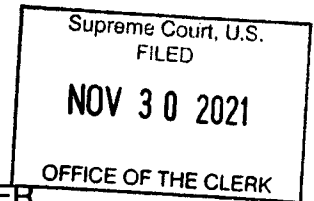


No. _____

21-6499

IN THE

SUPREME COURT OF THE UNITED STATES



HENRY PRATT — PETITIONER
(Your Name)

vs.

Commonwealth of PA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of PA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HENRY PRATT
(Your Name)

2135 South 61ST ST
(Address)

PA 1 PA 19142
(City, State, Zip Code)

(Phone Number)

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

HENRY PRATT,
PETITIONER

vs.

COMMONWEALTH OF PENNSYLVANIA
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

Henry Pratt
2135 South 61st Street
Philadelphia, PA 19142
(213) 808-3212

I. Question Presented

Where the trial court erred by precluding the Use of a Civil Settlement Agreement between Henry Pratt and Nationwide which was admissible to show Nationwide's bias and motive to fabricate to obtain restitution.

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IV. Petition for Writ of Certiorari

Henry Pratt respectfully petitions this court for a writ of certiorari to review the judgment of the Commonwealth of Pennsylvania Superior Court.

V. Opinions Below

The decision by the Superior Court of the Commonwealth of Pennsylvania denying Mr. Pratt's direct appeal reported as Commonwealth of Pennsylvania vs. Henry Pratt, Docket No. 2961 OF 2019 (2/26/21).

VI. Jurisdiction

Mr. Pratt's petition for hearing to the Supreme Court of the Commonwealth of Pennsylvania, Docket No. 122 EAL 2021 was denied on August 30, 2021. Mr. Pratt invokes this Court's jurisdiction under 28 U.S.C. §1257, having timely filed this petition for writ of certiorari within ninety days of the Commonwealth of Pennsylvania Supreme Court's judgment.

VII Constitutional Provisions Involved

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII Statement of the Case

This matter is before the Supreme Court after the Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court on August 30, 2021.

Henry Pratt was found guilty of Insurance Fraud, 18 Pa.C.S.A. §4117 A2; Criminal

Attempt n 18 Pa.C.S.A. §3922 A1; and Conspiracy, 18 Pa.C.S.A. §903).

Criminal Attempt - Theft By Deception-False Impression Guilty F3 18 § 901.

On April 7, 2009, Progressive issued a check in the amount of \$10,497.39, made payable to both Henry Pratt and Chase. Id. at 75. On April 9, 2009, [A presented the check to Delmar Check Cashing (hereinafter “Delmar”) located in Folcroft, Pennsylvania. Id. at 73. A Delmar cashier cashed the check, gave the money to Henry Pratt, whereupon Delmar submitted the check to its bank for payment. Id. at 75.

On October 29, 2009, Henry Pratt filed an insurance claim with Nationwide Insurance Company (Nationwide) for the abovementioned vandalism incident. June 12, 2015, N.T. at 17. On November 3, 2009, a Nationwide special investigator reviewed Mr. Pratt’s insurance claim on the Bentley resulting from a October 28th vandalism incident. Id. at 7. On November 9, 2009, the Nationwide investigator and an auto appraiser went to Magic to meet with Mr. Pratt and Magic in order to assess the Bentley’s damage. Id. at 35. The investigator took a statement from Henry Pratt and the appraiser took pictures of the damage. Id. at 36, 120. The total damage to the Bentley was appraised at \$48,560.92. Id. at 121. At this time, the Bentley was more severely damaged than it was on October 28, 2009, with dents and scratches on every panel, with impact holes from a rod shaped object, with a broken side mirror, with a cracked windshield, and with the phrase “booty snatcher” carved into the hood of the vehicle. Id. at 3, 7, 121-31.

Several days later, the Nationwide investigator went to meet with Officer Bryant to discuss the Bentley's damage. Id. at 11. The investigator showed Officer Bryant pictures taken at Magic of the damage and compared the pictures to the description of the damage in the prior police report. Id. at 15.

As the investigation continued on October 5, 2011, an arrest warrant issued for Henry Pratt and he was arrested on the same day. June 17, 2015, N.T. at 26, 44. The record reveals that police recovered a diary, several receipts, one (1) Mac Book Pro laptop, one (1) Tumi laptop, one (1) Sprint USB device, three (3) AT&T USB devices, one (1) AT&T Blackberry Torch 9800, one (1) iPhone, and one (1) iPad. Id. at 30-32.

Prior to trial, the Commonwealth filed a motion in limine to preclude the admission, under Pennsylvania Rule of Evidence 408, of a civil settlement between Nationwide and Appellant. The Honorable Robert P. Coleman ("the pretrial court") held a hearing on the motion on February 18, 2014, and subsequently granted the motion.

The trial court improperly excluded evidence of a prior civil settlement. Henry Pratt sought introduction of evidence regarding the fact that Nationwide (the complainant) disputed his insurance claim, performed a full investigation, talked to the same police that testified against Mr. Pratt at his criminal trial, and ultimately settled the claim in Mr. Pratt's favor. Mr. Pratt did not seek to use the amount of the settlement but simply the fact that a full blown investigation took place; and that the investigator spoke with police and this led the investigator ultimately

validating the claim. This would not only serve as impeachment of the police and of the Nationwide investigator, but was also critical exculpatory evidence. Defense counsel should have been permitted to elicit exculpatory information gleaned from the police officer which led him to settle the claim in the favor of Henry Pratt.

On June 11, 2015, Henry Pratt proceeded to a jury trial. On June 18, 2015, the jury found Appellant guilty of insurance fraud, conspiracy to commit insurance fraud, and attempted theft by deception,³ and acquitted him of forgery. On November 5, 2015, the trial court imposed concurrent terms of six to twelve months of incarceration, with immediate parole, followed by four years of probation for each of the insurance-fraud and conspiracy convictions, and eleven and one-half to twenty-three months of incarceration, with immediate parole, followed by four years of probation for the attempted theft-by-deception conviction. N.T., 11/5/15, at 36–37.

Appellant filed post sentence motions, which were denied on March 7, 2016.

There was no evidence at trial that Henry Pratt presented false information to Nationwide and thus this element of the charges against him was not proven. No witness claimed that Mr. Pratt vandalized the vehicle in question. The evidence was that the owner of the body shop, co-defendant Magri, intentionally vandalized the vehicle.

Relevant evidence is described as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

or less probable than it would be without the evidence. Pa. R. Evid. 401. Evidence is relevant if it “logically or reasonably tends to prove or disprove a material fact in issue, tends to make such a fact more or less probable, or affords the basis for or supports a reasonable inference or presumption regarding the existence of a material fact.” *Commonwealth v. Davis*, 554 A.2d 104, 108 (Pa.Super. 1989) (citations omitted). Thus, the threshold for relevance is very low.

Exclusion of relevant evidence in cases where credibility is outcome determinative, as it is here, is reversible error. See. e.g., *Commonwealth v. Woeber*, 174 A.3d 1096, 1099 (Pa. Super. 2017) (vacating judgment after trial court excluded evidence of the complaining witness’s statement that individuals other than the defendant may have sexually assaulted her); *Commonwealth v. Rouse*, 782 A.3d 1041, 1045 (Pa. Super. 2001).

Pennsylvania Rule of Evidence 408(b) recognizes the importance of cross-examination regarding credibility. While evidence of a settlement is generally inadmissible, the rule specifically allows introduction of the evidence for the purpose of “proving a witness’s bias or prejudice.”

“It is particularly important that, where the determination of a defendant’s guilt or innocence is dependent upon a prosecution witness, adequate opportunity be afforded to demonstrate through cross-examination that the witness is biased.” *In Interest of Dixon*, 654 A.2d 1179, 1181 (Pa.Super. 1985).

There is no question that complainant Nationwide has a pecuniary interest in its testimony against Henry Pratt because it was entitled to restitution if Mr. Pratt

was found guilty. Commonwealth vs. Pozza, 750 A.2d 889, 894 (Pa.Super. 2000). The Pennsylvania Supreme Court has specifically held that the Court is required to award restitution to an insurance company in such situations. Id.

Amendment XIV, Section 1 states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Therefore, the trial court's refusal to allow cross examination of Nationwide about its potential bias in this regard was a clear violation of Mr. Henry Pratt's Constitutional rights.

On direct appeal Henry Pratt alleged the following:

- A. The trial court erred in holding that the prior civil settlement evidence was inadmissible;
- B. The trial court erred in not allowing Mr. Pratt to cross examine the Nationwide witness about its investigation into the claim even after the Commonwealth "opened the door" to such issues

.....

The Superior Court of Pennsylvania summarily dismissed these claims by

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stating:

.....

“... It is beyond cavil that where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived.

Commonwealth v. Woodward, 129 A.3d 480, 502 (Pa. 2015).

COMMONWEALTH OF PENNSYLVANIA v. HENRY PRATT, IN THE
SUPERIOR COURT OF PENNSYLVANIA, No. 2961 EDA 2019 (2/26/21).

1. **Did the Trial Court Err when it prevented Defense counsel from cross examining witness Eugene Pratt regarding whether the ADA would inform his Sentencing Judge about his cooperation and/or whether or not he would receive a Benefit from testifying against Defendant?**
2. **Did the Trial Court Err in Permitting Documents which the Commonwealth Purported to be from Defendant's Diary Even though there was no Proof that Defendant Wrote the entries on the date of the incident and even though C62 was not relevant?**
3. **Did the Trial Court Err in finding that the Evidence was Sufficient to Convict Defendant and in finding that the Conviction was not against the Weight of the Evidence even though there was no "presentment" for insurance fraud; no "agreement" for conspiracy; and no "substantial act" for theft by deception?**
4. **Did the Trial Court Err in Failing to Grant a New Trial Despite Prosecutorial Misconduct in the ADA's Closing Arguments?**

Prosecutorial misconduct. There were several times in the Commonwealth's closing where the ADA made intentionally false claims about things which were not in evidence and which would inflame the Jury, appeal only to emotions and which amounted to impermissible burden shifting and an impermissible discussion about Defendant's character.

Limited Cross-Examination of a Cooperating witness. Defendant was not given a fair opportunity to impeach Eugene Pratt who was currently facing charges on related but different fraud charges. While Defendant was able to elicit that the witness was hoping for leniency; Defendant was not permitted to get into the specifics of the cases and the fact that a particularly harsh Judge was going to be sentencing him. This violates Defendant's constitutionally protected right to fairly confront witnesses against him with evidence of that witness' own bias and self-interest.

However, even if Pa.R.E.408 does apply in criminal cases, evidence of the Settlement Agreement should have been permitted as it falls squarely within the exception contained in subsection (b) of the rule, because it tends to prove the Nationwide investigator's bias in testifying – to recoup restitution for money paid to Defendant pursuant to the settlement.

Nationwide spent a considerable sum of money on Defendant's claim. They not only paid a large sum, but did so after conducting its own full-blown investigation by their special investigation department which cost Nationwide additional money. Nationwide would recoup these costs in the form of restitution payments if Defendant was found guilty of the charges against him. Thus, Nationwide had a clear bias and motive to fabricate testimony. At a minimum, Defendant should have been permitted to challenge the Nationwide witness' motive for his testimony and should have been permitted to elicit the fact that Nationwide would gain a pecuniary benefit if Defendant was found guilty and thus would be required to repay Nationwide in restitution because Nationwide had paid out for the underlying claim.

Further, this limit of Defendant's ability to conduct a full and fair cross-examination of the complainant violated his rights under the Pennsylvania Constitution, Article 1 § 9 and the United States Constitution, Sixth Amendment, which guarantees that "in all prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." "[T]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." ... "the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-

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examination.” Davis at 316–317, 94 S.Ct., at 1110 (citing Greene v. McElroy, 360 U.S. 474, 496[,], 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959)).

It is well established “that a witness may be cross-examined as to any matter tending to show the interest or bias of that witness.” Commonwealth v. Nolen, 535 Pa. 77, 83, 634 A.2d 192, 195 (1993) (footnote omitted). See also: Commonwealth v. Butler, 529 Pa. 7, 14, 601 A.2d 268, 271 (1991); Commonwealth v. Williams, 524 Pa. 218, 228, 570 A.2d 75, 80 (1990); Commonwealth v. Coades, 454 Pa. 448, 452–453, 311 A.2d 896, 898 (1973).

“It is particularly important that, where the determination of a defendant's guilt or innocence is dependent upon the credibility of a prosecution witness, an adequate opportunity be afforded to demonstrate through cross-examination that the witness is biased.” In Interest of Dixon, 654 A.2d 1179, 1181 (Pa. Super. 1995) (citing Commonwealth v. Birch, 532 Pa. 563, 566, 616 A.2d 977, 978 (1992). See also: Commonwealth v. Lane, 533 Pa. 276, 279–280, 621 A.2d 566, 568 (1993); Commonwealth v. Reed, 435 Pa.Super. 36, 44–48, 644 A.2d 1223, 1227–1228 (1994) (plurality opinion).

There is no question that Nationwide had a real pecuniary interest in its testimony against Defendant because it was entitled to restitution if Defendant was found guilty. Com. v. Pozza, 750 A.2d 889, 894 (Pa. Super. 2000). The Supreme Court has held specifically that the Court is required to award restitution to an insurance company in such situations. Id.

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Therefore, the trial Court's refusal to allow cross examination of Nationwide about its potential bias in this regard was a clear violation of Defendant's Constitutional rights.

B. The Trial Court Erred in Not Allowing Defendant to Cross Examine the Nationwide Witness about its investigation into the claim even After the Commonwealth "opened the door" to such issues

Rule 611(b) Scope of Cross Exam: Cross-examination of a witness other than a party in a civil case should be limited to the subject matter of the direct examination and matters affecting credibility, however, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination..."

On direct examination, nationwide investigator Frank McCole testified to discussions held with his policy holder (Defendant) regarding settlement with Defendant. He read from his "diary system", specifically:

I have received multiple calls from the PH each day after I met with him on 11/09/2009. The PH inquired about status on all of the calls and was **pushing for a settlement decision**. I politely advised the PH that my investigation was still ongoing and that I hoped to resolve it soon. I advised the PH that one of the things I needed to do involved meeting with the police officer. I advised the PH that this may be a reason for delay because I didn't know who she was yet or when she was working next. I advised the PH that I will continue with my investigation and try to expedite same. The PH understood my position, claimed to understand the issues at the conclusion of each of our conversations." NT 6/12/15, P79-80.

The Commonwealth, through its questioning of its own witness, "opened the door" and made Mr. McCole's "settlement decision", "investigation", and his "hope to resolve it" part of the witness' direct testimony – which undoubtedly amounted to testimony against the interest of Defendant since it had to do with Defendant pushing for a decision of the claim. The Confrontation Clause protects Defendant in this circumstance and affords

him the right to question the witness against him about these issues that the Commonwealth itself brought into the case. Defendant should have been permitted to cross examine on the settlement decision, the investigation leading to the decision to settle, and what he learned from meeting with the police that ultimately lead to the decision to settle.

What we know is that *after* the investigator met with the police officer (Officer Shamal Bryant) the insurance investigator decided to validate the claim. Thus, it was proper to allow Defendant to find out why, what was done in that meeting? What was said? Did the Officer indicate that she did not have a vivid recollection and was not sure of what the damages were? If so, that then could have been used as evidence against the veracity of the Police officer who ultimately testified against Defendant. (See Officer Bryant's Testimony, NT 6/15/15, pg 68 – 92).

C. The Trial Court Erred in Admitting Prior Bad Acts

The Pre-Trial Court erred when it granted the Commonwealth's Motion to Admit Prior Bad Acts and evidence of other acts pursuant to Pa.R.E.404(b), where such ruling allowed the inclusion of irrelevant, non-probative and unduly prejudicial evidence which did not fall within any evidentiary exception against Appellant and where the scope of that evidence was unreasonably overly expansive and included prior and subsequent bad acts in violation of Appellant's Constitutional right to a fair trial pursuant to the PA Constitution Article I § 8 and the United States Constitution, 6th Amendment.

The confrontation clause absolutely allows this type of cross examination for the reasons outlined above in Section

More specifically to the issue of government witnesses who may seek favor in their own criminal cases is the case Com v. Evans, 512 A2d 626 (Pa. Super. 1986). This case holds that cross examination should be permitted in the context of questioning witnesses concerning not only his role in the incident in question but also whether he had any *expectation* of leniency concerning other charges against him in the same jurisdiction. Id.

This right is guaranteed by the US and PA constitution to confront witnesses and the Defendant must be permitted to challenge a witness's self-interest by questioning him about *possible* or actual favored treatment by a prosecuting authority in the case at bar or any other nonfinal matter involving the same prosecuting authority.

In Pennsylvania a witness under indictment for the same crime involved in the case in which he is testifying is permitted to be cross-examined about that indictment. Commonwealth v. Ross, 434 Pa. 167, 252 A.2d 661 (1969). The rationale for permitting this type of cross-examination is that the jury should be allowed to evaluate whether the witness testified for the prosecution to gain favorable treatment in his own case. 3A J. Wigmore, EVIDENCE § 967 (Chadbourn rev. 1970). This possible bias is placed before the jury so that it may better weigh and judge that witness's credibility. If we permit a jury to infer that a co-indictee's testimony is biased because he *may* receive favorable treatment, we cannot logically preclude the jury from drawing the same inference when the co-indictee may *have already received* favorable treatment. "Whatever tends to show the interest or feeling of a witness in a cause is competent by way of cross-

examination.” Commonwealth v. Farrell, 187 Pa. 408, 423, 41 A. 382, 384 (1898). External circumstances tending to indicate that a witness may have received money or some other reward which may produce biased testimony is admissible. 3A J. Wigmore, EVIDENCE, § 961 (Chadbourn rev. 1970). The defense was entitled to have the jury know that the witness, Blagman, was a co-indictee who received a three-month probation sentence to a misdemeanor charge and that the more serious felony charges against him were nolle prossed.

Com. v. Evans, 512 A.2d 626, 630–31 (Pa. 1986).

In Com. v. Slaughter, 394 A.2d 453, 460 (Pa. 1978) the Supreme Court held that even with respect to the past juvenile criminal activity of a minor; the cross-examining attorney is still permitted to explore this area of bias.

The trial Court seemingly acknowledges the importance of the PA constitution’s protections in this regard. Pa. Const. Article 1, Section 9. Yet the court claims it was within its discretion to limit such examination. These are mutually exclusive when it comes to direct evidence against a defendant from a known cooperating witness who had similar charges against him prosecuted by the same government authority in the same Court.

The trial court states in its Opinion that it was enough for the Jury to simply know the witness may benefit from a reduced sentence. (Trial Court opinion pg 14). However, the trial court ignores the probative value of the specific charges against Eugene Pratt and their incredible similarity with the charges against Defendant. This shows that the trial court abused its discretion or at least failed to consider the added probative value of this particular situation. The trial court claimed in its opinion that the proposed question was “irrelevant” which is plainly an error. It is highly relevant that Eugene Pratt’s case was

pending in the same Court and prosecuted by the same DA's office and on extremely similar charges. It was also highly relevant that Eugene Pratt's criminal record was extensive and this is something the Jury should have been made aware of because of how important it was for Pratt to gain favor with the DA and Philadelphia Judges.

With regard to the specifics about Judge Wogan (the Judge hearing Mr. Pratt's case); Defense counsel was trying to elicit the fact that the witness knew, or believed that Judge Wogan was a Judge who would have given a very stiff sentence and this would have given Pratt more bias and motive to cooperate and/or fabricate his testimony. This was not hearsay because it was about the witnesses' own state of mind and would have explained his subsequent conduct, i.e. the reasons for why he would have felt such a need to gain favor with Judge Wogan.

IX REASONS FOR GRANTING THE WRIT

A. To validate the principle that in a criminal insurance fraud case evidence of a civil settlement should be admissible at trial is if is relevant and questions the credibility of the insurance company complainant.

There is no question that complainant Nationwide has a pecuniary interest in its testimony against Henry Pratt because it was entitled to restitution if Mr. Pratt was found guilty. Commonwealth vs. Pozza, 750 A.2d 889, 894 (Pa.Super. 2000). The Pennsylvania Supreme Court has specifically held that the Court is required to award restitution to an insurance company in such situations. Id.

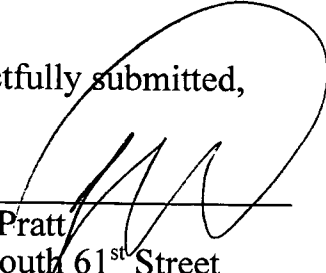
There was no evidence at trial that Henry Pratt presented false information to Nationwide and thus this element of the charges against him was not proven. No witness claimed that Mr. Pratt vandalized the vehicle in question. The evidence

was that the owner of the body shop, co-defendant Magri, intentionally vandalized the vehicle.

X. CONCLUSION

For the foregoing reasons Mr. Pratt respectfully requests that this Court issue a writ of certiorari to review the judgment of the Superior Court of the Commonwealth of Pennsylvania.

Respectfully submitted,



Henry Pratt
2135 South 61st Street
Philadelphia, PA 19142
(213) 808-3212

LIST OF ALL PROCEEDINGS

1. TRIAL COURT - COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, COMMONWEALTH OF PENNSYLVANIA VS. HENRY PRATT, DOCKET NO. CP-51-CR-0004759-2012 - JUDGMENT OF SENTENCE NOVEMBER 5, 2015
2. STATE APPELLATE COURT, SUPERIOR COURT OF PENNSYLVANIA, COMMONWEALTH OF PENNSYLVANIA VS. HENRY PRATT, DOCKET NO. 2961 EDA 2019, APPEAL DENIED FEBRUARY 26, 2021
3. STATE SUPREME COURT, PENNSYLVANIA SUPREME COURT, COMMONWEALTH OF PENNSYLVANIA VS. HENRY PRATT, DOCKET NO. 122 EAL 2021, PETITION FOR ALLOWANCE OF APPEAL DENIED, AUGUST 30, 2021