

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JABBAR WALLACE — PETITIONER
(Your Name)

vs.
COMMONWEALTH OF PA. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JABBAR WALLACE NO. JA-9822

(Your Name)

1100 PIKE STREET

(Address)

HUNTINGDON, PA. 16654-1112

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

THE PETITIONER IN THIS CASE ACTED IN SELF DEFENSE WHEN ATTACKED BY THE DECEDENT AND HIS FRIENDS WHILE IN THE RESTROOM. THE PETITIONER WAS IN DANGER OF HIS LIFE AND/OR SERIOUS BODILY INJURY. NONETHELESS THE PETITIONER WAS SENTENCED FOR MURDER.

THE PETITIONER WAS DENIED CONFRONTATION CLAUSE RIGHT PROTECTION.

COUNSEL WAS INEFFECTIVE AT TRIAL.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The Commonwealth of Pennsylvania is represented by:

DISTRICT ATTORNEY OF LUZERNE COUNTY
LUZERNE COUNTY COURTHOUSE
200 NORTH RIVER STREET
WILKES BARRE, PA. 18711-1001

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A DISTRICT COURT MEMORANDUM/OPINION
AND MAGISTRATE REPORT & RECOMMENDATION

APPENDIX B THIRD CIRCUIT COURT OF APPEALS

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BULLCOMING V. NEW MEXICO, 547 U.S. 813 (2006)	7
COMMONWEALTH V. RIERA, WL 10896787 (2014)	6
CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004)	7
DAVIS V. WASHINGTON, 547 U.S. 813 (2006)	7
DOYLE V. OHIO, 426 U.S. 610 (1976)	9
MELENDEZ-DIAZ V. MASSACHUSETTS, 557 U.S. 305 (2009)	7
WERTS V. VAUGHN, 228 F.3D 178 (3RD CIR. 2000)	8
STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)	8

STATUTES AND RULES

FIFTH AMENDMENT

SIXTH AMENDMENT

FOURTEENTH AMENDMENT

SPECIAL CASES OF IMPORTANCE:

CULLEN V. PINHOLSTER, 563 U.S. 170 (2011)	5
HARRINGTON V. RICHTER, 562 U.S. 86 (2011)	5
KELLER V. LARKINS, 251 F.3D 408 (3RD CIR. 2001)	5

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "B" to the petition and is C.O.A. Petition was denied. **||SHORT ORDER||**

reported at _____; or, **DENIED C.O.A.** 5-7-18
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix "A" to the petition and is **||MEMORANDUM OF DISTRICT JUDGE & MAGISTRATE REPORT||**

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 7, 2018 <---C.O.A. [SHORT ORDER]
~~XXXXXXXXXXXXXXXXXXXX~~

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE

THE PETITIONER, JABBAR WALLACE, WAS CONVICTED OF THIRD DEGREE MURDER FOR THE DEATH OF ERIC CUSAAC. HE WAS SENTENCED TO 16 TO 32 YEARS IN PRISON.

THE PETITIONER DOES NOT DENY THAT HE KILLED THE DECEDEDNT BUT ASSERTS THAT HE DID SO IN SELF-DEFENSE. THE PETITIONER AND THE DECEDEDNT HAD A VERBAL ARGUMENT IN A CERTAIN BAR IN LUZERVE COUNTY, PENNSYLVANIA. NO PHYSICAL CONFRONTATION RESULTED. INSTEAD THE PETITIONER LEFT THAT BAR AND WITH ONE OF HIS FRIENDS DROVE TO ANOTHER BAR (THE GLASS BAR) IN AN ATTEMPT TO AVOID ANY PROBLEMS.

WHILE AT THE GLASS BAR THE DECEDEDNT AND HIS FRIEND, CAMERON LITTLE, VISITED THE MENS RESTROOM. WHILE IN THE RESTROOM THE DECEDEDNT ENTERED THE RESTROOM, WITH SEVERAL OF HIS FRIENDS AND THE DECEDEDNT THREATENED THE PETITIONER VERBALLY. AFTER THE VERBAL THREATS THE DECEDEDNT APPROACHED THE PETITIONER AND PHYSICALLY HIT THE PETITIONER. IT WAS THEN THE PETITIONER PULLED OUT A GUN AND SHOT THE DECEDEDNT CAUSING THE DEATH OF THE DECEDEDNT.

THE PETITIONER ACTED IN SELF DEFENSE AND AT NO TIME WAS THE PETITIONER THE AGGRESSOR. IN FACT THE PETITIONER TRIED TO AVOID THE DECEDEDNT BY LEAVING THE ONE BAR — WHERE THE DECEDEDNT WAS AT, AND AT WHICH THEY HAD AN ARGUMENT-BUT NO PHYSICAL CONFRONTATION.

THE DECEDEDNT WAS THE AGGRESSOR WHO FOLLOWED THE PETITIONER TO THE "GLASS BAR" AND THEN PHYSICALLY ASSAULTED THE PETITIONER.

REASONS FOR GRANTING THE PETITION

ON JULY 24, 2014, THE PETITIONER FILED A HABEAS CORPUS § 2254 PETITION. IN THAT HABEAS CORPUS PETITION THE PETITIONER ASSERTED THAT

- (a) THE STATE COURTS ERRED BY FAILING TO APPLY PENNSYLVANIA'S (NEW) AND RECENTLY ENACTED "STAND YOUR GROUND" AMENDMENT TO ITS SELF-DEFENSE LAW RETROACTIVELY TO PETITIONER'S CASE WHEN THAT AMENDMENT BECAME EFFECTIVE WHILE PETITIONER'S CASE WAS STILL ON DIRECT APPEAL;
- (b) THE TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE EVIDENCE THE PROSECUTOR ELICITED FROM A FORENSIC PATHOLOGIST ABOUT THE FINDINGS OF A TOXICOLOGIST EVEN THOUGH THE THE TOXICOLOGIST WAS NOT MADE AVAILABLE BY THE PROSECUTOR FOR CROSS EXAMINATION. THIS WAS A VIOLATION OF THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT;
- (c) TRIAL COUNSEL FAILED TO CALL CHARACTER WITNESSES WHO WERE IN FACT AVAILABLE AND READY TO TESTIFY ON BEHALF OF THE PETITIONER;
- (d) THE TRIAL COURT ERRED BY NOT DECLARING A MISTRIAL AFTER THE PROSECUTOR REFERENCED PETITIONER'S POST-ARREST SILENCE;
- (e) THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE.

THESE WERE THE FIVE CLAIMS RAISED IN THE HABEAS CORPUS PETITION.

THE PETITIONER IS AWARE THAT A FEDERAL HABEAS CORPUS PETITION MAY ONLY BE GRANTED IF THE STATE COURT'S APPLICATION OF FEDERAL LAW WAS OBJECTIVELY UNREASONABLE. KELLER V. LARKINS, 251 F.3D 408 (3RD CIRCUIT 2001); HARRINGTON V. RICHTER, 562 U.S. 86 (2011); CULLEN V. PINHOLSTER, 563 U.S. 170 (2011).

THIS IS A VERY UNUSUAL CASE AND CONSISTS OF A SITUATION WHERE THE PETITIONER IS ACTUALLY INNOCENT OF MURDER. HERE-THIS IS A CASE OF SELF-DEFENSE. AT THE TIME OF THE INCIDENT WHICH INVOLVED THE PETITIONER SHOOTING THE DECEDENT AS THE DECEDENT ATTACKED THE PETITIONER, THE PENNSYLVANIA LAW ON THE USE OF DEADLY FORCE IN SELF-DEFENSE ATTACHED TO IT THE DUTY TO RETREAT. IN THE INSTANT MATTER INVOLVING THE PETITIONER THE PROSECUTOR ARGUED THAT THE PETITIONER COULD HAVE BUT DID NOT RETREAT. (The Petitioner argued there was no way to retreat because the decedent's friends blocked the doorway of the restroom). [EMPHASIS]

NONETHELESS THE JURY FOUND THE PETITIONER GUILTY OF THIRD DEGREE MURDER FINDING THE DUTY TO RETREAT WAS NOT ATTEMPTED BY PETITIONER.

WHILE ON DIRECT APPEAL IN THIS INSTANT CASE, THERE WAS AN AMENDMENT MADE TO THE SELF-DEFENSE STATUTE (18 PA. C.S. § 505(b)(2)(ii)(A)). THE AMENDMENT DID NEGATE THE COMMON LAW DUTY TO RETREAT IN CERTAIN CIRCUMSTANCES. COMMONWEALTH V. RIERA, WL 10896787 AT *23 (PA. SUPER. CT. 2014). THE PETITIONER'S CONVICTION AND SENTENCE WERE NOT YET FINAL WHEN THE AMENDED LAW (self-defense) WAS PASSED AND TOOK EFFECT. THE PETITIONER WAS ON DIRECT APPEAL, WHEN THE AMENDED SELF-DEFENSE LAW TOOK EFFECT THEREFORE THE PETITIONER IS REQUIRED TO RECEIVE THE BENEFIT OF THAT AMENDMENT. THE FACT OF THE MATTER IS SIMPLE: TODAY THE ACT THE PETITIONER WAS CONVICTED OF WOULD NOT BE ILLEGAL BUT IS SELF-DEFENSE.

THIS INVOLVES A REAL LIFE SITUATION WHERE THE PETITIONER IS ACTUALLY INNOCENT OF MURDER AND THAT HE ACTED IN SELF DEFENSE. THE PETITIONER IS BEING INCARCERATED IN VIOLATION OF THE U.S. CONSTITUTION. PETITIONER WAS CONVICTED OF THIRD DEGREE MURDER WHICH IS AN OFFENSE COMMITTED WITHOUT MALICE. THE KILLING OF THE DECEDENT WAS JUSTIFIED, HERE, BECAUSE THE DECEDENT WAS THE AGGRESSOR, FOLLOWED THE PETITIONER TO THE GLASS BAR, THEN WHEN THE PETITIONER WENT INTO THE RESTROOM, THE DECEDENT WITH HIS FRIENDS ENTERED THE SAME RESTROOM, BLOCKED THE DOORWAY PREVENT THE PETITIONER FROM MAKING AN EXIT, AND THEN THE DECEDENT ATTACKED THE PETITIONER. ONLY THEN DID THE PETITIONER SHOOT THE DECEDENT.

CLEARLY, UNDER THE AMENDED STAND YOUR GROUND LAW IN PA., THIS WOULD BE SELF DEFENSE. THE PETITIONER IS ENTITLED TO THE BENEFIT OF THE NEW AMENDED LAW THAT TOOK EFFECT WHILE THE PETITIONER WAS ON DIRECT APPEAL. THIS IS A CASE OF ACTUAL INNOCENCE.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE ADA INTRODUCING TESTIMONIAL EVIDENCE FROM A PATHOLOGIST CONCERNING THE FINDINGS FROM A TOXICOLOGIST, WHEN THE PATHOLOGIST HAD NO ROLE IN THE TOXICOLOGIST EXAMINATIONS AND NO ROLE IN THE REPORT OF THE TOXICOLOGIST. THIS WAS A VIOLATION OF THE CONFRONTATION CLAUSE. MELENDEZ-DIAZ V. MASSACHUSETTS, 557 U.S. 305 (2009); CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004); BULLCOMING V. N.M., 564 U.S. 647 (2011); DAVIS V. WASHINGTON, 547 U.S. 813 (2006).

COUNSEL MADE NO OBJECTION WHATSOEVER TO THE CONFRONTATION CLAUSE VIOLATION. PETITIONER'S TRIAL COUNSEL NEVER HAD THE OPPORTUNITY TO CROSS EXAMINE THE TOXICOLOGIST BECAUSE THE EXPERT WAS NEVER MADE AVAILABLE AT TRIAL. COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE ANY OBJECTION TO ALLOWING THE PROSECUTOR TO VIOLATE THE CONFRONTATION CLAUSE OF THE PETITIONER. PETITIONER HAD A RIGHT TO CONFRONT ANY OF THE WITNESSES WHO PRESENTED ANY EVIDENCE AGAINST THE PETITIONER. HERE IN THIS INSTANT CASE THAT WAS NOT DONE. TRIAL COUNSEL WAS NOT BEING AN EFFECTIVE ADVOCATE FOR THE PETITIONER IN ALLOWING THE PROSECUTOR TO INTRODUCE EVIDENCE IN VIOLATION OF THE CONFRONTATION CLAUSE OF THE U.S. CONSTITUTION. STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984); WERTS V. VAUGHN, 228 F.3D 178 (3RD CIR. 2000). FOR ALL THE REASONS SET FORTH, COUNSEL SHOULD HAVE OBJECTED IN THIS MATTER AND COUNSEL WAS INEFFECTIVE FOR NOT DOING SO.

COUNSEL WAS ALSO INEFFECTIVE FOR FAILING TO CALL CHARACTER WITNESSES WHO WERE ALL READY AND WILLING TO TESTIFY AS TO THE PETITIONER'S NON-VIOLENT CHARACTER. THE PETITIONER PROVIDED THE DEFENSE LAWYER WITH A LIST OF CHARACTER WITNESSES (family members) WHO WERE READY TO TESTIFY AS TO THE PETITIONER'S NON-VIOLENT CHARACTER. FOR NO REASON THAT COULD BE CONSIDERED TACTICAL, THE TRIAL COUNSEL FAILED TO CALL EVEN ONE OF THE CHARACTER WITNESSES REQUESTED. THERE WAS NO EXCUSE FOR THIS. COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL THE LIST OF CHARACTER WITNESSES PROVIDED BY THE PETITIONER. THESE WERE ALL GOOD SOLID CITIZENS, (family members) WHO KNEW PETITIONER HIS ENTIRE LIFE.

THEY ALL WOULD HAVE TESTIFIED AS TO PETITIONER'S NON-VIOLENT CHARACTER AND HOW THE PETITIONER "ALWAYS" TRIED TO AVOID PROBLEMS. UNDER STRICKLAND-V-WASHINGTON, COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT THE CHARACTER WITNESSES IN THIS CASE WHEN ALL OF THE OF THE CHARACTER WITNESSED WERE AVAILABLE, READY, AND WILLING TO TESTIFY. THE CHARACTER WITNESSES WERE IMPORTANT BECAUSE THEY WOULD HAVE TOLD THE JURY THAT THE PETITIONER IS NOT A VIOLENT PERSON.

THE TRIAL COURT DID COMMIT ERROR WHEN THE COURT FAILED TO DECLARE A MISTRIAL WHEN THE PROSECUTOR REFERENCED PETITIONER'S POST-ARREST SILENCE. DOYLE V. OHIO, 426 U.S. 610 (1976). THIS ACT BY THE ADA PROSECUTOR IN PETITIONER'S CASE VIOLATED DUE PROCESS CLAUSE RIGHTS OF THE FOURTEENTH AMENDMENT. THE REFERENCE BY THE PROSECUTOR THAT THE PETITIONER WAS SILENT AFTER BEING ARRESTED AND ASKED QUESTION(S) BY THE POLICE INDICATED TO THE JURY POSSIBLE GUILT AND THIS DID IMPACT UPON THE PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS AS PER THE FOURTEENTH AMENDMENT. THE PROSECUTOR ELICITED THE TESTIMONY OF TROOPER WILLIAMS WHICH IN SUMMARY INDICATED THAT THE PETITIONER WOULD NOT TALK TO HIM AFTER HE WAS ARRESTED. COUNSEL DID ASK FOR A MISTRIAL BUT THE TRIAL COURT DENIED THE REQUEST. THIS WAS TRIAL COURT ERROR THAT CAUSED PREJUDICE AGAINST THE PETITIONER IN THE EYES OF THE JURY WHO THEN ASSUMED THAT THE PETITIONER HAD SOMETHING TO HIDE.

THE JURORS HEARD THAT THE DEFENDANT/PETITIONER REMAINED SILENT AFTER HE TURNED HIMSELF IN TO THE STATE POLICE. IT WAS THE RIGHT OF THE PETITIONER TO REMAIN SILENT AND IT IS NOT TO BE MADE KNOWN TO THE JURY THAT PETITIONER EXERCISED HIS RIGHT TO REMAIN SILENT, AND TO REFUSE TO DISCUSS THE CASE WITH THE TROOPER. BUT HERE THE JURY HEARD THE QUESTION AND THE ANSWER INFORMING THE JURY THAT THE PETITIONER REFUSED TO SPEAK TO THE TROOPER. A MISTRIAL WAS DENIED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Jabbar Wallace
JABBAR WALLACE #JA-9822

Date: JUNE 18, 2018