IN THE IOWA DISTRICT COURT FOR MARION COUNTY

BILLY DEAN CARTER, BILL G. CARTER AND ESTATE OF SHIRLEY CARTER by and through BILL G. CARTER, Executor, Plaintiffs/Respondents, vs. JASON CARTER, Defendant/Petitioner.	LACV095809 **BRIEF IN SUPPORT OF PETITION FOR RELIEF AND MOTION TO VACATE JUDGMENT** **OR, IN THE ALTERNATIVE, FOR A NEW TRIAL**

Defendant/Petitioner Jason Carter ("Defendant"), in support of his Petition for Relief, states:

I. TABLE OF CONTENTS

II. INTRODUCTION

In December 2017, this Court presided over a civil trial wherein Plaintiff/Respondent Bill G. Carter ("Plaintiff(s)" or "Bill") accused Jason Carter ("Defendant" or "Jason") of shooting and killing Jason's mother, Shirley Carter. This trial was unusual for obvious reasons – a father accused his son of murdering his mother. This trial was unusual for a less obvious reason – a civil murder trial occurred before the State charged Jason with murder. The unique posture created unusual problems.

First, a civil trial with none of the protections of a criminal trial lead to a public "guilty[1]" finding. Additionally, that civil trial was accompanied by a media campaign demanding the State file charges against Defendant.

Second, because the criminal investigation into Shirley Carter's murder was ongoing and "active" before and during the civil trial, the State was not required to give to Defendant exculpatory evidence showing Jason did not murder Shirley Carter. If the civil trial had been criminal in nature, failure by the State to provide exculpatory evidence would have been an obvious violation of state and federal law, and of Jason's constitutional rights. *See Brady v. Maryland*, 373 U.S. 83 (1963).

[1]The civil burden of proof of "preponderance of the evidence" is significantly lower than the "beyond a reasonable doubt" standard required in criminal proceedings. This allowed a civil jury to find Defendant responsible for the murder of his mother without having to adhere to the standard that would have protected him if this trial had been criminal in nature. Now the defendant is in criminal proceedings with a great deal of publicity about a jury finding him responsible for the same alleged acts.

Third, given the nature of the exculpatory evidence which Defendant now possesses, it is clear the State provided evidence that made Jason appear guilty and withheld evidence that showed his innocence. Fortunately for Jason, federal and state law provide protections requiring the State to divulge all exculpatory evidence.

Defendant now has exculpatory evidence, which is the subject of this Petition for Relief, and which is detailed in Part V.

III. PROCEDURAL HISTORY

On December 15, 2017, the jury entered a verdict for Plaintiffs, upon which the Court entered judgment. On December 18, 2017, the State arrested Defendant and charged him with murder in the first degree. (App. at 1 (Ex. A, Criminal Complaint). Criminal proceedings, and the exchange of discovery therein, are ongoing.

One major issue in the civil trial was whether this Court would permit any of the State's files from its investigation into the murder of Shirley Carter to be entered and used as evidence. This issue presented in the context of Plaintiffs' subpoenas to DCI and law enforcement officials for substantial documentation from the criminal investigation file. Defendant moved to quash Plaintiffs' subpoenas. The Court denied Defendant's motion to quash the subpoenas. The Iowa Supreme Court denied interlocutory appeal. Defendant moved for continuance of the civil trial until law enforcement made a final decision as to whether or not the State would criminally prosecute Defendant for the murder of Shirley Carter, i.e., until the ongoing homicide investigation was closed. (App. at 8 (Ex. B, Dec. 5 2017 Trial Transcript at 14:1-5)). Defendant's request for a continuance was denied and trial proceeded.

Plaintiffs and DCI reached an agreement regarding which law enforcement witnesses the Court would allow to be questioned at trial. The scope of questioning that the Court permitted

was restrictive at DCI's insistence. This issue was discussed at length in a hearing on December 5, 2017. (App. at 4 (Ex. B, Dec. 5 2017 Trial Transcript at 8:8-9:5)). DCI's counsel clearly stated DCI's position in the hearing that law enforcement witnesses should not be permitted to testify as to information outside the reports DCI agreed to provide to Plaintiffs. (App. at 5 (*Id.* at 9:10-14)). Attorney Steven Wandro reiterated Defendant's position that no law enforcement official should be permitted to testify because Defendant's counsel had not been party to any of the agreements between DCI and Plaintiffs and because Defendant did not have full access to all of DCI's records, stating that they "may contain exculpatory evidence." (App. at 7 (*Id.* at 13:5-14)). The Court held that if it was DCI's position that information not covered by Plaintiffs' agreement with DCI should not be revealed, it would not be revealed. (App. at 12-13 (*Id.* at 28:3-9; 29:21-25)).

Once it became clear that law enforcement officials would be permitted to testify, Defendant's counsel met with law enforcement officials prior to the civil trial in an effort to determine what their trial testimony would contain. DCI's counsel instructed Defendant's counsel that they were not to ask questions that went beyond the scope of the reports DCI and Plaintiffs had agreed to submit as evidence. (App. at 10-11 (*Id.* at 20:1-5; 21:16-21)). DCI's counsel also explicitly informed the testifying law enforcement officers that they were only to testify as to the contents of the reports DCI had provided pursuant to its agreement with Plaintiffs. (App. at 12 (Id. at 28:15-20)).

IV. LAW AND STANDARD OF REVIEW

Upon timely petition and notice under Iowa R. Civ. P. 1.1013, the court may vacate a final judgment or order on the grounds of "[m]aterial evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not

discovered within the time for moving for new trial under rule 1.1004." Iowa R. Civ. P.1.1012(6). Iowa Rules of Civil Procedure 1.1012 and 1.1013 provide for vacation or modification of judgments and orders or the grant of a new trial. Rule 1.1012 specifies the grounds and 1.1013 sets forth the procedure. The trial court has broad but not unlimited discretion in passing upon a motion to vacate or modify judgment; however, the trial court's determination must have some support in the record. *Iowa-Illinois Gas & Elec. Co. v. Black & Veatch*, 497 N.W.2d 821, 828 (Iowa 1993); *Claeys v. Moldenschardt*, 148 N.W.2d 479 (Iowa 1967); *Oldis v. John Deere Waterloo Tractor Works, Inc.*, 147 N.W.2d 200 (Iowa 1966).

There is a dearth of case law on motions to vacate judgment based on newly discovered evidence because they are historically unusual. There is, however, substantial case law on motions for a new trial based on newly discovered evidence. Defendant requests this Court vacate its judgment, and only in the alternative requests a new trial.

The standard for both vacation of judgment and a new trial are included in Iowa R. Civ. P. 1.1012. This rule requires the movant to show (1) the evidence is newly discovered and could not, in the exercise of due diligence, have been discovered prior to the conclusion of the trial; (2) the evidence is material and not merely cumulative or impeaching; and (3) the evidence will probably change the result if a new trial is granted. *In re D.W.*, 385 N.W.2d 570, 583 (Iowa 1986). Under Iowa law, "newly discovered evidence" sufficient to merit a new trial (or in this case, vacation of judgment) is "evidence which existed at the time of trial, but which, for excusable reasons, the party was unable to produce at the time." *Benson v. Richardson*, 537 N.W.2d 748, 762-63 (Iowa 1995). Iowa law recognizes an exception to the requirement that the newly discovered evidence have been in existence at the time of trial in extraordinary cases in which "utter failure of justice will unequivocally result" if the new evidence is not considered or

where it is no longer just or equitable to enforce the prior judgment. *Mulkins v. Bd. of Sup'rs of Page County*, 330 N.W.2d 258, 262 (Iowa 1983); *Wilkes v. Iowa State Highway Comm'n*, 186 N.W.2d 604, 607 (Iowa 1971).

"If the proffered evidence presents material facts germane to the issue in controversy, which, considered with the evidence presented on the trial, might cause a jury to take the other view, then the motion should be sustained." *Henderson v. Edwards*, 183 N.W. 583, 584 (Iowa 1921). The Iowa Supreme Court has relied on Restatement (Second) of Judgments section 73 in providing post-judgment relief, which provides that a judgment may be set aside if "[t]here has been such a substantial change in the circumstances that giving continued effect to the judgment is unjust." *Mulkins*, 330 N.W.2d at 262. The exculpatory evidence Defendant now possesses represents such a substantial change in circumstances. Giving continued effect to the judgment given this new evidence would be unjust and an utter failure of justice.

V. NEWLY DISCOVERED EVIDENCE

The State began turning over discovery documents to Defendant in the course of criminal proceedings in February 2018. (App. at 16-17 (Ex. C, Affidavit of Grant Woodard)). The discovery was substantial, including hundreds of documents and many hours of audio recordings, and took months for Defendant's counsel to thoroughly review. (*Id.*) The newly discovered evidence stemming from these materials is broken into several categories below: (A) Exculpatory Evidence in Existence at the Time of the Civil Trial Indicating John and/or Joel Followill Murdered Shirley Carter; (B) Exculpatory Evidence Involving Claims John and Joel Followill Murdered Shirley Carter That Arose After the Civil Verdict; (C) Additional Exculpatory Evidence Tending to Support Claims John and Joel Followill Shot and Killed Shirley Carter; (D) Exculpatory Evidence Indicating the Potential Involvement of Michael

McDonald in Shirley Carter's Death; and (E) Newly Discovered Evidence That Is Inconsistent with the Evidence Produced at Trial.

A. Exculpatory Evidence in Existence at the Time of the Civil Trial Indicating John and/or Joel Followill Murdered Shirley Carter.

The State withheld the following information in its possession at the time of trial, and, due to the Court denying Defendant's motion to continue the civil trial until the State had completed its investigation into Shirley Carter's murder, and the State withholding exculpatory evidence, Defendant could not have discovered it through due diligence. If Defendant had possessed this exculpatory evidence, Defendant would have called multiple witnesses in his defense. Even if they refused to testify, he would have introduced reports and audio recordings as evidence. Knowledge of this evidence may have yielded additional evidence supporting Defendant's innocence. Taken individually or as a whole, the following evidence is material. It all supports Defendant's affirmative defense – someone other than Defendant shot and killed Shirley Carter. Its presentation at trial likely would have changed the outcome. The evidence provides an internally consistent narrative showing who killed Shirley Carter and shows it was not Jason Carter.

i. Interview Report of Robert Joseph Sedlock on September 2, 2015 (Exhibit D)

On September 2, 2015, Special Agent in Charge Mark Ludwick ("Ludwick") was contacted by a law enforcement officer who informed him an inmate known as Robert "Joe" Sedlock ("Sedlock") wanted to speak with a police officer. (App. at 18 (Ex. D. at 1)). Ludwick and State Patrol Trooper Thorup conducted an interview at the Marion County Jail. (*Id.*) Ludwick wrote an interview report on September 3, 2015. (*Id.*) The interview was audio recorded, and the audio recording is submitted as Exhibit E. The relevant information from the interview report includes the following:

SEDLOCK advised that he received information directly from JOEL FOLLOWELL.[2] He advised that JOEL FOLLOWELL told him on two different occasions that JOEL FOLLOWELL, his brother JOHN FOLLOWELL, and MATT KAMMERICK were in the process of burglarizing a home when the female home owner (SHIRLEY CARTER) spooked them and JOHN FOLLOWELL shot her twice. He advised that he was offered by MATT KAMMERICK to purchase the .22 caliber rifle that he believes is the murder weapon.

SEDLOCK advised that JOHN is the shooter. He advised that a period of time ago, JOHN and JOEL got into a fight over fear that each would rat each other out on the homicide act. He advised that they got into a fight where JOEL assaulted JOHN FOLLOWELL with a baseball bat. . . .

SEDLOCK advised that he assumed that both FOLLOWELL brothers were questioned by law enforcement regarding the homicide.

SEDLOCK advised that MATT is the scout for the residences and decides on which place to rob. He advised that they have completed other burglaries, but they usually do them at night. He advised that they are looking for electronics, guns, and drugs. He advised they like the pills (narcotics) and heroin.

SEDLOCK advised that CALLIE SHINN may know something about the homicide. He advised that she dates MATT. He advised that CALLIE will start to talk about the homicide, but then stops talking, "clams up" and then won't talk about it anymore.

SEDLOCK advised that the FOLLOWELL boys don't have cell phones typically. He advised that JOEL lives in Harvey and last he knew JOHN was living with CHRIS BRAISE. He also advised that he spoke with JEFF SCRADER since he has been in jail and that JEFF was upset about the murder due to it was close to his parents' home. He advised that JEFF SCRADER was questioned upset with JOEL FOLLOWELL because he had recently stayed with JOEL FOLLOWELL and he shared with JOEL FOLLOWELL how upset he was about the homicide. He further advised that he was upset that JOEL FOLLOWELL didn't tell him about the homicide.

SEDLOCK admitted that he heard that MATT had shot a person twice, but didn't know if it was a man or woman, and further stated he didn't know if they lived or died.

SEDLOCK advised that he has been to Knoxville and knows the CARTER family. He advised that he assumes the burglaries are being conducted at night. He advised that MATT thinks he does.

[2] Agent Ludwick repeatedly misspells the surname "Followill" as "Followell." Defendant will leave in the misspellings to accurately reflect the content of the report, but in portions of the brief that are not reports, Defendant will correctly spell the Followill surname.

(App. at 18-20 (Ex. D)).

This interview is obviously relevant evidence showing that Joel Followill confessed he and two other men were not only directly involved in the shooting death of Shirley Carter, but one of them pulled the trigger. Sedlock's statements match other witness statements described below – all provide virtually the same account – Joel and John Followill and another individual burglarized the Carter home and shot Shirley Carter. As shown below, the evidence against John and Joel Followill is greater than the evidence against Jason Carter. If Defendant knew multiple witnesses had pointed at the Followill brothers and described their involvement in the detail provided above and in other evidence, Defendant would have introduced all evidence supporting that narrative at trial. In all likelihood, the jury would have seen that Plaintiffs' evidence did not constitute a preponderance of the evidence.

ii. Audio Recording of September 2, 2015 Interview with Sedlock (Exhibit E).

The audio recording of the September 2, 2015 interview with Sedlock contains additional information that in all likelihood would have changed the outcome of the trial. It is attached as Exhibit E. For a more complete account of Sedlock's September 2, 2015 interview, please refer to the audio recording. This recording is material and relevant for the same reasons as the written report.

iii. Interview Report of Sedlock on October 14, 2015 (Exhibit F)

On October 14, 2015, Detective Reed Kious interviewed Sedlock at his home. (App. at 22-25 (Ex. F, Oct. 14 2015 Sedlock Interview)). The report states:

> Mr. Sedlock stated he talked to someone who stated "that women seen him." Mr. Sedlock would not reveal his source. He stated he didn't believe Joel Followill "pulled the trigger." Mr. Sedlock briefly mentioned the name "Mike," but changed it to Matt Kamerick as pulling the trigger. He also named Jon Followill as a participant in the crime.

. . . .

I asked Mr. Sedlock where he first heard of the aforementioned person's involvement and from whom. He stated he "heard about it before it happened," that "they were planning this big heist" for guns, drugs, and pills. Mr. Sedlock further explained that pills are mainly what Joel, Jon, and Matt steal; especially dilaudid. Mr. Sedlock had trouble remembering Matt Kamerick's last name, but stated he now lived in Pella and liked to brag about his crimes. Mr. Sedlock stated Joel was "freaked out" about the crime. . . .

Mr. Sedlock stated he believed he could get the "gun" from Joel. Mr. Sedlock further stated he thought Matt Kamerick had the firearm. He stated they had a .22 rifle that used to be Roger Shinn's and that Matt was the one who "robbed all the guns" from Mr. Shinn and "everything else they're trying to blame on me." Mr. Sedlock stated Rory Pearson supposedly went to Colorado and may have knowledge of the crime; he thought Rory might talk if questioned. Mr. Sedlock again stated he thought he could get Joel or Matt to tell him where the "gun" was.

. . . .

Mr. Sedlock again stated it was a planned out burglary; this time he added he thought they had "hit another one" or had previously stolen from her (Mrs. Carter). Mr. Sedlock stated "they got in this house, they got in this room," he stated the men then looked through the drawers, the door to the room shut so "she couldn't get in." He stated they then exited through the window to go around. He then stated it "went bad" and "she seen it." Mr. Sedlock then stops talking about the events at the house and references an event where Joel Followill assaulted his brother, Jon with a baseball bat.

This event is known to law enforcement from varying sources, but Joel and Jon did not report it as they are adverse to law enforcement. . . . Mr. Sedlock stated on the night Joel hit Jon with the bat, Joel came over after the assault and spoke with Mr. Sedlock. Mr. Sedlock stated Joel said he thought Jon was going to come after him and then proceeded to tell Mr. Sedlock about the murder. Mr. Sedlock stated that Joel didn't "tell me, tell me," but that Mr. Sedlock inferred the nature of the confession. . . .

. . . . I then asked if he stated they shot her; Mr. Sedlock reiterated Joel said she saw them, saw her face, and they had to do something; that she would have been able to identify Joel. Mr. Sedlock stated he then said something to the effect of they didn't have to shoot her twice.

I then asked what they used, Mr. Sedlock said a "22", a "rifle" is what Joel told him. Mr. Sedlock then stated he didn't know where he got the "22," but he remembered Joel said it was a "rifle," but not what caliber. . . . I again asked if Joel

> had stated what type of weapon she was shot with. Mr. Sedlock again stated the only identifier given was it was a "rifle." . . .
>
> . . . . Mr. Sedlock stated he could "probably" bring me a confession, he also stated that he knew it was getting to Joel and that Mr. Sedlock knew Jon was already in jail.

(App. at 22-25 (Ex. F, Oct. 14 2015 Sedlock Interview)).

This interview indicates that the burglars had gone through drawers, which is consistent with the crime scene. The description of the baseball bat and the fight between the Followill brothers is corroborated through other witness interviews. Sedlock correctly identifies a rifle was used to shoot Shirley Carter, and he also correctly states that Shirley Carter was shot twice, a fact that only someone who had either seen her be shot or had seen her body would know. The evidence from this report in the form of witness testimony would have led the jury to a different conclusion in the civil trial.

iv. Interview of Sedlock on October 15, 2015 (Exhibit G)

On October 15, 2015, Detective Kious again interviewed Sedlock, this time with Ludwick present. (App. at 25-26 (Ex. G, Oct. 15 2015 Sedlock Interview)). The following relevant information was contained in the report:

> Mr. Sedlock also stated he now didn't think it was a .22 rifle [used in the homicide of Shirley Carter] but Jason Beaman was his source of information on the rifle. . . . Mr. Sedlock stated he had an additional source, a female, but wouldn't name her. I believe this is Callie Shinn based on other information received.
>
> . . . .
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> Mr. Sedlock also stated he didn't think there were many burglaries Mr. [Joel] Followill got away with and that Mr. Followill's father killed someone in a burglary gone wrong. Mr. Sedlock stated Jon would be uncooperative. Mr. Sedlock referred back to the assault between Joel and Jon; he stated Joel was in the car and Jon punched out the windows as he thought Joel was going to go to the cops. He again stated Joel grabbed the bat and beat Jon.

> Mr. Sedlock then referenced the "breakdown" Joel had with him, he also stated Joel had a break down with "a girl" (believed to be Callie Shinn). Mr. Sedlock stated she was in Knoxville and he would call her to have her talk to us. Mr. Sedlock stated Joel told her the same things he told him. Mr. Sedlock said Joel was inside with another male and that Jon was outside. He states the vehicle used was possibly a white SUV that had previously been stolen by the sister of Mr. Sedlock's female source. . . .
>
> Mr. Sedlock stated Rory Person might know some information on this as well. Mr. Sedlock stated he thought the weapon was hidden . . .

(App. at 25-26 (Ex. G, Oct. 15 2015 Sedlock Interview)).

This evidence is material for similar reasons as the other Sedlock interviews. It presents additional information that corroborates known information about Shirley Carter's murder and information that implicates the Followills. First, Sedlock specifies the reason John and Joel Followill got into a physical altercation that night is because John feared Joel was going to go to the police to report the murder. Second, Sedlock provides evidence Joel Followill confessed to the murder to yet another individual, Callie Shinn. According to the interviews Defendant received from the State thus far in discovery, law enforcement never interviewed Callie Shinn, despite the fact multiple witnesses alleged she has direct knowledge regarding Shirley Carter's murder. Finally, witness reports corroborate Sedlock's statement the vehicle used in the murder was "possibly a white SUV." Such reports identify a suspicious white SUV seen in the vicinity of the Carter home the week of Shirley Carter's murder. *See* Exs. O, P, Q, and S. As with the other Sedlock interviews, this interview was never disclosed during the civil trial and is newly discovered evidence which would have changed the outcome of the civil trial.

v. Interview of Mitch Parker on October 16, 2015 (Exhibit H).

On October 16, 2015, Detective Reed Kious interviewed Mitch Parker ("Parker"). (App. at 27-28 (Ex. H, Parker Interview)). The relevant portions of the interview include:

> Mr. Parker stated he wanted to talk to me about Joel Followill, Jon Followill, and Jeremiah Laird. Mr. Parker stated Mr. Laird is a relative of the Carter's and that he knew the Carter's had pain pills and phentanol patches at the house, that Jon Followill "pulled the trigger" and that the reason "that lady" was killed was for the medication.
>
> Mr. Parker said he learned of this information from Joe Sedlock. Mr. Parker stated he was told Jon shot her because he was not getting his way, that he believed the medication was coming in the mail, but that it wasn't present on the date of the burglary. Mr. Parker added he heard something about a pond on the property, specifically that before they shot her the third time they took her to the pond to drown her in order to obtain the information. Mr. Parker stated he also heard this from Mr. Sedlock. Mr. Parker was very upset telling me this information and stated that it weighed heavily on him. Mr. Parker stated he didn't believe Mr. Sedlock knew where the murder weapon was.
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> . . . .
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> . . . Mr. Parker stated he and Mr. Sedlock held a long conversation while riding in a car driven by Amber Shinn. During this conversation, Mr. Sedlock stated he was interviewed at the Marion County Jail by law enforcement referencing the homicide that he was leading law enforcement on, and that law enforcement should have questioned Joel, Jon, and Jeremiah. . . .
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> Mr. Parker stated after some time, Joel was asleep on the couch and woke up in distress. Mr. Parker stated he heard Joel exclaim, "Jon, she won't quit screaming; Jon, she won't quit screaming." Mr. Parker stated Christine McCombs and Jason Wesley were present at this time, that Joel and Jordan Durham were in the bedroom, and that a Dillon were there when the gun was "out." . . .
>
> I asked if Mr. Sedlock would have changed the names, Mr. Parker stated Mr. Sedlock wanted Mr. Parker to trust him and thought he was telling him the truth. . . .
>
> I asked why would the Followill's be involved in shooting someone if they had been caught committing crimes before without resulting to violence, he stated he didn't know but didn't like the Followills or think they were good people. Mr. Parker stated Joel bragged about assaulting Jon with a baseball bat over money. Mr. Parker stated this assault occurred at Brandon Nilus's home. Mr. Parker stated Jon broke out Joel's windows in retaliation for the assault.

(App. at 27-28 (Ex. H, Parker Interview)).

This interview is material for reasons similar to Sedlock's interviews. Defendant was unaware Parker had knowledge of the crime and would have called him as a witness. Some of

Parker's knowledge comes from Sedlock (which does not necessarily make it less probative), but the fact Parker heard Joel having nightmares about a woman who "won't quit screaming" shortly after the murder of Shirley Carter is probative, especially given the other witness reports stating the reason the Followills shot Shirley Carter is because she was surprised by their presence and would not stop screaming. (App. at 38-41 (Ex. L, Wendy Bonnett Interview)).

vi. Interview of Danielle Daniels on October 24, 2015 (Exhibit I)

On October 24, 2015, Ludwick interviewed Danielle Daniels. (App. at 29-31 (Ex. I, Danielle Daniels Interview)). The relevant portions of the interview report include:

> DANIELS advised she didn't know any details about the murder of SHIRLEY CARTER. She advised that last week her "baby daddy," RANDY VANCENBOCK, asked her if she had heard anything about JOEL FOLLOWELL being involved in a homicide in the Marion County area. He told her that he heard a rumor but couldn't believe that JOEL FOLLOWELL could be capable of murder.
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> She advised that she did hear that JOEL FOLLOWELL helped clean up blood at a crime scene but didn't know anything ore about that and that it was a rumor she had heard from other individuals involved in the drug trade.
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> DANIELS advised there were several times that JOEL FOLLOWELL would contact her via phone in the middle night while he was having an anxiety attack and needed help. She recalls one time this summer while she had the stolen car of her sister, MICHELLE KAMERICK, she did go to the residence of FOLLOWELL in Harvey, Iowa, in the middle of the night and helped him come down. She doesn't recall any other times this summer that she helped him score drugs or meet with him in the middle of the night.
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> . . . .
>
> DANIELS advised that the circle of friends she has been associated with in the past would always protect each other from law enforcement regarding the drug trade. However, she advised that they would all rat on each other for crimes against kids or if a crime ever put someone in danger outside of narcotics. She advised that when it comes to homicide the entire circle of friends would be honest with law enforcement and would come forward if they had any information before law enforcement came to them. She advised that law enforcement wouldn't have to come find them because they would turn the person in right away. She advised that she just can't comprehend that anyone in her circle of friends, including JOEL FOLLOWELL, would ever commit murder.

(App. at 29-31 (Ex. I, Danielle Daniels Interview)). This interview corroborates other evidence that Joel Followill was directly involved in Shirley Carter's homicide. Daniels' statements that there was a rumor among the drug-using community that Joel was involved in the homicide, as well as her impression Joel had helped clean up blood at a crime scene, corroborate Sedlock's and Parker's interview reports. (App. at 18-20 (Ex. D); 21 (Ex. E); 22-24 (Ex. F); 25-26 (Ex. G); 27-28 (Ex. H)). Additionally, her statements that her sister had helped Joel "come down" from an anxiety attack in the summer of 2015 tend to show Joel was indeed struggling with what he and his brother had done to Shirley Carter, as Sedlock had indicated. (App. at 20 (Ex. D)).

vii. Interview of Matthew and Michelle Kamerick on October 23, 2015 (Exhibit J)

Ludwick interviewed Matthew and Michelle Kamerick on October 23, 2015. (App. at 32-34 (Ex. J, Matthew and Michelle Kamerick Interview)). The relevant portions of the interview report include:

> [Kamerick] advised that he did sell guns to ROGER SHINN in the summer of 2015, and he now knows those guns were stolen guns. He advised at the time he sold them he did not know they were stolen. He advised that he later learned and believed they were stolen from a farm in Marion County a few weeks earlier. . . .
>
> KAMERICK advised that he is a methamphetamine user. He advised that he has probably been in the vehicle during times that JOEL and JOHN FOLLOWILL have committed burglaries. . . .
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> . . . . [Kamerick] advise[d] that he heard JOEL FOLLOWILL was connected to the homicide, but didn't believe it until law enforcement surprised him at his residence on Wednesday, October 20, 2015. . . .
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> MICHELLE KAMERICK spoke up for the first time and advised that she has known JOEL FOLLOWILL her entire life and advised that he would never hurt anyone, other than his brother, and that it is not in his character. She advised that he is a doper but not a killer. She advised that law enforcement should really speak with her sister, DANIELLE DANIELS. She advised that DANIELS was a close friend to JOEL FOLLOWILL and that she has helped him multiple times with his demons. She advised that she recalls one time in the early summer of 2015, where JOEL FOLLOWILL did call her in the middle of the night and was agitated with

> anxiety. She advised that JOEL FOLLOWILL was wanting a ride from his residence in Harvey, Iowa, but didn't know where he needed to go. MICHELLE KAMERICK advised he was panicky and has frequent episodes of anxiety when he is coming down from multiple day binges. She advised that she never picked him up, but believes her sister, DANIELLE DANIELS, may have picked him up. She advised that this may have been during the timeframe when DANIELS had her vehicle and would not return it. . . .
>
> MICHELLE KAMERICK advised that her sister did have her car in early June 2015. She advised that during this timeframe the tire on the rear driver's side had a slow leak and they had the spare doughnut-sized tire on the car. . . .

(App. at 32-34 (Ex. J, Matthew and Michelle Kamerick Interview)). This interview indicates Matt Kamerick had possession of a gun that was stolen from a "farm in Marion County" weeks earlier. This tends to show the burglary in the Carter home was not actually staged, as suggested during civil trial, but it had indeed been burglarized. Additionally, Kamerick admits to presence at several burglaries committed by John and Joel Followill. Although this report is not as independently significant as the previously listed reports, it contains important details corroborating the overwhelming evidence John and Joel Followill murdered Shirley Carter.

viii. Interview of Brad Calder on April 20, 2016 (Exhibit K).

On April 20, 2016, Ludwick and Special Agent Van Fossen interviewed Polk County Jail inmate Brad Calder. (App. at 35-37 (Ex. K, Brad Calder Interview)). The relevant portions of the interview report include:

> CALDER advised that sometime during the fall of 2015, he met two girls that he knows as JORDAN and KRISTA. . . .
>
> CALDER advised that JORDAN was the girlfriend of JOEL FOLLOWELL. He advised it was his understanding that they are no longer together. He advised that he was present one night last fall when JOEL and JOHN FOLLOWELL got into a physical altercation. He advised the weather was warm and they had on short sleeved tee shirts, but is unable to remember the time frame, but believes it was last fall. He advised that he wanted to leave the residence right away because he didn't want any part or to witness JOEL and JOHN FOLLOWELL assaulting each other. He advised he left and didn't witness the assault. He stated that he doesn't remember why they were fighting or why they were so angry with each other. He

> advised that he witnessed JOEL in the driveway with a baseball bat and JOHN was attempting to get a knife from the kitchen.
>
> CALDER advised that JORDAN informed him that JOEL and JOHN FOLLOWELL were responsible for killing an elderly lady near Pleasantville. He advised she was told that they beat her up. He advised that he was told that they were good for breaking into residences to steal pills.

(App. at 35-37 (Ex. K, Brad Calder Interview)). This interview is material evidence when considered in tandem with other newly discovered evidence. Jordan Durham, who was Joel Followill's girlfriend during and after Shirley Carter's murder, is the individual who Wendy Bonnett[3] describes as having had a conversation with Joel where Joel confessed to murdering Shirley Carter (described below). (App. at 38-41 (Ex. L, Wendy Bonnett Interview); 42-44 (Ex. M, Brittney Jans Interview)). In this interview with Calder, Calder informs Ludwick and Special Agent Van Fossen that Jordan Durham directly stated to him that Joel and John were responsible for Shirley Carter's murder. *See* Ex. K. Calder additionally describes the physical altercation between Joel and John that both Sedlock and Parker also described. (App. at 19 (Ex. D); 21 (Ex. E); 22-24 (Ex. F); 25-26 (Ex. G); 27-28 (Ex. H)).

This interview is significant because, much like with Callie Shinn, the State has not provided evidence that law enforcement ever interviewed Jordan Durham. If it is true the State never interviewed Jordan Durham, who allegedly heard Joel Followill confess to the murder, Defendant would have questioned law enforcement about its apparently incomplete investigation during the civil trial. As with all other reports discussed in this brief, Calder's report, when considered with other reports, is evidence that would have materially changed the outcome of the civil trial.

[3] Wendy Bonnett is another individual connected with the Followills and who reported to law enforcement that she directly heard Joel Followill confess. Her interview is described separately because law enforcement failed to interview her prior to the verdict in the civil trial.

B. Exculpatory Evidence Involving Claims John and Joel Followill Murdered Shirley Carter That Arose After the Civil Verdict.

Defendant is now in possession of two investigation reports that were created on January 5, 2018, just weeks after the civil verdict was rendered. Defendant acknowledges that the standard for a vacation of judgment pursuant to Iowa R. Civ. P. 1.1012(6) generally requires the newly discovered evidence to have been in existence at the time of trial. The Iowa Supreme Court has created an exception to this rule under circumstances where it would be unjust not to consider evidence created after the trial.

There have been many cases where courts have granted relief on post-trial events when the new evidence, although arising after trial, goes to a condition that existed at the time of trial. *Mulkins v. Bd. of Sup'rs of Page County*, 330 N.W.2d 258, 262 (Iowa 1983). In extraordinary cases, an exception can be granted to the general rule that "newly discovered evidence" is evidence existing at the time of trial but not produced at trial for excusable reasons. *Id.* at 262; *see also Benson v. Richardson*, 537 N.W.2d 748, 763 (Iowa 1995) ("We recognize an exception to this rule where it is no longer just or equitable to enforce the prior judgment")).

An utter failure of justice would unequivocally result if this Court fails to consider the following two reports as newly discovered evidence under Rule 1.1012(6) simply because they were created weeks after the civil verdict was rendered. There is no practical distinction between the investigative materials that were created in January of 2018 and the investigative materials that existed before and during the civil trial in December of 2017, and Bonnett's and Jans' interviews corroborate numerous reports written before trial. This evidence is precisely why Defendant requested a continuance until the criminal investigation was closed. If such a continuance had been granted, Defendant would have been in possession of all of the

exculpatory evidence that existed at the time of trial, as well as these interviews conducted after the civil trial was complete and Defendant had been charged with murder.

i. Interview of Wendy Bonnett on January 5, 2018 (Ex. L)

On January 5, 2018, Ludwick interviewed Wendy Bonnett at the Knoxville Public Library. (App. at 38-41 (Ex. L, Wendy Bonnett Interview)). Relevant portions of this interview report include:

> BONNETT stated that MICHELLE DANIELS, JOSEPH SEDLOCK, JOHN FOLLOWELL, and JOEL FOLLOWELL were involved in the homicide. BONNETT advised that she has been told that JOEL FOLLOWELL, JOHN FOLLOWELL, and JOSEPH SEDLOCK had all three shot her over patches and pills that SHIRLEY CARTER had received. She advised that the three men knew that CARTER had received the opiate pills because she was a distant relative of JEREMIAH LAIRD. She advised that JEREMIAH told them that CARTER had just received pills and patches. BONNETT advised that the three men had a pact that if one person pulled the trigger, all three men had to pull the trigger and shoot.
>
> BONNETT advised that she was in a car once after the homicide with JORDAN DURHAM when DURHAM received a phone call from JOEL FOLLOWELL. She advised that she could hear part of the phone conversation and knew the voice of JOEL FOLLOWELL and knew it was him. She described that JOEL was in jail at the time and he was crying. She advised that JOEL said several times that he didn't want to do it (shoot CARTER), but she wouldn't stop screaming so they had to shoot her. BONNETT describe the conversation to be that JOEL FOLLOWELL shot and killed SHIRLEY CARTER because she would not stop screaming, then JOHN and JOE also shot her with the same gun.
>
> . . .
>
> BONNETT gave a detailed story of how she went over to RORY PEARSON's house to say goodbye because he was leaving town due to a head tumor, and that she had found MATT KAMMERICK unresponsive in the house. She advised that KAMMERICK had been beaten up severely and that he was unresponsive. She advised that she didn't call EMS or law enforcement and that KAMMERICK woke up and was fine. She alluded that the FOLLOWELL brothers and JOSEPH SEDLOCK assaulted KAMMERICK. She advised that JOSEPH SEDLOCK called her later the same day to ask what she knew about the assault.

(App. at 38-41 (Ex. L, Wendy Bonnett Interview)). Bonnett's statements join the other evidence showing John and Joel Followill murdered Shirley Carter. They are particularly probative because she claims to have actually heard Joel Followill confess to the crime over the phone to his girlfriend, Jordan Durham (discussed above). Her statement that Joel said to Durham that he did not want to shoot Shirley, but she wouldn't stop screaming, corroborates Mitch Parker's statements he heard Joel having a nightmare where Joel repeatedly said "John, she won't quit screaming." (App. at 28 (Ex. H)). Alone, Bonnett's statements are probative. When considered with the other evidence, it renders the evidence overwhelming. Again, this evidence would have materially changed the outcome of the trial.

ii. Interview of Brittney (Woodson) Jans on January 5, 2018 (Exhibit M).

On January 5, 2018, Ludwick interviewed Brittney (Woodson) Jans. (App. at 42-44 (Ex. M, Brittney Jans Interview)). The relevant portions of Jans' interview report include:

> JANS advised that she has knowledge regarding the homicide of SHIRLEY CARTER. She reported that she has previously given information about the homicide to DNR Officer CJ Hughes and Marion County Detective Kious. She advised that she has first-hand knowledge from CHARITY ROUSH that JOSEPH SEDLOCK, JOHN FOLLOWELL, and JOEL FOLLOWELL were involved in the homicide. She advised that they were in KALLY[4] SHINN's car at the time of the homicide.
>
> JANS buys [sic] that she was supposed to go to Des Moines that day with JOSEPH SEDLOCK, JOHN FOLLOWELL and JOEL FOLLOWELL. She advised that she didn't know any of them very well, but that they had been hanging out and they wanted her to go to Des Moines with them. She knows it was the day of the homicide, but she doesn't recall the date of the homicide. JANS advised that she would have been high that day and utilizing methamphetamines during the time of the homicide and during the time of the story. She advised that they wanted her to clean out the car for them, indicating clean up all the evidence. She advised they paid CHARITY RAUSCH one hundred dollars to clean up the car. She advised that CHARITY went to her asking for advice to get out of the situation.

[4] Defendant believes the correct spelling of Ms. Shinn's name to be "Callie Shinn" and will use that spelling in portions of this brief that are not interview reports.

> JOSEPH SEDLOCK has admitted to pulling the trigger according to JANS. JANS denies hearing it directly from SEDLOCK. She advised that she's heard this from CHARITY ROUSH. She advised that JOSEPH SEDLOCK, JOHN FOLLOWELL, and JOEL FOLLOWELL all had a pact that if one person pulled the trigger, they all would pull the trigger and kill the person. JANS advised that she believed that the three men believed SHIRLEY CARTER had received a fresh allotment of opiate pills. She did not know if CARTER got the opiate pills in the mail or from a store front. JANS believes that all three men pulled the trigger and shot her once.
>
> She advised that KALLY SHIN, CHARITY RAUSCH, and TAYLOR JONES, would have information about the homicide. She advised that TAYLOR JONES got rid of the gun at a pawn shop believed to be in Des Moines. She believed the murder weapon to be a handgun.
>
> . . . .
>
> JANS advised that SHIRLEY CARTER recognized JOEL and JOHN FOLLOWELL because they were distant relatives. JANS buys [sic] that CHARITY cleaned out her car when they she realized that the gun maybe in her vehicle. She advised that she found a gun and had CORY FORD throw the gun into the lake. She advised that the gun was actually her sons and was an illegal gun. She described the gun to be a handgun.
>
> JANS advised that she has spoken to law enforcement when they came to her house to question her then-boyfriend, GUY WELDON. She advised that the three men killed SHIRLEY CARTER because either she refused to give them the pills or that there were no pills at the house. JANS did not advise that the three men never obtained pills from the murder scene.

(App. at 42-44 (Ex. M, Brittney Jans Interview))

This interview contains additional detail. Significantly, it is yet *another* interview where a witness indicates John and Joel Followill murdered Shirley Carter. Jans also indicates Callie Shinn was involved in the murder, which corroborates the witness statements in Exhibits D, E, and G. (App. at 18-20 (Ex. D); 21 (Ex. E); 25-26 (Ex. G)). Jans' statements the Followills were looking for drugs fits with other witness reports. Finally, her statement Sedlock was involved is probative; although it conflicts with Sedlock's own reports, it tends to show Sedlock was somehow involved with or has knowledge of Shirley Carter's murder.

Ms. Jans makes the additional statement that the Followills paid a woman named Charity Rausch to clean out their car. Like Callie Shinn and Jordan Durham, none of the evidence the State provided to the Defendant indicates law enforcement interviewed Charity Rausch regarding her alleged involvement in the murder (or cover-up thereof) of Shirley Carter. The State has also not provided any evidence indicating law enforcement interviewed Taylor Jones or Cory Ford, persons whom Jans indicated would have direct knowledge of the homicide of Shirley Carter.

Again, alone, Jans' statements are probative. When considered with the other evidence, it renders the evidence overwhelming. This evidence would have materially changed the outcome of the trial.

C. Additional Exculpatory Evidence Tending to Support Claims John and Joel Followill Shot and Killed Shirley Carter.

The State's discovery file contains reappearing descriptions of strange cars around the Carter home the week of Shirley Carter's murder. As discussed above, Sedlock stated he believed the Followills had been driving a white SUV the day of the murder. (App. at 29 (Ex. G)). The following interviews contain descriptions of various statements from individuals living in the vicinity of the Carters regarding strange vehicles. It should be noted Defendant does not drive a white SUV. All of the following evidence is material to the key issues. Had Defendant known about these additional statements, Defendant would have called them as witnesses. When considered in context of all the other evidence, these statements likely would have changed the outcome at trial.

i. Interview of Shannon Stewart on June 20, 2015 (Exhibit N)

On June 20, 2015, Special Agent Rick Schaaf and Special Agent Scott Peasley interviewed a neighbor of the Carters, Shannon Stewart. (App. at 45-46 (Ex. N, Shannon Stewart Interview)). The relevant portions of the report include:

> . . . STEWART stated that on Thursday, June 18th between 4:00 p.m. and 4:30 p.m. there was a weird car in the area. STEWART described the car as an old white Lexus that was rusty and had a loud muffler. STEWART described the car as having a lot of rust on the side panels. STEWART said that there was a white man in his 30s with dark hair driving the vehicle. She said that the car drove very slowly from the direction of the CARTER'S house and then turned around in STEWART'S driveway. STEWART said that the car then drove slowly back toward CARTER'S house. STEWART said that she had never seen that vehicle before and she had not seen it since.

(App. at 45-46 (Ex. N, Shannon Stewart Interview)). Notes on Stewart's interview are also included in Exhibit O (App. at 47-49) (Notes of Special Agent Scott Peasley) and Exhibit P (App. at 50-51) (Notes of Special Agent Rick Schaaf). This interview is significant because it describes a strange, white car that was not only in the Carters' neighborhood, but actually *drove slowly past the Carter home, turned around in Stewart's driveway, and drove slowly back toward the Carter home*. An unusual car slowly passing back and forth in front of the Carter home the day before Shirley Carter was murdered is evidence the Carter home was being "cased," as is a typical strategy with the Followill brothers. (App. at 22 (Ex. D) (Sedlock describing Matt Kamerick as the "scout" for residences he would burglarize with the Followills)).

ii. Email from Jocelyn Richards on June 24, 2015 (Exhibit Q)

On June 24, 2015, Jocelyn Richards emailed Sheriff Jason Sandholt regarding a possible tip. (App. at 52 (Ex. Q, Jocelyn Richards Email)). She asked if law enforcement interviewed Jacob Sutter about a vehicle seen in the vicinity of the Carter home on June 19, 2015. (*Id.*) She stated she may have seen the same vehicle drive by her home earlier in the week and she had gotten a "very good look" at the driver. (*Id.*) She stated the main thing she had noticed about the car was it was an older car with white front fenders and a hood that didn't match the rest of the car. (*Id.*)

Richards' description of a strange car in the Carter neighborhood matches Stewart's description of the strange car she observed. (App. at 45-46 (Ex. N)). Both cars were not cars usually seen in the neighborhood, both were white, and while Stewart states the car she observed was rusty, Richards says the car had a hood that did not match the rest of the car. Even if these witnesses are describing different cars, that fact would be no less probative. If the Followills were "casing" the Carter home, they may well have done so in different cars. Regardless, a strange car driving through the Carter neighborhood on the day before and the day of Shirley Carter's murder is certainly evidence Defendant would have presented at trial if he had been in possession of it.

iii. Notes of Lieutenant Brian Bigaouette (Exhibit R)

Lieutenant Brian Bigaouette submitted an investigation report. (App. at 53-57 (Ex. R, Notes of Lt. Brian Bigaouette)). Bigaouette interviewed Brenda Johnson, who reported seeing a white truck northbound on Highway S-45 around 11:30 a.m. on June 19, 2015. (App. at 56 (*Id.* at 1)). The truck was followed by the Sheriff's car and pulled into Johnson's driveway to allow the Sheriff's vehicle to pass, then headed south, turned, and then headed back in the other direction. (*Id.*) She described the driver as a white male, 30s, short blonde hair, wearing a ball cap, and of slender build. (App. at 58) (*Id.*)).

Bigaouette interviewed Susan Wolfe, who reported she observed a suspicious white truck on two occasions prior to the homicide. (App. at 59 (*Id.*)). She stated it was a small-sized white truck with no plates, no back bumper, and significant rusting on the tailgate. (*Id.*) She first observed this truck on June 18, 2015, at approximately 2 p.m. (*Id.*) Two males occupied the vehicle. (*Id.*) The truck was rolling slowly past her residence. (*Id.*) Once the driver of the truck noticed Wolfe observing them, the truck sped off. (*Id.*) She observed this truck on a second

occasion on June 19, 2015, around 5 a.m. (*Id.*) The truck was headed eastbound. (*Id.*) She described the occupants as "scurvy looking." (*Id.*)

Johnson's statements about an odd white truck matches other witness statements that a strange white car was seen in the vicinity of the Carter home on days leading up to and on the day of Shirley Carter's murder. Wolfe's description matches Stewart's description of significant rusting on the strange vehicle each observed. Most significantly, Wolfe saw two "scurvy looking" individuals in the car as they "slowly" drove by Wolfe's home on the day before Shirley Carter's death and the day of Shirley Carter's death around 5 a.m. Defendant reminds the Court that Sedlock stated in his report he believed the Followills had been driving a white SUV on the day of Shirley Carter's murder. (App. at 29 (Ex. G)). As with Stewart's and Richards' statements, if available, Defendant certainly would have presented this additional evidence of a strange white SUV driving through the Carter neighborhood on the day before and on the day of Shirley Carter's murder.

iv. Neighborhood Canvas Questionnaire of Kathy Willoughby (Exhibit S)

In the days following the murder of Shirley Carter, law enforcement conducted a neighborhood canvas and interviewed neighbors of the Carters. This included neighbor Kathy Willoughby. (App. at 58-59 (Ex. S, Kathy Willoughby Questionnaire)). Willoughby informed law enforcement she witnessed a white truck pull up her driveway with a police vehicle following behind them. (App. at 59 (*Id.*). The police vehicle continued down the road. After the police vehicle continued down the road, the white truck pulled out of her driveway and left. (*Id.*)

This is yet another report of a strange white vehicle driving through the Carter neighborhood in the days leading up to the murder of Shirley Carter. This description matches vehicle descriptions given by Johnson, Richards, Wolfe, and Stewart.

v. Notes of Special Agent Scott Peasley (Exhibit O)

On June 20, 2015, Special Agent Scott Peasley interviewed neighbor Anthony Schultz. (App. at 51 (Ex. O, Notes of Special Agent Scott Peasley)). Anthony Schultz stated he noticed an older white Ford around 6:30 a.m. when he was outside his home. (*Id.*) Schultz stated this was out of the ordinary. (*Id.*) Peasley's notes also refer to an interview with Shannon Stewart, as discussed above. (*Id.*)

Schultz's description of a strange white vehicle in the vicinity of the Carter home matches the descriptions from Johnson, Richards, Wolfe, and Stewart, and corroborates Sedlock's statement he believed the Followills had been driving a white SUV the date of the murder. Clearly all these witness statements show during the week of Shirley Carter's murder, a strange vehicle was driving slowly near the Carter home.

If the information was available, Defendant would have called each witness who described seeing this strange vehicle in the neighborhood. Reports that a strange white SUV driven by "scurvy looking" individuals was driving slowly around the Carter neighborhood in the week leading up to Shirley Carter's death would have been probative and used to support Defendant's affirmative defense that someone other than Defendant murdered his mother. This evidence, when presented in conjunction with the other evidence described in this brief, would have materially changed the outcome of the trial.

D. Exculpatory Evidence Indicating the Potential Involvement of Michael McDonald in Shirley Carter's Death

Plaintiff Bill G. Carter and Defendant Jason Carter both identified Michael McDonald as someone who could have possibly been involved in the shooting death of Shirley Carter because of a land dispute shortly before Shirley Carter was murdered. Law enforcement interviewed

McDonald on June 19, 2015 and later gave him a polygraph exam, for which the results were inconclusive. (App. at 60-68 (Ex. T, McDonald Interview and Polygraph Results)).

McDonald's interview and polygraph report are attached as Exhibit T. McDonald's alibi for the morning of June 19, 2015 was that he was driving around the area hanging flyers for his family's land sale. (*Id.*) McDonald stated he called his friend 'Rick' (last name unknown) several times throughout the day when he was allegedly hanging flyers around town. (App. at 66 (*Id.*)). During the interview, Special Agent Ely looked at McDonald's phone and noted the last call to Rick was at 1:08 p.m., but there was no other call history for that number. (App. at 66-67 (*Id.*)). McDonald stated to law enforcement he only heard about the Carters on the news after Rick called him that day. (App. at 67 (*Id.*)). According to the report, McDonald only had one call made to Rick at 1:08 p.m. that day. McDonald's calls to Rick are relevant because McDonald was using those calls as evidence of his alibi; however, according to this interview report, McDonald was inconsistent about how many times he spoke with Rick—and not just minorly inconsistent. McDonald told law enforcement he had spoken with Rick on and off throughout the day in support of his alibi, and yet his phone records showed only one call was made between the two men.

Additionally, John Clymer interviewed with law enforcement on June 22, 2015, attached as Exhibit U. (App. at 68-69 (Ex. U, John Clymer Interview)). In his interview, Clymer told law enforcement McDonald had been complaining to him about a land dispute near where McDonald lived in Marion County. (App. at 72 (*Id.*)). McDonald told Clymer that he (McDonald) "should just hire a hit man." (*Id.*) Clymer assumed, based on the context of the situation, McDonald was referring to the opposing party in this land dispute, and although McDonald did not name the

person he was in a dispute with, he mentioned the son of the landowners. (*Id.*) Clymer also stated McDonald said if he hired a hit man "no one would ever find out." (*Id.*)

In an audio recording of McDonald's polygraph interview with DCI, McDonald admitted he made a comment about hiring a hit man to kill Jason. (App.at 70 (Ex. V, McDonald Polygraph Audio)). If Defendant had access before and during the civil trial to McDonald's and Clymer's statements, as well as the audio of the polygraph interview with DCI, Defendant would have called McDonald and Clymer as witnesses and addressed McDonald's statement that he wanted to hire a hit man to kill Defendant. Evidence McDonald specifically threatened a member of the Carter family with murder was probative and may have been developed to the point of materially changing the outcome of the trial.

E. Newly Discovered Evidence That Is Inconsistent with the Evidence Produced at Trial

Below are several examples of newly discovered evidence that go beyond impeachment or cumulative importance and directly contradict evidence Plaintiffs produced at trial. The Iowa Supreme Court has held that newly discovered evidence to successfully contradict a witness upon a material point is cause for new trial or a vacation of judgment, despite the fact that the evidence may incidentally impeach a witness. *Dobberstein v. Emmet County*, 155 N.W. 815, 818 (Iowa 1916). Had Defendant been able to discover this evidence through due diligence and present it at trial, it likely would have changed the outcome by demonstrating that Shirley Carter was in fact in rigor mortis when Bill G. Carter came upon her body, and that Curt Seddon did not know who had made the comment about "two holes" at the crime scene.

i. Bill G. Carter's Inconsistent Statements Regarding Rigor Mortis

Shirley Carter's time of death on June 19, 2015 was a material issue because of the undisputed fact Jason Carter spent the morning traveling to and from the Cargill facility in

Eddyville, Iowa. Whether Shirley Carter was in rigor mortis at the time her body was discovered is significant to determine time of death. Defendant's counsel Steven Wandro cross-examined Bill about this issue. Prior to the following exchange, Wandro showed Bill his DCI interview transcript wherein Bill described Shirley as "cold and stiff":

> **Mr. Wandro:** Okay. And you believe that to this day, correct, that she was stiff?
>
> **Bill G. Carter:** No, I don't.
>
> **Mr. Wandro:** Oh, so what you told the DCI on the day of Shirley's death that she was stiff was untrue?
>
> **Bill G. Carter:** No. There is a difference between being stiff and being alive. She was stiff when I kissed her forehead and her face. But when I let go of her head, her head went on its own back to the floor. Now, if she was really stiff and in rigor mortis, her head wouldn't have dropped to the floor.

(App. at 72 (Ex. W, Dec. 11 2017 Trial Transcript at 46:4-16)). In an audio recording believed to have been recorded on June 22, 2015, Bill said exactly the following to law enforcement officers:

> **Bill G. Carter:** Ray said Billy, if she was cold and stiff when you got there, she didn't die within ten or fifteen minutes. And I mean Ray knows that stuff too, as well as you do. He said your body actually warms up after death temporarily. *She was as cold and rigor mortis had already set in . . .*

(App. at 76 (Ex. X, June 22 2015 Audio Recording)). In a separate audio recording, attached hereto as Exhibit Y and believed to have been recorded on the same date as Exhibit Y, Bill G. Carter stated the following to law enforcement officials:

> **Bill G. Carter:** She was cold. She was terribly cold. *And she had rigor mortis*. I've been, I was a butcher at one time and did a lot of skinning and butchering. *And I know when something's been dead for a long time. And she was so cold and stiff*. And Jason was, he was out of his mind, and he said she's dead dad, and I went in there and she was. And I did give her a

> kiss on her forehead and I hugged her and *I could tell when I hugged her she was cold and stiff. She'd been dead for a while.. . . .*

(App. at 74 (Ex. Y, June 22 2015 Audio Recording)).

These statements directly contradict what Bill G. Carter stated at trial, which was when he arrived at his home, Shirley Carter's neck was limp and she was not in rigor mortis. If Defendant had possession of these audio recordings where Bill explicitly stated, with no qualification, that Shirley Carter was in rigor mortis, Defendant would have played the recording for two reasons: (1) to impeach Bill and (2) as material evidence Shirley Carter was in rigor mortis at the time she was observed by Bill G Carter. Whether Shirley Carter was in rigor mortis is important in this case because if she was in rigor mortis by the time Bill arrived on the scene, there is no medical possibility she died in the ten- to fifteen-minute period before Bill's arrival, which is the time alleged in the civil trial that Shirley Carter was killed. This evidence would have materially changed the outcome of the trial.

ii. Audio Recording of Interview with Curt Seddon on June 19, 2015 (Exhibit BB).

Another material issue in the trial was first responder Curt Seddon's statement Jason inexplicably told him Shirley Carter was shot two times, which Plaintiffs used to support their theory Jason had premature knowledge about the circumstances of Shirley Carter's death.

At trial, Danks questioned Seddon about this statement:

Mr. Danks: What did Bill Carter say to you?

Mr. Seddon: Something's happened to her. She's been shot.

Mr. Danks: Okay. What did Jason Carter say to you?

Mr. Seddon: He said she's been shot. There's two holes is what I recall.

(App. at 17 (Ex. B, Dec. 5 2017 Trial Transcript at 106:21-107:1)). Seddon also made the same representation during his deposition. When questioned by attorney Terry Gibson, the following exchange was made:

> **Mr. Gibson:** And what did you tell Mr. Ludwig [sic] about any statements that were made by Jason?
>
> **Mr. Seddon:** That Jason appeared to have knowledge that she had been shot, I thought, somewhat quickly, a statement that she's been shot, there were two holes.

(App. at 79 (Ex. Z, Seddon Dep. at 35:16-21)). Later in the same deposition, the following exchange was made:

> **Mr. Gibson:** Well, I think I read somewhere in your statement that you thought it was – that he seemed to have too much knowledge and you thought maybe that was because he had been the one that shot her; is that a fair statement?
>
> **Mr. Seddon:** I only made that statement because of, the, you know, two holes.

(App. at 80 (*Id.* at 55:3-10)). On cross-examination, attorney Phil Myers and Seddon had the following exchange:

> **Mr. Myers:** What was the first thing you remember Jason Carter saying to you?
>
> **Mr. Seddon:** What I had stated earlier, that she'd been shot, there is two holes.

(App. at 81 (*Id.* at 82:24-83:2)). Wandro pressed the issue on cross-examination:

> **Mr. Wandro:** Mr. Seddon, when Jason told you about the two holes, it was your understanding he was referring to the two holes that we just observed [(referring to the hole in the floor and in the refrigerator)]; isn't that true?
>
> **Mr. Seddon:** I didn't know at that point in time. All I know is that there was two holes. And I didn't ask him to specify any further which two holes he was talking to at the time.

(App. at 18 (Ex. B, Dec. 5 2017 Trial Transcript at 126:15-24)).

In contrast, law enforcement also recorded an interview with Seddon at the scene of the crime on June 19, 2015, attached as Exhibit BB. This audio recording contained the following statement by Seddon:

> **Mr. Seddon:** They made mention of there's, and I don't understand this, they said there's two holes in her, which is kind of confusing to me right now, and they said there's a hole in the refrigerator. So I don't know if they were referring to actually holes in the victim or if there's a place in the floor or a chunk out of the floor is out, and of course you got that one hole in the fridge, so I don't know if they're referring to those two holes.
>
> **Law Enforcement:** Who was the one making, were they both making those comments?
>
> **Mr. Seddon:** *I don't know who exactly said the two holes in her*, they were both making comments to a hole in the refrigerator.

(App. at 79 (Ex. AA, Curt Seddon June 19 2015 Interview)). This recording is evidence on the day of the murder, when Seddon's memory would have been most fresh, Seddon did not know whether Bill Carter or Jason Carter made the statement about there being "two holes."

At trial, Plaintiffs relied heavily on the allegation that Jason made the comment about "two holes" as showing premature knowledge that Shirley Carter had been shot. They based this allegation largely on Seddon's testimony. Defendant attempted to distinguish Seddon's testimony, as shown above. However, Defendant did not have access to this recording at the time of trial. Had Defendant been in possession of the recording, Defendant would have used it to impeach Seddon.

Defendant would have gone beyond impeachment, however, and played the recording for the jury to make its own determination as to whether Jason Carter made a statement Shirley Carter had been shot twice. Given that Jason's supposed premature knowledge that Shirley Carter had been shot twice was one of the most material pieces of evidence upon which Plaintiffs

based their case, any evidence that Jason did not in fact make that comment is material and could have changed the outcome of the trial.

iii. General Evidence Regarding Investigation Deficiencies

Based on the provided reports, it appears law enforcement did not interview the following individuals, all of whom reportedly have knowledge regarding involvement of the Followill brothers in the murder of Shirley Carter:

- Jason Beaman
- Chris Braise
- Jordan Durham
- John Followill
- Cory Ford
- Christine McCombs
- Taylor Jones
- Rory Pearson
- Charity Rausch
- Amber Shinn
- Callie Shinn
- Jason Wesley

If DCI did not interview the above individuals, such failure would be evidence of an incomplete or biased investigation. If Defendant had access to these documents for his civil trial, he would have used them to attack the flawed investigation by demonstrating all the gaping holes. Such evidence showing the failures of DCI's investigation into the murder of Shirley Carter was material and would likely materially change the outcome of trial.

VI. DEFENDANT IS ENTITLED TO VACATION OF JUDGMENT

Defendant presented an overwhelming series of reports indicating many witnesses have direct or indirect evidence that the Followill brothers and a third person (most likely Matt Kamerick or Joe Sedlock) shot and killed Shirley Carter. As already discussed, the majority of this evidence existed at the time of trial but is newly discovered and material to the issues of the case given the lack of disclosure during the civil trial. Below, Defendant addresses additional

legal considerations in meeting the standard under Rule 1.1012(6). Part A shows Defendant could not in the exercise of reasonable diligence have discovered the evidence at issue prior to the conclusion of trial. Part B focuses on the justice-based exception to the general rule. First, it makes the specific argument that this exception applies to the reports created shortly after trial. Second, it argues more broadly (and in the alternative), that the justice-based exception and the substantial change in circumstances provision of Restatement (Second) of Judgment section 73 covers all of the newly discovered evidence set forth herein. Part C ties together Defendant's assertion the newly discovered evidence would likely have changed the outcome at trial.

A. This Evidence is Newly Discovered and Could Not With Reasonable Diligence Have Been Discovered and Produced at Trial.

Although the vast majority of this evidence (with the exception of Wendy Bonnett's interview and Brittney Jan's interview, discussed below) existed well before trial, it was newly discovered to Defendant when the State provided it in the course of criminal discovery in February 2018. The extent to which DCI's criminal investigation files would be admitted into evidence and the extent to which DCI was willing to provide any investigation files were the matter of significant debate leading up to and during the trial, and these issues ultimately culminated in Defendant filing an application for interlocutory appeal and the ultimate continuance of the trial until December 2017. The complex legal matters underlying the interlocutory appeal are not particularly relevant to this motion to vacate judgment except in that they demonstrate DCI's willingness or lack thereof to turn over the entire criminal investigation file to civil litigants.

In July 2016, Plaintiffs served DCI a subpoena which demanded everything that could have been included in the State's investigation file of Shirley Carter's murder. (App. at 80-82 (Ex. BB, July 2016 Subpoena to DCI)). DCI submitted a Motion to Quash the July 2016

subpoena on the grounds the materials requested were part of an active DCI homicide investigation[5]. (App. at 83-88 (Ex. CC, DCI Mot. to Quash filed July 11, 2016)). DCI stated without qualification in its responsive Motion to Quash that law enforcement investigative materials are confidential under Iowa law, and such confidentiality extends to attempts by civil litigants to obtain this information. (App. at 87 (*Id.* at ¶ 1)). DCI further stated in its motion:

> Requiring the [r]elease of a law enforcement investigative file relating to a murder to civil litigants, including persons who may well be the subject of the investigation not only defies common sense but finds no support in law.
>
> [ ] Iowa law is also in accordance with federal law with respect to obtaining such law enforcement investigative materials. In the federal system there is a common law privilege protecting law enforcement investigative materials from disclosure and, as here, "[t]he purpose of the privilege is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witnesses and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and to otherwise prevent interference in an investigation." *Raz v. Mueller*, 389 F. Supp. 2d 1057, 1062 (W.D. Ark. 2005), citing *Jones v. City of Indianapolis*, 216 F.R.D. 440 (S.D. Ind. 2003).

(App. at 87 (Ex. CC at ¶¶ 1-2)).

Defendant has always taken issue with piecemeal filtering of selective criminal investigation files into the civil action. This response from DCI to Plaintiff's request for the entire criminal investigation file put Defendant on notice that he would be unable to obtain the complete file.[6] Given DCI's unwillingness to provide the investigation file to Plaintiffs, whose interest in accusing Defendant aligned with the State's ultimate decision to file criminal charges against him, there is no question DCI would have refused any request for the same from

[5] It should be noted that the reports were withheld because the investigation was "open" but nothing in discovery indicates that any investigation was completed between the time of the request and the arrest of Jason Carter on December 17, 2017.

[6] The reasonableness of Defendant's belief that any request from him for the entire file would be futile is further underscored by Iowa law. Iowa Code section 622.11 protects the State's criminal investigation from disclosure to private litigants. *See also State ex rel. Shanahan v. Iowa Dist. Court for Iowa County*, 356 N.W.2d 523, 527 (Iowa 1984). This "cloak of protection" extends to a public officer being examined and prohibits disclosure of the protected information. *Shanahan*, 356 N.W.2d at 527. Communications to DCI officers are confidential records under Iowa's freedom of information statute. *See* Iowa Code § 22.7(5).

Defendant, a purported suspect, at least while the criminal investigation was ongoing. And, unfortunately for Defendant, he did not have the unquestionable right to all exculpatory evidence that attends every criminal prosecution. *See Brady v. Maryland*, 373 U.S. 83 (1963) (holding that due process is violated when the prosecution suppresses exculpatory evidence material to guilt or punishment).

Because of DCI's clear unwillingness to provide the entire investigation file, Defendant could not have obtained the entire file by due diligence. This left him two ways to assert his interests: (1) demand that none of the file be admitted, because selective admission of the file pursuant to an agreement made between Plaintiffs and DCI to which Defendant was not a party would seriously prejudice Defendant; and (2) request a continuance until the criminal investigation was complete and DCI would not assert privilege based on the fact that the documents were part of an ongoing murder investigation. Defendant made both arguments, as outlined in more detail below.

After DCI filed its Motion to Quash the July 2016 subpoena, Plaintiffs filed a Notice of Resolution to the district court in August 2016 stating Plaintiffs had reached an agreement with DCI regarding which documents DCI would release to Plaintiffs in response to the July 2016 subpoena. (App. at 89 (Ex. DD, Pl. Notice of Resolution, filed August 24, 2016)). Defendant was not privy to this agreement or any discussions regarding the agreement. In April 2017, Plaintiffs served another subpoena on DCI requesting information from the investigative file. (App. at 91-97 (Ex. EE, Pl. April 2017 Subpoena to DCI)). This subpoena was more limited in scope than the July 2016 subpoena (although still very broad), containing nine demands for information. (*See id.*) Plaintiffs subsequently served five DCI staff members and one member of the Department of Public Safety with additional subpoenas on June 12, 2017, commanding them to appear at trial

and to bring with them substantial amounts of material and investigative documents developed in the ongoing homicide investigation. (App. at 98 (Ex. FF, Subpoenas to Various Law Enforcement Officials)). Defendant also moved to quash these subpoenas, asserting that Plaintiffs were attempting to "put on a criminal case in a civil trial." (App. at 124-133 (Ex. GG, Def. Reply to Pl. Res. to Def. Mot. to Quash, filed June 16, 2017 at 6)). Defendant specifically stated in his motion:

> This is not *State v. Jason Carter*. The State's investigation into Shirley Carter's death is ongoing. It is not the place of a private citizen to conclude – *especially prior to the State closing its criminal investigation into a murder* – that it is unhappy with the direction the criminal investigation is taking and attempt to use in a civil trial the materials from an ongoing criminal investigation.

(*Id.* (emphasis in original)). This Court ruled against Defendant on August 18 and August 22 of 2017, noting an agreement had been reached between Plaintiffs and DCI regarding the evidence DCI would turn over to Plaintiffs. DCI had agreed to produce documents in response to items one through seven of the nine demands Plaintiffs had made upon DCI for documents. (App. at 9 (Ex. B, Dec. 5 2017 Trial Transcript at 10:8-11)).

On November 2, 2017, Plaintiffs served several additional subpoenas on seven law enforcement officers, commanding the law enforcement officers' appearance at trial and to bring with them their reports and/or laboratory files associated with the murder of Shirley Carter. (App. at 134-162 (Ex. HH, Nov. 2017 Subpoenas to Law Enforcement)). Defendant filed a Motion to Quash portions of these subpoenas on November 3, 2017, asserting these subpoenas were in violation of this Court's August 22, 2017 ruling "subpoenas addressed to an officer or special agent should not be a dragnet that directs the officer to produce records or files not available to both parties or that expands the information previously provided by a law enforcement agency." (App. at 167 (Ex. II, Def. Nov. 2017 Mot. to Quash)). DCI's counsel filed

a motion joining Defendant's Motion to Quash on November 6, 2017, for the reasons stated in Defendant's motion. (App. at 166 (Ex. JJ, DCI Mot. to Quash, filed Nov. 6, 2017)).

Defendant's Motion to Quash and DCI's joinder were discussed in a hearing on December 5, 2017. DCI's counsel, Jeff Peterzalek, was present at this hearing to present DCI's position on the subpoenas. He stated DCI had agreed to provide "certain information" to the civil litigants in this matter, and DCI's position on the extent to which law enforcement officers could testify on this information was their testimony should be limited to the information that had already been presented to the litigants and logical extensions thereof. (App. at 7 (Ex. B, Dec. 5 Trial Transcript at 8:8-9:5)). Attorney Steven Wandro reasserted Defendant's motion to quash and argued none of the law enforcement officials should be allowed to testify because Defendant had not been privy to any of the discussions between Plaintiffs and DCI regarding what documents DCI would provide to Plaintiffs, and Defendant did not have full access to the entire investigative file, asserting "[i]t may contain exculpatory evidence." (App. at 10 (*Id.* at 13:5-14)).

From the beginning of Plaintiffs' requests to DCI for the investigation file in July 2016, DCI was not willing to provide the entire investigation file. DCI did eventually come to an agreement with Plaintiffs in conversations to which neither Defendant nor his counsel were privy. At this point, Defendant still did not want these documents to come in as evidence, because they were selectively chosen by Plaintiffs and DCI and because they did not contain the entire investigative file. In other words, Defendant wanted none of the file, or all of the file. However, seeing the writing on the wall given DCI's repeated assertions to Plaintiffs it would not provide the entire investigation file to Plaintiffs, Defendant understood DCI would not provide the entire investigation file to Defendant either, especially because Defendant was aware he was actively considered a suspect in Shirley Carter's murder.

Attorney Wandro then moved this Court to continue the civil trial until law enforcement or County Attorney Ed Bull made a final decision as to whether or not the State would criminally prosecute Defendant for the murder of Shirley Carter, i.e., until the ongoing homicide investigation was closed. (App. at 11 (*Id.* at 14:1-5)). The purpose of this motion was to allow time for DCI to complete its criminal investigation so parties to the civil suit would have access to all relevant criminal investigation files that could support Defendant's defense in the civil suit, including any exculpatory evidence that had been developed or would be developed during the course of investigation. This Court denied Defendant's motion. (App. at 12 (*Id.* at 19:21-23)).

Given DCI's repeated assertions it would not provide the entire discovery file to civil litigants, and Defendant's request for a continuance until the criminal investigation was closed, Defendant could not have obtained the investigation files that DCI withheld from the civil litigants before or during the civil trial. Defendant did not know what was contained in the investigation files, and Defendant could not have diligently discovered something he did not know existed, beyond requesting the civil trial be continued until the criminal investigation was closed and Defendant could then access the entire file.

Finally, there are limitations as to what a defendant must be held to reasonably anticipate. *See Bridgham v. Hinds*, 115 A. 197, 201 (Me. 1921). "The showing of diligence required is that a reasonable effort was made. The applicant is not called upon to prove he sought evidence where he had no reason to apprehend any existed." *Westergard v. Des Moines Ry. Co.*, 52 N.W.2d 39, 44 (Iowa 1952). Here we have the State doggedly pursuing Defendant as the perpetrator of this crime and collaborating with Plaintiffs, who sought to prove the same, in selectively providing certain information from the criminal investigation pursuant to an agreement to which Defendant was not privy. In so doing, the State withheld not just minor

evidence tending to show Defendant's innocence, but also an entire universe of firsthand accounts and corroborating evidence identifying other named individuals as perpetrating the crime. In light of the State's actions and its continued implication of Defendant as a suspect, no reasonable person would expect a hidden universe existed containing the shocking magnitude and breadth of the exculpatory evidence presented herein.

B. Justice Demands Consideration of Post-Trial Evidence Here.

i. Interviews of Wendy Bonnett and Brittney Jans

Wendy Bonnett's and Brittney Jan's interviews were conducted on January 5, 2018, after judgment had been rendered in the civil trial. As previously stated, Iowa law normally requires evidence to have existed during the trial in order to satisfy the newly discovered evidence standard for vacation of judgment. Nonetheless, the Court should still consider these reports in support of Defendant's request to vacate in the interests of justice.

When it is no longer just or equitable to enforce a judgment, facts which occurred after its rendition may be considered in deciding whether it should be vacated or whether a new trial should be granted. *Mulkins v. Bd. of Sup'rs of Page County*, 330 N.W.2d 258, 261-62 (Iowa 1983). This is an exception to the general rule. *Wilkes v. Iowa State Highway Comm'n*, 186 N.W.2d 604, 607 (Iowa 1971).

The Iowa Supreme Court stated in *Mulkins*:

> Ordinarily newly discovered evidence as the term is used in Rule 252[7] is limited to evidence which existed at the time of trial but which, for excusable cause, the party was unable to produce at that time . . . . There is, however, authority that when it is no longer just or equitable to enforce a judgment, facts which occurred *after* its rendition may be considered in deciding whether it should be vacated or whether a new trial should be granted.

[7] Rule 252 is now Rule 1.1012.

Mulkins, 330 N.W.2d at 261-62 (emphasis in original). The Iowa Supreme Court in *Mulkins* based its finding on section 73 of the Restatement (Second) of Judgment, stating the following:

> Restatement (Second) of Judgment § 73 (1982) provides:
>
> § 73. Changed Conditions.
>
> Subject to the limitations in § 74, a judgment may be set aside or modified if:
>
> (1) The judgment was subject to modification by its own terms or by applicable law, and events have occurred subsequent to the judgment that warrant modification of the contemplated kind; or
>
> (2) There has been such a substantial change in the circumstances that giving continued effect to the judgment is unjust.

Mulkins, 330 N.W.2d at 262.

There have been many cases where courts have granted relief on post-trial events when the new evidence, although arising after trial, goes to a condition that existed at the time of trial. *Id.* (citing, e.g., *Bridgham v. Hinds*, 115 A. 197, 201 (Me. 1921); *Swanson v. Williams*, 228 N.W.2d 860, 862-63 (Minn. 1975); *Piper v. Pipers*, 239 N.W.2d 1, 4 (N.D. 1976); *Chemical Leaman Tank Lines, Inc. v. Trinity Indus., Inc.*, 478 S.W.2d 114, 118 (Tex. App. 1972)). In extraordinary cases, an exception can be granted to the general rule that "newly discovered evidence" is evidence existing at the time of trial but not produced at trial for excusable reasons. *Mulkins*, 330 N.W.2d at 262; *see also Benson v. Richardson*, 537 N.W.2d 748, 763 (Iowa 1995) ("We recognize an exception to this rule where it is no longer just or equitable to enforce the prior judgment")).

This is an extraordinary case where "newly discovered evidence" should include investigative materials DCI created after the conclusion of the trial in this matter. DCI's interviews with Bonnett and Jans occurred mere weeks after the trial. Refusing to allow consideration of this evidence would be an utter failure of justice. "Courts should not demand

enforcement of a decree when subsequent events have made that course vain and worthless." *Mulkins*, 330 N.W.2d at 262. There is no practical distinction between the investigative materials that were created in January of 2018 and the investigative materials that existed before and during the civil trial in December of 2017, and in fact Bonnett's and Jans' interviews corroborate numerous reports written before trial. This further illustrates Defendant's position that it would have been better to continue trial until the criminal investigation finished. Defendant had access to neither of these interviews until he received criminal discovery from the State in the course of criminal proceedings in February of 2018.

ii. This Exception Applies to All of the Exculpatory Evidence.

Regardless of the Court's determination on whether Defendant acted with due diligence to discover the evidence discussed herein, the Court should nonetheless find that the judgment should be vacated or in the alternative that a new trial should be granted because all of this evidence should be considered under the exception set forth above. To continue to enforce the judgment in light of all of this evidence would be unjust. *See Mulkins*, 330 N.W.2d at 261-62*; see also In re D.W.*, 385 N.W.2d 570, 583 (Iowa 1986); *Wilkes v. Iowa State Highway Comm'n*, 186 N.W.2d 604, 607 (Iowa 1971); *Benson v. Richardson*, 537 N.W.2d 748, 762 (Iowa 1995).

As explained above, the Iowa Supreme Court has relied on Restatement (Second) of Judgments section 73 in providing post-judgment relief, which provides that a judgment may be set aside if "[t]here has been such a substantial change in the circumstances that giving continued effect to the judgment is unjust." *See Mulkins*, 330 N.W.2d at 262. Continued enforcement of the judgment in light of all this exculpatory evidence, which is internally consistent in identifying other named individuals as having perpetrated this crime, and which represents a substantial change in circumstances, would be inequitable and an unquestionable miscarriage of justice.

Defendant is entitled to a vacation of judgment or a new trial that includes consideration of this evidence. Allowing the judgment to stand based on incomplete evidence that has been directly and repeatedly controverted by the exculpatory evidence presented in this motion would be a complete and utter failure of the justice system.

C. <u>The Evidence Will Change the Result if a New Trial is Granted.</u>

Defendant based his theory and approach to the trial on the evidence that was available. This included evidence provided by DCI to Plaintiffs subject to an agreement made in a conversation between Plaintiffs and DCI to which Defendant was not a party. If Defendant had knowledge there had been even one allegation, let alone numerous, substantiated, and corroborative allegations, that the Followill brothers and any of the other individuals mentioned throughout the reports provided with this motion had shot and killed Shirley Carter, Defendant unquestionably would have introduced this evidence.

Defendant asserted the affirmative defense that someone other than Defendant murdered Shirley Carter. Because Defendant did not have access to the evidence describing the Followill brothers' involvement, and because Defendant believed it had evidence Bill Carter shot and killed Shirley Carter given Bill Carter's inconsistent statements and his history of domestic violence against Shirley Carter, Defendant focused its affirmative defense on Bill Carter. If Defendant had known of the numerous reports held by DCI indicating the Followill brothers' involvement, Defendant would have recognized this evidence and taken a different tact.

The standard for vacating judgment is not that Defendant must show this evidence conclusively proves Defendant did not kill Shirley Carter, but only that it could have changed the outcome of the trial. *In re D.W.*, 385 N.W.2d 570, 583 (Iowa 1986). While Defendant asserts this evidence clearly shows he did not kill Shirley Carter, Defendant emphasizes the only

requirement for this motion is Defendant show that had this evidence been available to him during trial, the outcome of the trial would have probably been different. That burden is met by the indicated evidence.

VII. ALTERNATIVELY, DEFENDANT IS ENTITLED TO A NEW TRIAL

In this Petition for Relief, Defendant is requesting this Court vacate the judgment entered against him because of the new evidence that would have changed the outcome of the trial and because of the irregular nature of the trial. In the event this Court denies Defendant's request to vacate judgment, Defendant alternatively requests that the Court order a new trial of this matter based on the same grounds asserted. Given the vast difference between these forms of relief, and the high stakes involved, the denial of Defendant's request to vacate judgment would be significantly adverse to his interests, even if a new trial were ordered. Accordingly, Defendant expressly notifies the Court and Plaintiffs that he considers determination of his request to vacate judgment a separate issue for purposes of appeal and preserves his right to undertake the same, regardless of the Court's determination on his alternative request for a new trial.

VIII. CONCLUSION

Defendant requests this Court vacate the judgment entered against him. In the alternative, Defendant requests this Court grant Defendant a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing instrument was served upon the parties to this action on May 30, 2018 by CM/ECF.

/s/ Alison F. Kanne

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