

No. 18-9481

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IN THE SUPREME COURT OF THE UNITED STATES

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JERRY EUGENE SHRUBB, Petitioner,

VS.

MICHAEL R. CLARK, Superintendent, SCI – Albion,

JOSH SHAPIRO, Attorney General of Pennsylvania,

SHAWN T. MCMAHON, Elk County District Attorney, Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED

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SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI FOR EXTRAORDINARY RELIEF

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The Petitioner files this appeal of the numerous previous case numbers:

( Elk County – CP-24-CR-330-2005; 327 WDA 2008; 511 WAL 2010. First  
P.C.R.A., – CP-24-CR-330-2005; pro se 70 WM 2012; 1147 WDA 2012.  
Second P.C.R.A., – CP-24-CR-330-2005; 637 WDA 2015; 283 WAL 2016.  
2254 Petition – W.D.Pa. No., 1-17-cv-00062. and Third Circuit No., 18-1382 ).

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JERRY EUGENE SHRUBB ( Pro Se )

HE 9060, A-B 47-1

10745 Route 18

Albion, PA 16475-0002

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## **QUESTIONS PRESENTED**

1. Has the Appellant been denied Due Process of Law in that no Court has reasonably observed the actual claims raised by the Appellant ?

ANSWER: YES.

2. Has the warrantless search, Miranda violation, and seizure of evidence violated the Appellant's well established Constitutional Rights ?

ANSWER: YES.

3. Has ineffective preliminary hearing Counsel (Martin) violated the Sixth Amendment Rights and Article (1), Section (9), by allowing the Elk County Courts to proceed to Trial Court, after failing to establish a *prima facia* case against the Appellant's actual innocence claim ?

ANSWER: YES.

4. Has ineffective Trial Counsel (Devecka) violated the Sixth Amendment Rights and Article (1), Section (9), for failing to appeal to the Superior Court the timely suppression, habeas corpus and actual innocence claims raised by the Appellant, before deciding without authorization to proceed to trial ?

ANSWER: YES.

**QUESTIONS PRESENTED** – (cont.)

5. Was ineffective Trial Counsel (Devecka) impaired by a brain disease called Cerebellar Degeneration, during the three (3) day jury trial, by failing to bring forth rebuttal witnesses and by failing to allow the Appellant's witnesses to testify ?

ANSWER: YES.

6. Was Appellant Counsel (Hindman), whom was the Counsel of Record, ineffective for not properly, promptly or timely filing a *Petition For Allowance Of Appeal* in the Supreme Court of Pennsylvania to secure the Appellant's appeal rights ?

ANSWER: YES.

## **LIST OF PARTIES**

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

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TABLE OF AUTHORITIES CITED

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Commonwealth vs. Taylor, 63 A.3d 327

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STATUTES AND RULES

28 U.S.C. § 2254

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42 Pa.C.S.A. § 9765

Pa.R.Crim.P., Rule 606

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Sixth Amendment, Article (1), Section (9)

Fourteenth Amendment

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

Petitioner respectfully requests that a Writ of Certiorari issue to review the judgments below.

**OPINIONS BELOW**

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix – A to the petition and Docket No., 327 WDA 2008.

The opinion of the Superior Court of Pennsylvania appears at Appendix – D to the petition and Docket No., 637 WDA 2015.

The opinion of the District Court appears at Appendix – F to the petition and Docket of W.C.Pa. No., 1-17-cv-00062.

## JURISDICTION

[ X ] For cases from **state courts**:

The date on which the highest state court decided my case was the 23<sup>rd</sup> of June 2010. A copy of that decision appears at Appendix – A. (The Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied per curiam without final review on 03/16/2011.)

[ X ] A timely petition for rehearing was thereafter denied on the following date of the 22<sup>nd</sup> of June 2018, and a copy of the Order denying rehearing appears at Appendix – G.

[ X ] An extension of time to file the Petition for Writ of Certiorari was granted to and including the 19<sup>th</sup> of November 2018, on September 20, 2018, in Application No., 18A294.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Tile block camp owner, Barbara Corder, was last up to camp the year prior "in 2004". [ TRIAL TRANSCRIPTS, DAY ONE, MAY 29, 2007; hereinafter referred to as **R-3**; ( R-3 at page 40 ). ]
2. Clear Cut Road camp owner, Clement Valchar, had last been at hunting camp the "week prior" working "to build up the driveway". ( R-3 at page 44 )
3. On 8/18/2005, the A-frame camp owner, Troy Weisner, was the last at the camp "the Thursday before" cutting the grass. ( R-3 at pages 80 and 81 )
4. On 8/19/2005 at 1:15 a.m., co-defendants Michael Deutsch ( hereinafter referred to as **Michael** ), and James Deutsch ( hereinafter referred to as **James** ), arrived at John Deutsch's home "*In James' pickup truck*". [ TRIAL TRANSCRIPTS, DAY TWO, MAY 30, 2007; hereinafter referred to as **R-4**; ( R-4 at page 173 ). ]
5. On 8/19/2005 at 6:45 a.m., the Rupert camp and Cummings camp were discovered to be completely destroyed ( R-4 at page 37 ) caused by lightning strikes. { PENNSYLVANIA STATE POLICE INCIDENT REPORT; hereinafter referred to as **P.S.P.I.R.**; also PAGES in Reproduced Record of Case No., 637 WDA 2015; hereinafter referred to as ( **page** ) followed by reference # in bottom right corner. [ P.S.P.I.R. No., C06 – 0835760 and C06 – 0835765 at ( **pages** ) 131 – 135 ]. }

6. On 8/19/2005 at 4:30 p.m. ( P.S.P.I.R. No., C06 – 0835873 at page 4 ), the Rothrock Camp and Rinker Camp were discovered ( “There’s no bridge.” “ You have to literally drive through the Sinnamahoning Creek, and the road picks up on the other side of the creek.” ) to be “completely destroyed by fire”. ( R-4 at page 41 )

7. On 8/19/2005, Curtis Shrubb testified that my uncle, Jerry Shrubb, was at the 106 Woodland Road residence at 8:00 p.m.. He was there all day. ( R-4 at pages 93 and 94 )

8. On 8/19/2005, Petitioner testified that he did return John Deutsch’s ( brother-in-law ) vehicle ( R-4 at page 185 ) arriving at “about 8:30” p.m.. ( R-4 at page 186 )

9. On 8/19/2005, Petitioner testified that James and Michael arrived at John Deutsch’s residence at 8:45 p.m.. ( R-4 at page 187 )

10. On 8/19/2005, Petitioner testified that James left John Deutsch’s residence by himself “In James pickup truck” from 8:45 p.m. to 11:45 p.m., “ close to three hours”. ( R-4 at pages 187 and 188 )

11. On 8/19-20/2005, Petitioner testified that James, Michael, and myself left John Deutsch’s residence from 12:00 a.m. to 2:40 a.m. to go drink at Jim’s Inn. ( R-4 at page 190 )

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12. On 8/20/2005, Petitioner testified that James drove Mike and myself, in his truck, back to John Deutsch's home arriving at 3:00 a.m.. ( R-4 at page 190 )

13. On 8/20/2005, Sue Meyer, a nurse that was working at John Deutsch's residence, testified that Jerry Shrubb, Michael Deutsch, and James Deutsch left about 3:45 a.m.. ( R-4 at pages 161 and 162 )

14. NOTE: That it was never established at trial, or through witnesses, that Trial Counsel failed to subpoena that I, Jerry Shrubb, was at the home of John Deutsch on the date of 8/20/2005 and had been at that residence since my arrival at that residence on 8/19/2005 with the exception of the bar, Jim's Inn.

15. NOTE: John Deutsch, Sue Meyer, Jim, and others would have testified to these facts and that Michael and James picked me up at the residence on the date of arrest. Counsel was so ineffective to not bring these issues before the Court, as well as, many other relevant issues not raised.

16. On 8/20/2005, Trooper Mathew Higgins testified that he got the dispatch for The Fox Township fires " a little bit after 4:00 " a.m.. ( R-3 at page 64 ). [ Please Note: The three counts of Burglary ( counts 1, 2 and 3 ) and the five counts of Arson ( counts 4, 5, 7, 8 and 9 ) consist solely of The Fox Township fires of the Troy Weisner camp; the Clement Valchar camp; and the Barbara Corder camp. ]

17. On 8/20/2005, witness Willard Butz testified that he saw a purple in color passenger car [ P.S.P.I.R. No., C06 – 0835871 at ( **page** ) 129 ] at the end of Boone Mountain Road ( R-3 at page 30 ) a couple miles from State Route 153 about a quarter after 4:00 a.m. when he was traveling to the Moshannon ( State Forest ) Job. ( R-3 at page 31 and 32 )

18. On 8/20/2005, Petitioner testified that Petitioner witnessed a ‘ white ’ “ Isuzu Trooper ”. [ Believed to be Fox Township Fire Chief, Dave Surra ( not subpoenaed ), at the totally destroyed Weisner Camp. *Compare*: P.S.P.I.R. No., C06 – 0835869 at ( **pages** ) 98 and 99 ]

19. On 8/20/2005, Trooper Mathew Higgins testified that he encountered a pickup truck coming from the opposite direction at 4:00 a.m. . ( R-3 at pages 64 and 65 )

20. On 8/20/2005, Trooper Mathew Higgins testified that he noticed a lot of corn in the bed of the truck. ( R-3 at pages 67 and 68 )

21. On 8/20/2005, Trooper Mathew Higgins testified that he did not see any military-style boots at all ( R-3 at pages 78 and 79 ), when the individuals or truck were stopped and released on the night of the ( *illegal* ) arrest. ( P.T. at page 16 )

22. On 8/20/2005, Trooper Mathew Higgins testified that he first went directly to the Clear Cut Road fire scene, that was completely destroyed ( R-3 at

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Pages 69 and 70 ), arriving at 5:40 a.m. about 10 minutes later from the time he stopped the occupants of the vehicle for over 45 minutes without ever giving any *Miranda Warnings* to the occupants. ( Compare: R-3 at pages 73, 74 and 75 )

23. On 8/20/2005, Trooper Mathew Higgins testified " that the Clear Cut Road camp I observed that the cable was broken ". ( R-3 at page 77 ) [ The cable was " Pinched in two. ". ( R-3 at page 146 ). ( Compare: R-3 at pages 32 and 44 ) ]

24. On 8/20/2005, Trooper Craig Smith gave sworn testimony that " on Gardner Hill Road " " I observed there was a lock that had been on a gate that was at that campsite. The lock had been cut. " ( R-3 at page 60 ). [ Compare: The Alternate Fire Marshal, Corporal Martin Henneman, testified that on " Gardner Hill Road " " I observed that there was no lock on the gate. " ( R-3 at pages 128 and 129 ) ]. ( No lock was ever found or displayed in Court as an Exhibit. )

25. On 8/20/2005, the Fedorka camp in Benezette Township was discovered by Fire Marshal, Gregory A. Agosti, to be completely destroyed by fire that was not turned in to 911 ( R-4 at page 42 ) that I was charged with.

26. On 8/20/2005, Fire Marshal, Gregory A. Agosti, testified that in Benezette Township the tire tracks at the Rinker property " appeared to be very fresh from my examination, that they had just occurred that day or the day prior. " ( R-4 at page 50 )

27. On 8/20/2005, Corporal Henneman testified that he met with Fire Marshal, Gregory A. Agosti, before I went to the Fox Township fires "to assist him". ( R-3 at page 127 )

28. The Alternate Fire Marshal gave an alternate opinion that he knew the Weisner fire was arson because the lock was cut. ( R-3 at pages 134 and 148 ) [ Compare also: " ... The lock on this building was missing. ... I noted that the gate lock was missing and could not be found. " ( See: P.S.P.I.R. No., C06 – 0835869 at ( page ) 98 ) ]

29. The Alternate Fire Marshal, Martin Henneman, testified that at the Weisner camp " I was not able to determine the point of origin or area of origin inside the camp due to the completeness of the burn. ". [ Preliminary Hearing Transcripts ( hereinafter referred to as P.T. )( P.T. at ( page ) 147 and ( page ) 148 ). ]

30. The Alternate Fire Marshal, Corporal Henneman, testified that at the Valchar camp " The damage to the camp was so severe that the exact cause of the fire could not be determined. " [ P.T. at ( page ) 152 ]. Also, he was not able to determine the cause because " once the roof is gone and the walls are gone, the wind could shift and change the fire pattern " giving misreadings. [ P.T. at ( pages ) 153 and 154 ]

31. The Alternate Fire Marshal, Martin Henneman, testified that at the Corder camp the P.S.P. Crime Lab did not find any accelerants simply because "the accelerant is burned up in the fire. The dog's nose is many times better than what the lab can reproduce in a scientific test." [ P.T. at ( page ) 156 ]

32. The Alternate Fire Marshal, Martin Henneman, testified that he observed "an ignitable pour pattern ( or accidental spill ) on the bottom of the shed going out and onto the back of the shed." of the Weisner camp and took some sample there which are put into paint cans. ( R-3 at pages 130, 131, and 133 ) The quart-sized paint can which contains fire debris taken from the interior of the shed ( R-3 at page 136 ) or from the outside rear corner of the shed is marked as Exhibit No., 26A. ( R-3 at page 137 )

33. The Alternate Fire Marshal, Corporal Martin Henneman, testified that the owners of the camps did store charcoal lighter fluid or kerosene for lamps in their camp and the bursting of those containers would explain that pattern. " -- when it's totally consumed, they have a hard time remembering some of the stuff they had in there." ( R-3 at pages 148 and 149 )

34. Robert Elsavage testified that he is a forensic scientist at the P.S.P. Crime Lab in Greensburg whom analyzed the quart-sized paint Can No., 3 / Item No., 3 containing fire debris, under the subject property of Troy Weisner, which

contained a medium dearomatised distillate that could be charcoal starter fluids, paint thinners, torch fuels, etc. . ( R-4 at pages 125 and 127 ) { See also: Expert Lab Report No., G05 – 06558 – 1 of the copy sent to Fire Marshal, Gregory A. Agosti. [ P.S.P.I.R. No., C06 – 0835869 at ( **page** ) 107 ] }

35. Corporal Jeffrey Snyder testified that he worked in the forensic services unit when he “ actually cast a tire impression *just off the roadway* ” at the Weisner camp ( R-3 at pages 94 and 95 ), but the “ boot print was *at the vicinity of the camp itself* ”, about “ 50 to 70 feet ” apart. ( R-3 at page 96 )

36. Trooper Randy Mocello, “ admitted then in terms of an expert in tire impressions ” ( R-3 at page 72 ), testified that Firestone Destination Tire / Item 3.1 had four accidental characteristics that occurred within the submitted tire impression casting. ( R-3 at page 114 )

37. Trooper Randy Mocello testified that the left boot ( Exhibit 24 ) had **no** accidental or identifying characteristics found with left shoe casting. ( R-3 at page 116 and 117 ), yet Trial Counsel failed to object to admission. ( R-4 at page 90 )

38. On cross-examination, Corporal Jeffrey Snyder testified that he could **not** tell from tire tracks and boot prints ( size 9.5 ); Who was in the truck ?; **nor** Who was in the shoes ?; **nor** When they were made ? ( R-3 at pages 97 and 97 )

39. On cross-examination, Trooper Randy Mocello testified that he did **not**

know; Who was in the truck when tire print was made ?; **nor** Who was in the boots ( size 9.5 ) when the impressions were made ? ( R-3 at pages 122 and 123 )

40. On cross-examination, Martin Henneman, the Alternate Fire Marshal testified that he did **not** know; When the tire tracks were made ?; **nor** When the shoe prints were made ?; **nor** Who was in the truck ?; **nor** Who was in the boots ? ( R-3 at page 145 )

41. On cross-examination, Fire Marshal, Gregory A. Agosti testified that he did **not** know; What vehicle made those tracks ?; **nor** Who was in the vehicle ? ( R-4 at page 56 )

42. On cross-examination, Trooper Michael Pisarchick testified that he was a criminal investigator ( R-4 at page 138 ) and that, When he saw the pickup truck at the P.S.P. barracks after the fires, nobody was in it.; he did **not** see, Who made the boot impression that left the boot print ?; and he did **not** know, When either the tire track **nor** the boot print was made ? ( R-4 at pages 150 and 151 )

43. Trooper Shawn Compton testified that on the 19<sup>th</sup> day of August 2005, he "noticed a pair of military-type jungle boots ( Exhibit 24 ) in the bed" of the truck ( R-4 at page 82 ) that did **not** match the impression.

44. Trooper Shawn Compton testified that the military-type jungle boots ( Exhibit 24 ) " were located inside the vehicle passenger compartment ". ( R-4 at

pages 85 and 86 ) These boots did not match the impression made by Corporal Jeffrey Snyder in forensic services.

45. Trooper Shawn Compton testified in the Preliminary Hearing that "there was a military dog tag which was in the shoestrings of the boot that was tucked in ". (These boots can be identified as belonging to Michael Deutsch. ) " Michael Deutsch's name on it and I believe Social Security Number " ( The Social Security Number is part of that identification, so boots are *Mr. Deutsch's boots.* ) [ Compare: P.T. at ( page ) 143 ]

46. NOTE: Curtis Shrubb relayed that his uncle, Jerry Shrubb " he did **always** keep it (bedroom) **locked.** " (emphasis added)( Omnibus Pretrial Motions on March 15, 2006 at page 63. )

47. NOTE: In that box with the *84 Playboys*, there were no names or addresses of the subscribers on the **black plastic cover**, on the **cardboard box**, **nor** on any of these **Playboys.** ( Omnibus Pretrial Motions on March 15, 2006 at pages 82 and 83 )

48. NOTE: Canine Reno, only trained to detect 18 different odors of accelerants, only indicated in one area where Item No., 3 was taken and positively identified by Robert Elsavage; but falsely indicated on tar paper, shingles, plastics, laminate tile, and other common household chemicals. ( R-3 at pages 156 – 158 )

49. NOTE: Under the totality of the circumstances, or *mere suspicion*, there was accelerant found *in or behind* the shed where chemicals are normally stored and **no locks** were present at the Weisner Camp; the cable was *pinched in two* ( likely from being run over by *heavy equipment* ) at the Valchar Camp; the beds located on the collapsed second floor were now on the first floor and the door was blown off of the tile block Corder Camp ( R-3 at pages 145 – 149 ), that could have occurred *days, weeks, or months prior*, with which, fails to meet the burden to establish the corpus delecti by showing that the fire was started by other than natural causes.

50. As applied to 1. Through 49., in U.S. vs. Haese, 162 F.3d 359 (9<sup>th</sup> Cir. 2002), a Defendant's conviction must be reversed on due process grounds where the government knowingly elicits or fails to correct, materially false statements from it's witnesses. In Schaff vs. Snyder, 190 F.3d 513 (7<sup>th</sup> Cir. 1999), a Prosecutor's knowing use of perjured testimony violates due process clause; See also: Mesaroesh vs. U.S., 352 U.S. 1, 1 L.Ed.2d 1, 77 S.Ct. 1 (1956) truthfulness of testimony ..... the dignity of the United States Government will not permit the conviction of any person on tainted testimony. See: U.S. vs. White, 222 F.3d 363 (7<sup>th</sup> Cir. 2000), the government has a special responsibility to ensure the integrity of the criminal judicial process by living up to the code of professional ethics and fair play at all times.

## STATEMENT OF THE CASE

On or about the 20<sup>th</sup> of August, 2005, the Appellant, Jerry E. Shrubb, along with James Deutsch and Michael Deutsch were traveling on State Route 2007 (South Kersey Road) in Elk County at approximately 4:15 a.m.. James Deutsch was driving the vehicle owned by James Deutsch, (A 2002 Dodge Dakota pickup truck.) after leaving Jim's Inn. We arrived at Jim's Inn after 11:00 p.m., and stayed there until just after closing time at 2:30 a.m..

According to the *Affidavit of Probable Cause*, State Police Officers, Craig Smith and Matthew Higgins, pulled the vehicle over by flashing their headlights and announcing over the P.A. System to pull over. Once the vehicle I was in came to a stop, the Police blocked the vehicle in, that I was in, and activated their lights. My co-defendants and I were removed from the truck and questioned for forty-five (45) minutes about the suspicious fires in the area, the truck was searched and our personal effects were searched, without reading us our Miranda Warnings, signing a waiver of said rights, and searched without a search warrant or without a written consent waiver.

After forty-five (45) minutes of questioning by Police, my co-defendants and I were released because we did not smell like a fire, or fire residue, and we did not smell of accelerants, the Police only identified and seized some tools, BB

gun, and other items located in the pickup truck after a search was conducted without consent or written waiver.

On the 21<sup>st</sup> of August, 2005, the Appellant was at my apartment in St. Marys, when the State Police came to my apartment and requested that I come to the station to answer some more questions related to the August 20<sup>th</sup> investigation. I was followed (escorted) to the Police barracks and detained, and I was questioned for several hours after requesting Counsel and told I was being arrested. After refusing to waive my right to Counsel, I was placed under arrest, and I explained to Trooper Scott A. Garverick that I needed my medication before being transported to jail. Upon arriving and entering my apartment, these Officers and I noticed the door was open to my bedroom, and James Deutsch was inside my bedroom and placed under arrest. I was then transported to jail in Elk County, and learned that new criminal charges were being filed for eight (8) fires that occurred throughout Elk County at Docket No., C.R. 330 of 2005, these charges were related to several arsons, various charges of Theft, Burglary and Receiving Stolen Property of eight (8) seasonal camps in the Elk County area.

The Appellant was arraigned by Magistrate Donald Wilhelm on the 21<sup>st</sup> of August, 2005, and a bond was placed on the Appellant at \$100,000, which the Appellant could not post. On the 22<sup>nd</sup> of August, 2005, the Pennsylvania State

Police Department did conduct a warrantless search of the Appellant's bedroom and apartment (Located at 106 Woodland Road in St. Marys, PA.) by physically removing a lock from the bedroom door in the presence of my roommate Curtis Shrubb, and seized several items located therein without a search warrant or permission of the owner.

The Appellant was ineffectively represented by Public Defender, James Martin, for the Preliminary Hearing held on the 25<sup>th</sup> of October, 2005. (See: partial Preliminary Hearing Transcripts at Appendix – H) Attorney James Martin, filed pre-trial motions for bond reduction, suppression, and writ of habeas corpus with the alibi defenses alleged herein. The monetary bail was reduced to \$50,000 straight, which the Appellant, through a bail bondsman, posted on the 29<sup>th</sup> of December, 2005, over four (4) months after the initial stop / arrest. During this time period of incarceration, an illegal search, seizure and general rummaging was conducted by Police of Petitioner's apartment and locked bedroom. (Located at 106 Woodland Road in St. Marys, PA.)

The Appellant hired Attorney Joseph Devecka to appeal to the Superior Court the denial of suppression and writ of habeas corpus by Elk County Court of the aforesaid motions filed by Attorney Martin for writ of habeas corpus and suppression. Attorney Devecka failed to appeal the denial of the aforesaid

motions decision and without appealing to Superior Court proceeded to trial after the discharging of James Martin on the 30<sup>th</sup> of January, 2006. Unknown to Appellant, Attorney Joseph Devecka was at this time suffering from Cerebellular Degeneration, which was not told to Appellant prior to retainment, a major brain tumor that has several side effects and can affect competence, gait, stamina, and in advanced stages, impair cognitive function. (See: Sentencing Hearing transcripts and Ineffective Counsel Hearing transcripts).

The Appellant at this time was ignorant of the law and court proceeding, court rooms or procedures, as the Appellant has no past criminal history other than these cases presented on appeal before this Honorable Court. After numerous court hearings, and a three (3) day trial with the Honorable Fred P. Anthony, specially presiding (Appendix – H), the deliberation of the jury, the Appellant was convicted of 5 counts of 18 Pa.C.S.A. § 3301 / Arson; 3 counts of 18 Pa.C.S.A. § 3502(a) / Burglary; and 5 counts of 18 Pa.C.S.A. § 3925(a) / Receiving Stolen Property. The Appellant retained new counsel, the Appellant hired Attorney Blair Hindman who made an open *Oral Motion for Extraordinary Relief* at sentencing pursuant to Pa.R.Crim.P., Rule 704(b), based upon ineffective assistance of counsel and a shocking discovery of Trial Counsel Devecka's medical illness. The Appellant was sentenced on the 17<sup>th</sup> of August, 2007, to a total term

of confinement of 6 to 12 years with a consecutive sentence of 2 ½ years of probation by Trial Court, Fred P. Anthony, specially presiding from Erie County, whom did deny an oral motion for a judgment of acquittal, or new trial, pursuant to Pa.R.Crim.P., Rule 606 and Rule 607. The Appellant immediately filed a timely post-sentence motion to Trial Court on the 27<sup>th</sup> of August 2007, pursuant to Pa.R.Crim.P., Rule 720, which challenged the sufficiency of the evidence and did challenge the weight of the evidence due to the after-discovered evidence that Trial Counsel Devecka was suffering from a medical illness called Cerebellar Degeneration. Attorney Blair H. Hindman did represent the Appellant on a post-sentence motion. The Honorable Richard A. Masson, without presiding over trial, did oddly preside over the post-sentence motion on claims of ineffective assistance of trial counsel, sufficiency and weight of the evidence at post-sentence hearings, instead of Trial Court, Fred P. Anthony, whom had first-hand knowledge of trial, which did violate Appellant's due process rights under Pa.R.Crim.P., Rule 607 without any apparent or valid reason. As a result, ineffective assistance of trial counsel, sufficiency and weight of the evidence have never been properly heard despite being proposed, in a limited circumstance on Direct Review, so that, Trial Court would properly address the Appellant's claim for relief. The post-sentence motion was denied on the 17<sup>th</sup> of January 2008; and

a Notice of Appeal was filed on the 12<sup>th</sup> of February 2008.

The Superior Court concluded that Bomar and Grant were fulfilled, and the Appellant's constitutional issues at trial were ripe for review, but Superior Court could not proceed without the Trial Court's Opinion pursuant to Pa.R.A.P., Rule 1925(a). An Opinion of the Court was never filed, but instead three letters from the Honorable Richard A. Masson, of not knowing how to proceed, were mailed over the prolonged period of 2 ½ years, which precluded a full, prompt and proper review on Direct Appeal, violating Appellant's protected due process rights. The Superior Court ruled on Appellant's Direct Appeal without a Trial Court Opinion, on the 23<sup>rd</sup> of June 2010. An appeal to the Supreme Court of Pennsylvania was denied on the 16<sup>th</sup> of March 2011, on Docket No., 511 WAL 2010.

A timely Amended P.C.R.A. was filed on the 16<sup>th</sup> of June 2011. Attorney Blair H. Hindman withdrew the claims of '*failing to move for a judgment of acquittal*' and '*failing to consult expert witnesses*', without properly informing his client, the Appellant. Numerous attempts were made to contact Attorney Hindman concerning the Amended P.C.R.A., but to not avail. Since Attorney Hindman did not communicate with the Appellant about withdrawing said claims or any other issue, the Appellant did not retain the counsel of Attorney Hindman

on any further appeal. The Appellant then served a motion by certified mail asserting a knowing, voluntary, and intelligent claim to proceed pro se on appeal to Superior Court (See: pro se Docket No., 70 WM 2012) after discovering that not only was a decision made on the Amended P.C.R.A., but that an unsolicited Notice of Appeal by Attorney Hindman had been filed, thereby violating my First Amendment right to proceed pro se. (See: Appendix – B) A Grazier Hearing was never held by any Court to determine the Appellant's capability of proceeding pro se on appellate review.

After further unanswered letters, and no responses from the Superior Court, nor Elk County District Attorney, nor the Elk County Clerk of Courts, the Appellant inquired directly of the Superior Court about the alleged appeal. On the 18<sup>th</sup> of April 2014, the Appellant ***first received*** the belated decision of the Superior Court, and immediately filed a Motion for Reinstatement on the 24<sup>th</sup> of April 2014, stating a new, unheard claim of 'Abandonment of Counsel'. (See: Appendix – C) The Superior Court erred when the new, P.C.R.A. claim of 'Abandonment of Counsel' was denied without a hearing on the 12<sup>th</sup> of May 2014, and not liberally construed pursuant to 42 Pa.C.S.A. § 9541, to be properly and justly heard in the P.C.R.A. Court, despite the Appellant filing in the wrong court. (Compare: 42 Pa.C.S.A. § 5301) The Superior Court failed to ever hold a hearing

to remedy the constitutional violation of the 'Abandonment of Counsel' claim purported by the Appellant.

The Appellant diligently filed his denied claim of 'Abandonment of Counsel' in a Second P.C.R.A. Petition on the 9<sup>th</sup> of September 2014, directly to P.C.R.A. Court; and an Order dismissing the Second Petition followed on the 18<sup>th</sup> of March 2015, without ever holding a hearing, stating that the new, unheard claim was beyond the 60 days pursuant to 42 Pa.C.S.A. § 9545(2) and thus statutorily denied as untimely. A timely Notice of Appeal diligently followed on the 16<sup>th</sup> of April 2015, and docketed at No., 637 WDA 2015. An Order affirmed the dismissal on the 17<sup>th</sup> of June 2016, yet peculiarly did recognize the liberally construed claim of 'Abandonment of Counsel', without ever a single hearing being conducted in any Court on the matter. At no time did the Appellant ever receive any remedy for his recognized claim in any Court violating his due process of law. (See: Appendix – D) A timely Petition for Allowance of Appeal was diligently filed on the 18<sup>th</sup> of July 2016; and was denied on the 6<sup>th</sup> of December 2016.

A Petition for Writ of Habeas Corpus was filed on the 28<sup>th</sup> of February 2017. In GROUND ONE of the said Writ, the Appellant asks for Equitable Tolling based upon the extraordinary circumstance of not timely receiving Superior Court Order without a state remedy, which did bar the Appellant from timely appealing to the

Supreme Court of Pennsylvania, the Supreme Court of the United States, and timely filing a habeas petition under 28 U.S.C. § 2254 which was beyond the one-year A.E.D.P.A. limitations to file. The Magistrate Judge denied the Writ on the 7<sup>th</sup> of December 2017, without considering the Appellant's claim of innocence, a First Amendment right to directly receive a Final Order, and a myriad of other constitutional violation nightmares. The District Court denied the Petition for Writ of Habeas Corpus on the 19<sup>th</sup> of January 2018, despite the Appellant's liberally construed claim of 'Abandonment of Counsel' being unheard without ever a hearing or remedy in any Court, violating the Appellant's due process of law. The Third Circuit Court of Appeals also denied the Appellant's constitutional claims of innocence, ineffective assistance of Trial Counsel, ineffective assistance of Appellate Counsel, right to proceed pro se, and the numerous violations of due process of law, despite the dissenting opinion of the Senior Judge Cleland, which is more respected than a reasonable jurist. A Petition for Panel Rehearing was denied on the 22<sup>nd</sup> of 2018. An Application for Extension of Time to file the Petition for Writ of Certiorari was granted to and including the 19<sup>th</sup> of November 2018, on September 20, 2018, in Application No., 18A294.

## REASONS FOR GRANTING THE PETITION

1. That at the time of the investigative stop, no party in the truck smelled of fire or accelerant, no accelerant was in the truck, and that no *prima facie* case was made by the Commonwealth or the police for these charges. ( See: Senior Judge Cleland's dissenting opinion. )
2. That although a B.B. gun belonging to James Deutsch's son was located with the vehicle that was searched without a search warrant, no bolt cutters or portable grinders were found in or around the truck that would have allowed anyone to gain entrance through locked areas or enclosures, which was not litigated by Trial Counsel or Appellate Counsel.
3. That Mr. James Deutsch was actually arrested while in my bedroom ( Located at 106 Woodland Road in St. Marys, PA 15857 ) where there was also signs of forced entry into my bedroom that always remained locked ( secured under key ), after I had been held in custody for approximately twenty-four (24) hours during the time I was not at home.
4. That the Playboys were allegedly found in my room ( along with Mr. James Deutsch ) which was unlawfully searched without a search warrant; so if these fires allegedly occurred on the night of the Investigative Stop, when we were questioned without being provided our Miranda Warnings and searched

without written consent or a search warrant, then why would the *box of Playboys* not have been located in the truck at the time of the Investigative Stop ?

5. That for Attorney Devecka to continue as my attorney while knowing he was incapable by his disease of performing his duties, and fail to investigate these issues previously raised by me over the phone, family, and in written correspondence, and yet Trial Counsel Devecka never informed me of his illness which was a violation of the Rules of Professional Conduct.

6. That by the Common Pleas Court's ruling to not allow the information about Trial Counsel Devecka's disease, nor allow my special investigator to examine his condition and disease affecting his effectiveness, denied my due process of law and created, through back-door-antics, a miscarriage of justice.

7. That Attorney Devecka was privately retained and failed to appeal the suppression and habeas corpus issues to the Superior Court of Pennsylvania. ( See: Senior Judge Cleland's dissent ) Attorney Devecka made the decision to go to trial without any authorization to do so which is a clear violation of the Rules of Professional Conduct.

8. That the boots in question were never shown or proven to be the boots matching the boot prints left at the vicinity of the Weisner camp.

9. That Trial Counsel Devecka did allow the boots in question and this

unverified boot print evidence to be entered into evidence without ever a single objection.

10. That Fire Marshal Agosti, whom was assigned to the Fox Township fires, was **not** questioned concerning the age of the boot prints or tire tracks left there by Ineffective Counsel Devecka, **nor** did Trial Counsel consult or question Fire Marshal Agosti about his rejecting or countering the testimony and ruling of arson provided by the Alternate Fire Marshal, Corporeal Henneman in Fox Township.

11. That at no time, was it established of the time when the initial fires were started, or the origin of how the fires started, or the the foot prints in the area, with which, may or may not match the boot allegedly found in the truck.

12. That all seasonal residences were totally or completely destroyed at the time the Fox Township Fire Department arrived, that *no origin and no cause* were able to be determined by the Alternate Fire Marshal, Corporeal Henneman of the Fox Township fires.

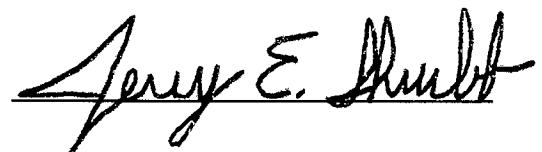
## CONCLUSION

**WHEREFORE**, the Appellant prays for a full review of the issues raised in this immediate case at bar before this Honorable Court of the Appellant's actual innocence of the crimes that were charged, and convictions thereof, as a direct result of Ineffective Counsel and failure of the Commonwealth to clearly establish a *prima facia* case against the Appellant. ( Appendix – A, Senior Judge Cleland's Decision ) The merits of the Appellant's issues at bar have not been fully litigated or ruled upon by any Court on appeal due to Ineffective Counsels and governmental interference without even discussing the underlying issues of the Appellant's actual innocence, which is clearly established by the records presented herein.

The Appellant humbly prays for relief in the best interests of Justice, the Appellant awaits this Honorable Court's decision.

RESPECTFULLY SUBMITTED,

Dated: 11/16/2018



Jerry E. Shrubb, ( Pro Se )  
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Albion, PA 16475-0002

cc: File / J.E.S.