

No. 26-

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IN THE  
**Supreme Court of the United States**

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MOISES JIMENEZ,

*Petitioner,*

*v.*

ALEXANDRE ANSARI,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

No decision of this Court has ever clearly established that police officers bear independent obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), or whether inadmissible evidence can be material for purposes of *Brady*. The circuits are split as to: (1) the level of culpability required to impose liability on a police officer under *Brady*, and (2) whether the withheld evidence must be admissible for a viable *Brady* claim.

Moises Jimenez—a retired detective—investigated a 2012 shooting and was sued in 2020, with Ansari requesting \$26,195,000 at trial. The district court denied qualified immunity. The Sixth Circuit affirmed, relying on *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009) and *Est. of Andrews v. City of Cleveland, Ohio*, 112 F.4th 436 (6th Cir. 2024) to hold police officers’ *Brady*-derived duties are clearly established. The Sixth Circuit cited no precedent from this Court holding *Brady* applied to police officers as of 2012-2013. The Sixth Circuit then refused to consider Jimenez’s argument that no clearly established law alerted him that uncorroborated rumors and anonymous tips should have been disclosed, finding Jimenez did not sufficiently raise this precise argument in his pre-verdict oral motion for judgment as a matter of law under Fed. R. Civ. P. 50(a).

This petition presents an opportunity to resolve these important questions:

### I.

Did the Sixth Circuit err in denying qualified immunity to Jimenez on Ansari’s *Brady* claim where no decision of this Court has ever clearly established that police officers bear independent obligations under *Brady*?

**II.**

Even if *Brady* does apply to the police, should the *Brady* obligation be limited to: (1) evidence that would have been admissible at trial, and not uncorroborated rumors, anonymous tips, and collateral information only tenuously connected to the criminal case, an argument that Jimenez sufficiently raised in his pre-verdict motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a), and (2) a failure to disclose in bad faith, or, at a minimum, nondisclosure arising from more than mere negligence?

**PARTIES TO THE PROCEEDING  
AND RULE 29.6 STATEMENT**

1. Petitioner Moises Jimenez is an individual and a retired Detroit police detective.
2. Respondent Alexandre Ansari is an individual.
3. The City of Detroit was a defendant in the district court but was dismissed, was not a party to the appeal in the Sixth Circuit, and is not a party to this petition.
4. No corporations are parties to the proceedings.

## **STATEMENT OF RELATED PROCEEDINGS**

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *People v. Ansari*, Wayne County Circuit Court Case No. 12-010941-01-FC (Sentenced Sep. 27, 2013)
- *People v. Ansari*, Docket No. 318524, 2015 WL 630388 (Mich. Ct. App. Feb. 12, 2015), lv den 498 Mich. 884 (2015)
- *People v. Ansari*, Wayne County Circuit Court Case No. 12-010941-01-FC (Stipulated Order Vacating Convictions and Sentences, Dismissing Charges, and Ordering Defendant Released from the Michigan Department of Corrections entered on March 15, 2019)

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Moises Jimenez (“Jimenez”) petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

### INTRODUCTION

This petition presents two important questions about whether and when a police officer may be held liable for a violation of an accused’s fair trial rights—questions on which the circuits are split.

1. *Brady v. Maryland*, 373 U.S. 83 (1963) held that a State violates due process when its prosecutor fails to disclose all material exculpatory evidence to the accused. *Id.* at 87. See also *Strickler v. Greene*, 527 U.S. 263, 280 (1999). The State’s *Brady* obligations run irrespective of individual fault, because the State owes the accused a fair trial, including disclosure of all exculpatory evidence in the State’s possession. See *Brady*, 373 U.S. at 87. In *Kyles v. Whitley*, 514 U.S. 419 (1995), this Court held that the prosecutor has a duty to learn about all exculpatory evidence known to investigating police officers. But this Court has never imposed the State’s *Brady* obligation on individual police officers.

2. Although this Court has never done so, several Courts of Appeals have imposed a *Brady* obligation on police under conflicting liability rules (often finding those rules clearly established based on only a few distinguishable precedents). The Third, Fourth, Fifth and Eighth Circuits have permitted claims for violation of due process where police act in bad faith, analogous to *Arizona*

*v. Youngblood*, 488 U.S. 51 (1988), wherein this Court held that “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” *Id.* at 58. The Seventh, Ninth, and Tenth Circuits hold that “reckless” nondisclosure of exculpatory evidence is sufficient to establish liability, inferring recklessness from apparent exculpatory value. The Eleventh Circuit rejected a no-fault standard for *Brady* claims against police officers but left the liability standard unsettled. The First Circuit imposed liability for intentional or reckless nondisclosure, without settling the precise standard. And the Second Circuit has suggested, without concluding, that a civil *Brady* claim requires intentional non-disclosure.

The Sixth Circuit alone holds that a police officer may face civil liability under *Brady* for inadvertent nondisclosure of purportedly exculpatory material. The Sixth Circuit first extended *Brady* duties to police in *Moldowan v. City of Warren*, 578 F.3d 351, 379-81 (6th Cir. 2009), a decision issued over a strong dissent. Relying on *Moldowan*, the decision below deemed a police officer’s *Brady* duties “clearly established.” Not only that, the Sixth Circuit held Jimenez can be held liable for nondisclosure of uncorroborated rumors and anonymous tips, and that he forfeited his argument that no clearly established law would have alerted him that such information was *Brady* material. But this Court has not decided whether inadmissible evidence is material under *Brady*, and the law across the circuits is in disarray as to whether the withheld evidence must be admissible to support a viable *Brady* claim.

Like its *Brady* ruling, the Sixth Circuit’s treatment of Jimenez’s preservation of his qualified immunity argument

conflicts with Rule 50(a)'s text and purpose—giving notice and a chance to cure, not demanding technical precision for every precise argument, in a motion made during trial.

3. These questions are important because astronomical damages are typically awarded in reverse conviction lawsuits since juries often seek to compensate the plaintiff without focusing on the specific defendant's conduct or whether that defendant violated the plaintiff's constitutional rights. Many defendants are forced into *in terroram* settlements, leaving their immunity rights unvindicated.

### OPINIONS AND JUDGMENTS BELOW

On August 23, 2022, the United States District Court for the Eastern District of Michigan entered an opinion and order granting in part and denying in part Jimenez's motion for summary judgment. *Ansari v. Jimenez*, No. 2:20-cv-10719, 2022 WL 3599287 (E.D. Mich. Aug. 23, 2022). (Pet. App. B).

On April 2, 2024, the United States District Court for the Eastern District of Michigan entered an opinion and order denying Jimenez's oral motion for directed verdict. *Ansari v. Jimenez*, No. 2:20-CV-10719, 2024 WL 3006874 (E.D. Mich. Apr. 2, 2024). (Pet. App. C).

On April 2, 2024, the United States District Court for the Eastern District of Michigan entered a judgment against Jimenez and in favor of Ansari for \$10 million. *Ansari v. Jimenez*, 2024 WL 1767458 (E.D. Mich. Apr. 2, 2024). (Pet. App. D).

On August 19, 2024, the United States District Court for the Eastern District of Michigan entered an opinion and order denying Jimenez’s motion for new trial and renewed motion for judgment as a matter of law. *Ansari v. Jimenez*, 2024 WL 3858308 (E.D. Mich. Aug. 19, 2024). (Pet. App. E).

On May 14, 2026, the United States Court of Appeals for the Sixth Circuit issued an opinion affirming the judgment and the district court’s denial of Jimenez’s motion for judgment as a matter of law, motion for new trial, and renewed motion for judgment as a matter of law. *Ansari v. Jimenez*, 176 F.4th 494 (6th Cir. 2026). (Pet. App. A).

### **STATEMENT OF JURISDICTION**

The Sixth Circuit’s opinion was entered on May 14, 2026. This Court has jurisdiction to consider this appeal under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE**

Alexandre Ansari (“Ansari”) seeks damages under 42 U.S.C. § 1983 for alleged violation of his rights under the Fourteenth Amendment to the United States Constitution. The relevant constitutional and statutory provisions are reproduced in the appendix to this petition. (Pet. App. F).

### **STATEMENT OF THE CASE**

1. On September 22, 2012, Rosalind Barley parked her car outside Miguel Figueroa’s home in Detroit,

Michigan. Pet. App. B at 28a. Figueroa and 15-year-old Ileana Cuevas were in the backseat. *Id.* At some point, a shooter fired seven to eight shots at the vehicle, wounding Barley and Figueroa and killing Cuevas. *Id.*

Detroit Police Detective Moises Jimenez investigated the incident. *Id.* Another Detroit police officer spoke to Barley that day, and she described the shooter as a tall “fat (not sloppy) 300 [pounds], [dark complexion[ed]]” twenty-year-old black male, possibly with cornrows or braids. *Id.* (quotation omitted). Five days later, when questioned by Jimenez, Barley gave the same description, except the shooter was in his mid-twenties. Pet. App. B at 28a (citation omitted). She also said she felt threatened by her ex-boyfriend, Jose Sandoval, because she had his car and he wanted it back. Pet. App. B at 28a.

A witness who heard gunshots but did not see the shooting described the person they believed to be the shooter like Barley, except stated the shooter was older. *Id.* at 28a-29a. A second witness also heard gunshots but did not see the shooting and described the person they believed to be the shooter as a six-foot tall, heavy set black male. *Id.* at 29a.

On September 26, 2012, a Crime Stoppers anonymous tip identified the suspected shooter as “Sousa,” a 28-year-old Hispanic male, approximately 5’8” and 230 pounds, with dreadlocks and a full beard. *Id.* at 29a. Ansari’s nickname was “Sosa.” *Id.* at 29a n. 3.

During his investigation, Jimenez gave Barley and Figueroa line-ups of six-photograph arrays. *Id.* at 29a. Neither included Ansari’s photograph, and neither Barley

nor Figueroa identified a shooter. *Id.* After one of the photo line-ups, Figueroa gave a statement describing the shooter like Barley. *Id.* When asked about Sandoval, Figueroa said Sandoval twice attempted to take his car back and Figueroa took nothing from Sandoval except his girl. *Id.* (quotation omitted).

On October 11, 2012, Jimenez showed Figueroa another six-photograph line-up with Ansari's photograph. *Id.* at 30a. Figueroa identified Ansari as the shooter. *Id.* Barley received another line-up but did not identify a shooter. *Id.* Based on Figueroa's identification, Jimenez submitted an investigator's report to the prosecutor's office. *Id.* The Wayne County Assistant Prosecuting Attorney recommended an arrest warrant for Ansari, who was arrested for first-degree murder. *Id.*

The court scheduled a preliminary examination for November 7, 2026. Dist. Ct. R. 59-14, Prelim. Hearing Tr., PageID.983. At the hearing, Ansari's counsel challenged Figueroa's photo line-up and noted the Crime Stoppers Report described the shooter differently from Barley and Figueroa. *Id.* at PageID.987, 991. Ansari's counsel then requested a live line-up. *Id.* at PageID.997. The court agreed and adjourned the examination. *Id.* at PageID.1004.

Figueroa and Barley testified at the preliminary examination. Pet. App. B at 30a. Both identified Ansari as the shooter at a live line-up the day before and again at the hearing. *Id.* Figueroa also confirmed he identified Ansari in the photo array. *Id.* Jimenez was not questioned about Sandoval at either hearing. The court found probable cause for first-degree murder and bound Ansari over to Wayne County Circuit Court. *Id.* at 30a-31a.

The first criminal trial ended in a hung jury. *Id.* at 31a. The second resulted in Ansari's conviction for first-degree murder, assault with intent to commit murder, and possession of a firearm during the commission of a felony. *Id.*; *People v. Ansari*, Docket No. 318524, 2015 WL 630388 (Mich. Ct. App. Feb. 12, 2015). Figueroa and Barley testified and identified Ansari as the shooter. *Ansari*, 2015 WL 630388, at \*2. Ansari presented one of the witnesses who had not seen the shooting itself to combat those accounts. *Id.* Barley was questioned extensively about her original heavyset description, and the prosecution offered Jimenez as a rebuttal witness. *Id.*

The jury convicted Ansari on all charges. *Id.* at \*1. Ansari received life in prison without parole for first-degree murder, 20 to 50 years' imprisonment for two assault with intent to commit murder convictions, and two years' imprisonment for the felony-firearm conviction. *Id.* Ansari appealed, arguing that the trial court violated due process by refusing to suppress identification evidence from allegedly unduly suggestive pretrial identification procedures, erred in permitting Jimenez to offer rebuttal testimony to contradict Ansari's witness's testimony, and erred in requiring his felony-firearm sentence to run consecutively to the sentences for his assault with intent to commit murder convictions. *Id.* at \*2-6. The Michigan Court of Appeals affirmed, finding the pre-trial photographic line-up was not unduly suggestive. *Id.* at \*3, \*6.

About five and a half years after Ansari's conviction and sentencing, the Wayne County Prosecutor's Office Conviction Integrity Unit reviewed Ansari's innocence claims without questioning Ansari, Figueroa, Barley, or the prosecutor. See Dist. Ct. R. 171, Jury Trial Vol. IV,

PageID.4566. Nevertheless, the investigation resulted in the state court vacating Ansari's conviction and dismissing the case pursuant to the parties' stipulation. Pet. App. B at 31a. No eyewitness ever recanted their identification of Ansari as 15-year-old Ileana Cuevas's murderer.

2. Ansari sued the City of Detroit and Jimenez, Pet. App. E at 63a, invoking 28 U.S.C. §§ 1331 and 1343 for jurisdiction. He asserted constitutional claims against Jimenez under 42 U.S.C. § 1983 for wrongful conviction based on Jimenez's alleged failure to disclose allegedly exculpatory evidence, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Pet. App. E at 63a. Ansari also raised Fourth Amendment violations for "fabrication of evidence" and malicious prosecution. Pet. App. B at 35a.

Ansari's *Brady* claim alleged that Jimenez failed to disclose: (1) the statement of Shawn Linsey, one of the witnesses to the shooting; (2) that Jimenez "knew" the shooting was an orchestrated hit by Sandoval; and (3) that Jimenez "fabricated" Figueroa's and Barley's identification of Ansari. *Id.* at 41a. Jimenez said he submitted his complete file, including the allegedly missing witness statements and anonymous tips about Sandoval. *Id.* at 44a. At trial, Jimenez argued the prosecutor's office possessed the pertinent documents. Dist. Ct. R. 173, PageID.4859. Jimenez's counsel said subpoenaing the prosecutor's file yielded documents Assistant Prosecutor Tusar testified she lacked when prosecuting Ansari; the subpoenaed file contained 911 pages, not the 278 claimed by the Conviction Integrity Unit. *Id.* Yet the district court did not admit the 911-page prosecutor's file into evidence. *Id.*; Pet. App. A at 19a. The prosecutor knew Sandoval may have been behind the shooting but denied knowledge of

evidence showing Sandoval was the shooter. Pet. App. B at 44a. Jimenez also received evidence in the form of an anonymous tip from the Federal Bureau of Investigation supporting how two witnesses described who they believed was the shooter and verifying another tip that the shooting was drug related; information from unregistered Drug Enforcement Administration sources; GPS tracking and cellphone data on Sandoval; and information from “very high up” drug sources (i.e., the “Sandoval evidence”). *Id.* at 31a-32a.

As to identification, the decision to prosecute relied on Figueroa’s composite sketch and eyewitness identification. *Id.* at 38a. Jimenez had no reason to doubt Figueroa’s identification at the time of Ansari’s arrest, and the prosecutor agreed that the composite sketch resembled Ansari. *Id.* at 38a-39a. Although two witnesses did not describe the shooter in exactly the same way as Figueroa, they did not see the shooting, so Figueroa’s identification was reliable. *Id.* at 38a. The Crime Stopper tip matched the suspected shooter to Ansari’s street name. *Id.* at 39a. Neither Figueroa nor Barley ever recanted their identifications of Ansari as the shooter, nor testified at the civil trial.

Jimenez moved for summary judgment, invoked qualified immunity, and argued that Ansari could not establish a *Brady* violation. Dist. Ct. R. 59, Jimenez’s Motion for Summary Judgment, PageID.886-894. Jimenez argued the prosecutor had all information Ansari claimed was withheld; the uncorroborated rumors and anonymous tips were not *Brady* evidence, did not undermine the state’s theory of the case, exonerate Ansari, or require a different trial result; and Jimenez was entitled to qualified

immunity. *Id.* at 888, 891, 893-894. The district court granted Jimenez summary judgment on all but one *Brady* claim, rejecting qualified immunity and citing *Moldowan*. Pet. App. B at 45a, 47a. Only the purported nondisclosure of Sandoval-related evidence remained for trial. *Id.* at 47a.

After lengthy litigation, trial began, but both parties requested a mistrial, which was granted. Pet. App. E at 64a. A second trial lasted eight days. *Id.* No witness authenticated the validity of the anonymous tips and rumors. No witness with personal knowledge inculpated Sandoval in Cuevas's murder. Neither Figueroa nor Barley, the eyewitnesses to the shooting, testified at trial. See Dist. Ct. R. 169-175. After Ansari rested his case and before closing arguments, Jimenez orally moved for judgment as a matter of law, arguing, among other things, that he did not withhold Sandoval-related information from the prosecutor and that Ansari failed to show the allegedly withheld evidence was favorable or material under *Brady*. Pet. App. C at 55a-57a; Dist. Ct. R. 173, Trial Tr. Vol. VI, PageID.4877-4878. Jimenez also invoked qualified immunity and argued the Sandoval evidence was not exculpatory or impeaching—i.e., not *Brady* evidence requiring disclosure. *Id.* at PageID.4901, 4884-4888.

The district court asked Jimenez's attorney whether *Brady* contemplated "turning over...the Sandoval evidence[.]" *Id.* at PageID.4886. Jimenez's attorney argued that *Brady* did not envision disclosure of "this kind of information" and questioned whether the Sandoval-related information constituted "evidence." *Id.* The district court denied the oral motion. Pet. App. C at 58a.

The jury found that Jimenez violated “Ansari’s Fourteenth Amendment right to due process,” and rendered a \$10 million verdict against Jimenez. Dist. Ct. R. 162, Verdict Form, PageID.3743-3744. Jimenez moved for a new trial and renewed his Rule 50(b) motion for judgment as a matter of law. Pet. App. E at 62a. As to the renewed motion, Jimenez again argued the alleged *Brady* evidence was immaterial and had been turned over to the prosecutor, and that its lack of materiality entitled him to qualified immunity. *Id.* at 65a, 67a-72a. Because the evidence was immaterial, there could be no constitutional violation, and Jimenez was thus entitled to qualified immunity. *Id.* at 69a, 72a. The district court denied Jimenez’s motion. *Id.* at 86a.

3. On appeal, the Sixth Circuit affirmed. Pet. App. A at 26a. Jimenez raised three arguments: (1) Ansari’s § 1983 claim was barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) because the conviction was not set aside by filing a motion as required by the Michigan Court Rules; (2) entitlement to qualified immunity; and (3) entitlement to a new trial. *Id.* at 7a.

The Sixth Circuit characterized the allegedly undisclosed Sandoval evidence as “information regarding Sandoval’s potential role in the shooting, including, among other things, Sandoval’s status as a major drug dealer, the fact that Sandoval was nearby on the night of the shooting but had no communication with Ansari, and the fact that the only eyewitnesses, Figueroa and Barley, had recently stolen heroin from Sandoval.” *Id.* at 13a. Jimenez argued that in 2012, police officers’ independent duties under *Brady* were not clearly established and that no case put him on notice that *Brady* required disclosure of uncorroborated rumors and anonymous tips. *Id.* at 14a.

Although the Sixth Circuit acknowledged this Court's repeated doubts that circuit precedent could create a clearly established right, it followed *Moldowan* and *Est. of Andrews v. City of Cleveland*, 112 F.4th 436 (6th Cir. 2024) to find that a police officer's *Brady* duties were "clearly established" as far back as 1990. *Id.* at 13a-14a.

On Jimenez's argument that no clearly established law would have alerted him that uncorroborated rumors and anonymous tips counted as *Brady* information, the court noted it rejected a similar argument in *Clark v. Louisville-Jefferson County Metro Govt*, 130 F.4th 571 (6th Cir. 2025). *Id.* at 14a-16a. Yet the court found Jimenez's argument and *Clark*'s application unpreserved on appeal because Jimenez failed to raise it in his Rule 50(a) motion in the district court, *id.* at 15a-16a, even though *Clark* was decided after the trial concluded in this case. Citing *Ayers v. City of Cleveland*, 773 F.3d 161, 167 (6th Cir. 2014) and *Sykes v. Anderson*, 625 F.3d 294, 304 (6th Cir. 2010), the court said Jimenez needed to raise his specific qualified-immunity argument about whether the evidence constituted *Brady* information during and after trial to avoid forfeiture on appeal. *Id.* at 15a-17a.

The Sixth Circuit acknowledged Jimenez raised qualified immunity in his Rule 50(a) motion and briefly addressed the clearly established prong, but held his claim was not "properly present[ed]" because he omitted the particular argument raised in his appellate brief. *Id.* at 16a. It therefore found the claim forfeited. *Id.*

The Sixth Circuit then held the district court did not err in denying qualified immunity to Jimenez on Ansari's *Brady* claim. *Id.* at 17a.

## ARGUMENT

**THE SIXTH CIRCUIT ERRED IN DENYING QUALIFIED IMMUNITY TO JIMENEZ BECAUSE NO DECISION OF THIS COURT HAS EVER CLEARLY ESTABLISHED THAT POLICE OFFICERS BEAR INDEPENDENT OBLIGATIONS UNDER *BRADY V. MARYLAND*, AND EVEN IF SUCH AN OBLIGATION EXISTS, IT DOES NOT EXTEND TO THE FAILURE TO DISCLOSE UNCORROBORATED RUMORS, ANONYMOUS TIPS, AND COLLATERAL INFORMATION ONLY TENUOUSLY CONNECTED TO THE CRIMINAL CASE WHEN THE OFFICER DID NOT ACT IN BAD FAITH**

The Sixth Circuit: (1) entered a decision in conflict with decisions of other United States courts of appeals on the same important matter, (2) decided an important question of federal law that has not been, but should be, settled by this Court, and (3) decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10(a) and (c).

**I. Review by this Court is needed to consider the important question of whether police officers bear independent obligations under *Brady v. Maryland***

This Court's case law has not clearly established any *Brady* obligation on police, even today. *Kyles v. Whitley*, 514 U.S. 419 (1995) did not impose any duty on police. Instead, this Court explained in *Kyles* that to comply with *Brady*, "*the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.*" *Id.* at 437 (emphasis added). *Strickler v. Greene*, 527 U.S. 263 (1999) also did not hold the *Brady* disclosure obligation extends to police. *Strickler* involved the

nondisclosure of evidence by the *prosecutor*. See *id.* at 296 (“Petitioner has satisfied two of the three components of a constitutional violation under *Brady*: exculpatory evidence and nondisclosure of this evidence by the prosecution.”). And this Court’s decision in *Arizona v. Youngblood*, 488 U.S. 51 (1988) did not concern disclosure of exculpatory evidence, but rather, the failure to preserve evidence in bad faith. Circa 2012-2013—at the time of the events in this case—anything less than bad faith could not be actionable as to Jimenez.

No precedent from this Court clearly established that on the specific facts here, the evidence (uncorroborated rumors and anonymous tips) was material or exculpatory. This Court has repeatedly emphasized that government actors are protected by qualified immunity unless “existing precedent” has placed the unconstitutionality of their actions “beyond debate.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

This Court has not definitively stated whether anything other than this Court’s own decisions can clearly establish the law for purposes of qualified immunity. The Sixth Circuit acknowledged this in its opinion. Pet. App. A at 14a.<sup>1</sup> At least eight times in the last fifteen years this Court has questioned whether circuit court precedent would suffice. See *Zorn v. Linton*, 146 S. Ct. 926, 930 n.3 (2026); *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021);

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1. The Sixth Circuit acknowledged below that this Court “has questioned whether circuit precedent can suffice” to create a clearly established right. Pet. App. A at 14a. The Sixth Circuit nevertheless elected to follow its own precedent, reasoning that this Court has “never squarely held” that circuit precedent is insufficient. *Id.*

*City of Escondido, Cal. v. Emmons*, 586 U.S. 38, 43 (2019); *Kisela v. Hughes*, 584 U.S. 100, 106 (2018); *D.C. v. Wesby*, 583 U.S. 48, 66 n.8 (2018); *City & County of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 614 (2015); *Carroll v. Carman*, 574 U.S. 13, 17 (2014); *Reichle v. Howards*, 566 U.S. 658, 665–66 (2012).

Yet here, the Sixth Circuit cited no Supreme Court precedent holding *Brady* applied to police officers as of 2012-2013—and there was none. Instead, the court relied on two Sixth Circuit decisions, *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009) and *Est. of Andrews v. City of Cleveland*, Ohio, 112 F.4th 436, 443 (6th Cir. 2024) (citing *Moldowan*). Pet. App. A at 13a-14a. Years after *Moldowan*, and years after the complained-of conduct in this case, the court in *Clark v. Louisville-Jefferson Cnty. Metro Gov’t*, 130 F.4th 571 (6th Cir. 2025) acknowledged that “*Brady* and the Supreme Court cases applying it have imposed the disclosure duty on ‘prosecutors,’ not investigators like police officers or forensic scientists.” *Id.* at 582.

To the extent a “‘robust consensus of cases of persuasive authority’ could itself clearly establish” a *Brady* obligation on police officers, *Sheehan*, 575 U.S. at 617, no such consensus existed here as of 2012-2013. The Sixth Circuit below relied on its previous 2009 *Moldowan* decision to hold otherwise—but *Moldowan* cited cases from just three circuits to hold that police’s *Brady*-derived obligation was clearly established. See *Moldowan*, 578 F.3d at 382. Three circuits is hardly “robust,” nor were the three cited decisions in “consensus” that a police officer’s *Brady* violation could flow from mere negligence. One case discussed the *Brady* obligation in the context of *deliberate*

concealment, holding: “attempts to circumvent the rule of that case [*Brady*] by retaining records in clandestine files *deliberately concealed* from prosecutors and defense counsel cannot be tolerated.” *Jones v. City of Chicago*, 856 F.2d 985, 995 (7th Cir. 1988) (emphasis added). In a second decision relied on by the *Moldowan* court, *Geter v. Fortenberry*, 882 F.2d 167 (5th Cir. 1989), the Fifth Circuit also referenced a deliberate concealment standard. *Id.* at 170. The third decision relied on in *Moldowan*, *Barbee v. Warden, Md. Penitentiary*, 331 F.2d 842 (4th Cir. 1964), held that “[t]he duty to disclose is that of *the state*.” *Id.* at 846 (emphasis added). And another decision cited in *Moldowan*, *Hilliard v. Williams*, 516 F.2d 1344 (6th Cir. 1975), cert. granted, judgment vacated in part, 424 U.S. 961 (1976), involved a prosecutor’s failure to disclose a report, not a law enforcement officer. See *id.* at 1349.

Thus, the *Moldowan* decision, on which later Sixth Circuit precedent repeatedly relies, misapplied narrow out-of-circuit precedent to find that a broad wholesale *Brady* obligation applied to the police and was clearly established in the Sixth Circuit—error from the outset. The Sixth Circuit itself has questioned the validity of *Moldowan*. See *Clark*, 130 F.4th at 593 (Murphy, J., concurring) (noting “room for debate” over whether *Moldowan* resolved the clearly established question correctly); *Salter v. City of Detroit*, 133 F.4th 527, 544 (6th Cir. 2025) (Nalbandian, J., concurring) (“*Moldowan* only cited cases from three circuit courts holding that the police’s *Brady*-derived obligations were clearly established by 1990. . . . three circuits doesn’t represent a consensus, much less a robust one.”).

Other circuits have correctly ruled that no such consensus existed regarding police having *Brady*-derived

constitutional obligations and recognized qualified immunity. See *Gibson v. Superintendent of NJ Dep't of L. & Pub. Safety-Div. of State Police*, 411 F.3d 427, 444 (3d Cir. 2005) (overruled on other grounds) (“Because such a right was not clearly established in this Circuit at the time of Gibson’s conviction, Troopers Pennypacker and Reilly are entitled to qualified immunity with regard to their failure to inform the prosecutor of *Brady* material”); *Haley v. City of Bos.*, 657 F.3d 39, 48 (1st Cir. 2011) (“Here, qualified immunity attaches for a different and independent reason: in 1972, it was not clearly established that *Brady*’s no-fault disclosure obligation applied to police officers as opposed to prosecutors.”). The *Haley* court recognized that “[b]y its terms, *Brady* applied only to prosecutors. The Court’s decision contained no discussion of any independent disclosure obligations that might affect police officers.” *Id.* (citation omitted).

This Court has refused to “substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government’s obligation to ensure fair trials.” *Kyles*, 514 U.S. at 438. “[P]olice officers . . . do not make . . . intentional prosecutorial decisions.” *Clark*, 130 F.4th at 592 (Murphy, J., concurring). Rather, the absolute duty under *Brady* is uniquely tailored to prosecutors—the prosecutor, not police officers, is trained to determine whether a piece of evidence is material and exculpatory (and unknown to the defense). It makes sense to impose *Brady*’s absolute duty on the prosecutor, who is an attorney and the government official “who will present the State’s case at trial, who can be expected to gather material evidence from law enforcement agencies, and who is in the best position to evaluate whether evidence must be disclosed because it is materially favorable to

the defense.” *Villasana v. Wilhoit*, 368 F.3d 976, 979 (8th Cir. 2004). It is inappropriate to impose a duty on police to evaluate and determine whether certain evidence is exculpatory or material because “their job of gathering evidence is quite different from the prosecution’s task of evaluating it.” *Jean v. Collins*, 221 F.3d 656, 660 (4th Cir. 2000) (Wilkinson, J., concurring in the judgment). This is especially true because “the prosecutor can view the evidence from the perspective of the case as a whole while police officers, who are often involved in only one portion of the case, may lack necessary context.” *Id.*

Review by this Court is needed because Ansari has not shown that Jimenez violated his due process rights under clearly established law. And, as explained below, even if *Brady* applies to police officers at all: (1) the *Brady* obligation should be limited to circumstances when an officer conceals evidence that would have been admissible and affected the outcome of trial, and (2) the test should be a bad faith standard, or, at a minimum, something more than mere negligence.

- II. Even if *Brady* does apply to the police, the *Brady* obligation should be limited to: (1) evidence that would have been admissible at trial, and (2) a failure to disclose in bad faith, or, at a minimum nondisclosure arising from more than mere negligence**
- A. The Sixth Circuit’s ruling that a police officer may be held liable for nondisclosure of uncorroborated rumors and anonymous tips is not supported by this Court’s precedent and exacerbates a circuit split about whether the withheld evidence must be admissible to give rise to a viable *Brady* claim**
- 1. This Court has not decided whether inadmissible evidence is material for purposes of *Brady***

At trial, Ansari argued that Jimenez “failed to disclose information regarding Sandoval’s potential role in the shooting.” Pet. App. A at 13a. The information related to Sandoval’s alleged involvement included: an anonymous tip from the Federal Bureau of Investigation (FBI) “that supported how two witnesses described who they believed was the shooter”; information from “unregistered and Drug Enforcement Administration (‘DEA’) sources”; GPS tracking and cellphone data; and information from “‘very high up’ drug sources[.]” Pet. App. B at 31a-32a.<sup>2</sup>

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2. Jimenez argued the prosecutor’s office possessed the pertinent documents. Pet. App. A at 19a-20a. But the district court excluded the entire 911-page prosecutor’s file from evidence, and the Sixth Circuit upheld that ruling. *Id.*

It is not clearly established that *Brady* requires a police officer to turn over all investigatory work of this nature—i.e., uncorroborated rumors and anonymous tips. To the contrary, in *Moore v. Illinois*, 408 U.S. 786 (1972), this Court stated that “[w]e know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case.” *Id.* at 795. Later in *Wood v. Bartholomew*, 516 U.S. 1 (1995), this Court explained that where the polygraph results at issue were regarded by the Ninth Circuit as inadmissible under state law, and the parties did not contend otherwise, disclosure of the polygraph results “could have had no direct effect on the outcome of trial, because respondent could have made no mention of them either during argument or while questioning witnesses.” *Id.* at 6.

Various circuit courts have also recognized that speculative and unsubstantiated information does not give rise to a *Brady* violation. See *United States v. Souffront*, 338 F.3d 809, 823 (7th Cir. 2003) (“The failure to disclose untrustworthy and unsubstantiated allegations against a government witness is not a *Brady* violation”); *United States v. Croft*, 124 F.3d 1109, 1124 (9th Cir. 1997) (“The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense”); *Smith v. Sec’y of New Mexico Dep’t of Corr.*, 50 F.3d 801, 823 (10th Cir. 1995) (“The Constitution, as interpreted in *Brady*, does not require the prosecution to divulge every possible shred of evidence that could conceivably benefit the defendant.”).

This Court in *Wood* did not squarely decide whether inadmissible information can qualify as material evidence

under *Brady*, and the circuits are split on the issue. See *Ellsworth v. Warden*, 333 F.3d 1, 5 (1st Cir. 2003) (“The circuits are split on whether a petitioner can have a viable *Brady* claim if the withheld evidence itself is inadmissible.”).

In imposing the various standards discussed below, the Circuit courts have recognized that this Court has not clearly stated whether inadmissible information can be material for purposes of *Brady*. See *Felder v. Johnson*, 180 F.3d 206, 212 n.7 (5th Cir. 1999) (“In *Wood v. Bartholomew*, the Supreme Court did not declare squarely whether inadmissible information could be material evidence under *Brady*, even though the circuit courts had already developed various approaches to that question”); *Wright v. Hopper*, 169 F.3d 695, 704 n.1 (11th Cir. 1999) (Explaining that in *Wood*, this Court “did not declare that admissibility was a precondition to materiality” but instead “sift[ed] through the record and, after examining the possible effects that the undisclosed polygraph results would have had on the outcome of the trial, concluded that the information was not material.”). The *Felder* court also recognized that “[r]eactions to [this Court’s decision in] *Wood* have been as varied as the pre-*Wood* jurisprudence.” *Felder*, 180 F.3d at 212 n.7.

**2. Review by this Court is needed to address the issue because the law is currently in disarray throughout the circuits as to whether the withheld evidence must be admissible to give rise to a viable *Brady* claim**

The Fourth and Seventh Circuits have held that inadmissible evidence is not material for purposes of

*Brady*. See *Hoke v. Netherland*, 92 F.3d 1350, 1356 n.3 (4th Cir. 1996) (“these statements may well have been inadmissible at trial under Virginia’s Rape Shield Statute, and therefore, as a matter of law, ‘immaterial’ for *Brady* purposes”); *Jardine v. Dittmann*, 658 F.3d 772, 776–77 (7th Cir. 2011) (“But not all suppressed evidence that has some tendency to exculpate or impeach is material under *Brady* . . . Logically, inadmissible evidence is immaterial under this rule.”). In *United States v. Tate*, 633 F.3d 624 (8th Cir. 2011), the Eighth Circuit also held that where the evidence at issue was “almost entirely inadmissible[,]” the *Brady* claim failed and Tate could not show materiality. *Id.* at 630. But see *United States v. Morales*, 746 F.3d 310, 315 (7th Cir. 2014) (“We find the Court’s methodology in *Wood* to be more consistent with the majority view in the courts of appeals than with a rule that restricts *Brady* to formally admissible evidence.”).

The court in *Ellsworth* acknowledged that the First Circuit has “never squarely ruled on th[e] question,” *Ellsworth*, 333 F.3d at 5, citing *United States v. Ranney*, 719 F.2d 1183 (1st Cir. 1983). In *Ranney*, the First Circuit held—in line with the reasoning of the Fourth and Seventh Circuits—that because the statement at issue was clearly inadmissible hearsay, such inadmissible evidence “is by definition not material, because it never would have reached the jury and therefore could not have affected the trial outcome.” *Id.* at 1190.

By contrast, the Third, Sixth, Ninth, Tenth, and Eleventh Circuits have interpreted *Brady* somewhat more broadly and treat admissibility as a factor in the materiality determination. In *Johnson v. Folino*, 705 F.3d 117 (3d Cir. 2013), the Third Circuit stated that

“inadmissible evidence may be material if it could have led to the discovery of admissible evidence.” *Id.* at 130. A few years later, in *Dennis v. Sec’y, Pennsylvania Dep’t of Corr.*, 834 F.3d 263 (3d Cir. 2016), the Third Circuit took the position that “suppressed evidence may be material for *Brady* purposes even where it is not admissible[,]” while also recognizing the circuit split, i.e., that “the Seventh and Fourth Circuits have indicated that inadmissible evidence cannot be material.” *Id.* at 310.

The Sixth, Ninth, Tenth, and Eleventh Circuits also look to whether the evidence at issue would have led to admissible evidence. See *United States v. Phillip*, 948 F.2d 241, 249 (6th Cir. 1991) (“information withheld by the prosecution is not material unless the information consists of, or would lead directly to, evidence admissible at trial for either substantive or impeachment purposes”); *Coleman v. Calderon*, 150 F.3d 1105, 1116 (9th Cir. 1998), rev’d on other grounds (“To be material, evidence must be admissible or must lead to admissible evidence”); *Banks v. Workman*, 692 F.3d 1133, 1142 (10th Cir. 2012) (“evidence cannot qualify as material without first being admissible or at least ‘reasonably likely’ to lead to the discovery of admissible evidence”); *Bradley v. Nagle*, 212 F.3d 559, 567 (11th Cir. 2000) (“in order to find that actual prejudice occurred—that our confidence in the outcome of the trial has been undermined—we must find that the evidence in question, although inadmissible, would have led the defense to some admissible material exculpatory evidence.”).

In *United States v. Gil*, 297 F.3d 93 (2d Cir. 2002), the Second Circuit explained that admissibility is a consideration bearing on the issue of materiality under

*Brady*, and when analyzing evidence, the court need only be satisfied that: “[1] either all or part of the [evidence] is admissible; [2] the [evidence] could lead to admissible evidence; or [3] the [evidence] would be an effective tool in disciplining witnesses during cross-examination by refreshment of recollection or otherwise.” *Id.* at 104. As part of this inquiry, the Second Circuit has looked at whether the theory of admissibility rests on speculation. For example, in *United States v. Persico*, 164 F.3d 796 (2d Cir. 1999), the court held that the impeachment evidence at issue was *not* material, recognizing that “[i]f the evidence would not have been admissible, it obviously would not have had any influence on the jury.” *Id.* at 805. In reaching that holding, the Second Circuit reasoned that the defendant’s argument relied on a series of speculative, hypothetical events:

Zambardi’s argument rests on a sequence of hypothetical events all of which are highly speculative and most unlikely to have occurred. He predicts that if he had gone to trial, the Scarpa/ DeVecchio information would have been admitted into evidence, that evidence would have significantly reduced the chances of his conviction, and, if the information had been disclosed before his plea, he would have had sufficient confidence in the admissibility of the information and its likely effect on the jury to go to trial and risk exposure to a life sentence instead of the 15 years specified in his plea bargain. *Id.*

Meanwhile, on the other end of the spectrum, the Fifth Circuit has held that admissibility does not determine

materiality. In *Spence v. Johnson*, 80 F.3d 989 (5th Cir. 1996), the Fifth Circuit stated that “inadmissible evidence may be material under *Brady*.” *Id.* at 1005. See also *Sellers v. Estelle*, 651 F.2d 1074, 1077 n.6 (5th Cir. 1981). A few years after *Spence*, in *Felder*, the Fifth Circuit recognized that it “has not clearly specified how to deal with *Brady* claims about inadmissible evidence[,]” identifying the issue as “a matter of some confusion in federal courts[.]” *Felder*, 180 F.3d at 212. Citing *Spence* and *Sellers*, the *Felder* court stated that in general, “inadmissible evidence may be material under *Brady*[.]” thereafter stating the rule that “we ask only the general question whether the disclosure of the evidence would have created a reasonable probability that the result of the proceeding would have been different.” *Felder*, 180 F.3d at 212.

As these cases show, the law is currently in disarray as to how the issue of admissibility plays into a plaintiff’s *Brady* claim. Direction from this Court is needed to resolve the circuit split. The admissibility inquiry is especially pertinent in this case, where Ansari’s *Brady* claim arises from the alleged nondisclosure of inadmissible hearsay evidence that appears in handwritten notes, an expert report, an investigation report, and memorandums, including: an anonymous tip, information from unregistered sources and Drug Enforcement Administration sources, GPS tracking and cellphone data, and information from “very high up” drug sources. Pet. App. B at 31a-32a. No evidence was submitted at trial to corroborate or authenticate this information. The underlying criminal case was based on eyewitness testimony of Barley and Figueroa, neither of whom recanted. The district court held *ipse dixit* that these materials would have “impeached” the witnesses.

Pet. App. B at 43a; Pet. App. 56a. But this Court has held that impeachment evidence is not always material for purposes of *Brady*. See *Turner v. United States*, 582 U.S. 313, 325–28 (2017).

The best view is a standard limiting the *Brady* obligation to *admissible* evidence as to which there exists 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). Such a standard would comport with this Court’s reasoning in *Wood*, recognizing that inadmissible information “is not ‘evidence’ at all” and “c[an] have . . . no direct effect on the outcome of trial[.]” *Wood*, 516 U.S. at 6.

**B. This Court’s review is also needed to resolve the nationwide circuit split about the level of culpability required to impose liability on a police officer under *Brady***

A prosecutor is the “architect” of the criminal proceeding and must “comport with standards of justice” when acting on behalf of the state. *Brady*, 373 U.S. at 88. In *Kyles*, this Court stressed that this responsibility obligates the prosecutor to learn about material exculpatory evidence known to the police, and to turn over that evidence to the accused—and that the State violates due process when that duty is breached, regardless of fault. *Kyles* did not, however, impose any *Brady* duty on individual police officers. That said, this Court has allowed that police have some obligations respecting exculpatory evidence. In *Youngblood*, this Court stated that “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful

evidence does not constitute a denial of due process of law.” *Youngblood*, 488 U.S. at 58. *Youngblood*’s bad faith requirement is consistent with this Court’s repeated holdings that negligence by a state actor is not actionable as a due process violation under 42 U.S.C. § 1983. *Daniels v. Williams*, 474 U.S. 327 (1986); *Allen v. Cooper*, 589 U.S. 248, 261 (2020). And it is a far cry from *Brady*’s no-fault regime.

In the face of the divergent culpability standards of *Brady* and *Youngblood*, and *Kyles*’ command to the prosecutor to learn about exculpatory evidence known to the police, the Circuit courts have adopted conflicting rules about when police officers may be held civilly liable for a nondisclosure of exculpatory evidence. The Sixth Circuit adopted the most extreme view in *Moldowan*—the case relied on below—that police may be held liable for negligent nondisclosure of material exculpatory evidence. See *Moldowan*, 578 F.3d at 388–89.<sup>3</sup>

Several other circuits expressly require evidence of bad faith. In *Villasana*, the Eighth Circuit relied on *Youngblood* to conclude that the bad faith standard should apply to due process claims against police officers

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3. In the Petition for a Writ of Certiorari filed in *Moldowan* over a decade and a half ago, the petitioners argued the Sixth Circuit’s ruling—that a police officer violates a defendant’s right to due process by withholding evidence that has any apparent exculpatory value, even when acting in good faith—conflicts with rulings of four other circuits, including the Fifth, Eighth, Ninth, and Eleventh. *City of Warren v. Moldowan*, 2010 WL 1049407, at \*12, 17–18. Since *Moldowan*, the circuit split has significantly matured and is ripe for this Court’s review, as explained in this section.

for an alleged failure to disclose evidence favorable to the defense. *Villasana*, 368 F.3d at 980. The Eighth Circuit also recognized that “[t]he Supreme Court has never imposed th[e] absolute duty [under *Brady*] on law enforcement officials other than the prosecutor.” *Id.* at 979. See also *Helmig v. Fowler*, 828 F.3d 755, 760 (8th Cir. 2016) (“an investigating officer’s failure to disclose exculpatory evidence does not constitute a *Brady* violation in the absence of bad faith.”).

The Fourth Circuit also requires bad faith on behalf of a police officer to make out a *Brady* claim. See *Owens v. Baltimore City State’s Att’ys Off.*, 767 F.3d 379, 396–97 (4th Cir. 2014). In *Jean*, a plurality of the en banc Fourth Circuit explained that “[a] *Brady* violation that resulted in the overturning of the § 1983 plaintiff’s conviction is a necessary, but not a sufficient, condition for § 1983 liability on the part of the police.” *Jean*, 221 F.3d at 663 (Wilkinson, J., concurring). The *Brady* violation is not sufficient for imposition of liability against a police officer because the *Brady* duty:

is a no fault duty and the concept of constitutional deprivation articulated in both *Daniels* and *Youngblood* requires that the officer have intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence during his criminal trial. This is what is meant by “bad faith.” *Id.*

Similarly, the Fifth Circuit has identified the standard for police officers as one of deliberate concealment. See *Brown v. Miller*, 519 F.3d 231, 237–38 (5th Cir. 2008) (“The Supreme Court held in *Brady v. Maryland* that a criminal

prosecutor’s failure to disclose exculpatory evidence . . . violates a defendant’s right to a fair trial. A police officer’s deliberate concealment of exculpatory evidence violates this same right, and can give rise to liability under § 1983.”). And the Third Circuit holds police are liable “when they affirmatively conceal material evidence from the prosecutor.” *Gibson*, 411 F.3d at 443.

Meanwhile, the Seventh, Ninth, and Tenth Circuits require only a “reckless” nondisclosure. See *Moran v. Calumet City*, 54 F.4th 483, 493 (7th Cir. 2022) (“negligent conduct does not offend the Due Process Clause. . . . evidence is considered suppressed in a § 1983 suit only if a police officer acted intentionally or at least recklessly in failing to turn it over to the prosecution” (quotations omitted)); *Tennison v. City & Cnty. of San Francisco*, 570 F.3d 1078, 1089–90 (9th Cir. 2009) (“a § 1983 plaintiff must show that police officers acted with deliberate indifference to or reckless disregard for an accused’s rights or for the truth in withholding evidence from prosecutors. . . . Plaintiffs are not required to establish that the Inspectors acted in bad faith”); *Tiscareno v. Anderson*, 639 F.3d 1016, 1023 (10th Cir. 2011) (vacated in part on other grounds) (“in a § 1983 context, all that is clearly established is that an investigator must not knowingly or recklessly cause a *Brady* violation”); *Johnson v. City of Cheyenne*, 99 F.4th 1206, 1232 (10th Cir. 2024).

Without precisely defining the requisite culpability, the Eleventh Circuit has held that “a negligent act or omission cannot provide a basis for liability in a § 1983 action seeking compensation for loss of liberty occasioned by a *Brady* violation.” *Porter v. White*, 483 F.3d 1294, 1308 (11th Cir. 2007); see also *id.* at 1308 n.11 (declining

to consider whether “‘something less than intentional conduct, such as recklessness or ‘gross negligence,’ is enough to trigger the protections of the Due Process Clause.”). In *Bellamy v. City of New York*, 914 F.3d 727 (2d Cir. 2019), the Second Circuit explained it has suggested, without concluding, “that a civil *Brady* claim requires a showing that the non-disclosure was intentional.” *Id.* at 751 n.23. And the First Circuit affirmed a jury verdict of liability where an officer “‘intentionally or recklessly withheld exculpatory evidence,”’ *Drumgold v. Callahan*, 707 F.3d 28, 45 (1st Cir. 2013), while commenting that “[n]on-disclosure [by a law enforcement officer] with a less culpable state of mind [than deliberate suppression] might suffice” and that “[t]his is a difficult question that has engendered a range of views.” *Id.* at 43 n.10, citing *Tennison*, *Porter*, and *Villasana*.

But the Sixth Circuit is the only circuit to hold that where the exculpatory value of a piece of evidence is “apparent,” the police have an “*unwavering*” duty to disclose that evidence, and “no *further* showing of animus or bad faith is required[.]” *Moldowan*, 578 F.3d at 388. See also *Clark*, 130 F.4th at 579. In his concurrence in *Clark*, Judge Murphy recognized the “circuit split on this intent element.” *Id.* at 590 (Murphy, J., concurring). See also 37-MAY Champion 58, 62 (discussing *Brady* claims against police officers and stating “[t]he circuit courts disagree over the level of culpability necessary to establish[] a *Brady* violation for § 1983 purposes.”).

The best view is the standard adopted by the Third, Fourth, Fifth, and Eighth Circuits, requiring proof that a police officer concealed evidence in bad faith. This is congruent with the standard this Court adopted

in *Youngblood*, 488 U.S. at 58. That view also aligns with this Court’s established precedent that “[l]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process[.]” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998).

A bad faith standard for police liability is especially appropriate given that the right at issue is a due process right to a fair trial—and the institutional guarantors of that right are prosecutors and the courts, not police. Broadening the reach of the *Brady* no-fault duty to include police officers also is not necessary. Police officers “already have an independent duty—though not a *Brady* duty—not to conceal materially exculpatory evidence in bad faith.” *Moldowan*, 578 F.3d at 402 (Kethledge, J., concurring in the judgment in part and dissenting in part). The Circuit courts’ expansion of that standard beyond bad faith has produced a flood of lawsuits against police officers, who have become the natural and exclusive targets of these fair trial claims, given police do not share the absolute immunity that shields prosecutors and judicial officers. Imposing a “one size fits all” absolute duty on both prosecutors and police, while simultaneously affording only prosecutors absolute immunity, “would multiply exponentially litigation against even conscientious officers[.]” *Jean*, 221 F.3d at 661 (Wilkinson, J., concurring in the judgment)—and it has.

Review is needed to resolve the circuit split and ensure the circuits are not requiring police officers, rather than prosecutors and the courts, to be the insurers of a fair trial.

**C. Jimenez’s pre-verdict Rule 50(a) motion preserved these issues for post-trial and appellate review**

The Sixth Circuit refused to address whether existing precedent clearly established that a *Brady* obligation included the duty to disclose uncorroborated rumors and anonymous tips, holding Jimenez did not sufficiently raise this in his oral Rule 50(a) motion—even though the court conceded Jimenez argued the “clearly-established” prong within the *Brady* context. Pet. App. A at 14a-17a. The court relied on *Sykes v. Anderson*, 625 F.3d 294, 304 (6th Cir. 2010), where waiver occurred only because defendants “never mentioned ‘qualified immunity’” or “clearly established”—then demanded far more than *Sykes*: a granular articulation of the specific qualified-immunity theory. This rigid, hypertechnical approach has no basis in Rule 50’s text, purpose, or the realities of civil trials.

Rule 50(a)(1) permits judgment as a matter of law where “a reasonable jury would not have a legally sufficient evidentiary basis.” Fed. R. Civ. P. 50(a)(1). The motion need only “specify the judgment sought and the law and facts that entitle the movant to the judgment,” Fed. R. Civ. P. 50(a)(2), giving the court and opponent notice and a chance to cure before submission to the jury. *Ford v. County of Grand Traverse*, 535 F.3d 483, 492-93 (6th Cir. 2008); *Kusens v. Pascal Co.*, 448 F.3d 349, 361 (6th Cir. 2006) (“technical precision” not required).

Jimenez first raised the argument regarding qualified immunity in a Rule 56 motion for summary judgment, which was denied by the district court. Pet. App. B at 45a-46a. Jimenez’s oral motion provided further notice.

He argued Ansari failed to show the Sandoval evidence was withheld or material under *Brady*, Dist. Ct. R. 173, PageID.4877-78, 4884, 4886-88, and that he would be entitled to qualified immunity because any theory that the withheld evidence affected the prosecutor's charging decision was "novel." *Id.* at PageID.4889. He later reiterated he was "at least entitled to qualified immunity" absent proof of intentional withholding. *Id.* at PageID.4901. This satisfied Rule 50(a)'s text and purpose.

Precise arguments are honed throughout trial. Trials are dynamic; theories crystallize as evidence unfolds and rulings issue. District courts rarely tolerate lengthy mid-trial argument, since grounds are typically already known from summary judgment or motions in limine. Treating the precision of a Rule 50(a) presentation as a precondition to preservation ignores that reality and converts the rule into a forfeiture trap.

Many sister circuits appreciate these realities, rejecting the approach taken by the Sixth Circuit in favor of a more practical approach. *Gonzalez-Bermudez v. Abbott Labs. P.R., Inc.*, 22 F.4th 1, 13-14 (1st Cir. 2021) (general motion preserved detailed refinement); *Laborers' Pension Fund v. A & C Envtl., Inc.*, 301 F.3d 768, 776-78 (7th Cir. 2002); *Urso v. United States*, 72 F.3d 59, 61 (7th Cir. 1995); *Taylor Publ'g Co. v. Jostens, Inc.*, 216 F.3d 465 (5th Cir. 2000); *United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd.*, 210 F.3d 1207, 1228-29 (10th Cir. 2000); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 519 n.18 (3d Cir. 1998). *Sykes* itself found waiver only because qualified immunity was never mentioned—unlike here.

This Court’s precedents also align with notice, not granularity. *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 400-01 (2006) treats Rule 50(a) as the benchmark for a general sufficiency challenge, permitting refinement post-verdict. *Ortiz v. Jordan*, 562 U.S. 180, 183-85 (2011) assumed oral Rule 50(a) motions adequately raised qualified immunity, finding forfeiture only for failure to renew under 50(b). *Dupree v. Younger*, 598 U.S. 729 (2023), confirms this notice-driven approach. Nothing requires spelling out the most granular theory pre-verdict. The district court acknowledged Jimenez “previously raised” the arguments made at oral argument, Pet. App. C at 51a, and was incorporating its reasoning from its previous decision. *Id.* at 56a. The Sixth Circuit’s decision that Jimenez waived a portion of his qualified immunity argument is incorrect and needs this Court’s review and clarification.

**CONCLUSION**

Wherefore, Petitioner, Moises Jimenez, respectfully requests that this Court summarily reverse the Sixth Circuit's decision denying qualified immunity, or alternatively, issue a writ of certiorari and grant all relief to which Petitioner is entitled in law and equity.

Respectfully submitted,

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Date: August 12, 2026

## **APPENDIX**

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**APPENDIX A — OPINION OF THE UNITED  
STATES COURT OF APPEALS FOR THE  
SIXTH CIRCUIT, FILED MAY 14, 2026**

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 24-1743

ALEXANDRE ANSARI,

*Plaintiff-Appellee,*

v.

MOISES JIMENEZ,

*Defendant-Appellant.*

Argued: December 10, 2025  
Decided and Filed: May 14, 2026

**OPINION**

Appeal from the United States District Court for the  
Eastern District of Michigan at Detroit. No. 2:20-cv-  
10719—Stephen Joseph Murphy III, District Judge.

Before: BATCHELDER, GILMAN,  
and LARSEN, Circuit Judges.

LARSEN, Circuit Judge. Alexandre Ansari was  
convicted in Michigan state court of first-degree murder

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and two counts of assault with intent to commit murder. He was sentenced to life in prison without the possibility of parole. But a review conducted by the local prosecutor's office later concluded that Ansari was not guilty of the crimes. In response, the state court vacated Ansari's convictions and sentence pursuant to a stipulated order. Ansari then filed this federal action against Moises Jimenez, the detective who investigated the crimes. Ansari alleged that Jimenez failed to disclose material exculpatory evidence in violation of Ansari's constitutional rights. A jury found for Ansari and awarded him \$10 million in damages. Jimenez now appeals. We AFFIRM.

**I.**

The events that led to Ansari's conviction began on September 22, 2012, when Rosalind Barley and her younger sister, Ileana Cuevas, drove to Miguel Figueroa's home in Detroit, Michigan. *People v. Ansari*, 2015 WL 630388, at \*1 (Mich. Ct. App. Feb. 12, 2015). Barley testified at Ansari's criminal trial that when they arrived, Figueroa, who was Barley's boyfriend, got in the back seat of the car. Barley then "heard a series of loud noises that sounded like fireworks." *Id.* Barley testified "that she did not immediately realize the noises were gunshots hitting her vehicle; however, after looking out the passenger window, she saw [Ansari] across the street holding a long gun." *Id.* Figueroa also testified that he saw Ansari fire a weapon toward the vehicle. *Id.* Figueroa quickly got out of the car and Barley drove away. *Id.* Barley then realized that Cuevas had been shot. *Id.* Figueroa tried to flee but was shot twice as he was running away.

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*Id.* Figueroa “testified that after being shot, he turned around in order ‘to get a good look at [the shooter] again,’ and was then shot in the face.” *Id.* (alteration in original). He nonetheless survived. Cuevas, however, died from the gunshot wound. *Id.*

Barley and Figueroa were each shown photographic arrays not containing Ansari’s picture. *Id.* Neither could identify the shooter. *Id.* Later, Figueroa was shown a photographic array that did include Ansari, and Figueroa identified Ansari as the shooter. *Id.* Barley was shown the same array, but she could not identify the shooter. *Id.* At a subsequent live lineup, however, both Barley and Figueroa identified Ansari as the shooter. *Id.* At trial, they did the same. *Id.* at \*2.

Ansari attempted to counter the in-court identification with the testimony of Leola Marlowe. Marlowe had heard the gunshots and had seen “a man with a gun run down the alley . . . , place the gun in the trunk of a car, and drive away.” *Id.* Marlowe testified that the man she saw was a “a big man – a heavy man,” who was close to 300 pounds and “really tall.” R. 64-15, Trial Tr., PageID 1325. This was consistent with witness identifications of the shooter during the investigation, which described the shooter as possibly 6 feet tall and “fat (not sloppy) 300 lbs,” R. 64-3, Witness Statement, PageID 1207–09, and as “a heavy set black male about 6 foot tall,” R. 64-5, Crime Report, PageID 124. Ansari is around 5’11” tall but weighs around 175 pounds. Marlow testified that she knew Ansari from the neighborhood and that he was not the person she saw because Ansari “is too small.” R. 64-17, Trial Tr., PageID

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1352. The prosecution called Moises Jimenez, the City of Detroit police detective who investigated the murder, to rebut Marlowe's testimony. *Ansari*, 2015 WL 630388, at \*2. He "testified that when he interviewed Marlowe immediately after the shooting she was nervous, shaky, and scared." *Id.*

Ansari was convicted of first-degree murder and two counts of assault with intent to commit murder. *Id.* at \*1. He was sentenced to life in prison without the possibility of parole. *Id.* The Michigan Court of Appeals affirmed, *id.*, and the Michigan Supreme Court denied leave to appeal, *People v. Ansari*, 498 Mich. 884, 869 N.W.2d 590 (2015) (mem.). Ansari then filed a habeas petition in federal district court.

Four days after Cuevas's death, Tommy Edwards, Figueroa's brother, was shot and killed. Jimenez, who investigated the Cuevas murder, also investigated the Edwards murder. Ultimately, Ansari was tried for the Edwards murder, but a jury acquitted him.

Ansari continued to profess his innocence of the Cuevas murder as well. And, in 2018, the Wayne County Prosecutor's Office Conviction Integrity Unit (CIU) began an investigation. An attorney at the CIU drafted a memorandum that concluded that Jose Sandoval, Barley's ex-boyfriend, likely had orchestrated the shootings. The memo explained:

[The Cuevas and Edwards] cases must be viewed together inasmuch as they provide the

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background and support for the recommendation of the CIU. The murders were set in motion after Rosalind Barley and her new boyfriend, Miguel Figueroa[, ] allegedly stole 3.5 grams of raw heroin from Barley's ex-boyfriend, Jose Sandoval, in the Spring/Summer of 2012. Sandoval, a known drug dealer with significant ties to a Mexican Cartel, was being investigated by the DEA at the time of the murders. As a result, trackers were placed on two of his cars and his cell phones were confiscated when he was arrested for a violation of his supervised release on federal drug charges. A recent CIU review of the tracker and phone data, as well as new witness interviews, contribute significantly to our conclusion that Jose Sandoval arranged for these killings, and that persons other than Mr. Ansari carried them out.

R. 64-19, CIU Memo, PageID 1374. The memo further explained that "victims Barley and Figueroa are now believed to have also been sabotaging the investigation: concealing their theft of Sandoval's heroin, and deliberately throwing off the investigation of the real perpetrators by offering bogus descriptions, and ID's, of the shooter." *Id.* at 1378. The memo was particularly critical of Jimenez, whom CIU investigators interviewed. The memo explained that Jimenez "has now admitted to deliberately failing to investigate Jose Sandoval because Sandoval is tied to a powerful Mexican drug cartel. Jimenez has family in Mexico, and Jimenez feared his family would be killed." *Id.* at 1377. According to the CIU, "[t]his distorted every

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aspect of his investigation and the truth-finding process.”  
*Id.*

Soon after, the Wayne County Prosecutor and Ansari filed a stipulated order in state court to dismiss the charges against Ansari. A Wayne County Circuit Judge then entered the following order:

This matter having been presented in open court through the stipulation of the parties, and the parties hav[ing] agreed that newly discovered evidence, as well as the Wayne County Prosecutor’s own investigation, warrants relief, and the Court being otherwise fully advised in the premises of said stipulation;

IT IS HEREBY ORDERED that in the interests of justice, Alexandre Ansari’s convictions and sentences in this matter are hereby vacated, and all related charges are hereby dismissed. Mr. Ansari shall be released from the Michigan Department of Corrections forthwith.

R. 75-1, Stipulated Order, PageID 1909.

Ansari was released from prison on March 15, 2019. A few days later, the federal district court dismissed Ansari’s previously filed habeas petition as moot, given that his “conviction and sentence ha[d] been vacated based on newly discovered evidence of actual innocence, and the charges dismissed.” R. 75-4, Order, PageID 1922.

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Once released from prison, Ansari brought this civil action under 42 U.S.C. § 1983, alleging that Jimenez and the City of Detroit had violated his constitutional rights. The district court dismissed the City from the case with prejudice. And, after protracted litigation, Ansari's case against Jimenez boiled down to one issue—whether Jimenez had violated Ansari's Fourteenth Amendment rights by withholding material and exculpatory information under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

Trial began in June 2023 but soon ended in a mistrial. A second trial began in February 2024. This time, the jury found for Ansari and awarded him \$10 million in damages. During trial, Jimenez moved for judgment as a matter of law. The district court denied the motion. After judgment was entered, Jimenez moved for a new trial and filed a renewed motion for judgment as a matter of law. The district court denied the motions. Jimenez now appeals.

**II.**

Jimenez makes three claims on appeal: (1) Ansari's § 1983 claim is barred by *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994); (2) Jimenez is entitled to qualified immunity; and (3) Jimenez is entitled to a new trial. We address each in turn.

**A.**

Jimenez first argues that *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), bars Ansari's

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§ 1983 claim. Jimenez raised his *Heck* argument in a motion to dismiss, in a motion for judgment as a matter of law, and in a renewed motion for judgment as a matter of law. We review the district court’s decision on all such motions de novo. *See In re Fifth Third Early Access Cash Adv. Lit.*, 925 F.3d 265, 275 (6th Cir. 2019); *Pouillon v. City of Owosso*, 206 F.3d 711, 719 (6th Cir. 2000).<sup>1</sup>

“The *Heck* doctrine addresses a common situation.” *Chaney-Snell*, 98 F.4th at 707. Convicted defendants often sue under § 1983, claiming “that public officials violated the Constitution while investigating or prosecuting” them. *Id.* When a § 1983 litigant seeks “a purely prospective remedy,” *Heck* poses no barrier to the lawsuit. *Olivier v. City of Brandon*, — U.S. —, 146 S. Ct. 916, 920, — L.Ed.2d — (2026). But *Heck* prevents “the use of § 1983 to challenge the validity of a prior conviction or sentence so as to obtain release from custody or monetary damages.” *Id.* So when a litigant seeking such a remedy brings a lawsuit that “would necessarily imply the invalidity of” the underlying conviction, *Heck* bars the lawsuit unless

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1. The parties and the district court discuss the *Heck* issue as pertaining to the court’s subject-matter jurisdiction. But panels of this court have recently treated the *Heck* bar as non-jurisdictional. *See Chaney-Snell v. Young*, 98 F.4th 699, 707–11 (6th Cir. 2024); *see also Kitchen v. Whitmer*, 106 F.4th 525, 533–34 (6th Cir. 2024) (“[W]e have recently implied that *Heck* is not jurisdictional.”). Whether the *Heck* bar is jurisdictional does not matter in this case because either way (1) we review the issue first, (2) we review it de novo, and (3) the *Heck* issue is squarely presented for our review. *Cf. Kitchen*, 106 F.4th at 536 (considering whether the defendants had forfeited the *Heck* issue).

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the plaintiff “can demonstrate that the conviction or sentence has already been invalidated.” *Heck*, 512 U.S. at 487, 114 S.Ct. 2364. That is, the plaintiff must show “that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.”<sup>2</sup> *Id.*

The *Heck* bar does not apply here. Ansari’s lawsuit does seek damages. And we assume, as do the parties, that success on Ansari’s due process claim would imply the invalidity of his state court convictions and sentence. *Cf. Richmond v. Mosley*, 2024 WL 2862505, at \*2 (6th Cir. June 6, 2024). But a cursory review of the procedural history shows that Ansari’s convictions and sentence have in fact been “invalidat[ed].” *Heck*, 512 U.S. at 487, 114 S.Ct. 2364.

The Wayne County Circuit Court order is clear and unambiguous—it states that “Ansari’s convictions and sentences in this matter are hereby vacated, and all related charges are hereby dismissed.” R. 75-1, Stipulated Order,

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2. It’s not clear that the methods listed in *Heck* are the only ways to show that a conviction or sentence has been invalidated. Our court has suggested that these may just be *examples* of ways to overturn a conviction. *See Carr v. Louisville-Jefferson County*, 37 F.4th 389, 394–95 (6th Cir. 2022) (“*Heck* did not impose a prerequisite of innocence to seek relief under § 1983. Instead, it gave examples of state procedures amounting to invalidation of a conviction. . . . [N]one of the examples in *Heck* require innocence or complete elimination of the fact of conviction.”).

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PageID 1909. The Circuit Court’s Register of Actions reflects this with the following notation—“Original Conviction Vacated.” R. 75-2, Register, PageID 1913. And, consistent with the Circuit Court’s order that “Mr. Ansari shall be released from the Michigan Department of Corrections forthwith,” R. 75-1, Stipulated Order, PageID 1909, Ansari was released from prison on the day the state court order entered. So there can be little doubt that Ansari’s convictions and sentence have been invalidated. Ansari’s civil “action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against” him. *Heck*, 512 U.S. at 487, 114 S.Ct. 2364 (emphasis in original). So the *Heck* bar does not apply.

Jimenez contests this conclusion. He argues that the state court order vacating Ansari’s conviction and sentence was not procedurally proper under Michigan law. Therefore, he says, the Michigan circuit court was not “a state tribunal authorized to” declare Ansari’s conviction invalid. *Id.* at 486–87, 114 S.Ct. 2364. This argument misses the mark.

Post-appeal relief in Michigan is governed by Michigan Court Rules (M.C.R.) 6.500, *et seq.* The procedures for motions to set aside or modify a judgment are set forth in M.C.R. § 6.502.

Did Ansari and the state court comply with the procedures for setting aside a judgment when overturning Ansari’s convictions and sentence? Possibly not. We need not decide that question, however, because *Heck* gives us no license to disregard the state court’s final judgment

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on the ground that the state court failed to follow its own procedures.

Applying the *Heck* bar to preclude Ansari's § 1983 claim would be inconsistent with the reasons for the doctrine. The *Heck* bar exists in part "to avoid conflicting resolutions of state criminal cases and federal civil rights proceedings." *Aprileo v. Clapprood*, 158 F.4th 317, 325 (1st Cir. 2025) (citation modified); *Heck*, 512 U.S. at 484, 114 S.Ct. 2364. So *Heck* requires that the plaintiff's conviction be "sufficiently invalidated to avoid parallel litigation and an inappropriate collateral attack on a conviction." *Carr v. Louisville-Jefferson County*, 37 F.4th 389, 395 (6th Cir. 2022). And that is the case here. The state court's judgment has wiped Ansari's convictions and sentence from the books and has ordered his release from prison. So Ansari's federal suit poses no risk of parallel proceedings or conflicting resolutions.

But Jimenez's proposal does. He urges us to second-guess the validity of the state court judgment on the ground that the state court did not properly follow its own procedures. The result, we suppose, would be to leave Ansari with an "outstanding criminal judgment" for federal purposes, *Heck*, 512 U.S. at 487, 114 S.Ct. 2364, but a vacated one for state purposes. That turns *Heck* on its head and subverts a core purpose of the doctrine: to enforce the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction." *Id.* (citation omitted). Jimenez has cited no caselaw suggesting that *Heck* requires such a result.

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Contrast this case with *Bolick v. Pennsylvania*, 473 F. App'x 136 (3d Cir. 2012). There, a § 1983 plaintiff argued that his state court conviction had been invalidated by an order of the state trial court. *Id.* at 138. But the Third Circuit held that his claim was *Heck*-barred because a state appellate court had concluded that the “order was unauthorized.” *Id.* at 139. Because the trial court’s order was a “legal nullity,” *id.* at 138, the plaintiff’s conviction remained valid, and a judgment in his favor “would necessarily imply the invalidity of [his] conviction,” *id.* at 139. Here, although Jimenez argues that the state court order was a legal nullity, no state appellate court has determined as such. And it is not for this court to revisit the state court judgment.

For these reasons, the district court didn’t err by allowing Ansari’s § 1983 claim to proceed.

**B.**

Jimenez next argues that the district court erred by denying him qualified immunity on Ansari’s claim under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).<sup>3</sup> A *Brady* claim has “three elements: [1] the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the State, either willfully or inadvertently; and [3] prejudice must

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3. For ease, we refer to Ansari’s claim as a *Brady* claim, but to the extent the allegedly withheld evidence would have been used to impeach witnesses at trial, the obligation stems from *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

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have ensued.” *Jackson v. City of Cleveland*, 925 F.3d 793, 814 (6th Cir. 2019) (alterations in original) (quoting *Strickler v. Greene*, 527 U.S. 263, 281–82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). We have held that the “[p]olice share this obligation.” *Est. of Andrews v. City of Cleveland*, 112 F.4th 436, 443 (6th Cir. 2024). At trial, Ansari argued that Jimenez had failed to disclose information regarding Sandoval’s potential role in the shooting, including, among other things, Sandoval’s status as a major drug dealer, the fact that Sandoval was nearby on the night of the shooting but had no communication with Ansari, and the fact that the only eye-witnesses, Figueroa and Barley, had recently stolen heroin from Sandoval (collectively, “the Sandoval information”).

We review the district court’s denial of qualified immunity de novo. *Klein v. Long*, 275 F.3d 544, 550 (6th Cir. 2001). A qualified immunity analysis asks “(1) whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and (2) whether that right was clearly established” at the time of the relevant conduct. *Harris v. Klare*, 902 F.3d 630, 637 (6th Cir. 2018) (citation omitted). The court may grant qualified immunity on either basis. *Pearson v. Callahan*, 555 U.S. 223, 241–42, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009).

On appeal, Jimenez focuses on the clearly established prong. He makes two arguments in this regard.

First, citing Fourth Circuit caselaw, Jimenez briefly contends that in 2012, when the acts here occurred, it was

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not clearly established that police officers had independent duties under *Brady*. See Appellant Br. at 47 (citing *Jean v. Collins*, 221 F.3d 656 (4th Cir. 2000) (en banc) (affirming by an equally divided court)). Yet Jimenez acknowledges that our circuit has deemed a police officer’s *Brady* duties “clearly established” since 1990. See *Moldowan v. City of Warren*, 578 F.3d 351, 382 (6th Cir. 2009).

To square this circle, Jimenez argues that, in the years following *Moldowan*, the Supreme Court has suggested that circuit court cases cannot create a clearly established right; only Supreme Court caselaw will do. It is true that the Supreme Court has questioned whether circuit precedent can suffice. See, e.g., *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6, 142 S.Ct. 4, 211 L.Ed.2d 164 (2021). But it has never squarely held that circuit precedent is insufficient. So we must follow our own precedent, which has repeatedly concluded that published caselaw from this court may create a clearly established right. See, e.g., *Campbell v. Riahi*, 109 F.4th 854, 860 (6th Cir. 2024). *Moldowan* held in 2009 that police officers’ Brady-derived duties were “clearly established” as far back as 1990. 578 F.3d at 382. We are bound by *Moldowan*; so this claim fails.

Next, Jimenez contends that Ansari has produced no case that would have put Jimenez on notice that *Brady* required him to turn over the particular “kind of information at issue” in this case, which he describes as “uncorroborated rumors and anonymous tips.” Appellant Br. at 37, 47. This court recently considered a similar argument, albeit at the summary judgment stage. In

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*Clark v. Louisville-Jefferson County Metro Government*, the defendant, a forensic scientist at a police crime lab, argued that he was entitled to qualified immunity because “no case ha[d] clearly established” a *Brady* duty to turn over the *kind* of evidence he had failed to disclose—his “‘unfinished notes’ that contain[ed] only initial ‘thoughts and impressions.’” 130 F.4th 571, 583 (6th Cir. 2025) (per curiam) (citation omitted). This court rejected that argument. “Contrary to [the defendant’s] claim,” *Clark* held that our “cases do not require plaintiffs to identify a decision that addressed exactly the same type of *Brady* evidence.” *Id.* The parties do not discuss *Clark*. And we need not decide whether *Clark*’s reasoning applies here because Jimenez did not raise this argument in his Rule 50(a) motion below. So it is not preserved for appeal.

“[A] party seeking a qualified-immunity defense must continue to urge it during and after trial in order to avoid forfeiting the argument on appeal.” *Ayers v. City of Cleveland*, 773 F.3d 161, 167 (6th Cir. 2014). The failure to do so forfeits the defense. *See Sykes v. Anderson*, 625 F.3d 294, 304 (6th Cir. 2010).

During his oral new trial motion, Jimenez primarily argued that there was no constitutional violation because he had turned over the purported *Brady* material, and, in any event, the information was neither material nor exculpatory. Then, with respect to the “clearly established” prong, Jimenez made two arguments. He argued that because the circuits were split on the point, *Moldowan*’s holding on a police-officer’s *Brady* duties could not clearly establish the law. And he briefly mentioned the clearly

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established prong in response to the district court's question regarding *Brady*'s applicability to charging decisions. But he never argued what he claims now: that no clearly established law would have alerted him that the particular kind of information he withheld—"the Sandoval evidence providing a motive for the shooting" and "uncorroborated rumors and anonymous tips"—counted as *Brady* information. Appellant Br. at 32. His failure to properly present his claim in his Rule 50(a) motion means that he forfeited it. *See Sykes*, 625 F.3d at 304; *see also Ayers*, 773 F.3d at 167. After all, the point of Rule 50(a) is to give the opposing party and the district court "the opportunity to simplify the trial by resolving some issues, or even all issues, without submission to the jury." *Ford v. County of Grand Traverse*, 535 F.3d 483, 492 (6th Cir. 2008) (citation omitted). Jimenez never gave the district court that chance.

Jimenez contests this conclusion. He points out that, in *Sykes*, this court held that the defendants' Rule 50(a) motion had not preserved their qualified immunity claim "because the Defendants 'never mentioned 'qualified immunity,'" "clearly established law," or similar terms "that might have put the court and the Plaintiffs on notice as to the Defendants' qualified-immunity claim." 625 F.3d at 304. That is an apt description of *Sykes*, but it does not save Jimenez's case. *Sykes* does not stand for the proposition that the mere "mention" of "qualified immunity" in a Rule 50(a) motion suffices to preserve any and all qualified immunity claims for a post-trial motion or for appeal. The import of *Sykes* is that the Rule 50(a) motion must have done enough to "put the court and the Plaintiffs on notice as to the Defendants'

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qualified-immunity claim.” *Id.* Jimenez’s incantation of “qualified immunity” with respect to two starkly different arguments was not sufficient to preserve the claim he now makes on appeal.

The district court didn’t err by denying qualified immunity to Jimenez on Ansari’s *Brady* claim.

**C.**

Finally, Jimenez challenges the denial of his motion for new trial. We review the denial of such motions using the abuse-of-discretion standard. *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 379 (6th Cir. 2022) (per curiam). The same standard generally governs our review of a district court’s evidentiary rulings. *United States v. Rodriguez-Lopez*, 565 F.3d 312, 314 (6th Cir. 2009). “A district court abuses its discretion when it relies on clearly erroneous findings of fact, applies the law improperly or uses an erroneous legal standard.” *Caudill Seed*, 53 F.4th at 379 (citation omitted).

**1.**

Jimenez argues that the district court erred by not admitting two items of evidence: a file created by the prosecutor’s office and an unredacted copy of a memorandum created by Assistant Prosecutor Erika Tusar.

Before addressing Jimenez’s arguments, we offer some background. Prior to trial, the district court prohibited

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the introduction of any evidence pertaining to Ansari's guilt or innocence of the Cuevas murder. The district court noted that "the parties *agreed* that [Ansari's] guilt or innocence of the underlying crime [was] not an issue of fact that [would] be litigated" at trial. R. 129, Mot. in Limine Order, PageID 2921. Moreover, the district court deemed such evidence "irrelevant to the narrow factual issue to be litigated—whether [Jimenez] turned *Brady* and *Giglio* evidence over to the Wayne County Prosecutor's Office," and thereby violated "Plaintiff's right to Due Process." *Id.*

We struggle to see how this can be right. The jury in Jimenez's civil trial was charged with determining "whether Jimenez turned over *Brady* or *Giglio* evidence to the prosecution." *Id.* That means that the jury had to decide two questions: (1) whether Jimenez turned over certain evidence and (2) whether that evidence, in fact, counted as *Brady* or *Giglio* evidence. The jury instructions reveal that the jury was charged with both tasks. But evidence counts as *Brady* or *Giglio* material only if there is "a reasonable probability" that, had the criminal jury heard the omitted evidence, "the result of the proceeding would have been different." *Akrawi v. Booker*, 572 F.3d 252, 262 (6th Cir. 2009) (citation omitted). In other words, the jury in the civil trial had to determine, at a minimum, whether there was a reasonable probability that the jury in the criminal trial would have acquitted Ansari of the Cuevas murder if it had had access to the information Jimenez withheld.<sup>4</sup> Of necessity, then, the jury in the civil

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4. We say "at a minimum" because a § 1983 claim "undoubtedly requires more than the three-part test for *Brady* claims in a criminal case." *Clark*, 130 F.4th at 592 (Murphy, J., concurring).

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trial would have needed to hear the evidence of Ansari's guilt and innocence that was presented to the criminal jury. (Though any such evidence that was not presented in the criminal trial would be irrelevant.) Nonetheless, the parties seem to have "agreed that [Ansari's] guilt or innocence of the underlying crime" would not be litigated at trial. R. 129, Order, PageID 2921. And they have not appealed the district court's rulings implementing that agreement. Nor have they indicated whether the jury in the criminal trial saw any portion of the evidence that Jimenez now says should have been admitted in his civil trial. We will evaluate Jimenez's arguments in light of these party-created limitations on our review.

**A.**

Jimenez first argues that the district court erred by excluding, under Federal Rule of Evidence 403, a 911-page file created by the Wayne County Prosecutor's Office containing information related to Ansari's alleged crimes. According to Jimenez, the file is important because it demonstrates that Jimenez turned over "everything that he purport[ed] to have turned over back in 2012" and that

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Section 1983 "likely requires plaintiffs to prove but-for and proximate causation by connecting their injuries to the defendant's constitutional violations." *Id.* "So plaintiffs asserting *Brady* claims under § 1983 may well have to establish more than the materiality standard (a 'reasonable probability' of a different outcome) that they must satisfy in a criminal case." *Id.* (citation omitted). They may "have to show by a preponderance of the evidence that the jury would have acquitted them if the defendant had disclosed the exculpatory evidence." *Id.* (citation omitted).

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the prosecutor's office timely possessed the pertinent documents that Assistant Prosecutor Tusar testified she did not have prior to trial. R. 173, Trial Tr., PageID 4859; *see also* Appellant Br. at 46.

Rule 403 permits a district court to “exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. When considering whether to admit the file, the district court first noted the parties' points of agreement: the file originated from the prosecutor's office and contained all the records in the prosecution's possession related to Ansari's criminal proceedings. But “the parties disagree[d] about when the contents of the file came into existence and who was aware of the file's contents.” R. 159, Am. Order, PageID 3739. Given that, the district court declined to “admit the file into evidence because its potential probative value [was] substantially outweighed by the danger of unfair prejudice, confusing the issues, and needlessly presenting cumulative evidence.” *Id.* (citing Fed. R. Evid. 403). It reasoned: “The file contains information that the Court previously ruled inadmissible,” including “evidence as to Plaintiff's guilt or innocence” of the Cuevas murder, and “certain evidence related to the Tommy Edwards murder and certain evidence in Erika Tusar's memo.” *Id.* at 3739–40. “Additionally, the file contain[ed] hundreds of pages that have not been summarized or presented to the jury in a way that is helpful to their understanding of the issues.” *Id.* at 3740.

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The district court reasonably balanced the considerations of Rule 403. Ultimately, there was too much unknown about the file—when it was compiled, who compiled it, and who knew what was in the file and when; and the file contained too much information that had been deemed irrelevant to the only issue at trial—whether Jimenez failed to disclose exculpatory and material evidence related to the killing of Cuevas. So the district court didn’t abuse its discretion by excluding the file.

**B.**

Jimenez next challenges the district court’s decision to allow into evidence only one paragraph of an internal memo drafted by Assistant Prosecutor Tusar. In October 2013, Tusar prepared a memo regarding a federal investigation of Sandoval. Jimenez argued that the memo showed that he had provided the Sandoval information to the prosecutor prior to Ansari’s trial. For its part, the district court recognized that the memo contained two types of information: (1) relevant information that went to whether Tusar knew of the Sandoval evidence, and (2) irrelevant information about the murder investigations that was “highly prejudicial and not at issue in the present trial.” R. 130, Order, PageID 2929. So the court allowed Jimenez to “introduce only the title of the document, its caption, and paragraph seven,” which discussed the then-ongoing FBI investigation into Sandoval. *Id.* In particular, paragraph seven showed: (1) “[t]here was a separate FBI investigation” involving Sandoval; (2) Rosalind Barley previously dated Sandoval; (3) Sandoval was a “high ranking drug dealer”; (4) “Sandoval had an ‘altercation’

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with Rosalind Barley, which was the subject of a domestic violence case;” (5) “Special Ops guys [ ] had information that [Plaintiff] was associated with” Sandoval; (6) Sandoval was prosecuted in federal court; (7) “Mr. Edwards was also a ranking drug associate”; and (8) someone believed that the above seven statements “overlapp[ed] with ‘an undercover FBI situation.’” *Id.* at 2930 (alterations in original) (citation omitted). The district court admitted this paragraph not for the truth of the matters asserted, but merely to show “that Prosecutor Tusar was aware of the *Brady* and *Giglio* evidence” before trial. *Id.*

Jimenez argues that the entire Tusar memo should have been admitted. He says that by allowing only one paragraph to be introduced, the district court violated the rule of completeness. *See* Fed. R. Evid. 106 (“If a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part—or any other statement—that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.”).

A review of the full memo shows that, in light of the background of this case, the district court didn’t abuse its discretion by excluding the remaining portions as more unfairly prejudicial than probative. *See United States v. Corder*, 724 F. App’x 394, 406 (6th Cir. 2018) (“Rule 106 permits inclusion of other parts of the writing if, ‘in fairness,’ they ought to be considered. The district court’s decision to redact the stipulation pursuant to Rule 403 amounts to a conclusion that ‘fairness’ would not be served by admitting evidence it considered unduly prejudicial.”).

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Other than the paragraph admitted into evidence, most of the memo touches either on Ansari's alleged involvement in the irrelevant Edwards murder or in the Cuevas murder, which the district court had ruled was not at issue in the civil trial. And, given that understanding, the excluded portions of the memo would have prejudiced Ansari's case by suggesting to the jury that he did, in fact, commit one or both murders. Accordingly, the district court didn't abuse its discretion by admitting only paragraph seven of the Tusar Memo.

**2.**

Jimenez next brings two challenges to the verdict form and jury instructions.

The final verdict form asked: "Did Defendant, Moises Jimenez, violate Plaintiff, Alexandre Ansari's, Fourteenth Amendment right to due process?" R. 162, Jury Verdict Form, PageID 3743. Jimenez says this was error because it failed to specify that, to find for Ansari on the due process claim, it would have to conclude that Jimenez had violated Ansari's due process rights "*by withholding exculpatory evidence from the prosecutor.*" R. 153, Proposed Jury Instr., PageID 3718 (emphasis added); *see also* R. 173, Trial Tr., PageID 4946–48. Jimenez argues that the lack of specificity harmed him because it permitted the jury also to consider whether Jimenez had failed to adequately investigate alternative suspects, including Sandoval, which was not a proper part of the Fourteenth Amendment *Brady* claim.

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There was no error. Jimenez is right that the prosecutor frequently referenced Jimenez's failure to investigate during the trial. But the verdict form cannot be considered in isolation. "It [comes] with a user's manual: the jury instructions." *Moody v. United States*, 958 F.3d 485, 491 (6th Cir. 2020). As a result, "we evaluate the verdict form in the context of the instructions as a whole (the same way we evaluate individual statements in the instructions)." *Id.*

Here, the trial judge clearly instructed the jury that the claim against Jimenez was limited to his withholding of *Brady* information from the prosecutor. *See, e.g.*, R. 174, Jury Instrs., PageID 5085–87 ("To prevail on [the due process] claim, plaintiff must prove . . . that the defendant intentionally or inadvertently withheld exculpatory and/or impeachment evidence in plaintiff's criminal trial."); *see also id.* at 5085 ("In this case Alexandre Ansari claims that Moises Jimenez violated his 14th Amendment right to due process of law by withholding evidence."); *id.* at 5085–86 ("Plaintiff establishes a *Brady* violation by showing: (1) that the evidence at issue was favorable to the plaintiff; (2) that Detective Jimenez either willfully or inadvertently suppressed that evidence; and (3) that prejudice ensued."). When the verdict form is considered in conjunction with the jury instructions, there was no risk of confusion and thus no error.

Jimenez also briefly argues that he was prejudiced by the trial court's failure to instruct the jury that his lawyer was permitted to contact Tusar, a witness, during litigation. The potential need for this instruction stemmed

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from Tusar’s testimony that she was “shocked” to have received a phone call from Jimenez’s counsel after her deposition since she was represented by counsel. R. 171, Trial Tr., PageID 4549–53. Jimenez’s cursory argument fails because he cannot show how any error in failing to give the instruction “concerned such an important point in the trial that its absence substantially impaired the defense.” *United States v. Henderson*, 2 F.4th 593, 597 (6th Cir. 2021). All Jimenez says is that “[w]ithout [the instruction], the jury would likely have concluded that Jimenez’s lawyer had engaged in wrongful conduct in trying to defend him, an erroneous belief created by Ansari’s lawyer’s statement and then confirmed when no instruction was given.” Appellant Br. at 64. That is insufficient to show error by the district court, let alone a prejudicial one.

**3.**

Jimenez further argues that Ansari’s counsel made improper and inflammatory arguments in closing that rendered the trial unfair. In particular, he charges that the lawyer’s use of props, his appeal to the jury’s emotions, his reference to his own father (a veteran) and son (a police officer), and his repeated encouragement to jurors to put themselves in Ansari’s place all unfairly prejudiced the jury.

To be entitled to a new trial on this ground, Jimenez “must show both that the closing argument was improper” and “a reasonable probability that the jury’s verdict was influenced by the improper argument.” *Fuhr v. Sch. Dist. of City of Hazel Park*, 364 F.3d 753, 760 (6th Cir. 2004).

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Ansari’s closing argument certainly did take some unusual turns. But the district court didn’t abuse its discretion by denying the motion for new trial. The court sustained many of counsel’s objections, often cautioning Ansari’s counsel and preventing him from proceeding further. To the extent Ansari’s counsel erred by improperly pressing for a \$20 million verdict, there was no prejudice—the jury awarded just half that amount. And finally, to the extent there were other improper-but-not-objected-to comments, they were minor enough to not sway the jury.

## 4.

Jimenez also briefly asserts that the trial errors cumulatively deprived him of a fair trial. For cumulative error, the court must consider the “combined effect of multiple trial errors to determine whether they are unfairly prejudicial.” *Beck v. Haik*, 377 F.3d 624, 644 (6th Cir. 2004) (citation modified). Because Jimenez hasn’t established any prejudicial errors by the district court, his cumulative-error argument also fails.

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We AFFIRM.

**APPENDIX B — OPINION AND ORDER OF THE  
UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN, SOUTHERN  
DIVISION, FILED AUGUST 23, 2022**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Case No. 2:20-cv-10719

ALEXANDRE ANSARI,

*Plaintiff,*

v.

MOISES JIMENEZ AND CITY OF DETROIT,

*Defendants.*

Filed August 23, 2022

**OPINION AND ORDER  
GRANTING IN PART AND DENYING  
IN PART SUMMARY JUDGMENT MOTION [59]**

Only malicious prosecution and *Brady* claims against Defendant Moises Jimenez remain in the case. ECF 1, PgID 10–14. Defendant asserted qualified immunity as a defense to the claims in a summary judgment motion. ECF 59. The parties briefed the motion, ECF 64; 65, and the Court ordered supplemental briefing on two questions,

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ECF 67, that the parties provided, ECF 68; 69.<sup>1</sup> For the following reasons, the Court will grant in part and deny in part the summary judgment motion.<sup>2</sup>

**BACKGROUND**

Rosalind Barley parked her car outside Miguel Figueroa's Detroit home on September 22, 2012. *People v. Ansari*, No. 318524, 2015 WL 630388, at \*1 (Mich. Ct. App. Feb. 12, 2015) (per curiam). As Figueroa sat in the backseat, a shooter began firing a gun at the vehicle. *Id.* The shooting wounded Barley and Figueroa and killed another passenger. *Id.* Defendant was assigned to investigate the shooting. ECF 64-2.

Barley described the shooter as a twenty-year-old black male who was tall “fat (not sloppy) 300 [pounds], [dark complexion],” and possibly had “braids [or] cornrows to back.” ECF 59-4, PgID 956. Five days later, Barley described the shooter the same way. ECF 59-5, PgID 960. In her statement, she explained that she had felt threatened by her ex-boyfriend, Jose Sandoval, because he had wanted his car back. ECF 59-5, PgID 960–61.

A different witness—who heard gunshots but had not seen the shooting—described the suspect as nearly the

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1. The Court need not resolve the supplemental briefing issue to resolve the motion and thus the Court will not address it.

2. Based on the parties' briefing, the Court will resolve the motion on the briefs without a hearing. *See* Fed. R. Civ. P. 78(b); E.D. Mich. L.R. 7.1(f)(2).

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same, but claimed the shooter was older. ECF 59-6, PgID 963. And another witness—who also heard gunshots but had not seen the shooting—described the suspect as “a heavy set black male about 6 foot tall.” ECF 59-7, PgID 967.

A Crime Stoppers anonymous tip identified the suspect as “Sousa” who was “a [H]ispanic male . . . 28 years old, and approximately 230 [pounds] and 5’8” with “4 inch long dark brown dreadlocked hair” and a “full beard.” ECF 59-9, PgID 971.<sup>3</sup> The tipster stated that the suspect is in a gang “known as Sousas and Friday’s boys.” *Id.*

Defendant later gave Barley and Figueroa line-ups of six-photograph arrays to identify the shooter. ECF 59-8, PgID 969; ECF 59-10, PgID 973. Neither array had Plaintiff’s photograph. ECF 59-8, PgID 969; ECF 59-10, PgID 973. And neither Barley nor Figueroa identified a photograph as the shooter. ECF 59-8, PgID 969; ECF 59-10, PgID 973.

The next day, Figueroa gave a statement, he described the shooter as a “Black male, about 25-28 [years old], tall, 6-01, medium built, dark complexed.” ECF 59-11, PgID 976. When asked about Sandoval, Figueroa explained that he did not “take anything from [Sandoval],” except for his girlfriend. *Id.* at 977. He also worked with a graphic artist to create a composite sketch of the shooter. ECF 59-12, PgID 979.

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3. Plaintiff’s nickname is “Sosa.” ECF 59-27, PgID 1080.

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Defendant later showed another six-photograph array line-up to Figueroa. ECF 59-13, PgID 981. Plaintiff's photograph was the second photograph and Figueroa identified Plaintiff as the shooter. *Id.*

Defendant then gave Barley another six-photograph array line-up that included Plaintiff's photograph. ECF 64-13, PgID 1286. She did not identify any photograph as the shooter. *Id.*

That same day, Defendant issued a report that recommended Plaintiff's arrest for first-degree murder. ECF 64-2, PgID 1202. Defendant based the recommendation on Figueroa's identification in the photo array. *Id.* at 1203. The warrant request did not mention Sandoval or a motive. *See generally* ECF 64-2. The prosecutor on the case signed the investigator's report. *Id.* at 1202. And police arrested Plaintiff for first-degree murder.

At a hearing the next month, Plaintiff's counsel requested a live lineup. ECF 59-14, PgID 997. At the live lineup, both Figueroa and Barley identified Plaintiff as the shooter. ECF 59-15, PgID 1008–09; ECF 59-16, PgID 1017–18 (Figueroa testimony at preliminary examination hearing), 1025–27 (Barley testimony at preliminary examination hearing). At the preliminary examination hearing, Figueroa and Barley identified Plaintiff as the shooter again. ECF 59-16, PgID 1013–14 (Figueroa), 1022–23 (Barley). Figueroa also confirmed that he had identified Plaintiff in the photo array. *Id.* at 1016. Barley confirmed that she did not identify the shooter in any photo array. *Id.* at 1025. The Michigan judge ultimately

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found probable cause on the first-degree murder charge and bound Plaintiff over to the Wayne County Circuit Court. *Id.* at 1028–31.

The first trial resulted in a hung jury. ECF 64, PgID 1174. In the second trial, the jury convicted Plaintiff on all crimes charged. *Ansari*, 2015 WL 630388, at \*2. The Michigan Court of Appeals affirmed the conviction on appeal, *id.* at \*1, and held that the pretrial identification procedures were not unduly suggestive, *id.* at \*2–3.

Years later, the Wayne County Conviction Integrity Unit investigated Plaintiff's conviction. The Unit found that Sandoval had carried out the shooting as well as another shooting around the same time because Barley and "Figueroa allegedly stole 3.5 [kilo]grams of raw heroin" from Sandoval. ECF 64-19, PgID 1374. The Unit found that Defendant had "admitted to deliberately failing to investigate Jose Sandoval because Sandoval is tied to a powerful Mexican drug cartel." *Id.* at 1377. Defendant believed that his family in Mexico would be killed if he pursued Sandoval. *Id.* The Unit found that Defendant "distorted every aspect of his investigation," *id.*, and that Barley and Figueroa had "sabotag[ed] the investigation," *id.* at 1378. As a result, the Unit recommended to fully exonerate Plaintiff. *Id.* at 1387. The Wayne County Prosecutor's office in turn stipulated to an order vacating Plaintiff's conviction and sentence and dismissing all charges against him. ECF 64-20, PgID 1398.

The evidence related to Sandoval's involvement in the shooting is extensive. To start, Defendant received an

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anonymous tip from the Federal Bureau of Investigation (“FBI”) that supported how two witnesses described who they believed was the shooter. *Compare* ECF 64-8, PgID 1224, *with* 59-4, PgID 956, ECF 59-5, PgID 960, *and* ECF 59-6, PgID 963; *see also* ECF 64-29, PgID 1628. The tip explained that “Solo” was the shooter and he was a black male in his “30’s [and] heavysset.” *Id.* The tip also verified another tip that Defendant had received from an Immigration and Customs Enforcement (“ICE”) agent that revealed the shooting was drug related. *see also* ECF 64-29, PgID 1628.

Defendant also knew from unregistered and Drug Enforcement Administration (“DEA”) sources that Sandoval was a kingpin heroin dealer in Southwest Detroit. ECF 64-10, PgID 1240. Defendant also believed that Plaintiff had worked as the hitman for Sandoval. *Id.* at 1242. The DEA later provided Defendant with GPS tracking and cellphone data that showed Sandoval was in the immediate area of the shooting when it occurred. ECF 64-21, PgID 1400–01; ECF 64-19, PgID 1383. Defendant even knew that the cellphone data showed that Plaintiff and Sandoval had no contact. ECF 64-10, PgID 1242–43. Besides cellphone data, “very high up” drug sources confirmed to Defendant that Sandoval had hired a hitman from a local gang to carry out the shooting because Figueroa had stolen heroin from Sandoval. ECF 64-24, PgID 1428. Last, Defendant knew that law enforcement had a Title III wiretap on Sandoval during the period at issue but Defendant “didn’t want to know” more about it. ECF 64-24, PgID 1429.

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The prosecutor in Plaintiff's criminal case claimed that she did not receive the Sandoval evidence from Defendant. ECF 64-27, PgID 1526, 1529, 1536, 1539–40; ECF 64-24, PgID 1430. She also explained that she could not recall discussing Sandoval with Defendant. ECF 64-27, PgID 1528. Defendant, however, testified that he turned over all the Sandoval evidence to the prosecutor. ECF 64-10, PgID 1242–43.

**LEGAL STANDARD**

The Court must grant a summary judgment motion “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A moving party must point to specific portions of the record that “it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the non-moving party may not simply rest on the pleadings but must present “specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (emphasis omitted) (quoting Fed. R. Civ. P. 56(e)).

A fact is material if proof of that fact would establish or refute an essential element of the cause of action or defense. *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984). A dispute over material facts is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When considering

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a summary judgment motion, the Court must view the facts and draw all reasonable inferences “in the light most favorable to the non-moving party.” *60 Ivy St. Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987) (citations omitted).

**DISCUSSION**

To establish a § 1983 claim, Plaintiff must prove “that (1) a person, (2) acting under color of [S]tate law, (3) deprived [him] of a federal right.” *Berger v. City of Mayfield Heights*, 265 F.3d 399, 405 (6th Cir. 2001) (citation omitted). “Qualified immunity is an affirmative defense” to a § 1983 claim. *English v. Dyke*, 23 F.3d 1086, 1089 (6th Cir. 1994) (citation omitted). It “‘shield[s]’ public officials from money-damages liability if ‘their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Citizens in Charge, Inc. v. Husted*, 810 F.3d 437, 440 (6th Cir. 2016) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

Once a defendant asserts a qualified immunity defense, “Plaintiff bears the burden of showing that [the] defendant[ ] [is] not entitled to qualified immunity.” *Maben v. Thelen*, 887 F.3d 252, 269 (6th Cir. 2018) (citing *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009)). Under qualified immunity, the Court must engage in a two-prong analysis and may ultimately decide which prong to analyze first. *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)).

First, the Court must “view[ ] the facts in the light most favorable to [ ] [Plaintiff]” and “determine whether

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the officer committed a constitutional violation.” *Barton v. Martin*, 949 F.3d 938, 947 (6th Cir. 2020) (citing *Burchett v. Kiefer*, 310 F.3d 937, 942 (6th Cir. 2002)). Second, “if there is a constitutional violation, the [C]ourt must determine whether that constitutional right was clearly established at the time of the incident.” *Id.* (citation omitted). The Court will grant qualified immunity to Defendant on the malicious prosecution claim and all but one *Brady* claim.

**I. Malicious Prosecution Claim**

The complaint asserted Fourth Amendment violations based on “fabrication of evidence” and malicious prosecution. ECF 1, PgID 10, 12. Fabricating evidence, however, is a Fourth Amendment malicious prosecution claim. *See Mills v. Barnard*, 869 F.3d 473, 480 (6th Cir. 2017) (“The prototypical case of malicious prosecution involves an official who fabricates evidence that leads to the wrongful arrest or indictment of an innocent person.”). Both claims thus fall under malicious prosecution.

“The Sixth Circuit recognizes a . . . constitutionally cognizable claim of malicious prosecution under the Fourth Amendment, which encompasses wrongful investigation, prosecution, conviction, and incarceration.” *Sykes v. Anderson*, 625 F.3d 294, 308 (6th Cir. 2010) (cleaned up). “[E]ven if independent evidence establishes probable cause against a suspect, it would still be unlawful for law-enforcement officers to fabricate evidence in order to *strengthen* the case against that suspect.” *Webb v. United States*, 789 F.3d 647, 670 (6th Cir. 2015) (emphasis added). To be sure, malicious prosecution claims concern “the

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initiation or *maintenance* of a prosecution.” *Rehberg v. Paulk*, 566 U.S. 356, 369 (2012) (emphasis added). That said, Plaintiff’s response brief and complaint asserted only that the malicious prosecution claim turns on Defendant’s request for the arrest warrant—not any post-warrant conduct. ECF 64, PgID 1180–81 (citing ECF 1, PgID 7, 12–13).<sup>4</sup>

“To succeed on a malicious-prosecution claim under § 1983 when the claim is premised on a violation of the Fourth Amendment,” Plaintiff must prove four elements. *Sykes*, 625 F.3d at 308. Defendant’s qualified immunity defense hinges on the first two: whether he participated in or influenced the decision to criminally prosecute Plaintiff, and whether he had probable cause at the time of Plaintiff’s arrest. ECF 59, PgID 898; *see Novak v. City*

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4. Officers can be held liable for malicious prosecution if they “influenced or participated in the prosecutor’s decision to *continue* the prosecution after [they] had knowledge of facts that would have led any reasonable officer to conclude that probable cause had ceased to exist.” *Johnson v. Moseley*, 790 F.3d 649, 654 (6th Cir. 2015) (emphasis added and internal quotation marks omitted). For example, officers must “refrain from engaging in acts which continue[ ] a person’s detention without probable cause.” *Gregory v. City of Louisville*, 444 F.3d 725, 749 (6th Cir. 2006); *see also Jones v. Clark Cnty.*, 959 F.3d 748, 768 (6th Cir. 2020) (holding that if a jury believed an officer withheld exculpatory information from prosecutors, then that would have violated the plaintiff’s right against continued detention without probable cause), *abrogated on other grounds, Thompson v. Clark*, 142 S. Ct. 1332, 1340–41 (2022). Because Plaintiff did not raise post-warrant conduct as a basis for the malicious prosecution claim, the Court’s inquiry focuses only on the conduct leading to the arrest warrant.

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*of Parma*, 33 F.4th 296, 307 (6th Cir. 2022) (citing *Sykes*, 625 F.3d at 308).

The first element requires Plaintiff to show that Defendant “participated in or influenced the decision to criminally prosecute him.” *Novak*, 33 F.4th at 307 (citing *Sykes*, 625 F.3d at 308). Because the Sixth Circuit “construe[s] participation in light of traditional ‘tort causation principles,’ [Defendant] must have done more than passively cooperate.” *Id.* (citing *Sykes*, 625 F.3d at 308 n.5). In other words, Defendant must have “aided in the decision to prosecute.” *Id.* (citing *Sykes*, 625 F.3d at 308 n.5).

“A prosecutor’s independent charging decision typically breaks the causal chain for malicious-prosecution purposes.” *Id.* (citing *Sykes*, 625 F.3d at 316). Officers can face liability only if they “influenced or participated in the prosecutor’s decision to continue the prosecution *after* [they] had knowledge of facts that would have led any reasonable officer to conclude that probable cause had ceased to exist.” *Moseley*, 790 F.3d at 654 (emphasis added and internal quotation marks omitted).

The Court will grant summary judgment on the malicious prosecution claim because Defendant had probable cause for Plaintiff’s arrest based on the eyewitness identification and the composite sketch. Eyewitness identifications create “sufficient probable cause unless, at the time of the arrest, there is an apparent reason for the officer to believe that the eyewitness was lying, did not accurately describe what he had seen, or was

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in some fashion mistaken regarding his recollection of the confrontation.” *Ahlers v. Schebil*, 188 F.3d 365, 370 (6th Cir. 1999) (quotation omitted). Put differently, an arrest lacks probable cause when “based solely on an eyewitness account that is in some way untruthful or unreliable.” *Ouza v. City of Dearborn Heights*, 969 F.3d 265, 282 (6th Cir. 2020) (citing *Ahlers*, 188 F.3d at 370–71).

Defendant conceded that “[t]he decision to prosecute hinged solely on the Figueroa’s sketch and eyewitness identification.” ECF 59, PgID 898. Plaintiff never suggested that Defendant had reason to believe that Figueroa lied at the time of the arrest. *See* ECF 64, PgID 1197–98. Thus, for Plaintiff to show that his arrest lacked probable cause, Figueroa’s identification must have been unreliable. *See Ouza*, 969 F.3d at 282 (citing *Ahlers*, 188 F.3d at 370–71).

But Plaintiff cannot show that Defendant had reason to believe that Figueroa’s identification was unreliable at the time of the arrest. For one, Plaintiff offered no argument about the identification lacking reliability. *See* ECF 64, PgID 1196–99; *Ahlers*, 188 F.3d at 371 (“Plaintiffs would have to allege that the [officers] had reason to think that [the victim’s] eyewitness identification was in some way untruthful or unreliable. Plaintiffs, however, put forth no such allegations.”).

For another, Figueroa’s identification was reliable at the time. Although other witnesses did not describe the shooter the same as Figueroa, those witnesses did not see the shooting. ECF 59-6, PgID 693; ECF 59-7, PgID

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697. And although Barley did not identify Plaintiff in the photo array, ECF 64-13, PgID 1286, her descriptions of the suspect largely tracked Figueroa's descriptions. *Compare* ECF 59-4, PgID 957 *and* ECF 59-5, PgID 960, *with* ECF 59-11, PgID 976 *and* ECF 59-12, PgID 979. And the anonymous tips, at best, conflict with one another but the second tip does match the suspect with Plaintiff's nickname. *Compare* ECF 64-8, PgID 1224 (FBI tip), *with* ECF 59-9, PgID 971 (second tip explaining that the suspect is "Sousa") *and* ECF 59-27, PgID 1080 (Plaintiff explaining that his nickname is "Sosa"). Although Figueroa was the only eyewitness to identify Plaintiff as the shooter, ECF 64-2, PgID 1202-03; ECF 59-10, PgID 973, the composite sketch tracked Plaintiff's appearance, ECF 59-29, PgID 1095 (prosecutor agreeing that the composite sketch looked like Plaintiff). *See also* ECF 59-12, PgID 979.

Last, the Sandoval evidence does not undermine the reliability of Figueroa's identification; it merely provides a motive for the shooting. ECF 64, PgID 1190 (Plaintiff characterizing the Sandoval evidence as "withheld motive evidence"). Because the evidence does not diminish the identification's reliability, the identification supported by the composite sketch are enough to establish probable cause. *See Penn v. Bergtold*, 803 F. App'x 900, 905 (6th Cir. 2020) ("It is well established that '[a] law enforcement officer is entitled to rely on an eyewitness identification to establish adequate probable cause with which to sustain an arrest.'") (alteration in original) (quoting *Ahlers*, 188 F.3d at 370).

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In sum, no constitutional violation occurred because Defendant had probable cause to charge Plaintiff based on Figueroa's identification and the composite sketch. The Court will therefore grant summary judgment to Defendant on the malicious prosecution and fabricating evidence claim.

**II. *Brady* Claims<sup>5</sup>**

Prosecutors may not suppress evidence that “is material either to [the defendant’s] guilt or . . . punishment.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). “[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. 667, 682 (1985). A “reasonable probability” is a probability sufficient to undermine confidence in the outcome.” *Id.*

A *Brady* claim has three elements: (1) the evidence at issue must favor “the accused, either because it is exculpatory, or because it is impeaching”; (2) the “evidence must have been suppressed by the State, either willfully or inadvertently”; and (3) the criminal defendant must have suffered prejudice. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999).

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5. Plaintiff’s *Brady* claims are best described as *Giglio* claims because the evidence largely undermines witness credibility. *Giglio v. United States*, 405 U.S. 150, 154 (1972); see ECF 64, PgID 1193 (“[A]ny evidence that could impugn the credibility of Barley and Figueroa’s identifications would be critical to establishing reasonable doubt.”). The Court will refer to the claims as *Brady* claims, because the parties used that term in the briefing.

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For the second element, Police officers must turn over all material evidence to the prosecutor's office. *Sykes*, 625 F.3d at 319 (noting that police officers may be sued under § 1983 for *Brady* violations) (citing *Moldowan v. City of Warren*, 578 F.3d 351, 381 (6th Cir. 2009)). "That duty is discharged once an officer delivers such evidence to the prosecutor's office." *Army v. Collins*, 488 F. App'x 987, 962 (6th Cir. 2012) (citing *Moldowan*, 578 F.3d at 381).

Plaintiff alleged three *Brady* violations. ECF 1, PgID 14–15. First, Defendant did not disclose Shawn Lindsey's statement. *Id.* at 14.<sup>6</sup> Second, Defendant did not disclose that "he knew the shooting was orchestrated as a hit by . . . Sandoval." *Id.* at 14–15; *see also* ECF 64, PgID 1181. Third, Defendant failed to disclose that he fabricated Figueroa's and Barley's identifications of Plaintiff. ECF 1, PgID 15; *see also* ECF 64, PgID 1181.

Defendant offered three arguments for why the claims fail. One, any motive evidence did not "undermine[ ] the [S]tate's theory of the case" and was thus not *Brady* evidence (first element). ECF 59, PgID 891. Two, the allegedly withheld evidence was not exculpatory (first element). *Id.* at 891–93.<sup>7</sup> And three, Defendant provided

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6. Plaintiff withdrew the first claim. ECF 64, PgID 1180 n.6. The claim is therefore abandoned. *See Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 372 (6th Cir. 2013) ("[A] plaintiff is deemed to have abandoned a claim when a plaintiff fails to address it in response to a motion for summary judgment.") (collecting cases).

7. Even if the evidence were not exculpatory, as stated above, prosecutors must disclose evidence that "could be used to impeach the credibility of a witness." *Schledwitz v. United States*, 169

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the evidence to the prosecutor's office (second element). *Id.* at 889–91, 894. The Court will address the two remaining *Brady* claims in turn.

**A. Sandoval Evidence**

The Court will deny summary judgment on the *Brady* claim about the Sandoval evidence. Defendant received several pieces of evidence about Sandoval. Some evidence came as witness statements. ECF 59-4, PgID 957; ECF 59-5, PgID 960–61; ECF 59-7, PgID 697. One statement from Barley explained that she felt threatened from Sandoval because he had wanted his car back. ECF 59-5, PgID 960–61.

Defendant also received a tip from the FBI that confirmed how two witnesses described the shooter. *Compare* ECF 64-8, PgID 1224, *with* 59-4, PgID 956, ECF 59-5, PgID 960, *and* ECF 59-6, PgID 963; *see also* ECF 64-29, PgID 1628. The tip also verified the ICE agent's tip that the shooting was drug related. *see also* ECF 64-29, PgID 1628.

Defendant knew that Sandoval dealt heroin in Detroit. ECF 64-10, PgID 1240. And sources confirmed to Defendant that Sandoval hired a hitman for the shooting because Figueroa had stolen heroin from him. ECF 64-24, PgID 1428. Defendant even believed that Plaintiff

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F.3d 1003, 1011 (6th Cir. 1999) (citing *Giglio*, 405 U.S. at 154–55). The second argument therefore addresses only part of the first element.

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had worked as the hitman for Sandoval. ECF 64-10, PgID 1242. Yet Defendant knew that the cellphone data showed Plaintiff and Sandoval did not contact one another. *Id.* at 1242–43.

What is more, the GPS tracking and cellphone data showed Sandoval was in the immediate area of the shooting when it occurred. ECF 64-21, PgID 1400–01; ECF 64-19, PgID 1383. And despite the evidence, Defendant did not want to know more about the Title III wiretap on Sandoval. ECF 64-24, PgID 1428.

The Sandoval evidence satisfies the first *Brady* element because the evidence undermines the State’s theory of the case. The prosecutor in the criminal case even admitted that she would have turned over the evidence under *Brady* and that the evidence would have undermined her theory of the case. ECF 64-27, PgID 1529. To compare, the Sixth Circuit has held that the *same* admissions from a prosecutor created “sufficient evidence for a reasonably jury to conclude that” a *Brady* violation occurred. *Sykes*, 625 F3d at 321. Besides that, the evidence would have impeached the star witnesses about their drug trade connections to Sandoval. ECF 64-29, PgID 1629. The evidence would have also marred Defendant’s own credibility and questioned his investigation. *Id.* Even though the evidence did not exonerate Plaintiff, it crushed the credibility of key witnesses and it very likely would have changed the jury’s verdict. To confirm, “[t]his was not a case where the evidence against [ ] Plaintiff[ ] was strong.” *Sykes*, 625 F.3d at 321. It turned on eyewitness identification and a distorted investigation. The evidence thus satisfies the first *Brady* element.

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As for the second *Brady* element, there is an issue of material fact that precludes the Court from granting summary judgment. The prosecutor in the criminal case claimed that she did not receive the Sandoval evidence from Defendant. ECF 64-27, PgID 1526, 1529, 1536, 1539–40; ECF 64-24, PgID 1430. And she could not recall specific discussions with Defendant about Sandoval. ECF 64-27, PgID 1528.

Defendant, in contrast, testified that he turned over all the Sandoval evidence. ECF 64-10, PgID 1242–43. Defendant also pointed to an internal memorandum from the prosecutor that Defendant claimed showed the prosecutor “was well-apprised of the Sandoval connection.” ECF 59, PgID 891 (citing ECF 59-34, PgID 1144). But the internal memorandum was written *after* Plaintiff’s conviction. ECF 59-34, PgID 1144.

Still, Defendant believed that Sandoval’s identity and his relationship to the case were disclosed to Plaintiff’s trial counsel through witness statements. ECF 59-4, PgID 957; ECF 59-5, PgID 960–61; ECF 59-7, PgID 697. To that end, the prosecutor testified that she also knew Sandoval may have been behind the shooting. ECF 64-27, PgID 1546, 1559–60. But the prosecutor also testified that she knew of no evidence that Sandoval was the shooter. *Id.* at 1560. And the witness statements confirm that much. ECF 59-4, PgID 957; ECF 59-5, PgID 960; ECF 59-7, PgID 697. All told, there is an issue of material fact over the second *Brady* element about whether Defendant disclosed all or some of the Sandoval evidence to the prosecutor.

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The Court cannot therefore find whether Defendant violated Plaintiff's constitutional rights by withholding the *Brady* evidence. A genuine issue of material fact exists about whether Defendant provided the prosecutor with the *Brady* evidence. As a result, the Court cannot grant qualified immunity on the first prong and a jury must resolve it.

The Court cannot grant qualified immunity on the second prong either. Even if a jury were to find that Defendant did not turn over the evidence to the prosecutor—thus violating Plaintiff's constitutional rights—the Court would still deny qualified immunity to Defendant because such a violation was clearly established at the time. Before Defendant's investigation, the Sixth Circuit clearly established that “the police can commit a constitutional deprivation analogous to that recognized in *Brady*.” *Moldowan*, 578 F.3d at 379; *see also Sykes*, 625 F.3d at 320 (applying the same doctrine to *Giglio* evidence that could be used to impeach a witness's credibility) (quotation omitted). Because the alleged constitutional violation here is the same as *Moldowan* and *Sykes*, Defendant would have no right to qualified immunity under the second prong.

In the end, the Court cannot grant qualified immunity under either prong. For the first prong, an issue of material fact precludes the Court from granting qualified immunity. For the second prong, even if a jury were to resolve the factual issue in Plaintiff's favor, the constitutional violation would have been clearly established when it occurred. The Court will therefore deny summary judgment as to this

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claim and reserve any qualified immunity decision until a jury resolves the remaining factual issue.

**B. Fabricating Identifications**

The Court will grant summary judgment on the claim that Defendant fabricated identifications. Four reasons support granting summary judgment.

First, Plaintiff offered no evidence to show that Defendant fabricated the identifications. *See* ECF 64. Indeed, no evidence showed Defendant fabricated any witness identification. At best, Plaintiff appeared to argue that Defendant showed witnesses unduly suggestive photo arrays. *Id.* at 1191–92.

But such a claim would not arise under *Brady*; it would arise under a § 1983 claim for due process violations under the Fourteenth Amendment. *See Salter v. Olsen*, --- F. Supp. 3d ---, 2022 WL 1819033, at \*9–16 (E.D. Mich. 2022) (analyzing an unduly suggestive identification claim separate from a *Brady* claim). Consider too that Plaintiff offered no argument to suggest the claim hinges on unduly suggestive photo arrays. *See generally* ECF 64. Yet Plaintiff appeared to assert the argument only *after* the Court had requested supplemental briefing about whether Plaintiff is collaterally estopped from challenging the photo arrays as unduly suggestive. ECF 68, PgID 1743–44; *see* ECF 67, PgID 1729–30. The claim is therefore abandoned. *See Brown*, 545 F. App'x at 372 (collecting cases).

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Third, even if the claim were not abandoned, the Michigan Court of Appeals already held that the photo arrays were not unduly suggestive. *Ansari*, 2015 WL 630388, at \*2–3. And the Michigan Court of Appeals’ extensive inquiry is correct based on the Court’s review of the law. Thus, the Court will adopt the Michigan Court of Appeals’ reasoning.

Last, even if the photo arrays were too suggestive, the claim still fails. The two witnesses that had identified Plaintiff in the photo array later identified him again in a live lineup—that Defendant’s counsel attended—and in court. ECF 59-16, PgID 1014, 1017–18; 1022–23, 1025–27. Thus, “under the totality of the circumstances,” the pretrial identification “was nonetheless reliable.” *United States v. Crozier*, 259 F.3d 503, 510 (6th Cir. 2001) (citation omitted). The Court will therefore grant summary judgment on the final claim.

**CONCLUSION**

Because only the *Brady* claim related to the Sandoval evidence remains, the Court will refer the parties to mediation with Mr. Dennis Barnes. The mediation must occur no later than September 25, 2022. The alleged *Brady* violations were egregious and could shock the sensibilities of a federal jury. The Court expects both parties to mediate in good faith. The Court will also set the jury trial for March 2023.

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**ORDER**

**WHEREFORE**, it is hereby **ORDERED** that the summary judgment motion [59] is **GRANTED IN PART AND DENIED IN PART**.

**IT IS FURTHER ORDERED** that the Court **REFERS** the case to Mr. Dennis Barnes<sup>8</sup> for mediation and settlement discussions and **ORDERS** the parties to proceed in compliance with Local Rule 16.4. The mediation and settlement discussions must occur **no later than September 25, 2022**. The parties must contact Mr. Barnes and provide him with a copy of this order as soon as practicable and must **NOTIFY** the Court of the date of the mediation session once it is scheduled.

**IT IS FURTHER ORDERED** that Mr. Barnes must **NOTIFY** the Court within seven days of completion of the mediation, “stating only the date of completion, who participated, whether settlement was reached, and whether further [alternative dispute resolution] proceedings are contemplated.” E.D. Mich. L.R. 16.4(e)(6). If a settlement is reached, the parties must **NOTIFY** the Court right after completing the mediation and must **SUBMIT** a proposed order of dismissal within twenty-one days. *Id.* at 16.4(e)(7). If a settlement is not reached, the parties must **NOTIFY** the Court within five days of the completion of the mediation.

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8. Mr. Barnes can be reached by phone at (248) 736-4828 or by email at [Dennis@BarnesADR.com](mailto:Dennis@BarnesADR.com).

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**IT IS FURTHER ORDERED** that the final pretrial conference is **SET** for **February 22, 2023**, and the trial is **SET** to begin on **March 7, 2023**.

**SO ORDERED.**

s/ Stephen J. Murphy, III  
Stephen J. Murphy, III  
United States District Judge

Dated: August 23, 2022

**APPENDIX C — ORDER DENYING MOTION  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN,  
SOUTHERN DIVISION, DATED APRIL 2, 2024**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Case No. 2:20-cv-10719

ALEXANDRE ANSARI,

*Plaintiff,*

v.

MOISES JIMENEZ,

*Defendant.*

**ORDER DENYING ORAL MOTION FOR  
DIRECTED VERDICT BY DEFENDANT**

At the close of Plaintiff Alexandre Ansari's case in chief, Defendant Moises Jimenez moved for judgment as a matter of law under Federal Rule of Civil Procedure 50 on three grounds. ECF 173, PgID 4876. First, Defendant argued that the Court lacked subject matter jurisdiction or was otherwise barred from rendering a judgment. *Id.* at 4877. Second, Defendant urged that Plaintiff failed to demonstrate that the withheld evidence was favorable or material under *Brady v. Maryland*, 373 U.S. 83 (1963).

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*Id.* at 4877. Third, Defendant claimed Plaintiffs allegation that Defendant withheld the evidence relied “only on speculation and innuendo” and was therefore insufficient for a jury to rule in favor of Plaintiff. *Id.* at 4877-78. Defendant previously raised each of those arguments, and the Court resolved them, in motions to dismiss and for summary judgment long before trial. *See* ECF 70, 80. Consistent with its prior orders, the Court will deny Defendant’s motion for judgment as a matter of law.

**PROCEDURAL HISTORY**

Plaintiff sued Defendant under 42 U.S.C. § 1983 for a wrongful conviction based on Defendant’s alleged failure to turn over exculpatory evidence. ECF 1. A State court jury convicted Plaintiff of first-degree murder and two counts of assault with intent to murder. *Id.* at 5. The State court sentenced Plaintiff to life in prison without the possibility of parole. *Id.* Plaintiff’s appeals failed. *Id.* at 6. Years later, the Wayne County Conviction Integrity Unit (CIU) reviewed Plaintiffs case and determined that Plaintiff was factually innocent of the crimes for which he was convicted. *Id.* at 6-8. The Wayne County Prosecutor agreed to fully exonerate Plaintiff for the convictions. *Id.* at 8. The State court accordingly vacated Plaintiffs convictions and sentence. ECF 75-1, PgID 1909.

Plaintiff then sued Defendant—a Detroit Police Department detective and the officer in charge of the investigation that led to Plaintiffs prosecution—under § 1983 for *Brady* violations. ECF 1, PgID 2-3. Specifically, Plaintiff alleged that Defendant did not disclose material

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exculpatory evidence in his possession in violation of Plaintiffs Fourteenth Amendment due process right. *Id.* at 14-15.

The parties litigated the case for four years. In that time, the Court resolved many motions that ranged in complexity from discovery disputes to dispositive motions to pretrial motions in limine. At the Court's encouragement, the parties attempted mediation three times. But the mediations failed because the parties refused to negotiate in good faith. *See* ECF 139, PgID 3474. The Court therefore conducted an eight-day jury trial, during which the lawyers' animosity and refusal to cooperate was apparent. In contravention of the Court's orders and admonishments, the lawyers engaged in speaking objections in front of the jury, re-raised issues that the Court previously resolved, and argued over the use of exhibits and demonstratives despite the Court's many instructions to agree on trial tactics before trial.

In the end, the jury concluded that Defendant violated Plaintiffs Fourteenth Amendment right to due process and awarded Plaintiff a total of \$10 million in compensatory damages. ECF 162, PgID 3743-44. Now, the Court will deny Defendant's oral motion for judgment as a matter of law and issue a judgment that reflects the jury's verdict and award.

**LEGAL STANDARD**

"Judgment as a matter of law is appropriate if a party has been fully heard on an issue during a jury trial

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and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” *Burley v. Gagacki*, 729 F.3d 610, 621 (6th Cir. 2013) (quoting Fed. R. Civ. P. 50(a)). A court should only grant judgment as a matter of law if “there is a complete absence of pleading or proof on an issue material to the cause of action or when no disputed issues of fact exist such that reasonable minds would not differ.” *Id.* (quotation omitted). Courts thus review the evidence “in the light most favorable to the nonmoving party” and determine whether there was a “genuine issue of material fact for the jury.” *Gray v. Toshiba Am. Consumer Prods., Inc.*, 263 F.3d 595, 598 (6th Cir. 2001) (citation omitted).

**DISCUSSION****I. Subject Matter Jurisdiction Under *Heck***

First, Defendant argued that the Court lacks subject matter jurisdiction under *Heck v. Humphrey*, 512 U.S. 477 (1994). ECF 173, PgID 4877, 4878. In *Heck*, the Supreme Court held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment or for other harms caused by actions whose unlawfulness was rendered a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486-87. Defendant argued that Plaintiffs sentence was not properly overturned by Michigan’s State courts

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because the exoneration was improper under Michigan Court Rules. ECF 173, PgID 4880.

During oral argument, the Court asked, “[H]ave I considered this at all previously?” ECF 173, PgID 4878. The Court explained, “I only ask because I recall reading the argument before.” *Id.* at 4879. Defense counsel responded, “Your Honor declined to rule on it, citing the principles of federalism that you would not reach the issue as to whether the conviction was validly set aside.” *Id.* at 4878-79.

Not so. The Court, in fact, denied Defendant’s motion to dismiss for lack of subject matter jurisdiction based on the exact same argument that Defendant raised at oral argument. ECF 80. Indeed, the parties fully briefed the issue, the Court considered it, and the Court denied the motion to dismiss “because the State court’s conviction and sentence of Plaintiff was vacated.” *Id.* at 1977. Here, the Court will incorporate the prior order in its entirety. The Court will affirm its reasoning therein and deny Defendant’s motion for judgment as a matter of law that was based on a lack of subject matter jurisdiction.

## **II. *Brady* Evidence**

To prevail, the law required Plaintiff to prove by a preponderance of the evidence the following three elements that constitute a *Brady* claim: (1) the evidence at issue must favor “the accused, either because it is exculpatory, or because it is impeaching”; (2) the “evidence must have been suppressed by the State, either willfully

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or inadvertently”; and (3) the criminal defendant must have suffered prejudice. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Defendant’s oral argument addressed the first two elements. First, Defendant argued that the evidence was not material or favorable. Second, Defendant argued that the evidence presented did not demonstrate that Defendant suppressed the evidence. The Court will address each argument in turn.

**A. Exculpatory Evidence: Favorable and Material Under *Brady***

Defendant argued that Plaintiff failed to demonstrate the evidence that was allegedly withheld was “favorable” and material under *Brady*. ECF 173, PgID 487778, 4883, 4889. In other words, Defendant argued that the evidence, if true, would not exculpate Plaintiff. *Id.* at 4884. The Court must evaluate the withheld evidence “in the context of the entire record and determine whether there is a reasonable probability that had the evidence been disclosed, the result of the proceedings would have been different.” *Turner vs. United States*, 582 U.S. 313, 324-25 (2017) (citations omitted). The “mere possibility that an item of undisclosed information might have helped the defense or might have affected the outcome of the trial does not establish materiality in the constitutional sense.” *United States v. Agurs*, 427 U.S. 97, 109-10, (1976) (alterations omitted).

Defendant argued that the allegedly withheld evidence “can best be summarized as dealing with the involvement of Jose Sandoval. And none of the evidence he’s presented

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has to do with the identification of [Plaintiff] as the shooter by two people.” ECF 173, PgID 4884. Again, the Court already ruled on the argument. *See* ECF 70, PgID 1824-1827 (Court’s order denying summary judgment as to favorability and materiality of the exculpatory evidence). The Court concluded that “the evidence undermines the State’s theory of the case.” *Id.* at 1826. Indeed, in accordance with its duty to decide whether evidence is material as a matter of law, the Court reasoned that “the evidence would have impeached the star witness about their drug trade connections to Sandoval” and “would have also marred Defendant’s own credibility and questioned his investigation.” *Id.* at 1827. The Court already ruled that the evidence, if true, would have been favorable and material under *Brady*.

The Court will incorporate the facts and reasoning in its prior order denying summary judgment in ECF 70, from pages 1824 to 1827. The summary judgment standard, *see* Fed. R. Civ. P. 56(a), is identical to the standard the Court must apply on a motion for judgment on the pleadings, *see id.* at 50(a). Both motions require the Court to consider the entire record and construe the facts in a light that is favorable to the non-moving party (i.e., Plaintiff for both motions). Both motions require the Court to rule in favor of the movant if there is no “genuine issue of material fact for the jury.” *Gray*, 263 F.3d at 598 (judgment as a matter of law); *see also* Fed. R. Civ. P. 56(a) (summary judgment).

The parties did not introduce evidence at trial that was additional to or different from the evidence the parties

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relied on in the summary judgment briefing. The Court will therefore deny the motion for judgment as a matter of law for the same reasons that it denied the motion for summary judgment with respect to the materiality argument. *See* ECF 70, PgID 1824-27.

**B. Willful or Inadvertent Suppression Under *Brady***

Defendant argued that “there is no question of fact as to whether the defendant, Mr. Jimenez, provided the purportedly exculpatory evidence to the prosecutor.” ECF 173, PgID 4896. The Court denied summary judgment with respect to that argument as well. *See* ECF 70, PgID 1827. The Court reasoned that under the second *Brady* element, there was a genuine issue of material fact for the jury to consider. *Id.* The same factual disagreement between Defendant and the prosecutor that the parties raised in their summary judgment briefing was raised during trial. Defendant argued that the prosecutor’s testimony revealed that she knew about the exculpatory evidence “and chose not to turn it over.” ECF 173, PgID 4897. But Defendant conceded that the prosecutor testified that she received the exculpatory evidence *after* Plaintiffs criminal trial. *Id.* The discrepancy presents a literal case of he-said-she-said between Defendant and the prosecutor. It is a genuine issue of material fact that a jury would decide. The Court will therefore incorporate the facts and reasoning in its prior order denying summary judgment on this issue and will deny the motion for judgment as a matter of law for the same reasons. ECF 70, PgID 1827-29.

*Appendix C***CONCLUSION**

For the reasons stated above and in the Court's orders denying summary judgment and a motion to dismiss, the Court will deny the oral motion for judgment as a matter of law under Rule 50(a). The Court will also deny Defendant's motion for leave to exceed the page limit if Defendant chooses to file a renewed motion for judgment as a matter of law under Local Rule 7.1(d)(3)(A). ECF 177. Excess pages are unnecessary because the issues Defendant raised in its motion for judgment as a matter of law have already been fully briefed by the parties in motions to dismiss and for summary judgment. And Defendant cannot raise new issues that differ from the issues it raised during its oral motion in a renewed motion for judgment as a matter of law. *See* Fed. R. Civ. P. 50(a) (requiring movant to "specify the judgment sought and the law and facts that entitle the movant to the judgment). The Court will therefore deny Defendant's motion for leave to file excess pages.

**ORDER**

**WHEREFORE**, it is hereby **ORDERED** that Defendant Moises Jimenez's oral motion for a directed verdict is **DENIED**.

**IT IS FURTHER ORDERED** that Defendant's motion for leave to exceed page limit [177] is **DENIED**.

**IT IS FURTHER ORDERED** that judgment will be **ENTERED** to reflect the Jury Verdict.

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**SO ORDERED.**

s/ Stephen J. Murphy, III  
Stephen J. Murphy, III  
United States District Judge

Dated: April 2, 2024

**APPENDIX D — JUDGMENT OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF MICHIGAN, SOUTHERN DIVISION,  
DATED APRIL 2, 2024**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Case No. 2:20-cv-10719

ALEXANDRE ANSARI,

*Plaintiff,*

v.

MOISES JIMENEZ,

*Defendant.*

**JUDGMENT**

This matter having been tried to a jury on February 16, 2024 in favor of Plaintiff Alexandre Ansari and against Defendant Moises Jimenez, in the amount of Ten Million Dollars (\$10,000,000.00) in compensatory damages, ECF 162:

**WHEREFORE**, it is hereby **ORDERED** that Judgment will **ENTER** in favor of Plaintiff, Alexandre Ansari, as against Defendant, Moises Jimenez, **in the amount of Ten Million Dollars (\$10,000,000.00).**

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**IT IS FURTHER ORDERED** that post judgment interest from the date of entry of this judgment will be **COMPUTED** daily to the date of payment and will **ACCRUE** at the legal rate and will be **COMPOUNDED** annually pursuant to 28 U.S.C. § 1961.

**IT IS FURTHER ORDERED** that an award of reasonable attorney fees and costs, pursuant to 28 U.S.C. § 1988, will be **DETERMINED** at a later date.

**SO ORDERED.**

s/ Stephen J. Murphy, III  
Stephen J. Murphy, III  
United States District Judge

Dated: April 2, 2024

**APPENDIX E — OPINION AND ORDER OF THE  
UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN, SOUTHERN  
DIVISION, DATED AUGUST 19, 2024**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Case No. 2:20-cv-10719

ALEXANDRE ANSARI,

*Plaintiff,*

v.

MOISES JIMENEZ,

*Defendant.*

**OPINION AND ORDER DENYING MOTION  
FOR A NEW TRIAL [180] AND DENYING  
RENEWED MOTION FOR JUDGMENT  
AS A MATTER OF LAW [181]**

A jury found that Defendant Moises Jimenez violated Plaintiff Alexandre Ansari's Fourteenth Amendment right to due process. ECF 162, PgID 3743-44. Before the jury returned a verdict, Defendant orally moved for judgment as a matter of law under Federal Rule of Civil Procedure Rule 50(a), and the Court denied the motion. ECF 178, PgID 5139. After the judgment, Defendant

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moved for a new trial, ECF 180, and renewed his motion for judgment as a matter of law under Rule 50(b). ECF 181. For the reasons below, the Court will deny the motions.

**BACKGROUND**

Plaintiff sued Defendant under 42 U.S.C. § 1983 for a wrongful conviction based on Defendant's alleged failure to turn over exculpatory evidence. ECF 1. A State court jury convicted Plaintiff of first-degree murder and two counts of assault with intent to commit murder. *Id.* at 5. The State court sentenced Plaintiff to life in prison without the possibility of parole. *Id.* Plaintiff's appeals failed. *Id.* at 6. Years later, the Wayne County Conviction Integrity Unit (CIU) reviewed Plaintiff's case and determined that Plaintiff was factually innocent of the crimes for which he was convicted. *Id.* at 6-8. The Wayne County Prosecutor agreed to fully exonerate Plaintiff for the convictions. *Id.* at 8. The State court accordingly vacated Plaintiff's convictions and sentence. ECF 75-1, PgID 1909.

Plaintiff then sued Defendant—a Detroit Police Department detective and the officer in charge of the investigation that led to Plaintiff's prosecution—under § 1983 for *Brady* violations. ECF 1, PgID 2-10. Specifically, Plaintiff alleged that Defendant did not disclose material exculpatory evidence in his possession in violation of Plaintiff's Fourteenth Amendment due process right. *Id.* at 14-15.

The parties litigated the case for four years. In that time, the Court resolved many motions that ranged

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in complexity from discovery disputes to dispositive motions to pretrial motions in limine. At the Court's encouragement, the parties attempted mediation three times. But the mediations failed because a supervisory lawyer for the City refused to negotiate in good faith. *See* ECF 139, PgID 3474. After a jury was empaneled, the case went to trial, but both parties requested a mistrial, which the Court granted. ECF 132. The Court then convened another jury and conducted an eight-day jury trial, during which the lawyers on both sides made their animosity for one another and their refusal to cooperate apparent. In contravention of the Court's orders and admonishments, the lawyers engaged in speaking objections in front of the jury, re-raised issues that the Court previously resolved, and argued over the use of exhibits and demonstratives despite the Court's many instructions to agree on trial tactics before trial.

In the end, the jury concluded that Defendant violated Plaintiff's Fourteenth Amendment right to due process and awarded Plaintiff a total of \$10 million in compensatory damages. ECF 162, PgID 3743-44. Before rendering a verdict, Defendant made an oral motion for judgment as a matter of law, ECF 173, PgID 4876, which the Court later denied, ECF 178. For many of the same reasons, the Court will deny Defendant's renewed motion for judgment as a matter of law. ECF 180. The Court will also deny Defendant's motion for a new trial.

*Appendix E***DISCUSSION****I. Renewed Motion for Judgment as a Matter of Law**

If the court denies a motion for judgment as a matter of law under Rule 50(a), the movant may renew the motion. Fed. R. Civ. P. 50(b). The court applies the same standard to a renewed motion as it does to the motion for judgment as a matter of law under Rule 50(a). “Judgment as a matter of law is appropriate ‘[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.’” *Burley v. Gagacki*, 729 F.3d 610, 621 (6th Cir. 2013) (alteration in original) (quoting Fed. R. Civ. P. 50(a)). A court should only grant judgment as a matter of law if “there is a complete absence of pleading or proof on an issue material to the cause of action or when no disputed issues of fact exist such that reasonable minds would not differ.” *Id.* (quotation omitted). Courts thus review the evidence “in the light most favorable to the non-moving party” and determine whether there was a “genuine issue of material fact for the jury.” *Gray v. Toshiba Am. Consumer Prods., Inc.*, 263 F.3d 595, 598 (6th Cir. 2001) (citation omitted).

Defendant raised three bases for granting judgment as a matter of law in the renewed motion: (1) the Court lacks subject matter jurisdiction under *Heck v. Humphrey*, 512 U.S. 477 (1994); (2) the alleged *Brady* evidence was not material and was turned over to the prosecutor; and (3) Defendant was entitled to qualified immunity. ECF

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181. The Court addressed the first two arguments in its order denying judgment as a matter of law, ECF 178, and in prior orders denying motions to dismiss, ECF 80, and for summary judgment, ECF 70. The Court also addressed the qualified immunity argument in its prior order denying summary judgment. ECF 70, PgID 1828. For the reasons explained in those prior orders—and summarized below—the Court will deny the motion on all three grounds.

**A. Subject Matter Jurisdiction**

Defendant insisted that the Court lacked subject matter jurisdiction under *Heck*. ECF 181, PgID 5195. In *Heck*, the Supreme Court held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486-87. Defendant argued that Plaintiff’s sentence was not properly overturned by the Michigan State court and that the Court declined to decide whether Plaintiff’s conviction was properly vacated. ECF 181, PgID 5195-96.

The Court ruled on the issue twice. *See* ECF 80; 178. In response to Defendant’s motion to dismiss, the Court conducted the two-part analysis laid out in *Heck* and

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found that the conviction was validly vacated by the State court. ECF 80, PgID 1976-78. Contrary to Defendant's accusation, the Court did not decline to rule on whether it had subject matter jurisdiction under *Heck*, but rather declined to sit in review of the State court's procedure for vacating the conviction. *Id.* The Court reaffirmed the reasoning in its denial of Defendant's oral motion for judgment as a matter of law. ECF 178, PgID 5135-36. To be clear, the Court will not determine whether the State followed its own procedure for vacating criminal convictions. Michigan vacated Defendant's conviction, which is enough to confer subject matter jurisdiction on this Court. The Court will continue to follow the reasoning set forth in the prior two orders, ECF 80, 178, and deny the renewed motion for judgment as a matter of law based on a lack of subject matter jurisdiction.

**B. *Brady* Evidence**

Defendant raised two separate issues regarding Plaintiff's *Brady* claim. First, Defendant argued that the purportedly withheld evidence was not material. ECF 181, PgID 5204. Second, Defendant argued that there was no question of fact as to whether Defendant provided the evidence to Prosecutor Erika Tusar. *Id.* at 5213. Again, the Court previously addressed these issues when it denied Defendant's motion for summary judgment and his oral motion for judgment as a matter of law. ECF 70, PgID 1824-29; ECF 178, PgID 5136-38.

Under *Brady*, prosecutors may not suppress evidence that "is material either to [the defendant's] guilt or . . .

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punishment.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). “[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. 667, 682 (1985). A “‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” *Id.*

To prevail on a *Brady* claim, Plaintiff must prove by a preponderance of the evidence the following three elements: (1) the evidence at issue must favor “the accused, either because it is exculpatory, or because it is impeaching”; (2) the “evidence must have been suppressed by the State, either willfully or inadvertently”; and (3) the criminal defendant must have suffered prejudice. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

Defendant first claimed that the purportedly withheld evidence was not material under *Brady* because the evidence was not favorable to Plaintiff. ECF 181, PgID 5204. Defendant argued that the evidence does not “exculpate Plaintiff but merely inculcates another individual who may have wanted to kill the victims.” *Id.* at 5204-05.

Defendant insisted that the evidence would not have served any purpose at Plaintiff’s criminal trial because the witnesses who could have been impeached—Rosalind Barley and Miguel Figueroa—did not testify at the criminal trial and the case there was not about motive but rather about identity. *Id.* at 5205. The Court addressed the issue in its order denying Defendant’s motion for summary

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judgment and found that the evidence would have been favorable and material evidence under *Brady*. ECF 70, PgID 1826; *see also* ECF 178, PgID 5137. The Court adopts and reaffirms that finding now. Had the evidence been turned over, the witnesses called during Plaintiff's criminal trial could have differed and testimony might have established Plaintiff's innocence. Evidence of motive could have been introduced and refuted. Defendant cannot rely on the criminal trial to state that the *Brady* evidence would have been irrelevant because it quite simply would have been a different case.

Defendant also argued that there was no question of fact as to whether Defendant provided the purportedly exculpatory evidence to the prosecutor. ECF 181, PgID 5213. Not so. Defendant relied on his own testimony at trial and information in Prosecutor Tusar's file to support the claim that Defendant turned the evidence over to the prosecutor. But, as the Court previously explained, ECF 70, PgID 1828, there was a genuine issue of fact as to whether Defendant turned the evidence over to the prosecutor before Plaintiff's criminal trial. Indeed, Prosecutor Tusar testified at trial that she did not receive any of the evidence at issue from Defendant before Plaintiff's criminal trial. ECF 171, PgID 4529-32, 4544, 4570, 4586-87. And the Court did not admit the prosecutor's 911-page file into evidence because there was no foundation laid as to when certain documents were placed in the file or who placed them in the file. *See* ECF 158 (order denying admissibility of Wayne County Prosecutor's Office file). The jury was therefore left to weigh the credibility of the witnesses and the evidence and decide whether Defendant turned

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the evidence over to Prosecutor Tusar before Plaintiff's trial. That question was not—and is not—an appropriate question for the Court to decide. *See United States v. Jackson*, 918 F.3d 467, 479 (6th Cir. 2019) (“[W]itness credibility is quintessentially a question of fact for the jury.”); *Rhinehimer v. U.S. Bancorp Investments, Inc.*, 787 F.3d 797, 804 (6th Cir. 2005) (“The evidence should not be weighed, and the credibility of the witnesses should not be questioned. The judgment of [the] court should not be substituted for that of the jury.”) (citation omitted).

The Court will deny Defendant's renewed motion for judgment as a matter of law because, for the third time, the Court finds that the evidence was material and there was an issue of fact as to whether Defendant turned the evidence over to the prosecutor before Plaintiff's trial.

**C. Qualified Immunity**

Last, Defendant argued that he was entitled to qualified immunity. ECF 181, PgID 5197. Although Defendant briefly mentioned qualified immunity in passing during the oral motion for judgment as a matter of law, the Court did not address qualified immunity in its order denying the oral motion, ECF 178, because Defendant did not argue in support of his entitlement to immunity. ECF 173, PgID 4889. The Court will, however, address the qualified immunity issue now because Defendant fully briefed the issue in the renewed motion. ECF 181, PgID 5197-04.

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“Qualified immunity is an affirmative defense” to a § 1983 claim. *English v. Dyke*, 23 F.3d 1086, 1089 (6th Cir. 1994) (citation omitted). It “‘shield[s]’ public officials from money-damages liability if ‘their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Citizens in Charge, Inc. v. Husted*, 810 F.3d 437, 440 (6th Cir. 2016) (alteration in original) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Once a defendant asserts a qualified immunity defense, “Plaintiff bears the burden of showing that [the] defendant[] [is] not entitled to qualified immunity.” *Maben v. Thelen*, 887 F.3d 252, 269 (6th Cir. 2018) (citing *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009)).

The Court must engage in a two-prong analysis and may ultimately decide which prong to analyze first. *Maben*, 887 F.3d at 269 (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)). First, the Court must “view[] the facts in the light most favorable to [] [Plaintiff]” and “determine whether the officer committed a constitutional violation.” *Barton v. Martin*, 949 F.3d 938, 947 (6th Cir. 2020) (citing *Burchett v. Kiefer*, 310 F.3d 937, 942 (6th Cir. 2002)). Second, “if there is a constitutional violation, the [C]ourt must determine whether that constitutional right was clearly established at the time of the incident.” *Id.* (citation omitted).

In its order denying Defendant’s motion for summary judgment, the Court ruled that it would not grant qualified immunity because there was a genuine issue of material fact regarding whether Defendant presented the evidence

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to the prosecutor. ECF 70, PgID 1828. Because there was a genuine issue of fact, the Court could not decide whether Defendant committed a constitutional violation and could not grant qualified immunity on the first element. *Id.* In his renewed motion, Defendant argued that the purportedly withheld evidence was not material evidence because it does not exculpate the Plaintiff. ECF 181, PgID 5203-04. Defendant contended that, because there was no material evidence, there was no constitutional violation, so Defendant should be granted qualified immunity. *See id.* at 5204-05. The Court, however, already ruled that the evidence in question was material under *Brady*. *See* ECF 178, PgID 5137-38. And Defendant was not entitled to qualified immunity.

After considering Defendant's arguments for the third time, the Court will once again deny Defendant's motion for judgment as a matter of law.

**II. Motion for a New Trial**

Defendant moved for a new trial under Federal Rule of Civil Procedure 59. Courts may grant a new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A). And "a new trial is warranted when a jury has reached a 'seriously erroneous result' as evidenced by . . . the trial being unfair to the moving party in some fashion, *i.e.*, the proceedings being influenced by prejudice or bias." *Holmes v. Massillon*, 78 F.3d 1041, 1045-46 (6th Cir. 1996) (citations omitted). Defendant presented numerous grounds that he believes warrant a new trial. The Court will address each argument in turn.

*Appendix E***A. Wayne County Prosecutor Office File**

First, Defendant argued that the Court should have admitted the WCPO file into evidence. ECF 180, PgID 5159. The Court entertained and considered extensive briefing and arguments regarding the admissibility of the file. *See* ECF 146, 150, 152, 154, 155, 157, 158. The Court issued an order denying the admissibility of the file but allowed the parties to make arguments and statements about the file and its contents—according to what evidence was presented at trial—during closing arguments. ECF 158. The Court incorporates its prior order, ECF 158, and maintains that the potential probative value was substantially outweighed by the danger of unfair prejudice, confusing the issues, and needlessly presenting cumulative evidence.

In his motion for a new trial, Defendant argued that the file should have been admitted as self-authenticating under Federal Rule of Evidence 902(11) and that Defendant was not offering anything in the file for the truth of the matter asserted so its contents cleared the hearsay hurdle. ECF 180, PgID 5159-5162. But Defendant ignored the basis for the Court's evidentiary ruling. Authentication and hearsay were not barriers to admissibility. *See* ECF 158. Unfair prejudice under Rule 403 was the basis for the Court's ruling. *Id.* Indeed, for the same reasons that admissibility would have been confusing at best and unfairly prejudicial at worst, there is no reason to believe that the file, if admitted, would have helped Defendant. The file contained 911 pages. Its contents were not contextualized, summarized, or

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organized by any witness during trial. Prosecutor Erika Tusar testified that she did not know the contents of the file, who had access to the file at what time, or when documents were placed in the file. And Defendant did not allege that there was a smoking gun in the file that proved Erika Tusar knew about the exonerating evidence *before* Plaintiff's criminal trial. The file only showed—and Prosecutor Tusar did not deny—that she became aware of the aforementioned evidence at some point. And the Court specifically instructed Defendant to present such evidence. ECF 157, PgID 3734-35 (“[T]o the extent the parties disagree about the timing and substance of the file’s contents, the parties should be prepared to call and question witnesses who can attest to the substantive content of the file.”). The Court’s decision to not admit the WCPO file was correct and does not warrant a new trial.

**B. Jury Verdict Form**

Second, Defendant argued that the Court erred by “not allowing Defendant to present his proffered Verdict Form to the jury.” ECF 180, PgID 5165. Defendant proposed a jury verdict form that asked the jurors “Did Defendant, Moises Jimenez, violate Plaintiff, Alexandre Ansari’s, Fourteenth Amendment right to due process by withholding exculpatory evidence from the prosecutor?” *Id.* at 5167. After considering the arguments from both parties, the Court allowed the jury verdict form to state “Did Defendant, Moises Jimenez, violate Plaintiff, Alexandre Ansari’s, Fourteenth Amendment right to due process?” ECF 162. The Court reasoned that Plaintiff’s complaint simply alleged that Defendant violated

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Plaintiff's Fourteenth Amendment right to due process and that the simple question posited by the allegation was the question on which the jury should deliberate. ECF 173, PgID 4946-47.

Defendant argued that he was prejudiced by the simpler verdict form because it "allowed the jury to consider other alleged actions and inactions by Defendant Jimenez during his investigation as potential constitutional violations." ECF 180, PgID 5167. For example, Defendant was concerned that the jury may have found Defendant liable based on the Jose Sandoval investigation. *Id.* But the verdict form specified that the jury needed to find that Defendant violated "**Plaintiff, Alexandre Ansari's**, Fourteenth Amendment right." ECF 162 (emphasis added). The verdict form therefore did not allow for the type of finding that Defendant feared—that is, a finding of liability based merely on Defendant's investigatory failures. Rather, the verdict form appropriately specified the finding the jury needed to make.<sup>1</sup>

**C. Jury Instructions: Attorney-Witness Communications**

Next, Defendant argued that the Court should have given several jury instructions that the Court declined to give. Defendant falsely claimed that the parties stipulated to an instruction regarding the propriety of attorney contact with a witness. ECF 180, PgID

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1. The case law that Defendant presented is inapposite. The cases address specificity of jury instructions, not verdict forms. *See* ECF 180, PgID 5164-65.

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5168-69. To the contrary, the parties disagreed about whether the instruction should be given and whether it should be accompanied by instructions on other Michigan professional conduct rules regarding lawyer communications with represented persons. ECF 173, PgID 4950-52; 4956. Because the conduct of the lawyers in the case was mixed between effective advocacy and needlessly unprofessional bickering and because the Court wanted the jury to focus on the credibility of witnesses, not the attorneys, the Court declined to give any instruction regarding attorney-witness contact. *See id.* at 4957-59; ECF 174, PgID 4972-74. The Court also ordered Plaintiff's counsel not to "tak[e] potshots or mak[e] statements about Krystal Crittendon's phone call with [Erika] Tusar." ECF 174, PgID 4972-74. Those rulings were not in error. Rather, it saved the jury from hearing irrelevant and unsavory arguments about lawyer professionalism.

**D. Jury Instructions: Eggshell Skull Plaintiff Rule**

Defendant also argued that the Court's jury instruction on the eggshell skull theory of liability prejudiced Defendant because it "allowed the jury to conclude that they did not have to consider the preexisting stress in [Plaintiff's] life before imprisonment." ECF 180, PgID 5170. Defendant's argument is confusing because the eggshell skull plaintiff instruction, in fact, informed the jury that Plaintiff's preexisting mental and emotional states were relevant, permissible considerations. As far as the legality of the instruction is concerned, the Court extensively researched the issue and distinguished the

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case before it from a case that Defendant relied on, *Virostek v. Liberty Twp. Police Dep't*, 14 Fed. App'x 493 (6th Cir. 2001). ECF 173, PgID 4937-39. In *Virostek*, the Sixth Circuit upheld omission of an eggshell skull plaintiff instruction because the plaintiff did not present evidence of a pre-existing emotional condition. 14 Fed. App'x at 507-08. In other words, the court reasoned that she “failed to establish that she was indeed ‘an eggshell plaintiff.’” *Id.* Here, unlike *Virostek*, Plaintiff offered evidence at trial of his preexisting mental and emotional distress. ECF 173, PgID 4938-39. He even called an expert witness, Dr. Shiener, to testify about Plaintiff’s condition prior to incarceration. *Id.* The Court’s instruction to the jury on the eggshell skull plaintiff rule was therefore not an error and does not warrant a new trial.

**E. Juror Questions**

Defendant claimed that the Court failed to advise the jury to not talk about the case or look up information about the case online before the Court released the jury on the first day of deliberations. ECF 180, PgID 5170. Not so. Just before the Court released the jurors for deliberations on the first day, the Court admonished the following:

When you start deliberating, do not talk to the jury officer, me, or anyone but each other about the case. During your deliberations you must not communicate with or provide any information to anyone by any means about the case. You may not use any electronic device or media such as a cell phone, smartphone

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or computer of any kind, the Internet, any Internet service, or any text or instant messaging services like Twitter or Snapchat, or any Internet chatroom, blog, website, or social networking website such as Facebook, Instagram, Tumbler, LinkedIn or YouTube to communicate to anyone any information about the case or to conduct any research about the case until I accept your verdict.

You may not use these electronic means to investigate or communicate about the case because it's important that you decide this case based solely on the evidence presented in the courtroom. Information on the Internet or available through social media might be wrong, incomplete or inaccurate. Information that you might see on the Internet or on social media has not been admitted into evidence and the parties have not had a chance to discuss it with you.

ECF 174, PgID 5101-02. Defendant's argument is plainly incorrect.

Additionally, Defendant argued that the Court erred when it "answered two jury questions without input from Plaintiff or Defense Counsel." ECF 180, PgID 5170-71. Defendant claimed that the questions should have been answered "in open court and in the presence of counsel for both sides." *Id.* (quoting *U.S. v. Combs*, 33 F.3d 667, 670 (6th Cir. 1994)). Defendant's assertion is incorrect and mischaracterizes the record. The Court called counsel for

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both sides into the courtroom, and the parties agreed to a response to the jurors' first three questions. *See* ECF 175, PgID 5112. First, the jury asked for all exhibits, which the parties agreed to provide. ECF 176, PgID 5121. The second and third questions asked about filing protocols and responsibilities in Wayne County criminal cases. *Id.* at 5122 (jury questions submitted on February 15, 2024 at 2:35pm). The parties agreed not to provide extra documents, evidence, or information to the parties that was not presented at trial. *See* ECF 175, PgID 5112. The Court therefore typed and printed a message to the jury in response to their second question which stated, "You must base your decision solely on the evidence in the courtroom as guided by the instructions on the law provided by the Court." ECF 176, PgID 5123 (typed response given to the jury on February 15, 2024 at 3:00 pm). The parties saw the message and agreed to it before it was delivered to the jury. ECF 175, PgID 5112. When the jury again asked questions about evidence outside the record, the Court referred the jury to the typed response that the parties agreed upon. *See id.*

Even if it was an error for the Court to respond to the questions without re-calling counsel, the error was entirely harmless because the response to the jury was legally correct and because counsel had already agreed that they would not provide evidence or information outside the record. *See, e.g., United States v. Combs*, 33 F.3d 667, 670 (6th Cir. 1994) (finding harmless error where the district court gave a legally correct, inconsequential response to a jury question without consulting the lawyers); *United States v. Bustamante*, 805 F.2d 201,

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203 (6th Cir. 1986) (finding that, even though the district court erred by answering a jury's question without convening the lawyers, the error was harmless and did "not automatically compel reversal of this otherwise well tried case").

Defendant did not suggest that he would have answered the juror's questions any differently than the Court. *See* ECF 180. And Defendant did not suggest or argue that the Court's response to the jury was prejudicial. *See id.* In fact, no prejudice could have occurred because, even if the parties changed their minds and decided to respond substantively to the jury's questions about evidence outside the record, the questions were not germane to the question of liability. The jury asked where each exhibit originated (i.e., from a discovery or a prosecutor file), why two exhibits (numbers 26 and 38) were identical, and what "DEFS RESP to 3rd RFP" meant. ECF 176, PgID 5124-26. Because the responses were not "confusing or misleading to the jury or potentially harmful to the defendant," the Court will not grant a new trial. *Bustamante*, 805 F.2d at 203.

**F. Closing Argument Conduct**

Next, Defendant argued that Plaintiff's counsel "engaged in improper conduct and argument during [c]losing [a]rgument which denied Defendant a fair trial." ECF 180, PgID 5171. When deciding whether misconduct or improper argument merits a new trial, "a court must examine on a case-by-case basis, the totality of the circumstances, including the nature of the comments,

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their frequency, their possible relevancy to the real issues before the jury, the manner in which the parties and the court treated the comments, the strength of the case (e.g. whether it is a close case), and the verdict itself.” *Cleveland v. Peter Kiewit Sons’ Co.*, 624 F.2d 749, 756 (6th Cir. 1980). “[W]here there is a reasonable probability that the verdict of a jury has been influenced by [improper] conduct, it should be set aside.” *Id.*

Defendant took issue with Plaintiff’s counsel’s (1) PowerPoint which showed a photograph of headstones in Arlington National Cemetery, (2) references to Plaintiff’s counsel’s veteran father, (3) appeals to patriotism by speaking about soldiers who fought and died to protect constitutional rights, (4) physical display of an American flag, and (5) tears while he spoke about his police officer son. *Id.* at 5171-72. Plaintiff argued that these references and emotional displays were “highly prejudicial and denied Defendant a fair trial.” *Id.* at 5172. Defendant objected at trial to these remarks. *See, e.g.* ECF 174, PgID 5009, 5078.

Although Plaintiff’s closing argument pushed the envelope, the references to soldiers and to Plaintiff’s counsel’s family were still not unfairly prejudicial; they were anecdotes to persuasively frame the constitutional issue in Plaintiff’s favor—which is the purpose of closing remarks. And any risk of prejudice was mitigated by the Court’s jury instruction. The Court instructed the jury that “the evidence from which you are to find the facts consists of the following: (1) the testimony of the witnesses; (2) documents and other things that were received in evidence; and (3) any facts that are stipulated,

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that is, formally agreed to by the parties.” ECF 174, PgID 5088 (alterations omitted). And the Court clarified that “[s]tatements, arguments and questions of the lawyers for the parties in this case” are not evidence. *Id.* The Court then explained that the jury must render a “decision based only on the evidence that you saw and heard here in court.” *Id.* at 5089. The jury was therefore instructed not to consider Plaintiff’s counsel’s props or familial patriotism in their deliberations on substantive factual issues. The risk of prejudice was mitigated by the Court’s jury instructions.

Moreover, “the verdict itself” weighed against a finding that a “reasonable probability that the verdict of a jury has been influenced by improper conduct” exists. *Cleveland*, 624 F.2d at 756. Plaintiff’s counsel asked for \$26,195,000 in compensatory damages, ECF 174, PgID 5013, and an equal amount, \$26,195,000, in punitive damages, *id.* at 5015. The jury awarded \$10,000,000 in compensatory damages and, notably, no punitive damages. ECF 162, PgID 3744. Plaintiff’s alleged prejudicial arguments failed to inflame the punitive passions of the jury and garner an unreasonably large award.

In sum, parties are afforded some discretion to present their case to the jury in a manner they deem persuasive; that is the purpose of closing arguments. Although he toed the line, Plaintiff’s counsel did not cross the line between persuasion and prejudicial argument. And because a reasonable probability does not exist that the verdict was influenced by improper conduct, the Court will not grant a new trial.

*Appendix E***G. Batson Challenge**

Defendant also argued that the Court should have denied Plaintiff's *Batson* challenge "because Defendant provided a race-neutral reason for his proposed strike." ECF 180, PgID 5172. Plaintiff objected to Defendant's preliminary strike of Juror Number 5, an African-American male. ECF 168, PgID 3901. Defendant allegedly believed he recognized Juror Number 5, but he did not state how or from where he knew the juror. *Id.* at 3903. Defense counsel argued that Defendant may have encountered Juror Number 5 at some point during Defendant's career as a police officer. *Id.* at 3903-04.

In *Batson v. Kentucky*, the Supreme Court held that the Equal Protection Clause of the 14th Amendment prohibits prosecutors from challenging potential jurors solely on account of their race. 476 U.S. 79, 86-7 (1986). The Court extended *Batson* to civil cases in *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 628 (1991). As an initial matter, Plaintiff established a prima facie case for a *Batson* challenge because Juror Number 5 was a member of the same cognizable race group as Plaintiff—that is, both were African Americans—and there were few other African Americans on the jury panel from which the venire would be selected. ECF 168, PgID 3909; *see Batson*, 476 U.S. at 95 ("a [party] may make a prima facie showing of purposeful race discrimination in selection of the venire by relying solely on the facts concerning its selection in his case") (alterations omitted).

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Defendant provided a race-neutral explanation for the preliminary strike. ECF 168, PgID 3909-10; *see Batson*, 476 U.S. at 97 (after a prima facie showing, the burden shifts to the other party to provide a neutral explanation for the challenge). Defendant claimed he wanted to strike Juror Number 5 because Defendant believed he recognized the juror. Even so, the Court ultimately determined that Defendant's reason was pretextual because it was not credible. ECF 168, PgID 3910-11; *see Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003) (the trial court must determine whether the race-neutral explanation is credible). "Credibility can be measured by, among other factors, the [party's] demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Miller-El*, 537 U.S. at 339.

On the one hand, Defendant was not sure he knew who Juror Number 5 was. *See* ECF 168, PgID 3903-04. Juror Number 5, on the other hand, answered under oath that he never had any involvement in the criminal justice system, that he had no biases against the police that would prejudice him in this case, and that he did not recognize either party in the case. ECF 168, PgID 3910-11. The Court explained that "it's too convenient for prosecutors or defense attorneys or plaintiff's attorneys in cases like this to say that . . . 'I may have known the juror' . . . [I]t's a very bare and unsupported ground on which to have a person not serve." *Id.* at 3911. The Court's decision to not strike Juror Number 5 was well-reasoned and not an error. *See id.* at 3912.

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Alternatively, Defendant asserted that the Court should have allowed him to strike another juror when the Court disallowed Defendant to strike Juror Number 5. ECF 180, PgID 5173-74. But the Court may only grant a new trial “for any reason for which a new trial has heretofore been granted in an action at law in federal court.” Fed. R. Civ. P. 59(a)(1)(A). Defendant provided no authority to support his assertion that he was entitled to another preemptory strike and that denial of it constitutes plain error and warrants a new trial. *See* ECF 180, PgID 5173-74. And the Court did not find a case to support Defendant’s argument. The Court will not grant a new trial on unsupported grounds.

**H. Erika Tusar Memorandum**

Last, Defendant argued that he is entitled to a new trial because the Court should have, but did not, admit the entire memorandum prepared by Prosecutor Tusar. ECF 180, PgID 5174. The admissibility of the Tusar memo was the subject of a motion in limine. ECF 91. As with most of Defendant’s post-verdict arguments, the question was briefed and argued extensively. *See id.*; ECF 114; ECF 130. And the Court ruled that the memo contained “(1) highly relevant information that is probative of whether Prosecutor Tusar knew of the allegedly withheld *Brady* and *Giglio* evidence and (2) irrelevant evidence about murder cases and criminal investigations that are highly prejudicial and not at issue in the present trial.” ECF 130, PgID 2929. The Court therefore admitted the former and ordered the parties to redact the later. *Id.* at 2929-30.

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Defendant relied on the Rule of Completeness, Federal Rule of Evidence 106, to argue that the Court should have admitted the entire Tusar memo, unredacted. ECF 180, PgID 5175. But the Rule permits—and does not require or guarantee—the introduction of “any other statement [] **that in fairness** ought to be considered at the same time” as the objected-to evidence. Fed. R. Evid. 106 (emphasis added). The Rule does not supersede Rule 403. *United States v. Dotson*, 715 F.3d 576, 582 (6th Cir. 2013). And the Court explained on many occasions that evidence of other criminal investigations involving Plaintiff were more prejudicial than probative. *See, e.g.*, ECF 130, PgID 2929. The Court did not err by admitting only part of the Tusar memo. The Court will not grant a new trial on that basis.

**CONCLUSION**

Defendant failed to demonstrate that the jury’s verdict in Plaintiff’s favor was against the manifest weight of the evidence. The Court will not issue judgment as a matter of law or order a new trial. The jury’s verdict stands.

**WHEREFORE**, it is hereby **ORDERED** that Defendant’s motion for a new trial [180] is **DENIED**.

**IT IS FURTHER ORDERED** that Defendant’s renewed motion for judgment as a matter of law [181] is **DENIED**.

**SO ORDERED.**

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s/ Stephen J. Murphy, III  
Stephen J. Murphy, III  
United States District Judge

Dated: August 19, 2024

**APPENDIX F — RELEVANT STATUTORY AND  
CONSTITUTIONAL PROVISION INVOLVED**

42 U.S.C. § 1983.

Civil action for deprivation of rights [Statutory Text &  
Notes of Decisions subdivisions I to IX]

Effective: October 19, 1996

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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*Appendix F*

U.S.C. Const. Amend. XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Appointment of Representation; Disqualification of Officers; Public Debt; Enforcement

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

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**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.