No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

LEWIS WRIGHT, PETITIONER

Vs.

PENNSYLVANIA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

STATE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

_____

LEWIS WRIGHT, Petitioner

SCI-COAL TOWNSHIP – 1 Kelley Drive
Coal Township, Pennsylvania 17866-1021

QUESTIONS PRESENTED

1. WHETHER THE COURT OF COMMON PLEAS ERRED IN LIMITING MR. STIEN ABILITY TO ESTABLISH WITNESS JOSEPH FARLEY'S BIAS WHERE MR. STEIN WAS PREVENTED FROM INQUIRING INTO FARLEY'S ARREST AND CONVICTION OF PROSTITUTION AND SOLICITATION IN ORDER TO ASCERTAIN WHETHER THERE WERE PROBATION VIOLATIONS AND OTHER POSSIBLE PENALTIES, AND WHETHER FARLEY'S CASES OR SENTENCING HAD BEEN POSTPONED UNTIL AFTER HE HAD TESTIFIED AGAINST PETITIONER WRIGHT AND WHETHER STARE DECISIS WAS FOLLOWED AND WHETHER PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED WHEN STATE APPELLATE COURT CONFIRMED CONVICTION?

   Suggested answer in the affirmative

2. WHETHER A DEFENDANT IS DENIED THE RIGHT TO EFFECTIVE CROSS EXAMINATION WHERE DEFENSE COUNSEL, ALTHOUGH PERMITTED TO ASK A PROSECUTION WITNESS ABOUT ARREST AND CONVICTIONS, IS PRECLUDED FROM MAKING A RECORD FROM WHICH TO ARGUE BEFORE THE JURY THAT THE WITNESS'S TESTIMONY WAS MOTIVATED BY HELP HE WAS RECEIVING FROM THE PROSECUTION TO GET HELP WITH HIS PROBATION VIOLATION AND A LIGHT SENTENCE OUTSIDE OF THE SENTENCING GUIDELINES?

   Suggested answer in the affirmative

3. WHEN COMMONWEALTH ATTORNEY DAWN HOLTZ FAILED TO DISCLOSE TO THE DEFENSE THAT JOSEPH FARLEY WAS GOING TO BE SENTENCED AS A PAROLE VIOLATOR, KNOWINGLY USED PERJURED TESTIMONY AND FAILED TO CORRECT PERJURED TESTIMONY WAS **BRADY V. MARYLAND**, 373 U.S. 83, (1963), **KYLES V. WHITLEY**, 514 U.S. 419 (1995) and **BANKS v. DRETKE**, 540 U.S. 668 (2004) VIOLATED ALONG WITH THE SUPREMACY CLAUSE?

   Suggested answer in the affirmative

LIST OF PARTIES

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

TABLE OF CONTENTS

INDEX TO APPENDICES

CONTINUED, INDEX TO APPENDICES PAGE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

Pennsylvania State Courts:

The Pennsylvania Superior Court is the highest State Court to review the merits and appears at Appendix A to the Petition and is unpublished.

The opinion of the Court of Common Pleas (Post-Conviction Court) appears at Appendix B and is unpublished.

The State Supreme Court denied Discretionary review of Petition for Allowance of Appeal and appears at Appendix C and is unpublished.

JURISDICTION

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

The date on which the highest state court denied allocatur in this case was July 10, 2018. No Petition for Rehearing or an extension of time was submitted by petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 6, Clause, provides, in relevant part as follows:

This Constitution, and Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the Authority of the United States shall be Supreme Law of the Land; and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Sixth Amendment to the United States Constitution provides in relevant part, as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States provides in relevant part, as follows:

... No State shall make or enforce any laws which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The State Supreme Court denied Petition for Allowance of Appeal to address claims for (1) whether prosecution was non-responsive to issues raised on appeal; (2) whether the lower court's non-responsive opinions concerning issues raised violated the due process clause; (3) whether the PCRA Court erred in limiting attorney Stein's ability to establish Commonwealth witness Joseph Farley's bias which prevented him from inquiring into what Farley was actually arrested for, to ascertain the typed of criminal charge, the available penalties and whether Farley's case had been postponed repeatedly until after he testified against petitioner; (4) whether the United States Constitution's Sixth Amendment right of an accused in a criminal case to be confronted with witnesses against him is secured in state as well as federal court; (5) whether Sixth Amendment right of an accused to confront witness is more than merely allowing physical confrontation; (6) whether a defendant is denied the right to effective cross-examination where defense counsel, although being permitted to ask about pending criminal charge, is precluded from making a record from which to argue before jury that the witness's testimony was motivated by deal he expected to receive from the prosecution for a reduced sentence on probation violation and pending charges; (7) whether there is an affirmative duty of due diligence on defense counsel that exempts a prosecutor from the mandates of Brady v. Maryland, 373 U.S. 83 (1963); (8) whether petitioner is entitled to relief once he has shown a reasonable likelihood that false testimony could

have affected the jury's verdict; (9) whether the prosecutor is exempt from his affirmative duty to correct any testimony known to be false and (10) whether Buck v. Davis, 137 S.Ct. at 777, 779, allows state courts to address ineffective assistance of counsel claims.

In the instant case, petitioner was convicted by remarkably contrary and false testimony of Commonwealth witness Joseph Farley. Attorney Stein was denied by the trial judge the opportunity to demonstrate to the jury that Farley was biased against him. This violated petitioner's right under the Sixth and Fourteenth Amendments to the United States Constitution. The Sixth Amendment right of confrontation of a witnesses requires that a defendant in a state criminal case be allowed to impeach the credibility of witnesses by cross-examination directed at possible bias. A Brady violation occurs when the government knowingly presents or fails to correct false testimony, or fails to provide impeachment evidence. Counsel could have used the perjured testimony to prove the Commonwealth witness was not credible and bolstered trial evidence that the prosecution witness was mistaken or lied when he testified that petitioner was the shooter. Moreover, the Brady evidence could have been used to impeach Farley and could have provided backbone for trial counsel's closing argument that Farley was expecting a deal from the prosecution for his testimony of a reduced sentence for his probation violation and pending charges and that Commonwealth used that coercion to gain favorable testimony.

The Commonwealth concluded: (1) Farley's open case and his

probationary status were brought out by Commonwealth on direct [-] examination. Appx. P, N.T. 8/10/05, pp. 136-38, 144-48, 185-89, and that Farley's criminal extract and corresponding docket sheet merely state the same facts Petitioner had known since the time of trial. Appx. A, pp. 6-7. Petitioner's issues were waived because he failed to include them in a prior PCRA Petition. Id. pp. 7-8. That Petitioner failed to establish the existence of an agreement between the Commonwealth and Farley or that Farley offered perjured testimony in Petitioner's case and that Petitioner failed to prove he could not have learned of the Farley letter earlier by the exercise of due diligence. Appx. A, p. 8. That Petitioner's Brady claim did not merit relief because Petitioner knew at the time of trial in 2005 that Farley had a lengthy criminal history, including solicitation and prostitution. Appx. A, p. 10.

A. THE TRIAL

Farley testified he was standing on the corner of Old York & Rising Sun Avenue, speaking to a crossing guard from about half a city block away when he observed a car bump into the back of a truck. He then observed the driver of the car, Petitioner and the driver of the truck, the victim exit their vehicles and the victim knocked Petitioner down and knocked his hat off. Appx. Q, N.T. 8/8/05, p. 162.

Farley further testified, he observed Petitioner retrieve something form his car and walk back toward the truck, at which time petitioner fired a shot at the victim through the open driver side window. As Petitioner was walking back toward his

car, Petitioner looked directly at Farley, who then observed Petitioner get back into his car and drive the wrong way down Germantown Avenue. Appx. R, N.T. pp. 143-168.

In closing arguments during the suppression hearing defense counsel admetted two statements that Farley made to poice investigators that failed to mention any identification information, arguing Farley's "fantastic, fabulous identification of Petitioner as the shooter is not recorded anywhere" on an official police documetn. Prosecutor Holtz stated: "I agree with that; it is not on any documents [!]. In fact, Ididn't know there was an I.D." Appx. S, N.T. p. 182.

During cross-examination at trial, Farley testified, he was having a conversation with crossing guard, Angela Yoro, and didn't actually see the accidint, he merely heard it. Appx. G, N.T. 8/10/05, p. 157.

Each time Farley was asked to tell his version of what happened his memory was updated with information that was after the fact. When asked during the suppression hearing about inconsistencies between the first statement he provided to police entered in docket at Appx. D, and the second statement at Appx. E, Farley testified victim was in the truck with his mom. When asked, "you didn't know it was his mom then, right?" Farley stated "At the time I didn't know it was his mom, I was told it was when the ambulance came, she was still in the truck." Appx. R, N.T. 158.

During direct examinationat trial, Farley testified under oath:

"I didn't even know it was anybody else in th ecar until after the fact when they were saying that his mom was in the car. I didn't even know it was anybody elso in the truck besides him until the ambulance came and, you know, they pulled her out of the truck. I didn't even know it was anybody else in there..." Appx. F, N.T. 8/10/05, p. 140.

During opening statements, defense counsel argued to the jury, an unidentified person in Petitioner's car was the one who shot the victim. Appx. T, N.T. 8/9/05, pp. 40-42. When asked during direct examination: "Did you see anybody else in th ecar besides the defendant?" Farley said, "no, because it would have been strange that, youknow, they see him like he did and nobody jumped out of the car to come to help him or anything. So I didn't see anybody elso in th ecar." Appx. F, N.T. p. 140.

During direct examination Farley was asked, was he in custody at the time on an open case he was arrested, on March 24, 2005? Farley said, "Yes". The prosecutor asked him, if the District Attorney's Office or anyone made any offers or promises to him about the open cse in order for him to testify in this case. He responded, no Ma'am. Appx. F, N.T. pp. 136-37. The prosecutor then elicited testimony form Farley which generally focused on his open prior convictions of burglary, theft by unlawful taking, an open case he had observed a shooting, the prosecutor mischaracterized as solicitation "for" prostitution. Taking advatage of that invitation, Farley testified: "yeah... I was actually inthe car with some other people when they, you know, people came up and said one thing or another and we all were arrested." Appx. F, N.T. pp. 136-38.

In response to the prosecutor's cross-examination, Farley stated, he was fighting an open drug case; that he knew pretty

much how it was going to turn out because he had been doing legal research, and did so whil specifically denying he had asked the D.A. or police to help out with his open case. Appex. G, N.T. p. 163. When asked if he had an open case when he observed the shooting, Farley stated, "they had him go toa program for that thing with the guy and the girl." When asked, well you were arrested on October 18, 2002, for prostitution, right? Farley stated, "It was soliciting... like I said, it was me and some other people in a car and that's how it went down..." Upon asking if he was found guilty of prostitution, the trial court twice sustained the objection of the prosecutor on relevance. Appx. H, N.T. 8/10/05, pp. 185-88.

The prosecution kept from the defense that Farely was currently facing two open violations of probation; that he was actually charged, tried and convicted two weeks earlier for "prostitution" and soliciting to commit prostitution in exchange for $45.00, to perform oral sex on an undercover officer. Appx. I, (Arrest Report).

Prosecutor Holtz knowingly allowed Farley's perjured testimony that he wasarrested for soliciting, not prostitution, to stand on the foundation of two sustained objections. See Appx. H. On criminal docket No. CP-51-CR-0707601-2005, Farley's open drug case, which 3was initially scheduled for trial on June 22, 2005, was rescheduled prior to Petitioner's case, due to a "possible negotiated guilty plea." Appx. B, p. 11.

Proscutor Holtz knowingly bolsterd the false testimonual statements made by Farley when she stated in her closing argu-

ments:

> "... He might have been a criminal in the day or night, I don't know, he might be a criminal today, but he was a human being that day and I don't care what you say, I'd rather have him be a witness than Mr. Dixon, who sees a shooting, supposedly, and walks home. I don't care how many convictions, wouldn't you want him here? To stay there and give the information if your love one was shot?...
>
> "He has no interest in the outcome of this case. He didn't know two and a half years ago that he might have an open case today. And I ask you to look at his testimony from the witness stand. Did he appear to be lying to you?" Appx. U, N.T. 8/15/05, pp. 140-41.

The trial judge explained to the jury, they must consider and weigh the testimony of each witness and give it weight as in their judgment it is fairly entitled to receive. The judge further explained, that whether th witness has any interest in the outcome of the case, is on of the factors that bears on the credibility of a witness. In doing so, the judge stated:

> "Falos in one, falso in all. If you concluded tha one witness testified falsely and did so intentionally about a fact which is necessary to your decision in this case, then for that reason alone you may, if you wish, disregard everything that witness said, and that if the jury finds that a witness intentionally testified falsely, in one respect, but truthfully about everything else, then they may accept that part of the testimony that they find truthfull, and reject that part which they found to be false and worthy of belief."

As a direct result of the prosecutor's willful failure to disclose Farley's complete criminal record and current probation staus and knowingly aiding Farley in his perjury, the jury chose to believe the misstatements of facts and perjury provided by Farley, as demonstrated by returning a verdict of guilty on August 16, 2005. Appx. V, N.T 8/16/05, pp. 13-14.

B. State Post-Convictions Federal Proceeding/Amendment To Post-Conviction And Newly Discovered/Presented Evidence.

Petitioner filed his first Post-Conviction Relief Act ("PCRA) Petition which raised seven distinct and separate claims

of ineffective assistance of counsel. PCRA Counsel, Pasquale Colavita, filed a Finley Letter on November 11, 2009, together with a motion to withdraw based on grounds Petitione's claims were frivolous. On November 23, 2009, the PCRA Court dismissed his petition and allowed PCRA Counsel to withdraw. On December 4, 2009, Petitioner appealed to the Pennsylvania Superior Court at docket No. 134 EDA 2010. On March 28, 2011, the Superior Court denied the appeal.

In December of 2011, Petitioner, pro se, filed a petition for writ of habeas corpus in th eUnited States Eastern District Court of Pennsylvania at Docket No. 2:11-cv-07466. On May 9, 2014, the District Court dismissed the petition and denied COA. Petitioner filed for Ceriorari and it was denied.

Petitioner sent request to Pennsylvania State Police ("PSP") and received information Farley was arrested on March 2015 for drug offense. Appx. J. Petitioner sent letters to Clerk of Court requesting copy of Farley's prior conviction, the request was denied. Appx. K. Petitioner obtained a copy of docket report for Criminal ActionNos.: CP-51-CR-0709201-1999; CP-51-CR-08075551-2001; CP-51-CR-0707601-2005; and, MC-51-CR= 1016551-2001, via an alternative source. As a result of obtaining said documents, Petitioner discovered that on March 28, 2005-- four days after Farley was charged with his second drug offense, two separate charges for violation of probation were initiated, Criminal Action No. CP-51-CR-709201-1999 & CP-51-CR-8075551= 2001, both violations were pending before the court when Farley testified against Petitioner but not disclosed to him prior to

trial as requested in Bil of Particulars.

Probation revocation hearings were rescheduled numerous times, until approximately 120 days after Petitioner's trial and after Farley testified against Petitioner. After testifying against Petitioner, Farley was sentenced to 1 to 2 years. Appx. L. Farley's second drug offense was rescheduled four times at Farley's request, due to a "possible negotioated guilty plea." Criminal Docket No.: CP-51-CR-707601-2005.

Farley was sentenced in exchage for his negotiated second guilty plea at CP-51-CR-0807551-2001, to 11½ to 23 months of confinement, with 1 year probation to run concurrent. Judge Woods specifically ordered Farley was not to be housed with Lewis Wright, PP#460680, State Institution No. GK-5937. Appx. M.

Petitioner filed hes second PCRA Petition within 60 days from the cdate he discovered Farley's complete criminal history. On April 10, 2015, Petitioner filed his third PCRA Petition which raised claims under the after-discovered exception of the PCRA Statute that prosecutor Holtz committed a Brady/Giglio violation by using perjured testimony of Farley to secure a conviction.

Petitioner obtained Farleys PCRA hearing transcript where he raised double jeopardy due to promise made to him for leniency in exchage for testifying in Petitioner's case. CP-51-0707601=2005, Appx. N, p. N.T. P. 23.

Petitioner's daughter, Jacqueline Wright, in the latter part of October of 2015, inspected and copied the court files relating to Farley, she discovered a handwritten letter drafted

by Farley, he had sent to Superior Court Prothonotary, Karen Reid-Bramblett stating he was the "star witness for the D.A. in an attempted murder on a Philadelphia Correctional Officer that [sic] why I [Farley] was given I.P. instead of state time I put him away for a long time with out me they [Prosecution] had nothing....". Petitioner's daugher sent this letter to him. Appx. O. See also Appx. N, p. 24. This direct evidence of the pre-existing agreement did not appear in neither the public domain nor Farley's criminal case file until September 3, 2010,-- 372 days after-- the PCRA's one year timebar expired on August 27, 2009.

REASONS FOR GRANTING THE WRIT

I. This Court should grant certiorari to decide whether, the Court of Common Peas erred in limiting Mr. Stien's ability to establish witnessJoseph Farley's bias where Mr. Stien was prevented from inquiring into Farley's arrest and conviction of prostitution and solicitation in order to ascertain whether there were probation violations and other possible penalties, and whether Farley's cases or sentencing had been postponed until after he had testified against Petitioner Wright and whether stare decisis was followed and whether Petitioner's Sixth and Fourteenth Amendment Rights were violated when state appellate court affirmed conviction?

Petitioner should hav been given a new trial by the State Court. He was convicted by the weak, and conflicting testimony of Joseph Farley. However, Petitioner was denied by the Common Peas Court the opportunity to demonstrate to the jury that Farley was biased against him. Armed with this information, Farley's feeble testimony would not have led to Petitioner's coviction. The Common Pleas Court's action in limiting Petitioner's ability to establish Farley's bias was a clear abuse of discretion and a violation of the Sixth and Fourteenth Amendments.

The Pennsylvnai Supreme Court has written the following about bias and pending cases:

> As a general rule, evidence of interest or bias on the part of witnesses is admissible and Constitutes a proper subject for cross=examination. It is particularly important that, where the determination of a defendant's guilt or innocence is dependent upon the credibility of a prosecution witness, an adequate opportunity be afforded to demonstrate through cross-examinationthat the witness is biased... [W]hether a prosecution witness may be biased in favor of the prosecution because of outstanding criminal charges or because of any non=finale criminal dispoition against him within the same jurisdiction must be known to the jury, Even if the prosecutor has made no promises, either on the present case or on other pending criminal matters, the witness may hope for favorable treatment from the prosecutor if the witness presently testifies in a way that is helpful to the prosecution. And if that possibility exists, the jury should know about it. The jury may choose to believe the witness even after it learns of actual promises made or possible promises of leniency which may be made in the future, but the defendant under the right guaranteed in the Pennsylvania Constitution to confront witnesses against him, must have the opportunity at least to raise doubt in the mind of the jury as to whether the prosecution witness is bias. It is not for the court to determine whether the cross-examination for bias would affect the jury's determination of the case.

Commonwealth v. Sattazahn, 763 A.2d 359, 364 (Pa. 2000); see also Commonwealth v. Corley, 816 A.2d 1109, 1115-16 (Pa. Super. 2003).

In Petitioner's case counsel attempted to question him as to whether he was arrested for prostitution. It went like this:

> **Q.** Well, you were arrested 10/18/02 for prostitution, right? **A.** It was soliciting. It, like I said, it was me and some other people in the car and that's how it went down but yes. **Q.** You had a trial and were found guilty of that, right? **--Ms. Holtz:** Objection. Relevance. **Court:** Sustained. **Q.** And then you got arrested for prostitution on 10/18/02, right? **Ms. Holtz:** Objection. **Court:** Sustained.

Appendix H.

When the Commonwealth Court "sustained" the prosecuting authority's objection no further inquiry into Farley's bias was permitted. The prosecuting attorney later aided and abetted in Farley's perjury knowing full well he was in fact arrested and charged with prostitution. Appx. I, N.T. 8/15/05, pp. 140-41.

Limiting Petitioner's counsel's cross-examination in that way was a clear abuse of discretion and violated Petitioner's rights under the Sixth and Fourteenth Amendments to the United States Constitution. The jury never heard Farley was arrested for prostitution, plead guilty to that charge and both the prosecutor and the court prevented the defense from showing the jury he had testified falsely and committed perjury. They never were informed of the possible sentences Farley could have received for his pending cases and probation violation. Most importantly, they never knew that Farley's case had been conveniently and repeatedly, postponed until his testimony was complete in Petitioner's case. Appx. L, and Docket No. CP-51-CR-707601-2005.

The Common Pleas Court, thus did not allow Petitioner's counsel the opportunity at least to raise a doubt in the mind of the jury as to whether the prosecution witness is bias. Sattazahn, 763 A.2d at 364. Certainly, the jury would have ad doubt about Farley's objectivity if they had learned that despite his claim to have no expectations of leniency from the police or prosecutor's office, his case kept being postponed until after Farley testified against Petitioner. Where, as here, due to the postponements, the serious nature of the charges Petitioner faced and the perjury Farley committed, the jury was lied to and should have know Farley was arrested and charged with prostitution and his cases were postponed until after he testified against Petitioner.

Had the Common Pleas Court judge not abused his discretion and allowed Petitioner's counsel to demonstrate, or at least

raise a doubt in the mind of the jury about Farley's bias, Petitioner's counsel could have argued more and demonstrated Farley was bias against him. Petitioner's counsel could have added that not only was Farley not credible for the reasons explained above but that Farley lied to get himself out of being sentenced to prison for his probation violation. The jury would have had good reason to believe Farley's probation violation hearing kept getting postponed until he testified against Petitioner. Because the Common Pleas Court erred and did not allow Petitioner's counsel to properly explore Farley's bias, that never happened.

II. This Court should grant certiorari to decide whether a defendant is denied the right to effective cross-examination where defense counsel, although permitted to ask a prosecution witness about arrests and convictions, is precluded from making a record from which to argue before the jury that the witness's testimony was motivated by the help he was receiving from the prosecution to get help with his probation violation and a light sentence outside the sentencing guidelines?

The Sixth Amendment right to confrontation of witnesses requires that a defendant in a state criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness's expectation of lenient sentencing for a probation violation. The Sixth Amendment's right to confrontation of witnesses means more than being allowed to confront the witness physically, and a primary interest secured by the Sixth Amendment is the right of cross-examination.

The partiality of a witness is subject to exploration at trial and is always relevant as discrediting the witness and affecting the weight of his testimony. Wherefore a defendant is

denied the right to effective cross-examination where defense counsel, although being permitted to ask a prosecution witness whether he is bias, is not permitted to make a record from which to argue why that witness might be biased or otherwise lacks that degree of impartiality expected of witnesses at trial. Denial of the right of effective cross-examination is a constitutional error of the first magnitude which no amount of showing or want of prejudice can cure.

When the Common Pleas Court "sustained" the prosecuting authority's objection, no further inquiry into Farley's bias was permitted. This was a denial of the right to effective cross= examination and violated Petitioner's Constitutional right under the Sixth and Fourteenth Amendments to the United States Constitution.

In Davis v. State of Alaska, 415 U.S. 308, 94 S.Ct. 1105, this Court ruled:

> Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial Judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness's story to test the witness' perceptions and memory, but the cross examiner has traditionally been allowed to impeach, i.e., discredit the witness. By so doing the cross-examiner intends to afford the jury a basis to infer that the witness' character is such that he would be less likely than the average trustworthy citizen to be truthful in his testimony. The introduction of evidence of a prior crime is thus a general attack on the credibility of the witness. A more particular attack on the witness' credibility by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they relate directly to issues or personalities as the case at hand. The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony." 3A J. Wigmore Evidence §940, p. 775 (Chadbourn rev. 1970) We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. (Quoting, Greene v. McElroy, 360 U.S. 474, 496, 79 S.Ct. 1400 (1959).

III. This Court should grant certiorari to decide whether Commonwealth Attorney Dawn Holtz failed to disclose to the defendant that Joseph Farley was going to be sentenced as a parole violator, knowingly used perjured testimony and failed to correct perjured testimony violated Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995), and Banks v. Dretke, 540 U.S. 668 (2004), and the Supremacy Clause?

Petitioner raised numerous claims in his PCRA proceeding, including that the Commonwealth violated Brady because it suppressed information that Farley had pending criminal cases, a probation violation hearing and that Farley was seeking a sentencing benefit for his testimony, and the prosecutor had knowingly allowed Farley to commit perjury then bolstered his perjured testimony. See Appx. N and O.

A Brady violation occurs when the government (1) knowingly presents or fails to correct false testimony; (2) fails to provide requested exculpatory evidence; or (3) fails to volunteer exculpatory evidence never requested. Haskell v. Superintendent Green SCI, 866 F.3d 139, 149 (3d Cir. 2017)(citing United States v. Agurs, 427 U.S. 97 (1976), holding modified by United States v. Bagley, 473 U.S. 667 (1985)). Where the claim is one of suppressed evidence, the nondisclosed evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Dennis v. Sec'y Pa. Dept. of Corr., 834 F.3d 263, 309 (3d Cir. 2016)(en banc)(quoting Kyles v. Whitley, 514 U.S. 419, 433-34 (1995), which quoted Justice Blackmun's opinion in Bagley).

> The "touchstone of materiality is a 'reasonable probability' of a different result." Kyles, 514 U.S. at 434, 115 S.Ct. 1555. Materiality "does not require demonstration by a preponderance that the disclosure of the suppressed evidence would have resulted ultimately in the defend-

> ant's acquittal ... [Rather], [a] 'reasonable probability' of a different result is ... shown when the government's evidentiary suppression undermines confidence in the outcome of the trial." Id. (internal quotation marks omitted).

Id. (alterations made by Court of Appeals)

C. The Newly discovered and presented evidence regarding the deal Farley expected to receive.

At trial Farley initially testified he was not promised anything from the police or prosecution he responded "no ma'am". Appx. F, N.T. 8/10/05, p. 137. Prosecutor Holtz then bolstered Farley's perjured testimony in her closing argument. Appx. U, N.T. 8/15/05, pp. 140-41. See also page 9 of petition. Farley raised double jeopardy at his PCRA hearing due to not receiving the promise for testifying at petitioner's trial because he was promised leniency. Prosecutor Holtz notwithstanding her obligations under the Supreme Court's command in Brady did not disclose Farley was promised a deal for his testimony against Petitioner. Such an understanding between parties is called a deal and it was kept secret thus both understood Farley committed perjury when he answered "no ma'am".

Prosecutor Holtz did not correct any of the false testimony given at Petitioner's trial. She stood by silently as a witness central to the Commonwealth's case, lied under oath to a judge and jury in an attempted murder case. Because she had suppressed the information about the deal the Commonwealth had with Farley, she deprived the defense of valuable testimony and called into question the integrity of the Commonwealth's prosecution of the case.

A state violates the Fourteenth Amendment's due process

guarantee when it knowingly presents or fails to correct false testimony in a criminal proceeding. Haskell, 866 F.3d at 145-46 (citing Napue and Giglio). As stated previously, the knowing use by the prosecution of false testimony so corrupts "the truth=seeking function of the trial process," that the more defense=friendly standard of materiality applies to such claims. Id. at 146 (quoting Agurs, 427 U.S. at 104).

Petitioner prevailed on his false-testimony claim because he demonstrated that (1) Farley, testified falsely; (2) the prosecutor knew or should have known that such testimony was false and did not correct it; and (3) there is a reasonable likelihood that the false testimony affected the judgment of the jury. Id. at 146 (italics added). Petitioner established each of these elements.

CONCLUSION

By virtue of the Brady violations and the likely impact on the prosecution's entire case if they had disclosed which the trial court did not consider, Petitioner respectfully request this Court grant his Petition for Writ of Certiorari.

9/26/18

Respectfully submitted,

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