19-7027

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Patrick Hughes — PETITIONER
(Your Name)

vs.

Commonwealth Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme court of Pennsylvania middle District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Patrick Hughes #NW1275
(Your Name)

1100 Pike St
(Address)

Huntingdon, PA. 16654
(City, State, Zip Code)

(814) 643-2400
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Whether the evidence was sufficient to [sustain] a conviction of criminal homicide, criminal conspiracy to commit homicide where the Commonwealth failed to establish, beyond a reasonable doubt, the existence of a conspiratorial agreement, the specific intent of which was to commit criminal homicide, prior to the death of Ervin Holton?

2. Whether the evidence was sufficient to [sustain] a conviction of criminal homicide or criminal conspiracy to commit homicide where the Commonwealth conceded at trial that [Appellant] was not a shooter, and offered no evidence of his presence at the scene, when, a conviction of murder cannot stand without sufficient evidence of accomplice liability?

3. Whether the trial court erred in granting the Commonwealth's motion *in limine* to present evidence of [Appellant's] drug dealing and prior drug arrests under [Pa.R.E.] 404(b) by order and opinion on November 14, 2016?

4. Whether the trial court erred in admitting 911 tapes referencing a Honda Odyssey without affording the Appellant his right to cross-examination guaranteed and by the confrontation clause of the United States Constitution?

5. Whether this honorable court erred when it barred the defense from cross-examining James Martin on his status as a sex offender registrant?

6. Whether this honorable court erred when it failed to grant Appellant's request for a mistrial due to Nicole Green[e]'s testimony that Appellant was incarcerated during most of the time they dated?

7. Whether the verdict was against the weight of the evidence?

8. Whether the trial court erred over Appellant's objection in denying Appellant's motion for severance, failing to order separate trials, and determining that [] Appellant would not be prejudiced by being tried with his co-defendant Omar Robinson[?]

9. Whether the trial court erred in failing to grant Appellant's motion for change of venue/venire where the pretrial publicity was sustained, pervasive, inflammatory, and inculpatory and there was a presumption of prejudice in selecting a fair and impartial jury from Northampton County?

10. Whether the trial court erred in failing to grant Appellant['s] motion to suppress statements made to police on December 5, 2012 and December 4, 2014?

11. Whether the sentence of the court to a mandatory life sentence without the possibility of parole for First[-]Degree Murder is unlawful where the underlying statute is unconstitutional and the sentencing issue was not presented to the jury?

12. Whether the mandatory sentence of Appellant to life imprisonment without the possibility of parole for murder of the first degree violates the Eighth Amendment prohibition on cruel and unusual punishment?

13. Whether the court erred in denying Appellant's request to instruct the jury that in Pennsylvania

The mandatory sentence for First [-] Degree murder is life imprisonment without the possibility of Parole? Appellants Brief At 3-5

(Capitalization, suggested answers, and some citations omitted)

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

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

The opinion of the United States district court appears at Appendix _____ to the petition and is

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

[✓] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Pa. Superior Court court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 9/10/19.
A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. 5th & 14th Due process violation

V. STATEMENT OF THE CASE

Your Appellant was charged by the District Attorney of Northampton County with the following crimes related to the November 23, 2012 homicide of Ervin Holton: Criminal Homicide as Murder of the First Degree, 18 Pa.C.S.A. §2501 [F-1]; Criminal Conspiracy to Commit Murder of the First Degree, 18 Pa.C.S.A. §903(A)(1). The selection of a Petit Jury commenced on January 9, 2017.

On January 20, 2017, a Petit Jury found your Appellant, Patrick T. Hughes, guilty of the following charges: Murder of the 1st Degree, 18 Pa.C.S.A. §2501(A) and Conspiracy to Commit Murder of the 1st Degree, 18 Pa.C.S.A. §903(A)(1).

Your Appellant was sentenced on February 28, 2017 to life without the possibility of parole on the charge of Murder of the 1st Degree and life of imprisonment without the possibility of parole on Murder in the 1st Degree and Conspiracy to Commit Murder of the 1st Degree to a term of imprisonment of 20 years minimum to 40 years maximum with all sentences to run concurrent.

The appellant filed an appeal to the Pa. Superior Court, which was denied on April 3, 2019. An allowance of Appeal was filed and denied on September 10, 2019.

REASONS FOR GRANTING THE PETITON

1. **THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION OF CRIMINAL HOMICIDE, CRIMINAL CONSPIRACY TO COMMIT HOMICIDE WHERE THE COMMONWEALTH FAILED TO ESTABLISH, BEYOND A REASONABLE DOUBT, THE EXISTENCE OF A CONSPIRATORIAL AGREEMENT, THE SPECIFIC INTENT OF WHICH WAS TO COMMIT CRIMINAL HOMICIDE, PRIOR TO THE DEATH OF ERVIN HOLTON.**

2. **THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION OF CRIMINAL HOMICIDE OR CRIMINAL CONSPIRACY TO COMMIT CRIMINAL HOMICIDE WHERE THE COMMONWEALTH CONCEDED AT TRIAL THAT PATRICK HUGHES WAS NOT A SHOOTER, AND OFFERED NO EVIDENCE OF HIS PRESENCE AT THE SCENE, WHERE, A CONVICTION OF MURDER CANNOT STAND WITHOUT SUFFICIENT EVIDENCE OF ACCOMPLICE LIABILITY.**

Issues 1 and 2 will be argued here together.

Your Appellant, Patrick T. Hughes, hereby incorporates the entire record as it relates to the within issues as though said portion was set forth herein at length. All evidence in the within case suggests that your Appellant did not participate in a conspiracy nor was he an accomplice in the death of Ervin Holton. No witness called by the Commonwealth testified that Appellant, Patrick T. Hughes, shot anyone. Circumstantial evidence brought forward in the case does not rise to the level necessary to show that your Appellant had a specific intent to kill. There were no eyewitnesses identifying

your Appellant, no weapon was found, and there was no specific direct evidence linking your Appellant to the crime.

No evidence was presented by the Commonwealth to prove that your Appellant was an accomplice of Omar Robinson, nor anyone else beyond a reasonable doubt. In addition, the Commonwealth failed to present evidence in its case in chief that your Appellant committed criminal homicide or was an accomplice to criminal homicide.

Appellant understands that the standard to apply in determining the sufficiency of the evidence is whether:

> "viewing the evidence in the light most favorable to the commonwealth in drawing all proper inferences favorable to the commonwealth, the trier of fact could reasonably have determined that all of the elements of the crime have been established beyond a reasonable doubt". *Commonwealth v. Keblitis, 500 Pa. 321, 456 A.2d 149 (1983).*

3. WHETHER THE TRIAL COURT ERRED IN GRANTING THE COMMONWEALTH'S MOTION IN LIMINE TO PRESENT EVIDENCE OF PATRICK HUGHES' DRUG DEALING THAT OCCURRED ON NOVEMBER 23, 2012 INCLUDING ANY PHOTOGRAPHS AND TESTIMONY IN VIOLATION OF PA.R.E. 404(B) AS ORDERED BOLSTERED BY AN OPINION OF NOVEMBER 14, 2016

On November 23, 2012, the Co-Defendants were together in the City of Easton in the area of North 7th Street by Bushkill Street. The fact that the

Co-Defendants were together is documented by photographs that were taken by the Easton Police Department and furtherance of a heroin investigation. Furthermore, the Co-Defendants were photographed at the home of Corey Reavis who drove the victim to the location where he was murdered. Your Appellant argues that prior drug deals are inadmissible pursuant to Pa.R.P.E. 404(B) which creates a presumption of exclusion which must be overcome by a showing that the probative value of the evidence outweighs even the potential for presidence.

The Supreme Court in *Commonwealth v. Spruill, 480 Pa. 601, 604-05, 391 A.2d 1048, 1049-50 (1978)* discussed the standard codified by Pa.R.E. 404(B):

> "The purpose of this rule is to prevent the conviction of an accused for one crime by the use of evidence that he has committed other unrelated crimes, and to preclude the inference that because he has committed other crimes he was more likely to commit the crime for which he is being tried. The presumed effect of such evidence is to predispose the minds of the jurors to believe the accused guilty, and thus effectively to strip him of the presumption of innocence." *Spruill, Supra.*

When determining whether the party seeking admission has met its burden, the Court must conduct a careful balancing test. In conducting this balancing test, Court's must consider factors such as the strength of the other

crimes, evidence, the similarities between the crimes, the time lapse between crimes, the need for other crimes evidence, the efficacy of alternative proof of the charged crime, and the degree to which the evidence probably will arouse the jury to overmastering hostility. *Commonwealth v. Brown, 2012 Pa.Super. 150, 52 A.3d 320, 326 (2012).*

The Court should be especially skeptical when asked to admit evidence under Pa.R.E. 404(B) if the Commonwealth's case relies on circumstantial evidence. *Commonwealth v. Cox, 2015 Pa.Super. 103, 115 A.3d 333, 338, Appeal denied, 124 A.3d 308 (Pa. 2015).* A Court's error in admission of 404(B) evidence will not be held harmless, but will result in retrial. See *Cox, Supra.*

Here, the Commonwealth's case is largely based on circumstantial evidence. The admission of a prior drug deal on November 23, 2012, the day before the homicide, was initiated and introduced by the Commonwealth to arouse the jury to overmastering hostility. Therefore, the granting of the Commonwealth's Motion In Limine to present evidence of Patrick Hughes' drug dealing was in error.

4. THE TRIAL COURT ERRED IN ADMITTING THAT PORTION OF A 9-1-1 TAPE REFERENCING A DESCRIPTION OF A VEHICLE THROUGH A

WITNESS CHRISTINE SANDT WITHOUT THE PRESENCE OF MS. CHRISTINE SANDT'S HUSBAND (HEREINAFTER "MR. SANDT") DESCRIBING THE MAKE AND MODEL OF THE VEHICLE.

Ms. Christine Sandt was called by the Commonwealth to testify at Trial on January 12, 2017. [N.T., January 12, 2017, Pages 72 – 114.]

During Ms. Christine Sandt's testimony, the Commonwealth played the 9-1-1 tape related to this case.

The tape was played over the objection of the Defense. In the background, Mr. Sandt was overheard saying that he observed a Honda Odyssey. Ms. Christine Sandt was not able to identify the vehicle when she testified at Trial. Mr. Sandt did not testify and was not available to your Defense or the Commonwealth. The Trial Court recognized that in the background there is a male voice saying Honda Odyssey. [See Notes of Testimony, January 12, 2017, Page 99.]

The Court interrupted testimony of Ms. Christine Sandt on January 12, 2017 and testimony from her resumed on January 17, 2017. [See Notes of Testimony, January 17, 2017, Page 42.]

Prior to the commencement of testimony on January 17, 2017, the District Attorney's Office indicated that they did not need the testimony of Mr. Sandt and indicated that the law was clear that Mr. Sandt's statements on

the 9-1-1 tape were non-testimonial statements as present sense impressions and excited utterances. Therefore, not being hearsay. [See Notes of Testimony, January 17, 2017, Page 4-12.]

After discussion in Chambers on January 17, 2017, the Court made a ruling on the statements of Mr. Sandt identifying the vehicle:

> "THE COURT: The statements made on the 9-1-1 tape based on the testimony that she had and what I heard on the 9-1-1 tape are not her present sense impression. It is someone else's present sense impression.
>
> And the ruling is I think they're entitled to cross-examine that person who's making the statement on the 9-1-1 tape, which is him and she is repeating it. Unless you give me an offer of proof that it was her direct observation and she could identify the van as a black Honda Odyssey, that is not what you told me last week; it was the husband that provided the information, you have a problem." [N.T., January 17, 2017, Pages 9-10.]
>
> THE COURT: You're saying you have a Supreme Court case where the person is on a speaker and there is voices in the background that can be heard. Do you have fact pattern that's on all fours with this one?
>
> MR. CASOLA: No.
>
> THE COURT: That's my ruling. You have a problem. What are you going to do about it?
>
> MR. PEPPER: Check to see if the Sandts have shown up." [N.T., January 17, 2017, Page 11.]

Mr. Sandt was never produced at Trial by the Commonwealth and never testified.

Your Appellant believes that the original Trial ruling made by the Court was proper and that your Appellant was denied his right to cross-examination with regard to Mr. Sandt guaranteed by the confrontation clause of the United States Constitution. See *Crawford v. Washington, 541 U.S. 36 (2004) and its progeny.*

The Trial Court in the 1925(a) Statement improvidently applied the standard exposed in *Davis v. Washington, 547 U.S. 813, 813-14, 126 S.Ct. 2266, 2268-69, 165 L.Ed.2d 224 (2006).*

Here, the information heard in the background describing a Honda Odyssey offered by Mr. Sandt was offered by the Commonwealth to primarily establish or prove some past fact. The Commonwealth was not attempting to describe current circumstances requiring police assistance. See *Davis v. Washington, Supra. at 827.*

The call made by the Sandts was not for purposes of responding to an ongoing emergency, rather, describing a factual event.

Therefore, the Trial Court was right in its initial thoughts with regard to the identification by Mr. Sandt of the Honda Odyssey and denying

Appellant the ability to confront Mr. Sandt and/or the failure of the Commonwealth to produce him at Trial was error.

5. **THE COURT ERRED WHEN IT BARRED THE DEFENSE FROM CROSS-EXAMINING KEY WITNESS JAMES MARTIN ON HIS SEX OFFENDER REGISTRANT.**

See generally Pa.R.E. 607; *Commonwealth v. Cox, 728 A.2d 923 (Pa. 1999); Commonwealth v. Murphy, 591 A.2d 278 (Pa. 1991);* and *Commonwealth v. Harris, 852, A.2d 1168 (Pa. 2004).*

Key Commonwealth Witness James Martin testified as to statements by Mr. Hughes which implicated him in the homicide.

The Defense desired to establish that Mr. James Martin was a Megan's Law tier three sexual offender, that he was in prison for 22 years beginning at the age of 18, that his sentence was 10 – 20 years for rape, and that subsequently he was sentenced for additional time for escape -- attempted escape from a State Correctional Institution.

Mr. Martin was also a witness in a Trial in the matter of *Commonwealth of Pennsylvania v. Javier Rivera-Alvarado* and *Commonwealth of Pennsylvania v. Renee Figueroa, Case Nos. 619-2013 & 620-2013* in the Court of Common Pleas of Northampton County, Pennsylvania tried before

the Honorable Anthony Beltrami. In those cases, Mr. James Martin testified as a Commonwealth witness and his Trial Counsel the famous Jack McMahon, Esquire was allowed to examine Mr. Martin about his sex offender status related to the issues of his credibility and bad reputation not Pennsylvania Rule of Evidence 609 that relates to crimen falsi.

The Defense Counsel wished to cross-examine Mr. Martin about his registration as a sex offender. This was denied by the Court after extensive discussion. [N.T., January 13, 2017, Pages 70-130.]

Defense argued that cross-examination of a Megan's Law registration is similar to probation or parole.

In cases where someone is on probation or parole, questioning motive and bias and credibility is allowed because such an individual witness may wish to testify favorably for the Commonwealth in order to avoid a probation or parole violation. See *Commonwealth v. Cox, 728 A.2d 923 (Pa. 1999); Commonwealth v. Murphy, 591 A.2d 278 (Pa. 1991)*; and *Commonwealth v. Harris, 852 A.2d 1168 (Pa. 2004)*. Similarly, Megan's Law probationary violations and new crimes are in the same class category.

The Court limited cross-examination by the Defense about Megan's Law. [N.T., January 13, 2017, Page 129.]

The Court's conclusion that it was not error denied Defense Counsel's request to elicit evidence regarding Mr. Martin's status as a sex offender registrant, which testimony would have been irrelevant and unduly prejudicial was error.

6. **THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT APPELLANT'S REQUEST FOR A MISTRIAL DUE TO NICOLE GREEN'S TESTIMONY THAT APPELLANT WAS INCARCERATED DURING MOST OF THE TIME THEY DATED.**

On January 13, 2017, Key Commonwealth Witness Nicole Green, the paramour of the Appellant testified.

Ms. Nicole Green was in a relationship with your Appellant, Patrick Hughes, meeting in 2005 and dating through 2012.

Fifteen questions by the Commonwealth into Ms. Green's testimony, the Commonwealth asked:

> "Was it an intense relationship?"
>
> Ms. Green responded: "He was in jail most of the time that we were together."

Defense Counsel moved immediately to object and moved for a Mistrial.

The remedy for a Mistrial is within the discretion of the Trial Court. However, a Court needs to grant a Mistrial where the alleged prejudicial event may reasonably be said to deprive the Appellant of a fair, impartial Trial. *Commonwealth v. Messersmith, 860 A.2d 1078, 1092 (Pa. Super. 2004).*

The Court's conclusion that the response "he was in jail most of the time that we were together" was a reference to the time from 2005 through 2012. A Jury could reasonably infer that he was in jail for most of that time. Therefore, it must be presumed that an individual who was in jail from 2005 through 2012 must have a substantial criminal record history and the reference was not simply to a single reference to the fact that he was incarcerated.

The Court's conclusion that Ms. Green did not specifically state when Appellant was incarcerated is erroneous and is not borne out from the record.

Your Appellant was deprived of a fair Trial and no curative instruction by the Court could cure it. In fact, the curative instruction was a reminder for the Jury to embellish.

7. **THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE.**

In evaluating a challenge to the weight of the evidence, the standard has been set forth in *Commonwealth v. Chanpeny, 574 Pa. 435, 832 A.2d 403 (2003).*

It is also important to point out that in criminal proceedings, credibility of witnesses and weight of evidence are determinations that lie solely with the trier of fact which is free to believe all, part, or none of the evidence. *Commonwealth v. Lewis, 911 A.2d 558, 566 (Pa.Super. 2006).*

Here, your Appellant incorporates the record made before the Trial Court to support his claim.

The evidence and testimony of Nicole Green and James Martin shocked the sense of fairness and conscious of justice. The testimony of a snitch, James Martin, and Appellant's girlfriend for many years while in jail was relied on by the Jury in a verdict that is devoid of justice.

8. **THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR SEVERANCE, FAILING TO ORDER SEPARATE TRIALS IN DETERMINING THAT YOUR APPELLANT WOULD NOT BE PREJUDICED BY BEING TRIED**

WITH CO-DEFENDANT, OMAR ROBINSON. **See Pa.Crim.P. Rule 583**

In determining whether to serve certain defendants, the Court must balance the need to minimize the prejudice that may be caused by consolidation, against the general policy of encouraging judicial economy. *Commonwealth v. Stocker, 424 Pa.Super. 189, 622 A.2d 333 (1993).*

A defendant's case should be served if not doing so would result in substantial injustice. Id.

Your Defendant, Omar Robinson, and your Appellant, Patrick T. Hughes, may have had antagonistic defenses where the jury, in order to believe the testimony offered on behalf of one defendant, must disbelieve the testimony offered by each co-defendant. *Commonwealth v. Jones, 542 Pa. 464, 668 A.2d 491, 501 (1996).*

Your Appellant argues that a joint trial prohibited your Appellant from introducing evidence to the allegations against him and to demonstrate his innocence to these allegations.

Therefore, the Order joining separate informations pursuant to Pennsylvania Rule of Criminal Procedure 582(A)(1)(a) was erroneous.

9. **THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR A CHANGE OF VENUE/VENIRE WHERE THE PRETRIAL PUBLICITY WAS SUBSTANTIAL, PREVASIVE, INFLAMMATORY AND INCULPATORY AND THERE WAS A PRESUMPTION OF PREJUDICE IN SELECTING AND FAIR AND IMPARTIAL JURY FROM NORTHAMPTON COUNTY.**

The extensive pretrial publicity by the media in this case prevented your Appellant from receiving a fair Trial in Northampton County. Pretrial publicity was pervasive and inflammatory requiring a change of venue/venire. See *Commonwealth v. Carter, 643 A.2d 61 (Pa. 1994)*.

In support of his Motion for Change of Venue/Venire, exhibits were attached where 25 articles were published in the *Express-Times* newspaper, a newspaper of general circulation in Northampton County and 10 article were published in the *Morning Call* also a newspaper of general circulation in Northampton County. A total of 35 articles were published.

The publications from the *Express-Times newspaper, lehighvalleylive.com*, and the *Morning-Call* created an aura of pervasive and inflammatory media publicity that prevented your Appellant from receiving a fair Trial.

A request for change of venue/venire is permitted by Pennsylvania Rules of Criminal Procedure 584 and it is required when a fair and impartial jury cannot be subject from a pool drawn from the County which the crime

occurred. *Commonwealth v. Stevens, 543 Pa. 204, 209, 610 A.2d 623, 625 cert. denied 519 U.S. 855, 117 S.Ct. 151 (1996).*

The pretrial publicity was sustained, pervasive, inflammatory, and culpatory and there is a presumption of prejudice in selecting a fair and impartial jury in Northampton County. See *Commonwealth v. Bridges, 757 A.2d 859, 871 (Pa.Super. 2000).*

10. THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION TO SUPPRESS STATEMENTS MADE TO THE POLICE ON DECEMBER 5, 2012 AND DECEMBER 4, 2014.

Statements were made by your Appellant to the Easton Police Department on December 5, 2012 and December 4, 2014.

The test for determining whether an accused knowingly waived his or her rights looks to the totality of the circumstances. Some of the factors to be considered include: the duration and means of interrogation, the accused physical and psychological state, the conditions attendant to the detention, the attitude exhibited by the police during the interrogation and any and all other factors which may serve to drain one's powers of resistance to suggestions and coercion. *Commonwealth v. Jones, 546 Pa. 161, 178, 683 A.2d 1181, 1189 (1996).*

On December 5, 2012, Mr. Hughes was taken into custody as a result of a vice investigation. He was given his Miranda Warnings and was interrogated for about an hour.

Your Appellant denied involvement in the homicide.

On December 4, 2014, your Appellant was interviewed again at the detective's office of the Northampton County District Attorney's Office adjacent to the Northampton County Prison and within the Northampton County Courthouse. Mr. Hughes was in custody and based on the totality of the circumstances, his statement could not be knowing, intelligent, and voluntary.

11. **THE SENTENCE OF THE COURT TO A MANDATORY LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE FOR 1ST DEGREE MURDER IS UNLAWFUL WHERE THE UNDERLYING STATUTE IS UNCONSTITUTIONAL AND THE SENTENCING ISSUE WAS NOT PRESENTED TO THE JURY.**

12. **THE MANDATORY SENTENCE OF APPELLANT TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR MURDER OF THE 1ST DEGREE VIOLATES THE EIGHTH AMENDMENT PROHIBITION ON CRUEL AND UNUSUAL PUNISHMENT.**

The above issues are argued together below.

At Appellant's Sentencing, the Court imposed a mandatory term of life imprisonment for the 1st Degree Murder conviction, which rendered Appellant ineligible for parole. See 61 Pa.C.S. §6137(A)(1).

Your Appellant is aware that the Pennsylvania Superior Court has previously addressed the constitutionality of mandatory life sentences for the crime of 1st Degree Murder. In *Commonwealth v. Waters, 483 2d 855, 861 (Pa. Super. 1984)*, the Superior Court stated:

> "A mandatory life sentence, as established by the legislature, is clearly not cruel and unusual punishment for the crime of first-degree murder. Indeed, this issue has already been decided in *Commonwealth v. Sourbeer, 422 A.2d 116, 123 (Pa. 1980)*, in which the Supreme Court stated that a mandatory life sentence: is not cruel and unusual punishment for it is not an excessive and unnecessary punishment disproportionate to the crime and does not shock the moral conscious of the community." *Commonwealth v. Waters, 483 2d 855, 861 (Pa. Super. 1984).*

Your Appellant contends that the Trial Court erroneously imposed a sentence of life imprisonment without the possibility of parole upon him in violation of the Eighth Amendment and *Miller v. Alabama, 567 U.S. 460 (2012).*

In effect, your Appellant presents a legality of sentencing claim. It is well established that if no statutory authorization exists for a particular

sentence, the sentence is illegal and subject to correction. An illegal sentence must be vacated. Issues relating to the legality of the sentence are questions of law. Our standard of review over such questions is de novo and our scope of review is plenary. *Commonwealth v. Cardwell, 105 A.3d 748, 750 (Pa.Super. 2014).*

On June 25, 2012, the United States Supreme Court held in *Miller v. Alabama,* that:

> "Mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment Prohibition on cruel and unusual punishments." 567 U.S. 460, 1132 S.Ct. 2455, 2460.

However, your Appellant argues that the bright line rule should be applied to all mandatory sentences whether juvenile offenders under 18 or over 18.

We understand that the Superior Court previously rejected this argument in *Commonwealth v. Furgess, 149 A.3d 90 (Pa.Super. 2016).* However, we reserve our argument and believe it has merit.

Similarly, mandatory sentencing is unlawful as a mandatory sentence pursuant to *Alleyne v. United States, 133 S.Ct. 2151 (2013); 18 Pa.C.S.A. §1102, 42 Pa.C.S.A. §9711.*

Here, the Jury never determined the mandatory sentence pursuant to *Alleyne v. United States, Supra.*

13. THE COURT ERRED IN DENYING DEFENDANT'S REQUEST TO INSTRUCT THE JURY THAT IN PENNSYLVANIA THE MANDATORY SENTENCE FOR 1ST DEGREE MURDER IS LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

Your Appellant requested this Honorable Court to instruct the Jury that the mandatory sentence in Pennsylvania for a conviction of 1st Degree Murder is life imprisonment without the possibility of parole. The Trial Court denied the request to charge the Jury regarding the penalty for 1st Degree Murder.

We understand when evaluating the propriety of Jury Instructions, a Trial Court will look to the instructions as a whole, not simply isolated portions, to determine if the instructions were improper. We also understand that an unquestionable maximum of the law in the Commonwealth is that the Trial Court has broad discretion in phrasing its instructions, and may choose its own words so long as the law is clearly, adequately, and accurately presented to the jury for its consideration. *Commonwealth v. Antidormi, 84 A.3d 736, 754 (Pa.Super. 2014).*

We understand also that the Jury's function is to determine guilt or innocence. *Commonwealth v. Carbaugh, 620 A.2d 1169, 1161 (Pa.Super. 1993).* However, a Jury cannot be informed adequately if it does not know that any person convicted of 1st Degree Murder would receive mandatory imprisonment of life without the possibility of parole if found guilty. Therefore, we believe that the Jury in order to be adequately informed should have been instructed as to the penalty for such a conviction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Hughes

Date: 11-16-19