard Mendez ("Mendez"), who lives up the street from Blaisdell, told MPD that between 4:00 p.m.

and 5:00 p.m. on the day of Blaisdell's murder, he saw Blaisdell leaving his house and getting into the passenger seat of a 4x4 white Ford Ranger pickup truck. Ex. "A", Tr. at 5162-64.

Freitas' friend Amanda Valentine ("Valentine") also informed MPD that around 5:15 or 5:30 p.m. on the day of Blaisdell's murder, she was walking down Kealaloa Avenue when she saw Freitas drive by in his white Ford Ranger pickup truck with Blaisdell in the passenger seat. Id. at 3436-38, 3443-45. Valentine told MPD that she waved at Freitas and Blaisdell, and that Blaisdell smiled and waved back at her, and then Freitas turned up the road towards Kula. Id. Another witness, Arthur Delima, Jr., ("Delima"), told MPD that he was driving along Kula Highway at around 5:30 p.m. on the day Blaisdell was murdered, when a white Ford Ranger pickup truck pulled out in front of him. Id. at 3451-52. Delima recognized Blaisdell as the passenger in the white Ford Ranger pickup truck. Id.

MPD Detective Richard Camara ("Det. Camara"), lead the investigation into Blaisdell's murder and questioned Freitas two days after the murder on August 13, 1994. Ex. "A", Tr. at 4388-89. Unbeknownst to Freitas at the time, Det. Camara already knew that Mendez, Valentine, and Delima had all seen Blaisdell in Freitas' truck heading toward the Kula/Skid Row area on the day Blaisdell was murdered. Id. at 4455, 4457. Det. Camara also knew that Blaisdell had told his uncle Moor that he was meeting Freitas when he left the house that day. Id. at 4464-65.

At his initial interview with MPD, Freitas was not aware that 1) Blaisdell told Moor that he was meeting Freitas, 2) multiple witnesses told police they saw Freitas and Blaisdell driving toward Skid Row the day of the murder, and 3) that MPD had recovered physical evidence at the crime scene. Based on what Det. Camara already knew when he first interviewed Freitas, two things should have been clear: Freitas was lying about not seeing Blaisdell on the day of his murder and that Freitas was involved in the murder. Det. Camara had eyewitness testimony and direct

physical evidence clearly indicating that Freitas was involved in Blaisdell's murder, and Det. Camara knew Freitas lied about being with Blaisdell on the date of the murder. Freitas would later admit that he lied to MPD during his first interview. Id. at 2938-40. Despite the overwhelming evidence, Det. Camara surprisingly claimed that Freitas was not a suspect and did not arrest him at the time of his interview. Id. at 4465-67.

In addition to interviewing Freitas, MPD took his fingerprints to compare to the fingerprints found in blood at the Skid Row crime scene.² Ex. "A", Tr at 3429-30, 4698-99. MPD also took Freitas' white Ford Ranger truck into custody and *visually looked* at Freitas' truck for blood stains. Id. at 3679-82. MPD did not conduct a luminal test to detect the presence of blood residue, even though this testing was available at the time. Id. at 3682-83. MPD could have tested Freitas' truck for GSR and fingerprints but failed to do so. Id. at 4460. MPD also failed to test the note found in Blaisdell's pocket or verify the phone number written on the note under the name "Mike Freitas" in fact belonged to Freitas. Id. at 3691.

On September 25, 1994, police fingerprint expert, Sergeant Russell Crosson ("Sgt. Crosson"), examined the fingerprints found on the E-Z Glider that was placed on top of Blaisdell's body and determined that the fingerprints "possibly" belonged to Freitas. Ex. "A", Tr. at 4699. Another set of fingerprints and palm prints were taken from Freitas three days later and Sgt. Crosson examined and compared these new prints to the palm print located on the E-Z Glider. Id. at 3431; Ex. "B", MPD Report at 115. On October 17, 1994, two months after the murder, Sgt. Crosson positively identified Freitas' palm print in Blaisdell's blood on the E-Z Glider exercise machine that was found covering Blaisdell's body. Ex. "A", Tr. at 4698-99.

² It would be well over a month before Freitas' prints were even compared to those found at the crime scene.

D. Confidential Informant, Shevling, is Planted by the Police at Freitas' Work and Shevling Tells Freitas about All the Evidence Police have Against Him

In an effort to get additional information about Freitas' involvement in Blaisdell's murder, Det. Camara placed an inexperienced confidential informant named David Shevling ("Shevling") at Freitas' new workplace, the Haleakala Dairy, to record his conversations with Freitas. See Exhibit "A", Tr. at 4468. Det. Camara gave Shevling key information about Blaisdell's murder and the evidence MPD had found at the crime scene. Shevling then shared this evidence with Freitas during his four recorded conversations that occurred between September 30, 1994, and October 15, 1994. Id.

In their first recorded conversation, Shevling confided that he needed money and Freitas told him that he "[g]otta get dope." When Shevling asked about purchasing an ounce of seeded weed, Freitas replied that he "can get some seeds." Exhibit "B", MPD Report at 44-45. Shevling then told Freitas that he was nervous about someone who "[g]ot murdered", presumably referring to Blaisdell who was murdered attempting to buy seeded weed through a deal set up by Freitas, and Shevling advised Freitas to get a bullet proof vest. Id. Shevling then brought up Blaisdell's murder again and asked about Freitas' friend "Scott," presumably Scott Frias ("Frias"). Freitas told Shevling that Frias was incarcerated for an unrelated drug robbery that Cordeiro was questioned about. Id. at 46. Shevling told Freitas that the rumor was that Freitas killed Blaisdell, threw him down a hill, and tried to bury him. Id. Shevling then brought up the name "Cordeiro" (presumably Gordon Cordeiro) and the rumors that Cordeiro had access to drugs and guns. Id. at 47.

Shevling then gave Freitas crucial evidence that the police had against him, which Freitas had not been aware of, including the numerous witnesses that saw Freitas "cruisin'" with Blaisdell in Freitas' "white Ford by five trees" near Skid Row. Ex. "B", MPD Report at 46, 48. Freitas then

told Shevling that he heard rumors that Freitas' cousin was involved and that the witnesses couldn't have seen Freitas there because he was in jail at the time. Id. Shevling told Freitas again that there were four or five people who would testify to seeing Blaisdell in Freitas' truck near "five trees" and warned him that if these people testify "they'll hang you [Freitas] with it." Id. at 51-52. Shevling then disclosed more details that MPD had uncovered, alerting Freitas to the fact that in addition to the witnesses who saw Blaisdell in Freitas' truck, there were also witnesses that said Blaisdell was asking about Freitas around town, and that Blaisdell's boss also knew Blaisdell was meeting Freitas. Id.

Shevling warned Freitas that if enough people talked, MPD would bring Freitas in. Ex. "B", MPD Report at 52. Shevling told Freitas that if the police talk to Cordeiro first and he points police to Freitas, then Freitas would be in trouble. Id. Freitas then said that he believed the police had already questioned Cordeiro, and Shevling lied and told Freitas that Cordeiro implicated Freitas. Id. Shevling lied and told Freitas that Cordeiro "told them [police] that you were there. He said that you shot...that you physically grabbed the guy and drug him down there and tried to bury him." Id. Then Shevling gave Freitas one of the most incriminating pieces of evidence MPD had against him, that "they got fingerprints of you [Freitas] from there [crime scene] or something." Id. at 55.

Based on what Shevling told him, Freitas realized he was a prime suspect in Blaisdell's murder. Freitas confirmed that he knew he was a suspect when he told Shevling, "three days after the murder...weeks later...I was a suspect." Ex. "B", MPD Report at 54-57. Freitas then began to backtrack and told Shevling that he was communicating with Blaisdell and even looking for him on the day of the murder. However, Freitas continued to deny that Blaisdell was in his vehicle on the day of his murder. Id. Shevling then revealed another key piece of information that would later

become part of Freitas' fabricated story – that Blaisdell did not drive his car to Skid Row but had “hitchhiked to wherever he was going.” Id. Shevling reiterated again that MPD had Freitas' print at the crime scene and that the police suspected that Freitas “shot the guy [Blaisdell].” Id. Freitas continued to deny to Shevling that he was a suspect by claiming that Det. Camara told Freitas that “they never find nothing on me [Freitas].” Id. Shevling then brought up Cordeiro's name yet again and told Freitas that “Scott [Frias] sold Cordeiro the gun that shot the guy” and then Freitas alleged that Cordeiro owed money to the “syndicate” and also mentioned Shane Shirota (“Shirota”). Id. at 15-16. Shevling continued to warn Freitas that he was a suspect in Blaisdell's murder or an accessory to it. He advised Freitas to write down his story so that he had it straight when the police questioned him. Id. at 61.

In the third recorded conversation with Shevling, Freitas again expressed his anger about his friend Frias being charged with robbery and drug offenses and stated that he believed that Cordeiro had something to do with Frias being charged. See Ex.“B”, MPD Report at 224-25. Shevling reiterated the seriousness of Blaisdell's murder and that the charge would carry a lot of jail time, to which Freitas echoed “the rest of your life”, and then Shevling further warned Freitas about the horrible conditions in the jail. Id. at 228.

In the last recording with Shevling on October 15, 1994, Shevling confronted Freitas and asked him how he knew that Cordeiro planned the Blaisdell murder one week prior to the actual murder if Freitas never spoke to Cordeiro. See Ex. “B”, MPD Report at 135-36. Freitas claimed he got this information from someone else. Freitas stated that he was not at Skid Row and did not witness Blaisdell's murder, but he saw the blood on the road and thought it might be Blaisdell, so he went down the hill. Id. When asked what made Freitas go down the hill to look for Blaisdell, he stated, “they had to take Timmy [Blaisdell] back home” and then mentioned that he took his

cousin back to the house after picking up Blaisdell. Id. Shevling said, “[y]ou watch. By the time I get done with Mike [Freitas] he’ll be a free man.” Id. Shevling’s statement solidified that it was never the intent of Shevling or the police to get to the truth about the Blaisdell murder but instead, their focus was to exonerate Freitas, and falsely implicate Cordeiro for Blaisdell’s murder. See id. at 138.

In an effort to further implicate Cordeiro for Blaisdell’s murder and exonerate Freitas, Shevling told Freitas that he would get him a wire to record a conversation with Cordeiro so that they can “try and get him, once he commits, you’re [Freitas] off the hook...do it on your own...go up to the police station, later on...tell them [police] you’d like to talk to them.” Ex. “B”, MPD Report at 140. Shevling reiterated the need for Freitas to pin the crime on Cordeiro when he told Freitas that recording Cordeiro was Freitas’ “only hope” to which Freitas replied that he “might get out of this” and that he was only twenty-one years old and life “is just beginning.” Id. at 145. Shevling then warned Freitas that “this is pretty much gonna be a trial for your life” and that Freitas’ future “depends on what happens within the next two weeks.” Id. Instead of Shevling getting incriminating information from Freitas about his involvement in Blaisdell’s murder, Shevling told Freitas critical information that MPD had uncovered, including the fact that multiple eyewitnesses had seen Blaisdell with Freitas just before the murder and that his prints had been found at the crime scene. Armed with the information and suggestions provided by Shevling, Freitas began to fabricate a story where he was a victim and not the main suspect in Blaisdell’s murder. This fabricated story included framing Cordeiro, an innocent man, for Blaisdell’s murder.

E. The Police and Shevling Gave Freitas Specific Confidential Information about the Investigation, which Freitas Used to Fabricate His Exculpatory Story and Frame an Innocent Cordeiro

On September 16, 1994, armed with the information Freitas received from Shevling and in an effort to further paint himself as a victim, Freitas claimed that an unidentified person tried to shoot him while he was driving his Ford Ranger truck. Exhibit “A”, Tr. at 2942-44. Freitas claimed that he pulled over and saw a car behind him drive past and turn around, but Freitas claimed he could not identify the car or the driver. Id. Freitas claimed that after this alleged drive-by shooting he could no longer hold back his knowledge (and likely involvement) in Blaisdell’s murder, so he decided he needed to confide in someone. See id. However, even though Freitas claimed he was fearful, he waited a month after his alleged drive-by shooting before he suddenly showed up at his sister-in-law, Lynette Sakamura’s (“Sakamura”) house on October 16, 1994, to talk about Blaisdell’s murder. See id. at 4167-68, 2944-45. For Freitas, this alleged drive-by shooting story was an opportunity for him to practice and formalize his most important fabricated story, that Cordeiro murdered Blaisdell. See id. at 4167-68. Sakamura, perhaps believing Freitas was in danger due to the alleged drive-by shooting, and that Freitas had information about Blaisdell’s murder, advised Freitas to talk to his mother and to the police. See id. at 4173.

The following day, Freitas went to his parents, and they immediately hired him an attorney. Ex. “A” Tr. at 3295-98. On October 19, 1994, accompanied by his lawyer, Freitas went to MPD and gave yet another story to Det. Camara. Id. at 4390-91. Freitas, armed with the knowledge that he was a suspect in Blaisdell’s murder and all of the evidence MPD had against him that he had learned from MPD informant Shevling, walked into MPD and provided a fabricated story that would absolve himself and implicate the innocent Cordeiro instead. MPD bought Freitas’ fabricated story about Cordeiro and instead of arresting Freitas for Blaisdell’s murder, Freitas was able to walk out of MPD that day, turning him from suspect into the State’s star witness. See id. at 3086-87, 4391. In Freitas’ fabricated story to MPD on October 19, 1994, he claimed that he was

never able to arrange the drug deal for Blaisdell on August 11, 1994. Id. at 2894-97, 3014-16. Freitas told MPD that on the day of Blaisdell's murder, he left his house in the afternoon to look at a . Yet, later at trial, Freitas would state that he left his house to go look at a car with his girlfriend Nakama around 4:30 p.m. or 5:10 p.m. Id. at 3163-64. There was never any consistency in Freitas' fabricated stories, because they were just that, fabricated stories. Freitas would continually change his story to align with whatever facts, evidence, and statements he learned from the MPD investigation, other witnesses, and even Cordeiro's eventual trial.

Freitas' fabrications about Blaisdell's murder are numerous. First, Freitas originally testified to the grand jury that Blaisdell asked him about setting up another weed deal on the date he was murdered. See Ex. "A" Tr. at 3030-33. However, by the time of Cordeiro's first trial, Freitas then claimed that Blaisdell only asked for a ride and never asked about a weed deal. See id. Freitas' story evolved yet again, when he later claimed that he was driving to Nakama's house when he happened to see Blaisdell standing by the road hitching a ride. See id. at 2862. Freitas made this claim despite the fact that Blaisdell was supposedly hitchhiking just outside his home where his vehicle was also parked. See id. at 3686. Aside from Freitas' trial testimony, there is no evidence whatsoever that Blaisdell was attempting to hitch a ride on the day that he was murdered because Blaisdell had a working vehicle. On the day he was murdered, Blaisdell had just driven his own vehicle to work and back to his home. When Blaisdell arrived home from work, he told his uncle Moor that he was leaving the house to go with Freitas who was helping him make the weed deal. See id. at 4076-77, 4081-82, 4086, 3690. The physical evidence recovered from the crime scene also support this due to the fact that when Blaisdell's body was recovered, his car keys were still in his pocket. See id.

According to Freitas' fabricated story at trial, even though Blaisdell had enlisted Freitas to help him purchase weed for quite some time before his murder, Freitas alleged that when he picked up Blaisdell that day that he inexplicably did not tell Freitas anything about what he was doing or where he was going. Id. at. 2902. In fact, Freitas claimed that he did not know where they were heading, that Freitas just followed Blaisdell's directions, even though Freitas lived on Maui his whole life and was familiar with Skid Row. Id. at 2886, 2902-03. Freitas later finally admitted, and testified to the grand jury, that Blaisdell told him he was going to Kula. Id. at 3144. Most notably, Freitas had previously told the police that "...we took Tim there," implying that himself and another person were involved in the weed deal at Skid Row and therefore, Blaisdell's murder. See id. ¶ 4 (emphasis added). However, by the time Freitas testified at Cordeiro's trial, there was no longer a "we" involved, and Freitas insisted that it was just him and Blaisdell in his truck that day. See id.

Freitas told the police that he drove Blaisdell to Skid Row and they arrived there between 4:30 p.m. and 4:45 p.m., but he told the grand jury they arrived at 4:40 p.m., and by the time of Cordeiro's trial Freitas claimed that they arrived at Skid Row at 5:45 p.m. Ex. "A" Tr. at 3154, 3157-58, 3043-44. When asked why he kept changing key facts and timelines, Freitas explained that he had talked to other people to make sure he could correct his story. In other words, Freitas' adapted and changed his fabricated story so that his story fit the facts and evidence as he learned of them. See id. at 3197. For example, Freitas statements about key details ebbed and flowed, with Freitas claiming at one point that when he drove Blaisdell to Skid Row, a Ford truck arrived, but he made contradictory statements about whether the truck was three feet away or eight feet away. See id. at 2906, 3064.

Freitas claimed that when this supposed truck arrived at Skid Row, he recognized it as belonging to Shane Shirota (“Shirota”) because of the rusted primer color. Ex. “A” Tr. at 2906-07. Once this alleged truck arrived, Freitas claimed that Blaisdell walked towards the passenger side door of the truck and put his hand on the passenger window frame. Id. at 2907. Freitas supposedly heard a popping sound and then saw Blaisdell fall back with blood coming out of his head. Id. at 2908-09. However, by the time of Cordeiro’s trial, Freitas no longer claimed to have seen Blaisdell get shot or fall because he was looking down to light his cigarette, and so he supposedly only heard a gunshot and then looked up to see Blaisdell lying in the road. Id. at 3062-63. After Freitas saw Blaisdell on the ground, Freitas claimed that someone came running up to his truck, pointed a gun to the side of his head, and that he was unable to drive away because it happened so fast. Id. at 2908-09. Freitas would later contradict his own statements, because he indicated that the driver’s side of the truck was blocked by bushes and grass. See id. at 3145-46. When questioned, Freitas stated that he recognized the gunman as Cordeiro, even though there was no evidence to indicate that they really knew each other. Freitas first claimed that he recognized Cordeiro as the gunman because he knew Cordeiro from high school, then later stated that he had only known Cordeiro for about a year, and even later that he had never really known Cordeiro at all but had just seen him around. Ex. “A” Tr. at 2909-10, 3160-61.

At Cordeiro’s first trial, Freitas claimed that Cordeiro ordered him to get out of the truck and to pick up Blaisdell’s body, and when Freitas refused, he claimed that Cordeiro held a revolver-type handgun and cocked the gun to Freitas’ head and ordered him to comply. Ex. “A” Tr. at 3080, 2910-13. Freitas stated that he alone picked up Blaisdell’s body by the waistband of his pants and carried Blaisdell’s body down a twenty to thirty feet steep embankment to the bottom of the ravine, all while wearing rubber slippers. Id. at 2914, 3115. Unbelievably, Freitas a 5’8” slim man, claimed

that he was able to carry Blaisdell's body all the way down the very steep embankment full of dangerous debris by himself without stumbling. Id. at 3100. Even though Freitas had originally told MPD that Cordeiro held a gun to Freitas' head as he carried Blaisdell's body down the embankment, by trial, Freitas had altered his story yet again, and claimed that Cordeiro only followed him halfway down the embankment. Id. at 3084, 2915-16. In an effort to conceal the body, Freitas then piled rubbish on top of Blaisdell. Id. at 2916-17. According to Freitas, Cordeiro left Freitas unharmed, never threatened him personally, but had threatened to hurt Freitas' family and friends if Freitas said anything. Id. at 3101, 2919-20. According to Freitas, Cordeiro allowed him to get back into his truck and drive toward Ulupalakua Road, unharmed. Id.

Freitas stated that after he left Blaisdell's dead body at the bottom of a ravine at Skid Row, that he had blood all over his legs and shorts, so he drove straight to his house and arrived around 6:00 p.m. Ex. "A", Tr. at 3094-95, 2920-24. Freitas' own mother would later contradict his statement because she told MPD that Freitas did not come home until 7:00 p.m. Id. at 2920-22. According to Freitas, once he got home, he went to the side of the house and washed Blaisdell's blood off his hands and legs with a hose. Id. Then he went in the house where he changed his clothes and put his bloody shorts under a chair, and that his mother later found those shorts and washed them. Id. at 2922-23. After he washed Blaisdell's blood off himself and changed his clothes, Freitas left his house to take his girlfriend Nakama to dinner to celebrate their anniversary. Id. at 2924-27. Freitas did not arrive at Nakama's house until about 7:15 p.m. that night. Id. at 4124. Nakama later said that she had expected Freitas to be at her house that afternoon, not that evening, because they had plans to go with her parents to look at cars, but Freitas never showed up. Id. at 4123-25. Despite the fact that Freitas arrived to Nakama's much later than she expected, he nevertheless picked her up that night and took her to an expensive steakhouse to celebrate their

anniversary. See id. at 2926-27. Even though he was unemployed at the time, Freitas paid for their anniversary dinner with cash and still had enough cash left to buy beer for himself and his cousin later that night. See id. at 2926, 2929.

F. Freitas' Story Changes Again as Police Evidence of Cordeiro's Innocence Mounts

On October 19, 1994, after his parents hired him a defense attorney, Freitas performed a videotaped reenactment of the murder for MPD. See Exhibit "A", Tr. at 3075, 3297-98. Two days later, Freitas went before a grand jury but instead of being a suspect in Blaisdell's murder he was the State's key witness. On October 21, 1994, armed with the key evidence MPD had against him, Freitas used this knowledge to his benefit, going from the prime suspect in Blaisdell's murder to the prosecution's star witness. See id. at 3019. Not only that, but Freitas in an effort to cast blame on anyone other than himself as being responsible for Blaisdell's murder, not only implicated the innocent Cordeiro, but then began to actively work with MPD to frame Cordeiro for Blaisdell's murder. On October 22, 1994, a day after Freitas falsely testified against Cordeiro to the grand jury, began working as an agent of MPD. Id. 229, 2948. Freitas executed a plan that was almost identical to the plan MPD informant Shevling had previously suggested, and with MPD set up a monitored and recorded phone call with Cordeiro. See id. Freitas stated that MPD "told me what to say when I make the phone call." Id. Freitas called Cordeiro and told him that he was afraid because everybody was blaming him for what happened to Blaisdell. He asked Cordeiro what happened to Blaisdell, but Cordeiro sounded confused during the conversation and hung up the phone when Freitas accused him of doing something wrong. Exhibit "B", MPD Report #94-44368, p. 258-59. Freitas called Cordeiro again, but Cordeiro refused to speak to him. Id.

MF: Everybody harassing me brah.

GC: Harassing you?

MF: That's right.

GC: And so what? And what is that?

MF: What is that?
GC: I don't know what.
MF: You know, brah, I so scared. Everybody coming up to me.
GC: What?
MF: Telling that I doing something wrong. So what?
GC: And so what? You did something wrong?
MF: No.
GC: And so why you worried then?
MF: But you did something wrong.
GC: No.

Id.

Unbeknownst to Freitas, the reason Cordeiro had nothing to say to Freitas was because he had no knowledge of Blaisdell's murder and was at his home surrounded by family and friends at the time Blaisdell was killed. See Ex. "A", Tr. 4928-29, 4532-33. When Freitas was with Blaisdell at Skid Row, Cordeiro was at home, outside, working on a shelving unit in his family's open garage. See e.g. at 5229-232. Cordeiro's alibi was supported by receipts for lumber purchased that day with his friend Curtis Diment ("Diment"). Id. at 1463-65, 5283-86. Freitas was not aware that at the time that Blaisdell was murdered, numerous witnesses had seen or even assisted Cordeiro in building shelves in the outdoor garage or installing a stereo in his sister's car later that evening. E.g. id. at 4532-33, 5229-232.

Despite the fact that MPD never search the home of the prime suspect Freitas, MPD obtained a search warrant for Cordeiro's home. Ex. "A", Tr. at 4496-99. Unsurprisingly, MPD's search uncovered no evidence to connect the innocent Cordeiro to Blaisdell or to Blaisdell's death. Most importantly, MPD's search never uncovered the murder weapon or any other physical evidence. Id. at 4497. Based on Freitas' false statements alone, claiming that the truck that pulled up on Skid Row resembled that of Cordeiro's neighbor Shiota, MPD seized and searched Shiota's Ford truck. Id. at 3369-72, 3377. MPD was able to secure a warrant based on Freitas' false claim that he recognized Shiota's truck at Skid Row and that allegedly Cordeiro had driven it there.

Despite the fact that there was no evidence, other the Freitas' false allegations, that Cordeiro had access to or had driven Shiota's truck to Skid Row on the day Blaisdell was murdered, MPD seized and searched Shiota's truck for any physical evidence connecting it to Cordeiro or Blaisdell. MPD conducted forensic testing on evidence taken from Shiota's truck but found no blood or fingerprints belonging to Blaisdell or Cordeiro on the inside or outside of Shiota's truck. Id. HPD evidence specialist Tracy Tanaka ("Tanaka") also analyzed seven adhesive lifts taken from Shiota's truck for gunshot residue ("GSR"). Id. at 4460. Shockingly, despite early evidence that implicated Freitas in Blaisdell's murder, MPD never checked Freitas' truck for blood, fingerprints, or gunshot residue. Id. at 4616. Out of the seven lifts taken from Shiota's truck, Tanaka found one particle on one, and two particles on another. Id. The one particle lift was labeled "front floor middle". Id. at 4620. The two-particle lift was labeled "driver's side rear of cab behind seat." Id. Tanaka concluded that the particles were not unique to gunshot residue, but merely consistent with it, and could not definitively say that the residue came from a firearm. Id. at 4619, 4630. Tanaka admitted that the particles were small enough that they could have floated in the air, making their actual source unknown and disputable. Id. at 4631.

G. Police Fail to Investigate Other Viable Suspects Despite Evidence that Cordeiro was Innocent of Blaisdell's Murder

Relying on Freitas' fabricated story alone that implicated Cordeiro in Blaisdell's murder, MPD failed to follow the investigative leads that would have identified potential suspects that Freitas had contacted or worked with to sell Blaisdell \$800.00 in seeded weed. Around the time of Blaisdell's murder, in 1993 MPD had arrested 31 people for the manufacturing or selling of marijuana, and in 1994 MPD had arrested 30 people.³ Cordeiro did not have a prior record or

³ *Drug Offense Arrests in Hawaii, 1982-1998*, Department of the Attorney General, 8 (May 2000).

conviction for drug offenses at the time of Blaisdell's murder, yet MPD failed to investigate potential suspects who Blaisdell could have been meeting to purchase the seeded marijuana from or who otherwise came forward with information about who may be responsible for Blaisdell's murder.

1. Failure to Investigate Freitas' Cousin's Shamsul Haq and Philip Freitas.

MPD failed to investigate multiple viable suspects linked to Blaisdell's murder. In a statement to MPD on August 12, 1994, John Vierra stated that he saw Freitas and Freitas' cousin Shamsul Haq ("Haq"), who was visiting from Oahu, at Ernest Mendes' house between 9:45 pm-11:00 pm. Exhibit "B", MPD Report at 33. They had beers together. *Id.* Ernest Mendes and Borling were both present and confirmed that Freitas had arrived around that time with his cousin. *Id.* at 397, 87. Even Freitas stated that he was with his cousin, Philip Freitas, around the time of Blaisdell's murder. *Id.* at 93. On August 16, 1994, MPD interviewed Thomas Osborne who stated that Ramos had told him that "Freitas had taken Timothy Blaisdell to "Skid Row" and that Michael's cousin had met them there [at Skid Row]." *Id.* at 38. On August 18, 1994, MPD interviewed Robert Kehano's cousin who said that Kehano had told him about Freitas' involvement in Blaisdell's murder. *See id.* at 402. Kehano told him that "Mike and Phillip Freitas shot Timothy Blaisdell for \$800, and that it was supposed to be a drug deal. *Id.* Despite these leads and Freitas admitting to others that he was with both of his cousins around the time of Blaisdell's murder, neither cousin was ever investigated by MPD.

2. Failure to Investigate Mark Cabral and Doug Camanse, the Hana connections Who Freitas Claimed Were Going to Sell Blaisdell Seeded Marijuana.

Freitas told MPD and others that the drug dealers that he had contacted to set up the weed deal for Blaisdell were from Hana, and specifically named Camanse and Cabral. Ex. "A", Tr. at 2933-34; Ex. "B", MPD Report at 34, 186. Based on public records, Cabral's drug related

criminal history begins in 1985 when he plead guilty in two separate counts of promoting a detrimental drug in the first degree. See Hawai'i v. Mark S. Cabral, Case No: 2PC850000015. By 1996, Cabral had four additional criminal cases with multiple counts which included commercial promotion of marijuana, promoting a dangerous drug II and III, and promoting a detrimental drug. See Hawai'i v. Mark S. Cabral, Case No: 2PC960000391. MPD failed to investigate Cabral fully and only took one statement from him where he claimed to MPD that he was in his tent by himself on the day that Blaisdell was murdered. Ex. "B", MPD Report at 21-22. MPD did not attempt to corroborate his alibi or investigate Cabral any further and did not even speak to Cabral's brother, whose backyard he lived in, to corroborate his statement. See id. MPD failed to fully investigate Cabral even though Freitas had indicated that Cabral was someone who could sell Blaisdell seeded weed and despite the fact that Cabral had previously been convicted on drug charges.

MPD also did not investigate Camanse at all. Ex. "B", MPD Report at 21-22. Camanse, like Cabral, had been previously convicted of drug related offenses before Blaisdell was murdered. Based on public records, in 1983 Camanse was charged with one count of promoting a detrimental drug I, three counts of felony possession of a firearm and ammunition, and one count of possessing an illegal knife. See Hawai'i v. Douglas D. Camanse, Case No: 2PC000007643. Further, in 1996, Camanse entered a plea of "No Contest" for two counts of promoting a dangerous drug III, one count of prohibited drug paraphernalia, and terroristic threatening. See Hawai'i v. Douglas Camanse, Case No. 2PC960000187, 2PC960000061. The public records show that prior to Blaisdell's murder, Camanse was involved in drug dealing and was also known by MPD to have guns. MPD should have immediately recognized Camanse was a person of interest in Blaisdell's murder based not only on his criminal history but also because

he is the first person Freitas mentions in connection to Blaisdell's murder. Yet, MPD failed to take a statement from Camanse or investigate his possible involvement in Blaisdell's murder at all.

MPD knew Blaisdell left his house with \$800.00 in cash that he planned to use to purchase seeded weed, yet MPD failed to even investigate known and convicted drug dealers. This is significant because although it was Freitas' bloody palmprint on the exercise machine, it likely took a second person to carry Blaisdell's body down the steep 25–30-foot embankment and cover it with an exercise machine, a car bumper, and two strollers. See id. at 1, 78-79.

3. Failure to Investigate Frias.

In Freitas' early conversations with MPD's confidential informant Shevling, Freitas mentions his friend Scott Frias ("Frias"). Shortly after Blaisdell's murder, Freitas tells Shevling that Frias was arrested and charged with a drug related robbery because Cordeiro had "snitched" to MPD and implicated Frias in that crime. Ex. "B", MPD Report at 46, 192, 302. In the recorded conversations with Shevling, Freitas states that he believes that Cordeiro had made Frias "the fall guy" for the robbery. Id. at 186, 224. One of the guns used in the robbery that Frias had previously been implicated in, is consistent with the description of the weapon Freitas claimed was used to murder Blaisdell. Later, Freitas would use these same details when he fabricated the description of the gun that he alleges Cordeiro used to murder Blaisdell. Id. at 186, 202. Despite Frias having been arrested for a drug related robbery prior to Blaisdell's murder and being connected to a gun that Freitas described in detail as being used in Blaisdell's murder, MPD failed to investigate Frias as a suspect. Additionally, MPD failed to investigate Frias even after Freitas told MPD's own confidential informant Shevling that he had a grudge against Cordeiro because of Freitas' mistaken belief that Cordeiro had "snitched" on Frias, which should have

caused MPD to investigate Freitas' grudge and motive to implicate Cordeiro as a likely retribution for his friend Frias.

4. Failure to Investigate Clifford Conte, a Criminal Convicted of Terroristic Threatening, Firearms Possession, and Promoting a Dangerous Drug.

Clifford Conte ("Conte") was also not investigated by MPD, even though he also participated in the drug robbery with Frias and was even accused by Frias' girlfriend of killing Blaisdell. Ex. "B", MPD Report at 302, 268. Frias' girlfriend, Brianita Lopes ("Lopes"), told MPD that Conte had killed someone before, that he owned multiple guns, and that she had seen him with guns. *Id.* at 270, 272. In fact, Lopes told MPD that she was afraid of Conte because he had threatened her and pointed a gun to her head. *Id.* Lopes denied involvement in Blaisdell's murder but had been told by others that Conte was involved and had robbed Blaisdell. *Id.* at 314-15. Lopes told MPD she refused to testify before the grand jury because Conte appeared at her home and threatened her that she "wouldn't make it to the stand." *Id.* at 279. Doreen Kekiwi ("Kekiwi"), who had dated Conte prior to Blaisdell's murder, told MPD that Conte had multiple guns, which she had seen when they dated. *Id.* at 287. By 1996, Conte had been convicted of multiple charges, including prohibited possession of firearm, prohibited possession of ammunition, and promoting a dangerous drug III. *State v. Clifford N. Conte*, Case No: PC960000038. Despite his relevant criminal history and the statements made by Lopes and Kekiwi, MPD failed to investigate Conte's possible involvement in Blaisdell's murder.

5. Failure to investigate Kekiwi, Former Girlfriend of Cliff Conte.

MPD also failed to investigate Kekiwi. In a statement to MPD, Kekiwi said she stayed with her friend, Bill Rothaus ("Rothaus") on the day Blaisdell was murdered. Ex. "B", MPD Report at 305. Rothaus was the owner of Upcountry Towing. *Id.* On November 2, 1994, Rothaus told MPD that he had Kekiwi's car towed because it was involved in an accident, and that he

kept the vehicle for six to eight weeks before sending it to Maui Scrap Metal to be destroyed. Id. at 315. Kekiwi's father told MPD he had previously bought his daughter two strollers, one was an umbrella type that was at Rothaus' home. Id. at 419-20. MPD failed to investigate whether Kekiwi or Rothaus were still in possession of these two strollers, especially because Blaisdell's body was covered up by two strollers, one of which was described as being an umbrella type. Multiple people also gave statements to MPD that Kekiwi had killed Blaisdell, including Frank Garcia, Elizabeth Mowat, and John Iona. Id. at 309, 389, 391. Mowat stated that Kekiwi told her she was going to jail because she had shot and killed someone. Id. at 391. Iona, who had previously dated Kekiwi, stated that Kekiwi could have killed Blaisdell or killed him with the help of Freitas. Id. at 539. When asked if Cordeiro was capable of killing Blaisdell, Iona repeatedly said no. Id. at 540.

6. Failure to Investigate Juveniles Who Found the Body.

MPD failed to investigate the juveniles' statements about how they found Blaisdell's body shortly after he was murdered. Some of the juveniles stated that two trucks with a total of five people went up to Skid Row when the body was found, but others stated that there was a third truck present with additional people. Ex. "A", Tr. at 611, 2337, 3460; Ex. "B", MPD Report at 2, 3, 36, 399. Their juveniles' statements were inconsistent about where the teens went after they discovered Blaisdell's body. Ex. "A", Tr. at 2337; Ex. "B", MPD Report at 3.

In a statement to MPD, one of the juveniles named Ramos said that another juvenile named Boyle went down the ravine and saw Blaisdell's body. Ex. "B", MPD Report at 3. Ramos stated that when they got to Skid Row that night that they saw what looked like blood stains on the road. Id. at 2335-36. Ramos stated that from his car he could tell it was not animal blood and that he did not want to go look and find out it was someone he knew. Id. These statements imply that Ramos knew there was a human body at the end of the trail of blood. Id. Boyle told MPD

that when he when he followed the blood trail down the ravine, that he saw a person's face with what appeared to be a bullet hole and blood. Id. at 98. However, at trial, Boyle stated that he saw a head, froze a couple seconds, turned around, and ran without seeing whether they were alive. Ex. "A", Tr. at 617-18. He testified that he did not see an injury, only blood on the head. Id.

The juveniles' stories about what they did after they discovered Blaisdell's body also conflicted. Ramos stated that after they found Blaisdell's body that all of the juveniles went to the Pukalani Superette, and someone called the police. Ex. "A", Tr. at 2337. Pimental first said that they went to the Superette after discovering the body, but four days later he said they went to Jared Santos' house first. Ex. "B", MPD Report at 3, 36. Boyle also told MPD that they decided to go "get bigger guys" to confirm the discovery of the body before calling the police. Id. at 98. At trial, Boyle stated that they went to Santos' house after seeing the body, then Santos drove to Skid Row in his own car and arrived at the crime scene before MPD. Ex. "A", Tr. at 630-32. It is unclear how Santos would know where the body was. Santos was Cordeiro's coworker. Ex. "B", MPD Report at 301. Cordeiro told MPD that Santos told him Freitas took Santos to the murder scene before MPD arrived. Id. In an interview with Santos and the Hawai'i Innocence Project, Santos now vehemently claims that he was the person who found the body after Ramos went to him and begged him to go to Skid Row to investigate blood on the road. Shevling later told MPD that Freitas told him Cordeiro sent people to find the body. Id. at 186. It is unclear how Freitas would know that unless he had sent people there himself, as this was not a fact known to the public. MPD failed to question Santos and he never testified at trial.

Five people, including Duane Ramos, Craig Ramos, Sunny Medeiros, and Kala'e Vasconcellos each told MPD that Felix Kehano ("Kehano") was at Skid Row before Ramos and Pimental arrived, that there were a lot of people drinking, and there was "a haole guy making

trouble” or “a haole guy acting stupid.” Ex. “B”, MPD Report at 110, 398, 399, 404. Craig Ramos even stated that Kehano told his brother, Duane Ramos, that Kehano had seen Freitas at Skid Row. Id. at 400. Kehano told MPD that on the day of the murder he visited his father at Maui Community Correctional Center with his family, then they had dinner and went home. Id. at 471. Records show that Kehano visited his father from 6:00 pm to 8:00 pm on August 11, 1994, however, MPD did not ask Kehano whether he was at Skid Row earlier that day or if he knew or saw Freitas there. Id. at 403, 471. Duane Ramos later denied saying that Kehano saw Freitas at Skid Row. Id. at 401. However, at voir dire for Cordeiro’s trial, Ramos admitted knowing Freitas through his brother, who was good friends with Freitas and hunted together. Ex. “A”, Tr. at 2338.

The record is filled with contradictory statements from these juveniles. Vasconcellos even admitted to MPD that “Boyle and Pimental told her to inform the police that she was never at the scene,” which is why she originally provided an inaccurate statement. Ex. “A”, Tr. at 110. MPD did not question Boyle or Pimental regarding Vasconcellos’ statement to clarify why they told her to lie. MPD failed to investigate the discrepancies, failed to question Kehano about his whereabouts prior to visiting his father, failed to investigate how Ramos knew it was human blood and that a body would be found, and failed to question Santos who was at the murder scene before MPD arrived.

H. Freitas Turns from the Only Suspect to the Prosecution’s Star Witness when Cordeiro is Indicted for Blaisdell’s Murder and the First Trial Ends with a Hung Jury Eleven to One in Favor of Cordeiro

Despite having no physical evidence linking Cordeiro to the scene, no witnesses seeing Cordeiro anywhere near Blaisdell’s house or Skid Row, and no corroborating evidence, Cordeiro was indicted for Blaisdell’s murder. Cordeiro was indicted solely on the word of Freitas, who was

or should have been the prime suspect and was incentivized to fabricate his story to implicate anyone other than himself in Blaisdell's murder. See Exhibit "A", at 4390. Even Det. Camara admitted that "if Freitas hadn't come forward then we would have to confront him with the evidence that his palm prints was at the scene and I probably would arrest MF for the murder of Blaisdell." Id. at 4390. Despite no evidence other than Freitas's numerous fabricated stories, on October 21, 1994, Cordeiro was indicted by a Maui grand jury in case number 94-522(3) on five separate counts: Count One, Murder in the Second Degree; Count Two, Prohibited Place to Keep Firearm; Count Three, Kidnapping; Count Four, Robbery in the First Degree; and Count Five, Carrying or use of Firearm in Commission of a Separate Felony. See State v. Cordeiro, 94-522(3).

The evidence before and during trial pointed overwhelmingly to the state's star witness, Freitas, as being responsible for Blaisdell's murder. See Ex. "A", Tr. at 938-40. During Cordeiro's first trial, the jury overwhelmingly believed in Cordeiro's innocence, with eleven jurors voting to acquit and only one voting for guilty. See id. at 1865. The state knew the case against Cordeiro was weak when the first jury voted eleven to one in favor of not guilty. See id.

I. Facing no Additional Evidence Going into a Retrial, Prosecutors Become Desperate and Decide to Rely on Jailhouse Informant Testimony in Cordeiro's Second Trial

After the first trial ended in a hung jury in favor of Cordeiro, the prosecution sent the hair that was found on Blaisdell's body for DNA testing. At Cordeiro's first trial, this hair had undergone microscopic hair analysis and the State's expert had determined that the hair was consistent with Cordeiro. See Exhibit "B", MPD Report at 676. Now with an almost unanimous verdict of Cordeiro's innocence in the first trial, the State realized that they needed to provide the jury with concrete physical evidence in Cordeiro's second trial. The State sent the hair found on Blaisdell's body, which had been microscopically analyzed and determined to be consistent with

Cordeiro in his first trial, to the FBI for DNA testing with the hope of conclusively proving what they argued in the first trial – that the hair found on Blaisdell belonged to Cordeiro. See id. DNA testing of that hair by the FBI, irrefutably excluded Cordeiro as a source of the hair found on Blaisdell's body. Ex. "F", FBI Report at 41.

This powerful new DNA evidence disputed the microscopic hair testing that was used in Cordeiro's first trial, which had falsely attributed the hair found on Blaisdell's body to being consistent with Cordeiro. See Ex. "F", FBI Report at 41. Approaching the second trial, the State became desperate because they had severe problems with Freitas' credibility, no witnesses to corroborate Freitas' outlandish story that Cordeiro was the murderer, and absolutely no forensic hair evidence connecting Cordeiro to the crime scene. Rather than dismissing Cordeiro's case when the State realized that they had been fooled by their prime suspect turned star witness Freitas, and knowing that the only physical evidence that linked Cordeiro to the crime scene had been refuted by the FBI through DNA testing prior to Cordeiro's second trial, the State doubled down on their effort to convict Cordeiro by enlisting numerous jailhouse informants to fabricate even more evidence and testimony against Cordeiro. In an effort to secure a conviction against Cordeiro, the state used several jailhouse informants with no corroborating evidence in Cordeiro's second trial. See Ex. "A", Tr. at 5519.

In November 1994, while Cordeiro was incarcerated at Maui Community Correctional Center ("MCCC") during his first trial, Cordeiro's attorney sent him about 300 pages of police reports and legal documents to review. Ex. "A", Tr. at 5038-39. However, by the time the discovery got to Cordeiro in his cell, the envelope had already been ripped open. Id. at 5039. Cordeiro's discovery had been incorrectly delivered to another inmate named Brian Cordeiro ("Brian"). Id. at 5040. Albert Murashige, the MCCC warden at the time, verified that in 1994 Cordeiro's police

reports were misdirected and delivered to Brian instead of being delivered to Cordeiro. Id. at 4184. Brian and his roommate, Kevin Duncan, read Cordeiro's discovery. Id. at 5040, 5098. Brian and other jailhouse informants, including William Cornelio ("Cornelio"), were housed in the same module at MCCC. Id. at 5040-41.

The State relied on four jailhouse informants to bring new charges against Cordeiro before his second trial. The State used these jailhouse informants to claim that Cordeiro hired these four jailhouse informants John Iona ("Iona"), William Cornelio ("Cornelio"), Anthony Kekona ("Kekona"), and Nedric Kapika ("Kapika") in a series of elaborate murder-for-hire plots to kill Freitas, the original murder suspect who was now the State's star witness. Based on the incentivized statements of these jailhouse informants, Cordeiro was indicted for an additional charge of Attempted Murder in the First Degree in CR. No. 95-0503 for attempting to hire Cornelio in October 1995 to kill Freitas. See Exhibit "G", Indictment at 35. Cordeiro was indicted for Attempted Murder in the First Degree in CR. No. 96-0310 for attempting to hire Kekona sometime between October and November of 1995 to kill Cornelio. See id. at 88. Cordeiro was indicted for Attempted Murder in the First Degree in CR. No. 97-0073 for attempting to hire Iona in March of 1995 to kill Freitas. See id. at 94. Cordeiro was indicted for Attempted Murder in the First Degree in the fourth and final matter, CR. No. 98-0149, for attempting to hire Kapika in January of 1998 to kill Freitas. See id. at 000145-46. Although prejudicial and detrimental to Cordeiro, the cumulative effect the State hoped for was that one of these four murder-for-hire charges against Cordeiro would stick. The State's plan ultimately worked, and the jury wrongfully convicted Cordeiro on one count of murder-for-hire plot involving Iona in addition to the Blaisdell murder charge. See Ex. "A", Tr. at 5655.

1. Jailhouse Informant One: John Iona

Iona was known by the State as a frequent informant. Iona, in exchange for a lighter sentence for a murder charge he was facing, tried to come forward before Cordeiro's first trial and falsely claim that Cordeiro had confessed to him that he murdered Blaisdell. See Exhibit "B", MPD Report at 531-32. Although Iona claimed Cordeiro had confessed to him, Iona could not get the basic facts about the case right. Id. at 535. In a recorded statement with MPD, Iona failed to convince them that Iona knew anything about the crime. He did not know the location of the murder or the weapon used, he claimed Cordeiro murdered Blaisdell because he was fooling around with his girlfriend, and he repeatedly called the victim by an incorrect name. Id. Iona did not even know the most basic facts of the case, such as where and how Blaisdell was murdered, so the State decided not to call Iona as a witness in Cordeiro's first trial. Id. at 537. Since the State did not believe Iona's fabricated story about Cordeiro confessing to him, Iona got more creative when he went to the State with "information" before Cordeiro's second trial.

Before Cordeiro's second trial, Iona believed he was under investigation for a murder and requested to speak to Det. Camara about the Cordeiro case to trade a fabricated story for his freedom. The State, with no other additional evidence with which to convict Cordeiro in his second trial, went back to Iona for information, *even though* Iona had proven to be unreliable when he initially came forward in Cordeiro's first trial and therefore was never called as a witness. Heading into Cordeiro's second trial, the State wanted corroborating evidence to substantiate Iona's story even if that evidence was fabricated. In an effort to become believable to the State, Iona consulted with Cornelio who helped Iona draw the maps that would later be used by the State to corroborate Iona and Cornelio's stories.

In 1997, Iona contacted Det. Camara and the State again and requested a meeting. This time Iona alleged that Cordeiro had hired him to murder Freitas and this time was armed with

fabricated maps to Freitas's house to help corroborate his false claims. Ex. "B", MPD Report at 690-91. Iona claimed that in June of 1995, he deliberately picked a fight with Cordeiro and his roommate by going into Cordeiro's jail cell, threatening Cordeiro and shoving Cordeiro's roommate. Ex. "A", Tr. at 3758. Iona then claimed that he grabbed Cordeiro's Bible and hid it in his cell because he wanted to see if Cordeiro had written anything about him in the Bible. See id. at 3759. Iona claimed that he tore the covers off the Bible and one page that had Iona's name written on it, then he threw away the front cover. Id. at 3759-61. Iona claimed that he hid the three fabricated maps and the Bible and did not turn them over to MPD until 1997. Id. at 3765-66. Iona testified that the first map was written on a page taken from the same Bible that he had stolen from Cordeiro. Id. at 003757. Iona said that none of the handwriting in the Bible was his, but that some of the map drawings could be his. Id. at 003897.

According to the information on Iona's hand-drawn map, Iona was supposed to break out of prison to murder "Michael Fraitis" living at Kokomo Road near a place labeled "Gigo Hill." Exhibit "G", State's Ex. at 23. At the time of Cordeiro's trials there were at least five persons named "Michael Freitas" living on Maui. Ex. "A", Tr. at 4147. Instead of drawing the map to the State's star witness, Freitas' house, Iona had instead drawn the map to another Michael Freitas' ("Smiley Freitas") house who was known to Iona as "Smiley." Id. at 4147, 4156-57, 4161. At the time of the murder, Michael A. Freitas, Sr. ("Freitas, Sr.") said he lived on Kokomo Road in Makawao his whole life, next to a park called "Giggle Hill" and identified the house noted on Iona's map as being his house where he lived with his son Smiley Freitas. Id. Neither the State's star witness Freitas nor his parents had ever lived on Kokomo Road and had always resided at 889 Makani Road in Pukalani. Id. at 2885-86, 2998-99.

Det. Camara showed a photo line-up to Iona that included Freitas and Iona was unable to pick Freitas out of the line-up. See Ex. “A”, Tr. at 4406-07, 4482. Instead, Iona told Det. Camara that “Smiley Freitas” was not in the line-up at all. Id. at 4482. At this point Det. Camara knew or should have known that Iona had drawn a map not to their star witness Freitas’ house, but instead Iona had drawn the map to another “Michael Freitas” known to Iona as, “Smiley Freitas.” At trial, Iona claimed that he did not know Freitas personally, which was inconsistent with what he had previously told MPD when he said he had known Freitas a long time. Id. at 3803, 3853-54. When confronted with his inconsistent statements, Iona claimed that “batu” had deteriorated his memory of events prior to 1994. Id. at 3853-57. If Cordeiro had drawn the map that Iona falsely claimed he had authored, Cordeiro would not have drawn the map to the wrong person’s house. Cordeiro knew where Freitas lived because Cordeiro had been to the house before to look at Freitas Sr.’s Model A car. See id. at 5051-52.

Lloyd James Josey, Jr. (“Josey”), a handwriting expert with the Honolulu Police Department (“HPD”), examined the writing on the second map which was written on the back of a medical request form supposedly signed by Cordeiro. See Ex. “A”, Tr. at 4711. Josey concluded that Iona had signed Cordeiro’s name to the medical request form and that the printed handwriting on the medical request form was inconsistent with Cordeiro’s handwriting. Id. at 4710. However, Josey was unable to identify or eliminate Iona or Cordeiro as having authored the second or third maps and could not say whether Iona or Cordeiro contributed to the writing on the documents. Id. at 4710, 47113, 4717; see also Exhibit “G”, State’s Ex. at 23. Josey also examined the writing on the pages from Iona’s Bible and was unable to reach a conclusion as to whether they were written by Iona or Cordeiro. See Ex. “A”, Tr. at 4716-17.

2. Jailhouse Informant Two: William Cornelio

When Iona approached the State the second time, he enlisted the help of other inmates, including jailhouse informant Cornelio. See Ex. “B”, MPD Report at 648, 694. Cornelio assisted Iona in fabricating the documents and maps to support their elaborate plot that Cordeiro had hired them to break out of MCCC to kill Freitas. See Ex. “C”, Cornelio Dec. at 1-2 ¶¶ 8-9; see also, Ex. “A”, Tr. at 3485-89. On October 12, 1995, the court sentenced Cornelio to forty years in prison in an unrelated case. State v Cornelio, 935 P.2d 1021, 1027 (Haw. 1997). Immediately following his sentencing, Cornelio called Detective Kaya (“Det. Kaya”) and told Det. Kaya he had information about Cordeiro’s case. See Ex. “C”, Cornelio Dec. at 1 ¶ 6, 31-32. Cornelio was fully aware that Cordeiro’s trial was coming up and even admitted that he was friends with Iona since their time at the Hawaii Youth Correctional Facility and MCCC. See Ex. “A”, Tr. at 3490-91, 3570.

By October 19, 1995, just seven days after he received a forty-year sentence, Cornelio was ready to make a deal and agreed to meet with Prosecutor Kevin Jenkins (“Jenkins”). See Ex. “C”, Cornelio Dec. at 1 ¶ 8. In exchange for Cornelio falsely claiming that Cordeiro had hired him to escape from prison and kill Freitas, Jenkins agreed to testify on Cornelio’s behalf at a sentencing hearing scheduled for February 13, 1996. Id. at 2 ¶ 11; see also, Ex. “A”, Tr. at 3562-65. Jenkins also promised Cornelio he would testify on Cornelio’s behalf before the parole board and would ask the Department of Public Safety to transfer Cornelio out of Halawa Correctional Facility. See Ex. “A”, Tr. at 3567-69. In order to receive all of the benefits Jenkins promised Cornelio, Cornelio told Jenkins a fabricated story about his plan to escape MCCC with Iona and another MCCC inmate named Tracy Ibara (“Ibara”). Id. at 3486-87. Cornelio falsely claimed that Cordeiro heard that Cornelio and Ibara were planning to escape MCCC and that Cordeiro told Cornelio that he would give Cornelio \$5,000.00 if he killed Freitas when he escaped MCCC. Id. 3486 ¶¶ 19-23. Cornelio admitted that he did not know Freitas, so Cordeiro was to provide Cornelio with a map

and a picture of Freitas, and that Cordeiro's grandmother would be paying Cornelio the \$5,000.00. Id. at 3487. Cornelio claimed that the escape never transpired because Ibara was caught. Id. at 3488. On March 12, 1995, MCCC ACO Allen Nouchi ("Nouchi"), stated that he received word in advance of an escape attempt by inmate Ibara and security was increased to prevent any escapes. To Nouchi's knowledge, neither Iona nor Cornelio were involved in the escape attempt. See id. at 4364-68.

On July 20 and 21, 1998, Cornelio falsely testified against Cordeiro in his second trial by stating that he entered into an agreement with Cordeiro to kill Freitas. Ex. "A", Tr. at 3491. Cornelio claimed that he typed up a written contract saying that he would get paid the \$5,000.00 by Cordeiro's grandmother to kill Freitas. Id. at 3493; see also, Exhibit "G", State's Ex. at 29. Cornelio also falsely testified that he had typed up a "brotherhood oath" between all the inmates in Module B. See Ex. "A", Tr. at 3491; see also, Ex. "G", State's Ex. at 29. These were all lies, as what Cornelio had actually typed was an in forma pauperis declaration for a civil lawsuit against MCCC that many inmates signed. See Ex. "A", Tr. at 3491-93, 3497. Several inmates agreed to sign the declaration of the lawsuit, including Cordeiro and another MCCC inmate named Thomas Reiher ("Reiher") who signed the in forma pauperis document in 1995. Ex. "C", Cornelio Dec. at 1 ¶ 7; see also, Ex. "A", Tr. at 4860-63.

Reiher's signature also appeared on Cornelio's "murder contract" and "brotherhood oath" but he denied that he had ever signed these documents and did not know how his signature ended up on them. Id. at 4859-63; see also, Ex. "G", State's Ex. at 33-34. Cornelio used the same prison typewriter to type all three documents: the in forma pauperis declaration, the "brotherhood oath," and the "murder contract." See Ex. "A", Tr. at 3492-93. Cornelio now admits that to create the fake "brotherhood oath" and "murder contract," he took the signatures from the in forma pauperis

declaration, used the erase function of the electronic typewriter to erase the in forma pauperis portion, and then re-typed the body of the document creating both the “brotherhood oath” and “murder contract.” Id. at 3493-95; see also Ex. “C”, Cornelio Dec. at 1 ¶ 8.

Prosecutor Jenkins and Det. Camara knew that other inmates’ names appeared on the “brotherhood oath” and “murder contract” and that those inmates admitted to signing the civil lawsuit, but they denied signing the “brotherhood oath” and “murder contract.” See Ex. “C”, Cornelio Dec. at 1 ¶ 7; see also, Ex. “B”, MPD Report at 693-94. Jenkins and Det. Camara knew Cornelio was lying about the “murder contract” and “brotherhood oath” yet still put forth Cornelio’s fabricated testimony before the grand jury and Cordeiro’s second trial. Jenkins and Det. Camara even gave Cornelio deals or favors in exchange for his fabricated testimony despite knowing that the testimony was completely false. See Ex. “A”, Tr. at 3495-97.

After Cornelio failed to get his sentence reduced and the Hawai’i Supreme Court upheld his sentencing, Cornelio attempted to notify Cordeiro, through a guard, that he would not lie at his upcoming second trial in 1998. See Ex. “C”, Cornelio Dec. at 2 ¶ 13. When Jenkins learned that Cornelio had recanted his murder-for-hire plot and would not lie at Cordeiro’s trial, Jenkins threatened Cornelio that if he did change his testimony, Jenkins would charge Cornelio for the murder-for-hire plot to kill Freitas. Id. at 2 ¶ 14. The Hawai’i Innocence Project contacted Cornelio in 2016, and he willingly admitted to making up the story about Cordeiro to reduce his own sentence. Id. at 1 ¶ 5. Cornelio also admitted to helping Iona create the maps, which Iona used to bolster his fictitious story about Cordeiro hiring Iona to murder Freitas. Id. at 2 ¶ 9.

3. Jailhouse Informants Three and Four: Anthony Kekona and Nedric Kapika

The prosecutors attempted to use two additional jailhouse informants in Cordeiro’s second trial, Anthony Kekona and Nedric Kapika. Cordeiro was charged with attempting to hire

Kekona to kill Cornelio sometime between October and November of 1995. See Ex. “A”, Tr. at 4888-89. Kekona first met Cornelio while the two were housed in Module C in MCCC. Id. at 4890-91. Kekona testified that on November 7, 1995, Cornelio came into Kekona’s cell and assaulted him. Id. at 4896. Cornelio falsely claimed that Cordeiro had hired Kekona to murder him because he was going to testify at Cordeiro’s trial. Id. at 4901. However, Kekona had never met Cordeiro and had only seen him in a newspaper. Id. at 4911. Kekona indicated the State had agreed that Kekona would be able to return to Maui to complete his sentence in exchange for testifying against Cordeiro regarding the false murder-for-hire plot. Id. at 4888-89.

Kapika, another jailhouse informant, also falsely alleged that Cordeiro attempted to hire him in early January of 1998 to kill Freitas. See Ex. “A”, Tr. at 2058-59. Kapika lived in Module C at MCCC with Kekona and had read key documents and transcripts in Kekona’s assault case involving Cornelio. Id. at 4913. Kapika falsely claimed that Cordeiro offered him crystal methamphetamine, cash, or a combination of the two, equivalent to \$5,000.00 to kill Freitas. Id. at 3916. The details Kapika provided had significant similarities to the State’s argument in Kekona’s transcripts, which Kapika read. Id. at 3909-15. Kekona testified that this murder-for-hire case was *not* true and that Kapika had fabricated the story against Cordeiro after reading the transcripts. See id. at 4907.

J. Based Almost Exclusively on Incentivized Testimony of Freitas and the Jailhouse Informants, Cordeiro was Wrongfully Convicted of the Murder of Blaisdell and the Murder for Hire Plot Involving Iona

Unfortunately for Cordeiro, during his second trial, the jury was given Freitas’s false story about Blaisdell’s murder coupled with the additional bogus murder-for-hire plots. The jury bought into the fabricated evidence and testimony and convicted Cordeiro of both Blaisdell’s murder and the murder-for-hire plot involving Iona. See Ex. “A”, Tr. at 2223-24. Cordeiro was wrongfully

convicted solely based on false incentivized testimony and given a life sentence with the possibility of parole for Blaisdell's murder, and a life sentence without the possibility of parole for the murder-for-hire plot involving Iona. See id. at 2247-50. After Cordeiro was convicted, inexplicably, the prosecutor never pursued charges against the jailhouse informants for their involvement in the alleged murder-for-hire plots.

K. Cordeiro's Prior Appeal was Unsuccessful and Cordeiro Remains Wrongfully Incarcerated in Arizona

Cordeiro appealed his conviction to the Hawai'i Supreme Court directly after his wrongful convictions. See State v. Cordeiro, 99 Hawai'i 390 (2002). Cordeiro's appellate attorney Wendy Hudson ("Hudson") raised eleven points of error with Cordeiro's conviction which were almost entirely unsuccessful. On appeal, Cordeiro unsuccessfully challenged the testimony of key witnesses such as the pathologist Dr. Manoukian and Wayne Hill. See id. at 399, 420. Cordeiro also raised issues of prosecutorial misconduct because of interruptions of the defense during cross examination as well as improper conduct by the court by limiting defense counsel's ability to cross, but these arguments also failed. See id. at 399, 421, 423. Cordeiro also raised the issue of consolidation, arguing both that his counsel erred in not objecting to the consolidation and that the court erred in allowing the consolidation, both of which the Court determined were not in error. See id. at 399, 411. Of the eleven points of error raised in his appeal, Cordeiro was only successful in arguing that the court erred in not instructing the jury that Cordeiro could not be convicted of second-degree murder and first-degree robbery as the robbery offense merged with the underlying murder charge. Id. at 409. On October 27, 2002 the Hawai'i Supreme Court affirmed Cordeiro's convictions for second degree murder and firearm charge in the Blaisdell case and the attempted first degree murder in the Iona murder-for-hire case. Id. at 428. However, Hawai'i Supreme Court agreed to vacate and remand Cordeiro's conviction and sentence for first-degree robbery in the

Blaisdell case as the Court found that charge should have merged with the second-degree murder offense. Id. Cordeiro's appeal was ultimately unsuccessful, and he is still serving a life sentence without the possibility of parole.

III. APPLICABLE LEGAL STANDARDS

A. **H.R.P.P. Rule 40 and Newly Discovered Evidence Under McNulty**

Cordeiro's newly discovered evidence is admissible, demonstrates his actual innocence, and is sufficient to establish that his convictions were wrongfully obtained. The evidence refutes the State's entire case against him and combined with the constitutional errors in his underlying trial, supports reversal of all charges against him as a matter of both law and fact. Cordeiro's new evidence meets the standard for a H.R.P.P. Rule 40(f) evidentiary hearing and the standard for a new trial under the standard established by the Hawai'i Supreme Court in State v. McNulty. See State v. McNulty, 60 Haw. 259, 588 P.2d 438 (1978), *overruled, in part, on other grounds by* Raines v. State, 79 Hawai'i 219, 900 P.2d 1286 (1995). The Intermediate Court of Appeals and the Hawai'i Supreme Court have used the McNulty standard for new evidence in evaluating Rule 40 petitions. See e.g., State v. Mabuti, 72 Haw. 106, 112-13, 807 P.2d 1264, 1268 (1991); State v. Jimenez, 126 Haw. 122, 267 P.3d 706 (Ct. App. 2011); Karagianes v. State, 2008 Haw. App. LEXIS 231, at *18 (App. May 8, 2008) (SDO).

H.R.P.P. Rule 40 provides, in relevant part, that "[a]t any time but not prior to final judgment, any person may seek relief under . . . this rule from the judgment of conviction, [on the grounds] that there is newly discovered evidence." Haw. R. Penal P. 40(a)(1)(iv). Judgment is final when the appellate process is undertaken and then terminated, or when the time for appeal has expired. Haw. R. Penal P. 40(a)(1); see also Haw. R. App. P.4(b). H.R.P.P. Rule 40 relief is not available when "the issues sought to be raised have been previously ruled upon or were waived." Haw. R. Penal P. 40(a)(3). As indicated in the procedural history section above, Cordeiro's

judgment is final as he has already appealed his conviction. See State v. Cordeiro, 99 Hawai‘i 390 (2002). The issues raised in this H.R.P.P. Rule 40 Petition have not previously been ruled upon or waived as Cordeiro presents new evidence of his actual innocence as detailed further below.

In McNulty, the Hawai‘i Supreme Court laid out the four requirements needed for a new trial based on newly discovered evidence in a H.R.P.P. Rule 40 petition:

(1) the evidence has been discovered after trial; (2) such evidence could not have been discovered before or at trial through the exercise of due diligence; (3) the evidence is material to the issues and not cumulative or offered solely for purposes of impeachment; and (4) the evidence is of such a nature as would probably change the result of a later trial.

State v. Ruis, No. CAAP–12–0001115, 2014 WL 1621780, at *1 (Haw. Ct. App. April 22, 2014) (SDO) (citing State v. McNulty, 60 Haw. 259, 588 P.2d 438 (1978)). As Cordeiro’s eight “Grounds for Relief” detailed below show, all of his new evidence meets the McNulty standard, and as such Cordeiro’s convictions should be vacated.

B. Ineffective Assistance of Counsel Under the U.S. and Hawai‘i Constitutions

The “proper standards for judging a criminal defendant’s contention that the [United States] Constitution requires a conviction...to be set aside because [trial] counsel’s assistance [during] the trial or sentencing was ineffective” have been formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 661 (1984). A claim that assistance of counsel “was so defective as to require a reversal of a conviction” must satisfy two requirements. Id. at 687.

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Strickland, 466 U.S. at 687.

Further, “the defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 694. The defendant “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment,” and the court must then determine “whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id. at 690. Counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary,” but a decision not to investigate “must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Id. at 691.

Under the Article I, section 14 of the Hawai‘i Constitution states that “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for the accused’s defense.” Haw. Const. art I, § 14. This constitutional right is only satisfied “when such assistance is ‘effective.’” State v. Kahalewai, 54 Haw. 28, 30, 501 P.2d 977, 979 (1972) (internal citations omitted). In determining whether counsel’s representation is adequate, a court must decide “whether, when viewed as a whole, the assistance provided is ‘within the range of competence demanded of attorneys in criminal cases.’” State v. Antone, 62 Haw. 346, 348, 615 P.2d 101, 104 (1980) (quoting Kahalewai, 54 Haw. at 30, 501 P.2d at 979). “Thus, a defendant in a criminal case is entitled to counsel who will represent him or her with the competence generally demanded of defense attorneys.” State v. Tetu, 139 Hawai‘i 207, 215, 386 P.3d 844, 852 (2016). The defendant has the burden of establishing ineffective assistance of counsel by meeting a two-part test, showing that:

- 1) that there were specific errors or omissions reflecting counsel’s lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense. To satisfy the second prong, the defendant needs to show a possible impairment, rather

than a probable impairment, of a potentially meritorious defense. A defendant need not prove actual prejudice.

State v. Wakisaka, 102 Hawai'i 504, 513-14, 78 P.3d 317, 326-27 (2003) (internal quotation marks, citations, and footnote omitted). As Cordeiro's eight "Grounds for Relief" detailed below show, Cordeiro's counsel was so ineffective and defective that justice requires that his convictions be reversed.

C. Due Process Rights Under the U.S. and Hawai'i Constitutions

Due process requires the State to prove beyond a reasonable doubt that the defendant committed the charged offense. In re Winship, 397 U.S. 358, 364 (1970); see also U.S. Const. amend. V, XIV; Hawai'i Const. art. I, § 5. The fundamental guarantee of due process also requires courts to intervene and overturn a conviction obtained through the use of false and misleading evidence when the falsity was unknown, not reasonably discoverable, and, therefore, not subject to meaningful challenge at trial.

In Birano v. State, the Supreme Court of Hawai'i announced two constituent rights encompassed by due process. 143 Hawai'i 163, 181, 426 P.3d 387, 405 (2018). First, under the rule adopted by the U.S. Supreme Court in Brady v. Maryland, 373 U.S. 83, 87 (1963), "which has been incorporated into the Hawai'i due process jurisprudence," due process requires that the prosecution disclose "evidence favorable to the accused" that, if suppressed, would deprive the defendant of a fair trial. State v. Matafeo, 787 P.2d 671, 672 (Haw. 1990). Second, "it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the" constitutional dictates of due process. Mooney v. Holohan, 294 U.S. 103, 112, (1935). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Napue v. Illinois, 360 U.S. 264, 269 (1959) (citations omitted). As Cordeiro's eight "Grounds for Relief" detailed below show, Cordeiro's due process

rights were violated through the State's use of false evidence and withholding evidence that would be favorable to Cordeiro.

D. The Court Must Consider the Constitutional Errors in Cordeiro's Case Combined with All of Cordeiro's Newly Discovered and Newly Presented Evidence Which Establishes Cordeiro's Actual Innocence Under Schlup

In Schlup v. Delo, the U.S. Supreme Court held to establish actual innocence, Petitioner must demonstrate that, “in light of all the evidence,” “it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.” Schlup v. Delo, 513 U.S. 298, 327-328, 130 L. Ed. 2d 808, 115 S. Ct. 851 (1995); see also Bousley v. United States, 523 U.S. 614, 118 S. Ct. 1604, 140 L.Ed.2d 828 (1998); Guity v. State, 153 Hawai'i 368, 538 P.3d 780 (App. 2023). Someone who makes a “threshold showing of innocence” may present otherwise defaulted constitutional claims as a matter of equity. Schlup, 513 U.S. at 317. Absent review, the combination of new, reliable evidence of innocence *and* a claim of constitutional error would “undermine confidence in the result of the trial.” Id. The Court described “new” evidence as “reliable evidence ... that was not presented at trial.” Id. at 324.

It is irrelevant under Schlup whether “new” evidence was discoverable earlier, so long as it is reliable and was not presented at trial. 513 U.S. at 324. The U.S. Supreme Court instructed that in considering whether a Petitioner may “pass through the [innocence] gateway and argue the merits of his underlying claims,” id. at 316, a “court must consider ‘all the evidence,’ old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under ‘rules of admissibility that would govern at trial.’” House v. Bell, 547 U.S. 518, 538 (2006) (quoting Schlup, 513 U.S. at 327–28). “[A]ll the evidence” plainly includes *all new* evidence (discoverable or not), so that the court may determine whether there is reason to doubt the trial result and conviction. Schlup, 513 U.S. at 328. The 9th Circuit Court of Appeals has also interpreted

“new evidence” under Schlup to include “evidence not heard by the jury,” regardless of whether it was discoverable earlier. Griffin v. Johnson, 350 F.3d 956, 962 (9th Cir. 2003). Therefore, regardless of whether Cordeiro’s new evidence of actual innocence is newly discovered or newly presented to this court, the court must look at all of the evidence presented in Cordeiro’s eight “Grounds for Relief” to determine whether his convictions should be vacated on the basis of actual innocence.⁴

IV. CORDEIRO’S GROUNDS FOR RELIEF

Based on the legal arguments discussed in Cordeiro’s eight “Grounds for Relief” detailed below, Cordeiro’s conviction should be vacated on the basis of his actual innocence and he should be immediately released from custody on the grounds that the judgments in cases Cr. Nos: 94-0522 and 97-0073 are unlawful in light of new evidence of Cordeiro’s actual innocence, the ineffectiveness of Cordeiro’s counsel in violation of the United States and Hawai‘i Constitutions, and prosecutorial misconduct which deprived Cordeiro of his due process rights under the United States and Hawai‘i Constitutions.

A. **Ground One: Post-conviction DNA Testing Results are Newly Discovered Evidence that Supports Vacating Cordeiro’s Conviction Based on Cordeiro’s Actual Innocence**

1. Physical Evidence Collected from the Scene of Blaisdell’s Murder

⁴ See Stephen Fox, *The Circuit Split on What Constitutes New Evidence in Habeas Corpus Proceedings*, U. Cincinnati L. Rev., (Oct. 18, 2022), <https://uclawreview.org/2022/10/18/the-circuit-split-on-what-constitutes-new-evidence>. State courts and legislatures have recognized free-standing claims of innocence. See e.g., *In re Clark*, 855 P.2d 729 (1993); *Summerville v. Warden*, St. Prison, 641 A.2d 1356 (Conn. 1994); *People v. Washington*, 665 N.E.2d 1330 (111. 1996); *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996); *St. ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. 2003); *Montoya v. Ulibarri*, 163 P.3d 476 (N.M. 2007); *State v. Beach*, 302 P.3d 47 (Mont. 2013); *People v. Hamilton*, 115 A.D.3d 12 (App. Div. 2014); Ariz. R. Crim. P. 32.1(h); D.C. Code § 22-4135(a) (2013); Md. Code Ann., Crim. Proc. § 8-301(a)(West 2012); Utah Code Ann. § 78B-9-402 (1953); S.D. Codified Laws § 21-27-5.1(1). See also *In re Davis*, 130 S. Ct. 1 (2009) (recognizing the federal constitutional right to prove actual innocence).

Matthew Boyle (“Boyle”) was down at Skid Row with friends when he first discovered Blaisdell’s body at the bottom of the embankment at Skid Row and notified MPD Officer Akuna of his discovery. Exhibit “B”, MPD Report #94-44368, p. 1. Boyle stated that he was at Skid Row with others when Duane Ramos alerted him to what looked like a bloodstain on the road and he took a flashlight and followed bloodstains in the grass down the embankment, approximately 25 to 30 feet down, to where Blaisdell’s body was found. Exhibit “A”, Tr. p. 615-18; Ex. “B”, MPD Report at 1, 2. Boyle told Officer Akuna that when he realized there was a body at the bottom of the embankment that he ran back up the embankment to alert his friends to his discovery and to contact police. Ex. “B”, MPD Report at 2, 98. Boyle did not touch Blaisdell or any of the rubbish that was covering him and left the scene to alert the police. Ex. “A”, Tr. at 617-20. Though Boyle was at Skid Row with friends, Boyle was the only member of their group who went down the embankment and saw Blaisdell’s body. Ex. “B”, MPD Report at 1-5.

Responding MPD Officer Akuna confirmed a deceased body (later identified as Blaisdell) was at the bottom of the embankment at Skid Row and secured the scene for another 10 hours while other officers arrived at the scene. Ex. “A”, Tr. at 92-94, 3326-28. In securing the scene, Officer Akuna made sure that no one disturbed the crime scene and that “no authorized personnel were allowed in the area” and throughout the night he would shine his spotlight on the area to make sure no one was down at the crime scene until it was daylight. Id. Officer Akuna also indicated that he only touched Blaisdell with an ungloved hand in order to determine there was no pulse and that he was deceased but otherwise did not disturb any other items at the scene. Id. at 3325-26.

MPD Officer Samonte arrived at the crime scene the morning after Blaisdell was murdered and was instructed to collect physical evidence from the scene related to Blaisdell’s murder. Ex.

“B”, MPD Report at 76-81. Officer Samonte collected various items of evidence on the roadway at Skid Row including: Benson and Hedges and unknown cigarette butts, some that were covered in reddish-brown drops resembling blood; Coors light beer cans; white envelope with vegetable matter resembling marijuana; piece of a watchband and outer casing of men’s wristwatch; and a used condom. Id. at 78-79. Located around Blaisdell’s body, Officer Samonte also recovered additional evidence including: Coors light beer cans; vehicle front bumper; two baby strollers; “Easy Glider” exercise machine; and a hard pack of Camel Light cigarettes stained with what appeared to be blood. Id. MPD Officer Kahooohanohano was also present at the crime scene when evidence was recovered and measured and diagrammed the location of where each piece of evidence was recovered. Id. at 117-25.

MPD Detective Fernandez was assigned to stay with Blaisdell’s body and transport it to the morgue. Ex. “A”, Tr. at 531, 3642; Ex. “B”, MPD Report at 250. Det. Fernandez also collected the clothing that Blaisdell was wearing when he was killed to preserve any evidence that may be on Blaisdell’s clothing. Ex. “A”, Tr. at 532. Det. Fernandez recovered Blaisdell’s clothing, which consisted of jeans, a blue T-shirt, underwear, and boots as well as collecting a cigarette lighter and \$8.35 in currency found in the front left pocket of Blaisdell’s pants. Ex. “A”, Tr. at 532, 3653-56; Ex. “B”, MPD Report at 251. Once Blaisdell’s body was transported to the morgue, Det. Fernandez also recovered fingernail scrapings, hair samples, and completed a sexual assault kit. Ex. “A”, Tr. at 533; Ex. “B”, MPD Report at 250-51. These items of evidence were then placed in an evidence locker which was locked and no one else had access to. Ex. “A”, Tr. at 538.

MPD Officer Kahooohanohano also was present at the medical examiner's office and recovered additional items from Blaisdell. Ex. “A”, Tr. at 558. From Blaisdell’s clothing, Officer Kahooohanohano recovered a yellow piece of paper with handwriting on it and a key ring with a

set of five keys from the right front pocket of Blaisdell's pants. Ex. "A", Tr. at 558, 3675, 3686, 3689-90. The yellow piece of paper found in the front right pocket of Blaisdell's pants was "Ace Auto Glass Inc." stationary and printed in ink were the words "Mike Freitas" and the numbers "572-8303." Ex. "B", MPD Report at 125. Officer Kahooohanohano was wearing latex gloves when he recovered the items from Blaisdell's pockets, as were the other officers at the scene who came in contact with Blaisdell's body and crime scene evidence. Ex. "A", Tr. at 560, 567. Officer Kahooohanohano indicated that while Blaisdell's pants were not skintight, he had to slightly force his gloved hand into Blaisdell's jeans in order to recover the paper and keys from Blaisdell's front right pocket and check Blaisdell's front left pocket. Id. at 568, 580. No wallet, \$800.00 cash, or other personal items were recovered from Blaisdell's body. Id. at 580. The recovery of the items in Blaisdell's pockets was also videorecorded by MPD Officer Hayakumoto. Ex. "A", Tr. at 569, 645; Ex. "B", MPD Report at 256. Blaisdell's body was then placed in a body bag and carried by Fire and Rescue from the bottom of the embankment to the top of the road. Ex. "A", Tr. at 580.

Freitas was the only other person that stated that he came into contact with Blaisdell's body after he was murdered. After Blaisdell was shot, Freitas testified that he picked up Blaisdell's body "right by his waistline, one hand around his shirt and lifted him up" and that he picked him up by his waist and belt line. Ex. "A", Tr. at 212, 224, 2913; Exhibit "F", Tr. at 23. When Freitas was asked if anything fell out of Blaisdell's pockets while Freitas carried Blaisdell's body down the embankment, Freitas stated that Blaisdell's sunglasses "fell off of him" and that a "pack of cigarettes that fell out, and the cigarettes were all over the place." Ex. "F", at 24. Freitas then placed some strollers and a dashboard on top of Blaisdell's body. Ex. "A", Tr. at 228, 2916-17.

Nowhere in the MPD investigative reports and trial testimony of the MPD Officers who recovered the crime scene evidence indicate that they searched Blaisdell's body, his clothing, and

more specifically his pant pockets without wearing latex gloves. Additionally, none of the witnesses who saw Blaisdell's body indicated that they searched Blaisdell's pant pockets, including the State's key witness Freitas. Furthermore, nowhere in the MPD investigative, interviews, and testimony of Michael Freitas does he state that he was wearing gloves when he carried Blaisdell's body. Freitas also never stated to MPD or testified that Cordeiro had or was wearing gloves when he allegedly killed Blaisdell and allegedly forced Freitas to carry Blaisdell's body down the embankment. Similarly, Prosecutor Jenkins at both trials stated that Cordeiro searched Blaisdell's pant pockets and stole the \$800.00, but never claimed that Cordeiro was wearing gloves.

2. Forensic Testing of Biological Evidence Found at the Crime Scene Evidence Conducted at the Time of Cordeiro's Trials

The physical evidence collected by Officer Samonte at the crime scene was sent to Honolulu Police Department ("HPD") crime lab. Captain Dias conducted forensic blood typing testing on the blood stains found on the road at Skid Row, the cigarette butts found on the road way and the cigarette pack found near Blaisdell's body that all appeared to be stained with blood. Ex. "B", MPD Report at 78-81. Captain Dias also tested other crime scene evidence for fingerprints including the cigarette butts, beer cans, watch band and casing, baby strollers and "Easy Glider" machine. Id. HPD also conducted DNA testing on the used condom found at the roadway. Id.

On October 11, 1994, MPD Detective Camara executed a search warrant on Freitas and collected his finger and palm prints for comparison to the physical evidence found at the crime scene. Ex. "B", MPD Report at 297-98. HPD Specialist Charbonneau found latent prints on one of the beer cans but not on the strollers or "Easy Glider" machine, as the prints on the machine appeared to be in blood so latent prints were not identifiable. Id. at 392-94. HPD Evidence

Specialist Wagner processed the cigarette butts stained with a blood like substance for latent prints but found none. Id. at 455.

On December 1, 1994, MPD collected Freitas's hair, blood, and saliva samples to compare to the crime scene evidence. Ex. "B", MPD Report at 421-22. On the same date, hair, saliva, and blood samples were taken from Cordeiro. Id. at 422-23. On February 1, 1995 Blaisdell's blood sample was sent to HPD to be tested and compared to evidence found at the crime scene. Id. at 461. Two of the cigarette butts found at the crime scene, one of which was blood stained, was sent to the forensic lab Cellmark for DNA analysis. Ex. "F", at 44-45. Cellmark determined that there was not enough DNA present on the cigarette butts to conduct PCR DNA testing. Id. However, Cellmark was able to obtain enough of a sample to conduct DQ Alpha testing on the two cigarette butts, and Cordeiro was excluded as the source of the DNA on both cigarette butts. Id. Cellmark also conducted PCR testing on a hair found on Blaisdell's outer pants (labeled "Q2") and were unable to obtain a profile from the hair root for comparison to individuals. Id.

Despite the fact that the hair recovered from Blaisdell's pants ("Q2") was sent to Cellmark for DNA testing of the hair root prior to Cordeiro's first trial and Cellmark determined that there was insufficient genetic material to conduct PCR testing on the root, the State still decided to send the "Q2" hair to HPD analyst Tracy Tanaka to conduct microscopic hair analysis. Ex. "A", Tr. at 1058, 1100. The State's expert, Tracy Tanaka, using microscopic hair analysis, testified that the hair found on Blaisdell's pants was consistent with Cordeiro's arm hair. Id. at 1112. At Cordeiro's first trial, the only physical evidence from the crime scene that the State claimed tied Cordeiro to Blaisdell's murder was this "Q2" hair that was found on Blaisdell's body, which was only identified by Tanaka using microscopic hair analysis. Id. at

1829, 1833. In Cordeiro's first trial, the State pointed to the importance of the microscopic hair analysis conducted on the hairs found on Blaisdell's body. Prosecutor Jenkins in his closing argument stated that:

Let's look at the physical evidence, because that strongly corroborates Michael Freitas' testimony. The hair found on Tim's pants is consistent with the arm hair of the Defendant [Cordeiro]. But if the hair is consistent with the Defendant's, then it's consistent with the Defendant being at the scene, as Michael Freitas testified that he was.

Keep in mind, even Mr. Whaley, the defense expert, who spends more time in the court than most judges, found the hair from Tim's pants consistent with all criteria with the range of characteristics established by the known sample, not just the two sides that he was looking at but all sides...Holy moly, we're on all four. Consistent.

...Keep in mind this follicle tag on the root of the hair that was mentioned by Tracy Tanaka, the State's expert. He testified it indicated that the hair had not been shed but that some force would have been required to dislodge it...it indicated that some force would have been used.

Id. at 1833-34. Jenkins also told the jury that in the process of going through Blaisdell's pockets after his murder, Cordeiro "has to turn the body over so that he can get access and pull the pants down. Now, if he did that, one of his hairs might have been – contacted with the pants and it might have been enough force to have it removed and be lodged in the pants." Id. at 1835.

When Cordeiro's first trial ended in a hung jury, on October 4, 1995, Det. Camara met with Prosecutor Jenkins who requested that MPD obtain arm hair samples from "all individuals who were near or around the body of the victim at the crime scene" and for those samples to be sent to Tracy Tanaka at the HPD crime lab for analysis and comparison to the hair recovered from the on the outside of Blaisdell's pants (hair labeled as "Q2"). Ex. "B", MPD Report at 558-60, 562, 616, 625-37. Det. Camara reviewed the video taken at the crime scene when Blaisdell's body was recovered to identify which individuals had contact with Blaisdell's body in order to test hair samples from them. Id. at 559. This "Q2" hair found on Blaisdell's pants was the hair

that had previously undergone microscopic hair analysis by Tanaka at Cordeiro's first trial, and Tanaka had determined the hair to be consistent with Cordeiro's arm hair. Id. at 558.

On October 12, 1995, MPD Chief of Police Tagamori sent a letter to HPD Evidence Specialist Tanaka indicating that they had set Cordeiro's case for a second trial and asked that Tanaka conduct further testing. Ex. "B", MPD Report at 609. Chief Tagamori asked Tanaka to compare the hairs found on Blaisdell's clothing to all of the individuals who came in contact with Blaisdell's body during its discovery and recovery as well as hair samples from Freitas and Cordeiro. Id. at 610. Tanaka conducted microscopic hair analysis on the hair samples provided by Freitas, Boyle, and all of the MPD Officers and examiners who had contact with Blaisdell's body. Id. at 640. Tanaka, using microscopic hair analysis⁵ found that the hair found on Blaisdell's outer pants (labeled "Q2") was not consistent with and "could not have originated" from Freitas or any of the other individuals who came into contact with Blaisdell's body. Id. at 640-44.

The evidence before and during Cordeiro's trial pointed overwhelmingly to the State's star witness, Freitas, as being responsible for Blaisdell's murder and that Freitas had worked with someone else to set up a fake drug buy for the purpose of robbing Blaisdell. See Ex. "A", Tr. at 938-40. The State knew the case against Cordeiro was weak after the first trial when the first jury

⁵ Since Cordeiro's trial, the scientific community has completely discredited hair microscopy. A 2009 federal report recognized the limitations of microscopic hair analysis in identifying specific individuals, concluding that "in cases where there seems to be a morphological match (based on microscopic examination), it must be confirmed using mitochondrial DNA testing ("mtDNA") analysis, [because] microscopic studies alone are of limited probative value." *See* "Strengthening Forensic Science in the United States: A Path Forward" (2009). Due to its high rate of error, microscopic hair analysis has been thoroughly discredited as a valid forensic method by the FBI and scientific community. *See* "FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90% of Cases in Ongoing Review"; *see also* "Wrongful Convictions and Exonerations: Understanding the Role of Forensic Science".

overwhelmingly believed in Cordeiro's innocence and voted eleven to one in favor of not guilty. See Ex. "A", Tr. at 1865. Now with the second trial looming, the State sent the hairs found on Blaisdell's body for DNA testing with the hope of conclusively proving what they argued in the first trial – that the hairs found on Blaisdell's body belonged to Cordeiro. See Ex. "B", MPD Report at 676. On August 22, 1996, the Prosecutor sent the hairs found on the outside of Blaisdell's pants (including the hair previously labeled "Q2") along with Cordeiro's blood, saliva, and hair samples to the FBI forensic laboratory for mitochondrial DNA testing. Id. Blaisdell's mother's blood and saliva were also sent to the FBI forensic laboratory for mitochondrial DNA testing to compare to the "Q2" hair. Id. at 689.

On November 20, 1996, the FBI forensic laboratory determined through mitochondrial DNA testing, that Cordeiro was eliminated as the source of the hairs found on the outside of Blaisdell's jeans. Ex. "F", at 41-42. The FBI forensic laboratory also eliminated Blaisdell as the source of the hairs found on the outside of his jeans. Id. This included the "Q2" hair that MPD forensic analyst Tanaka conducted microscopic hair analysis on prior to Cordeiro's first trial - the same hair that Tanaka had previously determined to be consistent with Cordeiro. Ex. "B", MPD Report, at 558. After DNA testing was conducted on the hair, it irrefutably excluded Cordeiro as a source of the hair on Blaisdell's body. See Ex. "F", at 42. Once the hair found on Blaisdell's body had undergone DNA testing, it directly disputed the microscopic hair testing conducted by Tanaka in Cordeiro's first trial, which Tanaka had falsely attributed to being consistent with Cordeiro. Id. By the time of Cordeiro's second trial, the "Q2" hair which was the only physical evidence that the State argued connected Cordeiro to the Blaisdell murder, was determined to not be Cordeiro's hair at all based on the DNA testing conducted by the FBI. Going into Cordeiro's second trial, the FBI's DNA testing directly refuted the results of

Tanaka's microscopic hair analysis, who was the State's own expert witness in Cordeiro's first trial. In Cordeiro's second trial, Tanaka could no longer testify that the "Q2" hair found on Blaisdell's body was Cordeiro's, thus eliminating the only physical evidence that the State had against Cordeiro in his first trial.

3. Court Authorizes DNA Testing of Crime Scene Evidence to be Conducted Post-Conviction

On April 25, 2006, Cordeiro's post-conviction attorney Wendy Hudson filed a "Petition for Post-Conviction DNA Testing." Ex. "F", at 72. Prosecutor Robert Rivera, who also represented the State of Hawai'i at Cordeiro's trial, filed the State's "Memorandum in Opposition to Petition for Post-Conviction DNA Testing" on May 31, 2006. Id. at 96. A hearing before Judge Joel E. August was held on June 30, 2006, who after hearing arguments from Attorney Hudson and Prosecutor Rivera, granted Cordeiro's Petition and ordered that any evidence that "has biological significance be submitted to an independent laboratory for analysis." Id. 000063. On April 26, 2007, Judge August ordered eleven items of evidence to be transferred to Genetic Technologies for DNA testing. Id. at 104-5.

In February 2013, Cordeiro filed a Motion to Disqualify Attorney Hudson and Appoint new counsel stating that Attorney Hudson had a conflict as she worked for the public defender's office which had represented witnesses who had testified against Cordeiro previously. Ex. "F", at 214. The Court granted Cordeiro's Motion and on September 28, 2015 and on November 11, 2015, the Hawai'i Innocence Project entered its Notice of Appearance as Cordeiro's counsel in post-conviction proceedings. Id. at 216. Despite efforts from Cordeiro's prior counsel, the State failed to fully comply with Judge August's 2007 order to produce evidence and other documents to the lab for DNA testing. Id. In January 2016, Judge Peter Cahill ordered the State to file an inventory list of evidence in the possession of MPD, to determine what items in its possession

could be transferred for DNA testing. Gordon Cordeiro v. State of Hawai‘i, Case no: 2PR-06-1-000007 at Dkt. 86. On September 26, 2016 the Court granted Cordeiro’s request to transfer evidence from Genetic Technologies to Forensic Analytical Sciences for further DNA testing. Id.

4. Blaidell’s Clothing is Key Physical Evidence Most Relevant for Submitting for DNA Testing

At both of Cordeiro’s trials, Prosecutor Jenkins highlighted the importance of the \$800.00 cash that Blaisdell put in his jean pocket to purchase marijuana. Ex. “A”, Tr. at 176, 4065-66, 4086. On the day that he was murdered, Blaisdell arrived home from work at the house he shared with his mother, Robyn Blaisdell (“Mrs. Blaisdell”) and his uncle Donald Michael Moor (“Moor”). Id. at 173, 4081. Blaisdell told Moor that he was going to meet somebody, and then told Moor that “I am going to call Mike. I am calling Mike...Freitas. You know Mike Freitas” and pointed to a house across the street where Jenny Nakama’s (“Nakama”) Freitas’ girlfriend lived. Id. at 173-74, 4082. Blaisdell took a piece of paper out of his pant pocket that had the name “Mike” and a phone number written on it, then Moor heard Blaisdell say over the phone: “I am here. You ready?” Id. 4083, 174. After getting off the phone, Blaisdell showed Moor the \$800.00 cash Tanouye had given him and told Moor that he planned to use the cash to purchase marijuana. Id. at 176, 4086. Blaisdell’s mother, also recalled that Blaisdell told her prior to his murder that Freitas was setting up a drug deal with Blaisdell so that he could purchase one pound of weed for \$800.00. Id. at 165-66, 4065-66. Moor described the \$800.00 as a “large roll” of money that Blaisdell pulled out of his front left pocket and indicated he was using this money to purchase marijuana through a deal that Freitas set up. Id. at 176-77, 4086. Moor also indicated that Blaisdell left home with his wallet, which was in his back pocket. Id.

During MPD’s investigation into Blaisdell’s murder, they took statements from individuals who indicated that Cordeiro had stolen the \$800.00 that Blaisdell had in his front left pocket. For

example, Clayton Bal was questioned shortly after Blaisdell's murder and stated that he heard about Blaisdell's murder and that Cordeiro had shot Blaisdell and stolen Blaisdell's \$800.00, and that Cordeiro later went to someone's house to buy drugs with the stolen \$800.00. Ex. "B", MPD Report, at 132-33. In the State's closing argument in Cordeiro's first trial, Prosecutor Jenkins also claimed that Cordeiro had stolen the \$800.00 that Blaisdell placed in the front left pocket of his pants and Blaisdell's wallet from his back pocket stating that:

The theft is the eight hundred dollars that Timothy Blaisdell had in his pocket before he went to skid row that afternoon. Now, he [Blaisdell] told Uncle Mike and Uncle Mike saw a wad of bills and he ask him, you know, how much is that? That was eight hundred dollars to buy this pound this pound of marijuana. When the body [Blaisdell] was discovered the next day, that night and then Officer Akuna camped out all night, he made sure nobody disturbed the scene, when the pile of debris and rumble was taken off of Timothy Blaisdell, his body was no longer the way it was when Michael Freitas laid him down.

Michael Freitas testified, ladies and gentleman, that when he laid Timothy Blaisdell down on the ground that he [Blaisdell] was on his back, his hands to his side and his feet together. And the next morning, when the police uncovered all these exercise machine, the baby stroller, the rubber bumper, took these objects off of Timothy Blaisdell, somebody had flipped him over, his shirt is now pulled up, his pants are down, and when the police search his [Blaisdell] pockets, no wallet, no eight hundred dollars.

When Gordon Cordeiro left – when Michael Freitas left that afternoon after being threatened by Gordon Cordeiro, he told you he [Freitas] went back on the Kula Highway, he looked over his side...[b]ut Gordon was nowhere to be found. He [Freitas] didn't even see him. And lo and behold, this eight hundred dollars, Timothy Blaisdell, is missing.

Ex. "A", Tr. at 1778-79.

Further in closing, Prosecutor Jenkins reiterated that Cordeiro had gone through Blaisdell's pockets, telling the jury that "Gordon Cordeiro was going through his [Blaisdell] pockets, he was pulling out the cash, he was pulling out the wallet, "He was checking out his pockets, he pulled down the pants." Ex. "A", Tr. at 1835. Prosecutor Jenkins told the jury that it would be unlikely that Michael Freitas would have killed Blaisdell and left his name and number in Blaisdell's

pockets, indicating that this was further proof that Cordeiro and not Freitas went into Blaisdell's pockets after he was killed. Jenkins stated "would he [Freitas] leave his name and telephone number in the pocket of the victim, if he's [Freitas] such a master brain about committing murder...to leave it behind in the victim's pockets?" Id. at 1785. On the contrary, logic would dictate that if Freitas had searched Blaisdell's pockets after he was killed, Freitas would have been sure to remove the paper with his name and phone number on it because Freitas would want to remove any connection to Blaisdell's murder. Based on Freitas's own testimony, he was fearful for his life and also fearful of being connected to Blaisdell's murder – evidenced by the fact that Freitas concocted numerous inconsistent statements to MPD and at trial in an effort to not be connected. See Ex. "A", Tr. at 2938. Prosecutor Jenkins even stated as much in his closing, that "Michael Freitas was threatened. His life was threatened; his parents were threatened. That was a great concern." Id. 5541.

In Cordeiro's second trial, Prosecutor Jenkins again reiterated that Cordeiro had stolen the \$800.00 from Blaisdell's pocket. In Jenkins' closing, he stated that "Tim Blaisdell left his residence with \$800 in cash...Tim showed it to Mike Moore prior to his leaving home" and that Cordeiro committed theft when he took Blaisdell's property, including the \$800.00 cash. Ex. "A", Tr. at 5526-27. Prosecutor Jenkins again told the jury that Cordeiro went through Blaisdell's pockets and stole his \$800.00. Jenkins stated that Freitas left Blaisdell's body in a certain way but that when Blaisdell's body was found it was in a different position than how Freitas had left him. Id. at 5621-22. Jenkins indicated to the jury that it was Cordeiro who moved Blaisdell's body, stating that Cordeiro had pulled Blaisdell's pants down, lifted his shirt up, and went through Blaisdell's pockets and took the \$800.00 cash. Id. Jenkins also told the jury that Freitas did not go through Blaisdell's pockets because if Freitas had, he wouldn't leave the paper with his name and

phone number in Blaisdell's pockets, and that Cordeiro would leave the paper in Blaisdell's pockets in an effort to frame Freitas. Id. at 5622.

5. Post-Conviction DNA Testing Conducted by Forensic Analytical Crime Lab Support Cordeiro's Actual Innocence and Points to Freitas and Unknown Person(s) as Being Responsible for Blaisdell's Murder⁶

On May 3, 2018, Forensic Analytical Crime Lab ("FACL") completed its first report on the DNA testing in Cordeiro's case. FACL conducted STR DNA testing on four items of evidence: condom found on the roadway at Skid Row; cigarette pack found near Blaisdell's body; knee area of Blaisdell's pants; and fingernail scrapings taken from Blaisdell. Ex. "F", at 107-17. The DNA profiles generated from the testing of these four items of evidence were compared to the reference samples of Blaisdell, Cordeiro, and Suspect #1.⁷ A summary of the results of FACL's testing of these four items of evidence is as follows:

- 1) An unknown male, characterized as Unknown Male #1, is the source of the DNA recovered from the non-sperm and sperm fractions of the samples taken from the **condom**. Timothy Blaisdell, Gordon **Cordeiro**, and [Suspect #1] are **eliminated as possible contributors** to these results.
- 2) Timothy Blaisdell is the source of the DNA recovered from the **cigarette pack** swab. Gordon **Cordeiro**, [Suspect #1], and Unknown Male #1 are **eliminated as possible contributors** to this result.
- 3) Timothy Blaisdell cannot be eliminated as a contributor to the mixture of DNA recovered from the samples taken from the **back right and left knee exterior of his jeans**. Gordon **Cordeiro**, [Suspect #1], and Unknown Male #1 are **eliminated as possible contributors** to these results.
- 4) Timothy Blaisdell is the source of the DNA recovered from his **fingernail scrapings**. Gordon **Cordeiro**, [Suspect #1], and Unknown Male #1 are **eliminated as possible contributors** to these results.

Ex. "F", at 108 (emphasis added).

⁶ Forensic Analytical Sciences changed its name to Forensic Analytical Crime Lab

⁷ The legal name of the individual labeled as "Suspect #1" has been withheld in order to protect the individual and to protect our ongoing and continued efforts to identify the person(s) who murdered Blaisdell.

Further DNA testing was conducted by FACL on the evidence submitted from Genetic Technologies on September 30, 2016, which included: four Coors Light brand beer cans; a stained Camel Lights cigarette pack with cigarettes inside; and Blaisdell's pants. Ex. "F", at 000109. DNA testing was also conducted on evidence received on March 30, 2018 from MPD which included: a Zippo lighter; Blaisdell's boots; Blaisdell's t-shirt; watch band; reference sample of Blaisdell's hair; and Freitas's reference blood sample. Id. at 231-32. The DNA profiles generated from the testing of these items of evidence were compared to the reference samples of Blaisdell, Cordeiro, Freitas, and Suspect #1. A summary of the results of FACL's testing of these items of evidence is as follows:

- 1) Relevant DNA results from each of the following samples from Blaisdell's jeans:
 - Blaisdell's Jeans, **interior of back right pocket**: mixture of at least two individuals (Individual #1 and Individual #2); Blaisdell is main contributor to the mixture (Individual #1); **Cordeiro, Freitas, Suspect #1 are eliminated as contributors** to the mixture (Individual #2).
 - Blaisdell's Jeans, **interior of front right pocket**: mixture of at least two individuals (Individual #1 and Individual #2); Blaisdell is main contributor to the mixture (Individual #1); **Cordeiro, Freitas, Suspect #1 are eliminated as contributors** to the mixture (Individual #2).
 - Blaisdell's Jeans, **interior of front left pocket**: mixture of at least two individuals (Individual #1 and Individual #2); Blaisdell is main contributor to the mixture (Individual #1); **Cordeiro, Freitas, Suspect #1 are eliminated as contributors** to the mixture (Individual #2).
 - Blaisdell's Jeans, **right ankle**: at least three contributors, including at least two male contributors; strong evidence that Blaisdell is contributor to the mixture; limited evidence that **Freitas is a contributor to the mixture; Cordeiro is eliminated as a contributor to the mixture**; limited evidence that Suspect #1 is not a contributor to the mixture.
 - Blaisdell's Jeans, **left ankle**: at least two contributors, including at least two male contributors; limited evidence that Blaisdell is contributor to the mixture; **Cordeiro, Freitas, Suspect #1 are eliminated as contributors** to the mixture (Individual #2).

2) Relevant DNA results from each of the following samples from Blaisdell's shirt:

- Blaisdell's Shirt, scrapings of **bottom of the left front t-shirt**: mixture of at least two individuals (Individual #1 and Individual #2); Blaisdell is main contributor to the mixture (Individual #1); **Cordeiro**, Freitas, Suspect #1 are **eliminated as contributors** to the mixture (Individual #2).
- Blaisdell's Shirt, swab of **bottom of the right front t-shirt**: mixture of at least two individuals (Individual #1 and Individual #2); Blaisdell is main contributor to the mixture (Individual #1); **Cordeiro**, Freitas, Suspect #1 are **eliminated as contributors** to the mixture (Individual #2).
- Blaisdell's Shirt, swab of **top of the left front t-shirt**: mixture of at least two individuals; including at least one male contributor; Blaisdell is main contributor to the mixture; **Cordeiro**, Freitas, Suspect #1 are **not potential contributors** to the mixture.
- Blaisdell's Shirt, swab of **top of the right front t-shirt**: mixture of at least two individuals, including at least one male contributor; Blaisdell is main contributor to the mixture; **Cordeiro** and Freitas are **eliminated as contributors** to the mixture; limited genetic evidence that Suspect #1 is a potential contributor.
- Blaisdell's Shirt, swab of **back of the t-shirt**: mixture of at least two individuals (Individual #1 and Individual #2); Blaisdell is main contributor to the mixture (Individual #1); **Cordeiro**, Freitas, Suspect #1 are **eliminated as contributors** to the mixture (Individual #2).

3) DNA results from the Coors Light beer cans:

- Samples originated from a single source and Blaisdell, **Cordeiro**, Freitas, Suspect #1 are **eliminated as contributors**.

See Ex. "F", at 226-27. FACL also conducted DNA testing on the hairs found on Blaisdell's pants. A low level of DNA from at least one male contributor was detected on the rooted hair and there is strong evidence that Blaisdell is the contributor. Id. at 297. Of all of the evidence submitted for DNA testing, Cordeiro has been eliminated as the source of all foreign DNA found on Blaisdell's body and eliminated as a source of the DNA found on crucial crime scene evidence.

Through its investigation into Cordeiro's wrongful conviction, this powerful new DNA new evidence that proves that Cordeiro is actually innocent and did not murder Blaisdell. Modern Advanced DNA testing on Blaisdell's clothing has found an unidentified DNA profile on the inside front pockets and the inside of the back right pocket of Blaisdell's jeans. See Ex. "F", at 226-27. Additionally, an unidentified DNA profile was also found on the bottom of the front of Blaisdell's shirt. Id. Cordeiro was eliminated as the source of the DNA on the inside of Blaisdell's pockets as well as Blaisdell's shirt. Id. This unidentified DNA profile was found on the inside of Blaisdell's front left pocket where Blaisdell put the \$800.00 in cash which was never recovered. Additionally, an unidentified DNA profile was also found on the inside of Blaisdell's back pocket where Blaisdell kept his wallet, which was also never recovered. This DNA testing completely refutes the State's case against Cordeiro because DNA testing proves that Cordeiro did not remove Blaisdell's wallet and the \$800.00 in cash from his pockets. DNA testing shows that an unidentified individual went into Blaisdell's pockets and likely removed his \$800.00 and wallet.

Most importantly, the DNA testing conducted on Blaisdell's clothing found that Freitas could be a contributor to the DNA present on the right ankle of Blaisdell's jeans. See Ex. "F", at 226-27. This DNA evidence supports the fact that Freitas stated that he alone carried Blaisdell's body down the embankment after he was shot. DNA evidence now shows that Freitas did not act alone, and likely carried Blaisdell down the embankment by his right ankle with the assistance of an Unknown Individual (labeled Individual #2 in the FACL report). Id. Considering that Blaisdell was bleeding from his head wound, it would seem likely that Freitas would have carried him by his extremities (his ankles or hands) in order to minimize the amount of blood transferred onto Freitas and Unknown Individual #2, and the FACL DNA testing results supports

this hypothesis. See id. Additionally, FACL's post-conviction DNA testing also shows that Freitas did not remove Blaisdell's \$800.00 or his wallet because his DNA is not present on the inside of Blaisdell's pockets. FACL's DNA testing results also supports the State's theory at trial that Freitas did not take Blaisdell's money or wallet, because if Freitas had, he would have also removed the paper with his name and number on it. However, FACL's DNA analysis refutes the State's theory that it was Cordeiro who took Blaisdell's cash and wallet from his pants pockets as Cordeiro is eliminated as a source of the DNA inside of Blaisdell's pants pockets. Id. Based on FACL's DNA testing Unknown Individual #2, not Cordeiro, is likely the person who acted alone or with Freitas, to murder Blaisdell and then steal his cash and wallet.

Post-conviction DNA testing now shows that there was an unknown person or persons who went into Blaisdell's pant pockets after he was murdered. Post-conviction DNA testing shows that another person's DNA was present on the inside of both of Blaisdell's front pockets as well as back right pocket. See Ex. "F", at 226, 248. Most importantly, Cordeiro is excluded as the source of the DNA found in Blaisdell's pant pockets. Id. Additionally, the testing to the front and back of Blaisdell's shirt also shows that Cordeiro's DNA is not present, and instead points to another unknown person as leaving behind DNA on Blaisdell's shirt. If these DNA results from Blaisdell's clothing were compared to other known potential suspects or uploaded to the State DNA database or CODIS, it may be able to identify the individual who murdered Blaisdell and stole his wallet and money out of his pockets.

6. Legal Standard for Newly Discovered DNA Evidence

A person convicted of a crime may seek relief from a conviction under Hawai'i Rules of Penal Procedure ("H.R.P.P.") Rule 40 when there is "newly discovered evidence." H.R.P.P. 40(a)(1). The standard justifying vacating a conviction and ordering a new trial based on newly

discovered evidence was set forth in State v. McNulty, where the Hawai‘i Supreme Court laid out the four requirements needed for a new trial based on newly discovered evidence in a H.R.P.P.

Rule 40 petition:

(1) the evidence has been discovered after trial; (2) such evidence could not have been discovered before or at trial through the exercise of due diligence; (3) the evidence is material to the issues and not cumulative or offered solely for purposes of impeachment; and (4) the evidence is of such a nature as would probably change the result of a later trial.

State v. Ruis, No. CAAP–12–0001115, 2014 WL 1621780, at *1 (Haw. Ct. App. April 22, 2014) (SDO) (citing State v. McNulty, 60 Haw. 259, 588 P.2d 438 (1978)).

Specifically, in recognition of the overwhelming power of DNA evidence especially in post-conviction proceedings, the Hawai‘i Legislature codified an individual’s right to seek post-conviction DNA testing for the purpose of producing “newly discovered evidence” that may prove someone’s actual innocence. Haw. Rev. Stat. §844D-123. Under that statute, the court must order testing if “evidence was not previously subjected to DNA analysis or was not subjected to analysis that can now resolve an issue not resolved by previous analysis...” HRS § 844D-123(a)(4); see also State v. Pavich, 119 Haw. 74, 86 n.12, 193 P.3d 1274, 1286 n.12 (Ct. App. 2008) (noting that “HRS §§ 844D-121- 133...establish procedures for post-conviction DNA testing” and that “[t]hese provisions permit a defendant ‘who was convicted of and sentenced for a crime’ to move for DNA analysis of evidence”). Thus, DNA testing conducted post-conviction constitutes “newly discovered” evidence as required under McNulty.

Additionally, under federal law, Title 18, Section 3600 of the U.S. Code allows for post-conviction DNA testing if “the evidence to be tested is newly discovered DNA evidence.” 18 U.S.C. § 3600(a)(10)(B)(ii). The Ninth Circuit concluded that newly discovered DNA evidence includes “the results of DNA testing not possible at the time of trial.” United States v. Watson, 792

F.3d 1174, 1183 (9th Cir. 2015). In applying the federal statute discussed above, the Ninth Circuit concluded that newly discovered DNA evidence is not merely limited to newly discovered objects. Watson, 792 F.3d at 1181 (“We conclude that the DNA is ‘newly discovered DNA evidence’ even though the underwear and semen are not.”). Thus, post-conviction DNA testing is “newly discovered” evidence even if the items of evidence were available at the time of trial because the test is not whether the items of evidence subject to DNA testing are newly discovered, but whether the DNA testing conducted on those items of evidence is new. Id.

In the over two decades that have passed since Cordeiro was convicted, forensic DNA testing has become the most relied upon forensic technique available to law enforcement and prosecutors. The evidentiary power and scientific precision of DNA technology has led to a remarkable consensus among prosecutors and defense attorneys that broad access to DNA testing is critical at all stages of criminal proceedings. In the words of former Attorney General John Ashcroft, DNA testing is “nothing less than the ‘truth machine’ of law enforcement, ensuring justice by identifying the guilty and exonerating the innocent.” See Naftali Bendavid, *U.S. Targets DNA Backlog-Agency To Spend \$30 Million To Aid State Crime Labs*, *Chi. Trib.*, Aug. 2, 2001, at 10. In recognition of the overwhelming power of DNA evidence, the Hawai‘i Legislature codified an individual’s right to seek post-conviction DNA testing for the purpose of producing newly discovered evidence that could prove actual innocence. Haw. Rev. Stat. §844D-123

Cordeiro’s new DNA evidence meets the first prong under McNulty, because post-conviction DNA testing was conducted almost two decades after Cordeiro’s trials. Cordeiro’s new DNA evidence also meets the second prong under McNulty, as the type of DNA testing done post-conviction was not available at the time of Cordeiro’s trials. Even the State noted in its opposition

to Cordeiro’s Motion for Post-Conviction DNA Testing⁸, that DNA analysis had advanced even between Cordeiro’s first and second trial, “[t]here was DNA done on some hair, but the hair excluded the Defendant in the first trial. Based on today’s standards, the DNA was inadequate and outdated and yet, that hair was presented in the first trial and received in evidence in the first trial. In the second trial, because testing was more advanced by that time, the Defendant was excluded as being a contributor to the hair.” Ex. “F”, at 58. In over two decades since Cordeiro was convicted, forensic DNA testing has advanced significantly and the new autosomal STR and Y-STR DNA testing methods used by FACL are also even more sensitive and much more capable of identifying DNA profiles from very small amounts of biological material present in skin cells, spermatozoa, seminal fluid, saliva, blood, or mixtures on any of the crime scene evidence than what was available at the time of Cordeiro’s trial, thus meeting the second requirement under McNulty.

Cordeiro’s new DNA evidence also meets the third prong under McNulty because this DNA evidence “is material to the issues.” State v. Ruis, No. CAAP–12–0001115, 2014 WL 1621780, at *1 (Haw. Ct. App. April 22, 2014) (SDO) (citing State v. McNulty, 60 Haw. 259, 588 P.2d 438 (1978)). When ordering post-conviction DNA testing in Cordeiro’s case, Judge August stated “It would appear that based upon the background of this case and upon the review of the status that we are dealing with the mandatory testing issues contained in 844D...opposed to permissive testing.” Ex. “F”, at 48; see also §844D-123(a).⁹ In stating his rational in determining

⁸Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner for Custody was filed on April 30, 2021. Stipulation for Dismissal Without Prejudice of Petitioner’s Rule 40 Petition was filed on September 1, 2022.

⁹§844D-123 Order for post-conviction DNA testing. (a) The court shall order testing after a hearing if it finds that:

- (1) A reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis, even if the defendant later pled guilty or no contest;
- (2) Identity was or should have been an issue in the proceeding that led to the verdict or sentence;
- (3) The evidence sought to be analyzed has been identified with particularity and still exists in a condition that permits DNA analysis; provided that questions as to the chain of custody of the evidence shall not

that an DNA testing results were mandatory rather than permissive under §844D-123(b), Judge August further stated, “[h]ere it sort of seems like it is all or nothing. It is either murder or it is not murder. I don't see the issue is going to be either DNA testing would tend to exculpate and lead to non-conviction to the murder as opposed to leading to some kind of lesser sentence,” to which the State concurred. Ex. “F”, at 48-47. A disputed issue of fact, and one that Prosecutor Jenkins relied heavily upon in seeking a conviction in Cordeiro’s trial, was that Cordeiro murdered Blaisdell and then stole Blaisdell’s cash and wallet. Post-conviction DNA testing now shows that an unidentified person, not Cordeiro, left behind their DNA on the inside of Blaisdell’s pockets when they went into Blaisdell’s pockets and stole his cash and wallet. As described above, Prosecutor Jenkins put on evidence at trial that Cordeiro murdered Blaisdell and then stole Blaisdell’s money and wallet. For that reason alone, this new DNA evidence is plainly material. See McNulty at 268.

This new DNA evidence also meets the third prong of McNulty because it is “not cumulative or offered solely for purposes of impeachment.” State v. Ruis, No. CAAP–12–0001115, 2014 WL 1621780, at *1 (Haw. Ct. App. April 22, 2014) (SDO) (citing State v. McNulty, 60 Haw. 259, 588 P.2d 438 (1978)). Cordeiro’s newly discovered DNA evidence is not offered solely for impeachment and is in no way cumulative, as there was no similar evidence offered at trial. Even in ordering post-conviction DNA testing on crime scene evidence, Judge August indicated that it was “[t]he Court's general impression is if there was some DNA evidence which was recovered which significantly calls into question the version of events that

constitute grounds to deny the motion if the testing itself can establish the integrity of the evidence;

- (4) The evidence was not previously subjected to DNA analysis or was not subjected to analysis that can now resolve an issue not resolved by previous analysis; and
- (5) The application for testing is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Mr. Freitas gave, that might tend to exculpate the Defendant [Cordeiro].” Ex. “F”, at 60-61. As Judge August predicted when he ordered post-conviction DNA testing in Cordeiro’s case, the DNA testing conducted by FACL on Blaisdell’s clothing “calls into question the version of events that Mr. Freitas gave” and exculpates Cordeiro, as it proves that Cordeiro did not take Blaisdell’s money or wallet out of his pockets as the State claimed at his trials. Cordeiro’s powerful new DNA evidence shows that neither Cordeiro or Freitas took Blaisdell’s money and wallet. The individuals that found Blaisdell’s body and alerted the police also stated that they did not touch Blaisdell or his clothing, so their DNA would not be present on the inside of Blaisdell’s pockets. Furthermore, the MPD individuals who came into contact with Blaisdell’s body after he was murdered and who searched his pockets, were all wearing latex gloves, thereby preventing their DNA to transfer to the inside of Blaisdell’s pockets. Instead, post-conviction DNA testing shows that Unknown Individual #2 went into Blaisdell’s pockets and left their DNA on the inside of Blaisdell’s pockets, and it is likely that this individual is also the person who murdered Blaisdell.

Post-conviction DNA testing of Blaisdell’s clothing also “calls into question the version of events that Mr. Freitas gave” because Freitas’s DNA profile was found on the right ankle of Blaisdell’s jeans. When testifying before Cordeiro’s first grand jury, Freitas claimed that after Blaisdell was shot that Freitas picked up Blaisdell’s body “right by his waistline, one hand around his shirt and lifted him up” at the “waistband of his trousers.” Ex. “F”, at 23; Ex. “A”, Tr. at 2914. New post-conviction DNA testing on Blaisdell’s clothing indicates that Freitas likely carried Blaisdell at some point by the ankles, which contradicts Freitas’s statements to MPD and his trial testimony. Cordeiro’s new DNA evidence shows that Blaisdell’s murder did not happen as Freitas claimed, and therefore, this new evidence is not solely offered for impeachment

purposes, as this DNA evidence supports Cordeiro's innocence as his DNA is not present on Blaisdell or any of the other crime scene evidence collected and tested. Moreover, this new DNA evidence also implicates an unknown individual in Blaisdell's murder.

Cordeiro's new DNA evidence meets the fourth requirement under McNulty because it is evidence "of such a nature as would probably change the result of a later trial." McNulty 60 Haw. 259, 268. At a new trial today, a jury would not convict Cordeiro of Blaisdell's murder because this new DNA evidence indicates that Unknown Individual #2 likely killed Blaisdell because this Unknown Individual #2 searched Blaisdell's pockets after he was murdered and stole Blaisdell's money and wallet, leaving behind their DNA in the inside of three of Blaisdell's pockets. At a new trial today, the State could not argue as they did at Cordeiro's prior trials, that Cordeiro killed Blaisdell and then stole Blaisdell's money and wallet from his pockets. At trial today, Cordeiro would now be able to put on powerful DNA evidence that another person stole Blaisdell's wallet and money after he was killed, and that person likely also murdered Blaisdell. Furthermore, if the State decided to prosecute Cordeiro despite this exculpatory DNA evidence, a jury today would be much more skeptical about the State's arguments at trial. Over the last two decades, not only have actors in the criminal legal system come to understand the significance of DNA evidence, but the public has as well. A jury likely would reject any allegations by the State that Cordeiro murdered Blaisdell and then stole his money and wallet, and did so without leaving a trace of Cordeiro's DNA on Blaisdell's body or any of the crime scene evidence. The likelihood that Cordeiro could have participated in Blaisdell's murder and leave no trace of biological evidence on Blaisdell or any of the crime scene evidence tested, is an extraordinarily improbable contention. Cordeiro's newly discovered DNA evidence is powerful exculpatory proof that fully undermines the State's case and demonstrates that someone other than Cordeiro

stole Blaisdell's cash and wallet, and that person is the likely perpetrator of Blaisdell's murder. This "evidence is of such a nature as would probably change the result of a later trial" and therefore Cordeiro has also satisfied the fourth prong of McNulty standard.

For the above reasons, Cordeiro's post-conviction DNA testing meets all of the requirements of "new discovered evidence" under McNulty, as his post-conviction DNA testing is unassailable scientific evidence that Cordeiro did not murder Blaisdell and then steal Blaisdell's wallet and cash out of his pocket, as the State claimed during Cordeiro's trials. Cordeiro's newly discovered evidence satisfies all four prongs of the McNulty test. See State v. McNulty, 60 Haw. At 268. First, all the above-mentioned evidence was discovered after Cordeiro's trial due to changes and advances in DNA science. Second, Cordeiro's newly discovered evidence could not have been discovered before or at trial through due diligence, as the changes in science occurred post-conviction. Third, Cordeiro's newly discovered evidence is material and not cumulative or offered solely for impeachment. Cordeiro's newly discovered evidence is not offered solely for impeachment and is in no way cumulative, as there was no similar evidence available to be offered at trial. Cordeiro's newly discovered evidence clearly meets the fourth requirement under McNulty that the newly discovered evidence is of the nature that would probably change the result of Cordeiro's later trial. Id.

7. The Totality of Cordeiro's Post-Conviction DNA Testing Both Old and New, Supports Cordeiro's Actual Innocence under Schlup

Cordeiro has spent three decades wrongfully incarcerated based on misapplication of forensic science and unreliable informant evidence. Today, powerful exculpatory DNA evidence proves that Cordeiro is innocent. It would be unconscionable for him to continue to remain incarcerated, given this overwhelming new evidence of innocence. In ordering post-conviction DNA testing in the case, the Court contemplated that post-conviction DNA testing could produce

results implicating an unknown person on the crime scene evidence. In issuing its ruling, the Court noted “I think if there is this third person whose DNA needs to be attained, that needs to be brought to the attention of the Court. Apparently, there is authority of the Court to order that DNA samples be taken from any person pursuant to some type of motion.” Ex. “F”, at 68. In addition to setting a hearing on this Petition, Cordeiro also requests that this Court order that the Unknown Individual #2 profile obtained from Blaisdell’s clothing be submitted to the State’s DNA database and to CODIS to be compared to known profiles. Additionally, if at a later date Cordeiro identifies a viable suspect to compare the unknown male DNA profile obtained from Blaisdell’s clothing, that this Court order a DNA sample be taken from that suspect. If this new DNA evidence could be compared to other suspect profiles, it may show who actually murdered Blaisdell and stole his wallet and the \$800.00 from his pockets.

MPD collected a significant amount of biological evidence at the crime scene in this case, that was suitable for DNA testing. An evaluation of all of the DNA testing done on the evidence strongly suggests that someone else killed Blaisdell and stole his money and wallet from his pockets, and that Cordeiro is innocent. Of all of the crime scene evidence submitted for post-conviction testing which resulted in a DNA profile, Cordeiro has been eliminated as a contributor on all tested evidence. Though there were numerous items of evidence collected at the crime scene, the items of evidence submitted for DNA testing were relevant to Blaisdell’s murder and potentially exculpatory to Cordeiro, thereby supporting his claim of actual innocence. In ordering post-conviction DNA testing, the Court ordered that the evidence be subjected to DNA testing because it is material and with biological significance in this case. Ex. “F”, at 62.

Cordeiro’s newly discovered DNA evidence that excludes Cordeiro and implicates others in Blaisdell’s murder is evidence of actual innocence pursuant to Schlup. The cumulative effect of

all of Cordeiro's newly discovered DNA evidence is "new" because it was not presented at trial and that "is reason to doubt the trial result and conviction." Schlup, 513 U.S. at 328. Furthermore, the cumulative results of all of Cordeiro's post-conviction DNA testing which excludes him as the source of the foreign DNA on Blaisdell's clothing and other crucial crime scene evidence meets the standard set in Schlup of actual innocence because it demonstrates that, "in light of all the evidence," "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." Schlup, 513 U.S. at 327-28. It is more likely than not that no juror today, understanding the weight of the exculpatory DNA testing today would convict Cordeiro, thereby finding Cordeiro actually innocent.

B. Ground Two: Misapplication of Forensic Science in Petitioner's Trial is Newly Discovered Evidence that Supports Petitioner's Colorable Claim of Actual Innocence

1. Legal Standard for Misapplication of Forensic Science as Newly Discovered Evidence

The Federal standard for admitting scientific evidence into court is the Frye standard, which is the "general acceptance test", meaning that a meaningful portion of the scientific community accepts the scientific test or evidence. See Frye v. US 293 F. 1013 (D.C. Cir. 1923). Daubert later narrowed the test, requiring that four parts be met: the claims made by the scientific expert are (1) testable; (2) peer reviewed; (3) uses reliable standards and protocols; and (4) must be accepted within the scientific community. See Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). In Hawai'i, the courts have found Daubert to be instructive stating that:

The prosecution is correct in contending that this court has not adopted the Daubert test, see Acoba v. General Tire, Inc., 92 Hawai'i 1, 13 n. 6, 986 P.2d 288, 300 n. 6 (1999), and we expressly refrain from doing so. However, because the HRE are patterned on the Federal Rules of Evidence (FRE), construction of the federal counterparts of the HRE by the federal courts is instructive, see Nielsen v. American Honda Motor Co., Inc., 92 Hawai'i 180, 989 P.2d 264 (1999).

State v. Vliet, 95 Haw. 94, 105, 19 P.3d 42, 53 (2001).

Even when evidence that was previously admitted at trial met the reliability test as established above and was admitted at trial, that same evidence if before the court today would no longer be reliable or scientifically acceptable because of changes in forensic science. Today, because of the prevalence of wrongful convictions around the nation, it has been determined that some forensic science that was once considered reliable and admissible in court would be found unreliable and inadmissible after more recent scientific evaluations and studies were conducted. See e.g., Ex. “D”, at 7-10. Unreliable or misapplied forensic science is one of the leading causes of wrongful convictions in the United States. See generally, Ex. “D”, at 12-17. Invalid forensic testimony had contributed to convictions 60 percent of the time. Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1, 14 (2009). Gunshot residue evidence (“GSR”) is one area of forensic science that has been found to be misapplied and unreliable when more recent testing and research was conducted. Id. at 122. “The National Registry of Exonerations (“NRE”) has recorded over 3000 cases of wrongful convictions in the United States. As of July 2021, the NRE associated 732 wrongful convictions with ‘False or Misleading Forensic Evidence.’” Id. at 110. Based on a study examining case factors associated with those 732 wrongful convictions, 19 out of 29 gunshot residue examinations resulted in case error, and 11 of those errors contributed to conviction. Id. at 149.

2. Misapplication of Forensic Science Gunshot Residue Causes Cordeiro’s Wrongful Conviction

GSR consists of a mix of particles created by a rapid high-temperature burning of primer mix when a firearm is discharged, resulting in residue or particles exiting the firearm and landing in the area near where the firearm was shot. See Ex. “D”, at 163-64. The three elements present that are fused together in GSR are lead (Pb), barium (Ba), and antimony (Sb). Id. at 177-78. Testing

methods to determine the presence of GSR have changed over time with the Scanning Electron Microscopy/Energy Dispersive Spectroscopy (“SEM/EDS”) test now being considered more reliable. Id. at 151. In addition to more reliable testing methods being used today, crime laboratories throughout the United States now require identification of all three fused particles (Pb, Ba, and Sb) to qualify as GSR. E.g., Ex. “D”, at 177-78. For example, the Federal Bureau of Investigation (“FBI”) requires a minimum of three PbBaSb fused particles, and the presence of “other particles consistent with a GSR-type environment” to be able to identify the particles as GSR. Ex. “D”, at 169. The United States Army Crime Laboratory requires a minimum of four PbBaSb fused particles to identify GSR. Id. at 178.

GSR expert John Kilty (“Kilty”) examined the evidence and transcripts of the GSR testimony presented by the State in Cordeiro’s first and second trial. Ex. “D”, at 1-6. The State’s expert, Tanaka, conducted seven lifts from Shiota’s truck to compare the lifts to gunshot residue finding one particle on one lift, and two particles on another. Ex. “A”, Tr. at 4615-17. Tanaka used the SEM/EDS test when looking at the particle lifts taken from Shiota’s truck. Id. at 4607, 4618. However, while Tanaka utilized a reliable form of GSR testing (the SEM/EDS test), Tanaka’s analysis of the particles is no longer considered a reliable scientific method. Tanaka was “mainly looking for the lead barium antimony” with the SEM/EDS test and believed it was possible that not all three elements be present in a particle, meaning that it was possible to find “lead only or lead barium or barium sulphur,” and even without the three elements present the particles would still be “consistent with discharge of a firearm.” Id. at 4619. When questioned, Tanaka stated that the three particles he identified and claimed were consistent with GSR only contained lead (Pb) and some copper. Id. The two additional required GSR elements (Ba and Sb) were not present. Id. at 1664. Tanaka only found the presence of lead Pb, and never identified a single PbBaSb fused

particle, much less three PbBaSb fused particles as recommended by the FBI under today's scientific standards. See Ex. "A", Tr. at 4632.

GSR expert Kilty also reviewed the Honolulu Police Department's ("HPD") current GSR policy, as HPD policy sets the standards for what all Hawai'i police departments must follow. Ex. "D", at 3. In the review of HPD's GSR policies, Kilty found that "if an HPD analyst were to produce the analytical results as recorded in this case, the current GSR policies of the HPD would not authorize or even suggest a 'positive' interpretation of such results." Id.

3. Misapplication of Gunshot Residue in Cordeiro's Trial is Newly Discovered Evidence of Actual Innocence Pursuant to McNulty and Schlup

Based on the changes in forensic science mentioned above, the GSR evidence that was admitted in Cordeiro's trial would likely not be admitted today. Conversely, if the GSR testimony were admitted today, it would be assessed with more reliable forensic science and serve to indicate that there was no evidence of GSR in Shirota's truck. Kilty's expert report on the GSR in Cordeiro's case is also powerful new evidence pursuant to State v. McNulty, that supports Cordeiro's innocence. 60 Haw. 259, 588 P.2d 438 (1978).

Kilty's report meets the four prongs under McNulty. Supra. First, the new, more reliable and accepted scientific methods in GSR did not exist at the time of Cordeiro's trial. This evidence was discovered after the trial because it is the result of scientific advancement and therefore could not have been discovered at or before Cordeiro's trials. Next, Cordeiro's new GSR expert testimony is material and not cumulative because it indicates the opposite of what the prosecution claimed, that the particles lifted from Shirota's truck were not consistent with GSR. Finally, if the new evidence of Kilty's testimony were available at the time of trial, it would have likely changed the result and prevented Cordeiro's wrongful conviction. The GSR evidence was the only physical evidence the State produced that supposedly connected Cordeiro to Blaisdell's murder. The State

argued that Cordeiro drove Shiota's truck to Skid Row and when Blaisdell approached the passenger side window of the truck, Cordeiro shot Blaisdell. Ex. "A", Tr. at 1774, 5524-25. Tanaka's testimony that the particles lifted from Shiota's truck were "consistent with discharge of a firearm" would not be admissible today based on the current scientific standards. Without Tanaka's testimony linking Shiota's truck with a discharged firearm, the State would have no physical evidence linking Cordeiro to Blaisdell's murder. Therefore, without Tanaka's testimony Cordeiro would likely not have been convicted at trial.

The changes in forensic science as it relates to GSR evidence would prevent Tanaka's testimony if Cordeiro was tried today, and this misapplication of the GSR evidence in this case is further proof of Cordeiro's actual innocence pursuant to Schlup. This new scientific evidence is "new" because the current standard for admitting GSR evidence at trial was not available when Cordeiro was convicted and with this new evidence there "is reason to doubt the trial result and conviction." Schlup, 513 U.S. at 328. Furthermore, these GSR evidence meets the standard set in Schlup of actual innocence because it demonstrates that, "'in light of all the evidence,'" "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." Schlup, 513 U.S. at 327-28. It is more likely than not that no juror today would be able to hear Tanaka's testimony nor rely on it to convict Cordeiro and would thereby find Cordeiro actually innocent.

C. Ground Three: Recantations of William Cornelio and John Iona Constitute Newly Discovered Evidence that Supports Petitioner's Colorable Claim of Actual Innocence

1. Legal Standard for Recantations as Newly Discovered Evidence Pursuant to McNulty and Teves

Cordeiro's newly discovered recantation evidence satisfies the test under State v. Teves, which specifically applies to the subset of cases where the newly discovered evidence indicates

that testimony given at trial by a prosecution witness was false. 5 Haw. App. 90, 96, 679 P.2d 136, 141 (1984). Under Teves, a trial court must grant a new trial when:

(1) It is reasonably satisfied that the testimony at the trial of a material prosecution witness is false; (2) defendant and his agents did not discover the falseness of the testimony until after the trial; (3) the late discovery is not due to a lack of due diligence by defendant or his agent; and (4) the false testimony is not harmless because there is a reasonable possibility that it contributed to the conviction.

Teves, 5 Haw. App. at 97, 679 P.2d. at 141. The court recently reaffirmed the need to review all the new evidence against the full record holistically to make a probabilistic determination about what reasonable, properly instructed jurors would do. Gable v. Williams, 49 F.4th 1315, 1322 (9th Cir. 2022). “To measure a recantation's likely effect on a juror, we consider its context, the circumstances and timing of the recantation, the original testimony and evidence, and the credibility and testimony of other witnesses. Id. at 1323.

Cordiero’s newly discovered recantation evidence also satisfies the McNulty four-prong test for a new trial. See supra.

2. Cornelio and Iona’s Recantations Support Cordeiro’s Actual Innocence

Iona was serving time for a felony when he met Cordeiro at Maui Correctional Center. Iona testified that Cordeiro offered him money to break out of jail and kill Freitas. Ex. “A”, Tr. at 3493. Cordeiro allegedly gave Iona three maps, a name, and a phone number to a contact in case he needed help when he escaped jail. Id. at 5056. The first map was drawn on a page that allegedly came from Cordeiro’s Bible, the second map was drawn on the back of a medical request form, and the third was on a piece of paper. See id. at 3746-48. Cordeiro allegedly gave Iona the third clearest map in March 1995, which Iona alleged was a map drawn of where Freitas lived. Id. 3744. Iona gave the maps and pages with writing that had been torn off from the Bible to Detective Camara. Id. at 5061.

Detective Camara testified to receiving the pages from Iona and seeing Cordeiro's name on one of the pages in the Bible, indicating that it belonged to Cordeiro. Ex. "A", Tr. at 5064. One of the pages in the Bible had writing stating that Cordeiro was in a brotherhood and that Freitas had to die. The maps and bible pages were the evidence presented against Cordeiro to convict him. Det. Camara testified during the grand jury that Iona was not solicited for information, but that Iona had stepped forward on his own. See id. at 5068. Iona admitted that he was testifying to try to get back with his family and also because the State had agreed not to prosecute him. Id. at 5061-62. At trial however, Iona claimed that he stole the bible in June 1995, but he did not come forward with until 1997 because "I wasn't approached about this case until later on, you know, by you [Jenkins] and Detective Camara." Id. at 003766.

Cornelio originally contacted the prosecutors on Monday, October 16, 1995, after being sentenced to forty years in prison on Thursday, October 12, 1995. See Ex. "C", Cornelio Declaration, September 19, 2016, at 1 ¶¶ 4, 6. Cornelio has now admitted, under penalty of perjury, that he, "decided to make up a story about [Cordeiro] and use it to get [his] sentence reduced." Id. at 1 ¶ 5. In a hearing to reduce Cornelio's sentence, Prosecutor Jenkins testified in support of reducing his sentence. Ex. "C", at 2 ¶¶ 10, 11; see also Ex. "A", Tr. at 1923. Prosecutor Jenkins' testimony was even more shocking because Cornelio's motion to reduce his sentence was opposed by the Maui Prosecuting Attorney's office, Prosecutor Jenkins' own employer. See Ex. "A", Tr. at 1923. Cornelio's scheme to get his sentence reduced in exchange for knowingly providing false testimony against Cordeiro failed. Ex. "C", at 2 ¶ 12; see also Ex. "A", Tr. At 1941. When Cornelio was unsuccessful in reducing his sentence, he realized that his false statements might send an innocent man to prison. Ex. "C", at 2 ¶ 12. Cornelio attempted to tell the truth to Cordeiro's defense team before Cordeiro's trial. Id. at 2 ¶ 13. However, Jenkins warned Cornelio that if he did not

continue to “cooperate,” then he would charge Cornelio as a co-conspirator with Cordeiro in the murder-for-hire scheme that Cornelio had concocted himself. Id. at 2 ¶ 13, 14.

Although Iona would not sign a declaration, he has made numerous statements to members of the Hawai‘i Innocence Project admitting that he committed perjury. Handwriting expert Reed Hayes corroborates Iona’s statements to the Hawai‘i Innocence Project, that Cordeiro did not draw the maps or write in the bible. Ex. “F”, Reed Hayes Report, October 30, 2016, at 403-04. At trial, Iona was adamant that Cordeiro drew the maps and wrote in the bible. Iona swore under oath that it was Cordeiro’s handwriting on these items. See Ex. “A”, Tr. at 3744-45. The statements that Iona made to the Hawai‘i Innocence Project, admitting that he authored the maps, are corroborated by both Cornelio and Hayes. Ex. “C”, at 1-2; see also Ex. “F”, at 403-4; Ex. “F”, Jasmine Declaration at 314.

3. Cornelio and Iona’s Recantations are Newly Discovered Evidence under Teves and McNulty that Supports Cordeiro’s Actual Innocence Under Schlup

Cordeiro’s newly discovered evidence fulfills every prong of the Teves test. First, it shows that the prosecution’s material witnesses, Cornelio and Iona, testified falsely. Ex. “C”, at 1 ¶ 1-2; see also Ex. “F”, at 403-04. In Cornelio’s declaration, he explicitly admits that his testimony was false. Ex. “C”, at 1 ¶ 5. Iona also admitted to lying and drawing the maps himself. Ex. “F”, Jasmine’s Statement at 314. The hand-writing expert Hayes also declared that Cordeiro did not draw the maps or write in the bible. Ex. “F”, Hayes Report, at 403. Iona and Cornelio have both recanted and admit that they testified to get “deals” and were led to believe that they could be charged as co-conspirators in a murder for hire when the only evidence of the murder for hire was created by Iona and Cornelio. See Ex. “C”, Cornelio at 2 ¶ 9-15. All of this taken together thoroughly discredits Iona and Cornelio’s testimony at trial.

The newly discovered recantation evidence satisfies the second Teves prong requiring that the discovery of the falsity occur after the trial. 5 Haw. App. At 97, 679 P.2d at 141. Although Cordeiro knew he was innocent and that the charges against him were false, it was not possible for Cordeiro to have known about Cornelio and Iona's recantation of their testimonies at trial as the recantations were only made after his trial. Third, the late discovery was not attributable to a lack of due diligence by the defendant or his agent because Cornelio and Iona were strongly incentivized to conceal the truth, and their recantations came to light after the trial. See Ex. "C", Cornelio at 1 ¶¶ 4, 5. Cornelio and Iona had deals with Jenkins for favorable treatment in their pending cases. Id. at 2 ¶ 11. Further, Jenkins threatened Cornelio when Cornelio attempted to come forward with the truth. Id. at 2 ¶¶ 13, 14. Therefore, the late discovery of the recantations is not attributable to Cordeiro's lack of due diligence.

The fourth prong is satisfied because the false testimony at trial was not harmless and contributed to the conviction. Cordeiro was convicted of murder for hire and sentenced to life without parole on this charge because of Cornelio and Iona's false testimony. Although Cordeiro was found not guilty of the murder-for-hire charge involving Cornelio, Iona corroborated Cornelio's testimony by positively identifying the fake "brotherhood oath" as something Iona had signed, which now Cornelio and the hand-writing expert both confirm was not written by Cordeiro. See Ex. "C", Cornelio Dec. at 1 ¶ 8; see also Ex. "F", Hayes Report at 404; Ex. "A", Tr. at 4710-13. The false testimony that led to Cordeiro's wrongful conviction is now discredited and, therefore, is not harmless.

Cordeiro's newly discovered recantation evidence satisfies both the Teves test and the McNulty test. The first and second prongs of McNulty are met because Cordeiro's trial ended in 1998, but Cornelio and Iona's recantations were obtained years later. Cornelio's change of heart,

and Iona's willingness to come clean about lying about Cordeiro could not have been discovered before or during the trial through due diligence because their recantations occurred after the trials. The third prong of McNulty, that the evidence is material and not cumulative or offered solely for impeachment, is also satisfied because Cordeiro's new recantation evidence is not offered solely for impeachment and is not cumulative. There was no similar evidence available offered at trial. While this evidence does impeach the testimony of Iona and Cornelio, it is not offered solely for impeachment purposes, but for the truth of the matter. The evidence of the recantations, supported by handwriting expert Hayes, go to the central issue of the trial – that Cordeiro was not involved in a murder for hire plot to kill Freitas. See Ex. "C", Cornelio Dec. at 2 ¶ 9; see also Ex. "F", Hayes Report at 403-04.

The recantations also meet the fourth prong under McNulty because had the truth been brought to light during Cordeiro's trial it would probably have changed the outcome. Both Cornelio and Iona testified that Cordeiro solicited both of them to kill Freitas, that they signed a "brotherhood oath" and a "murder contract", and that Cordeiro wrote incriminating statements in a Bible. Ex. "A", Tr. at 3491, 3493, 3497. The recantations and expert handwriting testimony unequivocally demonstrate that Iona and Cornelio lied about the murder for hire plots in exchange for lenient treatment in their pending cases. Ex. "C", Cornelio Dec. at 1 ¶¶ 4-6; see also Ex. "F", Hayes Report at 404. Since the testimony from the jailhouse informants was the only evidence of Cordeiro's involvement in a murder for hire plot, this newly discovered evidence would in all probability change the result of Cordeiro's trial.

Cornelio and Iona's recantations are powerful evidence of actual innocence pursuant to Schlup. Their recantations are "new" because they did not recant and tell the truth at trial and as a result "is reason to doubt the trial result and conviction." Schlup, 513 U.S. at 328. Furthermore,

their recantations meet the standard set in Schlup of actual innocence because it demonstrates that, “in light of all the evidence,” “it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.” Schlup, 513 U.S. at 327-28. It is more likely than not that no jury today would be able to convict Cordeiro of any murder for hire plot involving either Cornelio or Iona if they had been truthful in the first place and never testified falsely against Cordeiro, and would find Cordeiro actually innocent.

D. Ground Four: Expert Testimony of Handwriting Expert Reed Hayes is Newly Discovered and Newly Presented Evidence that Supports Cordeiro’s Claim of Actual Innocence

1. Expert Hayes Report Supports Cornelio and Iona’s Recantations and is New Evidence of Cordeiro’s Innocence

Although Cordeiro’s trial attorney, Wilkerson, hired handwriting expert Reed Hayes to provide a report in advance of Cordeiro’s second trial, Wilkerson failed to have Hayes complete his expert report. Instead, Wilkerson relied on the State’s handwriting expert, James Josey. Wilkerson incorrectly stated to the court that Hayes’ testimony was not necessary because it would be similar to that of the State’s expert Josey. Exhibit “F”, at 389-91. However, Wilkerson could not have known whether Hayes’s testimony would be the same or similar to Josey as Hayes never completed his expert report.¹⁰ Id. at 401.

Hayes reviewed the documents Q1 “Contract,” Q2 “Brotherhood Oath,” Q3 “Map to Victim’s House / Fraitis,” Q4a “Medical Request” dated 12/8/94, signed “Gordon Cordeiro,” Q4b “Map” on reverse of Q4a (“Pond, Kokomo, House, Yellow”), and Q5 “Map” (“To brada John / Direction”). Ex. “F”, Hayes Report at 401. Hayes was reviewing these documents because handwriting expert Josey testified that when he compared the signature on the Gordon J. Cordeiro

¹⁰ Wilkerson’s failure to have Hayes complete his expert report or to call him as a witness is outlined more fully in Cordeiro’s ineffective assistance of counsel claim below.

signature line, underneath the text of the Contract, he found there was evidence to indicate that Cordeiro probably authored it. Ex. “A”, Tr. at 4688. However, due to the limited nature of the signature and some variation, a conclusive opinion regarding whether Cordeiro authored the Contract could not be reached. Id. Hayes also examined the Contract and the Brotherhood Oath and concluded that the entire signature block on the Brotherhood Oath is misaligned with the paragraph above it, an indication that it may have been borrowed from another source. Ex. “F”, at 403.

Hayes’s expert opinion is that Cordeiro did not author the maps, further supporting Iona’s statements to the Hawai‘i Innocence Project that Iona authored the maps and not Cordeiro. See Ex. “F”, Jasmine Dec. at 314. Additionally, Hayes’s opinion supports Cornelio’s recantation that Cornelio used a typewriter to erase the language of a civil lawsuit and replace it with the language found in the Brotherhood Oath. See Ex. “F”, Hayes Report at 403-04.

2. Expert Hayes’ Handwriting Report Meets McNulty and Schlup Standards for Newly Discovered and Newly Presented Evidence Which Supports Cordeiro’s Claim of Innocence

Hayes’s report is new evidence that meets all four prongs of the test established in State v. McNulty, 60 Haw. 259, 268, 588 P.2d 438, 445268 (1978). Hayes’s report was created after Cordeiro’s trial, satisfying the first prong under McNulty. While Hayes was supposed to be hired for Cordeiro’s trial, he was not utilized by Wilkerson. Ex. “F”, Hayes Report at 401. Though Hayes was available at the time of trial, the new evidence of Iona’s statements and Cornelio’s recantation were not available at the time of trial and therefore could not be relied upon if Hayes had conducted his report at the time of trial. In this way, Hayes’s new report is based upon new evidence that was not known to Hayes or Cordeiro at the time of trial, thereby satisfying the second prong under McNulty. Hayes’s report also satisfies the third prong under McNulty

because it is material, as it further supports that Cornelio's recantation and Iona's statements to the Hawai'i Innocence Project are truthful, as Hayes was able to identify Iona's handwriting on the maps and was also able to confirm that Cornelio altered the document that later became the "brotherhood oath". See id.; see also Ex. "F", Hayes Report at 403-04. Lastly, coupled with the other new evidence of Cornelio's recantation and Iona's admissions to the Hawai'i Innocence Project, Hayes's expert testimony would probably change the result of Cordeiro's trial because it would refute the testimony of the state's expert, Josey. See id.

Hayes's expert testimony is newly presented evidence of actual innocence pursuant to Schlup. Even though Hayes was contacted and even hired by Cordeiro's trial counsel, he never produced a report and never testified at either of Cordeiro's trials. Therefore, Hayes's expert report and testimony is "new" because it is "reliable evidence ... that was not presented at trial" and this newly presented evidence "is reason to doubt the trial result and conviction." Schlup, 513 U.S. at 324, 328. Coupled with the new recantations of Cornelio and Iona, Hayes's expert report and testimony meets the standard set in Schlup of actual innocence because it demonstrates that, "in light of all the evidence," "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." Schlup, 513 U.S. at 327-28. It is more likely than not that no juror today, given Hayes's expert opinion that Cordeiro never authored the maps for the purported murder for hire plot, would convict Cordeiro. Instead, a jury would find Cordeiro actually innocent.

E. Ground Five: New Scientific Research Regarding the Unreliability of Incentivized Informant Testimony is Newly Discovered Evidence that Supports Petitioner's Colorable Claim of Actual Innocence

1. New Scientific Research on Incentivized Informants Supports Cordeiro's Claim of Actual Innocence

The Supreme Court of the United States has looked to scientific and behavioral research as a factor to guide decisions. Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (citing *Roper*, 543 U.S. at 569). Courts across the country have referenced published studies and data, or a lack thereof, to support their decisions. See e.g., People v. Liberta, 64 N.Y.2d 152, 166 (NY. Ct. App. 1984); State v. Chapple, 135 Ariz. 281, 293, 660 P.2d 1208, (AZ 1983). Current research in jailhouse informant testimony widely regards it as one of the least reliable forms of testimony in the criminal justice system. See e.g., Ex. “E”, Russell D. Covey, *Abolishing Jailhouse Snitch Testimony*, 49 Wake Forest L. Rev. 1375 (2014), at 1; see also Ex. “E”, Rob Warden, *Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row*, at 85. “It is difficult to imagine a greater motivation to lie than the inducement of a reduced sentence...” E.g., United States v. Cervantes-Pacheco, 826 F.2d 310, 315 (5th Cir. 1987). Jailhouse informants (or “snitches”) have been shown to go to great lengths to deceive and misinform whoever they need to in hopes of improving their own situations. Ex. “E”, The Justice Project, *Jailhouse Snitch Testimony A Policy Review*, The Pew Charitable Trusts 1 (2007), at 57; see also Ex. “E”, Alexandra Natapoff, *The Shadowy World of Jailhouse Informants: Explained*, The Appeal, July 11, 2018 (stating that “simply being in jail incentivizes informants to come up with information and educates them how to do so”). The Ninth Circuit has “recognized the unreliability of jailhouse informants—who are themselves incarcerated criminals with significant motivation to garner favor.” Maxwell v. Roe, 628 F.3d 486, 504 (2010). By providing false testimony in exchange for personal benefit, jailhouse informants have everything to gain and nothing to lose. Ex. “E”, The Justice Project, at 58.

A frequently cited 2005 study by the Center for Wrongful Convictions at Northwestern University refers to the history of the “snitch” as being “long and inglorious” and states that, “when

the criminal justice system offers witnesses incentives to lie, they will.” Ex. “E”, ACLU, *Snitch System*; see also Ex. “E”, Russell D. Covey, *Abolishing Jailhouse Snitch Testimony*, 49 Wake Forest L. Rev. 1375 (2014) (citing United States v. Cervantes-Pacheco, 826 F.2d 310, 315 (5th Cir. 1987) (finding that “it is difficult to imagine a greater motivation to lie than the indictment of a reduced sentence”). Strikingly, the California Commission on Fair Administration of Justice has opined that twenty percent of *all* wrongful convictions are the result of perjured jail-house informant testimony. E.g., Ex. “E”, Alexandra Natapoff, at 270; Ex. “E”, The Justice Project, at 77-78; see also Ex. “E”, Markus Surratt, *Incentivized Informants, Brady, Ruiz, and Wrongful Imprisonment: Requiring Pre-Plea Disclosure of Material Exculpatory Evidence*, 93 Wash. L. Rev. 523, 559 (2018) (stating that as the criminal justice system has grown, the use of incentivized informants has exploded).

According to the Innocence Project, testimony from jailhouse informants played a role in nearly one in five of the 367 DNA-based exoneration cases.¹¹ The 2022 report from the National Registry of Exonerations states that perjured testimony and false accusations occurred in 63% of recorded exonerations (2078 cases out of 3284), with false testimony accounting for the cause of wrongful convictions in 71% of homicide cases. Ex. “E”, at 330. Perjury and other false accusations continue to be the most frequent contributing factor in wrongful convictions. Ex. “E”, at 324. A 2005 study by the Center for Wrongful Convictions at the Northwestern School of Law examined 111 death row exonerations and found that 51 people (or 46%) were wrongfully sentenced to death, at least in part, due to the testimony of “witnesses with incentives to lie”, making it the leading cause of wrongful convictions in capital cases. Ex. “E”, at 86.

¹¹ Innocence Project, *Informing Injustice: The Disturbing Use of Jailhouse Informants*, Mar. 2019, <https://innocenceproject.org/informing-injustice-the-disturbing-use-of-jailhouse-informants/> (last visited Nov. 30, 2023).

Despite the overwhelming and obvious incentives for jailhouse informants to produce a fabricated account of criminal conduct, the testimony of these informants is often powerful evidence at trial. Ex. “E”, The Justice Project, at 59. In a related study by the Center for Wrongful Convictions, the Center examined ninety-seven exoneration cases and found informant testimony was a primary factor in the jury’s decision to convict in thirty-eight of them. Id. at 77. Furthermore, in sixteen of those ninety-seven cases, a jailhouse informant simply fabricated a story claiming the defendant confessed their involvement in the crime to the informant. Id. Although jailhouse informants are notoriously unreliable, such testimony is powerful evidence at trial. See e.g., United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993). Juries often fail to perceive the importance of the informant’s incentive to lie and give more weight to the secondary confession. Ex. “E”, at 17. As such, jurors are unable to properly discount snitch testimony despite knowing the snitches have incentives to lie. Id.

Research indicates that informant’s confession evidence has a more significant impact on jurors than other forms of evidence. Ex. “E”, at 18. Confession evidence produces the highest conviction rates, particularly in homicide cases, regardless of whether the jury knows that the informant has received an incentive for their testimony or not. Id. Informant testimony is persuasive because jurors underestimate the serious situational factors, “such as the informant receiving an incentive or having been an informant multiple times in the past.” Ex. “E”, at 8. Cordeiro’s case presents another tragic example.

3. New Scientific Research on the Unreliability of Incentivized Witnesses is Newly Discovered Evidence Pursuant to McNulty and Supports Cordeiro’s Claim of Actual Innocence Under Schlup

The current research regarding the dangers of incentivized jailhouse informants is new evidence under the McNulty test and increases the credibility of Cornelio’s recantation. State v.

McNulty, 60 Haw. 259, 268, 588 P.2d 438, 445 (1978). This new research meets the first two prongs under McNulty because it was conducted decades after Cordeiro's case, therefore it could not have been used in Cordeiro's trial. Additionally, this new scientific research is material to the issues in Cordeiro's case as the prosecutors relied heavily, almost exclusively, on the testimony of incentivized jailhouse informants in Cordeiro's trial. If this new research had existed at the time of Cordeiro's trial, it would have probably changed the result of the trial. The jury could have heard expert testimony on research about the unreliability of jailhouse informants and determined that Iona and Cornelio's trial testimony was not credible. Cornelio has now confessed that he lied at Cordeiro's trial and even explained how he created the fake documents and hand-drawn maps, which he and Iona both testified were created by Cordeiro. Ex. "C", Cornelio Dec. at 1 ¶¶ 5, 7-9. Cornelio's recantation is supported by facts presented at trial showing that the maps had misspelled the names of key locations and were of the wrong Freitas' house. See Ex. "G", State's Ex. at 16. Cornelio's recantation is further supported by handwriting expert Hayes, who confirmed that the handwriting on the maps was Iona's and not Cordeiro's. See Ex. "F", Reed Hayes Report at 404.

Scientific research on the unreliability of incentivized jailhouse informants and their likelihood of causing wrongful convictions is new evidence of actual innocence pursuant to Schlup. The unreliability of incentivized informants Cornelio and Iona is "new" because it is "reliable evidence ... that was not presented at trial" and this newly presented evidence "is reason to doubt the trial result and conviction." Schlup, 513 U.S. at 324, 328. This new scientific research meets the standard set in Schlup of actual innocence because it demonstrates that, "'in light of all the evidence,'" "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." Id. at 327-28. It is more likely than not that no juror today, knowing

what is now known about incentivized jailhouse informants, would have believed Cornelio or Iona's testimony, and instead, a jury would find Cordeiro actually innocent.

F. Ground Six: Petitioner was Denied Effective Assistance of Trial Counsel in Violation of the United States and Hawai'i Constitutions

1. Legal Standards of Ineffective Assistance of Trial Counsel

The Sixth Amendment of the Constitution guarantees that every criminal defendant receives the effective assistance of counsel. U.S. Const. amend. VI. "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Strickland, 466 U.S. at 691. To establish a claim of ineffective assistance of counsel, a convicted defendant must first show that his counsel's performance was deficient because the lawyer did not act as a "reasonably competent attorney." Strickland, 466 U.S. at 688-91. Second, if the defendant's counsel committed unreasonable errors, "the defendant must show that there is a reasonable probability that, but for his attorney's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

In Hawai'i, the "defendant has the burden of establishing ineffective assistance of counsel under the Hawai'i Constitution and must meet the following two-part test: (1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence, and (2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." Const. Art. 1, § 14; State v. Wakisaka, 102 Hawai'i 504, 514 (2003). To satisfy the second prong, "the defendant needs to show a possible impairment, rather than a probable impairment, of a potentially meritorious defense; a defendant need not prove actual prejudice." Const. Art. 1, § 14; Wakisaka at 514.

“Pretrial investigation and preparation are the keys to effective representation of counsel.” United States v Tucker, 719 F.2d 576, 581 (9th Cir. 1983). Counsel’s performance cannot fall within the “wide range of reasonable professional assistance” where counsel does not adequately investigate the underlying facts of a case, including prospective defense witnesses. State v. Aplaca, 74 Haw. 54, 71, 837 P.2d 1298, 1307 (1992). “This is because a decision not to investigate cannot be considered a tactical decision. It is only after an adequate inquiry has been made that counsel can make a reasonable decision to call or not to call particular witnesses for tactical reasons. Id. To establish a claim of ineffective assistance of counsel, Cordeiro must demonstrate specific errors or omissions by his attorney that indicate a lack of skill, judgment, or diligence, and that such errors *may* have resulted in the substantial impairment of a potentially meritorious defense. The following sections will discuss counsel’s failure to interview witnesses, failure to investigate the crime scene, failure to use multiple court approved experts, failure to suppress pre-trial statements, and failure to sever Cordeiro’s four trials.

2. Trial Counsel’s Failure to Conduct a Reasonable Investigation Denied Petitioner Effective Assistance of Counsel and Supports Cordeiro’s Claim of Actual Innocence

Wilkerson, Cordeiro’s trial attorney, did not attempt to interview any of the individuals who claimed to have inadvertently found Blaisdell’s body. In fact, the only individual Wilkerson ever spoke to was Duane Ramos, and that was only because Ramos was present during voir dire for Cordeiro’s second trial. See Ex. “A”, Tr. at 2334-43. Even then, Wilkerson had not studied the case well enough to know that the story Ramos told under oath during voir dire varied from the statements he had made to MPD and others in August 1994. Ex. “A”, Tr. at 2336-37. Pimental’s direct testimony about how he and others found the body was also considerably different than his statement to MPD. See id. at 3460-70. Since Wilkerson failed to investigate the individuals who

claimed to find the body, he was unable to thoroughly cross-examine Pimental and demonstrate that Pimental knew Freitas since they were kids. Id. at 3460. Wilkerson also failed to adequately investigate the scene of the crime. Had Wilkerson conducted a minimal investigation of the crime scene, he would have immediately known that Freitas was lying because the embankment was too steep for Freitas to have possibly carried down Blaisdell's body in the way that he claimed. See id. at 3099-100, 3153. Additionally, had he conducted a thorough investigation, he would have also realized that the way Freitas claimed the way in which the truck Cordeiro allegedly parked at the scene was not possible from the direction Freitas claimed the truck approached because the road was too narrow to turn around. Id. at 3145-47.

Cordeiro's right to effective assistance of counsel was violated because Wilkerson failed to conduct an adequate pre-trial investigation. The failure to investigate the crime scene and interview the witnesses that found Blaisdell's body demonstrates lack of skill, judgment, or diligence, thereby satisfying the first prong of the Wakisaka two-part test for ineffective assistance of counsel. The second prong in Wakisaka is met because Wilkerson's errors resulted in substantial impairment of a meritorious defense. If Wilkerson had conducted an adequate investigation, he would have discovered that Freitas, Ramos, and Pimental were lying, and he could have discredited their testimony. The inadequate investigation resulted in a likely impairment that led to Cordeiro's wrongful conviction. The Strickland standard is similarly satisfied because Wilkerson's failure to investigate the crime scene and witnesses was unreasonable, and there is reasonable probability that but for Wilkerson's deficiency, the result of the proceeding would have been different.

3. Trial Counsel's Failure to Use Defense Experts Denied Petitioner Effective Assistance of Counsel and Supports Cordeiro's Claim of Actual Innocence

Cordeiro was denied effective assistance of counsel by Wilkerson's failure to raise issues pertaining to the state's handwriting expert's testimony and failing to present the defense's own

handwriting expert, Reed Hayes. Trial counsel was granted funds by the court to hire Reed Hayes as the defense's handwriting expert. Ex. "F", Application for Funds Granted, at 400. The court set a deadline for the state and Wilkerson to exchange expert reports before Cordeiro's trial. Id. On the date the reports were due, Wilkerson did not provide the state or the court with Hayes's report. Ex. "F", at 377. Rather than admit that he had failed to have a report prepared, Wilkerson falsely claimed to the court that the State's expert, Josey, and the defense expert, Hayes, had both reached the same conclusions regarding the maps and other documents that the State intended on introducing into evidence. Ex. "A", Tr. at 2156. In actuality, Wilkerson never had Hayes prepare a report so Cordeiro was unable to present his own expert, Hayes, to refute the State's expert, Josey. Now given the opportunity to review copies of the documents and provide a report, Hayes now states that Iona authored the documents, not Cordeiro, which refutes the State's handwriting expert Josey's testimony. Ex. "F", Hayes Report at 403-04.

Wilkerson's failure to use Hayes as a defense expert is a specific error that reflects counsel's lack of skill, judgment, or due diligence, thereby satisfying the first prong of the Wakisaka test for ineffective assistance of counsel. The court approved funds for Wilkerson to hire an expert, Hayes, yet Wilkerson did not have Hayes' prepare a report. Instead, Wilkerson falsely claimed that it would have been the same as the State's expert report. Hayes' report actually states that Cordeiro did not author the documents offered as evidence against him, which refutes the State's expert testimony. The second prong in Wakisaka is satisfied because the error resulted in a substantial impairment in Cordeiro's defense. Cordeiro was not afforded effective assistance of counsel as guaranteed by the Constitution. The Strickland standard is similarly satisfied because Wilkerson's failure to have Hayes' prepare a report and then rely on the prosecution's expert was unreasonable. There is reasonable probability that but for Wilkerson's

unprofessional errors, the result of the proceeding would have been different.

Cordeiro was similarly denied effective assistance of counsel by Wilkerson's failure to use a court-approved accident reconstruction expert. Wilkerson was again granted funds by the court to hire an accident reconstruction expert. See Ex. "F", at 400. Again, the court set a deadline for Wilkerson to provide a report from his approved expert. Id. It appears from the record that Wilkerson forgot that the court had approved the funds to hire an expert and that he was required to produce his expert report to the court. Wilkerson asked the court for more time to provide his expert's report, and when the court denied his request Wilkerson withdrew the use of a defense accident reconstruction expert. See Ex. "A", Tr. at 2159-60. If Wilkerson had utilized a court approved accident reconstruction expert for the defense, that expert could have refuted Freitas's testimony by scientifically demonstrating that the crime did not occur the way that Freitas claimed it did. An accident reconstruction expert could have explained to the jury that the embankment where Blaisdell's body was found was too steep for Freitas to carry the body down the way he claimed. See id. at 380-81, 434. Additionally, an accident reconstruction expert could have viewed Freitas's own crime scene reconstruction video and been able to show the jury why Freitas's testimony about Blaisdell's murder was false. See id. at 293. The use of a crime scene expert would have been powerful testimony in favor of Cordeiro and may have prevented him from being wrongfully convicted.

Wilkerson's failure to use an accident reconstruction expert violated Cordeiro's Constitutional right to have effective assistance of counsel under Wakisaka. It is a specific error reflecting counsel's lack of skill, judgment, or diligence, because the court approved funds for Wilkerson to hire an accident reconstruction expert but he failed to do so. This expert could have disproven Freitas' testimony about how Blaisdell was shot and how his body was transported down

the embankment, further diminishing his credibility. The failure resulted in the substantial impairment of a potentially meritorious defense. The Strickland standard is similarly satisfied because Wilkerson's failure to hire an accident reconstruction expert was severely unreasonable, and there is reasonable probability that but for Wilkerson's deficiency, the result of the proceeding would have been different.

Wilkerson was further ineffective because he was aware that the State had obtained a GSR expert and intended to introduce evidence of GSR being found in Shirota's truck, yet Wilkerson did not seek a defense expert to refute the State's findings. Knowing that the court could allow the State's witness to testify as a GSR expert, Wilkerson should have retained his own expert to refute the testimony provided by the state's witness, Tanaka. As discussed above, Tanaka's testimony was inaccurate, unsound, and blatantly incorrect. Tanaka indicated that he was "mainly looking for the lead barium antimony," one of three requires particles, and incorrectly declared that the particles do not have to have all three elements present for it to still be "consistent with discharge of a firearm". Ex. "A", at 4613-14. The three particles that Tanaka said were consistent with GSR, only contained lead (Pb) and some copper; neither of the other two elements (Ba and Sb) were present. Id. at 4619. Tanaka did not identify a single PbBaSb fused particle, only lead (Pb). Id. Claiming to find GSR without any PbBaSb fused particles is in direct conflict with what the FBI and crime laboratories throughout the United States require, which is three PbBaSb fused particles.

Wilkerson's failure to hire a defense GSR expert violated Cordeiro's Constitutional right to have effective assistance of counsel under Wakisaka. The GSR testimony was a strong piece of evidence because it indicated that a gun had been fired. Another GSR expert for defense could have spoken of the weakness in Tanaka's claims. The failure to seek a GSR expert is a specific error reflecting counsel's lack of skill, judgment, or diligence, and this error resulted in a

substantial impairment of Cordeiro's defense. The Strickland standard is similarly satisfied because Wilkerson's failure to hire a GSR expert was severely unreasonable and would have refuted the weak evidence and Tanaka's testimony falsely indicating that a gun had been fired. There is reasonable probability that but for Wilkerson's deficiency, the result of the proceeding would have been different.

4. Trial Counsel's Failure to Suppress Petitioner's Pre-Trial Statements Denied Petitioner Effective Assistance of Counsel and Supports Cordeiro's Claim of Actual Innocence

The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 786 (2009) (quoting United States v. Wade, 338 U.S. 218, 227-228 (1967)). Critical stages include arraignments, post-indictment interrogations, post-indictment lineups, and the entry of a guilty plea. See Massiah v. United States, 377 U.S. 201, 205 (1964) (stating defendants are just as entitled to counsel during 'critical' times which are equally as important as the trial itself).

With respect to suppressing the statement as a violation of Cordeiro's rights under the Sixth and Fourteenth amendments under the U.S. Constitution and Article 1 subsection 14 of the Hawai'i Constitution, it does not matter if the statement is not incriminating. See U.S. Const. amend. XI, XIV; Haw. Const. art. I, § 14. The Sixth Amendment also imposes on the State an affirmative obligation to respect and preserve the accused's choice to seek this assistance. At a minimum, the prosecutor and police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protections afforded by the right to counsel. "The right to counsel granted by the Sixth and Fourteenth Amendment means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him..." Brewer v. Williams, 430 U.S. 387, 398 (1997). The Hawai'i courts have stated that the general rule is that

“after a person has been indicted, and before he or she has been arraigned, the government should not initiate a conversation with the defendant concerning the charges against him without the consent of counsel...” State v. Luilauna, 7 Haw. App. 447 (1992).

Cordeiro was first indicted for Blaisdell’s murder on October 21, 1994. Ex. “F”, at 1. Cordeiro’s rights attached on that date, specifically his post-indictment right to counsel, under the Sixth and Fourteenth Amendments of the U.S. Constitution and Article 1 subsection 14 of the Hawai‘i Constitution. See U.S. Const. amend. XI, XIV; Haw. Const. art. I, § 14. Nevertheless, on October 22, 1994, Det. Camara, Det. Peros, and Det. Higgins instructed Freitas to call Cordeiro’s house from the MPD. See Ex. “A”, Tr. at 2987. Det. Camara, knowing that Cordeiro had been indicted and could not be questioned without counsel’s consent, conducted a surreptitious interrogation of Cordeiro using Freitas as an agent of the State. Id. Freitas testified at Cordeiro’s trial that he placed the call from the MPD under the direction of Det. Camara who told him what questions to ask Cordeiro. See id. Prosecutor Jenkins also stated in court at a bench conference with Judge Mossman that, “[h]e was with the police, they staged the whole thing”, when referring to the phone call Freitas made to Cordeiro as instructed by Det. Camara. Id. at 2991. Statements made by Cordeiro during the surreptitious post-indictment interrogation were tape recorded and played for the jury during Cordeiro’s trial. Id. at 2993. The tape and a transcript of the conversation were also admitted into evidence as State’s exhibits 13 and 17. Id. at 2992-93.

The statements solicited by the police should not have been admitted at trial. Wilkerson was ineffective by failing to file a pre-trial motion to suppress Cordeiro’s recorded telephone conversation with Freitas. Wilkerson allowing the recorded phone call into evidence, although lacking in substance, gave credence to two falsehoods: 1) that Freitas knew Cordeiro on a sufficiently personal level to make a “normal” phone call between the two, and 2) that Freitas was

a credible witness who was working with the police department. The truth is that Cordeiro and Freitas were not friends, Cordeiro had never spoken to Freitas, and Cordeiro had never given Freitas his phone number. See Ex. “A”, Tr. at 2910. Wilkerson’s failure to specifically object through a pre-trial motion to the admission of the above-mentioned phone call or to make any reference whatsoever that this call was a post-indictment surreptitious interrogation, was a blatant example of his “lack of skill, judgment, or diligence.” State v. Richie, 88 Hawai‘i 19, 39, 960 P.2d 1227, 1247 (1998), as amended (Aug. 3, 1998). Wilkerson’s error in allowing this phone call to come into evidence by not filing a pretrial motion to suppress resulted in the “withdrawal of substantial impairment of a potentially meritorious defense” and as a result, Cordeiro was denied effective assistance of counsel in violation of the United States and Hawai‘i Constitutions. Id.

5. Trial Counsel’s Failure to Sever Petitioner’s Four Trials Denied Petitioner Effective Assistance of Counsel and Supports Cordeiro’s Claim of Actual Innocence

Cordeiro’s first trial ended in a hung jury, 11-1 in favor of acquittal. See Ex. “A”, Tr. at 1975. The State’s primary evidence in the first trial consisted of Freitas’s testimony and a hair found near the victim’s body which the State alleged through microscopic hair analysis was consistent with Cordeiro’s hair. See Ex. “F”, FBI Report at 41. After the jury was hung and a mistrial was declared, the State sent the hair to the FBI lab for DNA analysis. See Ex. “B”, MPD Report at 677. The DNA test revealed that the hair did not belong to Cordeiro, Freitas, or the victim. See Ex. “F”, at 42. Without this hair evidence tying Cordeiro to the crime scene and Blaisdell’s body, the State’s case became extremely weak.

With the second trial looming, the State relied on incentivized testimony from four jailhouse informants and added four murder-for-hire charges to Cordeiro’s pending murder case. To increase their chance for a conviction in Cordeiro’s second trial, the State moved to consolidate

the Blaisdell murder with the first three attempted murder cases (the fourth indictment involving Kapika had not come up by the time Cordeiro's second trial began). Ex. "A", Tr. at 2014-16. The State's theory in the murder-for-hire cases was that Cordeiro hired the three jailhouse informants to escape from prison and kill Freitas before trial. See id. at 2859, 2867-69. At the time these charges were brought, Cordeiro's defense attorney at the time, Tom Griswold, did not object to the motions to consolidate; Griswold had not yet reviewed the discovery, but he sought leave to raise the issue once discovery was reviewed. See id. at 2014-16, 23. After the final indictment occurred in March 1998, the State moved to similarly consolidate that case with the other four, and this time, Wilkerson who was now representing Cordeiro, did not object. See id. at 2075. Prior to the second trial, the circuit court dismissed the case involving Kekona, so Cordeiro proceeded to trial for Blaisdell's murder and the murder-for-hire plots involving Iona, Cornelio, and Kapika. State v. Cordeiro, 56 P.3d 692, 700 (Haw. 2002).

H.R.P.P 14 states in relevant part that, "[i]f it appears that a defendant or the government is prejudiced by a joinder of offenses...the court may order...separate trials of counts...". Haw. R. Penal P. Rule 14. Both Griswold and Wilkerson should have objected to the consolidation of the murder for hire charges with the Blaisdell murder charges as it would unfairly prejudice Cordeiro. Griswold stated that there was not a legal basis to object to the motions to consolidate, but it is clear that H.R.P.P. 14 provides the basis for an objection by raising a claim that consolidating the cases will prejudice the defendant. Ex. "A", at 21. Griswold and Wilkerson knew or should have known that the case against Cordeiro in the second trial was significantly weaker because DNA testing had excluded the key hair evidence. See Ex. "F", FBI Report at 42. The jury could not convict Cordeiro in the first trial, but now with DNA evidence excluding Cordeiro, a conviction in a second trial was unlikely. Without adding additional murder for hire charges to the Blaisdell

murder, Cordeiro would likely not have been convicted of the Blaisdell murder in his second trial. The murder-for-hire charges, which were all based on incentivized jailhouse informant testimony, was substantially unfair and prejudiced Cordeiro, causing his wrongful conviction. Failure of Cordeiro's counsel to object to the consolidation of the murder for hire charges with the Blaisdell murder denied Cordeiro effective assistance of counsel, in violation of the United States and Hawai'i Constitutions.

6. The Culmination of the Errors by Cordeiro's Trial Counsel Denied Cordeiro Effective Assistance of Counsel and Caused His Wrongful Conviction in Violation of the United States and Hawai'i Constitutions

The Sixth Amendment right to counsel should protect the factually innocent like Cordeiro because “[w]ithout it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.” Powell v. Alabama, 287 U.S. 45, 68–69 (1932). “[I]t is the defense counsel’s responsibility to protect the innocent from the mistakes of others: from witnesses’ misidentifications, police officers’ rush to judgment, and prosecution’s reluctance to reveal potentially exculpatory material.” Jon B. Gould & Richard A. Leo, *One Hundred Years Later: Wrongful Conviction After a Century of Research*, 100 J. Crim. L. & Criminology 825, 855 (2010). Cordeiro’s counsel’s failures caused “a cascade of errors that dilutes or even destroys the barrier provided by an effective advocate between an innocent defendant and a wrongful conviction.” Id. at 856.

Ineffective assistance of counsel is one of the leading causes of wrongful conviction in the nation and was a leading cause in Cordeiro’s wrongful conviction. “[E]gregiously incompetent defense lawyering” was one of the two “most common errors found at the state post-conviction stage.” James S. Liebman, Jeffrey Fagan, Valerie West & Jonathan Lloyd, *Capital Attrition Error Rates in Capital Cases, 1973-1995*, 78 Tex. L. Rev. 1839, 1850 (2000). The American Bar Association has also recognized that “inadequate representation often is cited as a significant

contributing factor” to wrongful conviction. A.B.A. Standing Comm. on Legal Aid & Indigent Defendants, *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice* 3 (Dec. 2004). Cordeiro’s case is yet another example of how the failures of counsel to render effective assistance has caused another wrongful conviction.

Cordeiro was continuously denied effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and the Hawai‘i Constitution. Counsel did not investigate the crime scene or interview the witnesses who found Blaisdell’s body and therefore was unable to determine that the statements made by the prosecution’s witnesses could not be true. Counsel failed to use three possible experts to support Cordeiro’s innocence: a handwriting expert, an accident reconstruction expert, and a GSR expert. The first two experts were already approved by the court, yet Wilkerson presumptuously and inaccurately claimed that defense’s handwriting expert would have come to the same conclusion as the State’s expert. Defense experts could have refuted the State’s expert witnesses and could have prevented Cordeiro’s wrongful conviction. Additionally, Wilkerson failed to suppress Cordeiro’s pre-trial statements obtained in violation of his right to have counsel present. Finally, defense counsel failed to sever Cordeiro’s four trials, which lead to substantial prejudice against Cordeiro. The test for ineffective assistance of counsel is satisfied under Hawai‘i’s standard because each instance demonstrates defense counsel’s lack of skill, judgment, or diligence, and each error resulted in a substantial impairment of Cordeiro’s defense. The test for ineffective assistance of counsel is satisfied under Strickland because counsel did not perform as a reasonably competent attorney. Cordeiro was substantially prejudiced because there is reasonable probability that but for counsel’s errors, the result of the second trial would have been different.

G. Ground Seven: The Maui Prosecuting Attorney’s Office Use of False and Incentivized Testimony at Trial Violated Petitioner’s Due Process Rights Under

the U.S. and Hawai'i Constitutions

1. Legal Standard for Violation of Due Process Rights Using False and Incentivized Testimony

The well-established rule is that “a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.” United States v. Bagley, 473 U.S. 665, 678-79 (1985) (quoting United States v. Agurs, 427 U.S. 97, 104 (1976)). The knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves “a corruption of the truth-seeking function of the trial process.” United States v. Bagley, 473 U.S. 665, 678-79 (1985) (quoting United States v. Agurs, 427 U.S. 97, 104 (1976)). Under Napue, a due process claim will succeed when: (1) the testimony or evidence was actually false, (2) the prosecution knew or should have known that the testimony or evidence was actually false, and (3) the false testimony or evidence was material. See Sivak v. Hardison, 658 F.3d 898, 908–09 (9th Cir. 2011)(internal citations omitted); Napue v. Illinois, 360 U.S. 264, 269 (1959)(citations omitted). Additionally, “when the State’s witness denies the presence of an ulterior motive or other evidence bearing negatively on the witness’s credibility and the State is aware the denial is false, the prosecution has a constitutional duty to correct false testimony, and the failure to do so violates due process irrespective of the prosecutor’s intent.” See Birano, 426 P.3d at 413.

2. The Prosecution Using False and Incentivized Testimony Supports Cordeiro’s Claim of Actual Innocence

The newly discovered evidence presented in this Petition establishes that Cordeiro’s due process rights were violated by the State when it introduced false testimony at trial as highly probative evidence of Cordeiro’s guilt. The Blaisdell murder and the murder for hire charges were all built entirely on incentivized informant testimony without a scintilla of physical evidence linking Cordeiro to any of the crimes. Other than Freitas, no one claimed to have seen Cordeiro

with Blaisdell on the day he was murdered. There was absolutely no physical evidence linking Cordeiro to the crime scene. See Ex. “A”, Tr. at 934-35. The State, through Det. Camara’s confidential informant Shevling, spoon-fed Freitas all of the evidence against him. See Ex. “B”, MPD Report at 51-52, 54-55. This allowed Freitas, the only suspect, to fabricate a story against Cordeiro in order to exculpate himself. All of the evidence pointed then, as it does now, to Freitas killing Blaisdell or being complicit in his murder. With all of the evidence pointing to Freitas as the perpetrator, one should have reasonably concluded that Freitas should have been charged with Blaisdell’s murder. Yet, the state allowed Freitas to falsely claim that Cordeiro killed Blaisdell and charged Cordeiro with Blaisdell’s murder without any other corroborating evidence.

In addition to relying on Freitas in the Blaisdell murder trial, the State also relied on four other incentivized jailhouse informants to bring additional murder for hire charges against Cordeiro before Cordeiro’s second trial. The State used these jailhouse informants with no corroborating evidence in the second trial, despite the fact that the State knew Iona was a frequent informant and had tried to falsely testify against Cordeiro in the first trial by claiming that Cordeiro confessed to him. See Ex. “B”, at 547-58. However, Iona was not credible and was never called to testify in Cordeiro’s first trial because he could not get the basic facts of the case right. See Ex. “A”, Tr. at 3774. For example, Iona falsely claimed that Cordeiro told him that the murder happened at Cordeiro’s friend’s house, that Cordeiro shot Blaisdell when Blaisdell was getting out of a truck, and that Cordeiro had thrown Blaisdell’s body off the side of the road and tried to hide it. See id. at 3772-73. Although the State had to provide Iona’s recorded statement to the defense, the State did not disclose to the defense or the jury the notes, memorandum, or correspondence explaining why the State did not use Iona in the first trial. Detective Camara went as far as telling

the Grand Jury on February 2, 1997, that Iona had come forward on his own free will, he had no reason not to trust Iona, and he had no grounds to believe that Iona had lied in the past. Id. at 2003.

Surely, there are notes or correspondence in the State's files that explain why the State did not find Iona credible. In Birano, the Court recognized that "[t]he crux' of a due process violation arising from a prosecutor's failure to correct false testimony is the 'deception' of the finder of fact and not whether any deal for leniency actually existed" and that "[a] promise is not necessary." 426 P.3d at 413 (citation omitted). Rather, the proper focus of the inquiry is the extent to which the false testimony misled the jury." Id. The State's undue reliance on Iona's uncorroborated testimony, which had previously been found to be false, violates the due process rights outlined in Birano because it demonstrates that the State obtained Cordeiro's conviction "through use of false evidence, known to be such by representatives of the State[.]" See Birano 426 P.3d at 405.

Even knowing that Iona made false statements to MPD before Cordeiro's first trial, the State relied upon Iona and three additional jailhouse informants to secure four murder for hire charges at Cordeiro's second trial. The State allowed these jailhouse informants to testify against Cordeiro knowing that they were not credible and had given false statements before. Not only did Jenkins know that Iona's testimony in Cordeiro's second trial was likely to be false or misleading because of his prior false statements during Cordeiro's first trial, Jenkins also knew that Iona's testimony in Cordeiro's second trial was incentivized. The state took advantage of Iona's fear of further convictions to convince Iona that testifying against Cordeiro would be in Iona's best interest. By Iona's own admission, his grand jury testimony was motivated by the State's threats to indict him for murder in a separate case. Iona's testimony at the second trial was as follows:

Q: Mr. Iona, you continued to talk to the police as of February of 1997, correct, about this case?

A: Detective Camara.

Q: Ok. And you testified before the grand jury in February of 1997, correct?

A: Correct.

Q: Why – what caused you at that point after two years after initially talking to the police about this case, what caused you in 1997 to testify before the grand jury? Why were you there testifying?

A: Going to be indicted on charges.

Q: Pardon?

A: So I don't be indicted on charges.

Q: So you don't be indicted?

A: Yes.

Q: In other words, they told you that if you don't testify, you are going to be indicted, is that what you are saying, basically?

A: Basically, I said that.

Mr. Wilkerson: No further questions, your honor.

And on Jenkin's re-direct, Iona testified:

Q: Mr. Iona, who told you prior to your testifying at the grand jury that you wouldn't be indicted on charges?

A: You.

Q: When did I tell you that?

A: I think when we made the – we signed the contract, no that would not be prosecuted for any – if I remember, I signed the contract that I would not be prosecuted for anything or something like that.

....

Q: Is that the only reason you are testifying?

A: No, not really.

Q: Why are you testifying?

A: Because I'm not the same person that I was.

Ex. "A", Tr. at 3874-76. Only after being asked twice more by Jenkins why he was testifying, did Iona finally say that he was testifying because he was a "changed person" and he wanted to get out of jail. Id. at 3876.

The newly discovered evidence in this case, shows that the prosecution knew, or at some point learned, that Cornelio's testimony was false. See Ex. "C", Cornelio Dec. at 2 ¶¶ 13-14. When Jenkins asked Cornelio before the grand jury whether he had any deal or agreement with him or his office in exchange for testimony, Cornelio said "[n]ot really, just that you protect me. I mean, make sure nothing happen to me." Ex. "A", Tr. at 1900. Cornelio's testimony that he did not have any kind of deal with the prosecutor in exchange for his testimony indicated that he was

disinterested in the outcome of the case and had nothing to gain by lying, but that was simply not true. Jenkins agreed to testify on Cornelio's behalf before the paroling authority, indicating that there was, at the very least, an understanding that Cornelio's testimony against Cordeiro would be rewarded. Ex. "C", Cornelio Dec. at 2 ¶¶ 10-11, 6-07, 31-32. Jenkins knew Cornelio was motivated by a desire for a more lenient sentence because Jenkins testified on Cornelio's behalf on a motion for reduction of sentence on February 13, 1996. Id. The prosecution's failure to disclose Cornelio's motivation for leniency to the jury was inappropriate and contrary to law. By hiding Cornelio's true motivation for testifying, the state purposefully conveyed an inaccurate account of material facts and presented a false impression that Cornelio had no personal stake in Cordeiro's conviction.

3. Cordeiro's Due Process Rights were Violated by the Prosecution Using False and Incentivized Testimony in Violation of the United States and Hawai'i Constitutions

Jenkin's constitutional duty to correct Cornelio's false testimony is triggered even where a witness's testimony is "at best misleading." See Birano, 426 P.3d at 413(citation omitted). Cornelio's testimony meets this higher standard, as it was not only misleading, but it was also entirely false. Cornelio falsely testified that he had agreed to kill Freitas for Cordeiro and that Cordeiro drew the maps to Freitas's house, even though they were drawn by Iona. See Ex. "A", Tr. at 3487; see also Ex. "F", Reed Hayes Report at 403-04. Cornelio, facing forty years in prison, admitted that he made up a story about Cordeiro to get a reduction in his sentence. Ex. "C", Cornelio Dec., at 1 ¶¶ 4-5. The State knew Cornelio's testimony was false because Cornelio came forward to tell the truth and admit he fabricated the story about Cordeiro. Id. at 2 ¶ 14. The State's failure to correct Cornelio's false testimony is a clear violation of due process. See Birano, 426 P.3d at 413.

For reasons discussed supra, Cordeiro has shown that the false testimony was material and affected the jury's verdict. When the "reliability of a given witness may well be determinative of guilt or innocence," the nondisclosure of evidence affecting that witness's credibility is material. See Birano 426 P.3d at 415. Here, there is a reasonable probability that the result of the case would have been different (1) had the prosecution corrected Cornelio's false testimony or (2) had the prosecution been forthcoming with evidence demonstrating that its jailhouse informants were not credible witnesses. Thus, the nondisclosure of Cornelio's false testimony, the handwriting expert conclusively finding that Iona drew the maps, Iona admitting that he drew the maps, and other evidence bearing on Iona and Cornelio's credibility misled the jury and warrants granting a new trial as their testimonies were material in obtaining Cordeiro's convictions. The fact that Cordeiro's first trial ended in a hung jury and notably, neither Iona nor Cornelio were called as witnesses, demonstrates how material Iona and Cornelio's testimonies were to securing a conviction in Cordeiro's second trial.

The State failed to correct Cornelio's false testimony and — by threatening him with charges for perjury — took affirmative action to keep Cornelio's false testimony on the record. "The most rudimentary of the access-to-evidence cases impose upon the prosecution a constitutional obligation to report to the defendant and to the trial court whenever government witnesses lie under oath." Birano, 426 P.3d at 413 (citation omitted). Cordeiro has spent years behind bars based on these informants' false testimonies. Thus, the errors in this case were not harmless. Perjured testimony – whether rewarded or not – violates rights protected by the U.S. and Hawai'i State Constitutions. See U.S. Const. amend. XI, XIV; Haw. Const. art. I, § 14. Accordingly, this court must vacate Cordeiro's convictions on the basis of his actual innocence.

H. Ground Eight: The State's Suppression of Favorable Evidence at Trial Violated Petitioner's Due Process Rights Under the U.S. and Hawai'i Constitutions

1. Legal Standard for Violation of Due Process Rights through Suppression of Evidence

In Brady v. Maryland, the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196–97, 10 L.Ed.2d 215 (1963). The Court has subsequently explained that “[t]here are three components of a true Brady violation: [1] The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the State, either willfully or inadvertently; and [3] prejudice must have ensued.” Strickler v. Greene, 527 U.S. 263, 281–82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). Brady applies not only to information known to the prosecutor, but also to “evidence ‘known only to police investigators and not to the prosecutor.’” Strickler v. Greene, 527 U.S. 263, 281–82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (quoting Kyles v. Whitley, 514 U.S. 419, 438, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)). Further, “the nondisclosure” must have been “so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.” Id. Failure to disclose such evidence—whether willful or inadvertent—violates the Due Process Clause.

The duty to disclose material impeachment evidence is compelled by both due process and the constitutional right to confrontation. See Birano, 426 P.3d at 407. “It is well-settled that upholding a defendant’s rights under the confrontation clause is essential to providing a defendant with a fair trial.” State v. Mattson, 226 P.3d 482, 495 (2010). The duty to disclose evidence that is favorable to the accused includes evidence that may be used to impeach the state’s witnesses by showing bias, self-interest, or other factors that might undermine the reliability of the witness’s

testimony. Birano, 426 P.3d at 406. “The jury’s estimate of truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty may depend.” Napue, 360 U.S. at 269. As stated in Birano, “when a witness’s stake in the outcome of the case is ‘not guaranteed through a promise or binding contract,’ but is instead ‘contingent on the Government’s satisfaction with the end result,’ it ‘serves only to strengthen any incentive to testify falsely in order to secure a conviction . . . The witness is then more likely to prioritize the State’s satisfaction over testifying truthfully, making this incentive structure highly relevant to the witness’s credibility.’” Id. It is then a key question of “whether the government possesses information that may have a potential negative impact on a key witness’s credibility, including that an incentive exists for the witness to deliver testimony that is biased against the defendant.” Id. Accordingly, an effective agreement between the prosecutor and witness is not relevant to determining whether the disclosure for purposes of impeachment is required. Rather, the relevant question is whether “the witness might have believed that the state was in a position to implement any promise of consideration.” Id. at 409.

2. The State’s Suppression of Favorable Evidence Supports Cordeiro’s Claim of Actual Innocence

On October 12, 1995, the court sentenced Cornelio to forty years in prison in an unrelated case. State v Cornelio, 935 P.2d 1021, 1027 (Haw. 1997). Immediately following his sentencing, Cornelio called Detective Kaya and told Det. Kaya he had information about Cordeiro’s case. See Ex. “C”, Cornelio Dec., at 1 ¶ 6, 31-32. Cornelio was fully aware that Cordeiro’s trial was coming up and even admitted that he was friends with Iona since their time at the Hawai’i Youth Correctional Facility and MCCC. See Ex. “A”, Tr. at 3490-91, 3570.

By Thursday, October 19, 1995, just seven days after he received a forty-year sentence, Cornelio was ready to make a deal and agreed to meet with Prosecutor Jenkins. See Ex. “C”, Cornelio Dec., at 1 ¶ 8. In exchange for Cornelio falsely claiming that Cordeiro had hired him to escape from prison and kill Freitas, Jenkins agreed to testify on Cornelio’s behalf at a sentencing hearing scheduled for February 13, 1996. See Ex. “C”, Cornelio Dec., at 2 ¶ 11; see also, Ex. “A”, Tr. at 3562-65. Jenkins also promised Cornelio he would testify on Cornelio’s behalf before the parole board and would ask the Department of Public Safety to transfer Cornelio out of Halawa Correctional Facility. See Ex. “A”, Tr. at 3567-69. In order to receive all of the benefits Jenkins promised Cornelio, Cornelio told Jenkins a fabricated story about his plan to escape MCCC with Iona and another MCCC inmate named Tracy Ibara. Id. at 3486-87. Cornelio falsely claimed that Cordeiro heard that Cornelio and Ibara were planning to escape MCCC and Cordeiro told Cornelio that he would give Cornelio \$5,000.00 if he killed Freitas when he escaped MCCC. Id. 3486 ¶¶ 19-23. Cornelio admitted that he did not know Freitas, so Cordeiro was to provide Cornelio with a map and a picture of Freitas, and that Cordeiro’s grandmother would be paying Cornelio the \$5,000.00. Id. at 3487. Cornelio claimed that the escape never transpired because Ibara was caught. Id. at 3488. On March 12, 1995, MCCC ACO Allen Nouchi, stated that he received word in advance of an escape attempt by inmate Ibara and security was increased to prevent any escapes. To Nouchi’s knowledge, neither Iona nor Cornelio were involved in the escape attempt. See id. at 4364-68.

On July 20 and 21, 1998, Cornelio falsely testified against Cordeiro in his second trial by stating that he entered into an agreement with Cordeiro to kill Freitas. Ex. “A”, Tr. at 3491. Cornelio claimed that he typed up a written contract saying that he would get paid the \$5,000.00 by Cordeiro’s grandmother to kill Freitas. Id. at 3493; see also, Ex. “G”, State’s Exhibit 25 at 29.

Cornelio also falsely testified that he had typed up a “brotherhood oath” between all the inmates in Module B. See Ex. “A”, Tr. at 3491; see also, Ex. “G”, State’s Exhibit 25 at 29. These were all lies, as what Cornelio had actually typed was an in forma pauperis declaration for a civil lawsuit against MCCC that many inmates signed. See Ex. “A”, Tr. at 3491-93, 3497. Several inmates agreed to sign the declaration of the lawsuit, including Cordeiro and another MCCC inmate named Thomas Reiher who signed the in forma pauperis document in 1995. Ex. “C”, Cornelio Dec., at 1 ¶ 7; see also, Ex. “A”, Tr. at 4860-63.

Reiher’s signature also appeared on Cornelio’s “murder contract” and “brotherhood oath” but he denied that he had ever signed these documents and did not know how his signature ended up on them. Id. at 4859-63; see also, Ex. “G”, State’s Ex. at 33-34. Cornelio used the same prison typewriter to type all three documents: the in forma pauperis declaration, the “brotherhood oath,” and the “murder contract”. See Ex. “A”, Tr. at 3492-93. Cornelio now admits that to create the fake “brotherhood oath” and “murder contract,” he took the signatures from the in forma pauperis declaration, used the erase function of the electronic typewriter to erase the in forma pauperis portion, and then re-typed the body of the document creating both the “brotherhood oath” and “murder contract.” Id. at 3493-95; see also Ex. “C”, Cornelio Dec. at 1 ¶ 8.

Prosecutor Jenkins and Det. Camara knew that other inmates’ names appeared on the “brotherhood oath” and “murder contract” and that those inmates admitted to signing the civil lawsuit but they denied signing the “brotherhood oath” and “murder contract.” See Ex. “C”, Cornelio Dec., at 1 ¶ 7; see also, Ex. “B”, MPD Report, at 817, 693-94. Jenkins and Det. Camara knew Cornelio was lying about the “murder contract” and “brotherhood oath” yet still put forth Cornelio’s fabricated testimony before the grand jury and Cordeiro’s second trial. Jenkins and Det.

Camara even gave Cornelio deals or favors in exchange for his fabricated testimony despite knowing that the testimony was completely false. See Ex. “A”, Tr. at 3495-97.

After Cornelio failed to get his sentence reduced and the Hawai‘i Supreme Court upheld his sentencing, Cornelio attempted to notify Cordeiro, through a guard, that he would not lie at the upcoming second trial in 1998. See Ex. “C”, Cornelio Dec. at 2 ¶ 13. When Prosecutor Jenkins learned that Cornelio had recanted his murder-for-hire plot and would not lie at Cordeiro’s trial, Jenkins threatened Cornelio that if he did change his testimony, Prosecutor Jenkins would charge Cornelio for the murder-for-hire plot to kill Freitas. Id. at 2 ¶ 14.

3. Cordeiro’s Due Process Rights were Violated by the Prosecution Suppressing Favorable Evidence in Violation of the United States and Hawai‘i Constitutions

Even without a formal agreement, the State’s duty to disclose was triggered by Prosecutor Jenkin’s personal knowledge that Cornelio expected to receive a benefit in exchange for testifying against Cordeiro. As stated in Birano, “an indication by the State sufficient to make [the jail-house witness] believe his testimony might be rewarded was sufficient to trigger [the prosecution]’s disclosure obligations, regardless of whether an agreement existed.” See Birano, 426 P.3d at 409. Any indication by the State sufficient to make Cornelio believe his testimony might be rewarded is sufficient to trigger the state’s disclosure obligations, regardless of whether an agreement existed. Cornelio’s affidavit makes clear that he expected to receive the benefit of obtaining a favorable endorsement from the State at his motion for resentencing. See Ex. “C”, Cornelio Dec., at 1-02 ¶¶ 5, 10-11. Jenkins was aware of Cornelio’s expected benefit when he came forward after his sentence was not reduced. See id., at 2 ¶¶ 9-13. Further, Cornelio’s expectation for a more lenient sentence is a natural conclusion given prosecutor Jenkin’s history of testifying on Cornelio’s behalf.

The possibility of leniency gave Cornelio a direct, personal stake in Cordeiro's conviction. As in Birano, the "possibility of a reward gives a witness a direct, personal stake in [the defendant]'s conviction." See Birano, 426 P.3d at 409. This evidence is relevant to Cornelio's credibility and is crucial to show that Cornelio was incentivized, whether intentionally or not, to provide false testimony against Cordeiro. See Birano, 426 P.3d at 409, 411. After Cornelio's motion for resentencing was denied, he expressed to the prosecution his desire to inform defense counsel of his perjured testimony. Id. at 2 ¶ 13. Upon learning of this, the prosecution responded by threatening Cornelio with additional charges. Id. at 2 ¶ 14. This tactic proved successful in preventing Cornelio from coming forward. Here, the State not only improperly tampered with a witness, *but failed to correct false testimony after discovering the witness had perjured himself before the Court*. By preventing Cornelio from coming forward and withholding the favorable evidence of Cornelio's recantation after Cordeiro's conviction, the State prevented Cordeiro from utilizing this favorable recantation evidence post-conviction, and as a result Cordeiro has been wrongfully imprisoned for over three decades.

V. PETITIONER IS ENTITLED TO THE RELIEF REQUESTED

Cordeiro is actually innocent of all charges. His convictions were obtained in violation of the United States and Hawai'i Constitutions. Cordeiro has not waived any claims, and his claims have never been reviewed on the merits. Cordeiro seeks an evidentiary hearing on his H.R.P.P. Rule 40 Petition, all records and files material to this position and in the custody of the State of Hawai'i, and seeks leave to amend his complaint upon review of that State's materials.

A. Petitioner is Entitled to All Records in the Custody of the State of Hawai'i Material to this Petition

Under H.R.P.P. 40(d), "respondent shall file with its answer any records that are material to the questions raised in the petition which are not included in the petition." Haw. R. Penal P.

40(d). Cordeiro seeks any and all records and files pertaining to his case in the State's possession pursuant to H.R.P.P. 40(d) including but not limited to any and all: police reports with corresponding notes and memo logs; physical evidence including originals to be reviewed by Cordeiro's experts; lab reports including background data, statistics, notes, etc.; evidence reports and logs; audio and video recordings of all witness interviews; records of key witnesses including Freitas; and documents, notes, in the Prosecutor's files relating to Cordeiro's case and Freitas that are not work product.

B. Petitioner is Entitled to Amend this Petition

Under H.R.P.P. 40(e), Cordeiro make seek leave from the court to amend this Petition. Haw. R. Penal P. 40(e). Under this rule, Cordeiro is shall be "freely allowed [to amend the petition] in order to achieve substantial justice." Id. In this case, Cordeiro seeks files and documents in the State's possession upon the filing of this Petition. Upon receipt of the State's files, Cordeiro fully anticipates that there are documents and things in the State's files that he has never seen. Additionally, Cordeiro needs access to the physical evidence so that his experts can complete their reports in support of this Petition. For these reasons, Cordeiro should be freely allowed to amend this Petition, as it would be patently unjust for the court to prevent him to amend it.

C. Petitioner is Entitled to a Hearing on this Petition

Cordeiro has requested an evidentiary hearing where he may present his newly discovered evidence. A court shall grant a petitioner an evidentiary hearing, "[i]f a petition alleges facts that if proven would entitle the petitioner to relief," and such hearing "may extend only to the issues raised in the petition or answer." Haw. R. Penal P. 40(f). If the petitioner's claims are "patently frivolous" and "without trace of support either in the record or from other evidence submitted by the petitioner," the court may deny petition without a hearing. Id. The Hawaii Supreme Court has

states that, as a general rule, “a hearing should be held on a Rule 40 petition for post-conviction relief where the petition states a colorable claim.” Dan v. State, 76 Haw. 423, 427, 879 P.2d 528, 532 (1994) (quoting State v. Allen, 7 Haw. App. 89, 92, 744 P.2d 789, 792 (1987)). In order to establish colorable claim, “the allegations of the petition must show that if taken as true the facts alleged would change the verdict, however, a petitioner’s conclusions need not be regarded as true.” Id. In other words, if the petition alleges facts that if proven would entitle the petitioner to relief, a hearing is mandatory. See id.

Cordeiro did not murder Blaisdell or hire anyone to murder Freitas. In fact, as elaborated above, the State’s own evidence points to Freitas as being responsible for Blaisdell’s murder. See Ex. “A”, Tr. at 938, 940. Thus, H.R.P.P. Rule 40(f)’s two exceptions that the claims are “patently frivolous” or “without trace of support” are inapplicable. Cordeiro’s claims of actual innocence are amply supported in this petition and by the attached exhibits and declarations, which should raise serious concerns that Cordeiro is an innocent man that has been wrongfully convicted and imprisoned. It cannot, therefore, be fairly said that these claims are “without a trace of support.” See Haw. R. Penal P. 40(f). Also, as the procedural history shows, no court has yet held an evidentiary hearing on this evidence, and the recantations could not have been provided at trial because this evidence did not exist at the time of trial. Therefore, under the plain language of HRPP 40(f), Cordeiro satisfies the requirements and this court should grant him an evidentiary hearing on the “Grounds for Relief” presented in this Petition and vacate his conviction on the basis of actual innocence.

VI. CONCLUSION

Petitioner Cordeiro is actually and factually innocent of the crimes for which he is serving a life sentence. Cordeiro has served almost three decades for a crime that he did not commit. The

new evidence contained in this Petition and its supporting documentation, demonstrate that Cordeiro has been wrongfully convicted and is innocent of the crimes for which he is incarcerated. Additional evidence presented in this Petition supports that Cordeiro's rights under the United States and Hawai'i Constitutions were violated by the ineffective assistance of counsel, resulting in Cordeiro's wrongful conviction. The Prosecution further deprived Cordeiro of favorable evidence that could have prevented his wrongful conviction, in violation of the United States and Hawai'i Constitutions. Together these errors resulted in a gross miscarriage of justice – sending Cordeiro, an innocent man, to prison for almost three decades for a crime he did not commit.

To correct this severe injustice, Petitioner Cordeiro respectfully requests that all records and files material to this matter be immediately provided by the State of Hawai'i for review pursuant to H.R.P.P. 40(d). Cordeiro requests leave from this court to amend this petition pursuant to H.R.P.P. 40(e), as records and files are received from the State of Hawai'i and are relevant and material to this Petition. Lastly, pursuant to H.R.P.P. Rule 40(f), Cordeiro requests that a hearing on this Petition be scheduled as soon as practicable for Cordeiro to present evidence that his conviction is wrongful and must be vacated in the interest of justice, and that he immediately be released from custody. Petitioner Cordeiro requests that this court grant him all relief for which he is entitled to in this proceeding.

DATED: Kahului, Hawai'i, May 15, 2024.

/s/ Setsuko Regina Gormley
SETSUKE REGINA GORMLEY, #8860
JENNIFER LOUISE BROWN, #10885

Attorneys for Petitioner
GORDON CORDEIRO