CASE NUMBER 19-7063

IN THE SUPREME COURT OF THE UNITED STATES

LEETON JAHWANZA THOMAS,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

RESPONDENT'S BRIEF IN OPPOSITION

"THIS IS A CAPITAL CASE"

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Dated: January 16, 2020

*Member of the Bar of this Court

COUNTER-STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

"CAPITAL CASE"

I. Whether Pennsylvania's death penalty statute comports with the United States Constitution by permitting the jury to weigh the aggravating and mitigating circumstances without imposing a beyond a reasonable doubt standard on the weighing process?

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COUNTER-STATEMENT OF THE CASE

The Factual and Procedural History of the Case is as follows:

By Lancaster County Information Number 4095 of 2015, the District Attorney of Lancaster County, Pennsylvania, charged Leeton Jahwanza Thomas (Petitioner) with two counts of Criminal Homicide, one count of Criminal Attempt-Criminal Homicide, and one count of Burglary.[1] The events leading to Petitioner's conviction and sentence began in 2015 when Lisa Scheetz reported that two of her three minor daughters had been sexually assaulted by Petitioner. (Notes of Testimony, Guilt Phase, at 295)(hereinafter, N.T., Guilty Phase). Previously, Petitioner's wife, Donna Thomas, would occasionally care for Lisa Scheetz's minor children. (Id. at 207). On April 15, 2015, following an investigation by the Pennsylvania State Police (PSP), Petitioner was charged with a variety of sexual offenses against two of Scheetz's children, H.S and S.S. (Id. at 296). The Petitioner was incarcerated that same day, but was shortly thereafter released on bail. (Id.) Following a May 22, 2015 preliminary hearing, the charges were returned to the Lancaster County Court of Common Pleas and arraignment was scheduled for June 26, 2015.

On June 11, 2015, Lisa Scheetz and her daughters (H.S. and P.S.) were in their basement apartment which was located below the residence of Jennifer and Steven Hershey.[2] (Id. at 197-197, 207-211). As some point in the early morning hours of June 11, 2015, Jennifer and Steven Hershey woke to "terrifying screams" from the basement apartment. (Id. at 212, 218). The

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[1] 18 Pa. C.S.A. § 2052; 18 Pa. C.S.A. § 901(a) / 18 Pa. C.S.A. § 2502; 18 Pa. C.S.A. § 3502(a)(1).
[2] Lisa's third daughter (S.S.) was at the beach with a friend. (Id. at 211).

Hershey's opened the door connecting their home to the basement apartment and found one of Scheetz's daughters (P.S.) half way up the stairs with blood all over her face. (Id. at 197-198, 212-214). P.S. looked at Jennifer and said "help me, Pie did it." (Id. at 213). "Pie" is a nickname used by Petitioner. (Id. at 219). Steven and Jennifer Hershey pulled P.S. to safety, ensured all the doors were locked, and called 911. (Id. at 213).

The minor victim, P.S., had numerous cuts all over her body, a large gash on her arm, and a huge gash to her back from which she was losing air. (Id. at 215). As the Hershey's were trying to treat her injuries, she continued to repeat "Pie did it." (Id. at 216). The victim continued to repeat "Pie did this" to the paramedics that responded to Jennifer Hershey's emergency call. (Id. at 162).

The emergency call, for a knife assault involving multiple victims, was received by Pennsylvania State Police Corporal Henry Callithen. (Id. 66-67). Immediately, Cpl. Callithen and Trooper James Spencer left the barracks in one vehicle, followed by Troopers Peter Minko and Stefanie Trazka in another vehicle. (Id. at 67-68). The Pennsylvania State Police arrived at the Scheetz/Hershey residence within 18 minutes. (Id. at 70). While en-route, they were informed both that the alleged attacker was Petitioner, and that he resided just around the corner from the scene. (Id. at 72-73). As such, Cpl. Callithen and Trooper Spencer went to the Scheetz/Hershey residence, while Troopers Minko and Trazka headed to Petitioner's house. (Id. at 77).

Upon arrival at the Scheetz/Hershey residence, Cpl. Callithen and Trooper Spencer were directed to the basement where they found the bloody staircase, and the bodies of Lisa Scheetz and her daughter, H.S. (Id. at 78-81). The Troopers cleared and secured the house as a crime

scene. (Id. at 87-89).

While this was occurring, Troopers Minko and Trazka went to Petitioner's residence. (Id. at 122-123). While initially passing Petitioner's residence and turning around, Trooper Minko noticed illuminated lights on the second and third floors of the home. (Id. at 124). Those lights, however, were off moments later when they pulled up to Petitioner's house. (Id. at 124). Once they were in position, Trooper Minko illuminated Petitioner's house with a spot light, and requested that Petitioner come out of the residence over his vehicle's public address system. (Id. at 127). In response, Troopers observed two individuals come to a second-floor window (Donna Thomas, followed by Petitioner), and ultimately both appeared at the front door with Petitioner wearing only a bathrobe. (Id. at 128). The Petitioner was immediately taken into custody. (Id. at 128).

After Petitioner was taken into custody, Cpl. Callithen arrived and explained to Donna Thomas that the house was being secured while a search warrant could be prepared. (Id. at 91). While walking through and securing the house with Donna Thomas, Cpl. Callithen noted that the bathroom floor and tub were wet, there was a wet wash cloth in the tub, and a towel on the floor. (Id. at 93). This bathroom's location corresponded with one of the lights Trooper Minko observed on when he was turning to Petitioner's residence. (Id. at 93, 490). In the other room Trooper Minko observed lights on, Trooper John Connelly located, *inter alia*, a closed, non-running washing machine, a flashlight, and an empty bottle of bleach. (Id. at 481-485, 490). As part of his check, Trooper Connelly opened the washing machine and was immediately repelled by the overpowering smell of bleach. (Id. at 482). In the 2/3 filled washer, Trooper Connelly located a full set of dark clothing, including sneakers, and a ten-foot piece of nylon

rope submerged in reddish brown bleach water. (Id. at 482-484).[3] These items were sent to the Pennsylvania State Police Crime Laboratory for testing, and while blood was not found on most, forensic scientists found human blood on a "protected" area of stitching on the left sneaker. (Id. at 556-559). The sneaker was sent for further testing. The blood from the sneaker recovered from the washing machine in the Petitioner's residence was a DNA match to Scheetz's deceased daughter, H.S. (Id. at 610).

The day of the assault, Pennsylvania State Police investigators contacted Red Rose K-9, and had bloodhounds respond to the scene at Scheetz/Hershey residence in an attempt to track the attacker's path. (Id. at 302-314). To provide the K-9's a scent, investigators directed the handlers to a screen that had been cut, and that they believed to be the point of entry to the Scheetz apartment. (Id. at 315-319). K-9 Ruben, the first bloodhound, tracked the scent from the scene directly to Petitioner's patio. (Id. at 319-322). Independently, a second bloodhound, K-9 Heather, followed a similar path directly to Petitioner's patio. (Id. at 345-352).

At trial, P.S. relived the horrifying events of June 11, 2015, for the jury. (Id. at 244-294). Specifically, P.S. told the jury that she, her sister H.S., and her mother Lisa Scheetz, were in their basement apartment watching television when the Petitioner entered their home. (Id. at 273). The Petitioner then attacked all three of them with two knives, stabbing them multiple times. (Id. at 274-277). Lisa Scheetz fell to the ground, H.S. went toward what she called the "great room," and she, P.S., fortunately made it to the stairway leading up to the Hershey's residence. (Id. at 277-278).

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[3] Approximately one-month after the murders, the landlord of Petitioner's residence contact the Pennsylvania State Police after finding a latex glove clogging the second-floor toilet. (Id. at 525-528). Ultimately additional latex gloves and a camouflage cloth were removed from the drain. (Id.)

On September 24, 2015, the Commonwealth filed a notice of intent to seek the death penalty based on five separate aggravating factors applicable to both Lisa Scheetz and H.S. 42 Pa.C.S.A. § 9711(d)(5-7), (11), (18). The case proceeded to a jury trial before the Honorable Dennis E. Reinaker, Court of Common Pleas of Lancaster County, Pennsylvania on June 7, 2017. After the presentation of evidence was concluded, on June 13, 2017, the Jury found Petitioner guilty on all counts.

The next day, Petitioner filed a Motion to Stay the penalty phase of the trial due to Pennsylvania Governor Thomas Wolf's moratorium on executions. (N.T. Penalty Phase at 6). That motion was immediately denied. (Id.). The Petitioner next presented a Motion to Strike the Notice of Death. In that motion Petitioner argued that Pennsylvania's Capital Sentencing Statute is unconstitutional as it allows the jury to make factual findings at a standard lower than beyond a reasonable doubt. (Id. at 6-7). This motion was also denied. (Id.)

Following the close of penalty phase evidence, the Trial Court instructed the Jury that they could only return a sentence death if the unanimously found "beyond a reasonable doubt that one or more aggravating circumstances exist and that no mitigating circumstances exist or, secondly, that any aggravating circumstances you find outweigh any mitigating circumstances that any of you find." (N.T., Penalty Phase, 158-159). Further, at the request and with the assent of counsel for the Commonwealth and Defense, the Court clarified for the jury that if they find the aggravating and mitigating circumstance to be equal, they must return a sentence of life imprisonment. (Id. at 178-179).

At approximately 8:00 p.m. on June 14, 2017, the Jury returned a verdict of death for the murders of Lisa Scheetz and H.S. (Id. at 181-186). Pursuant to the jury's verdict, Petitioner was

formally sentenced to death on June 16, 2017.[4] His subsequent Post-Sentence Motion was denied on June 27, 2017.

The Petitioner filed a direct appeal with the Supreme Court of Pennsylvania. Both parties filed briefs and the case was argued on December 4, 2018. On August 20, 2019, the Supreme Court of Pennsylvania affirmed the Order and Judgement of the Court of Common Pleas of Lancaster County, Pennsylvania. *Commonwealth v. Thomas*, 215 A.3d 36 (Pa. 2019). The Petitioner filed a Petition for *Certiorari* with this Honorable Court dated December 18, 2019.

[4] The trial court also imposed sentences of twenty (20) to forty (40) years for Attempted Murder and three (3) to six (6) years for Burglary.

REASONS FOR DENYING THE WRIT

I. The Pennsylvania death penalty statute comports with the United States Constitution by permitting the jury to weigh the aggravating and mitigating circumstances without imposing a beyond a reasonable doubt standard on the weighing process.

A. The Pennsylvania Death Penalty Statute and its Application in this Case.

The sentencing procedure for murder in the first degree in Pennsylvania is set forth in 42 Pa.C.S.A. §9711. The relevant portions are as follows:

> (c) Instructions to jury.--
>
> > (1) Before the jury retires to consider the sentencing verdict, the court shall instruct the jury on the following matters:
> >
> > > (I) the aggravating circumstances specified in subsection (d) as to which there is some evidence.
> > >
> > > (ii) the mitigating circumstances specified in subsection (e) as to which there is some evidence.
> > >
> > > (iii) aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt; mitigating circumstances must be proved by the defendant by a preponderance of the evidence.
> > >
> > > (iv) the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.
> > >
> > > (v) the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.
> > >
> > > ...
>
> (f) Sentencing verdict by the jury.—

(1) After hearing all the evidence and receiving the instructions from the court, the jury shall deliberate and render a sentencing verdict. In rendering the verdict, if the sentence is death, the jury shall set forth in such form as designated by the court the findings upon which the sentence is based.

(2) Based upon these findings, the jury shall set forth in writing whether the sentence is death or life imprisonment.

42 Pa.C.S. §9711(c)(1); (f)(1,2).

In the current case, the Trial Court appropriately instructed the jury in accord with this law as follows:

> THE COURT: All right. Members of the jury, now that the attorneys have made their arguments to you, it becomes my responsibility to instruct you on the law as it relates to the death penalty in Pennsylvania.
>
> When I'm finished with these instructions, you will then decide whether to sentence the defendant to life imprisonment or to death. Your sentence will depend upon what you find about aggravating or mitigating circumstances. The Sentencing Code defines aggravating and mitigating circumstances, and I'll explain more about them in a moment.
>
> First, however, you must understand that your verdict must be a sentence of death if, and only if, you unanimously find, that is, all of you find at least one aggravating and no mitigating circumstance, or if you unanimously find one or more aggravating circumstances that outweigh all mitigating circumstances. These are the only two situations in which the death penalty can be returned. If you do not all agree on one or the other of these findings, then the only verdict that you may return is a sentence of life imprisonment.
>
> To repeat, the two situations in which the death penalty may be returned are, one, if you unanimously find, all of you find, beyond a reasonable doubt that one or more aggravating circumstances exist and that no mitigating circumstances exist or, secondly, that any aggravating circumstances you find outweigh any mitigating circumstances that any of you find. In all other cases, the only verdict that may be returned is a verdict of life imprisonment.
>
> The Commonwealth must prove any aggravating circumstance beyond a reasonable doubt, and I want to clear something up. One of the attorneys pointed out that I may have, in

my earlier comments to you this morning, inadvertently one of the times I discussed this with you said that the preponderance of the evidence standard was what applied to the aggravated circumstances. If I said that, that was incorrect.

So I'll say this again, the Commonwealth must prove any aggravating circumstance beyond a reasonable A reasonable doubt, for this purpose, is exactly the same as the definition of reasonable doubt that I gave you during the guilt phase of this trial.

As you'll recall, I told you, this does not mean that the Commonwealth must prove the aggravating circumstances beyond all doubt and to a mathematical certainty.

A reasonable doubt is the kind of doubt that would cause a reasonable and sensible person to hesitate before acting upon an important matter in his or her own affairs. A reasonable doubt must be a real doubt. It may not be one that a juror imagines or makes up to avoid carrying out an unpleasant duty.

By contrast, the defendant must prove any mitigating circumstance. However, the defendant only has to prove it by a preponderance of the evidence, that is, by the greater weight of the evidence. This is a less demanding standard than proof beyond a reasonable doubt.

Facts are proven by a preponderance when the evidence shows that it's more likely than not that the facts are true.

...

Now, in this case, under the Sentencing Code, only the following factors, if proven to your satisfaction beyond a reasonable doubt, can be considered or found to be aggravating circumstances: (Court reviews five aggravating circumstances)

...

Now, in this case, under the Sentencing Code, the following matters, if proven to your satisfaction by a preponderance of the evidence, could be considered as mitigating circumstances:

And what I'm going to do here is read for you the same list that I read for you before. It's the list that was created by the defense in advance of this trial and given to the Commonwealth of what they propose as mitigating factors.

But I want to reiterate, as both of the attorneys have, this, unlike the Commonwealth's list of aggravating circumstances, is not exhaustive. So you may, on your own, one of you, come up with some other factor based upon the evidence that you've heard in this case that you can consider a mitigating circumstance; and if you do, it's perfectly appropriate for you to consider that as a possible mitigating circumstance.

But this is the list that has been presented or prepared by the defense: (Court reviews twenty mitigating circumstances and other law).

(N.T., Penalty Phase, 158-166).

The Trial Court next reviewed the verdict slip with the jury and specifically explained how to consider the aggravating and mitigating circumstances presented by the parties. More particularly, the Trial Court stated:

> As I told you earlier, you must agree unanimously on one of two general findings before you can sentence the defendant to death. They are a finding that there is at least one aggravating circumstance and no mitigating circumstance or a finding that there are one or more aggravating circumstances that outweigh any mitigating circumstance or circumstances.
>
> In deciding whether aggravating outweigh mitigating circumstances, do not simply count their number. Compare the seriousness and importance of the aggravating with the mitigating circumstances. If you all agree on either one of the two general findings, then you can and must sentence the defendant to death.
>
> When voting on the general findings, you are to regard a particular aggravating circumstance as present only if you all agree that it's present. On the other hand, each of you is free to regard a particular mitigating circumstance as present despite what other jurors may believe.
>
> This is different from the general findings to reach your ultimate sentence of either life in prison or death. The specific findings as to any particular aggravating circumstance must be unanimous. All of you must agree that the Commonwealth has proven an aggravating circumstance beyond a reasonable doubt.
>
> That is not true for mitigating circumstances. Any circumstance that any juror considers to be mitigating may be considered by that juror in determining the proper sentence.
>
> This different treatment of aggravating and mitigating circumstances is one of the law's safeguards against unjust death sentences. It gives a defendant the full benefit of any mitigating circumstances. It is closely related to the burden of proof requirements.
>
> Remember, the Commonwealth must prove any aggravating circumstance beyond a reasonable doubt, while the defendant only has to prove any mitigating circumstance by a preponderance of the evidence.

> Your final sentence, life imprisonment or death, must be unanimous. All of you must agree that the sentence should be life imprisonment or that the sentence should be death because there is at least one aggravating circumstance and no mitigating circumstance or because the aggravating circumstance or circumstances outweigh the mitigating circumstance or circumstances found by any juror.

(N.T., Penalty Phase, 168-170). In reviewing the verdict slip, the Trial Court explained and instructed the jury not only on how to complete the verdict slip but also instructed them regarding the process of how to move through the verdict slip considering the aggravating and mitigating circumstances. (N.T., Penalty Phase, 171-177). The Trial Court's instructions comport with the Pennsylvania death penalty law regarding how to appropriately consider and weigh the aggravating and mitigating circumstances to ultimately recommend either a sentence of life or death. Accordingly, the Pennsylvania death penalty statute was appropriately applied in the present case.

B. The weighing of the aggravating and mitigating circumstances is not a fact required to be found beyond a reasonable doubt per *Blakely v. Washington*, 542 U.S. 296 (2004), *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002).

The Petitioner contends that this Court should grant *certiorari* and find Pennsylvania's death penalty statute unconstitutional because it does not place a beyond a reasonable doubt standard on the process of the weighing of aggravating and mitigating circumstances. This argument has been rejected by both the Pennsylvania Supreme Court and several United States Circuit Courts. More particularly, in *United States v. Sampson*, 486 F.3d 13 (1st Cir. 2007), the United States Court of Appeals for the First Circuit specifically rejected the reasoning put forth by Petitioner and citing *Apprendi*, supra. and *Ring*, supra., that, "the balance" or weighing of the aggravating and mitigating factors is in and of itself a fact that must be found. The Supreme

Court of Pennsylvania has also "consistently rejected" the Petitioner's argument. *Commonwealth v. Roney*, 581 Pa. 587, 866 A.2d 351, 361 (2005); See also, *Commonwealth v. Means*, 565 Pa. 309, 773 A.2d 143, 153-154 (2001), *Commonwealth v. Bronshtein*, 547 Pa. 460, 691 A.2d 907 (1997), *cert. denied*, 522 U.S. 936 (1997); *Commonwealth v. Zook*, 532 Pa. 79, 615 A.2d 1, 17-18 (1992), *cert. denied*, 507 U.S. 974 (1993).

The Supreme Court of Pennsylvania stated in this regard, "the death penalty statute does not specify a fixed burden of proof for the weighing of aggravating and mitigating circumstances" *Roney*, 866 A.2d at 361. The lack of a fixed burden of proof in this portion of the death penalty statute does not invalidate the statute. *Commonwealth v. Zettlemoyer*, 500 Pa. 16, 66–67, 454 A.2d 937, 963 (1982), *cert.* denied, 461 U.S. 970 (1983). This is because the method of weighing the aggravating and mitigating circumstances is not mechanical in nature, is not a fact to be found but is rather a process that occurs only if and after the aggravating circumstances have been found beyond a reasonable doubt. Moreover, the instruction of the weighing of the circumstances is and was in this case adequately provided for by statute. There is simply no legal requirement that weighing is fact finding that requires the standard of reasonable doubt to be employed.

The Petitioner contends that the rulings in *Apprendi* and *Ring* dictate otherwise. In *Apprendi*, the Court held as a matter of due process that any fact, other than a prior conviction, that raises the *maximum* penalty for a crime has to be treated as if it were an "element" of an enhanced "offense," such that the enhancement factor must be included in the information, decided by a jury, and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Blakely* extended *Apprendi* by holding that, "the 'statutory maximum' for *Apprendi*

purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Blakely*, 542 U.S. at 303(emphasis in original). In *Ring*, the Court applied the reasoning of *Apprendi* to capital cases and held that Arizona's death penalty was unconstitutional as it permitted a judge instead of a jury to find if any of the ten aggravating factors necessary to impose the death penalty existed. The *Ring* Court found that the Sixth Amendment required the finding of the aggravating factors in and of themselves were factual determinations which must be found by the jury. *Ring*, 536 U.S. at 609.[5]

The weighing of the aggravating/mitigating circumstances is a process and is not an element of the offense or a fact which must be proven to a jury at a penalty phase hearing beyond a reasonable doubt. *United States v. Sampson*, 486 F.3d 13, 32 (1st Cir. 2007) citing, "*United States v. Purkey*, 428 F.3d 738, 750 (8th Cir. 2005)(characterizing the weighing process as the 'lens through which the jury must focus the facts that it has found' to reach its individualized determination), *cert.* denied, 549 U.S. 975 (2006); see also *Ford v. Strickland* , 696 F.2d 804, 818 (11th Cir. 1983); *Gray v.Lucas*, 685 F.2d 139, 140 (5th Cir. 1982)(*per curiam*)." The *Apprendi*, *Blakely* and *Ring* case holdings do not compel otherwise.

As the several Circuit Court cases illustrate, at the point of the "weighing," the facts, i.e., the aggravating circumstances, have already been found by the jury beyond a reasonable doubt. Considering the language of *Purkey*, supra., the weighing is akin to a "lens" which merely focuses the objects, which are the facts that have already been determined. And that is where the argument of the Petitioner fails, as permitting the weighing process to continue as is, does not

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[5]Pennsylvania law is consistent with *Ring* in that a jury must find whether any aggravating circumstances exist using a beyond the reasonable doubt standard. 42 Pa.C.S.A. § 9711(c).

lead to the death penalty being imposed in an arbitrary and capricious manner. Rather, as the United States Court of Appeals for the Tenth Circuit discussed, "the jury's determination that aggravating factors outweigh mitigating factors is not a finding of fact subject to *Apprendi* but a 'highly subjective, largely moral judgment regarding the punishment that a particular person deserves.'" *Matthews v. Workman*, 577 F.3d 1175, 1195 (10th Cir. 2009) quoting, *United States v. Barrett*, 496 F.3d 1079, 1107 (10th Cir. 2007) citing *Caldwell v. Mississippi*, 472 U.S. 320, 340, n. 7 (1985).

This concept was incorporated in how the jury was instructed in this case, as the Trial Court explained to the jury:

> In deciding whether aggravating outweigh mitigating circumstances, do not simply count their number. Compare the seriousness and importance of the aggravating with the mitigating circumstances. If you all agree on either one of the two general findings, then you can and must sentence the defendant to death.

(N.T., Penalty Phase, 169). The jury in the present case was afforded discretion under the law in the weighing process. This Court has long recognized:

> [a]s long ago as the pre-*Furman* case of *McGautha v. California*, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971), Justice Harlan, writing for the Court, upheld a capital sentencing scheme in spite of its reliance on jury discretion. The sentencing scheme's premise, he assured, was "that jurors confronted with the truly awesome responsibility of decreeing death for a fellow human will act with due regard for the consequences of their decision . . . " . . . Belief in the truth of the assumption that sentencers treat their power to determine the appropriateness of death as an "awesome responsibility" has allowed this Court to view sentencer discretion as consistent with—and indeed as indispensable to—the Eighth Amendment's "need for reliability in the determination that death is the appropriate punishment in a specific case." (Internal citations and quotations omitted).

Caldwell v. Mississippi, 472 U.S., 320, 329-330 (1985).

The weighing process is not a mathematical equation expressed in specific terms like facts. Rather, after the facts (aggravating and mitigating circumstances) have been determined using the appropriate standards, the jury uses their inductive and deductive reasoning in application in the weighing process. Facts are determined objective knowledge that the weighing process simply can never be. "In death cases, "the sentence imposed at the penalty stage . . . reflect[s] a reasoned moral response to the defendant's background, character, and crime." *United States v. Fields*, 483 F.3d 313, 345-46 (5th Cir. 2007)(Internal citations omitted). This process permits critical individualized determinations by the jury. The *Apprendi/Ring* rule applies by its terms only to findings of fact, not to moral judgments and such individualized determinations which are so important to the death penalty weighing process. Id.; See *Ring*, 536 U.S. at 602. Forcing the weighing process into a factual determination undermines the individualized scheme and the discretion placed with the jury that the process entails. Accordingly, the Petitioner's issue warrants no further review.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, the Respondent, Commonwealth of Pennsylvania, respectfully requests that this Honorable Court deny the Petition for Writ of *Certiorari*.

Respectfully submitted,

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CASE NUMBER 19A550

IN THE SUPREME COURT OF THE UNITED STATES

LEETON JAHWANZA THOMAS,
Petitioner,
vs.
COMMONWEALTH OF PENNSYLVANIA,
Respondent.

PROOF OF SERVICE

I, Susan E. Moyer, a member of the Bar of the Supreme Court of the United States, hereby affirm under the penalty of perjury that on this 16th day of January 2020, I placed the original and ten (10) copies of the Respondent's Brief in Opposition to the Petition for a Writ of *Certiorari* in the above captioned case, along with the Certificate of Word Count and this Proof of Service, in the United States Mail to the United States Supreme Court, 1 First Street, NE, Washington, DC 20543, and a copy of each to Counsel for the Petitioner, Marc Bookman, Esq., The Atlantic Center for Capital Representation, 1315 Walnut Street, Suite 905, Philadelphia, PA 19107. The Documents were mailed by United States First Class Mail and the postage was pre-paid.

Date: January 16, 2020

By: 

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CERTIFICATE OF WORD COUNT

As required by Supreme Court of the United State Rule 33.1(h), I hereby certify that the document contains 4,561 words, excluding the parts of the document that are exempted by Supreme Court of the United Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 16, 2020

By: _____

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