

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**GEORGE RAHSAAN BROOKS,**

Petitioner,

v.

**COMMONWEALTH OF PENNSYLVANIA**

Respondent

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On Petition for Writ of Certiorari to the  
Pennsylvania Supreme Court

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**PETITION FOR WRIT OF CERTIORARI**

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George Rahsaan Brooks, pro se  
State Correction Institution Coal Township  
1 Kelley Drive  
Coal Township, Pennsylvania 17866-1021  
Identification Number: AP-4884

### QUESTIONS PRESENTED

1. WHETHER THE UNITED STATES HAS A SUBSTANTIAL INTEREST IN PREVENTING THE RISK OF INJUSTICE TO DEFENDANT AND AN INTEREST IN THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS NOT BEING UNDERMINED?
2. WHETHER THE STATE COURT'S DECISION CONCERNING BRADY LAW WAS AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT?
3. WHETHER THE STATE COURTS ENTERED A DECISION IN CONFLICT WITH ITS RULES OF CRIMINAL PROCEDURES, DECISIONAL LAW AND CONSTITUTION ON THE SAME IMPORTANT MATTER AS WELL AS DECIDED AN IMPORTANT FEDERAL QUESTION ON NEWLY PRESENTED EVIDENCE IN A WAY THAT CONFLICTS WITH THIS COURT AND DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND FEDERAL LAW?
  - a. WHETHER THE SUPERIOR'S COURT'S DECISION THAT CHARGING INSTRUMENT IS NOT NEWLY PRESENTED EVIDENCE IS AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED TO THE STATE COURT AND AN UNREASONABLE APPLICATION OF FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT?
4. DID THE STATE COURT WILLFULLY FAIL TO DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW AND THE CONSTITUTION ON FRAUD ON THE COURT WHICH HAS BEEN SETTLED BY FEDERAL LAW AND BY THIS COURT?

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## **PETITION FOR WRIT OF CERTIORARI**

In the State proceeding petitioner initially filed under the Post-Conviction Rules Act ("PCRA" to address newly presented evidence, a **Brady** violation, miscarriage of justice, and actual innocence. Petitioner George Rahsaan Brooks respectfully prays that this writ of certiorari issue to review the rulings of the Pennsylvania State Courts' denial of post-conviction relief.

### **OPINIONS BELOW**

The Pennsylvania Superior Court confirmed the opinion on the Court of Common Pleas PCRA Court's September 26, 2017 decision (unpublished decision) App. A-1.

The Court of Common Pleas decision of September 26, 2017 denying PCRA relief (unpublished opinion) App. B-1

The Pennsylvania Supreme Court denied the Petition for Allowance of Appeal on May 2, 2018 (unpublished opinion) App. C-1

### **STATEMENT OF JURISDICTION**

This Honorable Court has jurisdiction under 28 U.S.C. § 1254(1). The judgment of the Pennsylvania Supreme Court entered is decision on November 27, 2018. (unpublished opinion) App. C-1. This Petition is timely filed

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<sup>1</sup> Opinion in Appendix are denoted at app. \_\_\_\_\_

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves a state criminal defendant's rights under the Supremacy Clause, the Fifth, Sixth and Fourteenth Amendments:

Article 6, Clause 2, of the United States Constitution provides in relevant part: "The Constitution, and the 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 Fifth Amendment to the United States Constitution provides in relevant part: "No person shall ... be deprived of life, liberty, or property, without due process of law ..."

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 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..."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law..."

## STATEMENT OF THE CASE

After Public Defenders David Metinko and Gary Zimmerman interviewed no Commonwealth witnesses and conducted no discovery and the trial Court denying petitioner's pro se pretrial motion for discovery **without prejudice** then denying all proceeding motions for discovery and petitioner for decades writing letters to public defender Gary Zimmerman and filing Motions for a copy of the probable cause affidavit, criminal complaint, arrest warrant, indictment, and autopsy report without success, petitioner requested aid from the Pennsylvania Innocent Project and they obtained a copy of grand jury indictment for Intentional First Degree Murder. (App. D-1 7 2, App. E-1) When there was no indictment for Second Degree Felony Murder petitioner sent \$10.00 to the Pennsylvania State Police ("PSP") to obtain a copy of his Criminal History Information. 1/ ("CHIA") After receiving the requested information and there being no information petitioner was

ever indicted for First Degree Murder and seeing the dates had been changed from when petitioner was informed he was officially arrested petitioner challenged the CHIA information as being invalid.

The PSP ruled the CHIA was valid and petitioner appealed to the Pennsylvania State Attorney General. ("PSAG") A video-conference hearing was ordered and the PSP was directed by the Administrative Law Judge to provide petitioner with all documents they intended to present at the hearing that was scheduled for August 20, 2015. The PSP provided petitioner with documents never provided to him nor to the Pennsylvania Innocence Project ("PIP") and this document is manufactured and masquerading as an Indictment. (App. F-1). The Administrative Law Judge ruled petitioner was attempting to circumvent Pennsylvania's Time Bar provision by using the CRIA.

Petitioner filed a Petition under the Post-Conviction Rules Act. ("PCRA") 2. In the Petition petitioner argued he was actually innocent of felony murder, the bogus indictment was newly presented evidence and also demonstrated the detective witnesses committed perjury and conspired to manufacture a false charging instrument that **Brady v. Maryland**, 373 U.S. 83 (1963) was violated. The PCRA Court denied the PCRA Petition as being patently frivolous without any support in the record under Rule 907 of the Pa. R. Crim. P. The PCRA Courts ruling is contrary to the United States Constitution and United States Supreme Court Law. (App. B-1). The Pennsylvania Superior Court ruling the indictments are not bogus, newly presented and no **Brady**

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1/ 18 Pa. C.S.A § 9101 et seq, & 18 Pa. C.S.A. § 9151 (a)

2. Pa. 42 Pa. C.S.A. § 9545(b)(1)

violation occurred. (App. A-5-6). Evidence is newly presented if it was never disclosed to the defendant. Reeves v. Fayette SCI, 997 F.3d 154 (2018); Schlup v. Delo, 513 U.S. 293, 327-28 (1993). An indictment must be signed by a public prosecutor, be in the language of the statute and must apprise the defendant to what he is being charged with. If it fails to do so, it violates the Supremacy Clause, the Fourteenth Amendment and Supreme Court precedent. The undisclosed bogus indictment not only was manufactured to circumvent the grand jury, the undisclosed Brady evidence shed light on hidden police methods used to convict a defendant never indicted it could have been used to impeach every detective witness who testified petitioner was arrested for felony murder and brought out the testimony of detectives McKay and Stotlemeyer who testified before the grand jury and mentioned nothing about the murder occurred while petitioner was involved in a robbery. In fact, their testimony was the murder was retaliatory because Michael Miller attempted to rape Dale Freddy Harris' mother. Counsel could have used the suppressed document to bolster trial evidence that he nor the petitioner knew what element of murder he was charged with because he was charged under 18 Pa. S 2501 which is a general charge of murder that includes First Degree, Second Degree, Voluntary Manslaughter and Involuntary Manslaughter, that jurors with death penalty scruples were removed for cause from the jury pool and that the defense could not prepare a defense because after the defense prevailed on the demurer for First Degree Murder, the Commonwealth then preceded with felony murder. Counsel could have used the suppressed evidence to bolster trial evidence that the prosecution was framing petitioner because he refused to cooperate with them in their investigation against Freddy Harris. Moreover, the Brady evidence would have been used to get the bogus indictment suppressed and prevented a new trial and would have provided the backbone for counsel's closing argument that the document was withheld to

give the State the advantage by allowing it to initially prosecute petitioner as a capital case, remove all jurors with death penalty scruple then after petitioner prevailed in his demurrer of having First Degree Intentional murder dismissed on insufficient evidence, after the defense rested and the State heard petitioner's case, the State then proceeded to prosecute petitioner for Second Degree Felony murder.

Petitioner request of this Honorable Court to grant writ of certiorari because the United States have a substantial interest in preventing the risk of injustice to a defendant actually innocent of the crime and an interest in the risk of the public's confidence in the judicial process being undermined. Liljeberg v. Health Service Acquisition Corp., 486 U.S. 847, 863-64 (1988). The Court should also grant certiorari because the state ignored the federal constitution and this Court's precedence and the State's decisions was based on an unreasonable determination of the facts in light of the evidence presented, Miller-El v. Crockell, 537 U.S. 322, 340 (2003), and was also contrary to, or an unreasonable application of, clearly established federal law. Williams v. Taylor, 529 U.S. 362, 412 (2000).

### **1. FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner was charged under the general charge of murder. <sup>3/</sup> Petitioner was indicted by the grand jury for First Degree Intentional Murder [App. E-1] Petitioner was held for Court on November 18, by the coroner's solicitor. At the in chamber voir dire, jurors with death penalty scruples were removed the jury pool. Petitioner was found guilty of Second Degree Felony Murder

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<sup>3/</sup> 18 Pa. C.S.A. § 2501 **Criminal Homicide:**

(a) **Offense Defined** – A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently Causes the death of another human being.

(b) **Classification.** – Criminal homicide shall be classified as murder, voluntary manslaughter, or involuntary manslaughter.

without the possibility of parole.

A. **The Trial**

Petitioner was indicted for First Degree Murder for allegedly beating and kicking Michael Miller to death. [App. E-1] The testimony given before the grand jury was the murder occurred because Michael Miller tried to rape Dale Freddy Harris' mother. This was the state's original theory. No one named or identified petitioner. At the coroner's hearing detective Robert Spozarski testified he informed petitioner he was under arrest on October 1, 1975, had an arrest warrant for him, read petitioner his Miranda Rights, petitioner gave an inculpatory statement the detective made no notes of, did not record nor told no one about until he learned of the death on November 5, 1975. Coroner Transcript ("C.T") pages 31, 34, 38. Police Officer John Gizler testified Michael Miller told him he was drinking with two buddies and one of them punched him in the stomach and took his money. C.T. pages 18-19. No one had named petitioner nor given a description of him "until after" the victim's family members saw him and heard testimony at the coroner hearing. After the close of the coroner hearing, petitioner was taken to a city magistrate arraignment where the victim's mother was asked to make an in court identification.

At the suppression hearing petitioner tried to suppress the inculpatory statement 4/ but detective Spozarski committed perjury stating he never told petitioner he had a warrant for him, that he was under arrest nor gave him a Miranda warning in the instant case. Suppression Transcripts ("S.T.") pages 56, 108, 113, 123, 124, 136, 167, 179.

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4/ It should be noted that Pennsylvania law no longer permits the prosecution to read/produce a police report of an alleged statement/confession as substantive evidence unless the defendant has actually signed and adopted the statement or the statement has been videotaped. Pa. R.E. 803(25) **Commonwealth v. Holloway**, 559 Pa. 258, 739 A.2d 1039 (1999); **Commonwealth v. Kitchen**, 730 A.2d 513 (Pa. 1999). See also, Pa. R.E. 803.1(i) (statements not admissible as prior inconsistent statements). **Commonwealth v. Halsted**, 542 Pa. 318, 666 A.2d 655 (1995); **Commonwealth v. Lively**, 530 Pa. 464, 610 A.2d 7 (1992).

On the morning of September, 1975, Lula Miller was called to the emergency room of Presbyterian Hospital where she worked. Trial Testimony ("T.T.") p. 181. Upon entry into the emergency room, she observed her son, petitioner and Mr. Harris, and Mrs. Terry, her neighbor. (T.T. p. 183)

After Petitioner had left, Mr. Harris and her son returned together. T.T. pp. 122, 127. Approximately ten minutes later, Mr. Harris returned to the hospital followed within a few minutes by petitioner. (T.T. p. 137). Ten minute later, the victim Michael Miller was brought to the hospital in a battered condition by city police. T.T. p. 137. Police officers Howard Dronski and James Pulcher testified they discovered him bent over holding his stomach in a back alley. T.T. pp. 144, 478. The officers then transported him to Presbyterian Hospital. The State stipulated Mrs. Lula Miller did not give a description of me to no one. T.T. p. 42.

At the dying declaration hearing the court rejected and suppressed the testimony of the victim's sisters, Paula Miller and Betty Davis that the victim told them Brooks beat him and took his money. After the jury found petitioner guilty of Second Degree Felony Murder, post-verdict motions was found arguing insufficiency of evidence. The court denied the motion, using the evidence he had suppressed and the jury never heard that the victim named Brooks to his sisters. T.T. pp 730, 731, 805, 827, 832, 842, 843, 865, 866. The court also ignored the stipulation agreed upon and ruled Mrs. Lula Miller gave a complete and accurate description of petitioner to Det. Robert Spozarski.

Pennsylvania Supreme Court confirmed the conviction without opinion and the federal habeas court adopted the state court's fake facts and denied relief in. The PCRA Court, Superior Court State Supreme Court denied PCRA relief. (App. A, B. C.)

## REASON FOR GRANTING THE WRIT

1. **This Court should certiorari to decide whether the United States has a substantial interest in preventing the risk of injustice to a defendant and an interest in the public's confidence in the judicial process not being undermined.**

In McQuiggin v. Perkins, \_\_\_, U.S. \_\_\_, 133 S.Ct. 1924 (2013) this Honorable Court held society views the conviction of an innocent person as perhaps the most grievous mistake our judicial system can commit. Reflecting the gravity of such an affront to liberty, the fundamental miscarriage of justice exception has evolved to allow ... petitioners to litigate their constitutional claims despite certain procedural bars if the petitioner can make a credible showing of actual innocence. This Honorable Court extended this doctrine to allow petitioners who could make that showing to overcome statute of limitations. In doing so, the Court recognized that untimely petitions should not prevent a petitioner who can adequately demonstrate his innocence from pursuing his claims. This view reflects society's value judgment that procedures should yield to substance when actual innocence is at stake.

McQuiggin announced a change in decisional law that retroactively applies to petitioner. It was public interest and the values encompassed by the fundamental miscarriage of justice exception which drove this Court's decision in that case. McQuiggin illustrates that where a petitioner makes an adequate showing of actual innocence, the public's interest in avoiding the wrongful conviction of an innocent man will permit him to pursue his constitutional claims in spite of the statute of limitation bar. A proper demonstration of actual innocence should permit relief unless the totality of equitable circumstance ultimately weighs heavily in the other direction. A contrary conclusion would leave open the possibility of preventing a petitioner who can make a credible showing of actual innocence from utilizing the fundamental miscarriage of justice because it took him decades to unearth evidence the prosecution was obligated to disclose to him. Such an outcome implicates two factors identified by this Court: "the risk of

Justice to parties” and the “risk of undermining the public’s confidence in the judicial proceeding.” Buck v. Davis, \_\_\_, U.S. \_\_\_, 137 S.Ct. 759 (2017). In light of the newly presented evidence, “no juror, acting reasonably, would have voted to find petitioner guilty beyond a reasonable doubt.” McQuiggin, 133 S.Ct. at 1928 (Quoting Schulp, 513 U.S. at 329, 115 S.Ct. 851). This Court has established that considerations of finality and comity must yield to the fundamental right not to be wrongfully convicted. See House v. Bell, 547 U.S. 518, 536-37, 126 S.Ct. 2064 (2006); Schulp, 513 U.S. at 320-21, 115 S.Ct. 851 (citing Murray, 477 U.S. at 496, 106 S.Ct. 2639).

Petitioner was charged under an open charge of murder which encompassed murder in the First, Second, Third Degrees and Voluntary and Involuntary Manslaughter. Thus, the charge of Second Degree Murder was not specified until the defense rested and prevailed on having First Degree Murder demurred for insufficient evidence. The Superior Court erred in fact when it stated at n. 1 of App. A-1 that petitioner was indicted under 18 Pa. C.S.A. §§ 2502(b) and 3701(a), respectively. In fact the document stating so is fake. The grand jury never indicted petitioner for such a charge. (App. E-1 & F-1) and page 5 of petition, n. 3. Also, the Superior Court erred in fact when at n.2 of App. A-2, it stated, “the record reflects that appellant was represented by counsel during the course of his first, second, third, and fifth PCRA Petitions when in fact Petitioner was only represented on his First PCRA Petition by Attorney David Shrager.”

The “Notice Requirement” in the statutory provisions of Murder violated the Sixth and Fourteenth Amendments. At first, petitioner was treated as a First Degree Murder “capital” case. Jurors with death penalty scruples were removed for cause. Then, after the state granted the defense’s demurred for First Degree Murder, they proceed with the charged of Second Degree Felony Murder where the grand jury had heard no such evidence by detectives McKay and Stotlémeyer then manufactured a fake indictment to

boot. (App. E-1 & F-1).

It is a well-established principle of law, as well as a constitutionally protected right that the accused must be confronted with a formal and specific Notice of the charge. In fact, the Sixth and Fourteenth Amendments were violated because a right to a formal Notice is a constitutional guarantee. It is so basic to fairness that it cannot be waived even if the defendant submits to the jurisdiction of the Court. Commonwealth v. Little, 314 A.2d 270, 272-73 (1974); Commonwealth ex rel. Fagan v. Francies, 53 Pa. 278 (1913); Albrecht v. United States, 47 S.Ct. 250 (1927).

The State did not disclose App. E-1 and F-1 to petitioner even though it was mandated to do so under Brady. And they willfully did not do so to prevent petitioner from impeaching detective witnesses and proving the grand jury never heard evidence that petitioner committed a murder in the course of committing a felony. (18 Pa. § 2502(b)) App. F-1 also willfully was not disclosed to prevent petitioner from proving it was manufactured, fake and to prevent petitioner from having this fake indictment dismissed and from preventing the state from re-indicting and re-charging him under both the State and federal Double Jeopardy Clauses. The Superior Court's ruling was based on an unreasonable determination of the facts because the ruling that the fake indictment was in fact authentic and not newly presented evidence was objectively unreasonable in light of the evidence presented because the evidence submitted by petitioner submitted was substantive and sufficient to rebut the Court's factual findings. Miller-El v. Cockrell, 537 U.S. 322, 340 (2003). The Superior Court's ruling that there was no Brady violation, that the fake indictment was not newly presented and was in fact authentic is contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. Williams v. Taylor, 529 U.S. 362, 412 (2000). For the above reasons this Court should reverse the judg-

ments of the State Courts and grant certiorari.

**2. The State Courts' decision concerning Brady law is an unreasonable application of clearly established federal law as determined by the United States Supreme Court.**

The Pennsylvania Superior Court held that Petitioner's Brady claim was meritless and he failed to present a scintilla of evidence to support the contention that the indictment was fraudulent or the Commonwealth willfully concealed anything from him in violation of Brady. (App. A-5-6) The Pennsylvania Supreme Court denied the Petition for Appealability. (App.C-1).

The Superior Court did not decide petitioner's case in accordance with stare decisis and that court's decision was contrary to, or an unreasonable application of clearly federal law as determined by the Supreme Court. The PCRA Court should have also held an evidentiary hearing on petitioner's newly presented evidence, Brady and miscarriage of justice claims. The PCRA Court denied PCRA relief under Rule 907 of Pa. R. Crim. P. because after careful review of the record, it found petitioner's claims to be patently frivolous and without support in the record. (App.B-1)

A second or subsequent petition will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred. Commonwealth v. Szuchon, 534 Pa. 486, 633 A.2d 1098, 1099 (1993) (citing Commonwealth v. Lawson, 549 A.2d 107 (1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceeding resulting in the petitioner's conviction was so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent to the crime charged. Szuchon, 534 Pa. 483, 487, 633 A.2d 1098, 1100 (1993).

A PCRA Court has the discretion to dismiss a Petition without an evidentiary hearing if the petitioner's claim is patently frivolous and has no support either in the record or other evidence." Commonwealth v.

v. Khalifah, 852 A.2d 1011, 1014 (Pa. Super. 2001). On appeal the reviewing court determined whether the PCRA Court erred in determining that “there was no genuine issue of material fact in controversy and in denying relief without conducting an evidentiary hearing. Id. (citing Commonwealth v. Hardcastle, 701 A.2d 541, 542-43 (Pa. 1997).

If a PCRA Petition is dismissed without an evidentiary hearing, a reviewing court must remand for an evidentiary hearing. The primary purpose of a PCRA evidentiary hearing is to enable the PCRA Court, serving as a fact-finder, to make credibility determinations. Id. at 539. Thus, where a petitioner raises genuine issues of material fact and offers evidence that, if believed, warrant relief he is entitled to an evidentiary hearing. Khalifah, 852 A.2d at 1240. (remanding for an evidentiary hearing where witness’s testimony may have affected outcome of petitioner’s trial and PCRA Court made credibility determinations based on affidavit alone); Commonwealth v. Burton, 121 A.3d 1063 (Pa. Super. 2015) (remanding for evidentiary hearing on timeliness of PCRA Petition where petitioner raised genuine issues of material fact as to when after discovered evidence was available to him and PCRA Court made credibility finding without hearing).

In laying out his claims, petitioner first argues credibility determinations made by the PCRA and Superior Courts (App. A-56, App. B-1) are not supported by the record. Factual determinations, while entitled to deference are not entitled to blind acceptance. The review of the entire record clearly shows newly presented evidence, police perjury actual innocence and a Brady violation. It is not for State Courts to create reasons to disbelieve the evidence. (App. 1-56; App. E-1; App. F-1) Court record and facts of the case must be believed or disbelieved based on that evidence that is before the courts.

Petitioner should have been given an evidentiary on his miscarriage of justice, newly presented evi-

dence and **Brady** claims and granted PCRA relief. In reviewing the trial Court's disposition of a PCRA Petition, the Superior Court must determine whether that court's ruling is supported by the record and free from legal error. Commonwealth v. Hawkins, 894 A.2d 716 (Pa. 2006).

The Pennsylvania Courts unreasonably interpreted **Brady** and its progeny in rejecting petitioner's **Brady** claim. First, the Pennsylvania Courts did not address, and unreasonably dismissed the impeachment value of the evidence and the Court's merit review that petitioner's **Brady** claim was meritless (App. 1-5) Secondly, the Court's ruling that petitioner has known since as early as December 1975 he was charged with inter alia, murder generally under Pa. Pa. C.S.A § 2502 and an information need not specify a degree of murder or the degrees of manslaughter in order to sustain the verdict of second degree murder and he failed to present a scintilla of verifiable evidence to support his contention the indictment was fraudulent or the Commonwealth willfully concealed anything from him in violation of **Brady**. App. A-5-6. First the document the court identifies as an indictment is bogus. (app. F-1 and no information was used in petitioner's case and if one would have been used, it would have had to be in the statutory language of 18 Pa. C.S.A. § 2502 and signed by a public prosecutor, not an alleged grand jury foreman. (Compare App. F-1 with App. G-1-2.) Petitioner was indicted for First Degree "Intentional Murder" (App. E-1) not Second Degree "Felony Murder" as the bogus, manufactured indictment claims. (App. F-1) The Commonwealth demurred on the only charge petitioner was lawfully indicted by a grand jury on, Intentional First Degree Murder, not Felony, Second Degree Murder where no witness went before a grand jury and testified that a murder occurred in the course of a felony being committed. (App. E-1)

The Commonwealth should have focused on whether petitioner received a fair trial in the absence of the newly presented evidence disclosed to him by the Pa. Innocence Project (App.D-1-2 and the PSP (App. F-1) in the case of **Brooks v. Pennsylvania State Police**, No. CHR 00031 (2015).

A **Brady** violation occurs when the government (1) knowingly presents or fails to correct false testimony; (2) fails to provide requested exculpatory evidence; or fails to volunteer exculpatory evidence never requested. **Haskill v. Superintendent Greene SCI**, 866 F.3d 139, 149 (3<sup>rd</sup> 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 non-disclosure evidence is material “if there is a reasonable probability that, had the evidence been disclosed, 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 Blackman’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 defendant’s acquittal ... [Rather], [a] “reasonable probability” of a different result is ... shown when the government’s evidentiary suppression undermines confidence of the trial.” (internal quotation marks omitted.)

Id. (alterations made by the Court of Appeals)

A different and more defense-friendly standard of materiality applies when the prosecutor knowingly uses false evidence, or fails to correct fake documents, where either of those events has happened, the falsehood is deemed to be material “if there is any reasonable likelihood that the false testimony or documents could have affected the judgment of the jury.” **Haskill**, 866 F.3d at

At 149 (quoting Agurs, 427 U.S. at 103; See also Giglio v. United States, 405 U.S. 150, 154 (1972); Napue v. Illinois, 360 U.S. 254, 271 (1959). The prosecutor did correct the false and different testimony that was given at the coroner, suppression hearings and trial that conflicted with testimony given before two different grand juries by Detectives Robert McKay, Joseph Stotlemeyer. Contrary to the Superior Court's ruling (App. 1-5-6) petitioner knew nothing of the above detectives giving different testimony before the Grand jury or that he was indicted for intentional as oppose to felony murder. Additionally, in petitioner's Reply Brief he furnished the Court with a copy of letter sent to Public Defender Gary Zimmerman complaining petitioner had not received a copy of any indictments. (Exhibit E to Reply Brief.)

Prosecutor willfully did not correct false testimony given at coroner and suppression hearing and at trial by detective witnesses Robert Spozarski, Robert McKay, Frank Amity, Joseph Stotlemeyer and Charles Lenzt. He stood silently by as these witnesses, central to the Commonwealth's case, detectives who the judge and jury gave credibility to, lied and manufactured a false and fabricated charging instrument. (App. F-1) By suppressing this evidence the Commonwealth was permitted to remove jurors with death penalty scruples, something it would have been constitutionally precluded from doing if the grand jury would have indicted petitioner for felony murder under 18 Pa. 2502(b). Compare App. E-1 with App. F-1.

Additionally, by suppressing App. E-1 & F-1, the Commonwealth deprived the defense of valuable evidence it could have used to impeach detective witnesses who gave different testimony before the grand jury and at the coroner's preliminary hearing. The defense would have been able to call into question the integrity of the Commonwealth's prosecution of the case and the legiti-

macy of App. F-1 masquerading as a charging instrument.

In evaluating petitioner's newly presented evidence and **Brady** claims, petitioner begs of the court to decide whether F-1 is a charging document under either the State or Federal Constitutions. Petitioner contends that in conducting its analysis, the Court examine the evidence introduced at his trial which neither App. E-1 and F-1 was not disclosed nor put into the court record because if those documents would have been disclosed, petitioner would have made the decision to take the stand and did not do so because of the prosecutor's misconduct. Contrary to the State Court's decision (App. A-1-5-6) that suppressed evidence is material to his case.

The Commonwealth's evidence, independent of the tainted sworn testimony of detectives and the bogus indictment contains inadequate evidence of petitioner's guilt. 5/ There exist a reasonable probability that if the commonwealth had disclosed the relevant impeach evidence, petitioner would have been able to get the bogus charging instrument dismissed and precluded the commonwealth from retrying him or use it as relevant impeachment evidence and found not guilty. The reliability of detective witnesses was determinant of petitioner's guilt because the perjured testimony and the weakness of the evidence leading to petitioner's guilt. The perjured testimony and fraudulent document so undermined the truth determinant process that no reliable adjudication of guilt or innocence could have taken place.

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5/ When Petitioner argued at trial the only evidence against him, the so-called inculpatory statement should be suppressed because at the coroner's hearing detective Robert Sporzarski testified he told me he had an arrest warrant for me for the assault and robbery for Michael Miller, told me I was under arrest for that charge, read me my Miranda warnings to that charge and I gave an inculpatory statement he took no notes of, did not reduce to writing or record nor told no one of until he learned of the death over a month later. But when petitioner tried to suppress the statement the court ruled petitioner was not arrested on this case until 11/11/75 not 10/1/75 so the Six Hour Rule did not apply. But after petitioner received an indictment stating that detective Frank Amity testified before the Grand jury petitioner was charged on 9/30/75 for assault and robbery and Petitioner challenged his Court Record Information of being invalid, the Commonwealth Court ruled in **George Rahsaan Brooks v. Pennsylvania State Police**, No. 122 C.D. June 23, 2017, Petitioner was arrested on "both 10/1/75 for robbery and assault & 11/11/75" when the victim died! If that document would have been disclosed petitioner would have prevailed on his suppression motion.

To prevail on his false testimony claim, petitioner has to demonstrate that (1) detective witnesses 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 could have affected the judgment of the jury. Haskill, at 146 (italics added)

“A state violates the Fourteenth Amendment’s due process guarantees when it knowingly presents or fails to correct false evidence in a criminal proceeding. Haskill, at 145-46 (citing Napue and Giglio) As set forth in this Petition, the knowing use by the prosecution of false testimony so corrupts “the truth seeking function of the trial process,” that the more friendly standard of materiality applies in such claims. Is. At 146 (quoting Agurs, 427 U.S. at 104. This is because:

Presenting false testimony cuts the core of a defendant’s right to due process. It thus makes sense that “the materiality standard of false testimony is lower, more favorable to the defendant, and hostile to the prosecution as compared to the standard for a general Brady withholding violation.” [United States v. Clay, 720 F.3d 1020, 1026 (8<sup>th</sup> Cir. 2013)]

At the root is how can a defendant possibly enjoy his rights to a fair trial when the state is willing to present (or fails to correct)( lies told by its own witnesses and then vouches for and relies on that witness’s honesty in its closing? As this Honorable Court recited in Napue,

[i]t is of no consequence that the falsehood bore upon the witness’s credibility rather than directly upon the defendant’s guilt. A lie is a lie, no matter what its subject, and if is in any way relevant to the case, the district attorney has a responsibility and duty to correct what it knows to be false and elicit the truth.

360 U.S. at 269-70 (quoting People v. Savvieds, 136 N.E. 2d 853, 854-55 (N.Y. 1956)) (internal ellipse omitted).

866 F.3d at 152.

Detective witnesses knew their testimony at the coroners hearing, suppression hearing and at

trial was false and the prosecutor knew it was false. Yet both detectives witnesses and prosecutor failed to correct it, manufactured a bogus charging instrument (App. F-1) and willfully failed to disclose it to the defense. As a result, petitioner nor his jury never learned the truth. Contrary to the state court's ruling. No information was present in petitioner's case because the evidence was presented to a grand jury. Plus, an information must be in the language of the statute and signed by a public prosecutor. (app. G-1-2)

The state Court erred when it ruled the bogus indictment was not newly presented (App. A-5-6) and erred when it failed to analyze the newly presented evidence with the instruction in Kyles that petitioners can use Brady evidence to "attack[] the reliability of the investigation." 514 U.S. at 446; Id at 453. State Courts also did not address the effect of evading the grand jury and manufacturing an indictment that failed miserably to meet standards of the state and federal constitutions and state and federal law. The State Courts decisions' analysis mirrored a sufficiency analysis that Kyles rejects. App. A-1-5-6' App. B-1; App. C-1); Kyles, 514 U.S. at 434, 453. Kyles instructs, "[t]he question is not whether the State would have had a case to go to the jury if it had disclosed the newly presented evidence, but whether we can be confident that the jury's verdict would have been the same." Id at 453.

Furthermore, it is probable that the disclosure of the authentic and bogus indictments would have undermined the jury's perception of the State's investigation and undermined confidence of the case and permitted the state to charge petitioner with five different homicides with five different elements (18 Pa. §2501) until the defense rested and after removing jurors with death penalty scruples something prohibited under felony murder. See Kyles, 514 U.S. at 434.

This court has made plain that impeachment evidence may be considered favorable under Brady even if the jury might not afford it significant weight. See Kyles, 514 U. S. at 450-51. Thus the State Courts decisions was contrary to or a misapplication of clearly established federal law as determined by the Supreme Court. Under Brady exculpatory evidence need not show defendant's innocence conclusively. ["Exculpatory evidence includes material that goes to the heart of the defendant's guilt or innocence as well as that which may well alter the jury's judgment of the credibility of a crucial prosecution witness"] Giglio v. United States, 405 U.S. 150, 154. (1972).

This court must consider the weakness of the Commonwealth case when it decides the Brady materiality of withheld, evidence, it must also weigh that fact with other critical considerations including (1) the importance of detective-witnesses whose testimony could have been impeached if the defense had been provided with the withheld evidence, 6/ Dennis, 834 F.3d at 293, 300; (2) the impact the prosecutorial misconduct had on the defense pursued, id at 311 and (3) how that evidence would have raised opportunities to attack .. the thoroughness and good faith of the Commonwealth's investigation. Kyles, 514 U.S. at 435; See also Dennis, 834 at 302 ("Counsel could have also used the fake indictment to challenge the adequacy of the police investigation") 7/

A state court decision is based on an "unreasonable determination of the facts" if the state court

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6/ The Superior Court gave no consideration to the reality that the trial testimony of Detectives McKay and Stottemyer conflicted with testimony given before the Grand detective Sporzarski s coroner hearing testimony conflicted with his suppression and trial testimony.

7/ Superior Court was objectively unreasonable. App. F-1 is not in the words of the statute, don't state how petitioner violated the Crime's Code and is not signed by a public prosecutor. The Court was also objectively unreasonable in its application of Brady And Kyles. App. A-1-5-6. The State Courts ignored the hard reality that based on the prosecution's decision as to how to prosecute petitioner, it was the centrality of detective-witnesses' perjured coroner hearing, suppression hearing and trial testimony And the bogus indictment that made the difference, the linchpin of the concept of "materiality" and the lies told at the hearings And at trial and the withheld authentic indictment App. E-1 that allowed the Commonwealth to remove jurors with death penalty Scruples as though he was a capital case and prevail at the suppression hearing. After petitioner was provided decades later with Indictment showing he was legally arrested on 10-1-75 Commonwealth Court ruled he was "lawfully arrested on that date. See Footnote 5. If document was not withheld petitioner would have prevailed at suppression hearing and been discharged.

factual findings are “objectively unreasonable in light of the evidence presented in the state court proceeding,” which requires review of whether there was sufficient evidence to support the state court’s factual findings. Miller-El v. Cockrell, 537 U.S. 322, 340 (2003). Determinations of factual issues made by state courts are presumed to be correct. Miller-El, 537 U.S. at 340. However, “[d]eference does not by definition preclude relief. A federal court can disagree with a state court’s credibility determination and, conclude the decision was unreasonable or that the factual premise was incorrect by clear and convincing evidence.” Miller-El, 537 U.S. at 340.

A state Court decision is an “unreasonable application of federal law” if the State court ‘identifies the correct governing legal principle,’ but “unreasonably applies that principle to the facts of petitioner’s case. Williams, 529 U.S. at 431. The Superior Court’s decision was objectively unreasonable. (App. A-1-5-6); Williams, 529 at 405. The Superior Court’s decision was lacking in justification and the errors well understood and comprehended in existing law beyond any possibility for fair-minded disagreement. Harrington v. Richter, 562 U.S. 86, 103 (2011).

**3. The State Court Entered A decision In Conflict With Its Rules Of Criminal Procedures, Decisional Law And the Constitution On The Same Important Matter As Well As Decided An Important Federal Question On Newly Presented Evidence In A Way That Conflicts With This Court And Departed From The Accepted And Usual Course Of Judicial Proceedings And Federal Law.**

The Elected Office of the District Attorney was created by the Pennsylvania Constitution. Article IX § 4 and its responsibilities are provided by statute. The District Attorney is the Chief Law Enforcement Officer of his county. The Commonwealth Attorney’s Act, 71 P.S. §§ 732-206, provides: “The attorney **shall** be the Chief Law Enforcement Officer for the county in which he is

elected...The Second County Code further provides: (a) The district Attorney shall sign all bills of indictment and conduct in the Court all criminal matters and prosecution, in the name of the Commonwealth or, when the Commonwealth is a party, which arise in the county, and perform all the duties which now by law are to be performed ... 16 P.S. § 4402.

Paramount among the duties of the District Attorney in the investigation of possible criminal offenses and the determination of when criminal charges should be pursued and when they should not. **Commonwealth v. Stripetich**, 652 A.2d 1294 (1995). The Superior Court's decision that App. F-1 is not fake ist meritless and petitioner failed to present a scintilla of verifiable evidence that the indictment was fraudulent is simply not true. App. A-1-4-5. App. F-1 is not signed by a public prosecutor but by an alleged grand jury foreman and "no grand jury heard evidence that petitioner brought about a murder in the course of committing a felony.

In **Commonwealth v. Badman**, 580 A.2d 1367 (1990) the Court found the language "did kill" or "take part in the killing of the victim" was sufficient to put the defendant on notice of the crime to which he was charged. Id. at 1371. App. F-1, does no such thing. See also **Commonwealth v. Tarasch**, 475 A.2d 887, 890 (Pa. 1974); **Commonwealth v. Bell**, 516 A.2d 1172, 1177 (1986); **Lebowitz v. Singer**, 323 A.2d 824 (1974); **Commonwealth v. Brandrup**, 366 A.2d 1233 (1976); **Commonwealth v. Lambert**, 313 A.2d 300 (1973); **Commonwealth v. Chambers**, 882 A.2d 1197 (Pa. Super.) (appeal denied, 8771 A.2d 188 (2005); **Commonwealth v. Pope**, 371 A.2d 887 (1974); **Commonwealth v. Alston**, 656 A.2d 1092).

Pennsylvania courts did not decide petitioner's case in accordance with stare decisis. Pennsylvania Courts deviated from their own decisions and from decisions of the Third Circuit and this Honorable Court. It is not for a Court to create reasons to disbelieve the evidence. Court

records and facts of the case should be believed on the evidence offered or presented. App. E-1, F-1 and G-1-2.

An indictment must be plain and concise, and a definite written statement of the essential facts constituting the offense charged. App. E-1. It is well established that an indictment returned by a legally constituted and unbiased grand jury must be valid on its face and charge on merit. **United States v. Vitillo**, 490 F.3d 314, 320 (3d Cir. 2007) (quoting Costello v. United States, 76 S.Ct. 406 (1956)). An indictment is facially sufficient “only” if it contains: (1) the elements of the offense intended to be charged, (2) sufficiently appraises the defendant of what he must be prepared to meet and (3) allows the defendant to show with accuracy to what extent he may plea a formal acquittal or conviction in the event of a subsequent prosecution. **Vitillo**, at 321. The Third Circuit has explained that in general, “an indictment will satisfy these requirements where it informs the defendant to the statute, and specifies the time period during which the violation occurred. App. F-1 miserably fails to do so.

The Presentment Clause of the Fifth Amendment to the U. S. Constitution guarantees that in criminal prosecutions “no person shall be held to answer to a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury.” (App. E-1) The fundamental right to indictment by a grand jury was intended to operate substantially like its English progenitor, the purpose of which was to provide a fair method for instituting criminal proceedings against persons believed to have committed crimes. **Russell v. United States**, 82 S.Ct. 1038 (1962) (quoting Costello, supra.) The Fifth Amendment thus ensures that a person’s jeopardy is limited “to offenses charged by that group of his fellow citizens acting independently of their prosecuting attorneys or judges.” **Stirone v. United States**, 361 U.S. 212, 218, 80 S.Ct. 270 (1960). (compare App. E-1

with App. F-1.

This Court has long held that it is the exclusive province of the grand jury to amend the substance of its indictment. See **Ex Parte Bain**, 7 S.Ct. 781 (1887); **Stirone**, supra. at 217-18. Petitioner was indicted by a grand jury for intentional murder (App. E-1) but the Commonwealth demurred on that charge due to insufficient evidence. E-1 was not amended and the case did not go before another grand jury. Instead, the Commonwealth manufactured a bogus indictment. (App. F-1) Petitioner did not consent to an amendment nor knew detectives went before the grand jury and gave evidence he was charged with “intentional” not felony murder. (App. E-1)

The grand jury serves as a “referee or buffer between the government and the people.” **United States v. Williams**, 122 S.Ct. 1735 (1992). The grand jury sits basically to assess whether there is an adequate basis for bringing charges. In view of the grand jury’s singular role in finding probable cause necessary to initiate a prosecution, courts generally lack authority for looking into and revising the grand jury’s judgment. **Kaley v. States**, 134 S.Ct. 1090. Thus, the trial judge lacked authority to charge the jury on felony murder and an alleged grand jury foreman lacked power or authority to sign a charging instrument. ((App. F-1)

Thus, the making of a determination that a defendant was indicted for felony murder and that detectives gave testimony before the grand jury to establish that fact is “vital” to prosecuting a defendant on a charge of felony murder. This is especially true in the instant case where petitioner was charged under 18 Pa. § 2501 and was charged under Intentional Murder, Felony Murder, Voluntary and Involuntary Manslaughter but detectives only went before the grand jury and presented evidence petitioner committed an intentional, not a felony murder then removed jurors

with death penalty scruples something the Commonwealth would have been precluded from doing under 18 Pa. 2502(b), the felony murder statute because "felony murder" is not an "intentional" murder nor capital offense. Since this presented a major problem for the Commonwealth, the grand jury was willfully evaded and a bogus charging instrument was manufactured. (App. F-1). The difficulty of a conviction occurring in the absence of an allegation in the indictment is illustrated in Deutch v. United States, 81 S.Ct. 1587 (1961).

To be sure, doubt should have beset the trial judge in trying to ascertain the subject matter in the fake indictment (F-1). First, because he permitted the Commonwealth to remove jurors with death penalty scruples. Secondly, because he did not care, being that the petitioner is Black and consequently poor. App. F-1 could hardly justify, even in the abstract that petitioner went before a grand jury, that the indictment (E-1) was amended or that petitioner committed a crime against Michael Miller. (App. F-1).

Petitioner ask of this Honorable Court to grant certiorari so difficult and doubtful questions can be answered regarding the Pennsylvania Judicial Process petitioner went through because the Supremacy Clause and United States Constitution places heavy emphasis upon the protection of rights and liberties of individuals. Under our system of justice, Pennsylvania Courts are to resolve such questions, not ignore them or create reasons to evade this Court's precedents. A proliferation of doubt, fraud and deception, not only burdens the federal judiciary, a farce and mockery in a state court's resolutions amounts to cruel and unusual and malicious prosecution of an innocent man making justice a desideratum in the instant case.

To be sure, this is not a case where there are minor and technical deficiencies. This is a case

fraud and perjury was willfully carried out.

18 Pa. C.S.A. § 2501 violates the Notice requirement and contrary to the Superior Court's ruling, petitioner was not charged or indicted under 18 Pa. C.S.A. § 2502(b) ( App. A-1 n.1; App. F-1), was pertinency to the subject under the statute which petitioner was mandated to answer to. What the action and offense actually was, therefore, is central to the very prosecution under the statute, where guilt depends so crucially upon such specific identification of fact. (App. E-1 which the Commonwealth demurred on) This Honorable Court's precedence have uniformly held, "an indictment must be so much more than simply stamping the word **indictment and statute** on a charging instrument." (App. F-1)

An indictment not framed to apprise the defendant with reasonable certainty (App. E-1), of the nature of the accusation against him is defective (App. F-1), in spite of having the word **indictment and statute** stamped on it. Evans v. United States, 14 S.Ct. 934 (1894); United States v. Simmons, 96 U.S. 360 (1878). See also United States v. Carll, 105 U.S. 611-12 (1882); Ledbetter v. United States, 18 S.Ct. 774, 776 (1898); United States v. Hess, 8 S.Ct. 571 (1888). Basic principles of fundamental fairness has retained their vitality under modern concepts of pleadings is illustrated by many more decisions coming out of this Honorable Court.

Even a cryptic form of indictment prevents a defendant to be tried and convicted when no criminal offense have been defined. In the instant case defendant's conviction rests on one statute (18 Pa. § 2502(b) and his indictment on another. (18 Pa. § 2502(a) The Commonwealth was given a free hand to convict an innocent man at all cost. He was indicted for an intentional murder and jurors with death penalty scruples were removed from his case. After petitioner prevailed of a de-

fense demurrer of First Degree Murder for insufficient evidence without E-1 being amended or the Commonwealth going before another grand jury, a bogus charging instrument was manufactured. (App. F-1). The Commonwealth was then able to create their own facts and fill in the gaps of proof with conjecture and falsehoods.

It is difficult if not outright improbable to imagine a case in which a manufactured charging instrument was manufactured (App. F-1) and resulted so clearly in a trial and conviction of a defendant that should never have been. At every stage in the ensuing criminal process the petitioner was met with a different theory of the proof or with no theory at all, as to what element of homicide he was alleged to have committed under charging statute 18 Pa. § 2501. Far from informing petitioner of the nature of the accusations against him, the prosecution was allowed to change the dates and elements of the alleged crime and permitted to freely roam at large shifting his theory from a capital case, to a first degree intentional murder case, to a felony murder case so as to take advantage of each passing vicissitude: grand jury proceeding, coroner preliminary hearing, voir dire proceeding, suppression hearing and trial. Yet, petitioner can be guilty of neither First Degree Murder nor Felony Murder because the Commonwealth demurred on First Degree Murder, that indictment was not amended and petitioner's case was not presented before a second grand jury and the charging instrument is both manufactured and fake. (App. F-1)

When the State Congress provided that no one could be prosecuted except upon indictment, Art. I, § 10, Pa. Const. Congress made the basic decision that only a grand jury could determine whether a person should be held to answer in a criminal trial for committing a criminal offense. See also Fifth Amendment, U.S. Constitution. A grand jury, in order to make that ultimate deter-

mination, must necessarily determine a crime was committed. In the instant case, they did not. (App. F-1) Thus the Fourteenth Amendment of the U.S. Constitution was violated.

A Detective masqueraded as a prosecutor and an alleged grand jury foreman masqueraded as a prosecutor. (App. F-1) This deprived petitioner of the basic protections which the guaranty of the intervention of the grand jury was designed to secure.

The underlying principles asserted in the Petition as they relate to grand juries and indictments was settled law when petitioner was indicted. (App. E-1) App. E-1 could not have been amended **except** by resubmission to a grand jury unless the charge was merely a matter of form.

**Ex parte Bain**, supra, **United States v. Norris**, 50 S.Ct. 424 (1930). See also App. F-1.

If it lies within the province of a detective or alleged grand jury foreman to change the charge and date of arrest and manufacture a document masquerading as an indictment (App. F-1), on their own motion of what an indictment ought to have been, or what the authentic grand jury could have made if what they felt had occurred, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a defendant's trial for a crime, and without which the Constitution says, "no person shall be held to answer, may be fretted away until its value is almost destroyed." Any other doctrine would place the rights of the citizen, which was intended to be protected by the Constitutional Provision, at the mercy or control of detectives and grand jury foreman(s). For if it be once held that changes can be made by the consent or order of detectives or a grand jury foreman in the body of the indictment as presented to the grand jury (compare App. E-1 with App. F-1) and a defendant can be called upon to answer to bogus indictments which on their face is fraudulent, the restriction which the Constitution places upon the power of detectives

or an alleged grand jury foreman (App. F-1), in regards to the prerequisite of indictments, in reality, would no longer exist. **Ex Parte Bain**, 121 U.S. at 10, 13.

The very purpose of the requirement that a person can be indicted by a grand jury is to limit that person's jeopardy to offenses charged by a group of that person's fellow citizens acting independently of prosecutors, detectives and alleged grand jury foreman(s) **Stirone**, 361 U.S. at 218. This level of deterrence falls on the spectrum between the strictest federal scrutiny that applies when a prosecutor, detectives or grand jury foreman colludes to wrongfully convict an innocent man and manufacture a charging instrument to enhance a case littered with perjury and weak evidence. (App. F-1).

A charging instrument a defendant never knew existed until it was provided to him in his case against the PSP founded upon fraud, collusion and misconduct (App. F-1) should be dismissed. **U.S. v. Russell**, 411 U.S. 432 (1973) (Courts will dismiss indictments for government misconduct outside of indictment process on due process grounds if misconduct is so outrageous that it violates fundamental fairness or is so shocking to the universal sense of justice) (App. F-1).

An indictment must contain those facts and elements of the alleged offense necessary to inform the accused of the charge he may prepare a defense in the case. (App. E-1). Petitioner prepared his defense for intentional murder and was successful in getting it dismissed for insufficient evidence. After he did so, unbeknown to him a bogus charging instrument was manufactured charging him with felony murder. (App. F-1). In determining whether an indictment sufficiently informs the defendant of offense charged, Courts must give the indictment a commonsense construction. **U.S. v. Lee**, 395 F.3d 194, 209 (3d Cir. 2004) A constructive amendment occurs when the evidence

presented at trial proves a crime different from that in the indictment. Stirone, 361 U.S. 212, 217 (1960).

It has been observed that a prosecutor has more control over life, liberty, and reputation than any other person in America. A Prosecutor's discretion is tremendous. (Kenneth C. Davis, Administration of Law Treatise § 98.1 2d Ed 1979) (quoting Justice Robert J. Jackson, United States Supreme Court)). This Honorable Court has ruled, "the grand jury is to be considered a 4<sup>th</sup> Branch of the Government," not to be tampered with by any other branch. United States v. Williams, 112 S.Ct. 1735 (1972). When detectives colluded with an alleged grand jury foremen to manufacture a bogus charging instrument to avoid going before another grand jury, they tampered with the grand jury. (App. F-1)

- a. **Superior Court's Decision that the bogus charging instrument is not newly presented evidence is an unreasonable determination of the facts in light of of the evidence presented to the State Court and an unreasonable application of federal law as determined by the United States Supreme Court.**

The Superior Court ruled; "contrary to his (petitioner's) contention, appellant has known since as early as December 1975 that he was charged with, **inter alia**, murder generally under 18 Pa. C.S.A. § 2502. An information need not specify a degree or murder or the degrees of manslaughter in order to sustain the verdict of second degree murder." Commonwealth v. Chambers, 852 A.2d 1187, 1199 (Pa. super. 2004), **appeal denied**, 871 A.2d 188 (Pa. 2005). (App. A-1-6) The State Supreme Court denied the Petition For Appealability. (App. C-1).

The Superior Court's ruling is blatantly erroneous. Petitioner was charged under 18 Pa. § 2501 which encompass all charges of murder and manslaughter. Detectives testified before a grand jury

that petitioner committed an intentional murder. (App. E-1) An intentional murder is first Degree Murder, not Second Degree Felony Murder. Then after doing so, the Commonwealth removed jurors with death penalty scruples from petitioner's jury pool. Something they would have been prohibited from doing if petitioner would have been indicted for felony, second degree murder. The charging instrument for felony murder is bogus (F-1) and no grand jury heard evidence petitioner committed a felony murder. No information was filed in petitioner's case so Commonwealth v. Chambers, 852 A.2d 1187, 1199 (Pa. Super. 2004) does not apply in the instant case. Even if it did, the information would have to be in the language of the statute, state what petitioner did to violate the crimes code and "be signed by a public prosecutor" not an alleged grand jury foreman. (Compare App. G-1 with App. F-1)

Petitioner's conviction is unconstitutionally impermissible because the indictment is bogus and manufactured ) (F-1) and he did not know about the fake charging instrument until it was provided to him in his case against the PSP. George Rahsaan Brooks v. Pennsylvania State Police, No. CHR. 00031 (2015). A fraud was perpetrated upon the Court. Thus, even if his conviction would have been the product of a fair trial, his conviction is impermissible. Schlup v. Delo, 513 U.S. 293, 316 (1995); Herrera v. Collins, 506 U.S. 390, 417 (1993). A gateway innocence claim asserts a claim of actual innocence so strong that a court cannot have confidence in the outcome of the trial unless the Court is also satisfied that the trial was free of non-harmless constitutional error. Schlup, 513 U.S. at 316.

Actual innocence is demonstrated where "new evidence" both shows the crime could not have happened the way the Commonwealth presented it did at trial. Detectives gave sworn testimony be

fore the grand jury that petitioner committed an intentional murder as revenge for Michael Miller attempting to rape his friend Dale "Freddy" Harris' mother. No testimony was given that the murder occurred in the course of a theft or a robbery. 18 Pa. 2502(b). At trial detectives' testimony changed to petitioner committing a murder in the course of committing a robbery. The indictment by the grand jury (E-1) was not disclosed to the defense so petitioner was not able to impeach the detectives suppression hearing or trial testimony. Petitioner did not become aware of the indictment until it was provided to him by the Pennsylvania Innocence Project. (App. D-1-2). Petitioner also did not know about the bogus indictment until it was disclosed to him in his case against the PSP..

In weighing petitioner's newly presented evidence, "the court's function is not to make an independent factual determination about what likely occurred, but rather assess the likely impact of the evidence on reasonable jurors," the actual innocence "does not require absolute certainty about petitioner's guilt or innocence." House, 547 U.S. at 538. The threshold requirement for applying the actual innocence standard is "new evidence" supporting the petitioner's innocence. Reeve v. Fayette SCI, 897 F.3d 154 (3d Cir. 2018).

The fake charging instrument (F-1) shed light upon the unlawful, unconstitutional methods used to obtain a wrongful conviction. Counsel could have used the bogus indictment (App. F-1) to get the whole case dismissed and the Commonwealth would have been precluded from retrying petitioner without violating the double jeopardy clause. The bogus indictment and array of crooked tactics used by the Commonwealth, perjury, fake charging instrument not disclosing the bogus charging instrument was a manifest injustice that brought about the wrongful conviction of an innocent man.

A sentence or conviction imposed in violation of a substantive rule is not just erroneous but contrary to law, as result void [it] follows, “as a general principle, that a court has no authority to leave in place a conviction or sentence that violate a substantive rule [or statute]” **Montgomery v. Louisiana**, 136 S.Ct. 718, 731 (2016); **Ex Parte Siebold**, 100 U.S. 371 (1880). It is clear that a claim challenging a court’s legal authority to impose a particular sentence presence is a question of sentencing legality. See e.g. **Commonwealth v. Vasquez**, 744 A.2d 1280, 1282 (2000); **Commonwealth v. Campbell**, 505 A.2d (1986) (Questions of “whether the trial court has authority to impose a statutory mandated fine” is a challenge to sentence legality); **Commonwealth v. Shaffer**, 879 A.2d 185, 189 (Pa. 2005) (Claim regarding the court’s authority to impose a particular sentence implicates the legality of the sentence); **In re M.W.**, 715 A.2d 729, 731 (Pa. 1999) (Same).

The only crime petitioner was legally indicted for was intentional murder under 18 Pa. § 2502(a). (App. E-1). The commonwealth demurred on that charge. This Honorable court has ruled that a demurrer amounts to that evidence being insufficient to convict. **Smalis v. Pennsylvania** 106 S.Ct. 1745 (1986). The charging instrument the Commonwealth ruled was authentic (App. A-1-5-6 & App. F-1) is in fact manufactured and fake. Compare App. E-1 and App. G-1. The Commonwealth’s opinion conflict with it prior opinions of what constitutes an indictment and conflicts with its statutory law, constitution, precedents of this Court and the federal Constitution on the same important matter as well as important federal question on newly presented evidence that departs from the accepted and usual course of judicial proceedings and federal law. **Russell v. United States**, 82 S.Ct. 1038 (1962); **Reeves v. Fayette SCI**, 997 F.3d 154 (2018) (Quoting **Schlup v. Delo**, 513 U.S. 293) As this Court stated in **Montgomery**, “when a state enforces a proscription “or penalty barred by the Due Process Clause, the resulting “conviction or sentence” is by definition, unlawful or void. 136 S.Ct. at 729-30. When this Honorable Court issue decisions, state courts are bound not only by the result[.] but also those portions necessary to that result. **Seminole Tribe of Florida v. Florida**, 517 U.S. 44, 67 (1996); **Commonwealth v. Jemison**, 98 A.2d 1254, 1257 (Pa. 2014) (Pursuant to the Supremacy clause of the United States Constitution ... State Courts, like all state courts; is bound by the decisions of the United States Supreme Court with respect to decisions with substantive federal law as well to decisions with substantive federal

Constitution.

Any judicial reason, rationale or decision that is inconsistent with the dictates of the United States Constitution is invalid and no reason at all. The supremacy clause forbids a state to circumvent, ignore or dissociate from the United States Constitution or refuse to recognize the superior authority of its source. Brown v. Allen, 73 S.Ct. 397 (1953); Howlett v. Rose, 110 S.Ct. 24330 (1990). A state's decision to nullify rights ...cannot be evaded by formalism and the state's invocation of jurisdiction cannot trump the Supremacy Clause. Wyeth v. Levine, 124 S.Ct. 1187 (2009); Haywood v. Drown, 129 S.Ct. 2108 (2009).

Thus, the decisions of this Honorable Court controls in matter unambiguously as they relate to a prosecutor's duty to disclose indictments, impeachment and exculpatory evidence. Grand jury proceedings, what constitutes a charging instrument, perjury, newly presented evidence, substantive federal law, how the federal constitution is to be applied and the interpretation of the Supremacy Clause.

Pennsylvania state court decisions in the instant case is in conflict with or made a misinterpretation of federal law and the federal constitution as defined by this Honorable Court. [App. A-1-5-6; App. B-1; App. C-1]

**4. The State Court Willfully Failed To Decide An Important Question Of Federal Law And The Constitution On Fraud On The Courts Which Has Been Settled By Federal Law And This Court.**

In Brooks v. Zimmerman, 712 F. Supp. 496 (W.D. 1989) the habeas court adopted evidence the Commonwealth had suppressed but used to deny petitioner's claim of insufficiency evidence. Petitioner was without trial transcripts to dispute the habeas court's decision. Decades later with the aid of a Pennsylvania Prison Society volunteer petitioner was able to obtain pages of his trial transcript that showed the evidence used by both the state and habeas courts were in fact suppressed

and not part of the trial evidence.

In **Commonwealth v. Brooks**, No. 1602 WDA (2017) Asst. District Attorney Rebecca Good McBride asserted the same suppression evidence in her appellate brief under **Factual History**. Petitioner informed her of her fraud upon the Court and alerted her that if she perpetrated this fraud for a third time petitioner would file a complaint against her with the Pa. Supreme Court's Disciplinary Board.

In **Commonwealth v. Brooks**, No. 288 WAL (2018) Asst. District Attorney McBride yet again perpetrated a fraud in her appellate brief and used suppressed evidence that Michael Miller had named petitioner to his family members.<sup>8/</sup> Petitioner filed a Reply Brief arguing fraud on the Court. The Superior Court ignored petitioner's Reply Brief and willfully failed to address his fraud on the court claim.

The Commonwealth's claim that the victim named petitioner to family members before he died was suppressed after testimony was taken at the dying declaration hearing and petitioner's jury never heard, assessed or evaluated that testimonial evidence. Willfully putting that falsehood in her appellate brief after being informed it was fraudulent poisoned the whole brief and made it defective. Due to this falsehood, petitioner asked the Superior Court to render the brief poisoned and not to give the claim asserted under **Factual History** merit.

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<sup>8/</sup> Due to Petitioner's Complaint to the Pa. Supreme Court's Disciplinary Board, Asst. District Attorney McBride was removed from the case and on Nov. 2, 2018 her employment with the District Attorney's Office ceased and she was no longer permitted to represent the Commonwealth.

When the Commonwealth deliberately perpetrated a fraud and Petitioner demonstrated such in his Reply Brief and the Pennsylvania Courts refused to address petitioner's substantive claim of fraud on the Court, petitioner's Fourteenth Amendment right to due process was violated. (App. A-1-5-6-; App. C-1) Petitioner's substantive claim should have been addressed because the Commonwealth's fraud on the Courts seriously undermined real evidence in a factual manner. Deliberately misstating the facts was not in conformance with Pa.'s Rules of appellate Procedure and the fraud upon the Courts substantially defected the facts and consequently interfered with a Court from conducting a meaningful and fundamentally fair review of the facts of the case.

The Pennsylvania Appellate Courts had the power to sanction Asst. District McBride's bad conduct which occurred during the appellate process but instead ignored it and left it up to the Pa. Supreme Court's Disciplinary Board to whom petitioner filed a complaint with. Instead of protecting petitioner's rights and having the fraud removed, the Courts left the fraud in place by not addressing petitioner's fraud claim. The Pennsylvania Courts ignored petitioner's due process rights and left in place bad faith conduct by the Commonwealth which demonstrated a lack of institutional integrity which allows the Commonwealth to commit fraud in their appellate briefs yet again.

This is not a case where the Commonwealth committed a harmless mistake, suppressed evidence was willfully asserted in an appellate brief after the Asst. District Attorney was warned not to do so. This Honorable Court have ruled that due and orderly administration of justice is to maintain the dignity and authority of the Courts. Cook v. United States, 267 U.S. 515, 539.

The Court's inherent power can be used or invoked at any time to vacate or rescind prior orders or judgments obtained by fraud. Chambers v. Nasco, Inc., 111 S.Ct. 2123, 2132 (1991); Hazel-Atlas Glass Co. v. Harford-Empire Co., 64 S.Ct. 997 (U.S. Pa. 1944); U. S. Burke, 193 Fed. App. 143 (3<sup>rd</sup> Cir. 2006); Nix v. Whiteside, 106 S.Ct. 988 (1986). Petitioner's fraud on the court was ignored by the state courts. Thus this substantive claim is ripe before this Court on certiorari.

### CONCLUSION

By virtue of the petitioner's actual innocence, newly presented evidence, Brady and fraud upon the court claims and violations, and the likely impact on the entire arrest and prosecution. If these claims would have been properly addressed in accordance with federal law as determined by this Honorable Court petitioner would have prevailed on his claims that the United States Constitution was blatantly violated. Unfortunately, the Commonwealth Courts ruled differently, thus petitioner respectfully requests that the Court grant this Petition for Writ of Certiorari.

Respectfully submitted,



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