APPENDIX A

NON-PRECEDENTIAL DECISION -
SEE SUPERIOR COURT I.O.P. 65.37

IN THE SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v. No. 236 EDA 2017

LAEL J. ALLEYNE
Appellant

Appeal from the Judgment of Sentence December 8, 2016 In the Court of Common Pleas of Northampton County Criminal Division at No(s): CP-48-CR-0001098-2015

BEFORE: PANELLA, J., SOLANO, J., and MUSMANNO, J.

MEMORANDUM BY PANELLA, J.

FILED DECEMBER 27, 2017

Appellant, Lael J. Alleyne, appeals from the judgment of sentence entered in the Northampton County Court of Common Pleas, following his conviction for first-degree murder and related offenses.

After careful review, we reverse one of Appellant's convictions for conspiracy to commit robbery and its sentence, but affirm the judgment of sentence in all other respects.

The relevant facts and procedural history are as follows. Appellant was sixteen on the day he committed these crimes. Along with Charles David Martin III, he devised a plan to purchase marijuana from Nichelson Raymond and Richard Piscoya. In fact, Appellant and Martin planned to rob Raymond and Piscoya. Appellant used Monserrat Rosas, a mutual friend of his and Piscoya's, to arrange the drug buy.

On the day of the sale, Rosas approached the vehicle in which Raymond and Piscoya sat, and got into the backseat in order to conduct the drug sale. Appellant and Martin then approached the vehicle. Appellant opened the front passenger side door of the car, pointed a gun at the vehicle's occupants, and demanded that they give him the marijuana. In an effort to escape, Raymond threw the car into reverse and the vehicle rolled backward. Appellant fired several shots into the car, which struck and killed Raymond. Appellant and Martin fled the scene.

Appellant was arrested and proceeded to a jury trial with Martin. Appellant was convicted of first-degree murder, two counts of robbery, two counts of conspiracy, and one count each of possession of an instrument of crime and possession of a firearm by a

minor.[1] The court sentenced Appellant to an aggregate term of forty-eight years to life imprisonment. Appellant timely appealed.

On appeal, Appellant challenges the sufficiency of the evidence presented against him, the jury instructions used at trial, and the admission of two autopsy photographs into evidence. We begin by evaluating Appellant's sufficiency argument.

To preserve a sufficiency issue on appeal, an appellant's Rule 1925(b) statement "must specify the element or elements upon which the evidence was insufficient." *Commonwealth v. Gibbs*, 981 A.2d 274, 281 (Pa. Super. 2009) (citations omitted). "Such specificity is of particular importance in cases where the [a]ppellant was convicted of multiple crimes each of which contains numerous elements that the Commonwealth must prove beyond a reasonable doubt." *Id.* (citation omitted).

Here, Appellant raised the issue of sufficiency in his Rule 1925(b) statement. But he failed to specify with any particularity which elements of each of the seven crimes he desired to challenge. Instead, Appellant merely named all seven of his crimes and baldly stated the evidence was insufficient to support his convictions.

Despite this, our Supreme Court has previously

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[1] 18 Pa.C.S.A. §§ 2502(a), 3701(a)(1)(i), (ii), 903, 907(a), and 6110.1(a), respectively.

held that this Court may afford sufficiency review in certain cases even where an appellant fails to preserve his specific sufficiency contention, provided the issue is "relatively straightforward." *Commonwealth v. Laboy*, 936 A.2d 1058, 1060 (Pa. 2007).

In this specific instance, we find it appropriate to overlook Appellant's lack of specificity. The Commonwealth concedes Appellant's sufficiency challenge to his second conspiracy conviction (the focus of Appellant's appellate brief) is meritorious and deserving of relief. *See* Commonwealth's Brief, at 12. Thus, we will review the merits of this conviction.

A challenge to whether an appellant engaged in one conspiracy or multiple conspiracies depends on a factual finding, and is thus a challenge to the sufficiency of the evidence. *See Commonwealth v. Andrews*, 768 A.2d 309, 313-314 (Pa. 2001) (holding that a challenge to whether an appellant's criminal conduct amounted to one conspiracy or more is a fact-driven inquiry and constitutes a sufficiency claim, rather than a non-waivable illegality of the sentence issue).

To prove criminal conspiracy, the Commonwealth must show that an appellant "1) entered into an agreement to commit or aid in an unlawful act with another person or persons; 2) with a shared criminal intent; and 3) an overt act was done in furtherance of the conspiracy." *Commonwealth v. Mitchell*, 135 A.3d 1097, 1102 (Pa. Super. 2016) (citation omitted). "If a person conspires to commit a

number of crimes, he is guilty of only one conspiracy so long as multiple crimes are the object of the same agreement or continuous conspiratorial relationship." 18 Pa.C.S.A. § 903(c).

The jury found Appellant guilty of conspiracy to commit robbery of Nichelson Raymond and conspiracy to commit robbery of Richard Piscoya. At trial, the Commonwealth presented testimony from Monserrat Rosas, the woman Appellant used to arrange the drug purchase. Rosas explained Appellant asked her to set up a fake drug sale with Raymond and Piscoya, with the stated intention of robbing the men. Rosas stated that she told Appellant she did not wish to rob Piscoya or participate in the scheme. Appellant then told her he would instead supply her with cash, which she would use to purchase the marijuana. Rosas testified that, on the day of the sale, she proceeded to Piscoya's car to make the drug transaction. She said she was shocked when Appellant and Martin followed her to the car. Rosas stated that Appellant then pointed a gun into the car and told Raymond and Piscoya that he and Martin wanted the drugs. At this point, Rosas jumped out of the car and ran away.

Based on that, the Commonwealth presented evidence Appellant and Martin formulated a plan to rob Raymond and Piscoya of their drugs. However, as noted above, multiple crimes may be the result of a single conspiracy, so long as those crimes are the object of the same agreement. The evidence offered indicates the existence of a single agreement, to rob the victims and steal their drugs. The fact this crime

victimized two persons rather than one does not create an additional conspiracy, in the absence of a second, separate criminal agreement. The Commonwealth concedes this very point, agreeing the judgment of sentence for the conspiracy to commit robbery of Piscoya should be reversed. *See* Commonwealth's Brief, at 12 ("The Commonwealth concedes that, based on the facts of this case, Appellant is correct.") Appellant is entitled to relief on this claim.

However, his sentence for that conviction is concurrent with his sentences for his other crimes, and our disposition does not affect Appellant's aggregate sentence. In cases where our decision does not alter the overall sentencing scheme, remand is unnecessary. *See Commonwealth v. Thur*, 906 A.2d 552, 569 (Pa. Super. 2006). Thus, we reverse Appellant's second conspiracy conviction, but decline to remand.

In his second claim, Appellant argues the trial court erred in refusing to instruct the jury on voluntary manslaughter. In Appellant's view, Raymond made a swift motion to shift the car into reverse and try to escape from Appellant. Appellant asserts he may have reasonably believed Raymond was reaching for a gun. He supports this argument by indicating that Raymond had a gun on his person at the time of his death.

"Our standard of review when considering the denial of jury instructions is one of deference an appellate court will reverse a court's decision only when it abused its discretion or committed an error of

law." *Commonwealth v. Yale*, 150 A.3d 979, 983 (Pa. Super. 2016) (citation omitted).

> [A] voluntary manslaughter instruction is warranted only where the offense is at issue and the evidence would support such a verdict. To support a verdict for voluntary manslaughter, the evidence would have had to demonstrate that, at the time of the killing, [a]ppellant acted under a sudden and intense passion resulting from serious provocation by the victim.

Commonwealth v. Sanchez, 82 A.3d 943, 979 (Pa. 2013) (brackets in original; citation omitted). And no jury charge is required on voluntary manslaughter where the defendant denies committing the killing. *See id.*, at 980.

That is the situation here. Appellant denied culpability at trial. Far from establishing the applicability of voluntary manslaughter to the evidence, Appellant continues to maintain in his appellate brief that he is not guilty of killing Raymond. Appellant's argument the trial court erred in not supplying the voluntary manslaughter instruction instead appears to concede that if Appellant did commit the murder, it was justified by Raymond's swift movement toward the car's gear shift. Appellant's denial that he shot Raymond precludes such an instruction. *See id.*

Appellant admits "the shooter" only began firing the gun into Raymond's car as Raymond drove it in reverse in order to escape. Appellant's Brief, at 17. As Appellant concedes, Raymond was attempting to escape at the time he was shot. Appellant has thus wholly failed to demonstrate any circumstances which would justify a voluntary manslaughter jury instruction. Based on the foregoing, we find that Appellant was not entitled to a voluntary manslaughter jury instruction.

In his final issue for our review, Appellant contends the trial court erred in admitting autopsy photographs of Raymond at trial. We find this claim waived.

"The viewing of photographic evidence in a murder case is, by its nature, a gruesome task. But photographs of a corpse are not inadmissible *per se*." *Commonwealth v. Hetzel*, 822 A.2d 747, 765 (Pa. Super. 2003) (citation omitted).

> In determining whether photographs [of a decedent] are admissible, we employ a two-step analysis. First, we consider whether the photograph is inflammatory. If it is, we then consider whether the evidentiary value of the photograph outweighs the likelihood that the photograph will inflame the minds and passions of the jury. Even gruesome or potentially inflammatory photographs are admissible when the photographs are

> of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors.

Commonwealth v. Solano, 906 A.2d 1180, 1191-1192 (Pa. 2006) (citations omitted).

The autopsy photographs are not in the certified record. It is an appellant's responsibility to ensure that the certified record contains all the items necessary to review his claims. *See, e.g., Commonwealth v. Tucker*, 143 A.3d 955, 963 (Pa. Super. 2016); *Commonwealth v. B.D.G.*, 959 A.2d 362, 372 (Pa. Super. 2008). "When a claim is dependent on materials not provided in the certified record, that claim is considered waived." *Commonwealth v. Petroll*, 696 A.2d 817, 836 (Pa. Super. 1997) (citation omitted).

Without the photographs, we cannot conduct a review of Appellant's issue presented on appeal. *See, e.g., Commonwealth v. Powell*, 956 A.2d 406, 423 (Pa. 2008) (finding claim that an autopsy photograph was unduly prejudicial waived "[b]ecause the record does not contain the photograph appellant refers to, we cannot assess his description and claim"); *Petroll*, 696 A.2d at 836 (finding claim of improperly admitted photographs waived where they were not in the certified record). Accordingly, we find Appellant's final claim waived for our review.

Thus, we reverse Appellant's second conspiracy to commit robbery conviction, but decline to remand

for resentencing as it does not alter the overall sentencing scheme. We affirm Appellant's judgment of sentence in all other respects.

Judgment of sentence reversed in part and affirmed in part. Jurisdiction relinquished.

Judgment Entered.

/s/
Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/27/2017

APPENDIX B

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY,
PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v. C-0048-CR-1098-2015

LAEL J. ALLEYNE,
Defendant/Appellant.

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PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(a) STATEMENT

Notice of an appeal to the Superior Court of Pennsylvania, docketed January 5, 2017, from a sentence imposed in the above-captioned matter on December 8, 2016, has been received. We hereby provide the following Memorandum Opinion with respect to the matters complained of on appeal.

Memorandum Opinion

On the afternoon of December 22, 2014,

Nichelson Raymond was shot to death as he and a passenger, Richard Piscoya, sat in Raymond's vehicle in the vicinity of South 10th and Ferry Streets in the City of Easton. A police investigation ensued, and Defendant/Appellant Lael Alleyne (DOB 9/29/1998) and Charles Daniel Martin, III, were arrested and charged with various crimes arising from the episode. The investigation continued, and several months later, a third man was arrested in connection with the incident. The Alleyne and Martin cases were designated to the undersigned for disposition on April 20, 2015. Upon the arrest of the third man, his case was also designated to the undersigned for disposition. Discovery ensued, and on March 18, 2016, the Commonwealth filed an unopposed motion to join the cases for trial, which was granted.

The third man resolved his charges by entry of a guilty plea, and on September 6, 2016, Alleyne and Martin went to trial before a jury of their peers. On September 12, 2016, the Defendant/Appellant was found guilty on one count of First-Degree Murder, one count of Robbery (Inflict Serious Bodily Injury), one count of Conspiracy to Robbery (Inflict Serious Bodily Injury), one count of Robbery (Threatening Immediate Serious Bodily Injury), one count of Conspiracy to Robbery (Threatening Immediate Serious Bodily Injury), one count of Possession of an Instrument of Crime, and one count of Possession of a Firearm by a Minor. Following the conviction, the Court ordered a presentence investigation, and scheduled sentencing for December 8, 2016. Following a hearing at which counsel for the Commonwealth and the Defendant/

Appellant were afforded the opportunity to set forth evidence and argument, the Court imposed a sentence of incarceration for a term of four hundred fifty-six (456) months to life in prison on the charge of the First-Degree Murder of Nichelson Raymond; a consecutive term of seventy-two (72) to one hundred forty-four (144) months on the charge Robbery (Inflict Serious Bodily Injury) against Nichelson Raymond; a concurrent term of the same length on the charge of Conspiracy to Robbery (Inflict Serious Bodily Injury) against Nichelson Raymond; a consecutive term of forty-eight (48) to ninety-six (96) months on the charge of Robbery (Threatening Serious Bodily Injury) against Richard Piscoya; a concurrent term of thirty-six (36) to seventy-two (72) months on the charge of Conspiracy to Robbery (Threatening Serious Bodily Injury) against Richard Piscoya; a concurrent term of three (3) to six (6) months on the charge of Possession of an Instrument of Crime, and a concurrent term of one (1) to two (2) months on the Possession of a Firearm by a Minor charge, for an aggregate prison term of forty-eight (48) years to life in a State Correctional Institution.

Defendant/Appellant raises four issues on appeal. By the first of his issues, he challenges the sufficiency of the evidence generally.

> It is well settled that in passing upon the sufficiency of the evidence to sustain a criminal conviction, the evidence must be read in the light most favorable to the Commonwealth. Furthermore, the test of

> the sufficiency of the evidence is whether, accepting as true all the evidence and all reasonable inferences therefrom, upon which if believed the jury could properly have based its verdict, it is sufficient in law to prove beyond a reasonable doubt that the defendant is guilty of the crime or crimes of which he has been convicted.

Commw. v. Thomas, 350 A.2d 847, 848-49 (Pa. 1976).

The trial of Defendant/Appellant took place over four (4) days. Jurors heard evidence from witness Monserrat Rosas; surviving victim Richard Piscoya; two witnesses near the scene of the crime, including one who saw two men running away from the scene; an associate of the Defendants who saw them shortly after the crime; nine law enforcement officers, including the officers who investigated the scene of the crime and the detectives who conducted the many aspects of the criminal investigation; the County Coroner; and the pathologist who performed an autopsy on victim Nichelson Raymond.

As to the eye-witness testimony of Ms. Rosas and Mr. Piscoya, Ms. Rosas testified that she had been approached by Defendant/Appellant to arrange a drug deal with Richard Piscoya for two (2) ounces of marijuana so Defendant/Appellant could rob him, and that she had had done so. *N.T. Vol. II*, 53-86. She further testified that she went along with the defendants to the scene of the crime based upon an understanding with Defendant/Appellant that he

would provide her with money for the marijuana and that she alone would conduct the transaction with Piscoya. *N.T. Vol II*, 71-72. She testified that when they arrived near the scene, Defendant/Appellant and Mr. Martin each armed themselves with a gun, and they followed her to the scene. *N.T. Vol. II*, 89-94. She testified that she was never provided any money for the planned drug transaction. *N.T. Vol. II* at 94. She testified that after she got into the victims' car, Defendant/Appellant approached, opened the front passenger door of the vehicle, and pointed their guns at the victims. *N.T. Vol. II,* 102-03. Defendant/ Appellant demanded the drugs, Victim Raymond started pulling the vehicle away, Ms. Rosas got out of the vehicle, and as she ran away, she heard shots behind her. *N.T. Vol. III*, 106-108.

Mr. Piscoya's testimony corroborated Ms. Rosas' with respect to their communications regarding a marijuana transaction, and the details of the crime up to the time that Mr. Raymond starting backing his car up. *N.T. Vol. III*, 17-34. Additionally, Mr. Piscoya testified that the movement of the vehicle was immediately followed by gunshots, fired by Defendant/ Appellant. *N.T. Vol. III*, 30, 35.[1]

The jury also heard the testimony of record producer, Rohan Rowe, who stated that Mr. Martin called him at 4:03 p.m. on the day of the crime to book

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[1] Mr. Piscoya testified that he observed the "bigger" of the two defendants firing, referring to the heavier of the two. Defendant/Appellant is the heavier of the two defendants.

recording studio time, and that Martin arrived at Mr. Rowe's home with Defendant/Appellant at approximately 4:50 p.m. that day. That timeline testimony dovetailed with the testimony of Easton Police Officer Jamie Luise, who testified that he was dispatched to the scene of the crime at or about 4:38 p.m.

These accounts are corroborated by several items of evidence. These include the Defendants' own digital communications records, video footage of the car implicated in the crime approaching and then leaving the scene, the recovery of the jackets that the Defendant/Appellant and Mr. Martin were described as wearing at the time of the murder, the presence of Defendant/Appellant's DNA on a mask collected from the scene of the crime, and a prison phone call placed by Defendant/Appellant in which he appears to be attempting to establish an alibi suggesting that he was at Rohan Rowe's house at the time of the crime. *N.T. Vol. II and III.*

In consideration the foregoing, the undersigned believes that jury's verdict was well founded and reasonably based on all the evidence and all the reasonable inferences that could be drawn therefrom. Accordingly, the undersigned respectfully suggests that this Honorable Court should deny Defendant/Appellant's sufficiency of the evidence claim, and affirm this Court's judgment of sentence.

By his next issue, Defendant/Appellant alleges that the Court erred in refusing to charge the jury on

voluntary manslaughter. It is well settled that:

> a trial court shall only instruct on an offense where the offense has been made an issue in the case and where the trial evidence reasonably would support such a verdict. Therefore, only where an instruction is requested and only if the evidence supports "heat of passion" voluntary manslaughter, is an instruction thereon required … Instructions regarding matters which are not before the court or which are not supported by the evidence serve no purpose other than to confuse the jury.

Commw. v. Browdie, 671 A.2d 668, 674 (Pa. 1996).

> A Voluntary Manslaughter instruction is appropriate in the face of evidence of a killing:
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> without lawful justification ... if at the time of the killing [the actor] is acting under a sudden and intense passion resulting from serious provocation by:
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> (1) the individual killed; or
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> (2) another whom the actor endeavors to kill, but he negligently or accidentally causes the death of the individual killed[; or]

> if at the time of the killing [the actor] believes the circumstances (relating to self-protection or protection of another) to be such that, if they existed, would justify the killing ... but his belief is unreasonable.

18 Pa.C.SA. § 2503.

While there was evidence that Nichelson Raymond had a gun in his vehicle at the time of the crime, there is no evidence that he ever brandished it, or that its presence was known to Defendant/Appellant at all. Rather, the evidence is that Mr. Raymond was attempting to flee at the time the shots were fired. *N.T. Vol. II and III*. Accordingly, the undersigned believes that it would have been error to give a Voluntary Manslaughter instruction based on an imperfect self-defense theory. Likewise, the undersigned believes it would have been improper to give a Voluntary Manslaughter instruction amid evidence that the only preamble to the shooting was the victims failing to turn marijuana over to the Defendant/Appellant as he held them at gunpoint. *N.T. Vol. II and III*. Consequently, the undersigned respectfully suggests that this Honorable Court should deny Defendant/Appellant's request for relief premised on allegations of this Court's failure to instruct the jury on Voluntary Manslaughter.

Finally, in items 3 and 4 of his Concise Statement of Matters Complained of On Appeal, Defendant/Appellant claims that this Court erred in

admitting into evidence autopsy photographs of the Decedent, Nichelson Raymond, and the clothing worn by Mr. Raymond at the time of his death, and allowing them to be published to the jury. Pursuant to Pennsylvania Rules of Evidence 401 and 402, "[e]vidence is relevant if it tends to prove or disprove a material fact," and "[r]elevant evidence is admissible if its probative value outweighs its prejudicial impact." *Czimmer v. Janssen Pharm., Inc.*, 122 A.3d 1043, 1058 (Pa. Super. 2015), reargument denied (Oct. 26, 2015).

> With respect to the presentation of photographs of a murder victim in a jury trial,
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> When considering the admissibility of photographs of a homicide victim, which by their very nature can be unpleasant, disturbing, and even brutal, the trial court must engage in a two-step analysis:
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> First a [trial] court must determine whether the photograph is inflammatory. If not, it may be admitted if it has relevance and can assist the jury's understanding of the facts. If the photograph is inflammatory, the trial court must decide whether or not the photographs are of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors . . . [Further,] [a]lthough the presence of

> blood on the victim depicted in the photographs is unpleasant, it is not in and of itself inflammatory.

Commw. v. Spell, 28 A.3d 1274, 1279 (Pa. 2011).

Prior to the trial of the instant case, the defense made a motion to preclude admission of two post-mortem photographs of Mr. Raymond, depicting his torso bearing indications of stitches and blood. In response to the objection, the Commonwealth explained that the first of the photographs depicted Mr. Raymond's severed spine, which would be relevant to the pathologist's testimony that Mr. Raymond was immediately paralyzed when he was shot, and the second photograph showed a fracture and a bullet fragment in Mr. Raymond's elbow, which was relevant to demonstrating the position of his hands at the time he was shot. Given the relevance of the photographs, and the fact that the Court did not find the photographs unusually graphic or inflammatory, it permitted the Commonwealth to present the photographs to the jury in black and white. *N.T. Vol. I*, 55-62. During trial, Defendant/Appellant raised no objection to any of the photographs offered by the Commonwealth, with the exception of a series of three pictures, marked C-146-148, depicting the clothing worn by Mr. Raymond at the time of his murder. Specifically, Defendant/Appellant argued that the photographs were more inflammatory and prejudicial than probative, and that they should not be published to the jury. *N.T. Vol. IV*, 148-49.

By way of response, the Commonwealth, citing *Commw. v. Solano*, 588 Pa. 716 (Pa. 2006),[2] argued that the photographs were relevant and admissible to show that Mr. Raymond died as a result of excessive blood loss, and also to show malice under *Commw. v. Taylor*, 524 A.2d 942 (Pa. Super. 1989).[3] *N.T. Vol. IV*, 149. In reliance on the case law, the undersigned overruled Defendant/Appellant's objection, and allowed the photographs to be admitted and published to the jury. Given the small number of photographs, the fact that blood is only readily apparent in two of them, and the fact that the photographs were introduced as evidence of material facts, the Respectfully recommends that the Defendant/Appellant's third and fourth requests for relief should be denied and his sentence affirmed.

BY THE COURT:

/s/

CRAIG A. DALLY, J.

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[2] "Murder evidence is not often agreeable, but sanguinity does not equal inadmissibility." *Commw. v. Spell*, 28 A.3d 1274, 1279 (Pa. 2011).

[3] In *Taylor*, the Superior Court was called to consider whether a trial court had erred in admitting a pair of jeans laden with blood and stab marks into evidence for publication before a jury. Upon consideration, it found that they were admissible as "an indication of the brutality of the attack in order to establish the elements of aggravated assault." *Commw. v. Taylor*, 524 A.2d 942, 945 (Pa. Super. 1987).

APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,
Respondent

v. No. 62 MAL 2018

LAEL J. ALLEYNE,
Petitioner

Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 13th day of June, 2018, the Petition for Allowance of Appeal is DENIED.