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OPINION, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT (MARCH 26, 2025)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRUCE MASON,

Appellant.

v.

STATE OF DELAWARE; SUPERINTENDENT JAMES T. VAUGHN CORRECTIONAL CENTER; ATTORNEY GENERAL DELAWARE

No. 24-2162

On Appeal from the United States District Court
for the District of Delaware (D.C. No. 1:21-cv-00864)
District Judge: Honorable Gregory B. Williams

Submitted Pursuant to Third Circuit
L.A.R. 34.1(a) March 25, 2025

Before: BIBAS, PHIPPS, and AMBRO,
Circuit Judges.

(Filed: March 26, 2025)

OPINION*

PHIPPS, *Circuit Judge*.

About twenty-five years after his conviction for statutorily raping a thirteen-year-old girl, an inmate discovered that the victim had been involuntarily committed to a mental health facility before and during the trial at which she testified against him. The inmate filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, claiming that the Government violated its duty to disclose exculpatory material under *Brady v. Maryland*, 373 U.S. 83 (1963), by not turning over the report discharging her from the facility. On procedural default grounds, we will affirm the District Court's denial of the petition.

FACTUAL BACKGROUND

In February 1993, a Delaware grand jury indicted Bruce Mason on four counts of first-degree unlawful sexual intercourse, *see* Del. Code Ann. tit. 11, § 775 (1993), and one count of first-degree kidnapping, *see id*. § 783A (1993). Those charges were related to his alleged statutory rape of a minor: forcing her to engage in penetrative vaginal sex, forcing her to engage in penetrative anal sex, forcing her to perform oral sex on him, and forcibly performing oral sex on her; and unlawfully restraining her with the intent to sexually abuse her. In June 1994, the case went to trial.

The victim, R.R., provided a firsthand account at trial on June 21. She described how one summer night after seventh grade, when she was thirteen years old,

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Mason, who was nineteen, drove her to his apartment under the pretense of needing help feeding his dog. R.R. explained that she brought along her younger stepbrother and younger sister even though Mason objected and told her that he wanted only her to join him. She also recounted how at his apartment, she grew concerned and asked her stepbrother not to leave her alone with Mason. But, as R.R. detailed, Mason brought her into a bedroom, locked her stepbrother out, and sexually assaulted her.

Three other witnesses testified against Mason. R.R.'s stepbrother described how while at Mason's apartment, R.R. asked him not to leave her alone with Mason but that Mason locked him out of the bedroom. Her stepbrother further recounted that he heard his sister crying through the locked door and watched her later exit, sniffling, with her hair disheveled. Two other witnesses — one of whom was Mason's friend and the other of whom was R.R.'s boyfriend — both testified that Mason told them, separately, that he sexually assaulted R.R.[1]

The jury ultimately convicted Mason of three counts of first-degree unlawful sexual intercourse related to penetrative vaginal sex and oral sex. The jury acquitted him of the first-degree unlawful sexual intercourse count for forced penetrative anal sex but could not reach a verdict on the kidnapping count.[2] In August 1994, after denying Mason's post-trial motion for

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[1] R.R.'s sister, who was about three years old at the time of the incident and was described as being asleep the entire time, did not testify.

[2] The Government later entered a nolle prosequi on the kidnapping charge.

acquittal or a new trial contesting the guilty verdicts on the three counts, *see State v. Mason*, 1994 WL 1877137, at *5 (Del. Super. Ct. Aug. 16, 1994), the Delaware Superior Court sentenced him to 48 years, suspended after serving 45 years for three years of probation.

PROCEDURAL HISTORY

In the years that followed, Mason challenged his conviction through civil collateral attacks. His petitions under Delaware Superior Court Criminal Rule 61 for postconviction relief initiated in 1996 and 1998 were unsuccessful. *See* Del. Super. Ct. Crim. R. 61; *Mason v. State*, 692 A.2d 413 (Table), at *2 (Del. 1997) (denying Mason's first petition for postconviction relief); *Mason v. State*, 725 A.2d 442 (Table), at *1, *3 (Del. 1999) (denying Mason's second motion for postconviction relief). But about twenty years later, in June 2018, R.R. wrote a letter in support of Mason's release, and from the statement, Mason learned that R.R. had been admitted to a mental health facility shortly before and during his trial. *See Mason v. Ceresini*, 2024 WL 2832501, at *9 (D. Del. June 4, 2024). He investigated, and by January 2019, he obtained a key record related to her stay: the Discharge Summary. *Id*. That document, dated August 6, 1994, indicated that for about five days in June of 1994 — from the 19th to the 23rd — R.R. was admitted to a mental health facility for suicidal ideation. That document also provided a report of the mental examination performed while R.R. was admitted. It stated that "[s]he was fully oriented" and that "[a]ll tests of memory were good." Discharge Summ. 2 (App. 43).

Nevertheless, Mason believed that R.R.'s commitment before and during his trial was exculpatory for him as a means of undermining R.R.'s credibility. He formalized his claim for a Brady violation related to the suppression of material exculpatory evidence by filing a third Rule 61 motion for postconviction relief on February 20, 2019.[3]

The Delaware Superior Court summarily dismissed that motion. *See State v. Mason*, 2019 WL 6353372, at *7 & n.52 (Del. Super. Ct. Nov. 25, 2019), *aff'd*, 244 A.3d 681 (Table) (Del. 2020). It explained that under Delaware Superior Court Criminal Rule 61(i), subsequent motions for postconviction relief are barred "unless the motion pleads with particularity the existence of new evidence that creates a strong inference of actual innocence." *Id*. at *3 (citing Del. Super. Ct. Crim. R. 61(d)(2) & (5), (i)). And after concluding that Mason had failed to provide evidence that created such an inference, *see id*. at *7, the Superior Court did not analyze Mason's motion on the merits, *see id*. at *3. Mason appealed that ruling, and the Delaware Supreme Court affirmed it. *See Mason*, 244 A.3d 681.

Mason then sought collateral review at the federal level by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254 on June 17, 2021. The District Court denied the petition on the grounds that Mason's claim had been procedurally defaulted and that he could not overcome that default. *See Mason*, 2024 WL

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[3] Mason also alleged that the statement R.R. wrote in favor of his release contradicted her earlier trial testimony and thus constituted exculpatory evidence, but the District Court did not grant a certificate of appealability for that issue. *See Mason*, 2024 WL 2832501, at *13.

2832501, at *10. The District Court did, however, grant Mason a certificate of appealability on the question of whether the Government's failure to disclose the Discharge Summary constituted a Brady violation. *See id*. at * 13. That certificate of appealability, coupled with Mason's timely appeal, triggered this Court's appellate jurisdiction. *See* 28 U.S.C. §§ 1291, 2253(a).

DISCUSSION

Because the Delaware state courts determined that Mason's third petition for postconviction relief was barred by Rule 61,[4] the Brady challenge he now brings is deemed exhausted.[5] But satisfying the exhaustion requirement by virtue of a state procedural rule that bars collateral review in state court comes with a consequence: it exposes a federal petitioner's § 2254 claim to dismissal on procedural default grounds. *See McCandless v. Vaughn*, 172 F.3d 255, 260 (3d Cir. 1999); *Ross v. Adm'r E. Jersey State Prison*, 118 F.4th

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[4] *See Mason*, 2019 WL 6353372, at *3 (applying Rule 61 to determine that "Mason's claims raised [in his motion for postconviction relief] should be summarily dismissed because they fail to meet the pleading requirements for proceeding with the motion on its merits").

[5] *See McCandless v. Vaughn*, 172 F.3d 255, 260 (3d Cir. 1999) ("When a claim is not exhausted because it has not been 'fairly presented' to the state courts, but state procedural rules bar the applicant from seeking further relief in state courts, the exhaustion requirement is satisfied because there is 'an absence of available State corrective process.'" (quoting in the second instance 28 U.S.C. § 2254(b))); *Ross v. Adm'r E. Jersey State Prison*, 118 F.4th 553, 565 (3d Cir. 2024) (explaining that a "habeas claim is deemed exhausted" when "additional state-court review" is not available). *See generally Granberry v. Greer,* 481 U.S. 129, 131 (1987) (explaining that § 2254 exhaustion is non-jurisdictional).

553, 565 (3d Cir. 2024). In that circumstance, the general rule is that the petition must be dismissed absent a showing of cause and prejudice sufficient to excuse the default. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991); *accord McCandless*, 172 F.3d at 260.[6]

Here, the requirements for procedural default have been met. This Court has already determined that a denial of a postconviction collateral challenge on Rule 61(i) grounds is a procedural ruling. *See Flamer v. Delaware*, 68 F.3d 710, 717 n.4 (3d Cir. 1995) ("Subsection (i) of Rule 61 establishes the procedural bars to relief."). And Rule 61(i) was the basis for the Delaware courts' rejection of Mason's third Rule 61 motion. *See Mason*, 2019 WL 6353372, at *3, *7 & n.52 (summarily dismissing Mason's Brady claim based on Rules 61(d)(2) and (i)); *see also* Del. Super. Ct. Crim. R. 61(i) (explaining that a subsequent motion for postconviction relief may not be considered unless it satisfies the requirements of Rule 61(d)(2)).

By contrast, the cause-and-prejudice exception does not apply here. To make the cause-and-prejudice showings for an asserted Brady violation, a § 2254 petitioner must establish two of the elements of a Brady violation: (i) that the Government suppressed evidence and (ii) that the suppressed evidence is material. *See Johnson v. Folino*, 705 F.3d 117, 128 (3d Cir. 2013). Although it is unclear how the Discharge Summary,

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[6] A § 2254 petitioner may also avoid procedural default by demonstrating a "fundamental miscarriage of justice," but that requires a showing that "that he is actually innocent of the crime by presenting new evidence of innocence," and Mason has not attempted such proof. *Keller v. Larkins*, 251 F.3d 408, 415-16 (3d Cir. 200 1) (emphasis added) (internal citations omitted).

which was dated after Mason's trial, could have been suppressed before or during trial, the Government asserts procedural default on the basis of only the materiality prong.

Mason comes up short in that respect. To establish that a suppressed document is material, a habeas petitioner must demonstrate a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). And evidence pertaining to a witness's mental health cannot be material unless "it 'undermines [the witness's] reliability . . . or calls into question [her] ability to perceive, remember[,] and narrate perceptions accurately.'" *Lesko v. Sec'y Pa. Dep't of Corr.*, 34 F.4th 211, 233 (3d Cir. 2022) (first alteration in original) (quoting *United States v. Georgiou*, 777 F.3d 125, 141 (3d Cir. 2015)). The Discharge Summary did not contain that information; to the contrary, it indicated that "[a]ll tests of memory were good." Discharge Summ.2 (App. 43).

Undeterred by that dead end, Mason contends that based on the Discharge Summary, R.R. must have exaggerated her conditions to gain admission to the mental health facility. Even assuming arguendo that the Discharge Summary could be read to support that inference and its consequences for R.R.'s credibility, "[t]he materiality of Brady material depends almost entirely on the value of the evidence relative to the other evidence mustered by the state." *Johnson*, 705 F.3d at 129 (quoting *Rocha v. Thaler*, 619 F.3d 387, 396 (5th Cir. 2010)). And it is well established that evidence that "would be used to impeach testimony of a witness whose account is strongly corroborated is generally not considered material for Brady purposes." *Id.* At trial,

R.R.'s testimony was strongly corroborated. Her stepbrother testified about what happened the night of the assault. And two other witnesses — one of whom was Mason's friend — testified that Mason described his sexual assault of R.R. to them. Thus, even if the Discharge Summary could support the inference that R.R. exaggerated her symptoms, the other witnesses corroborated the key aspects of her testimony, and so that document would not be material.

CONCLUSION

For these reasons, the Rule 61(i) dismissal of Mason's petition for postconviction relief constitutes a state procedural ruling that bars consideration of Mason's § 2254 claim, and Mason has not made one of the requisite showings needed to overcome procedural default.

MEMORANDUM OPINION, U.S. DISTRICT COURT FOR THE DISTRICT OF DELAWARE (JUNE 4, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRUCE MASON,

Petitioner,

v.

SCOTT CERESINI, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,

Respondents.[1]

Civil Action No. 21-864-GBW

Before: Hon. Gregory B. WILLIAMS, District Judge.

MEMORANDUM OPINION[2]

June 4, 2024
Wilmington, Delaware

/s/ Gregory B. Williams
Williams, District Judge:

[1] Warden Scott Ceresini has replaced former Warden Truman Mears, an original party to this case. *See* Fed. R. Civ. P. 25(d).

[2] This case was re-assigned to the undersigned's docket on September 8, 2022.

Presently pending before the Court is Petitioner Bruce Mason's ("Petitioner") counseled Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. (D.I. 1) The State filed an Answer in opposition, to which Petitioner filed a Reply. (D.I. 15; D.I. 19) For the reasons discussed, the Court will deny the Petition.

I. Background

> In the summer of 1992, R.R. was thirteen years old and living with her mother and stepfather. She ha[d] just completed the 7th grade. [Petitioner] worked with R.R.'s step-father.
>
> On the night of the assault, [Petitioner] drove R.R., and her nine-year-old step-brother, L.R., over to his apartment under the pretense that the children could help him feed his dog. [Petitioner] also promised thirteen-year-old R.R. that she could drive the car on the way home from his house. Once inside [Petitioner's] apartment, R.R. became leery of [Petitioner] and asked her step-brother not to leave her alone with [Petitioner].
>
> [Petitioner] directed L.R. to play videogames in the living room while he lured R.R. into his bedroom under the guise of viewing photographs located there. L.R. tried to follow [Petitioner] and R.R. into the bedroom, but [Petitioner] shut and locked the bedroom door before L.R. could enter.
>
> At trial, R.R. testified that while locked in his bedroom, [Petitioner] kept attempting to enter her vaginally with his penis, and slightly

> penetrated her, but was too big. [Petitioner] then used his fingers and tongue to enter her. [Petitioner] also forced her to have anal sex. [Petitioner] asked R.R. to "suck his d___" and told her that he would not let her leave the bedroom until she kissed his penis. Which she did.
>
> At [Petitioner's] trial, L.R. testified, most convincingly, that he heard his sister crying as he stood outside the door trying to get inside the bedroom. [Petitioner] instructed L.R. to leave R.R. and him alone and to continue playing videogames. L.R. further testified that R.R.'s hair and clothing were disheveled and she was sniffling when she finally emerged from [Petitioner's] bedroom.
>
> In the summer of 1992, [Petitioner] was nineteen-years old. [Petitioner] was 6 feet, 2 inches in height, and weighed 220 pounds. R.R. was much shorter and weighed 115 pounds. R.R. was no comparison in strength to [Petitioner].
>
> R.R. told no one of the incident except her boyfriend. Her boyfriend kept R.R.'s secret for several months but finally told R.R.'s mother in November of 1992, who in turn called the police.
>
> [Petitioner] admitted that he had taken R.R. to his home but claimed that he had not engaged in any sexual activity with R.R.

State v. Mason, 2019 WL 6353372, at *1-2 (Del. Super. Ct. Nov. 25, 2019) (cleaned up).

On December 7, 1992, a New Castle County Grand Jury indicted Petitioner on three counts of first degree unlawful sexual intercourse, in violation of 11 Del. C. § 775 ("USI First Degree"), and one count of first degree kidnapping, in violation of 11 Del. C. § 783A. (D.I. 16-23 at 3-4) Petitioner was reindicted on February 1, 1993 to add a fourth count of USI First Degree. (D.I. 16-21 at 28-30) As a result of the reindictment, the State entered a *nolle prosequi* for the counts in the original indictment. (D.I. 16-21 at 31)

On October 25, 1993, the State moved to amend the indictment. (D.I. 16-1 at Entry No. 18) The Superior Court granted the motion that same day. *(Id.)* The State sent a waiver of indictment and a copy of the superseding information to Petitioner's counsel. (D.I. 16-21 at 52-54) The superseding information changed the offense dates from "on or about August 1992" to "on or about June 27, 1992 to August 31, 1992." (D.I. 16-21 at 52-54) Petitioner executed the waiver-of-indictment form, consenting to proceed by the information. (D.I. 16-21 at 51-54)

Prior to trial, Petitioner filed a motion to have R.R. evaluated by a psychiatrist, which the Superior Court denied on September 17, 1993. (D.I. 16-1 at Entry Nos. 11, 15) On June 24, 1994, a Delaware Superior Court jury convicted Petitioner of three counts of USI First Degree. (D.I. 16-1 at Entry No. 63) The jury found Petitioner not guilty on the remaining USI First Degree count and could not reach a verdict on the kidnapping count. *(Id.)* The Superior Court declared a mistrial as to kidnapping, and the State later entered a *nolle prosequi* on that charge. *(Id.)* Petitioner filed a motion for judgment of acquittal and/or a new trial, which the Superior Court denied on August 16, 1994.

(D.I. 16-1 at Entry Nos. 26, 33); *see State v. Mason,* 1994 WL 1877137 (Del. Super Ct. Aug. 16, 1994). On August 19, 1994, the Superior Court sentenced Petitioner to 48 years of imprisonment, suspended after serving 45 years, for three years of probation. (D.I. 16-1 at Entry No. 34) Petitioner appealed, and the Delaware Supreme Court affirmed his convictions and sentences on May 16, 1995. *See Mason v. State,* 658 A.2d 994, 996 (Del. 1995).

On January 4, 1996, Petitioner filed his, first motion for postconviction relief pursuant to Delaware Superior Court Criminal Rule 61 ("Rule 61 motion"). (D.I. 16-9 at 10-13) The Superior Court denied the motion on April 11, 1996, and the Delaware Supreme Court affirmed that decision on February 25, 1997. (D.I. 16-8 at 20-46); *Mason v. State,* 692 A.2d 413 (Table), 1997 WL 90780, at *2 (Del. Feb. 25, 1997).

On February 24, 1998, Petitioner filed a second Rule 61 motion, which the Superior Court denied. (D.I. 16-16 at 159-64); *State v. Mason,* 1998 WL 449563 (Del. Super. Ct. Apr. 28, 1998). The Delaware Supreme Court affirmed that decision on February 11, 1999. *Mason v. State,* 725 A.2d 442 (Table), 1999 WL 93283 (Del. Feb. 11, 1999).

Petitioner filed a third Rule 61 motion on February 20, 2019, and then filed a Rule 35 motion for sentence modification on February 25, 2019. (D.I. 16-20 at 64-86; D.I. 16-1 at Entry No. 75) The Superior Court denied the Rule 35 motion on April 3, 2019. (DJ. 16-23 at 7-10) On November 25, 2019, a Superior Court Commissioner issued a report and recommendation that Petitioner's third Rule 61 motion be denied. *See Mason,* 2019 WL 6353372. The Superior Court adopted the report and recommendation and denied the third

Rule 61 motion on December 12, 2019. (D.I. 16-20 at 42-43) Petitioner appealed, and the Delaware Supreme Court affirmed the Superior Court's decision on December 16, 2020. *See Mason v. State,* 244 A.3d 681 (Table), 2020 WL 7392348 (Del. 16, 2020).

In June 2021, Petitioner filed the § 2254 Petition presently pending before the Court.

II. Governing Legal Principles

A. Statute of Limitations

Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") "to reduce delays in the execution of state and federal criminal sentences . . . and to further the principles of comity, finality, and federalism." *Woodford v. Garceau,* 538 U.S. 202, 206 (2003). AEDPA prescribes a one-year period of limitations for the filing of habeas petitions by state prisoners, which begins to run from the latest of:

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made

> retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). AEDPA's limitations period is applied on a claim-by-claim basis, and the timeliness of a single claim will not render other later raised claims timely. *See Fielder v. Varner,* 379 F.3d 113, 122 (3d Cir. 2004). In addition, AEDPA's limitations period is subject to statutory and equitable tolling. *See Holland v. Florida,* 560 U.S. 631 (2010) (equitable tolling); 28 U.S.C. § 2244(d)(2) (statutory tolling).

1. Statutory Tolling

Pursuant to § 2244(d)(2), a properly filed state post-conviction motion tolls AEDPA's limitations period during the time the motion is pending in the state courts, including any post-conviction appeals, provided that the motion was filed and pending before the expiration of AEDPA's limitations period. *See Swartz v. Meyers,* 204 F.3d 417, 420-24 (3d Cir. 2000). A post-conviction motion is "'properly filed' for statutory tolling purposes when its delivery and acceptance is in compliance with the state's applicable laws and rules governing filings, such as the form of the document, any time limits upon its delivery, the location of the filing, and the requisite filing fee." *Crump v. Phelps,* 572 F. Sup. 2d 480, 483 (D. Del. 2008).. The limitations period is also tolled for the time during which an appeal from a post-conviction decision could be filed even if the appeal is not eventually filed. *See Swartz,* 204 F.3d at 424. The limitations period, however, is

not tolled during the ninety days a petitioner has to file a petition for a writ of certiorari in the United States Supreme Court regarding a judgment denying a state post-conviction motion. *See Stokes v. Dist. Att'y of Philadelphia,* 247 F.3d 539, 542 (3d Cir. 2001).

2. Equitable Tolling

The one-year limitations period may be tolled for equitable reasons in rare circumstances when the petitioner demonstrates "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland,* 560 U.S. at 649-50. With respect to the diligence inquiry, equitable tolling is not available where the late filing is due to the petitioner's excusable neglect. *Id.* at 651-52. Additionally, the obligation to act diligently "does not pertain solely to the filing of the federal habeas petition, rather it is an obligation that exists during the period [the petitioner] is exhausting state court remedies as well." *LaCava v. Kyler,* 398 F.3d 271, 277 (3d Cir. 2005). As for the extraordinary circumstance requirement, "the relevant inquiry is not whether the circumstance alleged to be extraordinary is unique to the petitioner, but how severe an obstacle it creates with respect to meeting AEDPA's one-year deadline." *Pabon v. Mahanoy,* 654 F.3d 385, 401 (3d Cir. 2011). An extraordinary circumstance will only warrant equitable tolling if there is "a causal connection, or nexus, between the extraordinary circumstance [] and the petitioner's failure to file a timely federal petition." *Ross v. Marano,* 712 F.3d 784, 803 (3d. Cir. 2013).

3. Actual Innocence Exception

A credible claim of actual innocence may serve as an "equitable exception" that can overcome the bar of AEDPA's one-year limitations period. *See McQuiggin v. Perkins,* 569 U.S. 383, 392 (2013); *Wallace v. Mahanoy,* 2 F. 4th 133, 150-151 (3d Cir. 2021). A petitioner satisfies the actual innocence exception by (1) presenting new, reliable evidence of his innocence; and (2) showing "by a preponderance of the evidence" that "a reasonable juror would have reasonable doubt about his guilt[] in light of the new evidence." *Wallace,* 2 F.4th at 151.

B. Exhaustion and Procedural Default

Absent exceptional circumstances, a federal court cannot grant habeas relief unless the petitioner has exhausted all means of available relief under state law. *See* 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel,* 526 U.S. 838, 842-44 (1999); *Picard v. Connor,* 404 U.S. 270, 275 (1971). AEDPA states in pertinent part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that —
>
> (A) the applicant has exhausted the remedies available in the courts of the State; or
>
> (B) (i)there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. § 2254(b)(1). This exhaustion requirement, based on principles of comity, gives "state courts one

full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan,* 526 U.S. at 844-45; *see Werts v. Vaughn,* 228 F.3d 178, 192 (3d Cir. 2000).

A petitioner satisfies the exhaustion requirement by demonstrating that the habeas claims were "fairly presented" to the state's highest court, either on direct appeal or in a post-conviction proceeding, in a procedural manner permitting the court to consider the claims on their merits. *See Bell v. Cone,* 543 U.S. 447, 451 n.3 (2005); *Castille v. Peoples,* 489 U.S. 346, 351 (1989). If a petitioner raised the issue on direct appeal in the correct procedural manner, the claim is exhausted and the petitioner does not need to raise the same issue again in a state post-conviction proceeding. *See Lambert v. Blackwell,* 134 F.3d 506, 513 (3d Cir. 1997).

If a petitioner presents unexhausted habeas claims to a federal court, and further state court review of those claims is barred due to state procedural rules, the federal court will excuse the failure to exhaust and treat the claims as exhausted. *See Coleman v. Thompson,* 501 U.S. 722, 732, 750-51 (1991) (such claims "meet[] the technical requirements for exhaustion" because state remedies are no longer available); *see also Woodford v. Ngo,* 548 U.S. 81, 92-93 (2006). Such claims, however, are procedurally defaulted. *See Coleman,* 501 U.S. at 749; *Lines v. Larkins,* 208 F.3d 153, 160 (3d Cir. 2000). Similarly, if a petitioner presents a habeas claim to the state's highest court, but that court "clearly and expressly" refuses to review the merits of the claim due to an independent and adequate state procedural rule, the claim is exhausted

but procedurally defaulted. *See Coleman,* 501 U.S. at 750; *Harris v. Reed,* 489 U.S. 255, 260-64 (1989).

Federal courts may not consider the merits of procedurally defaulted claims unless the petitioner demonstrates either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental miscarriage of justice will result if the court does not review the claims. *See McCandless v. Vaughn,* 172 F.3d 255, 260 (3d Cir. 1999); *Coleman,* 501 U.S. at 750-51. To demonstrate cause for a procedural default, a petitioner must show that "some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule.". *Murray v. Carrier,* 477 U.S. 478, 488 (1986). To demonstrate. actual prejudice, a petitioner must show that the errors during his trial created more than a possibility of prejudice; he must show that the errors worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *Id* at 494.

Alternatively, if a petitioner demonstrates that a "constitutional violation has probably resulted in the conviction of one who is actually innocent,"[3] then a federal court can excuse the procedural default and review the claim in order to prevent a fundamental miscarriage of justice. *See Edwards v. Carpenter,* 529 U.S. 446, 451 (2000); *Wenger v. Frank,* 266 F.3d 218, 224 (3d Cir. 2001). The miscarriage of justice exception applies only in extraordinary cases, and actual innocence means factual innocence, not legal insufficiency. *See Bousley v. United States,* 523 U.S. 614, 623 (1998); *Murray,* 477 U.S. at 496. A petitioner establishes actual

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[3] *Murray,* 477 U.S. at 496.

innocence by asserting "new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial," showing that no reasonable juror would have voted to find the petitioner guilty beyond a reasonable doubt. *See Hubbard v. Pinchak,* 378 F.3d 333, 339-40 (3d Cir. 2004).III.

III. Discussion

The Petition asserts the following three grounds for relief:

(1)

(a) Petitioner has newly discovered evidence demonstrating that R.R. was involuntarily committed to a mental health facility during his trial and the State violated *Brady v. Maryland,* 373 U.S. 83 (1963) by failing to disclose this information to Petitioner at that time.

(b) Petitioner has newly discovered "exculpatory" evidence in the form of a statement provided by R.R. in June 2018 alleging that penetration never occurred and the prosecutors counseled her on how to testify. (D.I. 1 at 10-13; D.I. 14 at 7-8)

(2) the Superior Court lacked jurisdiction to try Petitioner because he did not knowingly, voluntarily, and intelligently execute a waiver of indictment. (D.I. 1 at 16-20; D.I. 14 at 15-19)

(3) Petitioner's sentence constitutes cruel and unusual punishment in violation of the

Eighth Amendment and the Delaware Constitution (D.I. 1 at 20-21; D.I. 14 at 19-20).

The State argues that the Petition should be denied because: (1) Claims One (b), Two, and Three are time-barred; (2) Claim Two and a portion of Claim Three assert issues of state law that are not cognizable on federal habeas review; and (3) all three Claims are procedurally barred. (D.I. 15)

A. Claims Two and Three: Cognizability

A federal court may consider a habeas petition filed by a state prisoner only "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Claims based on errors of state law are not cognizable on federal habeas review, and federal courts cannot reexamine state court determinations on state law issues. *See Estelle v. McGuire,* 502 U.S. 62, 67-8 (1991); *Pulley v. Harris,* 465 U.S. 37, 41 (1984) ; *Riley v. Taylor,* 277 F.3d 261, 310 n.8 (3d Cir. 2001).

In Claim Two, Petitioner contends that he was denied his constitutional right to be charged by indictment as required under Article I § 8 of the Delaware Constitution and the Fifth Amendment of the United States Constitution. (D.I. 14 at 19) Because the Fifth Amendment right to a grand jury indictment does not apply to State criminal prosecutions,[1] "the legality of an amendment to an indictment is primarily a matter of state law." *United States ex. rel Wojtycha v. Hopkins,* 517 F.2d 420, 425 (3d Cir. 1975). Therefore, the

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[1] *See Apprendi v. New Jersey*, 530 U.S. 266, 272 (1994); *Hurtado v. California*, 110 U.S. 516 (1884).

Court will deny Claim Two for failing to assert an issue cognizable on federal habeas review.

In Claim Three, Petitioner contends that the imposition of three consecutive 15-year terms of incarceration constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Article I § 11 of the Delaware Constitution. (D.J. 14 at 19) To the extent Petitioner asserts a violation of the Delaware Constitution, he has presented an issue of state law that is not cognizable in this proceeding. To the extent he asserts a violation of the Eighth Amendment, Claim Three is cognizable. Nevertheless, as explained below, Petitioner's Eighth Amendment argument does not warrant relief because it is both time-barred and procedurally barred. *See infra* at Section.III.B.2. and D.1.

B. Claims One (b), Two and Three: Time-Barred

1. Claim One (b): R.R.'s Statement

In a handwritten statement dated June 18, 2018, R.R. asserts that penetration never occurred. (D.I. 16-21 at 58-61) Petitioner contends that R.R.'s Statement constitutes exculpatory evidence which "suggests that Petitioner did not commit the crimes he was convicted of."[4] (D.I. 19 at 4)

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[4] Claim One (b) also asserts that R.R.'s Statement presents newly discovered evidence that the "State counseled [R.R.] about how to testify in order to make the State's case stronger so that [Petitioner] would 'get better'." (D.I. 1 at 11) R.R.'s Statement, however, does not allege that the State counseled/coached the content of R.R.'s testimony. (*See* D.I. 16-21 at 58-61) Therefore,

When a habeas Petition alleges newly discovered evidence, "the filing deadline is one year from the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." *McQuiggan,* 569 U.S. at 388-89; *see* 28 U.S.C. § 2244(d)(1)(D). While Petitioner does not specify when he learned about R.R.'s Statement, the Court assumes it was on the same date R.R. signed the Statement — June 18, 2019. Applying the one-year limitations to that date, Petitioner had until June 18, 2019 to timely file Claim One (b). Petitioner, however, filed the instant Petition on June 17, 2021, two years after the filing deadline. Thus, in the absence of any tolling, Claim One (b) is time-barred.

Statutory tolling does not render Claim One (b) timely. AEDPA's one-year limitations period for Claim One (b) started to run on June 19, 2018 and ran for 246 days until Petitioner filed his third Rule 61 motion on February 20, 2019. Petitioner's third Rule 61 motion tolled the limitations period through December 16, 2020, the date on which the Delaware Supreme Court affirmed the Superior Court's denial of the motion. The limitations clock resumed on December 17, 2020, and ran the remaining 119 days without interruption until the limitations period expired on April 14, 2021. Thus, even after considering the applicable statutory tolling, Petitioner filed the instant petition two months too late.

Equitable tolling also does not save Claim One (b). Petitioner obtained R.R.'s statement in June 2018, presented his argument concerning R.R.'s statement in

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the Court will focus only on Petitioner's assertion that R.R.'s Statement constitutes a recantation of her testimony.

his third Rule 61 motion that was filed in February 2019, and filed the instant Petition on June 17, 2021. Petitioner does not assert, and the Court cannot discern, that any extraordinary circumstance prevented him from filing a habeas petition containing Claim One (b) on a date closer to June 2018 or even closer to February 2019. Petitioner does not even offer *any* explanation for the delay.[5] To the extent Petitioner's late filing in this Court was due to a lack of legal knowledge or miscalculation of AEDPA's one-year filing period, such circumstances do not warrant equitably tolling the limitations period. *See Taylor v. Carroll,* 2004 WL 1151552, at *5-6 (D. Del. May 14, 2004). Given these circumstances, the Court concludes that equitable tolling is not available to Petitioner on the facts he has presented.

Finally, to the extent Petitioner's allegations of newly discovered exculpatory evidence in Claims One (a) and (b) should be construed as an attempt to trigger the actual innocence exception, it is unavailing — whether the allegations are considered, independently or together. The jury convicted Petitioner of three counts of first degree unlawful sexual intercourse: for placing his mouth on R.R.'s vagina, for placing his penis in her mouth, and for penetrating her vagina. (*See* D.I. 14-1 at 53-54; D.I. 16-1 at Entry No. 23) The jury acquitted Petitioner of penetrating her anus. (*See id.)* R.R.'s statement asserts that Petitioner "forced himself upon [her]" and "attempted to penetrate both her vagina and

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[5] In his Reply, Petitioner distinguishes the newly discovered evidence relied upon in Claim One (b) (R.R's Statement) from the newly discovered evidence relied upon in Claim One (a) (Discharge Summary), and only explains the reason for his delay in bringing Claim One (a). (D.I. 19 at 1-4)

anus," but because of "his size," he "gave up after only 15-20 min[ute]s" and "no penetration" occurred. (D.I. 16-21 at 58-61) Contrary to Petitioner's assertion, R.R.'s Statement actually corroborates that the sexual assault occurred, and explicitly identifies Petitioner as her assailant, even if she believes one of the criminal acts was not completed. Additionally, R.R.'s assertion about penetration only concerns one of Petitioner's three convictions and, at most, suggests that he was guilty of *attempted* first degree unlawful sexual intercourse rather than first degree sexual intercourse due to his failure to penetrate her vagina.[6] *See* 11 Del. C. § 531. And finally, the information in R.R.'s statement is not "new" because it is consistent with R.R.'s trial testimony. During trial, R.R. testified that Petitioner "tried having sex with [her], but couldn't because he couldn't get it in." (D.I. 16-28 at 9) When the State asked, "Did he get it in a little bit?", R.R. nodded and responded, "Yes." (D.I. 16-28 at 9-10) While R.R.'s 1994 testimony and her 2018 written statement demonstrate that she disagreed with the jury over whether Petitioner accomplished penetration, the statement is not new evidence of his actual innocence.

Petitioner's assertion of newly discovered exculpatory evidence in Claim One (a) fares no better. Claim One (a) asserts that the State violated *Brady* by failing to disclose the fact that R.R. was in a psychiatric hospital at the time of Petitioner's trial because that information could have been used to impeach R.R.'s credibility. As discussed later in the Opinion, the

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[6] Notably, an "[a]ttempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting." 11 Del. C. § 531.

mental health record concerning R.R.'s admission at that hospital was not material. *See infra* at Section III.D.1. Since the standard for establishing materiality is less demanding than the *Schlup* standard for proving actual innocence, the Court concludes that Petitioner's assertions in Claim One (a) are not sufficient to establish a gateway claim of actual innocence. *See Mattis v. Vaughn,* 80 F. App'x. 154, 159 (3d Cir. 2003) ("The *Schlup* standard for proving actual innocence is far more demanding than establishing the existence of a reasonable doubt.").

In sum, Petitioner has not established "by a preponderance of the evidence" that a reasonable juror would have reasonable doubt about Petitioner's guilt in light of the information in R.R.'s. Statement and the information in the Discharge Summary.[7] Accordingly, the Court will deny Claim One (a) as time-barred.

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[7] To the extent Claim One (a) and Claim (b) should be construed as asserting freestanding claims of actual innocence, the Court also concludes the Claims lack merit. The United States Supreme Court has not yet resolved if a freestanding claim of actual innocence is cognizable on federal habeas review. *See Reeves,* 897 F.3d 154, 160 n.4 (3d Cir. 2018). Nevertheless, assuming a freestanding claim of innocence should be considered to be cognizable, the Third Circuit has reasoned that "[f]ailure to meet the gateway standard is sufficient to reject any hypothetical freestanding actual innocence claim." *Bruce v. Warden Lewisburg USP,* 868 F.3d 170, 184 (3d Cir. 2017) (abrogated on other grounds by *Voneida v. Johnson,* 88 F.4th 233, 237 (3d Cir. 2023). As discussed here and in Sections III.B.I and III.D.1 Petitioner has failed to satisfy the gateway actual innocence standard for time-barred and procedurally barred claims, which means that he cannot satisfy the higher standard of proof for a hypothetical freestanding actual innocence claim.

2. Claims Two and Three

In addition to denying Claim Two and a portion of Claim Three for failing to assert issues cognizable on federal habeas review, the Court also concludes that Claims Two and Three are time-barred. Petitioner does not assert, and the Court cannot discern, any facts triggering the application of § 2244(d)(1)(B), (C), or (D) for Claims Two and Three. Consequently, the one-year period of limitations began to run for these Claims when Petitioner's convictions became final under § 2244(d)(1)(A).

Pursuant to § 2244(d)(1)(A), if a state prisoner appeals a state court judgment but does not seek certiorari review, the judgment of conviction becomes final ninety days after the state appellate court's decision. *See Kapral v. United States,* 166 F.3d 565, 575, 578 (3d Cir. 1999); *Jones v. Morton,* 195 F.3d 153, 158 (3d Cir. 1999). The Delaware Supreme Court affirmed Petitioner's convictions and sentences on May 16, 1995. Since he did not seek certiorari review of that decision, his judgment became final ninety-days later, on August 14, 1995. However, state prisoners whose convictions became final prior to AEDPA's effective date of April 24, 1996 have a one-year grace period for timely filing their habeas applications, thereby extending the filing period through April 23, 1997.[8] *See*

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[8] Many federal circuit courts have held that the one-year grace period for petitioners whose convictions became final prior to the enactment of AEDPA ends on April 24, 1997, not April 23, 1997. *See Patterson v. Stewart,* 251 F.3d 1243, 1246 (9th Cir. 2001) (collecting cases). Although the Third Circuit has noted that "[a]rguably we should have used April 24, 1997, rather than April 23, 1997, as the cut-off date, *"Douglas,* 359 F.3d at 261 n.5 (citing Fed.R.Civ.P. 6(d)), it appears that April 23, 1997 is still

McAleese v. Brennan, 483 F.3d 206, 213 (3d Cir. 2007); *Douglas,* 359 F.3d at 261; *Burns v. Morton,* 134 F.3d 109, 111 (3d Cir. 1998). Thus, Petitioner had until April 23, 1997 to timely file Claims Two and Three.

Petitioner did not file the instant Petition until June 17, 2020, almost 23 full years after the applicable deadline. Consequently, Claims Two and Three are time-barred and should be dismissed, unless the limitations period can be statutorily or equitably tolled, or Petitioner. makes a gateway showing of actual innocence. *See Jones,* 195 F.3d at 158; *see Wallace v. Mahanoy,* 2 F.4th 133, 151 (3d Cir. 2021) (explaining that actual innocence is an "exception to the statute of limitations" rather than an "extension to the statute of limitations via equitable tolling.").

Statutory tolling does not render Claims Two and Three timely. As explained above, the first day of AEDPA's one-year statute of limitations period in this case was April 24, 1996. Since Petitioner filed his first Rule 61 motion on January 4, 1996, the limitations period was actually tolled through February 25, 1997, the day on which the Delaware Supreme Court affirmed the Superior Court's denial of that motion. *See Mason,* 1997 WL 90780, at *2. The limitations clock started to run on February 26, 1997, and ran for 363 days until Petitioner filed his second Rule 61 motion on February 24, 1998. The second Rule 61 motion tolled the limitations period through February 11, 1999, the date on which the Delaware Supreme Court affirmed the Superior Court's denial of that motion. The limitations clock

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the relevant cut-off date in this circuit. In the present situation, however, petitioner filed his petition well-past either cut-off date, rendering the one-day difference immaterial.

resumed on February 12, 1999, and expired on February 16, 1999.[9] Petitioner's third Rule 61 motion has no statutory tolling effect because it was filed long after the expiration of the limitations period. Thus, even after the applicable statutory tolling, Petitioner's filing of Claims Two and Three on June 24, 2021 is untimely.

Once again, Petitioner does not assert, and the Court does not discern, that any extraordinary circumstance prevented him from presenting Claims Two and Three before the expiration of the limitations period. Nor does he provide any explanation for the 22-year delay in filing the instant Claims. Therefore, the Court concludes that equitable tolling is not warranted for Claims Two and Three.

Finally, for the same reasons discussed with respect to Claim One (b), the Court concludes that Petitioner has not presented a gateway claim of actual innocence sufficient to excuse his untimely filing of Claims Two and Three. *See supra* at Section

Accordingly, the Court will also dismiss Claims Two and Three as time-barred.

C. Claim One (a): Not Time-Barred

Claim One (a) asserts that the State violated *Brady v. Maryland* by failing to disclose that R.R. was involuntarily committed at the Rockford Center during his trial. According to Petitioner, after R.R. men-

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[9] The limitations period actually expired on February 14, 1999, which was a Sunday. The next day, February 15, 1999 was President's Day, a federal holiday. Therefore, the filing deadline was extended until the end of the day on Tuesday, February 16, 1999. *See* Fed. R. Civ. P. 6(a)(1)(C).

tioned in her June 2018 Statement that she had been committed at the Rockford Center before Petitioner's trial (*see* D.I. 1-1 at 12), his counsel and an investigator undertook the process of trying to determine if any records of R.R.'s commitment still existed. In October 2018, Petitioner's counsel obtained verification that the records still existed, but did not obtain an actual copy of those records (in the form of a Discharge Summary) until January 2019. (D.I. 19 at 2)

The Discharge Summary reveals that R.R. was initially admitted at the Rockford Center due to "suicidal ideations," and Petitioner contends this information could have been used to impeach R.R.'s credibility. (D.I. 19 at 2) Relying on § 2244(d)(1)(D), Petitioner argues that the limitations period should not start to run for Claim One (b) until January 2019, when he actually obtained a copy of the Discharge Summary. (D.I. 19 at 2-3)

In contrast, the State contends that the limitations period should start sometime closer to June 2018, when R.R. provided her statement and mentioned that she had been placed at the Rockford Center prior to Petitioner's trial. (D.I. 15 at 13) The State argues that Petitioner could have obtained the Discharge Summary earlier than January 2019 had he exercised due diligence.

After considering both positions, the Court finds that Petitioner exercised reasonable diligence in seeking to obtain a copy of the Discharge Summary, and views the date on which Petitioner *learned* that the Discharge Summary still existed as the appropriate starting date for the limitations period rather than the date on which he actually *received* a copy of the Discharge Summary. Since Petitioner does not identify

the specific day in October 2018 on which he learned the records still existed, the Court will use October 1, 2018 as the relevant date. Consequently, the limitations period began to run on October 2, 2018. *See Wilson v. Beard,* 426 F.3d 653, 662-64 (3d Cir. 2005) (Fed. R. Civ. P. 6(a) applies to AEDPA's limitations period). Applying one year to that date, Petitioner had to file his Petition by October 2, 2019. *See Phlipot v. Johnson,* 2015 WL 1906127, at *3 n. 3 (D. Del. Apr. 27, 2015) (AEDPA's one-year limitations period is calculated according to the anniversary method, *i.e.,* the limitations period expires on the anniversary of the date it began to run).

Although Petitioner did not file his Petition until June 17, 2021, Claim One (a) is rendered timely through the application of statutory tolling. The one-year limitations period for Claim One (a) started to run on October 2, 2018, and ran for 141 days until Petitioner filed his third Rule 61 motion on February 20, 2019. The third Rule 61 motion tolled the limitations period through December 16, 2020, the date on which the Delaware Supreme Court affirmed the Superior Court's denial of the motion. When the limitations clock resumed on December 17, 2020, there were 224 days remaining in the limitations period. Petitioner filed the instant Petition 183 days later, on June 17, 2021. Thus, the *Brady* argument in Claim One (a) is not time-barred.

D. All Claims Are Procedurally Barred

Petitioner presented Claims One, Two, and Three in his third Rule 61 motion, which the Superior Court summarily dismissed as successive under Rule 61(d)(2). *See Mason,* 2019 WL 6353372, at *3, *6-7.

The Superior Court also denied Claim Two as time-barred under Rule 61(i)(1) and procedurally barred under Rule 61(i)(3) because he failed to raise it on direct appeal or in a timely Rule 61 motion. *See id.* The Delaware Supreme Court affirmed that decision "on the basis of and for the reasons state in the Commissioner's November 25, 2019 Report and Recommendation, as adopted by the Superior Court in its December 12, 2019 Order." *Mason,* 2020 WL 7392348, at *1.

Delaware Superior Court Criminal Rules 61(d)(2), (i)(1) and (3) and (d)(2) are independent and adequate state procedural rules precluding federal habeas review. *See Taylor v. May,* 2022 WL 980859, at *16-21 (D. Del. Mar. 31, 2022) (Rule 61(d)(2)); *Campbell v. May,* 2022 WL 3099185, at *11 (D. Del. Aug. 4, 2022) (Rule 61(d)(2); *Stanford v. Akinbayo,* 2021 WL 4263045, at.*9 (D. Del. Sept. 20, 2021). By explicitly applying the procedural bars of Rule 61(d)(2), (i)(1) and (3), the Delaware state courts articulated a "plain statement" that their decisions rested on state law grounds. Thus, Claims One, Two, and Three are procedurally defaulted, and the Court cannot review their merits absent a showing of cause for, and prejudice resulting from, Petitioner's default, or upon a showing that a miscarriage of justice will occur if the Claim is not reviewed.

The procedural default analysis for *Brady* claims differs from that used for *non-Brady* claims. Therefore, the Court will address Petitioner's procedural default of Claim One (a) separately from his procedural default of Claims One (b), Two, and Three.

1. Claims One (b), Two, and Three

Petitioner does not assert any cause for his procedural default of Claims One (b), Two, and Three. In the absence of cause, the Court will not address the issue of prejudice. In addition, for the reasons already discussed, Petitioner's assertions of newly discovered evidence presented in Claims One (a) and (b) do not assert a credible claim of actual, factual innocence triggering the miscarriage of justice exception to procedural default doctrine. *See supra* at Section.III.B. Therefore, the Court will deny Claims One (b), Two, and Three as procedurally barred.

2. Claim One (a)

In *Banks v. Dretke,* 540 U.S. 668 (2004), the Supreme Court opined that two of the three elements of a substantive *Brady* claim mirror the cause and prejudice inquiry for a procedural default, and proof of one is necessarily proof of the other. *Id.* at 691. A petitioner establishes a *Brady* violation by showing that: (1) the evidence at issue was favorable to the accused, either because it was exculpatory or it had impeachment value: (2) the prosecution suppressed the evidence, either willfully or inadvertently; and (3) the evidence was material. *See Strickler v. Greene,* 527 U.S. 263, 281-82 (1999); *Lambert v. Blackwell,* 387 F.3d 210, 252 (3d Cir. 2004). The method for excusing a procedural default is by demonstrating "cause and prejudice" and, within the context of *a Brady* claim, the suppression of evidence by the State would be adequate "cause," while the non-disclosure of "material" evidence would prejudice the petitioner. "Thus, if [the petitioner] succeeds in demonstrating 'cause and prejudice,' he will at the same time succeed in establishing

the elements of his *[Brady]* due process claims." *Banks,* 540 U.S. at 691.

The State "does not dispute" that the information contained in the Discharge Summary "appears to be *Brady* material" because it included potential impeachment material. (D.I. 15 at 28) The State also asserts this "information was known by the State and not disclosed to [Petitioner]." *(Id.)* Thus, the State concedes — and the Court also finds — that Petitioner has established cause for his default by satisfying the first and second components of a *Brady* claim.

In order to establish prejudice sufficient to overcome his default of Claim One (b), Petitioner must demonstrate that the information in the Discharge Summary was material for *Brady* purposes. A petitioner demonstrates the materiality of suppressed evidence by showing a "reasonable probability of a different result," which requires a showing that the suppressed evidence "undermines confidence in the outcome of the *trial." Kyles v. Whitley,* 514 U.S. 419, 434(1995); *see also United States v. Reyeros,* 537 F.3d 270, 281 (3d Cir. 2008) (explaining that materiality requires "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."). The "materiality of *Brady* material depends almost entirely on the value of the evidence relative to the other evidence mustered by the State." *Johnson v. Folino,* 705 F.3d 117, 128 (3d Cir. 2013).

Petitioner contends that the State's "[f]ailure to disclose [R.R.'s] hospitalization denied [him] and the Trial Court the opportunity to investigate the competency of the witness to appear and testify." (DJ. 14 at 8-9) The underlying premise of Petitioner's *Brady*

argument appears to be that R.R. falsely testified about the incident during the trial, and the information in the Discharge Summary concerning her "suicidal ideations during the week of trial" could have been used to impeach her credibility and veracity. (D.I. 1 at 14) Relying on a Second Circuit case, *Fuentes v. Griffin,* 829 F.3d 233 (2d Cir. 2016), Petitioner argues that the information in the Discharge Summary was material because it implicated R.R.'s credibility:

> As in *Fuentes,* here, [R.R.] and [Petitioner] were the only two people who were present and alone in the room where the incident allegedly occurred. The Jury's verdict of guilt against [Petitioner] could only have been returned if the Jury believed in the credibility of [R.R.] as she was the centerpiece of the State's case. This allegation was a delayed report to the police by a third party several months after the alleged incident. Significantly, there were no forensics of other physical evidence offered to corroborate her testimony. The facts presented to the Jury were strictly "he said/she said" as they were in *Fuentes.*
>
> Failure to disclose that [R.R.] was undergoing in-patient treatment for suicidal ideation during the week of trial denied [Petitioner] his Constitutional rights to due process, confrontation, and exculpatory evidence, and thereby eliminated his ability to challenge her credibility meaningfully.

(D.I. 1 at 14) Petitioner further argues that, "had the prosecution disclosed [R.R]'s admission into a psychiatric. hospital, the defense would have been able to

have her records reviewed by an expert [. . .], and thus would have been able to present such testimony regarding the credibility of [R.R.]' s testimony." (D.I. 14 at 14)

Although the Court is not bound by the Second Circuit's decision in *Fuentes,* the Court notes that it is distinguishable.[10] The Third Circuit has noted that "[s]uppressed evidence that would be cumulative of other evidence or would be used to impeach testimony of a witness whose account is strongly corroborated is generally not considered material for *Brady* purposes." *Johnson,* 705 F.3d at 128. In *Fuentes,* the issue was whether the sexual intercourse had been consensual, and "the witness's testimony [was] the only evidence that there was in fact a crime." *Fuentes,* 829 F.3d at 248, 259 ("Contrary to the Majority's depiction, the State's other evidence was not overwhelming In only one respect was Fuentes's version contradicted by evidence other than the testimony of [the victim] herself."). Here, in contrast, R.R.'s account of what occurred was corroborated by the testimony of R.R.'s stepbrother and Petitioner's friend, George English. R.R.'s stepbrother testified that he was at the apartment with Petitioner and R.R. on the night of the incident, and stated: (1) Petitioner and R.R. went into the bedroom (D.I. 16-28 at 68); (2)

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[10] Both Petitioner and the State refer the Delaware Supreme Cotes discussion of *Fuentes* when it affirmed the Superior Court's finding that Claim One (b) was procedurally barred. (D.I. 1 at 14-16; D.I. 15 at 30-31; D.I. 19 at 5-7) Given the Delaware Supreme Court's explicit statement that it was affirming the Superior Court's decision on procedural grounds, the Court does not view its discussion of *Fuentes* as constituting an adjudication of Claim One (b) on the merits.

Petitioner locked the door (D.I. 16-28 at 68); (3) the stepbrother "heard [R.R.] crying [and he] tried getting in" and "said, what is going on in there?" (D.I. 16-28 at 68); and (4) when R.R. came out of the bedroom, her hair was "messed up" and her eyes "looked like she was crying, and she kept sniffling" (D.I. 16-28 at 71). Petitioner's friend, George English, testified that Petitioner "said [R.R.] sucked his dick." (D.I. 16-113 at 179) English also testified that R.R. told him that "Petitioner tried to get her to perform oral sex" (D.I. 16-16 at 120).

Moreover, "evidence of a witness's mental health will be material only if it undermines the witness's reliability or calls into question his ability to perceive, remember and narrate perceptions accurately." *Lesko v. Sec'y Penn. Dept. Corns.,* 34 F.4th 211, 233 (3d Cir. 2022); *Wilson v. Beard,* 589 F.3d 651, 666 (3d Cir. 2009). The information in R.R.'s mental health record from the Rockford Center falls short of satisfying this standard. For instance, the Discharge Summary reveals that R.R. feared having to testify at Petitioner's trial, and indicates that her suicidal ideations were related to, and/or cause by, the fear of going to trial and her unstable living environment.[11] The Discharge Summary states that: R.R. had never

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[11] The Court finds the following excerpts from the Discharge to be relevant to the materiality issue:

> BRIEF HISTORY: The patient's chief complaint was "guys." She had suicidal ideations. She has an unstable living situation. [. . .] Recently, she has been staying with her 18 year old sister, who told her to leave. She has to attend a rape trial, and she was frightened by the trial. She was considered at high risk for self-harm behavior. She had called the police

department threatening suicide. She called the police because she didn't know what else to do. She was aware that her statement would get her into the hospital because she was so desperate. [. . .] She has never attempted suicide and never hurt herself. [. . .] She denies hearing voices or having plots against herself. [. . .] She has been sexually active with serial monogamy. She reports other sexual abuse although she sees herself as happy.

PAST PSYCHIATRIC HISTORY: She has never been in the hospital before but has been in counseling with [KJ] two or three times.

* * *

MENTAL STATUS EXAMINATION: [. . .] There were no signs of depression. [. . .] Her patterns of thought were logical and relevant. There were no preoccupations or ideas of reference or influence. [. . .] All tests of memory were good. Impulse control is somewhat undermined by her life situation and tests of judgment were somewhat impulsive.

* * *

HOSPITAL COURSE: The goals of the hospitalization were for patient to identify sources of her depression and suicidal thoughts and develop positive alternatives. She was seen on the adolescent unit in individual psychotherapy and attended all the therapies of the adolescent treatment center. The prosecutor's office was permitted to visit her. No medications were used.

Patient was to go to Court to testify in the rape trial on 6/21/94. She said that she did well in. Court. She was happy about it. The only issue that remained was where she could safely live.

* * *

DISCHARGE STATUS: Somewhat improved. The patient was no longer stating that she was suicidal.

been hospitalized prior to this particular admission at the Rockford Center; there were no signs she was suffering from depression; no medications were used during treatment; and R.R.'s symptoms improved after she testified; and R.R. was discharged after four days of treatment. (D.I. 1-1 at 7) Given the extremely short amount of time R.R. was at the Rockford Center and the relatively rapid resolution of the issues which initially caused R.R. to threaten suicide, Petitioner has failed to demonstrate how the evidence concerning R.R.'s mental health in the Discharge Summary calls into question R.R.'s "ability to perceive, remember and narrate perceptions accurately." While the Discharge Summary's assertion that R.R. called the police department threatening suicide because she knew the threat would "get her into the hospital" may have provided a basis for impeaching R.R.'s reliability,[12] the impeachment value of that information is not material because the corroborative testimony provided by R.R.'s stepbrother and George English was "strong enough to sustain confidence in the verdict."[13] *Smith v. Cain,* 565 U.S. 73, 76 (2012).

In sum, after reviewing the information in the Discharge Summary in context with corroborating testimony that was presented during Petitioner's trial, the Court concludes that Petitioner has failed to demonstrate a reasonable probability that, had the

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(D.I. 1-1 at 7-9) (emphasis added)

[12] The Discharge Summary's description implies that R.R. may have exaggerated her distressed state in order to gain admission to the Rockford Center which.

[13] Nevertheless, the Court will grant a certificate of appealability on this issue. *See infra* at Section IV.

information in the Discharge Summary been disclosed to Petitioner during his trial, the result of the proceeding would have been different. Thus, the information in the Discharge Summary was not material and does not establish actual prejudice sufficient to overcome Petitioner's default of Claim One (a). Nor has Petitioner demonstrated that the miscarriage of justice exception applies. Accordingly, the Court will deny Claim One (a) as procedurally barred.

IV. Certificate of Appealability

A district court issuing a final order denying a § 2254 petition must also decide whether to issue a certificate of appealability. *See* 3d Cir. L.A.R. 22.2 (2011); 28 U.S.C. § 2253(c)(2). A certificate of appealability is appropriate when a petitioner makes a "substantial showing of the denial of a constitutional right" by demonstrating "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel,* 529 U.S. 473, 484 (2000). Additionally, when a district court denies a habeas claim or petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates that jurists of reason would find it debatable: (1) whether the claim or petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. *See Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

The Court has concluded that the instant Petition does not warrant relief. Reasonable jurists would not find this conclusion to be debatable with respect to

Claims One (b), Two, and Three. Accordingly, the Court will not issue a certificate of appealability for Claims One (b), Two, and Three.

As for Claim One (a), while the Court concludes that R.R.'s testimony was sufficiently corroborated such that there is not a reasonable probability that any further impeachment using the information in the Discharge Summary would have changed the outcome of Petitioner's trial, it also concludes that "reasonable jurists could debate" that finding. *See Slack,* 473 U.S. at 484. Accordingly, the Court will issue a certificate of appealability for Claim One (a).

V. Conclusion

For the reasons discussed, the Court will deny the instant Petition without holding an evidentiary hearing. The Court declines to issue a certificate of appealability for Claims One (b), Two, and Three, but will issue a certificate of appealability for Claim One (a). The Court will enter an order consistent with this Memorandum Opinion.[14]

[14] The Court's adjudication of the Petition moots the need to hold an office conference that Petitioner requested. (*See* D.I. 21)

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF DELAWARE (JUNE 4, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRUCE MASON,

Petitioner,

v.

SCOTT CERESINI, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,

Respondents.

Civil Action No. 21-864-GBW

Before: Hon. Gregory B. WILLIAMS, District Judge.

ORDER

At Wilmington, this 4th day of June 2024, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Bruce Mason's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (D.I. 1) is DISMISSED, and the relief requested therein is DENIED.

2. The Court declines to issue a certificate of appealability for Claims One (b), Two, and Three because Petitioner has failed to satisfy the standards set forth in 28 U.S.C. § 2253(c)(2).

3. A certificate of appealability SHALL issue solely on the question of materiality with respect to Claim One (a), in that reasonable jurists could debate whether the suppressed Discharge Summary was material under *Brady v. Maryland,* 373 U.S. 83 (1963). *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

/s/ Gregory B. Williams
U.S. District Judge

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT (MAY 28, 2025)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRUCE MASON,

Appellant.

v.

STATE OF DELAWARE; SUPERINTENDENT JAMES T. VAUGHN CORRECTIONAL CENTER; ATTORNEY GENERAL DELAWARE

No. 24-2162

(D. Del. No. 1:21-cv-00864)

Before: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and AMBRO,* Circuit Judges.

[ORDER DENYING] SUR PETITION FOR REHEARING

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the

* Judge Ambro's vote is limited to panel rehearing.

judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ Peter J. Phipps
Circuit Judge

Date: May 28, 2025
Tmm/cc: Nicholas Casamento, Esq.
Kathry J. Garrison, Esq.

HABEAS CORPUS PETITION FILED IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF DELAWARE (MAY 28, 2021)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRUCE MASON,

Petitioner,

v.

STATE OF DELAWARE,
ROBERT MAY, SUPERINTENDENT OF JAMES T. VAUGHN CORRECTIONAL FACILITY,

and

KATHLEEN JENNINGS, ATTORNEY GENERAL OF THE STATE OF DELAWARE,

Respondents.

No. _____

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2242 *ET. SEQ.*

I. Introduction

1. Bruce Mason (hereinafter "Mason") has been incarcerated at the James T. Vaughn Correctional Center in Smyrna, Delaware since he was convicted in the summer of 1994 of three (3) counts of Unlawful Sexual Intercourse First Degree in the above-captioned matter. The conviction followed a Jury Trial in the Superior Court of Delaware in and for New Castle County taking place between June 21, 1994 and June 24, 1994. Mason exhausted all of his state appeals.

2. Robert May, Respondent herein, is the Superintendent of the James T. Vaughn Correctional Center located in Smyrna, Delaware where Mason is housed.

3. Kathleen Jennings, Respondent herein, is the Attorney General for the State of Delaware with offices located in Wilmington, Delaware.

4. Mason was sentenced to three, 15-year mandatory and consecutive sentences a total of 45 years at Level V. Mason has served over 24 years at Level V status thus far – which is more than half of the Level V sentencing time imposed.

5. Mason was 19 years of age at the time of the acts for which he was charged and Robyn Roberts was 13 years of age at the time.

6. The entire time period of the acts for which he was charged were alleged to take place on a single day over a short period of time, approximately 20 minutes, and appear to have been one single episode versus

three (3) separate crimes for which he was sentenced. If left uncorrected, this miscarriage of justice will result in Mason's loss of freedom through his youthful years until he is released well into his mid-sixties years of age.

7. There are no other petitions or appeals pending in any state court or Federal court relating to these claims herein as Mason raises three grounds by which he is entitled to relief under 28 U.S.C. 2254:

a. Both newly discovered and exculpatory evidence existed that was never disclosed to the defense in violation of case precedent of *Brady v. Maryland* thus violating Mason's rights of due process as well the Confrontation Clause of the Sixth Amendment.

b. The Trial Court lacked subject matter jurisdiction as a result of Mason's ineffective waiver of his right to be Indicted by the Grand Jury contrary to both the Delaware and U.S. constitutions;

c. The sentence imposed is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and in violation of Article I § 11 of the Delaware Constitution and inconsistent with 11 Del. C. 3109(d).

II. Factual And Procedural History

8. In November 1992, the police received a report from the mother of Robyn Roberts, the alleged victim (hereinafter "Roberts"), that Mason had sexually assaulted Roberts. Roberts' mother received the report from Roberts' boyfriend, who stated that Roberts had

recently confided in him about an assault that occurred months prior. Mason was arrested on November 19, 1992 on these allegations and corresponding offenses.

9. Mason was ultimately convicted of three counts of Unlawful Sexual Contact First Degree with each count carrying a mandatory fifteen (15) years incarceration. The conviction followed several changes to the charging documents and a delayed filing of a "Waiver of Indictment".

10. A Grand Jury failed to return an original Indictment on the facts presented by the prosecution in December 1992 as no specific date nor time period could be identified in the Indictment By letter dated January 14, 1993, the State of Delaware indicated its intent to Re-Indict Mason with a new Grand Jury.

11. In fact, a Re-Indictment was returned by the next Grand Jury on February 1, 1993. It is the first and only True Bill returned on the docket. The Re-Indictment charged Mason with five felony offenses committed on or about August 1992:

a. Kidnapping First Degree;

b. Unlawful Sexual Intercourse First Degree;

c. Unlawful Sexual Intercourse First Degree;

d. Unlawful Sexual Intercourse First Degree; and

e. Unlawful Sexual Intercourse First Degree.

12. As a result of the Re-Indictment being successfully returned by the new Grand Jury, the State entered a *nolle prosequi* on the original charges.

13. A Motion to Amend the Re-Indictment was granted on October 25, 1993.

14. The State delivered a Waiver of Indictment and Information to the defense by letter dated October 27, 1993. On November 7, 1993, the State wrote defense counsel and noted that "the Information should read *on or about June 27, 1992 and August of 1992* the defendant did commit the criminal offenses" [emphasis added].

15. Less than one month later, on November 17, 1993, Trial Counsel solicited Mason's signature on "some documentation regarding the re-indictment." The letter said that the State was "locked on to the date of June 27, 1992," even though the new Information actually expanded the time frame beyond that date.

16. A Waiver of Indictment, consenting to the case proceeding to trial by Information as opposed to by Indictment, executed by Mason, was filed with the Prothonotary on December 8, 1993.

17. Also on December 8, 1993, an Information was filed with the Prothonotary. The Information alleged that the criminal offenses were committed "on or about June 27, 1992 to August 31, 1992", contrary to what was presented by the prosecution to Mason's counsel and contrary to what Mason was aware of.

18. A Jury Trial commenced on June 21, 1994 and concluded on June 24, 1994. Mason was found guilty of three counts of Unlawful Sexual Intercourse First Degree. He was sentenced to forty-five (45) years of incarceration based on three consecutive mandatory periods of fifteen (15) years of incarceration at Level V.

19. Notice of direct appeal was timely filed on September 13, 1994. Mason pursued his state appeal

rights but was unsuccessful as the appellate courts of Delaware upheld his conviction and sentence.

20. On January 4, 1996, Mason, through previous, post-conviction counsel, filed a timely Motion for Post-Conviction Relief pursuant to Delaware Superior Court Criminal Rule 61. Said Motion was denied on April 11, 1996 and an appeal was taken.

21. The Supreme Court of Delaware affirmed the lower court's ruling on March 14, 1997.

22. On February 24, 1998, Mason, *pro se*, filed a subsequent Motion for Post-Conviction Relief pursuant to Delaware Superior Court Criminal Rule 61; said Motion was denied on April 28, 1998.

23. The instant petition for Federal Habeas Corpus Relief is being filed as a result of Mason's February 20, 2019 filing of a Delaware Rule 61 motion in the state court based on new and exculpatory evidence previously unknown to defendant and lack of jurisdiction. This is Petitioner's first petition for Federal Habeas Corpus. Said Delaware Rule 61 motions were denied and said denial affirmed on appeal by the Delaware Supreme Court on December 16, 2020. (Exhibit "A"). Said state Rule 61 Motion was premised on both newly discovered evidence and exculpatory evidence of impeachment of Roberts that the prosecution failed to disclose to the defense at the time of Mason's original trial in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), as well as Eighth Amendment and both Delaware and U. S. Constitutional violations.

III. Newly Discovered and Exculpatory Evidence

24. In October of 2018, Mason's counsel through an investigator learned that Roberts informed that

she had been an inpatient at the Rockford Psychiatric Center. Roberts then retrieved her medical records from the Rockford Center, a psychiatric center in New Castle County Delaware, which disclosed that from June 19, 1994 to June 23, 1994, during the actual time of testimony at Mason's trial, Roberts was involuntarily committed and treated for mental health issues. (Exhibit "B"). With regards to Robert's mental health, the records disclosed that she was admitted with "Admission Diagnosis of-Occupational defiant disorder/Personality disorder/GAF 50; past six months. The notes state her "chief complaint was 'guys.' She has had suicidal ideation". "She said she'd kill herself or someone else". "She admitted that her stepfather's best friend raped her "a few years ago" "She reports other sexual abuse". She threatened suicide to the police. She reported multiple incidents of sexual abuse. She was a "daily drug user". Had been in counseling with "Kevin Johnson two or three times"; used to use drugs every day, but "It's been slowing up". She received "individual psychotherapy" and she was referred to the "drug and alcohol group". The notes further state "The prosecutor's office was permitted to visit her". She was discharged to "outpatient therapy".

25. At the time of Robert's stay at the Rockford Center, the State's prosecutors were fully aware of her hospitalization in a psychiatric unit as evidenced by the hospital discharge summary which states that "the prosecutor's office was permitted to visit her " and that she made suicidal reports to the police.

26. The State prosecutors advised neither Mason's trial counsel nor the trial court of Roberts' hospitalization at the Rockford Center; they deliberately withheld such information from the defense.

27. It was only after the retrieval of these records in the fall of 2018 did Mason first become aware of the information contained within the Rockford Records.

28. Moreover, on June 18, 2018, Roberts' hand wrote a statement which included both newly discovered and exculpatory evidence. (Exhibit "C"). Therein, Roberts stated that, while there may have been attempts of sexual assault, there was no penetration at all. She refers to the event as a "so-called rape." The statement also indicates that it was misrepresented (obviously by the prosecuting team who visited her) to Roberts that Mason would simply receive counseling and time served if he is convicted and she testified. Upon review and reflection on her prior testimony, she found things about her testimony alarming. Sadly, she admits that sexual assaults were a regular occurrence where she was living during the relevant time period. She believes that she was pushed to come forward by a man named Louis Reader because of his efforts to cover up his own crimes against Roberts' sister. None of this information was available to Mason until 2018.

29. As a result of both this new evidence and exculpatory evidence, Mason filed on February 20, 2019 with the Delaware Superior Court a Criminal Rule 61 motion attacking his convictions and sentences as the prosecution's withholding of the newly discovered evidence and exculpatory evidence violated Mason's constitutional rights and violated the *Brady* material disclosure rule that requires the prosecution to disclose evidence favorable to the accused so as not to violate his due process rights. The Delaware State Rule 61 is the state's rule that provides the State court an opportunity to correct constitutional infirmities in a conviction or sentence. (Delaware Superior Criminal Rule 61).

30. The state courts failed to correctly apply the law to Mason's claims and abused its discretion as their decisions were contrary to clearly established U.S. Supreme precedent (ie: *Brady v Maryland*) and involved an unreasonable application of thereof. 28 U.S.C. 2254(d)(1); *see Williams v. Taylor*, 529 U.S. 362, (2000).

31. The "contrary to" clause of Section 2254(d)(1) is violated if the state court reaches a result opposite to the one reached by the U.S. Supreme Court on the same question of law or arrives at a result opposite to the one reached by the U.S. Supreme Court on a "materiality indistinguishable" set of facts. *Williams*, 529 U.S. at 405-06. An "unreasonable application" of Supreme Court law occurs if the state court identifies the correct rule of law but applies that principle of the facts of the petitioner's case in an unreasonable way. *Id.* at 413.

32. The Due Process Clause of the United States Constitution prohibits the criminal conviction of any person except upon sufficient proof of guilt of every element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). "The prosecution [has an] affirmative duty to disclose evidence favorable to a defendant . . . " *Kyles v. Whitley*, 514 U.S. 419, (1955) at 432.

33. The information recently discovered could not have been previously discovered by due diligence as the State failed to disclose such exculpatory information to the defense in violation of Mason's rights pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976). To wit:

a. The State failed to disclose Roberts' involuntary commitment Rockford Center despite knowing that she was involuntarily committed on or about the actual time of her trial testimony.

b. The State counseled Roberts about how to testify in order to make the State's case stronger so that Mason would "get better."

c. Roberts now denies that "penetration"– a necessary element of each offense for which Mason was convicted and sentenced – even occurred.

34. The duty to disclose favorable evidence to an accused is applicable irrespective of whether the accused made a request; Agurs at 107; and in *United States v. Bagley*, 473 U.S. 667 (1985), the Court held that the duty exists irrespective of whether the information bears on the defendant's innocence or a witness's impeachment. Failure to disclose Roberts' hospitalization denied Mason and the Trial Court the opportunity to investigate the competency of the witness to appear and testify. It further denied the defense the opportunity to adequately cross-examine Roberts at trial; thus violating Mason's due process rights.

35. Ironically, the defense had filed a pretrial motion to have Roberts evaluated for competency during pre-trial proceedings. That motion was denied. Clearly, the prosecution was aware of the defense requests regarding Roberts and hid from them her psychiatric commitment thus violating due process.

36. The State's blatant withholding of knowledge of Roberts' hospitalization demonstrated a lack of candor to the Trial Court, violated Mason's Confrontation

Clause rights guaranteed by the United States Constitution and by the Delaware Constitution, violated Mason's rights to exculpatory information pursuant to *Brady v. Maryland* and violated *Jencks v. United States*, 353 U.S. 657 (1957).

37. On June 18, 2018, Roberts gave a statement concerning the underlying case. She stated that she was counseled by the prosecution to testify in such a way so that the case against Mason would be stronger so that Mason would get counseling. Further, in her recent statement, Roberts denies that any "penetration" actually occurred. She stated that Louis Reader forced her to accuse Mason to cover for his own crimes against Roberts' sister. Louis Reader was listed as a witness at Mason's trial.

38. Roberts' statements are exculpatory now and were exculpatory in 1994 when she testified at Mason's trial. Each assertion in her new statement was also true when she testified. Each assertion would have been fair game for cross-examination before the jury. The information that she has presented to Mason's post-conviction trial now in 2018 would have resulted in a "not guilty" verdict at trial had it been provided prior to trial.

39. The foregoing exculpatory information is compounded by the fact that the State failed to disclose Roberts' psychiatric condition during trial. Pursuant to the recent case of *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016), on facts close to identical to Mason's, where the prosecution failed to disclose the psychiatric /psychological hospitalization of the victim/witness in a case involving the credibility of said witness, the court found a Brady violation requiring the reversal of

a conviction. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016).

40. As in *Fuentes*, here, Roberts and Mason were the only two people who were present and alone in the room where the incident allegedly occurred. The Jury's verdict of guilt against Mason could only have been returned if the Jury believed in the credibility of Roberts as she was the centerpiece of the State's case. This allegation was a delayed report to the police by a third party several months after the alleged incident. Significantly, there were no forensics of other physical evidence offered to corroborate her testimony. The facts presented to the Jury were strictly "he said/she said." as they were in *Fuentes*.

41. Failure to disclose that Roberts was undergoing in-patient treatment for suicidal ideations during the week of trial denied Mason his Constitutional rights to due process, confrontation, and exculpatory evidence, and thereby eliminated his ability to challenge her credibility meaningfully, all of which the state courts failed to apply in this case. The Delaware State Supreme Court's Order (and opinion therein which is hereby attached as Exhibit "A") attempts to distinguish the *Fuentes* case from Mason's by stating *Fuentes* applied a different standard, it was a "consent case", the victim in *Fuentes* made inconsistent statements which heightened the significance of credibility, *Fuentes* did not consist of "corroborating evidence" as they see in Mason. The Delaware Supreme Court's distinguishing factors are completely misplaced. In *Fuentes*, the victim actually spoke to two witnesses the night of the incident who testified at trial to attempt to corroborate her testimony, inconsistent statements had nothing to do with the *Brady* violation in *Fuentes*, and the Rule

61 that Mason was required to use in his Delaware motion and its standards surely can't supersede a *Brady* due process violation.

42. The State had a duty to disclose evidence favorable to Mason, particularly evidence that bears on the witness's credibility. A defendant in a criminal prosecution has the right under the Confrontation Clause of the Sixth Amendment by way of the Fourteenth Amendment in a state prosecution to confront the witnesses against him including to impeach by cross-examination. *Pointer v. Texas*, 380 U.S. 400, 403-406 (1965); *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974). Here, it is obvious that a State Prosecutor visited Roberts at the Rockford Center. The State was fully aware that Roberts was involuntarily committed to a psychiatric facility. Egregiously, the State knowingly failed to disclose the information to either the defense or the Trial Court – despite the fact that she was the State's star witness and despite the fact that the defense had earlier in the case motioned the Trial Court to order a psychiatric evaluation. *See Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016). *See also Brady v. Maryland*, 373 U.S. 83 (1963).

43. The materiality requirement in a *Brady* argument is clearly met here and is unquestionable. Without Roberts' testimony, there would have been no case; and her credibility was paramount to the prosecution's case. The impeachment of said key witness was of infinite value to the defense and could have certainly resulted in Mason's acquittal. Just like in *Fuentes*, the psychiatric records from the Rockford Center "provided the only evidence with which the defense could have impeached" Roberts. *See Fuentes, supra.*

IV. The Judgments of Conviction Must Be Set Aside Because the Superior Court Lacked Jurisdiction Because the State Failed to Secure Either an Indictment by the Grand Jury or an Effective Waiver Thereof.

44. Article I § 8 of the Delaware Constitution guarantees Mason the right to be Indicted by the Grand Jury for these criminal offenses; it is the state's equivalent to the Fifth Amendment of the U.S. Constitution concerning subject matter jurisdiction. Just as in the federal court's subject matter jurisdiction, offenses within the jurisdiction of the Superior Court of Delaware, such as those for which Mason was convicted, shall be prosecuted by Indictment unless the accused waives the right to be indicted. Unlike its Federal counterpart, Superior Court Criminal Rule 7(b) provides that the waiver may be in writing or "in open court".

45. The Delaware Supreme Court has recognized that "'[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

46. The waiver of indictment in Mason's case was ineffective because it was not done knowingly, intelligently, and voluntarily with sufficient awareness of the relevant circumstances and likely consequences.

47. Because the waiver was ineffective, the State was required to present the charges recited in the Information as an Indictment to the Grand Jury. Because the State did not, the Superior Court lacked jurisdiction due to the critical defect in the institution of the proceedings.

48. The difference between the February 1993 Re-Indictment and the December 1993 Information was as follows: the "on or about" language was expanded from "on or about August 1992" to "on or about June 27, 1992 to August 31, 1992." The change was critical under the unique factual circumstances of the case. The waiver was contrary to Mason's best interest.

49. Despite language in the waiver form indicating that Mason waived his right to Grand Jury "in open Court." Mason will testify that he was never colloquied that he had a State Constitutional Right to insist on Indictment. Further, Mason will testify that he was never colloquied by the Court at any time before his trial regarding his understanding of his right to the Grand Jury and his waiver thereof. The waiver was ineffective because it was not knowing, intelligent, nor voluntary. It is further ineffective because its plain terms are not satisfied because the waiver was not in open court.

50. The Court noted having received the waiver on the first day of trial, some six months after it was signed. There was no discussion with the Court concerning Mason's understanding of the waiver of his constitutional rights.

51. The Court should have examined the waiver form and discussed the waiver with Mason. "Open Court" is a term of the waiver form. The change in the Information was significant, and prejudicial to Mason under the unique factual circumstances of the case. To wit:

a. The Information greatly expanded the date range applicable for potential guilty verdicts by providing substantially more dates upon

which the incident may have occurred. Rather than simply August 1992, the Information alleged June 27, 1992 to August 31, 1992."

b. At the same time, the Trial Court was made aware of allegations of sexual conduct or misconduct involving Roberts and/or others.

i. Medical records indicated that Roberts had become sexually active with someone other than Mason in August of 1992.

ii. Someone other than Mason sexually assaulted Roberts in the past.

iii. On the same date in November 1992 that this incident was reported, Roberts' sister or stepsister alleged that someone sexually assaulted her also.

iv. Roberts' and her sister's reports were made when police were called to the residence to address a report concerning another young woman, Katrina.

v. Another young woman named Jen alleged to have been sexually abused by another man living at the home the entire period of time.

52. Mason's constitutional right to be charged by indictment was not adequately waived and thus his prosecution was illegal in violation of Article I § 8 of the Delaware Constitution and his rights under the Fifth Amendment.

53. Because the Trial Court lacked subject matter jurisdiction to try and sentence Mason, the judgments

of conviction must be set aside and the case remanded for a new trial.

V. The Sentence of Three Consecutive 15 Year Terms of Incarceration Is Cruel and Unusual Punishment and the Sentence Should Be Modified from Consecutive to Concurrent Sentences.

54. The sentence imposed is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and in violation of Article I § 11 of the Delaware Constitution.

55. The mandatory consecutive sentences imposed are contrary to the general sentencing rules now in effect in Delaware. Had Mason been sentenced since the passing of House Bill 312 by the General Assembly in 2014, he would have been eligible for concurrent sentences pursuant to 11 Del. C. 3901(d). Having been found guilty, concurrent sentencing would have been justified under the circumstances.

56. Under the factual circumstances of this case, the consecutive sentences require Mason's incarceration for 45 years – an absurd result in violation of Mason's right to be free from cruel and unusual punishment. Mason has already served no less than 25 years at Level V for these convictions. Even Roberts, the alleged victim, believes Mason's sentence to be a miscarriage of justice and thus a violation of his Eighth Amendment rights for cruel and unusual punishment.

WHEREFORE, Mason prays this Honorable Court (1) schedule an evidentiary hearing on the factual issues raised herein; (2) enter an Order to set aside all of Mason's judgments of conviction in the above-

captioned matter, or, in the alternative, re-sentence Mason concurrently; and (3) grant other appropriate relief as warranted.

Respectfully submitted:

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Dated: May 28, 2021

EXHIBIT A
ORDER, SUPREME COURT OF THE STATE OF DELAWARE
(DECEMBER 16, 2020)

IN THE SUPREME COURT
OF THE STATE OF DELAWARE

BRUCE MASON,

Defendant Below, Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below, Appellee.

No. 6, 2020

Court Below: Superior Court of the State of Delaware Cr. ID No. 93001218DI(N)

Submitted: October 14, 2020
Decided: December 16, 2020

Before: VALIHURA, VAUGHN, and TRAYNOR, Justices.

ORDER

This 16th day of December, 2020, upon consideration of the parties' briefs and the record below, we find that:

(1) The judgment of the Superior Court, denying Mason's third motion for postconviction relief of his 1994 conviction on several counts of sexual assault, should be affirmed on the basis of and for the reasons stated in the Commissioner's November 25, 2019 Report and Recommendation, as adopted by the Superior Court in its December 12, 2019 Order. In addition to those reasons, we conclude that Mason's reliance on *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016), an opinion Mason cited below and in this Court but not addressed by the Superior Court or the State in its answering brief, is misplaced.

(2) Unlike the *Brady*[1]/due process claim made in *Fuentes*, Mason's claim is that he has recently discovered new evidence—in particular, that his 13-year-old victim was involuntarily committed and treated for mental health issues immediately before and during Mason's trial—that creates a strong inference that he is actually innocent.

(3) Admittedly, *Fuentes* presents facially similar circumstances; it involved a rape prosecution in which the prosecutor was under a discovery obligation to produce the alleged victim's medical records and in fact produced those

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[1] In *Brady v. Maryland*, the Supreme Court of the United States 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." 373 U.S. 83, 87 (1963).

records, except for an intentionally withheld psychiatric record. Ultimately, the Second Circuit concluded that the withholding of the record was a material and prejudicial *Brady* violation.

(4) We find *Fuentes* to be distinguishable on at least four grounds. First, *Fuentes* brought his claim as a *Brady*/due process claim and, therefore, it was subject to a standard that is different than we apply to new-evidence claims.[2] Second, *Fuentes* was a consent case; that is, both the defendant and the alleged victim acknowledged that they had engaged in sexual intercourse, but the alleged victim said that it was non-consensual. Here, because of the victim's young age, consent was not an available defense. Moreover, the victim in *Fuentes* had made inconsistent statements about the events immediately preceding the intercourse, which heightened the significance of the credibility battle between her and the defendant. Third, here there is corroborative evidence in the trial record, including the

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[2] Under Superior Court Criminal Rule 61(d)(2)(i), new-evidence claims are subject to an exacting standard; to warrant relief, the new evidence must create a strong inference of actual innocence. New evidence that is "merely cumulative or impeaching" will not satisfy the "actual innocence" standard. *Taylor v. State*, 180 A.3d 41, 2018 WL 655627, at *1 (Del. Jan. 31, 2018) (TABLE). By contrast, evidence that the defense can use to impeach a prosecution witness, by showing bias or interest, is covered by the *Brady* rule. *Michael v. State*, 529 A.2d 752, 756 (Del. 1987), *abrogated on other grounds by Stevens v. State*, 129 A.3d 206 (Del. 2015). Here, the new evidence, according to Mason, could have been used to impeach the victim's credibility. Opening Br. at 20.

stepbrother's testimony and George English's testimony that Mason told him that the victim had performed oral sex on him. There were no similar facts in *Fuentes*. And finally, *Fuentes* involved the intentional suppression of a document within the prosecutor's file; here no such document existed at the time of Mason's trial. And while this last fact does not make the State's failure to disclose the fact of Mason's victim's involuntary commitment any less of a *Brady* violation, all four of the factors viewed together convince us that we need not adopt the approach taken by the Second Circuit in *Fuentes*.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's judgment is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

EXHIBIT B
ROCKFORD CENTER DISCHARGE SUMMARY
(JUNE 19, 1994)

Patient: Robyn Roberts
Medical Record #: 10908/01
Date of Admission: 6/19/94
Date of Discharge: 6/23/94
Status: Involuntary Emergency
Physician: Dr. Graff

Admitting Diagnosis:

Axis I

Oppositional defiant disorder.

Axis II

Personality disorder, NOS.

Axis III

None.

Axis IV

Stressors, problems with primary support system, Hopelessness, severe.

Axis V

GAF, 50; past six months, 60.

Discharge Diagnosis

Axis I

Oppositional defiant disorder.

Axis II

Personality disorder, NOS.

Axis III

None.

Axis IV

Stressors, problems with primary support system, Hopelessness, severe.

Axis V

GAF, 50; past six months, 60.

Brief History:

The patient's chief complaint was "guys." She has had suicidal ideations. She has an unstable living situations. She moved out of mother's due to problems. She moved in with her uncle. She has lived on the streets. Recently, she has been staying with her 15 years old sister, who told her to leave. She has to attend a rape trial, and she was frightened by the trial. She was considered at high risk for self-harm behavior. She had called the police department threatening suicide. She called the police because she didn't know what else to do. She was aware that her statement would get her to into the hospital because she was so desperate. She said she'd kill herself or someone else. She admitted that her stepfather's best friend raped her "a few years ago." She has never attempted suicide and never hurt herself. She sleeps and eats well. She denies hearing voices or having plots against herself. She denies racing thoughts. She has been sexually active with serial monogamy. She

reports other sexual abuse, although she sees herself as happy.

Past Psychiatric History:

She has never been in the hospital before but has been in counselling with Kevin Johnson two or three times. She did not have a period for many months, but was not pregnant. She then admitted she had a period the month before.

Past Medical History:

Drug/Alcohol History:

She used to do drugs every day, but "it's been slowing up."

Current Social Situation:

Personal/Family History:

She has a very checkered and disordered family situation. She went on the street because she felt she was a burden to people. Even though she has two elder half siblings with the name Roberts, and she has the name Roberts, mother was not married to her father. Mother had separated from David Roberts prior to her birth. Her own Father is Rocky Massey, whom she not only once several months ago. Mother then married Louis Reader and had two children. She separated from Louis Reader and then had another child, whose father is unknown. Mother works at MBNA. Patient would stay at home to take care of her younger sibs while mother works. She had to skip school in order to do this. Patient felt she was unappreciated by her mother for this service.

Mental Status Examination:

Showed an attractive young women who could make eye contact. There were no sign of depression. There were no problems with gait, mannerism or gestures. Her speech was spontaneous. Her mood was friendly. Her Patterns of thought were logical and relevant. There were no preoccupations or ideas of reference or influence. She was able to abstract well. Information and intelligence were good. She could not do serial 7s and therefore did not attempt then. She was fully oriented. All tests of memory were good. Impulse control is somewhat undermined by her life situation and tests of judgment were somewhat impulsive.

Physical Examination:

Performed by Dr. Gianakon, who noted mild allergic rhinitis.

Lab Studies

Non-contributory to the patient's physical or emotional situation.

Hospital Course:

The goals of the hospitalization here for patient to identify sources of her depression and suicidal thoughts and develop positive alternatives. She was seen on the adolescent unit in individual psychotherapy and attended all the therapies of the adolescent treatment center. She was referred to survivor's group, drug and alcohol group. The prosecutor's office was permitted to visit bar. No medications were used.

Patient was to go to Court to testify in the rape trial on 6/21/94. She said that she did well in Court. She was happy about it. The only issue that remained was where she could safely live. We had to make sure that she was placed appropriately.

At one point, she had an upset stomach and Wynants was ordered. We noticed the marijuana metabolites and noted on her lab studies. Patient admitted that she was going to give it up. We are awaiting a family meeting to determine whether she could be safety discharged. There were no suicidal or homicidal ideations.

A family meeting was held, which went well. She was therefore able to be discharged to outpatient therapy on 6/20/94.

Discharge Status:

Somewhat improved. The patient was no longer stating that she was suicidal.

Discharge Instructions:

She was discharged without limits to her activities. She was warned not to smoke marijuana. She was referred to Delaware Guidance for her first appointment on 8/29/94 at 1:30. She was to live with her Aunt Debbie until the family could straighten out her situation. No medications were given.

Prognosis:

Guarded because of the patient's long term family issues.

/s/ Harold Graff
Harold Graff, M.D.

HG/pap
dd: 8/6/94

EXHIBIT C
STATEMENT OF ROBYN ROBERTS
(JUNE 18, 2018)

Statement Robyn Roberts
Taken By: Jeffery Goldstein
RE: Bruce Mason
Date: 6/18/18 Page 1 of 4

STATEMENT

Hi, my name is Robyn Roberts I am a 39 years old and a mother to a 15 year son. I recently received my real state license and am now employed at Realty Mark in Newark, DC, I also help Care for Jay Hawthorne who is a and my address is 100 admiral Drive in Wilmington DE and my phone number is 302-67-1622. I ask you today to please listing to what the lawyers have prepared and let Bruce Mason have an actual change to build a life outside of prison which he deserves. I know he forced himself upon me and even attempted to Penetrate both by vagina and anus, what is not clear from the transcript is that due to his size he gave up after only 15-20 mins. My opinion has never mattered before and I was made to talk about the anal part of this in trial even though live always felt that should not count, there was no penetration at all only attempts. That did not seem to matter to anyone. I was under the Impression that Bruce would receive counselling and time served boy was [sic].

I tried to and 25 years later this young man grew old wasting away. I recently read my testimony and discovered a few things I find alarming. Before trial I was part in Rockford (a mental hospital), the DA feared

I wouldn't testify and the doctors couldn't understand why I was there. Now I know it was to help the state look like they were doing their jobs by removing me from an environment where sexual assault was a regular thing. I was never given counseling or talked to about my liking situation. What did happen was this my step sister was raped and her mother's brother is law. He was prosecuted and given some years in Jail. My older sister was raped by my step Father, whom to this day has never even been questioned about what he did. And the state even gave him Custody of my younger sisters. My Stepfather was a known drug abuser and hit women and us kids to the point the schools were getting involved. My sister was beaten so badly one time she couldn't hear, her ears were giving.

Back to the reporting of this So-Called rape. I remember clearly Lewis Reader throwing up while I was in the Station because he was dope sick and now I wonder if he wasn't in trouble would he have pushed me to come forward. The answer is no, he would not have he used me to cover his crimes against my sister and his offenses continued now against my baby sisters who learned even if you tell on dad like big sister nothing will happen. My Family is very lucky that 1 of the 2 is clean and sober today. The only other point I would like to make my grandfather was murdered in 1997 and the man responsible was given less time than Bruce. He not only killed my grandfather. He attempted to kill his girlfriend by stabbing her in the Stomach. How can someone – anyone justify Bruce still being in jail. I'm sure these is a way to help him readjust to society smoothly and I trust his lawyers to handle the transition. In closing I want to thank everyone for their time and efforts to help this situation.

My Heart has been heavy with this burden for 25 years and if Bruce were released it would finally give me some peace in regards to this matter. If I can answer anything further please feel free to contact me I'm not very good with writing things so I completely understand and if you call. I have written this statement consisting of 9 1/2 pages and it is yours and correct and to the least of my knowledge.

Witness: /s/ Jeffery Goldstein

Signature: /s/ Robyn Roberts