NO._____.

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IN THE SUPREME COURT OF THE UNITED STATES

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SPASSKY ALCEQUIECZ,
Petitioner.

VS.

KELLY RYAN,
Respondent.

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ON PETITIONER FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT.

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July 9 , 2018

Spassky ~~Alcequiecz~~, pro-se

Shirley Med. Corr. Cent.
P.O. Box 1218
1 Harvard Road
Shirley, Massachusetts
01464-1218

QUESTION PRESENTED.

WHETHER THE PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL, DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL, AS COUNSEL"S ABANDONEMENT ON A MANSLAUGHTER INSTRUCTION ON PROVOCATION, ON A BELIEF, WHICH COUNSEL NOW ADMITS WAS WRONG, DEPRIVED THE PETITIONER OF DUE PROCESS OF LAW UNDER THE SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATE CONSTITUTION.

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STATUTES AND COURT RULES.

Sixth Amendment To The United States Constitution;

Fourteenth Amendment To The United States Constitution;

Supreme Court Rule 10(b) and (c);

28 U.S.C., Section 1254(1);

and

28 U.S.C., Section 2254(d).

OPINIONS BELOW.

The order of the state court and federal courts are cited at Commonwealth v Alcequiecz, 989 N.E. 473 (2013) and Alcequiecz v Ryan, Dist. Ct. 1:14-cv-11693-ADB (2017). Both courts denied relief on the reasons that are in violation of this courts' mandate, that is, they are based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. as it applies to this courts' Strickland v Washington, 466 U.S. 668 (1984), decision.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

The Due Process clause of the Sixth and Fourteenth amendment to the United States is the statutory benchmark that guides this petition.

FEDERAL STATUTES INVOLVED.

The text of 28 U.S.C., section 2254(d)(1) inflicts upon the petitioner's claim.

SUMMARY OF ARGUMENT.

The State and Federal Courts have steadily denied the petitioner relief, relying on the belief that the petitioner's claim does not involve an unreasonable application of Supreme Court law under **Washington v Strickland**, 466 U.S. 668, 686, (1984).

WHEREFORE, the petitioner is requesting and seeking for this court to resolve this burdensome conflict amongst the state courts, as well as the federal circuits, as set forth in Supreme Court Rule 10 (b) and (c).

STATEMENT OF THE CASE.

In May of 2007, the petitioner, Spassky Alcequiecz, was indicted for the murder of Carlos Mejia. The events previous to the murder are vital to the resolvement of the petitioner's claim, in his favor.

The petitioner and his long time girlfriend Amanda Poisson, began their relationship in 2001. Coming into the relationship Amanda had a daughter from her previous relationship (Ariana). Amanda and the petitioner at some point in 2001 moved in together, Amanda got pregnant and had a child by the petitioner (Jovanny). Furthermore, the petitioner had a very close relationship with the children and he was a very good father.

In 2004, Amanda, the kids, and the petitioner moved to Crescent Street, to a single family house owned by Amanda's parents Theresa & Arthur Poisson. Furthermore, in 2005, a family friend, Carol DeChristforo moved into the Crescent Street house with them. (Tr. Vol. 6, Pgs. 15-19,27,35). As in the previous apartment, the petitioner paid all the bills, the rent, the house-hold expenses, brought all the furniture, as well as both vehicles. (Tr. Vol. 6, Pgs. 24,122-124,134,

139-141). Whenever the two had an argument, the petitioner would leave, go to his other apartment, then return when both tempers have calmed down. (Tr. Vol. 6, Pgs. 80,116-117).

In March of 2007, the petitioner and Arthur Poisson reached an agreement, that being, the petitioner would pay for all the renovations to Arthur & Theresa's Crescent Street house, thereby, the petitioner and his family (Amanda and kids) would have perminent residency their. See **Appendix C.** While the work was taken place, the petitioner, Amanda, and the kids would stay at Arthur and Theresa's house. The petitioner had his step-brother staying at the Crescent Street Dwelling while the work was taking place to oversee things.

On March 15th, 2007, the step-brother reported to the petitioner that someone had broken into the Crescent Street house. On March 17th, 2007, Amanda informed the petitioner that the break-in drove her over the edge, thereby, she no longer wanted to be with the petitioner and live that life-style.

At that point, the petitioner grabbed his belonging and left the parents house where they were temporarily staying while the renovation work was still in process at their Crescent Street house. The petitioner went to the Crescent Street house where he stayed for a while, then because of the noise and renovation taking place, the petitioner went to his other apartment in Revere. Sometime later, when the renovation was completed, Amanda, the children, and DeChristoforo returned to the Crescent Street dwelling. /1/ (Tr. Vol. 6, Pgs. 19-23, 107-108,121,141-144,178).

Unbeknownst to the petitioner, three days before Amanda asked him to leave her parents house. (not the Crescent Street dwelling), Amanda met a man named Carlos Mejia, Amanda and Mejia began seeing each other daily, and Mejia occassionally

1/ Though the petitioner left the parents house, where he was staying while renovation work was in process at his Crescent Street house (because Amanda requested so). However, this wouldn't apply to the Crescent Street dwelling where the petitioner went to, as the petitioner had lawful entry to. See Commonwealth v Marshall, 65 Mass. App. Ct. 710,715-716 (2006) Citing Commonwealth v Ricardo, 26 Mass. App. Ct. 345, 357 (1988) (One cannot burglarize his own dwelling). See also Appendix C. (This is only mentioned because the petitioner was charged with felony murder, the felony being armed burglary.)

stayed the night. (Tr. Vol. 6, Pgs. 26,41-42,109-110,131-132). Amanda never informed the petitioner that she was seeing someone else, or that Mejia would stay occassionally at their Crescent Street house. Infact, Amanda and the petitioner's relationship (he believed, and Amanda led him to believe) was closely knitted. They spoke daily on the phone, met daily, switched vehicles routinely, and spent time together. Furthermore, the petitioner went to the Crescent Street residence daily, took the children out, had keys to the house, took showers there daily, changed clothing, and had all his belongings there, and Amanda had no problems with it. (Tr. Vol. 6, Pgs. 24,88,148-153).

On Amanda's oldest child's brithday (Ariana), the petitioner paid for everything, including the food and beverages at the event. Amanda invited Mejia even though the petitioner was there. Amanda and Mejia introduced Mejia as a friend from school/2/, thus never informing the petitioner of her and Mejia's secret

2/. Mejia has to know that the petitioner is involved with Amanda (contrary to the motion judge's findings. See Pg. 15-16 Infra.), yet is content with the introduction as "Amanda's friend from school."

relationship. The petitioner got Mejia a cold beer, then engaged Mejia in a friendly conversation. Yet, when the party was over, and the petitioner made a run somewhere, Amanda and Mejia secretly went somewhere. (Tr. Vol. 6, Pgs. 27-30,116,155,159-161).

Amanda and Mejia secretly hid their relationship, not only from the petitioner, but others as well. For instance, friends of theirs testified that days before the murder that they were invited over to the Crescent Street house for dinner and drinks, and that Amanda and the petitioner were in a good mode, happy, and talking alot.

However, Amanda and her deceptive ways kept the petitioner in the blind, while also sometimes deceiving Mejia as well. For instance, on April 15th, 2007, Amanda told Mejia she was going out with some girlfriends, yet she was going out with the petitioner. During this time together, they had sex, went out to eat and had drinks. While out eating, Amanda informed the petitioner that she had to use the ladies room, however, Amanda

went into the ladies room, and once there Amanda placed a call to Mejia, but got no reply. (Tr. Vol. 6, Pgs. 31-32,79-88,114-115).

On the day of the murder, Amanda put the kids to bed, and went into her room with Mejia after making sure the doors were locked. (Tr. Vol. 6, Pgs. 32-36,37,39-42,104-105). Amanda, still in deceiving mode with the petitioner as to her and Mejia's sexual encounters or relationship (Tr. Vol. 7, Pgs. 57-59,61-62,65,96-97,108-111,113-114,127,131-133), when the petitioner called and she recognized his number tried to play like she was asleep, doing this because she didn't want to talk to the petitioner in front of Mejia. However, Amanda eventually answered, and the petitioner informed her that he was coming over because he was to drunk to drive to Revere. Amanda informed the petitioner not to. After brief words were exchanged, Amanda informed the petitioner that no one was there, or at their house to go to Revere.

The petitioner informs Amanda, "did you forget that I got keys to our house, and hung up." (Tr. Vol. 6, Pgs. 42-45,112, 161-163). At that point, Amanda got off of the bed and looked out the window in the livingroom, thereby seeing the petitioner's vehicle, Amanda then ran and told Mejia that the petitioner was there./3/. Amanda, having the door partially locked/4/ informed the petitioner that Mejia was there and they were watching a movie. (Tr. Vol. 6, Pgs. 163-164). The petitioner then threw a battery charger at the door breaking some window-pains. (Tr. Vol. 6, Pgs. 149-150). Amanda then took the lock off the door and allowed the petitioner inside the house. (Tr. Vol. 6, Pg. 166-167). /5/

3/. This proves they were both hiding their relationship from the petitioner.

4/. The petitioner unlocked all the other locks with his own keys, the only lock was a chain lock that is hand operated. (Tr. Vol. 6, Pgs. 166-167).

5/. There could be no armed burglary as the petitioner was let into the house by Amanda freely and by her will.

At this juncture, the petitioner hits Amanda with the battery charger, then runs up the stairs to confront Mejia, who is hiding in the bedroom with the door blocked by his body weight. The petitioner then states to Mejia: **"this is what I wanted to see, I wanted to see you <u>in my house in my bed</u>."** (Tr. Vol. 6, Pg.53).

The petitioner then went and got a knife from the kitchen area, then went back to the room where Mejia was hiding at. (tr. Vol. 6, Pg. 59). Mejia had the door closed with his weight against it. The petitioner forced the door open enough to get his arm in where the petitioner weilded the knife wildly, thus striking Mejia killing him. (Tr. Vol. 6, Pgs. 59). The petitioner then ran down the stairs and was confronted by the police and arrested. (Tr. Vol. 6, Pg. 51). In route to the police station, the petitioner informed officers **"what would you do if you found your girlfriend with someone <u>in your home.?</u>**

REASONS FOR GRANTING THE WRIT

ARGUMENT.

I. WHETHER, THE PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL, AS COUNSEL'S ABANDONEMENT ON A MANSLAUGHTER INSTRUCTION ON PROVOCATION, ON A BELIEF, WHICH COUNSEL NOW ADMITS WAS WRONG, DEPRIVED THE PETITIONER OF DUE PROCESS OF LAW UNDER THE SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

This court has steadily gauranteed a criminal defendant that "the right...to have assistance of counsel for his defense" is fundamentally mandated, because such a right ensures a gauranteed right to effective assistance of counsel. See Strickland v Washington, 466 U.S. at 686; quoting McMann v Richardson, 397 U.S. 759,771 n14 (1970).

This court proposition enphasizes that a defendant must meet a two (2) prong criteria to establish that his counsel rendered ineffective assistance of counsel. The first being, the defendant must demonstrate "that (his) counsel's performance was deficient", the second being, "that the deficient performance prejudiced the defense.". Strickland Supra at 687. Looking

through this lense, (the prejudice inquiry), this court must assess whether "there is a reasonably probability that, but for counsel's unprofessional error, the results of the proceeding would have been different." Strickland Supra at 694 ("(a) reasonable probability is a probability sufficient to undermine confidence in the outcome.")

A. COUNSEL'S FAILURE TO REQUEST A PROVOCATION INSTRUCTION.

This court has emphasized that jury instructions normally involve issues of state law, which even if incorrect, may not be entitled to federal review and relief. See Estelle v McGuire, 502 U.S. 62. 71 (1991) citing Marshall v Lonberger, 459 U.S. 442, 448 n6 (1983). However, errors in jury instructions can sometimes be found unconstitutional in and of itself. For Instance, a jury instruction violates due process of law if it omits an element of an offense. See Osborne v Ohio, 459 U.S. 103, 122-124 (1990), citing In Re Winship, 397 U.S. 358, 364 (1970). This court has further stated that "(a)s a general proposition a defendant is antitled to an instruction as to any

recognized defense for which there exist evidence sufficient for a reasonable jury to find in his favor." Mathew v United States, 485 U.S. 58, 63 (1988) (citations Omitted).

Nonetheless, though not every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation, Middleton v McNeil, 541 U.S. 433,437, (2004) (per curam), quoting Estelle Supra at 72, a challenged instruction must be viewed in isolation, rather, it must be considered "in the context of the instructions as a whole and the trial record." Estelle Supra at 72 citing; Cupp v Naughten, 414 U.S. 141, 146 (1973). Once this court reaches a determination that it was error, next, this court must determine whether the error prejudiced the petitioner. See Henderson v Kibbe, 431 U.S. 145, 154 (1997).

In the present case, the petitioner went to his house that he shared with his long time girlfriend and their children, the petitioner caught his girlfriend with another man in "his house, in his bed", (Tr. Vol. 6, Pg 53.), thereby, the sudden

discovery of infidelity equals "provocation", which could equate to manslaughter. See Mullaney v Wilmur, 421 U.S. 684, 686 (1975).

Here, the petitioner's counsel was lost and confused in the matter, he was under the mistaken belief that the court had established that provocation can never be an issue with regards to felony murder. See **Appendix D**. Wherefore, counsel did not request, and the judge did not give a provocation instruction with regards to felony murder theory.

Furthermore, to compound the fault of counsel, the court specifically instructed the jury that provocation was not an issue with regard to felony murder. See **APPENDIX F** Counsel's fault he now recognizes, realizing the commonwealth did not hold that provocation cannot mitigate felony murder where the provocation preceeded the intent to commit the felony and counsel acknowledges that he should have requested an instruction on provocation with regards to felony murder. See **Appendix D.** (Tr. Vol. 6, Pgs. 194-196) (Tr. Vol. 8, Pgs. 143-144,151-152, 178-179).

The law in Massachusetts is clear that "in a murder case where the evidence has raised the possibility of provocation and voluntary manslaughter may be at issue, proof of malice requires proof of the absence of provocation. See Commonwealth v Whitman, 430 Mass 746, 751-752 (2000). Furthermore, The Model Instructions On Homicide (1999) (Appendix E), clearly indicates that provocation can mitigate the constructive malice required for felony murder. It specifically states that a voluntary manslaughter instruction may be given in a felony murder case. Id at 19 Infact, identical references to involuntary manslaughter are included at the end of the preceding instructions on the premeditated and extreme actrocity theories. Id at 10 and 14. /6/ Clearly counsel's

6/ During the motion for a new trial under ineffective assistance of counsel premises, the court missed the point as well as it assumed that it was not appropriate to give a provocation instruction with regards to felony murder. Appendix F. This was flat wrong, as the law was clear at the time of the petitioner's trial that the petitioner was constitutionally entitled to a provocation instruction. Whitman, Supra at 751-752. Thereby, counsel had a constitutional duty to request such an instruction. Commonwealth v Sinclair, 138 Mass 493, 493 (1985) ("it is the duty of the party, who deems a ruling or instruction necessary for the protection of his interest to call the attention of the

unprofessional blunder prejudiced the petitioner, it was the difference between a first degree murder conviction (which the petitioner recieved), and a manslaughter conviction, which avoided the jury during their deliberation process.

At bar, the infidelity games by Amanda and Mejia came to an end when the petitioner came home and discovered Mejia "in his house in his bed", this sudden discovery would have been the "elephant in the room" that the jury could not have ignored to apply provocation in a manslaughter conviction. **Mullaney**, 421 U.S. at 686. And counsel mishap in not requesting a provocation instruction, due to the belief that the petitioner wasn't entitled to one, is blantant ineffective assistance of counsel under **Strickland** and its progeny.

(THE STATE COURT RULINGS, TO WHICH THE)
(FEDERAL COURTS ADOPTED INVOLVED AN)
(UNREASONABLE APPLICATION OF CLEARLY)
(ESTABLISHED FEDERAL LAW, IN LIGHT OF)
(THE EVIDENCE PRESENTED IN IT.)

During the motion for a new trial regarding whether the case warranted a provocation instruction, and if counsel was ineffective for failing to request one, the judge expressed

6 con't/ judge thereto by proper request.") See also **Kent v United States,** 383 U.S. 541,557 (1966) (any state which elects to impliment laws must observe only the constitutional due process required of essential fairness.)

"some doubt", noting the petitioner and Amanda "had broken up" sometime before the murder, and that the petitioner may have suspected Amanda was seeing Mejia after meeting Mejia at the party. This finding is based on an unreasonable determination of the facts in light of the evidence in the state court proceeding. Williams v Taylor, 529 U.S. 326, 411 (2000). Furthermore, the court found that Amanda was the only one who provoked the petitioner, since it was Amanda that told the petitioner that Mejia was with her. (**Appendix F, Pgs. 18-19,21,36-40,44)**

Here, the state court is not relying on the facts presented during the petitioner's trial, but is instead assuming, speculating, and guessing, something it encourages the jury not to do. The articulation that the petitioner suspected Amanda was seeing Mejia after meeting Mejia at the party, is misplaced by the court and an unreasonable application in light of the evidence in the proceedings. There, **Amanda** and **Mejia** introduced Mejia to the petitioner as an old friend from school, to which, the petitioner got Mejia a cold beer and engaged him in friendly conversation. (Tr. Vol. 6, Pgs. 27-30,116,155,159-161). The

court abandoned the facts that the petitioner had keys to the house given to him by the parents who owned the house as part of an agreement for the renovation work. See Appendix C. The petitioner had all his belongings there, washed and came and went as he so pleased, paid all the rent, brought all the furniture, and both vehicles and the house hold expenses. (Tr. Vol. 6, Pgs. 143,146-148,157) (Tr. Vol. 6, Pgs. 24,88,148-153).

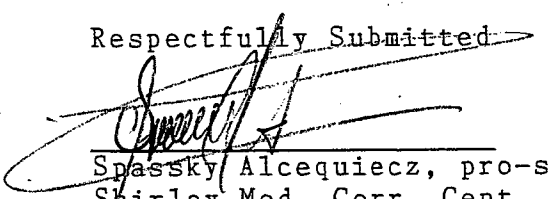
Furthermore, the court is disregarding the fact that Amanda NEVER informed the petitioner that she was seeing Mejia or romantically involved with Mejia either. (Tr. Vol. 7, Pgs. 57-59, 61-62,96-97,108-111,113-114,127,131-133). Thereby, the state courts' ruling, articulating that the petitioner "suspected Amanda was seeing Mejia after meeting Mejia at the party", is unreasonable in light of the evidence presented in the state court proceeding.

Lastly, mere suspicion for a period of time that ones partner may be seeing someone else does not preclude a provocation instruction. Commonwealth v Andrade, 422 Mass 236-238 (~~1996~~) See also Commonwealth v Schnopps, 383 Mass 178, 182 (1981). Nor does it matter if Amanda is the sole one who provoked the petitioner either. Commonwealth v Andrade, 422 Mass at 238. The commonwealth admitted to the petitioner's jury that once the petitioner discovered that Mejia and Amanda were in his house, in his bed, "that truth triggered in him rage and an anger" that continued until the petitioner reached the police station. (sudden discovery of infidelity/provocation). (Tr. Vol. 6, Pgs. 194) (Tr. Vol. 8, Pgs. 27-32,93,95-97,175-176).

CONCLUSION.

WHEREFORE, the petitioner seeks for this courts' guidance that posits that the petitioner was furnished with ineffective assistance of counsel under Strickland and its progeny, by counsel's failure to request a provocation instruction for a case that begged for one.

Respectfully Submitted



Spassky Alcequiecz, pro-se
Shirley Med. Corr. Cent.
P.O. Box 1218
1 Harvard Road
Shirley, Massachusetts
01464-1218

Dated: 7/9/18