

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MUSTAFA ALI,

Petitioner,

v.

MICHAEL D. OVERMYER, et al.

Respondents.

CIVIL ACTION

NO. 18-1074

FILED

MAR 28 2019

KATE BARKMAN, Clerk
By _____ Dep. Clerk

REPORT AND RECOMMENDATION

MARILYN HEFFLEY, U.S.M.J.

March 28, 2019

This is a pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by Mustafa Ali (“Ali” or “Petitioner”), a prisoner incarcerated at the State Correctional Institution—Retreat in Hunlock Creek, Pennsylvania. As set forth below, I recommend that the petition be denied.

I. FACTUAL AND PROCEDURAL HISTORY

On February 25, 2010, after a jury trial in the Philadelphia County Court of Common Pleas, Ali was found guilty of two counts of first-degree murder, two counts of robbery, carrying a firearm without a license, and recklessly endangering another person. See Opinion at 1, Commonwealth v. Ali, No. CP-51-CR-0000683-2008 (Pa. Ct. Com. Pl. Phila. Cnty. July 19, 2010) (reproduced as Exhibit A to Resp’ts’ Br. (Doc. No. 16)) [hereinafter “Trial Ct. Op.”]. Following a penalty hearing, the jury sentenced Ali to life imprisonment. Id. The trial court then imposed two consecutive life sentences without parole for the first-degree murder charges and concurrent sentences of 10 to 20 years’ imprisonment on the robbery counts, three and one-half to seven years’ imprisonment for carrying a firearm without a license, and two and one-half years’ imprisonment for recklessly endangering another person. Id. at 1-2.

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The trial court summarized the facts underlying Ali's conviction as follows:

On October 4, 2007, at approximately 7:43 am, 36-year old Mustafa Ali followed a Loomis Armored truck to an ATM machine at the Police and Fire Federal Credit Union on Castor Avenue in Northeast Philadelphia. Mr. Ali parked his newly purchased Acura TL Type "S" a block away and watched Loomis guards, William Widmaier (age 65) and Joseph Alullo (age 54) service the Credit Union ATM machine. Mr. Ali then returned to his car, drove around the block and proceeded to follow the Loomis Armored vehicle to the Wachovia Bank ATM machine in the Roosevelt Shopping Center on Bustleton Avenue in Philadelphia.¹ According to his statement, Mr. Ali watched the two Loomis guards as they began servicing the Wachovia ATM machine. At approximately 8:08 am, Mr. Ali got out of his car and approached the two Loomis guards.

As Mr. Ali neared William Widmaier and Joe Alullo, a shot was fired and struck the driver's side window of the Loomis Armored truck. Although the bullet did not penetrate the window, the vehicle's driver, Joseph Walczak (age 70) was knocked to the deck of the truck by a shard of glass that separated from the window.² Before being struck, Mr. Walczak saw Mr. Alullo walking toward the truck and a black male, with a baseball cap and dark clothes, holding a gun and firing it. Walczak heard four of five shots.

Subsequent thereto, Walczak raised his head and saw William Widmaier and Joe Alullo lying on the ground. The black male, however, was gone. A video camera captured what had occurred and showed the defendant approach Mr. Widmaier on the ground and take a canvas money bag situated nearby. Within minutes of the incident, the police arrived. Joseph Walczak was taken to Frankford Hospital, Torresdale Division where he was treated for lacerations. He was later taken to police headquarters to give a statement.

Following the incident, the police secured the scene and the assigned detective, Detective Stephen Buckley began processing it for evidence. In the course of doing so, police took 140 photographs of the scene, recorded a 31-minute videotape of the scene, and examined the armored car both inside and out. After thoroughly inspecting and processing the armored car, Detective Buckley determined further processing of it was unnecessary and the vehicle was returned to Loomis.

¹ According to the testimony of Joseph Walczak, Joseph Alullo stated that he believed that their vehicle was being followed. This information prompted Mr. Widmaier, the crew chief, to change their route and go to the Wachovia Bank at the Roosevelt Mall instead of their next intended ATM location.

² The decedents, William Widmaier and Joseph Alullo, were both retired police officers. The driver, Joseph Walczak, had worked in the security business most of his career.

On October 5, 2007, an arrest warrant was issued for the defendant in Bucks County, Pennsylvania, on charges of theft by deception, receiving stolen property and passing a bad check during the purchase of the black 2007 Acura TL Type "S." Mr. Ali was arrested at his home at 3850 Woodhaven Road, Apartment 1505 in Philadelphia on the warrant that same day and was taken directly to the Homicide Division of the Philadelphia Police Department for questioning in connection with the robbery and homicide of the two Loomis guards the day before.

At approximately 7:30 pm on Friday, October 5, 2007, Mr. Ali discussed his options with Detective Charles Boyle in an interview room at the Homicide Division. Detective Boyle testified that in response to a question posed by the defendant, he told the defend[an]t that his options were "life and death." At approximately 8:05 pm, the defendant gave a voluntary written statement to Detectives Charles Boyle and Dominic Mangoni in which he admitted attempting to rob the Loomis guards, firing eight shots from his gun and killing Joseph Alullo and William Widmaier. Defendant also admitted to discarding his clothing and the DeWalt gloves that he was wearing when the shooting occurred as well as burying the Ruger 9mm gun he used in the incident. Following his statement, defendant drew a map of the location of the discarded gloves and buried gun. According to the testimony of Detective Boyle, defendant was fully informed of his Miranda rights and at no time during the course of the interview did he appear to be in distress nor did he ever ask to stop or invoke his right to counsel. The interview, which lasted a total of an hour and 50-minutes, ended at 9:55 pm. Based on what the defendant told them, police recovered evidence from a sewer on Townsend Road and nearby field. A search warrant for defendant's apartment also resulted in the recovery of relevant evidence from the defendant's personal computer.

Id. at 2-4.

Ali filed a notice of appeal with the Pennsylvania Superior Court on March 17, 2010. Id. at 2. The Superior Court affirmed Ali's judgment of sentence on July 25, 2011. See Opinion, Commonwealth v. Ali, No. 736 EDA 2010 (Pa. Super. Ct. July 25, 2011) (reproduced as Exhibit B to Resp'ts' Br.) [hereinafter "Super. Ct. Op."]. Ali appealed to the Pennsylvania Supreme Court, but his petition for allowance of appeal was denied on December 28, 2011. See Commonwealth v. Ali, No. 509 EAL (2011) (Pa. Dec. 28, 2011).

On August 28, 2012, Ali filed a timely pro se petition for collateral review pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. §§ 9541-9546.

See Opinion at 2, Commonwealth v. Ali, No. CP-51-CR-0000683-2008 (Pa. Ct. Com. Pl. Phila. Cnty. Jan. 11, 2017) (reproduced as Exhibit C to Resp'ts' Br.) [hereinafter "PCRA Ct. Op."].

Counsel was appointed on November 19, 2013; however, Ali filed motions to remove the court-appointed counsel and proceed pro se. Id. Following a hearing pursuant to Commonwealth v. Grazier, 713 A.2d 81 (Pa. 1998), the PCRA court permitted Ali to proceed pro se on November 3, 2015. PCRA Ct. Op. at 2. On November 29, 2016, the PCRA court dismissed Ali's petition as meritless. Id. at 2-3. Ali then filed a timely appeal with the Pennsylvania Superior Court on December 20, 2016. Id. at 3. Ali raised the following issues on PCRA appeal: (1) the PCRA court's delay in the resolution of his PCRA petition was an abuse of discretion; (2) the PCRA court abused its discretion in considering the Commonwealth's purportedly untimely filed answer; (3) Ali's arrest was improperly "pretextual"; (4) the trial court lacked subject matter jurisdiction; (5) prosecutorial misconduct; (6) the questioning of Ali after his arrest on a separate matter violated the Fourth Amendment; (7) the trial court erred in not allowing psychiatric testimony during the guilt phase; (8) Ali's statement to the police was involuntary; (9) trial counsel was ineffective in arguing multiple defenses; and (10) the jury instructions for first-degree murder were improper. Opinion at 2-3, Commonwealth v. Ali, No. 135 EDA 2017 (Pa. Super. Ct. Aug. 11, 2017) (reproduced as Exhibit D to Resp'ts' Br.) [hereinafter "PCRA Super. Ct. Op."]. On August 11, 2017, the Superior Court affirmed the dismissal of Ali's PCRA petition. Id. at 5. Ali appealed to the Pennsylvania Supreme Court, but his petition for allowance of appeal was denied on January 4, 2018. See Docket, Commonwealth v. Ali, No. 411 EAL 2017 (Pa. Jan. 4, 2018).

Ali filed the present petition for a writ of habeas corpus on February 25, 2018.³ In his petition, he raises the following claims: (1) his arrest “was pretextual lacking probable cause”; (2) he was denied an opportunity to challenge subject matter jurisdiction; (3) his arrest “created an unnecessary delay”; (4) his statement to police was involuntary; (5) ineffectiveness of trial and appellate counsel; (6) denial of due process due to prosecutorial misconduct; and (7) psychiatric testimony should have been allowed during the guilt phase of the trial.

II. APPLICABLE LEGAL STANDARDS

A. Standard for Issuance of a Writ of Habeas Corpus

Congress, by its enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), significantly limited the federal courts’ power to grant a writ of habeas corpus.

Where the claims presented in a federal habeas petition were adjudicated on the merits in the state courts, a federal court shall not grant habeas relief unless the adjudication:

1. Resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
2. Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

The United States Supreme Court has made clear that a writ may issue under the “contrary to” clause of § 2254(d)(1) only if the “state court applies a rule different from the governing law set forth in [United States Supreme Court] cases, or if [the state court] decides a

³ Pursuant to the prison mailbox rule, a pro se prisoner’s habeas application is deemed filed on the date he or she delivers it to prison officials for mailing to the district court, not on the date the application was filed with the court. See Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Ali stated in his habeas petition that he placed his petition in the prison mailing system on February 25, 2018, Pet. at 19, and consequently, I will use that date as the date his petition was filed.

case differently than [the United States Supreme Court has] done on a set of materially indistinguishable facts.” Bell v. Cone, 535 U.S. 685, 694 (2002). A writ may issue under the “unreasonable application” clause only where there has been a correct identification of a legal principle from the Supreme Court, but the state court “unreasonably applies it to the facts of the particular case.” Id. This requires a petitioner to demonstrate that the state court’s analysis was “objectively unreasonable.” Woodford v. Visciotti, 537 U.S. 19, 27 (2002).

State court factual determinations are also given considerable deference under the AEDPA. Palmer v. Hendricks, 592 F.3d 386, 391-92 (3d Cir. 2010). A petitioner must establish that the state court’s adjudication of the claim “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2).

B. Exhaustion and Procedural Default

“[A] federal habeas court may not grant a petition for a writ of habeas corpus . . . unless the petitioner has first exhausted the remedies available in the state courts.” Lambert v. Blackwell, 134 F.3d 506, 513 (3d Cir. 1997) (citing 28 U.S.C. § 2254(b)(1)(A)). The exhaustion requirement mandates that the claim “have been ‘fairly presented’ to the state courts.” Bronshtein v. Horn, 404 F.3d 700, 725 (3d Cir. 2005) (quoting Picard v. Connor, 404 U.S. 270, 275 (1971)). Fair presentation requires that a petitioner have pursued his or her claim “through one ‘complete round of the State’s established appellate review process.’” Woodford v. Ngo, 548 U.S. 81, 92 (2006) (quoting O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999)). The procedural default barrier, in the context of habeas corpus, also precludes federal courts from reviewing a state petitioner’s habeas claims if the state court decision is based on a violation of state procedural law that is independent of the federal question and is adequate to support the

judgment. Coleman v. Thompson, 501 U.S. 722, 729 (1991). “[I]f [a] petitioner failed to exhaust state remedies and the court to which the petitioner would be required to present his [or her] claims in order to meet the exhaustion requirement would now find the claims procedurally barred . . . there is a procedural default for purposes of federal habeas” Id. at 735 n.1; McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999).

To survive procedural default in the federal courts, a petitioner must either “demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.” Coleman, 501 U.S. at 750.

C. Ineffective Assistance of Counsel

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court set forth the standard for claims of ineffective assistance of counsel in violation of the Sixth Amendment. Counsel is presumed to have acted effectively unless the petitioner demonstrates both that “counsel’s representation fell below an objective standard of reasonableness” and that there was “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 686-88, 693-94.

To satisfy the reasonable performance prong of the analysis, a petitioner must show “‘that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.’” Harrington v. Richter, 562 U.S. 86, 104 (2011) (quoting Strickland, 466 U.S. at 687). In evaluating counsel’s performance, the reviewing court “must apply a ‘strong presumption’ that counsel’s representation was within the ‘wide range’ of reasonable professional assistance” and that there are “‘countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a

particular client in the same way.” Id. at 104, 106 (quoting Strickland, 466 U.S. at 689). The reviewing court must “reconstruct the circumstances of counsel’s challenged conduct’ and ‘evaluate the conduct from counsel’s perspective at the time.” Id. at 107 (quoting Strickland, 466 U.S. at 689). “[I]t is difficult to establish ineffective assistance when counsel’s overall performance indicates active and capable advocacy.” Id. at 111.

To satisfy the prejudice prong of the analysis, a petitioner must demonstrate that counsel’s errors were “so serious as to deprive [petitioner] of a fair trial, a trial whose result is reliable.” Id. at 104 (quoting Strickland, 466 U.S. at 687). Thus, a petitioner must show “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. (quoting Strickland, 466 U.S. at 694). This determination must be made in light of “the totality of the evidence before the judge or jury.” Strickland, 466 U.S. at 695.

III. DISCUSSION

14th Amendment

A. Ali’s Claim that He Was Arrested Without Probable Cause in Violation of the Fourth Amendment Is Not Cognizable on Habeas Review

In his first claim for relief, Ali argues that his arrest was “pretextual” because when he was arrested on the Bucks County bad-check case the police lacked probable cause to arrest him for the armored car robbery murder case. Pet. (Doc. No. 1) at 6-10. He contends that his confession and the physical evidence resulting from his arrest should have been suppressed because his arrest violated the Fourth Amendment. Id. This claim is not cognizable.

In Stone v. Powell, the United States Supreme Court held that “[w]here the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an

unconstitutional search or seizure was introduced at his trial.” 428 U.S. 465, 494 (1976). The United States Court of Appeals for the Third Circuit has stated, “[u]nder Stone v. Powell, a federal court may not reexamine the state court’s determination that no Fourth Amendment violation occurred, that a violation had occurred but that introduction of its fruits was harmless, or that any Fourth Amendment violation that might have occurred had harmless results.” Gilmore v. Macks, 799 F.2d 51, 56 (3d Cir. 1986). The Third Circuit has explained an opportunity for full and fair litigation requires only that “no structural defect in the system itself prevented [the petitioner’s] claim from being heard.” Marshall v. Hendricks, 307 F.3d 36, 81 (3d Cir. 2002). In addition, “[a]n erroneous or summary resolution by the state court of a Fourth Amendment claim does not overcome [Stone’s] bar.” Id.; see also Gilmore, 799 F.2d at 57. “A petitioner has . . . a full and fair opportunity to litigate [a Fourth Amendment] claim if the state has an available mechanism for suppressing evidence seized in or tainted by an illegal search or seizure, irrespective of whether the petitioner actually availed himself of that mechanism.” Whitfield v. Phelps, No. 06-137, 2009 WL 700234, at *5 (D. Del. Mar. 16, 2009).

Here, Ali was provided a full and fair opportunity to litigate his Fourth Amendment claim in state court. He availed himself of that opportunity by seeking to exclude the physical evidence and the statement he made after his arrest in a motion to suppress and on direct appeal. See Super. Ct. Op. at 2-8; Trial Ct. Op. at 4-8. The state courts denied his Fourth Amendment claims. Id. The fact that he was unsuccessful in his challenges does not provide a basis for this Court to ignore the holding in Stone. Accordingly, Ali’s Fourth Amendment claim is not reviewable in this forum.

due process
14th Am

B. Ali's Claim that the State Courts Lacked Subject Matter Jurisdiction over his Criminal Prosecution is Both Procedurally Defaulted and Substantively Meritless

Ali argues that the trial court denied him the opportunity to challenge subject matter jurisdiction and that he should not have been prosecuted in a Pennsylvania state court because his crimes were purportedly within the jurisdiction of the federal courts.⁴ Pet. at 12-15. This claim is procedurally defaulted because Ali did not raise it in the trial court or on direct appeal. Although Ali raised the issue on PCRA appeal, the Pennsylvania Superior Court held that Ali was not entitled to review of this claim because it had been waived. See PCRA Super. Ct. Op. at 4 (citing 42 Pa. Cons. Stat. Ann. § 9453(a)(3), (4) (requiring a petitioner seeking PCRA relief to plead and prove that the issue he or she raises has not been waived)); see also 42 Pa. Cons. Stat. § 9544(b) (“[A]n issue is waived if the petitioner could have raised it but failed to do so . . . on appeal or in a prior state postconviction proceeding.”). Accordingly, this claim is procedurally defaulted, as the state procedural rules constitute an “independent and adequate” state ground barring the exhaustion of the claim. See Coleman, 501 U.S. at 729-30; Williams v. Sauers, No. 12-102, 2015 WL 787275, at *13-14 (E.D. Pa. Feb. 25, 2015). Nor does Ali successfully assert any grounds to overcome this procedural default.

Even if Ali's claim regarding subject matter jurisdiction was not procedurally defaulted, it is meritless. As the Superior Court held, “[t]he Commonwealth charged Ali with murder and robbery of two victims, in violation of the Pennsylvania Crimes Code. Ali's claim that the court of common pleas had no jurisdiction is meritless.” PCRA Super. Ct. Op. at 4 n.6.

“Controversies arising out of violations of the Crimes Code are entrusted to the original

⁴ Ali argues that the federal courts had proper jurisdiction because, inter alia, the robbery of the armored truck was a crime against a banking institution pursuant to 18 U.S.C. § 2113. Pet. at 13.

jurisdiction of the courts of common pleas for resolution.” Commonwealth v. Bethea, 828 A.2d 1066, 1074 (Pa. 2003). That Ali could also have been prosecuted and convicted in federal court for related violations of federal law does not mean that he could not be prosecuted and convicted for his violations of Pennsylvania law. Therefore, this claim must fail.⁵

C. Ali’s Claim Based on the Purported Delay in Bringing Him Before a Magistrate Following His Arrest is Meritless

Ali next argues that his rights were violated when the Philadelphia police arrested him on the Bucks County bad-checks warrant and questioned him about the murders and robbery rather than immediately bringing him before a Bucks County magistrate. Pet. at 15-18. He maintains that his arrest was improperly “pretextual” and that there was an unnecessary delay in bringing him before a magistrate. Id. This claim is meritless.⁶ To the extent Ali alleges that his arrest

⁵ In his petition, Ali also summarily claims that his trial and appellate counsel were ineffective in failing to raise this issue. See Pet. at 15. The Superior Court correctly determined on PCRA appeal, however, that Ali’s “bald[] assert[ions]” of ineffectiveness of trial and appellate counsel in failing to argue that Ali should have been tried in federal court since this involved a bank robbery were meritless as counsel cannot be ineffective for failing to raise a meritless claim. PCRA Super. Ct. Op. at 4 n.6 (citing Commonwealth v. Fears, 86 A.3d 795 (Pa. 2017)); see also Real v. Shannon, 600 F.3d 302, 310 (3d Cir. 2010).

⁶ Respondents argue in their brief that this claim is procedurally defaulted because Ali failed to raise it in the trial court or on direct appeal and that the Superior Court found it had been waived when Ali raised it on PCRA appeal. Resp’ts’ Br. at 11 n.1. However, in addressing Ali’s claim that his arrest was pretextual and that his statement was taken after an unnecessary delay, the Superior Court on PCRA appeal held that these issues were previously raised and addressed on direct appeal. PCRA Super. Ct. Op. at 2-4. In his statement pursuant to Pa. R. App. P. 1925(b) on direct appeal, Ali argued that his confession to the police should have been suppressed as the fruit of an unlawful pretextual arrest. Trial Ct. Op. at 6-7. The trial court rejected Ali’s argument, noting that, as it held in denying Ali’s motion to suppress, the United States Supreme Court “has repeatedly held that the subjective motivation underlying an arrest is irrelevant and an arrest is not automatically invalid due to its pretextual nature.” Id. at 7 (citing Arkansas v. Sullivan, 532 U.S. 769, 772 (2001)). Ali did not, however, challenge any delay in his arraignment. Although the Superior Court on direct appeal held that the motion to suppress was properly denied, it did not specifically address whether there was an unlawful pretextual

(Footnote continued on next page)

violated the Pennsylvania Rules of Criminal Procedure, see id. at 15-16, any state-law violation does not provide a basis for federal habeas relief. Estelle v. McGuire, 502 U.S. 62, 63 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.”). Next, Ali’s claim that his arrest violated the so-called “McNabb/Mallory” rule, Pet. at 16, also fails. The “McNabb/Mallory” rule is an exclusionary rule that applies to confessions that violate the prompt presentment requirement of Rule 5 of the Federal Rules of Criminal Procedure. See Corely v. United States, 556 U.S. 303, 309 (2009). The rule is not constitutional in nature and does not apply to state criminal proceedings. See, e.g., Ahlswede v. Wolff, 720 F.2d 1108, 1110 (9th Cir. 1983); United States v. Pitts, No. 13-403-1, 2015 WL 619611, at *9 (E.D. Pa. Feb. 12, 2015); Rodgers v. Petsock, No. 86-2438, 1987 WL 6016, at *2 (E.D. Pa. Jan. 30, 1987). Thus, it does not provide a basis for habeas relief.⁷ Moreover, to the extent Ali contends that any procedural delay after his arrest violated the Fourth Amendment, such a claim is not cognizable on habeas review because he had a full and fair opportunity to litigate the issue in the Pennsylvania courts. See supra Section III.A. As to Ali’s argument that his trial and appellate counsel were ineffective in failing to litigate this issue, that claim would be

arrest. Super. Ct. Op. at 1-8. Nevertheless, because Ali’s claim is meritless regardless of any claims of procedural default, I recommend denial of this claim on the merits. 28 U.S.C. § 2254(b)(2) (“An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.”).

⁷ As Respondents note, the “McNabb/Mallory” exclusionary rule has been modified by 18 U.S.C. § 3501(c), which creates a “safe harbor period for certain voluntary confessions” that were taken within six hours of arrest. See Resp’ts’ Br. (Doc. No. 16) at 10-11; see also United States v. Thompson, 772 F.3d 752, 760 (3d Cir. 2014). Here, Ali gave his inculpatory statement approximately three hours after he was arrested. See Transcript of Record at 85-114, 156-215, Commonwealth v. Ali, No. CP-51-CR-0000683-2008 (Pa. Ct. Com. Pl. Phila. Cnty. Feb. 4, 2010).

meritless because counsel cannot be ineffective for failing to raise a meritless claim. Real, 600 F.3d at 310.

D. Ali's Claim that his Confession and Miranda Waiver Were Involuntary Is Meritless

Ali next maintains that his confession to the police and waiver of an attorney were the product of coercion and, therefore, were not voluntary. Pet. at 19-21. In support of this contention, Ali makes vague claims that he and his wife were threatened and assaulted. Id. This claim lacks substance.⁸

A statement is considered involuntary when the defendant's "will was overborne in such a way as to render his confession the product of coercion." United States v. Latz, 162 F. App'x 113, 118 (3d Cir. 2005); see also Arizona v. Fulminate, 499 U.S. 279, 288 (1991). A determination of whether a statement is voluntary requires consideration of "the totality of the circumstances in which they were made." Latz, 162 F. App'x at 118. These surrounding circumstances include "not only the crucial element of police coercion," but may also include "the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, and mental health." Withrow v. Williams, 507 U.S. 680, 693 (1993) (citations omitted). The voluntariness of Ali's incriminating statements to police is a legal question requiring independent federal determination. Miller v. Fenton, 474 U.S. 104, 110 (1985); see also Lam v. Kelchner, 304 F.3d 256, 264 (3d Cir. 2002) ("[U]nder the AEDPA

⁸ Respondents argue that this claim is procedurally defaulted. Resp'ts' Br. at 11-12. They acknowledge that Ali challenged the voluntariness of his confession in state court, but argue that he never fairly raised the vague claims that he and his wife were threatened with assault as a basis for suppression in the state courts. Id. However, because Ali's claim is meritless regardless of whether procedural default exists, I recommend denial of this claim on the merits. 28 U.S.C. § 2254(b)(2) ("An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.").

habeas standard, we are required to determine whether the state court's legal determination of voluntariness was contrary to or an unreasonable application of Supreme Court precedent.”). However, state-court findings related to “subsidiary factual questions,” such as the length and circumstances of the interrogation and the credibility of the witnesses who testified at the suppression hearing, are treated as presumptively correct. Sweet v. Tennis, 386 F. App'x 342, 345 (3d Cir. 2010); see also 28 U.S.C. § 2254(e)(1).

On direct appeal, Ali argued that he was coerced into confessing and that as a result, his statement should be suppressed. See Trial Ct. Op. at 5. In determining the validity and admissibility of the confession, the trial court considered the totality of the circumstances and the waiver of Miranda rights, including: (1) the voluntariness of the confession, including whether Miranda warnings were given; (2) the temporal proximity of arrest and confession; (3) the presence of intervening circumstances; and (4) the purpose and flagrancy of the official misconduct. Id. (citing Commonwealth v. Gwynn, 943 A.2d 940, 946 (Pa. 2008)). The trial court concluded that Ali's statement was voluntary, finding that the police “interviewed him for approximately an hour and 50 minutes; he was not handcuffed during the interview nor was he under the influence of alcohol or narcotics[;] . . . [he] waived his right to counsel only after the Miranda warnings were administered to him and he read and signed the Miranda portion of the statement and initialed his responses to the questions regarding his understanding of the rights enunciated in Miranda.” Id. at 5-6. Moreover, the trial court noted that, in previously denying Ali's motion to suppress, it had determined that Detective Boyle's testimony that his recollection of the interview showed no indication of threat or force was credible. Id. at 6. On appeal, the Superior Court similarly concluded that Ali's claim that his statement was not voluntary lacked merit. Super. Ct. Op. at 7. Here, nothing in the record suggests that Ali's statements were not

voluntary, nor does Ali provide any allegations beyond his bald assertions that he and his wife were threatened and assaulted to support his claim that he was coerced into confessing and waiving his Miranda rights. There is no evidence to suggest that Ali was physically harmed or threatened; there is no testimony that he was deprived of food, water, or other physical needs that would otherwise serve to overbear a person's will; and there is no indication that the police used unnecessary or overbearing psychological tactics to extract an incriminating statement from him. Accordingly, the state courts' determination that Ali's incriminating statements were voluntary was not contrary to, or an unreasonable application of, clearly established federal law, nor was it an unreasonable application of the facts. 28 U.S.C. § 2254(d). For these reasons, there is no basis for habeas relief on this claim.

E. Ali's Claim of Ineffective Assistance of Counsel is Meritless

Ali further maintains that his trial and appellate counsel were ineffective. Pet. at 21-26. This claim lacks merit.

In his PCRA petition, Ali asserted that his trial counsel were ineffective in presenting "multiple defenses" at trial. See Mem. in Support of PCRA Pet. at 9-10, Commonwealth v. Ali, No. CP-51-CR-0000683-2008 (Pa. Ct. Com. Pl. Phila. Cnty. Aug. 28, 2012) [hereinafter "Mem. in Support of PCRA Pet."]. According to Ali, his attorneys requested that the jury be instructed on the crime of third-degree murder but then, after the jury was so charged, counsel objected to the giving of the charge. Id. The PCRA court concluded that the "the claim was properly deemed lacking in merit because defendant cannot establish that counsel's actions were unreasonable or that he was prejudiced by counsel's actions." PCRA Ct. Op. at 11. Although Ali levied additional vague allegations of ineffectiveness, the PCRA court focused solely on Ali's argument regarding the charges of murder given to the jury. Id. On PCRA appeal, the

Superior Court similarly determined that counsel were not ineffective in presenting “multiple defenses” at trial. PCRA Super. Ct. Op. at 5.

In support of his claim of ineffectiveness in his habeas petition, however, Ali makes only vague and conclusory allegations about having an adversarial relationship with his counsel, feeling pressure to seek a plea agreement, and counsel making unilateral strategic decisions regarding what motions to file, juror selection, and issues to raise on appeal. See Pet. at 21-26. These general assertions do not provide sufficient grounds for habeas relief. See Zettlemoyer v. Fulcomer, 923 F.2d 284, 298 (3d Cir. 1991). Ali makes no allegations identifying specific attorney conduct that would allow this Court to evaluate whether his counsel’s “representation fell below an objective standard of reasonableness” or whether there was “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 686-88, 693-94; see also Palmer, 592 F.3d at 395 (“[A] habeas petitioner’s nonspecific or conclusory allegations of ineffective assistance of counsel do not compel district courts to convene evidentiary hearings in order to delve into the unelaborated factual basis of a habeas petition.”); United States v. Minerd, No. 06-212, 2012 WL 1069946, at *3 (W.D. Pa. Mar. 29, 2012) (“[A] claim of ineffective assistance must identify the specific error(s) counsel has made.”); Robinson v. United States, No. 07-3115, 2010 WL 427739, at *5 (E.D. Pa. Feb. 1, 2010) (noting that where “[p]etitioner [did] not [allege] with specificity any facts in support of [ineffective assistance claims], and instead . . . made only bald, conclusory allegations,” he was not entitled to habeas relief). Thus, Ali’s vague accusations are insufficient to support a finding that counsel was ineffective.

substance. A habeas petition will be granted for prosecutorial misconduct only when the misconduct “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 181 (1986) (internal quotation marks omitted). Here, before the jury deliberated, the trial judge specifically instructed the jury that:

You have heard the arguments of Counsel, and you have seen Counsel during the course of this trial. At times, they may appear to be overzealous. That is to their credit. They are advocates for their client. . . . This case has nothing to do with the lawyers; it has to do with the evidence, and that’s what you are here to consider. You have heard their arguments, and that is not part of the evidence [Y]ou should apply those facts as you find them to the law as I will be giving it to you.

...

It is not the Defendant’s burden to prove that he is not guilty. Instead, it is the Commonwealth that always has the burden of proving each and every element of the crime charged, and that the Defendant is guilty of that crime, beyond a reasonable doubt.

...

Murder may be Murder of the First Degree, Murder of the Second Degree, or Murder of the Third Degree. It will be your duty in this case, jurors, based on the facts, to decide whether Joseph Alullo and William Widmaier died as a result of gunshot wounds inflicted upon them by this Defendant, and if so, whether such killing amount to Murder of the First Degree, Murder of the Second Degree, or Murder of the Third Degree.

Transcript of Record at 17, 21, 41, Commonwealth v. Ali, No. CP-51-CR-0000683-2008 (Pa. Ct. Com Pl. Phila. Cnty. Feb. 17, 2010) [hereinafter “Feb. 17 Tr.”]. Both federal and Pennsylvania law presume that the jury follows the trial court’s instructions. See Gov’t of Virgin Islands v. Mills, 821 F.3d 448, 463 (3d Cir. 2016) (“it is well established that jurors are presumed to follow their instructions”); Commonwealth v. Laird, 988 A.2d 618, 629 (Pa. 2010) (“absent evidence to the contrary, the jury is presumed to have followed the trial court’s instructions”); Commonwealth v. Robinson, 864 A.2d 460, 519 (Pa. 2004) (court’s instruction that arguments of counsel were not evidence and that the jury is the finder of fact cured any improper prejudice

that may have resulted from the prosecutor's comments). Indeed, the trial court, in addressing certain challenges to the jury instructions on direct appeal, determined that "this Court instructed the jury at length on the concept of malice and the necessity of malice for purposes of murder; the instructions further provide the definition and elements of first[-]degree murder as well as the lesser degrees of murder and clearly describe the conscious purpose to bring about death and the scope of premeditation. In sum, . . . the instructions were clearly and accurately presented to the jury." Trial Ct. Op. at 13-14. Accordingly, any potential for confusion resulting from the prosecutor's comments to the jury regarding the Commonwealth's burden and the jury's duty in determining guilt was cured by the trial judge's jury instructions.

Moreover, with respect to Ali's argument that the prosecutor infringed on the jury's determination of the proper degree of guilt, the prosecutor's argument that the third-degree murder was not applicable was not misconduct. The prosecutor was arguing to the jury that it should render a verdict consistent with the evidence presented by the Commonwealth. See Commonwealth v. Freeman, 827 A.2d 385, 413-14 (Pa. 2003) (prosecutor's comments that "[j]ustice, ladies and gentlemen, in this case is nothing less than first-degree murder," were not improper, as the prosecutor merely argued that he had proved the defendant guilty of first-degree murder). During a side bar conversation, defense counsel himself informed the judge that, "[i]n this case, based on the way that the evidence was presented, and the way the arguments were made, basically, this is a decision between First[-] and Second[-]Degree Murder." Feb. 17 Tr. at 60.

Finally, with respect to Ali's argument that appellate counsel was ineffective for failing to raise this issue, see Pet. at 27, counsel cannot be found ineffective for failing to raise an unmeritorious claim, see Real, 600 F.3d at 310.

G. Ali's Claim that His Counsel Were Ineffective in Failing to Introduce Psychiatric Expert Testimony During the Guilt Phase of His Trial is Meritless

In his final claim for relief, Ali alleges that trial and appellate counsel were ineffective in failing to present testimony during the guilt phase of the trial from Dr. Richard Dudley, a psychiatrist who testified during the penalty phase that Ali suffered from borderline personality disorder and who, Ali claims, would have testified that he supposedly did not possess the requisite intent to commit first-degree murder. Pet. at 27-29. This claim lacks merit.¹⁰

Even if the claim was not procedurally defaulted, it is meritless. When a petitioner asserts that his trial counsel was ineffective in failing to call a witness, the petitioner must show: (1) that the witness existed; (2) that the witness was available; (3) that counsel was informed of the existence of the witness or should have known of the witness's existence; (4) that the witness was prepared to cooperate and would have testified on the petitioner's behalf; and (5) that the absence of the testimony prejudiced the petitioner. Commonwealth v. Brown, 767 A.2d 576, 581-82 (Pa. Super. Ct. 2001). Thus, counsel will not be deemed ineffective for failing to call a witness unless there is some showing that the witness's testimony would have been helpful to the

¹⁰ In his PCRA petition, Ali argued that his trial counsel were ineffective in failing to have Dr. Dudley testify during the guilt phase of trial and that appellate counsel was similarly ineffective in failing to raise this issue. See Mem. in Support of PCRA Pet. at 9. On PCRA appeal, the PCRA court determined that Ali's claim that the trial court erred by determining that testimony from the psychiatrist would not have been allowed during the guilt phase did not warrant any relief because it could have been raised previously. PCRA Ct. Op. at 7-8 (citing 42 Pa. Cons. Stat. Ann. § 9544(b)); see also Matters Complained of on Appeal, Commonwealth v. Ali, No. CP-51-CR-0000683-2008 (Pa. Ct. Com. Pl. Phila. Cnty. Dec. 20, 2016). The Superior Court agreed, finding that the issue was waived. PCRA Super. Ct. Op. at 4. The issue of counsel's ineffectiveness was not directly addressed by the Superior Court. However, because Ali's claim is meritless regardless of any claim of procedural default, I recommend denial of this claim on the merits. 28 U.S.C. § 2254(b)(2) ("An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.").

defense. See Commonwealth v. Matias, 63 A.3d 807, 811 (Pa. Super. Ct. 2013) (counsel will not be found ineffective for failing to call a witness unless the defendant can demonstrate that the witness's testimony would have been helpful to the defense).

Here, Dr. Dudley testified at the penalty phase that Ali suffered from borderline personality disorder and a depressive order. Transcript of Record at 113, Commonwealth v. Ali, CP-51-CR-0000683-2008 (Pa. Ct. Com. Pl. Phila. Cnty. Feb. 23, 2010). The record does not reflect that the expert would have testified that Ali was incapable of possessing the requisite intent to commit first-degree murder.¹¹ Absent any evidence supporting Ali's claim that Dr. Dudley could have testified about Ali's ability to form the requisite intent, Ali fails to show that he was prejudiced by the absence of Dr. Dudley's testimony during the guilt phase of the trial. Therefore, trial counsel was not ineffective in failing to introduce Dr. Dudley's testimony during the guilt phase of trial nor was appellate counsel ineffective in failing to raise this issue on appeal.

¹¹ Diminished capacity is an extremely limited defense under Pennsylvania law. See Commonwealth v. Taylor, 876 A.2d 916, 926 (Pa. 2005). "Before a defendant may introduce expert mental health evidence at trial to support a diminished capacity defense, Pennsylvania law requires that he or she establish that the evidence is relevant and probative on the issue of specific intent. Only expert mental health testimony that speaks to mental disorders affecting the cognitive functions necessary to formulate specific intent is relevant and admissible. Where the proffered expert mental health evidence does not speak to those mental disorders that affect cognitive functions, the evidence is irrelevant and hence inadmissible. Moreover, the Pennsylvania Supreme Court has repeatedly rejected the contention that evidence of a defendant's supposed inability to control his or her actions—by virtue of an 'irresistible impulse,' a 'compulsion,' or otherwise—is relevant to negate specific intent, and the court has consistently held that such evidence may not be admitted in support of a diminished capacity defense." Woo v. Beard, No. 05-1105, 2006 WL 3813986, at *1 n.3 (W.D. Pa. Dec. 27, 2006) (internal quotation marks and citations omitted) (citing Taylor, 876 A.2d at 926-27 (collecting cases); Zettlemoyer, 454 A.2d at 949 ("[N]either social maladjustment, nor lack of self-control, nor impulsiveness, nor psycho-neurosis, nor emotional instability, . . . nor all such conditions combined" "bear upon the narrow defense of diminished capacity.")).

IV. CONCLUSION

For the foregoing reasons, I recommend that Ali's habeas petition be denied.

Accordingly, I make the following:

RECOMMENDATION

AND NOW, this 28th day of March, 2019, IT IS RESPECTFULLY RECOMMENDED that the Petitioner's petition for a writ of habeas corpus be DENIED and DISMISSED. There has been no substantial showing of the denial of a constitutional right requiring the issuance of a certificate of appealability. The Petitioner may file objections to this Report and Recommendation. See Local Civ. Rule 72.1. Failure to file timely objections may constitute a waiver of any appellate rights.

/s/ Marilyn Heffley

MARILYN HEFFLEY

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MUSTAFA ALI

CIVIL ACTION

v.

MICHAEL D. OVERMYER, THE DISTRICT
ATTORNEY OF THE COUNTY OF
PHILADELPHIA and THE ATTORNEY
GENERAL OF THE STATE
OF PENNSYLVANIA

NO. 18-1074

AMENDED ORDER

NOW, this 16th day of April, 2019, upon consideration of the Petition Under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* By a Person in State Custody (Document No. 1), the Response to Petition for Writ of *Habeas Corpus*, the Report and Recommendation filed by United States Magistrate Judge Marilyn Heffley (Document No. 20) , and the petitioner's objections to the Report and Recommendation (Document No. 22), and after a thorough and independent review of the record, it is **ORDERED** that this Court's Order of April 15, 2019 is **AMENDED** as follows:

1. The petitioner's objections are **OVERRULED**;
2. The Report and Recommendation of Magistrate Judge Marilyn Heffley is **APPROVED** and **ADOPTED**;
3. The Petition for Writ of *Habeas Corpus* is **DENIED**; and,
4. There is no probable cause to issue a certificate of appealability.

/s/TIMOTHY J. SAVAGE

APPENDIX B

DLD-263

August 22, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 19-1950

MUSTAFA ALI, Appellant

v.

SUPERINTENDENT FOREST SCI; ET AL.

(E.D. Pa. Civ. No. 2-18-cv-01074)

Present: JORDAN, GREENAWAY, JR. and NYGAARD, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)

in the above-captioned case.

Respectfully,

Clerk

ORDER

Ali's application for a certificate of appealability is denied. See 28 U.S.C. § 2253(c). Jurists of reason would agree without debate that the District Court correctly denied his 28 U.S.C. § 2254 petition for essentially the reasons set forth in the Magistrate Judge's well-reasoned report and recommendation.

By the Court,

s/ Richard L. Nygaard
Circuit Judge

A True Copy:



Dated: August 29, 2019
CLW/cc: Mr. Mustafa Ali
Douglas M. Weck, Jr., Esq.

Patricia S. Dodszeweit

Patricia S. Dodszeweit, Clerk
Certified Order Issued in Lieu of Mandate

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1950

MUSTAFA ALI,
Appellant

v.

SUPERINTENDENT FOREST SCI;
ATTORNEY GENERAL PENNSYLVANIA

(E.D. Pa. Civ. No. 2-18-cv-01074)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, and NYGAARD, * Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

* Pursuant to Third Circuit I.O.P. 9.5.3, Judge Richard L. Nygaard's vote is limited to panel rehearing.

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Richard L. Nygaard
Circuit Judge

Dated: October 23, 2019
Lmr/cc: Mustafa Ali
Max C. Kaufman

APPENDIX D

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

December 30, 2019

Mr. Mustafa Ali
Prisoner ID #JK6902
SCI Retreat
660 State Route 11
Hunlock Creek, PA 18621

Re: Mustafa Ali
v. Derek Oberlander, Superintendent, State Correctional
Institution at Forest, et al.
Application No. 19A713

Dear Mr. Ali:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on December 30, 2019, extended the time to and including March 21, 2020.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

APPENDIX E

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**DOCKET**

Docket Number: CP-51-CR-0000683-2008

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

Page 16 of 22

v.

Mustafa Ali

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
3	01/27/2010		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	01/28/2010		Ali, Mustafa
Writ of Habeas Corpus			
4	01/28/2010		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	02/01/2010		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	02/01/2010		Minehart, Jeffrey P.
FORMAL ARRAIGNMENT WAIVED. NOT GUILTY PLEA ENTERED OUT OF THE PRESENCE OF THE JURY.			
FORMAL ARRAIGNMENT WAIVED. NOT GUILTY PLEA ENTERED OUT OF THE PRESENCE OF THE JURY.			
5	02/01/2010		Minehart, Jeffrey P.
Jury Sworn			
3	02/02/2010		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	02/03/2010		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	02/03/2010		Defender Association of Philadelphia
Motion in Limine			
3	02/04/2010		Court of Common Pleas - Philadelphia County
Hearing Notice			

EXHIBIT B



PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION
MOTIONS UNIT
206 Criminal Justice Center
1301 Filbert Street
Philadelphia, PA 19107
(215) 683-7517
Fax (215) 683-7521

February 5, 2010

Mustafa Ali
PP# 1042878

Re: CP-51-CR-0000683-2008

Dear Inmate:

Lack of Jurisdiction is an appeal issue. It cannot be raised during a trial but is applicable only if a conviction occurs.

Thank you,

Criminal Motions Unit
Criminal Justice Center
1301 Filbert Street, Room 206
Philadelphia, PA 19107
215-683-7517

EXHIBIT A

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0000683-2008

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

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v.

Mustafa Ali

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
2	06/06/2014		Court of Common Pleas - Philadelphia County
			Hearing Notice
1	04/07/2015		Ali, Mustafa
			Motion for Removal of Counsel
2	04/07/2015		Ali, Mustafa
			Motion to Proceed Pro Se
1	05/13/2015		Court of Common Pleas - Philadelphia County
			Full Docket Sheet Sent to Inmate
1	05/28/2015		Ali, Mustafa
			Petition for Writ of Habeas Corpus Filed
1	06/30/2015		Minehart, Jeffrey P.
			Order Granting Motion for Continuance
			Grazier hearing rescheduled via video;
			Atty. Gary S. Server
			ADA: Samuel Ritterman
			Steno: Bill Geftman
			Court Clerk: Lula Lewis room 1101
			NCD 9/22/15 in room 1101
2	07/07/2015		Court of Common Pleas - Philadelphia County
			Hearing Notice

CPCMS 9082

Printed: 09/29/2015

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assume any liability for inaccurate or delayed data, errors or omissions on these reports. Docket Sheet information should not be used in place of a criminal history background check which can only be provided by the Pennsylvania State Police. Moreover an employer who does not comply with the provisions of the Criminal History Record Information Act may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

DEFENDER ASSOCIATION OF PHILADELPHIA

1441 Sansom Street
Philadelphia, PA 19102
(215) 568-3190

ELLEN T. GREENLEE
DEFENDER

December 4, 2009

Mr. Mustafa Ali
PP# 1042878
C.F.C.F.
7901 State Road
Philadelphia, PA 19136

Dear Mustafa,

We are in receipt of your letter concerning the cases having to do with pretextual stops and arrests. We have read those cases carefully. I am enclosing the case of Whren v. United States, which deals directly with the issue that is pertinent to our situation.

Unfortunately for us, the cases you cited are not nearly as "on point" to our issue as is the Whren case. Many of your cases involve police conduct without probable cause, others involve the appropriate physical scope of a search, and still others raise "totality of circumstances" issues. Unfortunately, none deal with the issue squarely presented in our case – whether in Pennsylvania a police officer can arrest a defendant on a minor case, for the explicit purpose of questioning him on a more serious, unrelated case. As Karl explained the other day, Whren makes the subjective thoughts of the police irrelevant. In your case, the police had an arrest warrant for the car and wanted to question you about the murder – Whren makes that path constitutional. Your case, with an actual arrest warrant, is far worse than the cases where there is no warrant. Of course a state may decide that its state constitution bars such behavior, and reject Whren – see Washington v. Ladson, a case on your list. Unfortunately, PA has accepted Whren as its law as well.

I'm sorry to answer your question about the pretext issue so negatively, but I don't think it benefits us to do anything but squarely confront the law we are facing.

The Wimbush, Jackson and Hawkins cases are not on point, either. Those cases make it clear that a defendant cannot be arrested on an anonymous tip alone. That's not our case – while some of the information provided to the police proved to be wrong, the police used that information to develop a case in Bucks County on the bad check, etc. While we can keep out of evidence the misinformation provided about you, such misinformation will not negate the warrant they obtained.

We appreciate your letter nonetheless. These are very difficult times, and we are gearing up for an arduous trial. I know that one of us will see you soon. Be well,

Exhibit "B"



**DEFENDER ASSOCIATION
OF PHILADELPHIA**

1441 Sansom Street
Philadelphia, PA 19102
(215) 568-3190 FAX: (267) 765-6990

ELLEN T. GREENLEE
Defender

ELLEN T. GREENLEE
DEFENDER

January 27, 2010

Mustafa Ali
CFCF
7901 State Road
Philadelphia, PA 19136

Dear Mr. Ali:

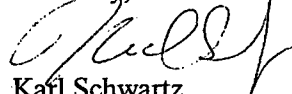
I am in receipt of your motion which asks that we, your present counsel, be removed from your case. I write to reiterate the points that I made to you in the courtroom last week about your proposed motion.

I strongly urge you not to file this motion and continue with our representation. I do so for several reasons. First, it is my firm belief that there is virtually no chance that Judge Minehart would appoint new counsel for you at this late date, considering his knowledge of our capital litigation experience and practice, and the sheer amount of time and expense we have devoted to your case.

Thus I believe there would be no benefit to the motion, however, there might very well be a severe cost. Some of the assertions made in the motion, if revealed to your jury, would be quite prejudicial to your case. I am concerned that if you file the motion, and it is therefore made public, the Commonwealth might be able to use your assertions against you.

Finally, my strong sense is that most of the claims set forth in the motion relate to your concerns about the lawyer-client relationship. You have a right to be consulted and informed of the goings on in your case and we are committed to vindicating your right. Therefore I believe that we can work out any issues or differences that you feel may exist, and as mentioned last week we are very willing to commit to doing so.

Sincerely,



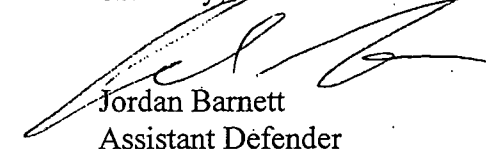
Karl Schwartz
Marc Bookman
Francis Carmen
Assistant Defenders

Exhibit "D"
5

rch 23, 2010. In that issue you raise a series
n addition, you request that we not file
review it. Finally, you request that we
n voir dire, trial, penalty."
th the issues that you think are relevant.
ony, I will certainly read all transcripts with an
ever, I cannot promise you that all of these
es Supreme Court has noted, appellate counsel
sue requested by a defendant, but rather may,
issues to raise on appeal. See Jones v.
py of this opinion for your review.
or your request to provide all filings to you for
I will certainly provide you with a copy of any
provide them prior to our filing them with the

copy of all notes of testimony. Upon the
copy of the notes of testimony that we have.
ests are not to our "liking" that we inform you
to secure private counsel is yours and yours
our requests. We will continue to represent
n of this matter or until another attorney
eal.
ith any questions or concerns.

Sincerely,



Jordan Barnett
Assistant Defender

Exhibit 7
7a

Page 45

Page 46

[1] Commonwealth vs. Ali
[2] issue a warrant for their arrest, what is
[3] your procedure? What do you do next?
[4] A. After I type up the charges in the
[5] probable cause affidavit, I take it to our
[6] local magistrate who then has to read and
[7] approve it if he finds that there is probable
[8] cause.
[9] Q. Did you take this particular warrant to
[10] the local magistrate?
[11] A. Yes, I did.
[12] Q. To whom did you take it?
[13] A. Judge John Kelly.
[14] Q. He is a Judge in Bucks County; is that
[15] correct?
[16] A. Yes.
[17] Q. Is he in the Court of Common Pleas or is
[18] he a magistrate?
[19] A. A magistrate.
[20] Q. C-1 in front of you, that is a sealed
[21] copy of the warrant; is that correct?
[22] A. Yes.
[23] Q. After getting the warrant signed and
[24] sealed by the Judge, what is the next step
[25] you need to take in your procedure?

[1] Commonwealth vs. Ali
[2] A. I would make contact or attempt to make
[3] contact and serve the warrant.
[4] Q. Did you do that in this particular case?
[5] A. In this particular case, I knew that the
[6] Philadelphia Police Department was watching
[7] the location of where the Defendant would
[8] have been sitting.
[9] Q. Is it fair to say you did inform the
[10] police detectives then of the existence of
[11] this warrant at that time?
[12] A. Yes, I did.
[13] Q. Did you do that directly or through your
[14] lieutenant?
[15] A. I actually faxed a copy of this to the
[16] Philadelphia Homicide Detectives, Detective
[17] Lucke and Byard who I was dealing with.
[18] Q. So you would agree with me then you knew
[19] this warrant was going to be used to arrest
[20] Mr. Ali who was at that point a suspect in a
[21] homicide; is that correct?
[22] A. Yes.
[23] Q. You mentioned before that Mr. Carita
[24] mentioned to you prior contact with your
[25] department; is that correct?

Page 47

Page 48

[1] Commonwealth vs. Ali
[2] A. Yes.
[3] Q. Specifically what was he instructed
[4] during that prior contact?
[5] A. To send the letter out and file his
[6] civil claim on the vehicle.
[7] MR. BOOKMAN: I am sorry. I
[8] missed the last question.
[9] BY MR. BARRY:
[10] Q. Mr. Carita spoke to somebody at the
[11] police department before; is that correct?
[12] A. Yes.
[13] Q. That was not you; correct?
[14] A. That was not me. I don't know who it
[15] was and he didn't know who it was who he
[16] spoke to.
[17] Q. So would it be fair to say your entire
[18] basis of knowledge of that prior conversation
[19] is what Mr. Carita told you?
[20] A. Yes.
[21] Q. What did Mr. Carita tell you happened
[22] when he contacted your police department on
[23] the prior occasion?
[24] A. That he was told to send out a certified
[25] letter requesting the funds, the \$5500, and

[1] Commonwealth vs. Ali
[2] to file a civil judgment against Mr. Ali.
[3] Q. Am I correct, that certified letter,
[4] that is the very certified letter you talk
[5] about as being required under PACS 4105.b.1,
[6] ii; is that correct?
[7] A. Yes.
[8] MR. BARRY: The Commonwealth
[9] has no further questions.
[10] THE COURT: Cross-examine.
[11] MR. BOOKMAN: Thank you.
[12] ---
[13] CROSS-EXAMINATION
[14] ---
[15] BY MR. BOOKMAN:
[16] Q. Detective, for lack of a better phrase,
[17] this was kind of a rush job; am I right?
[18] MR. BARRY: Objection.
[19] MR. BOOKMAN: The whole
[20] pretext argument goes to their intent.
[21] I can ask other questions. I can make
[22] it clearer.
[23] THE COURT: Rephrase.
[24] BY MR. BOOKMAN:
[25] Q. Detective, you were asked to put this

10/05/2007 13:30 2157522850

MIDDLETOWN TWP CID

PAGE 01 of 00

COMMONWEALTH OF PENNSYLVANIA
County of: **BUCKS**

WARRANT OF ARREST
Commonwealth of Pennsylvania
VS.

Mag. Dist. No: **07-1-08**
MDJ Name: Hon: **JOHN J KELLY, JR**
Address: **2661 TRENTON ROAD**
LEVITTOWN, PA 19056
Telephone: **(215) 946-5450**

NAME and ADDRESS

ALI, MUSTAFA
3850 WOODHAVEN ROAD
APT.#1505
PHILA, PA 19154



Complaint No: _____ Docket No: **CR-0000790-07**
Charging Officer: **AMOROSO, ANDREW J** NCIC OFF: _____
Date Filed: **10/05/07** OOC: _____
OTN: **K 644303-2** WARRANT ID: **MDJ80015279544**

Warrant Control No: **07-1-08-AW-0000182-2007**
Issued For: **ALI, MUSTAFA**
Reason for Warrant: **FELONY**

Charge(s):	Offense Date
S 18 §3922 §3A2 THEFT BY DECEPTION	05/26/07
S 18 §3925 §3A RECEIVING STOLEN PROPERTY	05/26/07
S 18 §4105 §3A1* BAD CHECKS	05/26/07

TO POLICE OFFICER:

In the name of the Commonwealth of Pennsylvania, you are commanded to take the defendant, **ALI, MUSTAFA**, into custody. When the defendant is taken into custody, bring the defendant before me at the Court address shown above to answer the Commonwealth or **MIDDLETOWN TWP** upon the complaint of **AMOROSO, ANDREW J** charging the defendant with the offense(s) set forth above and further to be dealt with according to law.

Witness the hand and official seal of the issuing authority on this **5TH** day of **OCTOBER** **2007**



(Signature)
JOHN J. KELLY, JR.

AOPC 417F-07
Cymaw

DEFENDANT
DATE PRINTED: **10/05/07**

2:14:20 PM

Page 1 of 2

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF: BUCKSPOLICE
CRIMINAL COMPLAINTMagisterial District Number 07-1-08MDJ Name: Hon. JOHN J. KELLY JRAddress: 2661 TRENTON ROAD
LEVITTOWN PA 19056Telephone: () 215-946-5450COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:

NAME and ADDRESS

MUSTAFA ALI
3850 WOODHAVEN ROAD APT.# 1505
PHILADELPHIA PA 19154Docket No.: CR-790-07Date Filed: 10/ 5 07OTN: K 644303-2

Defendant's Race/Ethnicity <input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic <input checked="" type="checkbox"/> Unknown	Defendant's Sex <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male	Defendant's D.O.B. <u>01/12/1971</u>	Defendant's Social Security Number	Defendant's SID (State Identification Number)
Defendant's A.K.A. (also known as)		Defendant's Vehicle Information Plate Number State Registration Sticker (MMYY)		Defendant's Driver's License Number State
Complaint/Incident Number <u>20071005M0035</u>		LiveScan Tracking Number	Complaint/Incident Number if other Participants	UCR/NIBRS Code <u>1103/26A</u>

Office of the Attorney for the Commonwealth ☐ Approved ☐ Disapproved because: _____

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. Pa.R.Crim.P. 507.)

(Name of Attorney for Commonwealth-Please Print or Type)

(Signature of Attorney for Commonwealth)

(Date)

I, DET ANDREW AMOROSO4476

(Name of Affiant-Please Print or Type)

(Officer Badge Number/I.D.)

of MIDDLETOWN TWP POLICE DEPARTMENTPA009090020071005M0035/CA-22869

(Identify Department or Agency Represented and Political Subdivision)

(Police Agency or ORI Number)

(Originating Agency Case Number (OCA))

do hereby state: (check appropriate box)

1. ☒ I accuse the above named defendant who lives at the address set forth above
☐ I accuse the defendant whose name is unknown to me but who is described as _____

☐ I accuse the the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at _____

(Place-Political Subdivision)

2051 E LINCOLN HWY LANGHORNE DAVIS ACURAin BUCKSCounty on or about MAY 26, 2007

Participants were: (if there were participants, place their names here, repeating the name of the above defendant)

ALI, MUSTAFA

Defendant's Name: MUSTAFA ALI
Docket Number: CR-790-07



POLICE CRIMINAL COMPLAINT

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated.)

THEFT BY DECEPTION (F3): The Actor intentionally obtained or withheld property, namely, 2007 Acura TL Type "S", VIN# 19UUA76597A016021, belonging to Davis Acura, by preventing said other person/business from acquiring information which would affect said other person's judgement of a transaction, that is said actor, passed a bad check for the purchase of the vehicle, in violation of Section 3922(a)(2) of the Pennsylvania Crimes Code, Act of December 6, 1972, as amended, 18 Pa. C.S. 3922(a)(2)

RECEIVING STOLEN PROPERTY (F3): Did intentionally receive, retain or dispose of movable property, namely, 2007 Acura TL Type "S", VIN# 19UUA76597A016021, belonging to Davis Acura, with no intent to restore it to the owner, knowing that such property was stolen or believing that it had probably been stolen, in violation of Section 3925(a) of the Pennsylvania Crimes Code, Act of December 6, 1972, as amended, 18 Pa.C.S./3925(a).

BAD CHECKS (M1): The Actor issued or passed one or more check(s) or similar sight order(s), namely, Check #120 drawn on Philadelphia Federal Credit Union account # 1040000722690, for the payment of money in the amount of, \$5,500, with knowledge that said check(s) or similar sight order(s) would not be honored by the drawee, Philadelphia Federal Credit Union, in violation of Section 4105(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, as amended, 18 Pa. C.S.

(Continued)

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of

1. 3922	A2	of the 18	1
(Section)	(Subsection)	(PA Statute)	(counts)
2. 3925	A	of the 18	1
(Section)	(Subsection)	(PA Statute)	(counts)
3. 4105	A1	of the 18	1
(Section)	(Subsection)	(PA Statute)	(counts)
4.		of the	
(Section)	(Subsection)	(PA Statute)	(counts)

3. I ask that a warrant or a summons be issued and that the defendant be required to answer the charges I have made. (In order for a warrant of arrest to issue, the attached affidavit of probable cause must be completed and sworn to before the issuing authority.)

4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. 4904) relating to unsworn falsification to authorities.

Oct 5, 2007

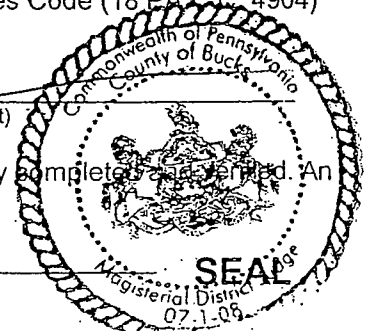
(Signature of Affiant)

AND NOW, on this date OCT. 5, 2007 I certify that the complaint has been properly completed and verified. An affidavit of probable cause must be completed in order for a warrant to issue.

07-1-08

(Magisterial District)

(Issuing Authority)



Defendant's Name: MUSTAFA ALI
Docket Number: CR-790-07



POLICE CRIMINAL COMPLAINT

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated.)

4105 (a) (1)

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of

1.	_____	_____	of the _____	_____
	(Section)	(Subsection)	(PA Statute)	(counts)
2.	_____	_____	of the _____	_____
	(Section)	(Subsection)	(PA Statute)	(counts)
3.	_____	_____	of the _____	_____
	(Section)	(Subsection)	(PA Statute)	(counts)
4.	_____	_____	of the _____	_____
	(Section)	(Subsection)	(PA Statute)	(counts)

3. I ask that a warrant or a summons be issued and that the defendant be required to answer the charges I have made. **(In order for a warrant of arrest to issue, the attached affidavit of probable cause must be completed and sworn to before the issuing authority.)**

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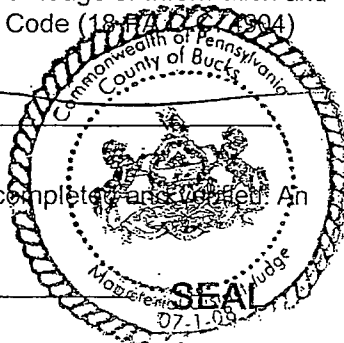
[Signature]
(Signature of Affiant)

AND NOW, on this date OCT. 5TH 2007, I certify that the complaint has been properly completed and verified. An affidavit of probable cause must be completed in order for a warrant to issue.

07-1-08

(Magisterial District)

[Signature]
(Issuing Authority)



Page 85

[1] Commonwealth vs. Ali
[2] doesn't happen all of the time if that is
[3] what you are asking.
[4] Q. Can you talk about situations that you
[5] had been involved in, interrogations where
[6] Defendants were not so forth coming in terms
[7] of information?
[8] MR. BARRY: Objection, Your
[9] Honor. Other cases?
[10] MR. SCHWARTZ: It is a
[11] permissible question.
[12] MR. BARRY: It is not
[13] permissible at all, Your Honor.
[14] THE COURT: I will sustain the
[15] objection. Move on.
[16] BY MR. SCHWARTZ:
[17] Q. Would you have been able to hold him on
[18] the murder or charge him on the murder had he
[19] not given the information that he gave you?
[20] A. That day, no.
[21] Q. Did his level of cooperation during the
[22] course of your interviewing him, did it ever
[23] waver or wane during that process while the
[24] detectives were out looking for what they
[25] were looking for and while you were going

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[1] Commonwealth vs. Ali
[2] A. That's correct, sir.
[3] Q. Detective Bass had been speaking to him
[4] a bit of time before that; is that correct?
[5] A. That is correct.
[6] Q. In fact, you had information from that
[7] statement that he, prior to getting arrested
[8] by Detective Cahill, had been hiding
[9] evidence; is that correct?
[10] A. That's correct.
[11] Q. Destroying evidence; is that correct?
[12] A. That's correct.
[13] Q. He mentioned, I believe, hiding some
[14] clothing somewhere in New Jersey.
[15] You never found that clothing in New
[16] Jersey; is that correct?
[17] A. That's correct, sir.
[18] Q. The gun, he didn't throw out the gun.
[19] He hid the gun; is that also correct?
[20] MR. SCHWARTZ: Objection, Your
[21] Honor.
[22] THE COURT: Overruled.
[23] BY MR. BARRY:
[24] Q. That is your understanding; is that
[25] correct?

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[1] Commonwealth vs. Ali
[2] back and forth with him?
[3] A. No, it never wavered.
[4] MR. SCHWARTZ: I beg your
[5] indulgence.
[6] ---
[7] (Whereupon, the discussion was
[8] held, off the record.)
[9] ---
[10] MR. SCHWARTZ: Nothing
[11] further. Thank you, Detective Boyle.
[12] THE COURT: Cross-examine.
[13] MR. BARRY: Thank you.
[14] ---
[15] CROSS-EXAMINATION
[16] ---
[17] BY MR. BARRY:
[18] Q. Detective Boyle, you already testified
[19] that as part of your strategy in taking the
[20] statement, you made him feel like he was
[21] caught; is that correct?
[22] A. That's correct.
[23] Q. I know I am using a generalization of
[24] the term but you talked about we didn't pick
[25] you out of a phone book; is that correct?

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[1] Commonwealth vs. Ali
[2] A. That's correct.
[3] Q. The gun was in a remote location with a
[4] marker where it could be refound; is that
[5] correct?
[6] A. Yes, sir.
[7] Q. It had the ammunition with the gun where
[8] it was found; is that correct?
[9] A. That's correct.
[10] Q. You also have learned he, prior to
[11] taking that statement, was reading internet
[12] accounts of about what was going on in the
[13] investigation prior to sitting down --
[14] MR. SCHWARTZ: I object to the
[15] retrial of the case at this point.
[16] THE COURT: Objection is
[17] overruled. It is not a retrial.
[18] BY MR. BARRY:
[19] Q. Is that also correct?
[20] A. I am not sure of the question. I didn't
[21] know that at the time.
[22] Q. Are you aware of that now?
[23] A. I am aware of that now. I didn't know
[24] it at the time, no.
[25] Q. As far as the accuracy of his statement,

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[1] Commonwealth vs. Ali
[2] would you agree with me that the first line
[3] of his statement said that he went by the
[4] Roosevelt Mall on his way to work? Do you
[5] remember that, the first line of the body of
[6] his answer?
[7] A. Yes, sir.
[8] Q. Is the Roosevelt Mall on his way to
[9] work?
[10] A. No, sir.
[11] Q. Do you recall that he said that he
[12] didn't take anything out of the bag? Do you
[13] remember that?
[14] A. That's correct.
[15] Q. Are you aware that at the scene, some of
[16] the contents of the bag were found outside
[17] the bag?
[18] A. Yes, sir.
[19] Q. He also stated in his statement that he
[20] approached the two Guards, Mr. Alullo and
[21] Mr. Widmaier, told them to give him what was
[22] in the bag and Mr. Alullo was kneeling down.
[23] He backed up, reached for his weapon.
[24] MR. SCHWARTZ: Judge, I object
[25] at this point.

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[1] Commonwealth vs. Ali
[2] spin on it, you would still take that
[3] statement; is that correct?
[4] A. Yes, sir.
[5] Q. Was that one of those types of
[6] statements here?
[7] A. Partially it could be construed to that,
[8] yes.
[9] MR. BARRY: Nothing further.
[10] THE COURT: Any redirect?
[11] MR. SCHWARTZ: Yes.
[12] ---
[13] REDIRECT EXAMINATION
[14] ---
[15] BY MR. SCHWARTZ:
[16] Q. The information, detective, about hidden
[17] evidence, destroyed evidence, all of that
[18] information, all of that stuff, you learned
[19] that information because he told you that
[20] information; isn't that right?
[21] A. Yes, sir.
[22] Q. What Mr. Barry talked about about trying
[23] to talk to a Defendant and make a Defendant
[24] feel like you have him, you do that with
[25] every Defendant with whom you want to get a

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[1] Commonwealth vs. Ali
[2] THE COURT: Overruled.
[3] BY MR. BARRY:
[4] Q. Mr. Ali said no, no, no, no, no and they
[5] both fired. It may not be word-for-word, but
[6] do you recall that general portion being in
[7] his statement?
[8] A. Yes, sir.
[9] Q. Are you aware from the video that only
[10] one second passed from when he arrived on the
[11] scene to when he shot Mr. Widmaier?
[12] MR. SCHWARTZ: That is
[13] objected to.
[14] THE COURT: Overruled.
[15] BY MR. BARRY:
[16] Q. Are you aware?
[17] A. Yes, sir.
[18] Q. So would you consider that portion of
[19] his statement accurate?
[20] A. At that time because I hadn't seen the
[21] video, was it 100 percent, was his spin on,
[22] yes.
[23] Q. You agree that if a Defendant gives a
[24] statement that identifies himself as
[25] committing the crime but tries to put his

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[1] Commonwealth vs. Ali
[2] full statement from; isn't that fair?
[3] A. That's fair.
[4] Q. That doesn't always happen, does it?
[5] A. No, it doesn't.
[6] MR. SCHWARTZ: I beg your
[7] indulgence for one moment.
[8] ---
[9] (Whereupon, the discussion was
[10] held, off the record.)
[11] ---
[12] BY MR. SCHWARTZ:
[13] Q. As long as we have gone here, let me ask
[14] you this: In the course of the statement,
[15] Mr. Ali told you at one point he said no, no,
[16] no; am I right about that?
[17] A. Yes, sir.
[18] Q. At some point after the incident
[19] happened and you had occasion to view the
[20] videotape -- you did have occasion to view a
[21] videotape of the crime?
[22] A. I have seen it, yes.
[23] Q. Is it fair to say you see a point in
[24] that videotape where Mr. Ali is raising his
[25] left hand; is that fair?

DEFENDER ASSOCIATION OF PHILADELPHIA

1441 Sansom Street
Philadelphia, PA 19102
(215) 568-3190

ELLEN T. GREENLEE
DEFENDER

September 17th, 2008

Mr. Mustafa Ali
PP# 1042878
C.F.C.F.
7901 State Road
Philadelphia, PA 19136

Ali

Got your letter. Don't worry, I'm on top of the Bucks situation. Please don't write to Peter Hall until we talk. I have it covered.

I'll see you this week or next. In the meantime, chill.

A handwritten signature in black ink, appearing to read "Karl". The signature is written in a cursive, stylized font with a large, sweeping initial "K".

EX K

IN THE SEVENTH JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS BUCKS COUNTY
CRIMINAL TRIALS DIVISION

COMMONWEALTH OF PENNSYLVANIA

PP: 1042878

V.

CP# 09-CR-0000008-2008

CHARGES: 18 §4105§§ A

MUSTAFA ALI

MOTION TO WITHDRAW GUILTY PLEA

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, MUSTAFA ALI, the Defendant, Pro se, and request that this Court grant him leave to WITHDRAW HIS GUILTY PLEA.

Petitioner represents the following:

1. Petitioner appeared before your Honor on 5/5/08, and entered a non negotiated guilty plea to all of the pending charges against him. Bad Checks.
2. Sentence was deferred indefinitely.
3. Petitioner wishes to Withdrawal his guilty plea and enter a plea of not guilty to all charges.
4. Petitioner asserts that he is INNOCENT of the charges against him and did commit any of the offenses charged.
5. Petitioner's plea of guilty to the charges on 5/5/08 was not Knowingly, Intelligently nor Voluntarily made, and he believes court appointed counsel misled him.

2008 MAY 14 A 8:38
RECEIVED
CLERK OF COURT
BUCKS COUNTY, PA

1 One of those occasions
2 I either showed him the discovery or gave him
3 a copy of the discovery, and that's when --
4 and the discovery contained some of his PFCU
5 records. And he did, as he testified,
6 suggest to me that I get the remainder of
7 them to show that he was making regular
8 payments automatically deducted, and I did
9 obtain those and showed those to the DA and
10 that's how they withdrew the, in my view,
11 wrongly charged car theft charges.

12 Q. And did you in any way force Mr. Ali
13 to enter a plea in this case?

14 A. From my perspective, no, I did not.

15 Q. And did you -- do you agree with
16 Mr. Ali's testimony that he did relate to you
17 his version of events?

18 A. Yes.

19 Q. Okay. And do you agree as well that
20 you did tell him that he could enter a plea,
21 and if he chose to at some point he could
22 seek to withdraw his plea?

23 A. Yes, absolutely.

24 MS. SPANG: I have no further
25 questions, Your Honor.

DIRECT EXAMINATION

BY MS. SPANG:

Q. Mr. Hall, by whom are you employed?

A.. Public Defender's Office of Bucks County.

Q. And how long have you been employed there?

A. Twenty-four years plus.

Q. Okay. And is it fair to say that in your 24 years plus you've handled hundreds, if not thousands, of cases for the Public Defender's Office?

A. Yes.

Q. And you have handled cases that have been both guilty pleas and trials. Is that fair to say?

A. Yes. Yes.

Q. Okay. In 2008 were you assigned to the defendant's case, to Mr. Ali's case?

A. I was. I asked to be assigned to it.

Q. Okay. And was the defendant at the time being -- he had stated earlier he was incarcerated. Was he being housed in Bucks

MV - 1 (5-05)						I. TAX / FEES	
VEHICLE DESCRIPTION	MAKE OF VEHICLE ACURA		VEHICLE IDENTIFICATION NUMBER (VIN). IF TRACING REQUIRED, TAP SECRETLY TO REVERSE OF THIS COPY 1500A75537A11021		BODY TYPE (SDN, TK, BUS, ETC.) 5.5	MODEL YEAR 2007	PURCHASE PRICE
	GROSS VEHICLE WT. RATING	FUEL TYPE: <input type="checkbox"/> GASOLINE <input type="checkbox"/> DIESEL <input type="checkbox"/> ELECTRIC <input type="checkbox"/> PROPANE <input type="checkbox"/> HYBRID <input type="checkbox"/> OTHER	DIN/MECHANIC #	AUTHORIZED NOTARY PUBLIC OR CERTIFIED INSPECTION MECHANIC (PRINT NAME)		LESS TRADE-IN	
	CHECK THE APPROPRIATE BLOCK IF THE VEHICLE IS TO BE USED OR WAS FORMERLY USED AS A TAXI <input type="checkbox"/> OR A POLICE VEHICLE (IF APPLICABLE)		I certify that I have verified that a legible tracing cannot be secured and that the above VIN and vehicle weight information listed here and in Section F are correct.		SIGN HERE		TAXABLE AMOUNT
APPLICANT INFORMATION	LAST NAME (OR FULL BUSINESS NAME) HONDA LEASE TRUST		FIRST NAME	MIDDLE INITIAL	DATE ACQUIRED/ PURCHASED 05/26/2007	X 6% (.06) SALES TAX *X 7% (.07) (See note on reverse)	
	CO-PURCHASER		DEALER ID NUMBER (IF APPLICABLE) 856683		LESS TAX CREDIT		
	STREET 121 CONTINENTAL DR., SUITE 308 NEWARK DE 19713		CITY	STATE	ZIP	COUNTY CODE 5 1	1. SALES TAX DUE
	NOTE: If a co-purchaser other than your spouse is listed and you want the title to be listed as "Joint Tenants With Right of Survivorship" (On death of one owner, title goes to surviving owner.) CHECK HERE <input type="checkbox"/> . Otherwise, the title will be issued as "Tenants in Common" (On death of one owner, interest of deceased owner goes to his/her heirs or estate.).					1A. Exemption Reason Code (must be a number from 1 to 26 or 0) #2	
MILEAGE INFORMATION	<input type="checkbox"/> REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS		<input type="checkbox"/> IS NOT THE ACTUAL MILEAGE WARNING: ODOMETER DISCREPANCY		ODOMETER READING 381 TENTHS	1C. (PTA) NO.	
	WARNING: FEDERAL AND STATE LAWS REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.					2. TITLE FEE 22.50	
	1ST LIEN DATE: <input checked="" type="checkbox"/> IF NO LIEN, CHECK <input type="checkbox"/>		2ND LIEN DATE: <input type="checkbox"/> IF NO LIEN, CHECK <input type="checkbox"/>		3. LIEN FEE N/A		
LIEN INFORMATION	1ST LIENHOLDER		2ND LIENHOLDER		4. REGISTRATION OR PROCESSING FEE 36.00		
	STREET		STREET		Fee Exempt Number as assigned by the Bureau		
	CITY STATE ZIP		CITY STATE ZIP		5. DUPLICATE REG. FEE NO. OF CARDS N/A		
ADDITIONAL VEHICLE INFORMATION	MAKE OF VEHICLE HONDA		VIN JH1BK12F661508387		MODEL YEAR 2006		6. TRANSFER FEE N/A
	BODY TYPE (SDN, BUS, TK, ETC.) 4 0		CONDITION OF VEHICLE <input type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR		7. INCREASE FEE N/A		8. REPLACEMENT FEE N/A
	PASSENGER TAXI/BUS	PASSENGER <input checked="" type="checkbox"/> TAXI <input type="checkbox"/> LIMOUSINE <input type="checkbox"/> SCHOOL BUS <input type="checkbox"/> MASS TRANSIT <input type="checkbox"/> OTHER BUS <input type="checkbox"/>	SEATING CAPACITY		9. TOTAL PAID (ADD 1 THRU 8) Send One Check In This Amount 58.50		
	MOTORCYCLE MOTOR DRIVEN CYCLE MOPED	CYLINDER CAPACITY 50CC OR LESS <input type="checkbox"/> YES <input type="checkbox"/> NO	BRAKE HORSEPOWER <input type="checkbox"/> 1.5 OR LESS <input type="checkbox"/> 1.6 TO 5.0 <input type="checkbox"/> OVER 5.0				
	MOTOR HOME	OPERABLE PEDALS <input type="checkbox"/> YES <input type="checkbox"/> NO	MAX DESIGN SPEED 25 MPH OR LESS <input type="checkbox"/> YES <input type="checkbox"/> NO				
	TRAILER & VEHICLES BELOW	AUTOMATIC TRANSMISSION <input type="checkbox"/> YES <input type="checkbox"/> NO	DESIGNED/ALTERED FOR ROAD USE <input type="checkbox"/> YES <input type="checkbox"/> NO				
	TRUCK TRUCK TRACTOR	CHASSIS MFR:	BODY MAKE:				
		NUMBER OF AXLES:	REQ. REGISTERED GROSS WT. (INCLUDING LOAD)				
		SUM OF GAWRS:	UNLADEN WT. (EMPTY)				
		REQ. REGISTERED GROSS COMBINATION WT.		GROSS COMBINATION WT. RATING			
APPLICATION FOR REGISTRATION	ORIGINAL PLATE <input checked="" type="checkbox"/> Check One		<input type="checkbox"/> TRANSFER OF PREVIOUSLY ISSUED PLATE		<input type="checkbox"/> TRANSFER & RENEWAL OF PLATE		
	<input type="checkbox"/> PLATE TO BE ISSUED BY BUREAU (PROOF OF INSURANCE MUST BE ATTACHED.)		<input type="checkbox"/> TRANSFER & REPLACEMENT OF PLATE		<input type="checkbox"/> TRANSFER OF PLATE & REPLACEMENT OF STICKER		
	<input type="checkbox"/> EXCHANGE PLATE TO BE ISSUED BY BUREAU		PLATE NO.		REASON FOR REPLACEMENT		
	<input type="checkbox"/> TEMPORARY PLATE ISSUED BY FULL AGENT (NOTE: THIS PLATE WILL EXPIRE 90 DAYS FROM DATE OF ISSUANCE.)		EXPIRES Month Year		<input type="checkbox"/> LOST <input type="checkbox"/> STOLEN <input type="checkbox"/> DEFACED <input type="checkbox"/> NEVER REC'D (LOST IN MAIL)		
	TEMP. PLATE NO. GRH-2800		TRANSFERRED FROM TITLE NO.		VIN		
ISSUING AGENT INFORMATION	INSURANCE COMPANY NAME STATE FARM INS CO		NAIC NO.	POLICY NO. (OR ATTACH BINDER) 1108734C2338	POLICY EFFECTIVE DATE 03/23/2007	POLICY EXPIRATION DATE 09/23/2008	
	I CERTIFY THAT ON MONTH 05 DAY 26 YEAR 2007 I HAVE CHECKED TO DETERMINE THAT THE VEHICLE IS INSURED AND ISSUED TEMPORARY REGISTRATION TO THE ABOVE APPLICANT, IN COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE VEHICLE CODE AND DEPARTMENT REGULATIONS.		ISSUING AGENT (PRINT NAME) DAVIS ACURA		AGENT NO. 856683		
	SIGNATURE OF PERSON FROM WHOM PLATE IS BEING TRANSFERRED (IF OTHER THAN APPLICANT):		SIGN HERE		RELATIONSHIP TO APPLICANT		
	SIGNATURE OF INDIVIDUAL OR AUTHORIZED SIGNER		SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER		TELEPHONE NO. 215 943-7000		
SEAL AND APPLICATION FOR TITLE	SUBSCRIBED AND SWORN TO BEFORE ME: MO. 05 DAY 26 YEAR 2007		FURTHER CERTIFY THAT ALL STATEMENTS HEREIN ARE TRUE AND CORRECT AND MAKE APPLICATION FOR CERTIFICATE OF TITLE FOR THE VEHICLE DESCRIBED IN BLOCK A.				
	SIGNATURE OF PERSON ADMINISTERING OATH		SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER				

SIGN IN PRESENCE OF NOTARY

If your registration documents are not received within 90 days, please contact PennDot.

EXHIBIT A



12800 Townsend Road
Philadelphia, PA 19154-1003
215-934-3500/800-832-PFCU

ACCOUNT NUMBER

0000722690

STATEMENT PERIOD

FROM TO

05/01/07 05/31/07

PAGE 2

Post Date	Effective Date	Description	Amount	Balance
		Processed Check - ACB - PA 07124 TYPE: CHECKPAYMT ID: 1510375573 ACH Trace Number: 031100968620683		
05/08	05/07	Withdrawal PFCU CHECK CARD 05/06 0 7126408165 1 AMOCO OIL 06778534 PHILADELPHIA PA	-7.00	2171.00
05/08	05/07	Withdrawal PFCU CHECK CARD 05/05 0 7125003629 3 SAMSUN FOOTWEAR PHILADELPHIA PA	-69.98	2101.02
05/08	05/07	Withdrawal PFCU CHECK CARD 05/05 0 7125151688 1 THE CHILDRENS PLACE 0 PHILADELPHIA PA	-143.50	1957.52
05/08	05/07	Withdrawal PFCU CHECK CARD 05/05 0 7125818140 3 RITE AID STORE 2698 PHILADELPHIA PA	-10.48	1947.04
05/08		Withdrawal ACH FRANKLIN SQUARE TYPE: RENTPMT ID: 1841275621 ACH Trace Number: 091000010276675	-845.00	1102.04
05/08		Withdrawal PFCU CHECK CARD 05/06 0 7126364076 1 US GAS 1 PENNSAUKEN PENNSAUKEN NJ	-27.00	1075.04
05/08		Withdrawal PFCU CHECK CARD 05/06 0 7126164445 1 THE HOME DEPOT 4103 BENSALEM PA	-116.90	958.14
05/10	05/09	Withdrawal Adjustment Credit Voucher 05/07 0 7127786155 1 THE HOME DEPOT 4103 BENSALEM PA	41.29	999.43
05/11	05/10	Withdrawal PFCU CHECK CARD 05/09 0 7129677913 3 SUPERFRESH 70723 PHILADELPHIA PA	-21.54	977.89
05/11	05/10	Withdrawal PFCU CHECK CARD 05/08 0 7128795387 2 RITE AID STORE 1956 PHILADELPHIA PA	-28.98	948.91
05/14	05/12	Withdrawal at ATM #000000007079 ATM PNC BANK 8152 CASTOR AVE PHILADELPHIA PA PN6227	-250.00	698.91
05/14	05/13	Withdrawal at ATM #000000000006 ATM PNC BANK 2600 GRANT AVE. PHILADELPHIA PA PN7949	-110.00	588.91
05/14		Withdrawal PFCU CHECK CARD 05/11 0 7131922902 3 AMOCO OIL 06778534 PHILADELPHIA PA	-12.00	576.91
05/14		Withdrawal PFCU CHECK CARD 05/12 0 7132485623 2 FAULKNER MAZDA PHILA PA	-20.22	556.69
05/15	05/14	Withdrawal PFCU CHECK CARD 05/12 0 7132342810 2 AMC NESHAMINY 06003578 Bensalem PA	-19.50	537.19
05/15	05/14	Withdrawal PFCU CHECK CARD 05/13 0 7133303954 5 SUPERFRESH 70723 PHILADELPHIA PA	-22.73	514.46
05/15	05/14	Withdrawal PFCU CHECK CARD 05/11 0 7131391052 0 LEES AUTO SUPPLY INC PENNSAUKEN NJ	-14.43	500.03
05/15		Withdrawal at ATM #000000000926 ATM PNC BANK 2600 GRANT AVE. PHILADELPHIA PA PN7949	-420.00	80.03
05/15		Withdrawal at ATM #000000009053 ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007	-50.00	30.03
05/16	05/15	Withdrawal PFCU CHECK CARD 05/12 0 7132470488 1 RISING SUN PHILADELPHIA PA	-20.00	10.03
05/16	05/15	Check 000119 Tracer 13019188	-152.21	-142.18
05/16	05/15	Withdrawal OverDraft fee	-25.00	-167.18
05/18		Deposit ACH MCGRATH TECHNICA TYPE: NET=PAY ID: 1202215757 ACH Trace Number: 12232225916936	1403.45	1236.27
05/21	05/19	Withdrawal at ATM #000000008368 ATM PNC BANK 12301 ACADEMY RD PHILADELPHIA PA PN8360	-110.00	1126.27
05/21		Withdrawal PFCU CHECK CARD 05/18 0 7138953813 6 SUPERFRESH 70723 PHILADELPHIA PA	-27.44	1098.83
* 05/21		Withdrawal PFCU CHECK CARD 05/18 0 7138359130 5 DAVIS ACURA LANGHORNE PA	-500.00	598.83
05/21		Withdrawal ACH FIA ONLINE PYMT TYPE: ONLINE PMT ID: 9500000000 ACH Trace Number: 067010906991429	-237.00	361.83
05/22		Withdrawal ACH VERIZON	-100.80	261.03
--- continued on following page ---				



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EX P Pg. 1

ACCOUNT NUMBER

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STATEMENT PERIOD

FROM

TO

06/01/07

06/30/07

PAGE 3

Post Date	Effective Date	Description	Amount	Balance
		ATM PNC BANK 12301 ACADEMY RD PHILADELPHIA PA PN8361		
06/25		Withdrawal PFCU CHECK CARD	-31.00	1961.35
		06/22 0 7173931298 1 WAWA, INC. PHILADELPHIA PA		
06/25		Withdrawal PFCU CHECK CARD	-5.99	1955.36
		06/22 0 7173797641 6 SUPERFRESH 70723 PHILADELPHIA PA		
06/25		Deposit at ATM #000000002628	1000.00	2955.36
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/25		Deposit at ATM #000000002629	300.00	3255.36
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/25		Deposit at ATM #000000002630	700.00	3955.36
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/25		Withdrawal ACH CHASE	-50.00	3905.36
		TYPE: EPAY ID: 5760039224 CO: CHASE		
		ACH Trace Number: 021000025285212		
06/25		Withdrawal ACH AM-HONDA	-525.00	3380.36 *
		TYPE: PMT ID: 3953472715 CO: AM-HONDA		
		ACH Trace Number: 021200022577918		
06/26	06/25	Withdrawal PFCU CHECK CARD	-54.85	3325.51
		06/23 0 7174236865 3 PHILA ZOO- GROUP SALES 215-243-1100 PA		
06/26		Deposit at ATM #000000002715	800.00	4125.51
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/26		Deposit at ATM #000000002716	200.00	4325.51
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/26		Deposit Adjustment at ATM #000000002716	-200.00	4125.51
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/26		Deposit at ATM #000000002717	100.00	4225.51
		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
06/26		Withdrawal ACH STATE FARM RO 27	-342.17	3883.34
		TYPE: SFPP ID: 9000307001		
		CO: STATE FARM RO 27		
		ACH Trace Number: 021000027336169		
06/27	06/26	Withdrawal PFCU CHECK CARD	-12.82	3870.52
		06/23 0 7174988094 0 PHILADELPHIA ZOO PHILADELPHIA PA		
06/27	06/26	Withdrawal PFCU CHECK CARD	-26.02	3844.50
		06/25 0 7176672618 3 SUPERFRESH 70723 PHILADELPHIA PA		
06/28		Deposit	173.85	4018.35
06/29	06/28	Withdrawal PFCU CHECK CARD	-15.70	4002.65
		06/27 0 7178645901 1 WAL MART PHILADELPHIA PA		
06/29	06/28	Withdrawal PFCU CHECK CARD	-59.98	3942.67
		06/26 0 7177831303 1 SAMSUN FOOTWEAR PHILADELPHIA PA		
06/29	06/28	Withdrawal PFCU CHECK CARD	-40.00	3902.67
		06/26 0 7177148363 2 GILLY JEANS CHERRY HILL NJ		
06/29	06/28	Withdrawal PFCU CHECK CARD	-75.98	3826.69
		06/26 0 7177550113 2 FOOTLOCKER 8277 PHILADELPHIA PA		
06/29	06/28	Withdrawal Adjustment Credit Voucher	75.98	3902.67
		06/26 0 7177550114 2 FOOTLOCKER 8277 PHILADELPHIA PA		
06/29		Deposit ACH MCGRATH TECHNICA	1292.74	5195.41
		TYPE: NET=PAY ID: 1202215757		
		CO: MCGRATH TECHNICA		
		ACH Trace Number: 122232226971916		
06/30		Ending Balance		5195.41
		NSF Fee Paid Period to Date	25.00	
		NSF Fee Paid Year to Date	25.00	
		Overdraft Fee Paid Period to Date	0.00	
		Overdraft Fee Paid Year to Date	175.00	

--- Continued on following page ---

131,981

EXHIBIT E



PHILADELPHIA
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ACCOUNT NUMBER

0000722690

STATEMENT PERIOD

FROM TO

07/01/07 07/31/07

PAGE 3

Post Date	Effective Date	Description	Amount	Balance
		TYPE: NET=PAY ID: 1202215757		
		CO: MCGRATH TECHNICA		
		ACH Trace Number: 122232227453106		
07/16	07/13	Withdrawal PFCU CHECK CARD	-741.00	3390.10
	07/12 0	7193578918 3 PHILA NEWSPAPER AD 215-854-4794 PA		
07/16	07/13	Withdrawal Adjustment Credit Voucher	741.00	4131.10
	07/12 0	7193578920 3 PHILA NEWSPAPER AD 215-854-4794 PA		
* 07/16	07/13	Withdrawal PFCU CHECK CARD	-1000.00	3131.10
	07/12 0	7193252401 2 DAVIS ACURA LANGHORNE PA		
07/16	07/13	Withdrawal PFCU CHECK CARD	-500.00	2631.10
	07/12 0	7193252402 2 DAVIS ACURA LANGHORNE PA		
07/16		Withdrawal	-700.00	1931.10
07/16		Withdrawal Teller Net Transfer To Share 0001	-25.77	1905.33
		Teller Net Transfer		
07/17	07/16	Check 000122 Tracer 11096393	-64.14	1841.19
07/17		Withdrawal ACH FIA ONLINE PYMT	-300.00	1541.19
		TYPE: ONLINE PMT ID: 9500000000		
		CO: FIA ONLINE PYMT		
		ACH Trace Number: 067010905273078		
07/17		Withdrawal	-3.00	1538.19
		CHECK CARD REPLACEMENT FEE		
07/18		Withdrawal	-400.00	1138.19
07/23		Withdrawal ACH PhoneCharge	-3.50	1134.69
		TYPE: Fee ID: 9323187862 CO: PhoneCharge		
		ACH Trace Number: 021000028263294		
07/23		Withdrawal ACH CHASE	-50.00	1084.69
		TYPE: EPAY ID: 5760039224 CO: CHASE		
		ACH Trace Number: 021000027674573		
07/23		Withdrawal ACH Verizon By Phone	-243.00	841.69
		TYPE: PAYMENT ID: 7323181805		
		CO: Verizon By Phone		
		ACH Trace Number: 021000027474047		
07/24		Withdrawal ACH PhoneCharge	-3.50	838.19
		TYPE: Fee ID: 8304674002 CO: PhoneCharge		
		ACH Trace Number: 021000028454234		
07/24		Withdrawal ACH PECO	-173.00	665.19
		TYPE: PAYMENT ID: 9304674001 CO: PECO		
		ACH Trace Number: 021000028722783		
07/24		Withdrawal ACH STATE FARM RO 27	-342.17	323.02
		TYPE: SFPP ID: 9000307001		
		CO: STATE FARM RO 27		
		ACH Trace Number: 021000020796791		
07/26		Withdrawal at ATM #000000008250	-50.00	273.02
		ATM PNC BANK 12301 ACADEMY RD PHILADELPHIA PA PN8360		
07/27	07/26	Withdrawal PFCU CHECK CARD	-21.25	251.77
	06/30 0	7181239270 1 AMC NESHAMINY 06003578 Bensalem PA		
07/27		Deposit ACH MCGRATH TECHNICA	1403.45	1655.22
		TYPE: NET=PAY ID: 1202215757		
		CO: MCGRATH TECHNICA		
		ACH Trace Number: 122232227942131		
07/30		Withdrawal PFCU CHECK CARD	-36.00	1619.22
	07/27 0	7208888842 1 WAWA, INC. PHILADELPHIA PA		
07/30		Withdrawal PFCU CHECK CARD	-16.00	1603.22
	07/26 0	7207410584 5 WAWA 8035 PHILADELPHIA PA		
07/30		Withdrawal ACH AM-HONDA	-525.00	1078.22
		TYPE: PMT ID: 3953472715 CO: AM-HONDA		
		ACH Trace Number: 021200025939008		
07/31	07/30	Withdrawal PFCU CHECK CARD	-53.50	1024.72
	07/28 0	7209191655 3 SPRINT FONCARD REFRESH 800-366-0707 KS		
07/31		Deposit ACH PAYPAL	0.05	1024.77
		TYPE: VERIFYBANK ID: PAYPALRD33		
		CO: PAYPAL		
		ACH Trace Number: 091000011509280		
		--- Continued on following page ---		

116,790



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ACCOUNT NUMBER
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STATEMENT PERIOD
FROM TO
08/01/07 08/31/07

PAGE 4

Post Date	Effective Date	Description	Amount	Balance
08/27	08/22 0	7234067394 2 WAWA 8035 PHILADELPHIA PA	-42.80	901.47
08/27	08/24 0	7236145761 3 SPRINT FONCARD REFRESH 800-366-0707 KS	-54.00	847.47
08/27	08/23 0	7235311297 5 TITAN MARKETING INC CHERRY HILL NJ	100.00	947.47
08/28		Deposit Teller Net Transfer From Share 0001	-46.00	901.47
08/28	08/25 0	7237082231 2 REEBOK 512 PHILADELPHIA PA	200.00	1101.47
08/28		Deposit Teller Net Transfer From Share 0001	-525.00	576.47 *
08/29	08/28	Teller Net Transfer		
08/29	08/27 0	7239960884 2 GOLDEN FEVER PHILADELPHIA PA	-50.00	526.47
08/30	08/29	ACH Trace Number: 021200027018404	200.00	726.47
08/30	08/29	08/26 0 7238116410 2 PA SCOLL 717-9301103 TX	-270.00	456.47
08/30	08/29	08/28 0 7240134436 3 SUNOCO SVC STATION PHILADELPHIA PA	-15.00	441.47
08/30	08/29	Withdrawal at ATM #214592	-60.50	380.97
08/30		ATM Cardtronics CCS AMBER/ALLEGNY AVE PHILADELPHIA PA SU000426		
08/30		Deposit at ATM #000000008315	700.00	1080.97
08/30		ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
08/30		Deposit at ATM #000000008316	1000.00	2080.97
08/31	08/30	ATM PHILADELPHIA FCU 12800 TOWNSEND ROAD PHILADELPHIA PA 825007		
08/31	08/30	Withdrawal PFCU CHECK CARD	-25.00	2055.97
08/31	08/30	08/28 0 7240011192 2 WAWA, INC. PHILADELPHIA PA	-42.80	2013.17
08/31	08/30	08/28 0 7240739486 1 SPRINT FONCARD REFRESH 800-366-0707 KS		
08/31		Ending Balance		2013.17
		NSF Fee Paid Period to Date	0.00	
		NSF Fee Paid Year to Date	25.00	
		Overdraft Fee Paid Period to Date	0.00	
		Overdraft Fee Paid Year to Date	175.00	

Account Balance Summary		Balance
Total Shares	Balance	Total Loans
REGULAR SAVINGS	4008.81	
PFCU CHECKING	2013.17	

	6021.98	
	=====	

"EX R" "Exp" pg 3



12800 Townsend Road
Philadelphia, PA 19154-1003
215-934-3500/800-832-PFCU

ACCOUNT NUMBER
0000722690
STATEMENT PERIOD
FROM TO
09/01/07 09/30/07

Post Date	Effective Date	Description	Amount	Balance
09/24	09/21	Withdrawal PFCU CHECK CARD	-28.26	2459.57
	09/19 0	7262349742 1 US GAS 1 PENNSAUKEN PENNSAUKEN NJ		
09/24		Withdrawal PFCU CHECK CARD	-80.25	2379.32
	09/20 0	7263113584 7 SPRINT FONCARD REFRESH 800-366-0707 KS		
09/24		Deposit ACH PAYPAL	200.00	2579.32
		TYPE: TRANSFER ID: PAYPALSD11 CO: PAYPAL		
		ACH Trace Number: 091000012230794		
09/25		Withdrawal ACH STATE FARM RO 27	-369.77	2209.55
		TYPE: SFPP ID: 9000307001		
		CO: STATE FARM RO 27		
		ACH Trace Number: 021000024134394		
09/25		Withdrawal ACH AM-HONDA	-525.00	1684.55
		TYPE: PMT ID: 3953472715 CO: AM-HONDA		
		ACH Trace Number: 021200026220216		
09/26	09/25	Withdrawal PFCU CHECK CARD	-32.01	1652.54
	09/23 0	7266703292 1 WAWA, INC. PHILADELPHIA PA		
09/26	09/25	Withdrawal PFCU CHECK CARD	-53.50	1599.04
	09/23 0	7266526754 3 SPRINT FONCARD REFRESH 800-366-0707 KS		
09/26		Deposit	2000.00	3599.04
09/27	09/26	Withdrawal PFCU CHECK CARD	-320.00	3279.04
	09/21 0	7264179250 2 PA SCOLL 717-9301103 TX		
09/27	09/26	Withdrawal PFCU CHECK CARD	-34.50	3244.54
	09/24 0	7267737236 3 SUNOCO SVC STATION PHILADELPHIA PA		
09/28	09/27	Withdrawal PFCU CHECK CARD	-89.99	3154.55
	09/25 0	7268585046 2 FOOT LOCKER 08620 PHILADELPHIA PA		
09/28		Withdrawal at ATM #727169119152	-140.00	3014.55
		ATM PNC BANK 2250 LINCOLN HWY TREVOSE PA		
		PN7142		
09/30		Ending Balance		3014.55
		NSF Fee Paid Period to Date	0.00	
		NSF Fee Paid Year to Date	25.00	
		Overdraft Fee Paid Period to Date	0.00	
		Overdraft Fee Paid Year to Date	175.00	

Total Shares
REGULAR SAVINGS
PFCU CHECKING

Account Balance Summary

Balance
10513.26
3014.55
13527.81

? where is it

Balance

APPENDIX F

COMMONWEALTH OF PENNSYLVANIA, Appellee v. MUSTAFA ALI, Appellant
SUPERIOR COURT OF PENNSYLVANIA
2017 Pa. Super. Unpub. LEXIS 3045; 175 A.3d 1065
No. 135 EDA 2017
August 11, 2017, Decided
August 11, 2017, Filed

Notice:

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37 PUBLISHED IN TABLE
FORMAT IN THE ATLANTIC REPORTER.**

Editorial Information: Subsequent History

Appeal denied by Commonwealth v. Ali, 2018 Pa. LEXIS 6896 (Pa., Jan. 4, 2018)

Editorial Information: Prior History

Appeal from the PCRA Order November 29, 2016. In the Court of Common Pleas of Philadelphia County, Criminal Division at No(s): CP-51-CR-0000683-2008. Commonwealth v. Ali, 2017 Phila. Ct. Com. Pl. LEXIS 239 (Jan. 10, 2017)

Judges: BEFORE: LAZARUS, J., MOULTON, J., and FORD ELLIOTT, P.J.E. MEMORANDUM BY LAZARUS, J.

Opinion

Opinion by: LAZARUS

Opinion

MEMORANDUM BY LAZARUS, J.:

Mustafa Ali appeals from the order, entered in the Court of Common Pleas of Philadelphia County, denying his petition filed under the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546 ("PCRA"). After our review, we affirm.

Following trial, a jury convicted Ali of two counts of first-degree murder,¹ two counts of robbery,² and one count each of carrying a firearm without a license,³ and recklessly endangering another person.⁴ Following a penalty hearing, the jury sentenced Ali to life imprisonment. The court imposed two consecutive life sentences, without parole, for the murder convictions, and a concurrent aggregate sentence of 16 to 32 years' imprisonment on the remaining convictions. On direct appeal, this Court affirmed Ali's judgment of sentence, and the Supreme Court of Pennsylvania denied allowance of appeal.

Ali filed a timely *pro se* PCRA petition on August 28, 2012. The court appointed counsel and Ali filed a motion to remove counsel and proceed *pro se*. The court held a *Grazier*⁵ hearing, and allowed Ali to proceed *pro se*. Following a hearing on Ali's petition, the court denied relief. Ali filed a *pro se* appeal and a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

Ali raises the following issues for our review:

1. Was not Judge Minehart's prolonging this matter an inordinate delay and an abuse of discretion?
2. Did not the Judge abuse his discretion in considering the Commonwealth's answer, although it was filed after the deadline set by him?
3. Did not the court err in ruling Appellant's arrest was not pretextual, lacking probable cause?
4. Was not Appellant denied due process when he was denied an opportunity to challenge subject matter jurisdiction?
5. Was not Appellant denied due process because of prosecutorial misconduct?
6. Was not the questioning of Appellant after arrest on a separate matter an unnecessary delay and a Fourth Amendment violation?
7. Was not the court in error in ruling psychiatric testimony was not allowed during the guilty phase?
8. Was not the court in error in ruling Appellant's statement was voluntary?
9. Was not the court in error in ruling Appellant's counsel was not ineffective for arguing multiple defenses?
10. Was not the court in error in giving erroneous first-degree murder instructions? Appellant's Brief, at 3-4.

To be entitled to PCRA relief, appellant must establish, by a preponderance of the evidence, his conviction or sentence resulted from one or more of the enumerated errors in 42 Pa.C.S.A. § 9543(a)(2), his claims have "not been previously litigated or waived[.]" and "the failure to litigate the issue prior to or during trial, . . . or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel." 42 Pa.C.S.A. 9543(a)(3)-(4). An issue is previously litigated if "the highest appellate court in which [appellant] could have had review as a matter of right has ruled on the merits of the issue[.]" 42 Pa.C.S.A. § 9544(a)(2). An issue is waived if appellant "could have raised it but failed to do so before trial, at trial, . . . on appeal or in a prior state post [-]conviction proceeding." 42 Pa.C.S.A. § 9544(b).

Our review is limited to determining whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. **Commonwealth v. Berry**, 2005 PA Super 219, 877 A.2d 479, 482 (Pa. Super. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Carr**, 2001 PA Super 54, 768 A.2d 1164, 1166 (Pa. Super. 2001).

After our review, we agree with the Honorable Jeffrey P. Minehart's determination that Ali is not entitled to collateral relief. We note that all but two of Ali's claims have been previously litigated or waived. Issues 3, 6 and 8 were previously raised and addressed by this Court on direct appeal, **Commonwealth v. Ali**, 32 A.3d 280 (Table) (unpublished memorandum, filed July 25, 2011), and our Supreme Court denied allowance of appeal. **See Commonwealth v. Ali**, 613 Pa. 649, 34 A.3d 81 (Dec. 28, 2011). **See also** 42 Pa.C.S.A. § 9544(a)(2), (3). Ali's claims in issues 4, 6, 5, 7 and 10 have been waived. **See** 42 Pa.C.S.A. § 9543(a)(3), (4).

Ali's properly raised claims, issues 1, 2 and 9, afford him no relief. We agree with the PCRA court's determination that the disposition of Ali's petition was not subject to an unconstitutional delay, that the

court's consideration of the Commonwealth's untimely motion did not prejudice Ali, and that counsel were not ineffective in for presenting multiple defenses at trial. **See** PCRA Court Opinion, 1/11/17, at 6-7, 9.

Accordingly, we affirm the order denying Ali's petition for post-conviction relief, and we do so on the basis of Judge Minehart's opinion. We direct the parties to attach a copy of this opinion in the event of further proceedings.

Order affirmed.

Judgment Entered.

Date: 8/11/2017

Footnotes

1

18 Pa.C.S.A. § 2502(a).

2

18 Pa.C.S.A. § 3701.

3

18 Pa.C.S.A. § 6106.

4

18 Pa.C.S.A. § 2705.

5

Commonwealth v. Grazier, 552 Pa. 9, 713 A.2d 81 (Pa. 1998) (holding when waiver of right to counsel is sought at post-conviction and appellate stages, on-the-record determination should be made that waiver is knowing, intelligent, and voluntary).

6

We note that Ali numbers this issue as 7 in the Argument section of his brief. To the extent that Ali baldly asserts at the end of his argument that trial and appellate counsel were ineffective for failing to argue that Ali should have been tried in federal court since this involved a bank robbery, we find no relief is due. The Commonwealth charged Ali with murder and robbery of two victims, in violation of the Pennsylvania Crimes Code. Ali's claim that the court of common pleas had no jurisdiction is meritless. **See Commonwealth v. Fears**, 624 Pa. 446, 86 A.3d 795 (Pa. 2017) (counsel cannot be deemed ineffective for failing to raise a meritless claim).

CERTIFICATE OF COMPLIANCE

No.

MUSTAFA ALI
v
, Petitioner

Superintendent S.C.I. Mahanoy;
Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2800 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

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

Executed on 3/5 ^{March 5}, 2020

Mustafa Ali
Mustafa Ali #JIC6902

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-1950

Ali v. Superintendent Forest SCI
(E.D. Pa. No. 2-18-cv-01074)

To: Clerk

1) Motion by Appellant for leave to appeal in forma pauperis

The foregoing motion to proceed in forma pauperis is granted. The Court may reconsider in forma pauperis status or request additional information at any time during the course of these proceedings.

For the Court,

s/ Patricia S. Dodszeit
Clerk

Dated: May 16, 2019
CLW/cc: Mr. Mustafa Ali
Douglas M. Weck, Jr., Esq.