No. 21-6702

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2022

OSCAR PORTER

Petitioner,

vs.

ADMINISTRATOR OF THE NEW STATE PRISON;
ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Oscar Porter
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Petitioner is confined

QUESTIONS PRESENTED

1. Is the Sixth Amendment violated when trial counsel pre-judges and excludes close friends and family from testifying as alibi witnesses without investigation in a murder trial with a single uncorroborated eyewitness?

2. Does 28 U.S.C. §2254(d)2 require the federal court to grant relief when the state court's finding that petitioner's potential alibi witness was his "paramour" was objectively unreasonable where trial counsel made the claim despite never speaking to the witness.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner, Oscar Porter, certifies that the names of all parties to this proceeding appear in the caption of this Petition for Writ of Certiorari.

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

Petitioner, Oscar Porter, respectfully petitions this Court for a writ of certiorari to review the order of the Court of Appeals for the Third Circuit denying his writ of habeas corpus where Petitioner's Sixth Amendment right to the effective assistance of counsel was denied when trial counsel refused to investigate and call an alibi witness during his murder trial.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit decided July 12, 2021, appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the District of New Jersey decided April 29, 2020, appears at Appendix B to the petition and is unpublished.

STATEMENT OF JURISDICTIONAL

On April 29, 2020, the United States District Court for the District of New Jersey entered a final Judgment denying appellant's 28 U.S.C. §2254 petition for issuance of a writ of habeas corpus and denying him a certificate of appealability. On May 22, 2020, appellant filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit. On October 28, 2020, the Third Circuit, pursuant to 28 U.S.C. §2253(c)(1), entered an Order granting appellant a certificate of appealability on his claim that he was denied his right to the effective assistance of counsel when trial counsel failed to interview and call witnesses Katrina Adams.

On July 12, 2021, the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of the petition for the writ of habeas corpus.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

28 U.S.C. §2254(d)(2)

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the 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."

STATEMENT OF THE CASE

On December 10, 2004, an Essex County Grand Jury returned a nine count indictment charging Petitioner with committing the following crimes, in Newark, New Jersey on September 11, 2003: conspiracy to commit robbery, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1 (Count One); robbery of David Veal, while armed, in violation of N.J.S.A. 2C:15-1 (Count Two); attempted murder of David Veal, in violation of N.J.S.A. 2C:5-1, and N.J.S.A. 2C:11-3 (Count Three); aggravated assault of David Veal, in violation of N.J.S.A. 2C:12-1(b)(1) (Count Four); robbery of Rayfield Ashford, while armed, in violation of N.J.S.A. 2C-15-1 (Count Five); felony murder by causing the death of Rayfield Ashford during the course of committing a robbery, in violation of N.J.S.A. 2C:11-3a(3) (Count Six); knowing or purposeful murder of Rayfield Ashford with a handgun, in violation of N.J.S.A. 2C:11-2a(1), (2) (Count Seven); possession of a firearm, a handgun, without a permit to carry, in violation of N.J.S.A. 2C:39-5b (Count Eight); and possession of a weapon a handgun, with a purpose to use it unlawfully against the person or property of another, in violation of N.J.S.A. 2C:39-4a. (Count Nine)

On June 7, 2005, trial commenced in the Superior Court of New Jersey, Law Division, Essex County and continued through June 16, 2005. At the end of the second day of deliberations, the jury announced it had reach a partial verdict. The Foreperson, stated to the Court that the jury could not reach a verdict on Count Seven (murder), found Petitioner not guilty on Count Five (robbery of Ashford), and guilty on Count One (Conspiracy to commit robbery), Count Two (robbery of Veal), Count Three (attempted murder), Count Four (aggravated assault), Count Six (felony murder), Count Eight (possession of a handgun), and Count Nine (possession of a handgun with an unlawful purpose). The jury was polled and individual jurors disagreed with the announced verdicts on Counts Six, Eight and Nine. A

mistrial was declared on Counts Six through Nine and each of the subsequent counts were dismissed.

Petitioner was sentenced to consecutive 20-year terms of imprisonment on Counts Two and Three, after the court merged Count One in Counts Two and Three, and a concurrent 10-year term of imprisonment on Count Four, for an aggregate sentence of 40 years imprisonment, with parole ineligibility for eighty-five percent of the term under the No Early Release Act (NERA). The also imposed various mandatory monetary fines.

On direct appeal Petitioner's convictions were affirmed in an unpublished opinion, State v. Porter, 2007 WL 2460179 (App. Div. 2007) and his petition for certification to the Supreme Court of New Jersey was denied, State v. Porter, 193 N.J. 276 (2007).

On January 18, 2008, Petitioner filed a pro se petition for post-conviction relief ("PCR") and thereafter appointed counsel filed a supplemental petition with supporting certifications. In a letter opinion dated July 24, 2009, the PCR court denied Petitioner's petition without holding an evidentiary hearing. The New Jersey Appellate Division affirmed the denial of the PCR. Thereafter, the Supreme Court of New Jersey reversed the Appellate Division's affirmance of the denial of the PCR petition and remanded to the Law Division for an evidentiary hearing on Petitioner's claim that he was denied effective assistance of counsel based on the failure to investigate his alibi defense, among other claims. State v. Porter, 216 N.J. 343 (2013).

On June 6, 2014, an evidentiary hearing was conducted in the New Jersey Law Division. The PCR court heard regarding trial counsel's failure to investigate and advance an alibi defense. Two witness testified at the evidentiary hearing: Petitioner's alibi witness Katrina Adams and trial counsel, Gerald Saluti. On October 6, 2014, the PCR court issued a letter opinion denying the petition. On appeal the New Jersey Appellate Division affirmed the PCR court's denial of the

Petition. On January 20, 2017, the Supreme Court of New Jersey denied the petition for certification. State v. Porter, 228 N.J. 502 (2017).

On April 24, 2017, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 in the United States District for the District of New Jersey. On April 29, 2020, the district court issued an opinion and Order denying the writ of habeas corpus and certificate of appealability.

On May 22, 2020, Petitioner filed a Notice of Appeal and on June 24, 2020, the application for certificate of appealability. On October 28, 2020, the Court granted is the certificate of appealability on the issue of ineffective assistance of trial counsel for failure to investigate and present an alibi defense.

On July 12, 2021, the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of the petition for the writ of habeas corpus.

REASON FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER TRIAL COUNSEL VIOLATES THE SIXTH AMENDMENT WHEN HE PREJUDGES AND EXCLUDES GIRLFRIENDS AS ALIBI WITNESSES IN A MURDER TRIAL WHERE IDENTIFICATION WAS AT ISSUE.

Petitioner, Oscar Porter, asserted that his right to the effective assistance of counsel under the Sixth Amendment was violated when trial counsel Gerald Saluti, refused to call or investigate his long-time live-in girlfriend, Katrina Adams, as an alibi during his trial for murder for which the state presented no physical or forensic evidence supporting its lone eyewitness. Trial counsel flatly rejected Mr. Porter's request to use Ms. Adams as an alibi because among other things, "he typically did not like to use relatives or close friends as alibi witnesses because they could be biased." Third Circuit op. at p. 6. Counsel did not investigate or speak to Ms. Adams prior to deciding she would been a "poor witness." Id. at pp. 6 to 7. Further, counsel mischaracterized Adams as a "paramour" when she was in fact Petitioner's high school sweetheart. Id. This pre-judging of Adams reliability and competence as an alibi witness without speaking to her was deficient performance that prejudiced Mr. Porter's defense given the weakness of the state's case. Strickland v. Washington, 466 U.S. 668, 687 (1984).

"The Sixth Amendment guarantees to each criminal defendant 'the Assistance of Counsel for his defence.'" McCoy v. Louisiana, 138 S. Ct. 1500, 1507 (2018). "To gain assistance, a defendant need not surrender control entirely to counsel." Id. "For the Sixth Amendment, in granting to the accused personally the right to make his defense, speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant." Id. at 1508. [Internal brackets and quotations omitted].

"Trial management is the lawyer's province: Counsel provides his or her assistance by making decisions such as "what arguments to pursue, what evidentiary objections to raise, and

what agreements to conclude regarding the admission of evidence." Id. [citations and quotations omitted].

This Court has determined that some decisions "are reserved for the client." Id. These include, "whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal." Id. This Court has also found that "[a]utonomy to decide that the objective of the defense is to assert innocence belongs in [the decisions reserved for the client]." To that end, counsel has the obligation to present evidence of innocence at a defendant's request, provided that evidence is competent. See U.S. Const. Amend. VI. (The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor."); see also Washington v. Texas, 388 U.S. 14, 17-18 (1967); Chambers v. Mississippi, 410 U.S. 284, 294-95 (1973) (defendant was denied a fair trial because state's hearsay rules prevented him from calling witnesses who would have offered reliable exculpatory testimony); Crane v. Kentucky, 476 U.S. 683, 690 (1986) (defendant's has a right to present a complete defense, including witnesses in his favor).

In this matter, Ms. Adams, testifying at an evidentiary hearing nearly a decade after Petitioner's trial, maintained that Petitioner was innocent of the crime because on the night of the robbery, Petitioner was at home with her. Third Circuit op. at p. 7; June 6, 2014 transcript at pp. 17-13 to 18-23. Mr. Porter requested that trial counsel Saluti "assert innocence" and present evidence of that innocence in the form of his domestic partner's alibi. McCoy, 138 S. Ct. at 1508; See ABA Model Rule of Professional Conduct 1.2(a)(2016)(a "lawyer shall abide by a client's decisions concerning the objectives of the representation").

If a person is innocent of a crime, the most likely place he or she would be is with a close friend or family member. Permitting attorneys to prejudge the veracity of alibi's simply because

the person who is willing to testify is close to the defendant, subverts the spirit and purpose of the Sixth Amendment. Particularly in a case such as this one in which the state connected Petitioner to the crime 315-days after the crime to place through a photo array where it is unknown how many times Petitioner's picture had been shown to the victim.

Petitioner was convicted based solely on the identification of a victim, David Veal. Mr. Veal did not know Mr. Porter and there no corroborating witnesses or forensic evidence supporting his guilt. The photo-array identification made by the victim, who lost a thumb in the incident, occurred 315-days after the shooting. The reliability of the identification relative to the alibi evidence was in question due to, (A) the eyewitness seeing Petitioner picture several times; (B) the eyewitness memory was effected by the high stress of losing a thumb; and (C) the eyewitness' military training being neutralized by known limitations of memory in stressful situation.

More than ten years after the shooting, Katrina Adams, testified at a post-conviction evidentiary hearing that Mr. Porter was innocent of the shooting because Porter was at home with her during the incident. Ms. Adams testimony is legally competent evidence of Mr. Porter's actual innocence.

A. THIS COURT HAS RECOGNIZED THE LIMITATION OF EYEWITNESS TESTIMONY.

More than three decades ago, Justice Brennan cautioned:

> "[E]yewitness testimony is likely to be believed by jurors, especially when it is offered with a high level of confidence, even though the accuracy of an eyewitness and the confidence of that witness may not be related to one another at all. All the evidence points rather strikingly to the conclusion that there is almost noting more convincing than a live human being who takes the stand, points a finger at the defendant, and says 'That' the one!'" Watkins v. Sowders, 449 U.S. 341, 352 (1981)(Brennan, J., dissenting)(quoting Elizabeth Loftus, Eyewitness Testimony 19 (1979)).

In the last thirty years, over 2,000 studies have examined human memory and cognition and their relationship to the reliability of eyewitness identifications. State v. Henderson, 208 N.J. 208, 27 A.3d 872, 892 (N.J. 2011), holding modified by State v. Chen, 208 N.J. 307, 27 A.3d 930 (N.J. 2011); Charles A. Morgan III et al., Accuracy of Eyewitness Memory for Person Encountered During Exposure to Highly Intense Stress, 27 Int'l J.L. & Psychiatry 265, 265 (2004). This impressive body of scholarship and research has revealed that eyewitness accounts can be entirely untrustworthy. As the International Association of Chiefs of Police has concluded, "[o]f all investigative procedures employed by police in criminal cases, probably none is less reliable than the eyewitness identification. Int'l Ass'n of Chiefs of Police, Training Key No. 600: Eyewitness Identification 5 (2006).

Yet, the law has not caught up to the science. The Innocence Project has documented that, nationwide, eyewitness misidentifications have been a factor in seventy-five percent of the wrongful convictions that were subsequently overturned by DNA evidence. The Innocence Project, Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification 3 (2009); see also Brandon L. Garrett, Convicting the Innocent: Where Criminal Prosecutions Go Wrong 8-9, 279 (2011)(finding same in 190 of 250 DNA exoneration cases); Perry v. New Hampshire, 565 U.S. 228, 240(2012)("[S]tudies have consistently found that the rate of inaccurate identifications is roughly 33 percent.")

This Court has long recognized that eyewitness identifications are not always as reliable as witnesses (and jurors) may believe them to be. In 1927, long before the explosion of research in this area, Justice Felix Frankfurter wrote: "[t]he hazards of [eyewitness identification] testimony are established by a formidable number of instances in the records of English and

American trial." Felix Frankfurter, The Case of Sacco and Vanzetti: A Critical Analysis for Lawyers and Laymen 30 (Universal Library ed., 1962).

In 1932, well before the availability of DNA analysis, Yale Law professor Edwin M. Borchard documented almost seventy cases involving eyewitness errors that caused miscarriages of justice. Edwin M. Borchard, Convicting the Innocent; Sixty-Five Actual Errors of Criminal Justice (1932). Over thirty years later, this Court acknowledge this problem in United States v. Wade, 388 U.S. 218 (1967). The Court famously proclaimed that "[t]he vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification." Id. at 388 U.S. 228. The Wade Court went on to find:

> "The fact that the police themselves have, in a given case, little or no doubt that the man put up for identification has committed the offense, and that their chief pre-occupation is with the problem of getting sufficient proof, because he has not 'come clean,' involves a [] danger that this persuasion may communicate itself even in a doubtful case to the witness in some way. Id. at 235.

The importance of conscious and unconscious police persuasion cannot be overstated in the context of a trial because it negates the effect that strenuous cross-examination may otherwise have on the witness' confidence in his identification. "[E]ven though cross-examination is a precious safeguard to a fair trial, it cannot be viewed as an absolute assurance of accuracy and reliability." Id.

There is broad consensus that police must instruct witnesses that the suspect may not be in the lineup or array and that the witness should not feel compelled to identify anyone. Henderson, 27 A.3d at 897

Mistaken identifications are more likely where the suspect stands out in comparison to the fillers. See Roy S. Malpass, Colin G. Tredoux, & Dawn McQuiston-Surrett, Lineup Construction and Lineup Fairness, in 2 The Handbook of Eyewitnesses Psychology 155, 156-58

(2007). Furthermore, "a biased lineup may inflate a witness' confidence in the identification because the selection process seemed easy." Henderson, 27 A.3d at 898.

B. PETITIONER MUG SHOT WAS SHOWN TO THE EYEWITNESS SEVERAL TIMES DURING THE 315-DAYS IN BETWEEN THE CRIME AND IDENTIFICATION.

The eyewitness, David Veal, had been given Mr. Porter's mug shot several times during the 315-days between the crime and the identification of Mr. Porter. The existence of "mug shot commitment" is well documented. Kenneth A. Deffenbacher, Brian H. Bornstein, & Steven D. Penrod, Mugshot Exposure Effects: Retroactive Interference, Mugshot Commitment, Source Confusion, and Unconscious Transference, 30 L. & Hum. Behav. 287, 299 (2006). This refers to the fact that once witnesses positively identify an innocent person from a mug shot, "a significant number" then "reaffirm [] their false identification" in a later photo lineup. See Gunter Koehnken, Roy S. Malpass, Michael, S. Wogalter, Forensic Application of Line-Up Research, in Psychological Issues in Eyewitness Identification 205, 219 (Siegfried L. Sporer, Roy S. Malpass, Gunter Koehnken eds. 1996). After repeatedly seeing Mr. Porter, the eyewitness simply reaffirmed his misidentification.

C. THE EYEWITNESS LOST OF A THUMB SKEWED HIS ABILITY TO ACCURATELY IDENTIFY THE PERPETRATORS.

Mr. Veal unfortunately lost a thumb during the incident. His inability to identify anyone for over 10-months shows how his physical injury limited his recollection of events. He also could only identify one out of three alleged assailants. The accuracy of eyewitness' identification are effected by high levels of stress at the time of memory formation negatively impacting a witness' ability to accurately identify the perpetrator. See Charles A. Morgan III et al., Accuracy of Eyewitness Identification Is Significantly Associated with Performance on a Standardized Test of Face Recognition, 30 Int'l J.L. & Psychiatry 213 (2007); Kenneth A. Deffenbacher et al.,

A Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory, 28 L. & Hum. Behav. 687 (2004); Morgan et al., Accuracy of Eyewitness Memory, supra. at 124. Stressful conditions impair a witness' ability to accurately identify the perpetrator. See Charles A. Morgan III et al., Misinformation Can Influence Memory for Recently Experienced, Highly Stressful events, 36 Int'l J.L. & Psychiatry 11, 15 (2013). There is nothing more high stress than losing a body part. This undoubtedly effected his memory and lead to misidentification.

D. THE EYEWITNESS'S MILITARY TRAINING WAS NOT ENOUGH TO OVERTAKE THE STRESS OF THE SITUATION.

Mr. Veal proudly served this country and received training in combat awareness. Notwithstanding, a recent study examining the effects of stress on identifications at a U.S. Military mock prisoner-of-war camp illustrates the limitation of memory in even the most highly trained individuals when placed in stressful situations. Morgan et al., Accuracy of Eyewitness Memory, supra, at 266. In this study, 509 active-duty military personnel, with an average of 4.2 years in the service, underwent two types of interrogations. Id. at 267-68. After twelve hours of confinement, participants experienced either a high-stress interrogation involving real physical confrontation followed by a low-stress interrogation without physical confrontation, or vice versa. Id. at 268. The interrogations were separated by approximately four hours, and about half the participants received the high-stress interrogations first, while the other half experienced the low stress interrogation first. Id. Bother interrogations lasted about forty minutes. Id. Twenty-four hours after the interrogations, the participants were asked to identify their interrogators from live lineups, sequential photo arrays, or simultaneous photo arrays. Id. at 269-70. Across all identification procedures, subjects had far more difficulty accurately identifying their high-stress interrogators. Id. at 272. Sixty-two percent of subjects could identify their low stress interrogators in live lineups, while only thirty percent of subjects could accurately identify their

high stress interrogators from such lineups. Id. Furthermore, fifty-six percent of subjects erroneously identified a person who was not their interrogator (false positive) during live lineups, while only thirty-eight percent of subjects did so for their low-stress interrogations. Id.

This study is particularly stunning when one considers that the subjects all had a prolonged and unobstructed opportunity to view their interrogators, and the interrogators were all within arm's reach of their subjects. The subjects' ability to see the faces of their interrogators was therefore exponentially better than the opportunity witnesses to most violent crimes have to see perpetrators. Mr. Veal was less able to see the perpetrators of this crime because they were wearing hoodies.

Justice Thurgood Marshall aptly emphasized that "the vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification." Manson v. Brathwaite, 432 U.S. 98, 117 (1972) (Marshall, J., dissenting)(internal alteration omitted). The limitation of eyewitness identification are known far better today. As Justice Marshall continued:

> "It is, of course, impossible to control one source of such errors[-]the faulty perceptions and unreliable memories of witnesses[-]except through vigorously contested trials conducted by diligent counsel and judges." Id.

Sadly, Mr. Porter was saddled with trial counsel unwilling to present the evidence of actual innocence as he requested in a case with a likelihood of misidentification. Despite being told about the alibi witness, counsel engaged in no investigation and mischaracterized Ms. Adams as a "paramour." Ms. Adams testified that she and Petitioner lived together during the time of the incident and had been together since they were both 14 years of age approximately 15 years. Evidentiary Hearing June 6, 2014 pp. 12-4 to 13-4. Mr. Saluti clearly was unfamiliar with the nature of their relationship. (see below for further discussion).

Moreover, Mr. Saluti's suspension from the practice of law during the time of the evidentiary hearing and his subsequent disbarment was never given the proper weight against his testimony. See Matter of Saluti, 229 N.J. 114 (2017). This Court should discourage defense attorneys from prejudging evidence before conducting the requisite investigation. For the proceeding reasons, the writ should issue.

II. THIS COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER RELIEF IS WARRANTED WHERE AN ALIBI WITNESS WAS FOUND TO BE A PARAMOUR AND DISCREDITED WITHOUT EVIDENTIARY SUPPORT.

Petitioner was denied his claim of the ineffective assistance of counsel primarily because his long-term, live-in significant other was found to be a "paramour" without any factual basis to support the state's finding. This finding "was objectively unreasonable in light of the evidence presented in the state court proceeding" where trial counsel made the unsupported self-serving assertion during an evidentiary hearing in regards to a witness he had never spoken to before. Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

Ballentine's Law Dictionary defines the term "paramour" as:

> "A mistress. A lover with whom a woman carries on an illicit relationship. One having an illicit relationship, particularly with a married person. The third party in the triangle presented by infidelity. A word imputing want of chastity." Ballentine's Law Dictionary, 3rd Edition (2002)

This Court has universally employed the term "paramour" as "one having an illicit relationship, particularly with a married person" and/or "[a] word imputing want of chastity." Id.; Giles v. California, 554 U.S. 353, 364 (2002) (citing the defendant's paramour testifying regarding the death of his wife); Bond v. United States, 572 U.S. 844, 867 (2014)(Scalia concurring) (discussing "a husband's paramour suffer[ing] a minor thumb burn at the hands of a betrayed wife"); Alcorta v. Texas, 355 U.S. 28, 30 (1957) (describing the testimony of a defendant's wife "lover and paramour"); Crooker v. California, 357 U.S. 433, 434-35 (1958)

(discussing death sentence for murder of defendant's paramour in which an "illicit relationship" had occurred before her death).

In this matter, the state court determined Petitioner's potential alibi witness was his paramour, "want of chastity," based on trial counsel self-serving assertion. At an evidentiary hearing, trial counsel stated:

> "In my experience, [], um, generally, when I go to use an alibi witness in a case, whether it be a homicide or any other type of case, um, I try not to use, if I -- if I can, someone that's related to the individual -- or, in this instance, *I believe the young lady was a paramour of Mr., uh, Mr. Porter's*." [Emphasis added] Evidentiary Hearing June 6, 2014 p. 33-16 to 21.

The Third Circuit determined that:

> "The PCR court concluded that counsel's decision was tactical and sound trial strategy because Adams was a paramour of Defendant and in his experience, this would not be favorable for a defendant[.]" Third Circuit Op. at pp. 6 to 7.

The Third Circuit also determined that counsel did not investigate or speak to Ms. Adams when denying Petitioner's claim. Id. at 7. Counsel's off-hand remark that he believed Adams was a "paramour" without ever speaking to her or disclosing how he knew she was Mr. Porter's paramour is not evidence sufficient to find that Adam's was a paramour, "want of chastity." Where the factual findings in the state court proceedings are "objectively unreasonable," a Petitioner is entitled to relief under 28 U.S.C. §2254(d)2. Miller-El, 537 U.S. at 340. The state and federal courts dismissed Adams as an unreliable alibi witness because she was a paramour. That label originated from trial counsel despite counsel never speaking to her. This was an "objectively unreasonable" finding of fact requiring relief under 28 U.S.C. §2254(d)2. id.

For the above reasons, the writ should issue.

CONCLUSION

For the above reason, it is respectfully requested that the writ of certiorari issue.

Dated: 12-9-21

Respectfully Submitted,

Oscar Porter, pro se