

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD RATUSHNY — PETITIONER
(Your Name)

VS.

PENNSYLVANIA — 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

RICHARD RATUSHNY #JF-3719

(Your Name)

1100 PIKE STREET

(Address)

HUNTINGDON, PA. 16654-1112

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WAS THE PETITIONER DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL WHERE DEFENSE COUNSEL THAT REPRESENTED PETITIONER SIMULTANEOUSLY AND A POTENTIAL DEFENSE WITNESS-IN PETITIONER'S CASE-RESULTED IN AN ACTUAL/OBVIOUS CONFLICT OF INTEREST ?
2. DID THE PROSECUTOR VIOLATE PETITIONER'S DUE PROCESS RIGHTS AND COMMIT A BRADY V. MARYLAND VIOLATION BY FAILING TO DISCLOSE EVIDENCE THAT THE VICTIM'S MOTHER, WHO WAS BOTH A PROSECUTION STAR WITNESS AND THE INITIAL COMPLAINANT, HAD RECENTLY BEEN CONVICTED OF WELFARE FRAUD, A CRIMEN FALSI ?

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:

REPRESENTING THE COMMONWEALTH OF PENNSYLVANIA IS:

DISTRICT ATTORNEY OF NORTHAMPTON COUNTY
669 WASHINGTON STREET
EASTON, PA. 18042

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OTHER

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 A to the petition and is THIRD CIRCUIT COURT OF APPEALS

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☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is U.S. DISTRICT COURT MAGISTRATE REPORT IS C (APPENDIX).

☐ 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☒ is unpublished.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☐ is unpublished.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 June 26, 2018.

☒ 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

5TH AMENDMENT

6TH AMENDMENT

14TH AMENDMENT

DUE PROCESS CLAUSE

ACTUAL INNOCENCE

STATEMENT OF THE CASE

THIS CASE CONSISTS OF ANNETTE H. AND PETITIONER RICHARD RATUSHNY WHO HAD A ROMANTIC RELATIONSHIP WITH EACH OTHER. EVENTUALLY THE PETITIONER AND ANNETTE HAD A FALLING OUT AND THE ROMANTIC RELATIONSHIP ENDED.

ON JULY 29, 2006, AFTER THE ROMANTIC RELATIONSHIP ENDED, ANNETTE H. CALLED THE HELLERTOWN, PENNSYLVANIA POLICE TO REPORT HER EX-BOY-FRIEND, THE PETITIONER, HAD SEXUALLY ASSAULTED HER SEVEN YEAR OLD DAUGHTER A.H. AND FOURTEEN YEAR OLD DAUGHTER T.H.. THE PETITIONER WAS CHARGED WITH SEVERAL COUNTS OF SEXUAL ABUSE OF BOTH T.H. AND A.H., AS WELL AS CHARGES OF FURNISHING LIQUOR TO MINORS AND WITH POSSESSING DRUGS WITH THE INTENT TO DELIVER.

THE PETITIONER DENIED HE EVER HAD DRUGS OR LIQUOR AROUND EITHER A.H OR T.H. AND DENIED THAT HE HAD ANYTHING TO DO WITH DRUGS. THAT ALLEGATION BY ANNETTE H., WAS COMPLETELY FALSE.

THE PETITIONER WENT TO TRIAL, AND ASSERTED HIS TOTAL AND FACTUAL ACTUAL INNOCENCE TO ALL OF THE CHARGES LODGED AGAINST HIM BY THE COMPLAINANT ANNETTE H..

AFTER A FOUR DAY TRIAL IN NORTHAMPTON COUNTY, PENNSYLVANIA THE PETITIONER WAS ACQUITTED OF STATUTORY SEXUAL ASSAULT AGAINST T.H., AND "ALL" CHARGES RELATING TO ANNETTE H.'s YOUNGER DAUGHTER A.H., AND WAS ACQUITTED OF THE DRUGS AND ALCOHOL CHARGES.

THE JURY CONVICTED PETITIONER OF AGGRAVATED INDECENT ASSAULT OF A PERSON UNDER THE AGE OF 16, INDECENT ASSAULT, ENDANGERING THE WELFARE OF CHILDREN, CORRUPTION OF MINORS, AND UNLAWFUL CONTACT

WITH A MINOR, ALL ARISING WITH ALLEGED CONTACT WITH T.H.. THE COURT SENTENCED THE PETITIONER TO NINETEEN (19) YEARS IN PRISON. ANNETTE H. HAS A HISTORY OF MAKING ALLEGATIONS AGAINST MEN WHO SHUNNED HER AND HAVING CRIMINAL CHARGES BROUGHT AGAINST THE MEN CHARGING THE MEN WITH HAVING CONTACT WITH HER DAUGHTERS (sexual contact). ONE SUCH "OTHER MAN" WAS JEFFREY HITCHO. HE WAS ROMANTICALLY INVOLVED WITH ANNETTE H. BUT MR. HITCHO SHUNNED HER. THEN IT WAS ALLEGED THAT HER DAUGHTER HAD SEX WITH MR. HITCHO. THE SAME PATTERN WAS USED PREVIOUSLY BY ANNETTE H. AS WAS USED BY ANNETTE H. AGAINST THE PETITIONER IN THIS INSTANT CASE. [EMPHASIS]

HAD THIS WITNESS BEEN CALLED TO TESTIFY IT WOULD HAVE SHOWN THAT ANNETTE H., THE MOTHER OF T.H. HAD A MOTIVE TO FABRICATE THE SAID ACCUSATION — THAT MOM GETS SCORNEED AND THEN DAUGHTER IS SAID TO BE SEXUALLY ASSAULTED.

UNFORTUNATELY FOR THE PETITIONER COUNSEL DID NOT CALL MR. HITCHO TO TESTIFY EVEN THOUGH THIS WOULD HAVE QUALIFIED AS AN EXCEPTION, TO THE RAPE SHIELD LAW, 18 PA. CONS. STAT. § 3104.

AFTER TRIAL, THE PETITIONER WAS MADE AWARE THAT ANNETTE H., THE COMPLAINANT, WAS PREVIOUSLY CONVICTED OF WELFARE FRAUD, A CRIMEN FALSI, AND THAT THE COMMONWEALTH OF PA. WITHHELD THIS INFORMATION FROM THE PETITIONER. ANNETTE H. WAS THE COMPLAINANT AND A KEY WITNESS FOR THE PROSECUTION. SHE WOULD HAVE BEEN IMPEACHED WITH THIS INFORMATION HAD THE COMMONWEALTH NOT VIOLATED DISCOVERY IN

THIS INSTANT CASE. THIS NEW INFORMATION WAS KNOWN TO THE PROSECUTOR BUT IT WAS NOT REVEALED TO THE PETITIONER OR COUNSEL PRIOR TO THE TRIAL. TRIAL COUNSEL TESTIFIED AT A POST CONVICTION STATE HEARING, THAT HE HAD NEVER RECEIVED INFORMATION ABOUT ANNETTE H.'s PRIOR CRIMINAL RECORD FROM THE PROSECUTION, AND HAD NOT SOUGHT IT OUT HIMSELF, INDEPENDENT OF HIS BRADY V. MARYLAND DISCOVERY REQUEST. ALTHOUGH DISCOVERY REQUESTS WERE MADE FOR COMPLETE DISCOVER UPON THE PROSECUTOR THE PROSECUTOR NEVER PROVIDED TRIAL COUNSEL WITH THE CRIMINAL RECORD OF ANNETTE H. TRIAL COUNSEL TESTIFIED AT THE POST CONVICTION STATE HEARING THAT HAD HE KNOWN ABOUT THE CRIMINAL RECORD OF ANNETTE H. HE WOULD HAVE USED IT TO IMPEACH HER WHEN SHE TESTIFIED AND IN ADDITION HE WOULD HAVE REQUESTED THE JURY BE INSTRUCTED TO USE THE CRIMINAL CONVICTION FOR WELFARE FRAUD IN ASSESSING ANNETTE'S CREDIBILITY.

IN THE U.S. DISTRICT COURT THE PETITIONER REPRESENTED HIMSELF. THREE CLAIMS WERE RAISED. THE HABEAS CORPUS WAS DENIED AND THE DISTRICT JUDGE ---, NOTED THAT NO CERTIFICATE OF APPEALABILITY SHOULD ISSUE--IN TWO OF THE THREE CLAIMS--RAISED IN THE HABEAS CORPUS PETITION BUT THAT A CERTIFICATE OF APPEALABILITY WAS ISSUED FOR THE BRADY V. MARYLAND CLAIM. THE COMMONWEALTH OF PENNSYLVANIA'S "KEY" WITNESS AND THE COMPLAINANT IN THIS CASE WAS CONVICTED OF WELFARE FRAUD, A CRIMEN FALSI, AND THIS INFORMATION WAS NOT TURNED OVER TO THE PETITIONER OR COUNSEL PRIOR TO THE TRIAL ENDING.

THE FACT THAT ANNETTE H.'s CRIMINAL RECORD WAS SUPPRESSED-ON
THE VERY COMPLAINANT IN THIS INSTANT CASE-REQUIRES A NEW TRIAL
BECAUSE THIS EVIDENCE IS MATERIAL,—IT IS IMPEACHMENT EVIDENCE
AGAINST THE ACTUAL COMPLAINANT—AND WOULD HAVE DIMINISHED THE
RELIABILITY THAT THE JURY PLACED IN THIS "KEY" WITNESS AND THE
COMPLAINANT. THE COMMONWEALTH OF PENNSYLVANIA WAS UNDER A DUTY HERE.
THE INFORMATION THAT WAS SUPPRESSED BY THE COMMONWEALTH VIOLATED
BRADY V. MARYLAND, 373 U.S. 83 (1963); GIGLIO V. UNITED STATES,
405 U.S. 150 (1972). UNDER GIGLIO, IT DOES NOT MATTER THAT THE TRIAL
PROSECUTOR WAS UNAWARE OF THIS INFORMATION. WHETHER THE NONDISCLOSURE
WAS A RESULT OF NEGLIGENCE OR DESIGN, IT IS THE RESPONSIBILITY OF
THE PROSECUTOR.

AS LONG AGO AS MOONEY V. HOLOHAN, 294 U.S. 103, 112 (1935), THIS
COURT MADE CLEAR THAT DECEPTION OF A COURT AND JURORS WITH FALSE
EVIDENCE AND FACTS/INFORMATION IS INCOMPATIBLE WITH RUDIMENTARY
DEMANDS OF JUSTICE. THEREAFTER BRADY V. MARYLAND, 373 U.S. [83]
(1963) HELD THAT THE SUPPRESSION OF MATERIAL EVIDENCE JUSTIFIES A
NEW TRIAL IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE SAID
PROSECUTOR. HERE IN THIS INSTANT CASE, SUCH IMPEACHMENT EVIDENCE
AS WAS SUPPRESSED, IS COVERED BY BRADY V. MARYLAND RULE. SEE ALSO
UNITED STATES V. BAGLEY, 473 U.S. 667, 683 (1985).

IT WAS ABSOLUTELY NECESSARY FOR ANNETTE H. TO BE IMPEACHED AND
FOR THE JURY TO BE MADE AWARE THAT ANNETTE H. WAS CONVICTED OF A
CRIMEN FALSI. BUT THE PROSECUTOR SUPPRESSED THIS INFORMATION.

BRADY REQUIRES THAT THE PETITIONER'S CONVICTION BE REVERSED. THE COMMONWEALTH OF PENNSYLVANIA DOES NOT DISPUTE THAT THE EVIDENCE IT HAD, CONCERNING THE CRIMEN FALSI CRIMINAL CONVICTION OF ANNETTE H., WAS FAVORABLE TO PETITIONER FOR IMPEACHING ANNETTE H.. THE EVIDENCE CONCERNING ANNETTE & CRIMEN FALSI CONVICTION WAS NOT DISCLOSED TO THE PETITIONER NOR TO COUNSEL. IF THE PETITIONER WAS GIVEN THE OPPORTUNITY TO HAVE HAD THIS EVIDENCE THE IMPEACHMENT OF ANNETTE H. WAS SUCH THAT THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. CONE V. BELL, 556 U.S. 449, 469-470 (1995); KYLES V. WHITLEY, 514 U.S. 419, 433, 434 (1995). THE CRIMEN FALSI CRIMINAL CONVICTION INFORMATION WAS PLAINLY MATERIAL, AND THE COMMONWEALTH OF PENNSYLVANIA'S FAILURE TO DISCLOSE THAT INFORMATION TO THE DEFENSE THUS VIOLATED BRADY.

THE LOWER COURTS (THIRD CIRCUIT AND DISTRICT COURT) BOTH DID IDENTIFY THE BRADY VIOLATION EXISTING, IN THIS CASE, BUT THE THIRD CIRCUIT ALSO AGREED WITH THE DISTRICT COURT THAT THE CRIMINAL INFO AND CRIMEN FALSI EVIDENCE WAS SUPPRESSED UNDER BRADY. THE THIRD CIRCUIT ALSO STATED THAT THE STATE COURTS RELIANCE ON THE FACT THAT THE CRIMINAL RECORDS WERE PUBLICLY ACCESSIBLE IS OF NO MOMENT SINCE PUBLIC AVAILABILITY DOES NOT ABSOLVE A PROSECUTOR FROM THE RESPONSIBILITY TO PROVIDE SUCH RECORDS TO THE DEFENSE. WILSON V. BEARD, 589 F.3D 651, 663 (3D CIR. 2009).

THE THIRD CIRCUIT THEN DETOURED OFF OF THE FAIRNESS AND JUSTICE HIGHWAY AND FOUND THAT THE DISTRICT COURT WAS CORRECT THAT THE STATE COURTS DID NOT UNREASONABLY APPLY FEDERAL LAW, REGARDING BRADY.

THE THIRD CIRCUIT AGREED WITH THE DISTRICT COURT IN DENYING RELIEF FOR A BRADY VIOLATION, HERE, BECAUSE ANNETTE H. WAS CROSS EXAMINED, DURING THE PETITIONER'S TRIAL-BY COUNSEL AND COUNSEL ELICITED FROM ANNETTE H. THE FACTS CONCERNING HER LONG HISTORY OF DRUG USE, HER DIFFICULT RELATIONSHIP WITH HER DAUGHTER, AND HER BELIEF THAT SHE WAS COMPETING WITH HER DAUGHTER FOR PETITIONER'S ATTENTION AND AFFECTIONS. SHE ALSO ADMITTED SHE WAITED TWO (2) YEARS BEFORE REPORTING THE SEXUAL EPISODES BETWEEN HER DAUGHTER AND THE PETITIONER, AND HER REVENGE AGAINST THE PETITIONER FOR THE PETITIONER LEAVING HER. THERE WAS NO MENTION OF ANY CRIMEN FALSI CONVICTIONS BECAUSE THE PROSECUTOR FAILED TO PROVIDE THIS INFORMATION TO THE DEFENSE. ALTHOUGH, IT IS TRUE, THAT DEFENSE COUNSEL DID CROSS EXAMINE ANNETTE H., AS TO ALL OF THE ABOVE, THERE WAS NO IMPEACHMENT OF HER CRIMEN FALSI CONVICTION FOR WELFARE FRAUD. THIS RESULTED BECAUSE, PLAIN AND SIMPLE, THE COMMONWEALTH OF PENNSYLVANIA FAILED TO PROVIDE THE DEFENSE WITH THIS INFORMATION. GIGLIO V. UNITED STATES, 405 U.S. 150 (1972).

CONFIDENCE IN THE VERDICT IS UNDERMINED IN THIS CASE BECAUSE OF THE DUE PROCESS BRADY/DISCOVERY VIOLATION.

THE PETITIONER WAS DENIED A FAIR TRIAL.

IN ADDITION TO THE FACTS SET FORTH CONCERNING THE BRADY CLAIM THE DISTRICT COURT DID REVIEW THE PETITIONER'S CONFLICT OF INTEREST CLAIM UNDER THE INEFFECTIVE ASSISTANCE OF COUNSEL TEST SET FORTH IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). THE DISTRICT COURT FOUND THE EVIDENCE OF TRIAL COUNSEL'S CONCURRENT REPRESENTATION OF HITCHO AND THE PETITIONER "SOMEWHAT TROUBLING" BUT DECLARED ITSELF UNABLE TO GRANT RELIEF IN LIGHT OF THE DEFERENCE OWED TO THE STATE COURT ADJUDICATION OF THE CLAIM. BECAUSE COUNSEL FOR THE PETITIONER ALSO REPRESENTED ANOTHER INDIVIDUAL, NOT PART OF THIS INSTANT CASE, THAT INDIVIDUAL-WHO ALSO WAS ACCUSED BY ANNETTE H. OF HAVING SEX WITH HER DAUGHTER, AFTER THIS INDIVIDUAL DROPPED HIS INTEREST IN ANNETTE H., DID NOT TESTIFY ON BEHALF OF THE PETITIONER EVEN THOUGH HE WANTED TO. THAT TESTIMONY WOULD HAVE SHOWN ANNETTE H.'s PATTERN. ONCE A GUY ENDED THE ROMANTIC RELATIONSHIP WITH ANNETTE H. SHE WOULD ACCUSE THE GUY WHO JILTED HER OF HAVING HAD SEX WITH HER DAUGHTER. BECAUSE COUNSEL FOR PETITIONER ALSO REPRESENTED THIS OTHER INDIVIDUAL NAMED HITCHO, THE CONFLICT PREVENTED THE PETITIONER FROM HAVING THAT WITNESS TESTIFY AS TO WHAT ANNETTE H. ALSO DID TO HIM.

THE THIRD CIRCUIT COURT OF APPEALS GRANTED THE PETITIONER A CERTIFICATE OF APPEAL, AS TO THE BRADY CLAIM.

REASONS FOR GRANTING THE PETITION

PRO-SE PETITIONER

XXXXXXXXXXXXXXXXXXXX

THE COMMONWEALTH OF PENNSYLVANIA ACKNOWLEDGES THAT BOTH THE CONCLUSION SECTION OF JUDGE RUFÉ'S MEMORANDUM OPINION AND THE ACCOMPANYING ORDER STATE GENERALLY THAT A CERTIFICATE OF APPEALABILITY WILL ISSUE. BECAUSE THE THIRD CIRCUIT COURT OF APPEALS DECIDED THAT THE DISTRICT COURT LIMITED THE GRANT OF A COA TO ONLY THE BRADY V. MARYLAND, THE ISSUE RAISED BY THE PETITIONER ASSERTING THE CONFLICT OF INTEREST CLAIM RAISED IN THE INEFFECTIVE ASSISTANCE OF COUNSEL WAS NOT ADDRESSED BY THE THIRD CIRCUIT COURT OF APPEALS. THE THIRD CIRCUIT COURT OF APPEALS READ THE COA AS LIMITED TO SOLELY THE BRADY V. MARYLAND, VIOLATION. THE THIRD CIRCUIT COURT OF APPEALS STATED "WE THEREFORE, LACK JURISDICTION TO REVIEW THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, THAT DOES EMBRACE STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)."

THE THIRD CIRCUIT DID ERROR IN NOT REVIEWING THE I.A.C. CLAIM WHEN THE CONCLUSION SECTION OF JUDGE RUFÉ'S MEMORANDUM OPINION DOES STATE GENERALLY THAT A COA WILL ISSUE. IT DOES NOT EXCLUDE THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM. THE THIRD CIRCUIT SHOULD HAVE, AT A MINIMUM, REMAND THE MATTER TO THE DISTRICT COURT TO SPECIFY ON WHICH ISSUES THE COA WAS GRANTED. 28 U.S.C. § 2253 (c)(3). THIS WAS NOT DONE. CONSEQUENTLY THE I.A.C. CLAIM THAT

INCORPORATED THE CONFLICT OF COUNSEL ISSUE WITHIN IT, WAS NEVER ADDRESSED BY THE THIRD CIRCUIT, BECAUSE THE THIRD CIRCUIT STATED STATED THEY LACKED JURISDICTION TO DO SO.

A SHORT SUMMARY OF THE I.A.C./CONFLICT CLAIM IS SET FORTH ON PAGE 10 OF THIS PETITION. THE PETITIONER RESPECTFULLY ASSERTS THAT THIS CLAIM SHOULD HAVE BEEN ADDRESSED BY THE THIRD CIRCUIT AND IT WAS RAISED IN THE PETITIONER'S BRIEF FILED WITH THE THIRD CIRCUIT COURT OF APPEAL. [EMPHASIS].

B R A D Y V I O L A T I O N

THE COMMONWEALTH OF PENNSYLVANIA FAILED TO DISCLOSE THAT ANNETTE H.--THE COMMONWEALTH KEY WITNESS WHO WAS THE ORIGINAL COMPLAINANT IN THIS CASE, AND WHO ORCHESTRATED FALSE ACCUSATIONS AGAINST THE PETITIONER--HAD BEEN CONVICTED OF WELFARE FRAUD, A CRIMEN FALSI OFFENSE, PRIOR TO THE PETITIONER 'S TRIAL.

THIS FAILURE PLAINLY VIOLATED THE PETITIONER'S DUE PROCESS RIGHTS. CLEARLY BRADY AND KYLES SUPPORT THE ASSERTION MADE BY THE PETITIONER CONCERNING THE COMMONWEALTH'S FAILURE TO PROVIDE THE PETITIONER WITH THIS IMPEACHMENT EVIDENCE THAT WAS FAVORABLE TO THE DEFENSE. THE COMMONWEALTH OF PENNSYLVANIA DOES CONCEDE THIS VIOLATION OF BRADY AND KYLES BUT CONTENDS THE STATE COURT'S RESOLUTION OF THIS CLAIM WAS NOT UNREASONABLE.

THE COMMONWEALTH'S ASSUMPTION, THAT THE STATE COURT'S RESOLUTION OF THE SUPPRESSION AND MATERIALITY PRONGS OF THE PETITIONER'S BRADY CLAIM WERE REASONABLE IS WRONG. THE STATE COURT'S IMPOSITION OF A DUE DILIGENCE REQUIREMENT UPON THE DEFENSE TO DISCOVER ANNETTE H.'S CRIMEN FALSI CONVICTION WAS CONTRARY TO BRADY AND KYLES, AND IT WAS AN UNREASONABLE APPLICATION OF THE ABSOLUTE DUTY THAT BRADY AND ITS PROGENY IMPOSES UPON THE COMMONWEALTH IN THIS CASE.

THE COMMONWEALTH OF PENNSYLVANIA ADVANCED ITS ARGUMENT THAT THE PETITIONER HAD A DUTY TO OBTAIN THE COMMONWEALTH WITNESS ANNETTE H.'S CRIMEN FALSI CONVICTION FROM THE PUBLIC RECORDS, COURT RECORDS-AND THAT THE FAILURE OF THE PETITIONER TO DO SO-RELIEVED THE COMMONWEALTH OF ITS OBLIGATION UNDER BOTH BRADY AND KYLES. THE COMMONWEALTH'S ARGUMENT IS PLAINLY INCORRECT. BRADY WAS FIRMLY ESTABLISHED LONG BEFORE THE PENNSYLVANIA SUPERIOR COURT ADJUDICATED PETITIONER'S BRADY CLAIM IN 2014. THE COMMONWEALTH ARGUED THAT THE PETITIONER BASED HIS ARGUMENTS ON THE FINDINGS SET FORTH IN DENNIS V. SECRETARY, PA. DEPT. OF CORRECTION, 834 F.3D 263, 285 3D CIR. 2016)(EN BANC), RATHER THAN ON U.S. SUPREME COURT LAW. THE COMMONWEALTH IS INACCURATE AND PLAIN WRONG. ON PAGE 38 OF THE PETITIONER'S BRIEF TO THE THIRD CIRCUIT COURT THE PETITIONER SET FORTH THE FOLLOWING: "A PROSECUTOR MUST DISCLOSE EVIDENCE THAT IS FAVORABLE TO THE DEFENSE AND MATERIAL TO GUILT OR PUNISHMENT. BRADY V. MARYLAND, 373 U.S. AT 87; ACCORD BANKS V. DRETKE, 540 U.S. 668, 690 (2004); KYLES V. WHITLEY, 514 U.S. 419, 432-

33 (1995); UNITED STATES V. BAGLEY, 473 U.S. 667, 676 (1985);
GIGLIO V. UNITED STATES, 405 U.S. 150, 153,-56 (1972)."

THE PETITIONER ANCHORED HIS ARGUMENTS ON WELL ESTABLISHED U.S. SUPREME COURT LAW, AS IS PLAIN TO SEE BASED ON THE ABOVE CASE CITE AUTHORITIES. THE PETITIONER POINTS TO DENNIS V. SECRETARY OF PA. DEPT. OF CORRECTIONS, 834 F.3D 263, 285 (3D CIR. 2016) (EN BANC). MATERIALITY IS DEFINED AS A REASONABLE PROBABILITY OF A DIFFERENT RESULT. A PETITIONER DOES NOT NEED TO SHOW BY A PREPONDERANCE THAT DISCLOSURE OF THE SUPPRESSED EVIDENCE WOULD HAVE RESULTED IN THE DEFENDANT'S ACQUITTAL, JUST THAT THE EVIDENCE SUPPRESSED UNDERMINES CONFIDENCE IN THE OUTCOME OF THE TRIAL.

THE SUPPRESSION OF ANNETTE H'S CRIMINAL RECORD VIOLATED BRADY. THE CRIMINAL RECORD THAT CONTAINED A CRIMEN FALSI CONVICTION FOR WELFARE FRAUD WAS FAVORABLE IMPEACHMENT EVIDENCE THAT WAS INDEED SUPPRESSED BY THE COMMONWEALTH OF PENNSYLVANIA. IN PENNSYLVANIA THE LAW PERMITS PARTIES TO IMPEACH A WITNESSES' CREDIBILITY WITH EVIDENCE OF PAST CONVICTIONS INVOLVING FALSE STATEMENTS OR THAT OF DISHONESTY. PA.R.EVID. 609(a) ("FOR THE PURPOSE OF ATTACKING THE CREDIBILITY OF ANY WITNESS, EVIDENCE THAT THE WITNESS HAS BEEN CONVICTED OF A CRIME, WHETHER BY VERDICT OR BY PLEA OF GUILTY OR NOLO CONTENDERE, MUST BE ADMITTED IF IT INVOLVED DISHONESTY --HISTORICALLY KNOWN AS CRIMEN FALSI--PROVIDE POWERFUL IMPEACHMENT EVIDENCE AGAINST A WITNESS. IN COMMON LAW, THEY SERVED TO PROVIDE

FOR THE WITNESS TO BE DISQUALIFIED").SEE COMMONWEALTH ex rel. BALDWIN V. RICHARD, 751 A.2D 647, 652 (PA. 2000)("THE OFFENSES WHICH DO DISQUALIFY A PERSON TO GIVE EVIDENCE, WHEN CONVICTED OF THE SAME CRIMES, ARE TREASON, FELONY, AND EVERY SPECIES OF THE CRIMEN FALSI, SUCH AS FORGERY, SUBORNATION OF PERJURY, ATTAINT OF FALSE VERDICT, AND OTHER OFFENSES OF THE LIKE DESCRIPTION, WHICH INVOLVE THE CHARGE OF FALSEHOOD AND AFFECT THE PUBLIC ADMINISTRATION OF JUSTICE").

CRIMEN FALSI CONVICTION SUPPRESSED

IN 2004, ANNETTE H. WAS CONVICTED IN THE NORTHAMPTON COUNTY COURT OF COMMON PLEAS OF VIOLATING 62 P.S. §481, WHICH PENALIZES THE USE OF FALSE STATEMENTS TO OBTAIN WELFARE BENEFITS MEANT FOR IMPOVERISHED PERSONS, AND WAS SENTENCED TO A TERM OF PROBATION. THE SAME OFFICE THAT PROSECUTED THE PETITIONER ALSO PROSECUTED ANNETTE H.--THIS D.A. OFFICE KNEW OF THEIR "KEY" WITNESSES' CRIMEN FALSI CONVICTION BUT SUPPRESSED IT. THIS CRIMINAL RECORD OF WHICH THE PROSECUTION KNEW OR SHOULD HAVE KNOWN WAS NOT DISCLOSED TO THE DEFENSE. [EMPHASIS] *THE COMMONWEALTH OF PA. DOES ADMIT THAT THIS INFORMATION WAS FAVORABLE TO THE DEFENSE AND THAT IT WAS NOT EVER PROVIDED TO THE DEFENSE BY THE COMMONWEALTH.

THE EVIDENCE WAS MATERIAL

THE DISTRICT COURT NOTED THAT THE PETITIONER'S DEFENSE FOCUSED UPON UNDERMINING THE CREDIBILITY AND MOTIVES OF THE COMMONWEALTH WITNESSES. ANNETTE H. WAS THE COMPLAINANT IN THIS CASE AND WAS

THE INDIVIDUAL WHO BROUGHT THE COMPLAINT TO THE POLICE AGAINST THE PETITIONER. SHE WAS THE "STAR" WITNESS AT THE PRELIMINARY HEARING. HER CREDIBILITY WAS AN IMPORTANT ISSUE AND THE STATE PROSECUTOR KNEW THAT HIS WITNESS HAD A CRIMINAL RECORD FOR WELFARE FRAUD, A CRIMEN FALSI OFFENSE. THE COMMONWEALTH OF PENNSYLVANIA SUPPRESSED THIS EVIDENCE FROM THE PETITIONER AND HIS COUNSEL. IN ADDITION, THE VERDICT WAS A CLOSE ONE, WITH THE PETITIONER BEING ACQUITTED OF ALL CHARGES RELATING TO T.H.'s SISTER AND WAS ALSO ACQUITTED OF THE MOST SERIOUS CHARGE RELATING TO T.H.. EVIDENCE THAT ANNETTE H. HAD BEEN CONVICTED OF LYING IN THE RECENT PAST FOR THE PURPOSE OF OBTAINING WELFARE BENEFITS WOULD HAVE BEEN MORE THAN SIMPLY CUMULATIVE; IT CERTAINLY WOULD HAVE FIT INTO THE MAIN THEORY OF THE DEFENSE: THAT THE CHARGES AGAINST THE PETITIONER CAME ABOUT BECAUSE OF ANNETTE H'S JEALOUSY AND DISHONESTY, AND THAT SHE WOULD SAY ANYTHING TO ADVANCE AND FURTHER HER OWN ENDS.

THE STRENGTH OF THIS IMPEACHMENT EVIDENCE OF ANNETTE H. WOULD HAVE ALSO AFFECTED THE WAY IN WHICH THE JURY ASSESSED T.H.'s COURT TESTIMONY. ATTACKING ANNETTE'S CREDIBILITY WOULD ALSO CAST THE TESTIMONY OF T.H. IN A NEW, LESS CREDIBLE LIGHT. COUNSEL FOR THE PETITIONER COULD HAVE ARGUED MORE CONVINCINGLY THAT IT WAS DUE TO THE INFLUENCE OF ANNETTE, A CONVICTED LIAR, THAT T.H. HAD ALTERED HER STORY REPEATEDLY, INCRIMINATING THE PETITIONER IN SUCCESSIVELY WORSE-SOUNDING ACTS.

PLAIN AND SIMPLE: THE ADDITION OF THIS IMPEACHMENT NEW EVIDENCE THAT ANNETTE H. WAS * CONVICTED OF LYING/CRIMEN FALSI OFFENSE WAS EXTREMELY IMPORTANT AND VERY WELL COULD HAVE TIPPED THE JURY IN FAVOR OF MR. RATUSHNY'S (the Petitioner) ACQUITTAL.

THE COMMONWEALTH'S FAILURE TO DISCLOSE THIS BRADY MATERIAL EVIDENCE EVIDENCE REQUIRES THAT THE CONVICTION BE VACATED.

STATE COURT'S DUE DILIGENCE REQUIREMENT WAS CONTRARY TO BOTH BRADY AND KYLES.

THE STATE COURT HELD THAT THE PETITIONER HAD FAILED TO SHOW THE CRIMINAL RECORD OF ANNETTE H. WAS SUPPRESSED. THE STATE COURT STATED THAT ANNETTE H. CRIMINAL CONVICTIONS WERE A MATTER OF PUBLIC RECORD AND ACCESSIBLE TO THE DEFENSE, SO THE DEFENSE COULD HAVE DISCOVERED THE EVIDENCE IN QUESTION WITH DUE DILIGENCE. THE STATE COULD ALSO HELD THAT SINCE IT WAS NOT PROVEN THAT THIS EVIDENCE WAS IN THE POSSESSION OF THE COMMONWEALTH, IT WAS NOT SUPPRESSED. THIS IS AN UNREASONABLE DETERMINATION AND WAS CONTRARY TO BRADY AND KYLES. DENNIS, 834 F.3D AT 293 DISCUSSES THE PROSECUTOR'S DUTY AND AFFIRMATIVE REQUIREMENT UNDER BRADY AND KYLES.

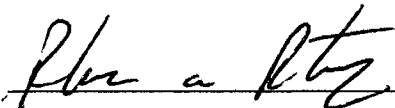
BRADY, OPERATES AS A CLEAR MANDATE IMPOSING OBLIGATIONS SOLELY ON THE PROSECUTION. ALL FAVORABLE MATERIAL SHOULD BE DISCLOSED BY THE PROSECUTION. THE DUTY IS ABSOLUTE AND BRADY AND KYLES PLAINLY SAYS SO.

THE STATE COURT HOLDING THAT THE PROSECUTION DID NOT POSSESS THE CRIMINAL RECORD IS UNREASONABLE. THE STATE COURT REJECTED THE CLAIM MADE UNDER BRADY BECAUSE THE COMMONWEALTH DID NOT POSSESS THE BRADY EVIDENCE CONCERNING ANNETTE H.'S CRIMEN FALSI CONVICTION. THIS IS AN UNREASONABLE APPLICATION OF BRADY, AS WELL. THE DUE DILIGENCE REJECTION BY THE STATE COURT AGAINST THE PETITIONER WAS ALSO AN UNREASONABLE APPLICATION OF BRADY AND KYLES.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


RICHARD RATUSHNY JF-3719

Date: September 18, 2018
DATE MAILED