ORIGINAL

No. 21-7241

FILED
FEB 24 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Darrell A. Johnson — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Superior Court of Pennsylvania
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darrell A. Johnson #JC9163
(Your Name)

301 Morea Road
(Address)

Frackville, PA 17932
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

I. Was the Pennsylvania State Court's ruling supported by the evidence and free from legal error when it held that Petitioner's trial counsel was not ineffective for neglecting to request and preserve a Alibi Instruction? (Pa.SSJI Crim.3.11).

II. Was the Pennsylvania State Court's ruling supported by the evidence and free from legal error when it held that Petitioner's trial counsel was not ineffective for entering into stipulations with the Commonwealth, that Petitioner sent five letters, without first obtaining Petitioner's approval, when said stipulations were in contrast to Petitioner's defense and trial testimony?

III. Was the Pennsylvania State Courts ruling supported by the evidence and free from legal error when it held that Petitioner's trial counsel was not ineffective for failing to conduct an on-the-record colloquy with Petitioner before agreeing to the stipulations regarding the five letters allegedly sent by Petitioner?

LIST OF PARTIES

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

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

Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001

Attorney General of Pennsylvania Josh Shapiro, Strawberry Square, 4th & Walnut st, 16th Floor Harrisburg, Pa 17120

Robert Martin Falin, Esq., Montgomery County District Attorney's Office, Po Box 311, Norristown, Pa 19404-0311

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

[✓] For cases from **state courts**:

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

[ ] reported at Commonwealth v. Johnson, No. 1398 EDA 2020; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the PCRA court appears at Appendix B to the petition and is

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

JURISDICTION

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

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

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

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

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

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

[X] For cases from **state courts:**

The date on which the highest state court decided my case was January 4, 2022. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 6 Rights of the accused.

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; 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 defense.

Amendment 14

Sec. 1. [Citizens of the United 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 it's jurisdiction the equal protection of the laws.

The Pennsylvania Suggested Standard Criminal Jury Instruction 3.11 (Alibi) Instruction:

In this case, the defendant has presented evidence of an alibi, that is, that he was not present at the scene or was rather at another location at the precise time that the crime took place. You should consider this evidence along with all the other evidence in the case determining whether the Commonwealth has met it's burdon of proving beyond reasonable doubt that a crime was committed and that the defendant himself committed [or took part in committing] it. The defendant's evidence that he was not present, either by itself or together with other evidence, may be sufficient to raise a reasonable doubt of his guilt. If you have a reasonable doubt of the defendant's guilt, you must find him not guilty.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and

I. STATEMENT OF THE CASE

A. Procedual Facts

On September 2, 2016, Petitioner was arrested by West Pottsgroves Police Department. Criminal charges involved the robbery and shooting of the victim Anthony Gibbons on August 20, 2016.

Petitioner had a three day jury trial, represented by Thomas Egan, that began on March 22, 2017. At the conclusion of trial, on March 24, 2017, Petitioner was found guilty on all charges. Petitioner was found guilty of two counts of Robbery, Criminal Conspiracy, Aggravated Assault, Person Not to Possess Firearms, and Firearms Not to be Carried Without a License. On July 19, 2017, Petitioner was sentenced to an aggregate term of not less than 25 nor more than 50 years inprisonment.

Following Petitioner's July 19, 2017 sentence, Petitioner filed a post-sentence motion, which was denied on August 17, 2017. A timely appeal was filed to the Pennsylvania Superior Court and docketed as Commonwealth v. Johnson, 2721 EDA 2017. On June 29, 2018, the Pennsylvania Superior Court affirmed Petitioner's judgement of sentenct. Petitioner subsequently filed a petition for allowance of appeal to the Pennsylvania Supreme Court, docketed as Commonwealth v. Johnson, 490 MAL 2018. Petition was denied on January 11, 2019.

On September 20, 2019, Petitioner filed a pro se PCRA petition. PCRA counsel was appointed, and on December 6, 2019, an Amended PCRA Petition was filed. On June 25, 2020 a final order of dismissal was entered. See Appendix B. Petitioner subsequently filed an appeal to the Pennsylvania Superior Court on July 23, 2020. The Pennsylvania Superior Court affirmed the PCRA court decision, filed in the June 30, 2021 order. See Appendix A.

July 26, 2021, Petitioner filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court. That petition was denied on January 4, 2022. See Appendix C.

B. Factual Background

On August 20, 2016, between 10:30pm and 11:45pm, Mr. Anthony Gibbons and Ms. Latia Lofton, was out together having a drink at the China Bar. N.T., 3/22/17, p.19,21. After leaving the bar, the two went outside to have a smoke. N.T., 3/22/17, p.21. While outside smoking, Mr. Gibbons was robbed, and an shoot-out ensued, in which Mr. Gibbons was shot twice. N.T., 3/22/17, p.21, 23,26,27. The suspect who Mr. Gibbons encountered, fled the scene iimmediately after the shoot-out. On September 2, 2016, almost two weeks after the icident, Petitioner was arrested and charged for the robbery and shooting of Mr. Gibbons.

1. Gibbons' description of suspect

After being robbed and shot twice, Mr. Gibbons was able to

call for help. Some time later, officers and medical responders arrived. My. Gibbons and Ms. Lofton was questioned by officers about what had occurred. Neither Mr. Gibbons, nor Ms. Lofton, could identify the suspect. N.T., 3/22/17, p.24,31,94,95. Mr. Gibbons did give a description of the suspect. He said the suspect was about 6'; 190lbs; with a red, white, and blue bandana or shirt covering his face. N.T.,3/22/17,p.48,49,52.

a. Mr. Gibbons' trial testimony

Mr. Gibbons trial testimony is very similar to his initial statements. He still does not know the identity of the suspect; the suspect had a red, white and blue bandana or shirt covering his face; before robbing him, the suspect said: "do you remember me, old head, from back in the day?" N.T.,3/22/17,p.24.

i. Mr. Gibbons' testimony of what happen leading up to the robbery and shooting

Mr. Gibbons picked Ms. Lofton up in their neighborhood and the both of them went for some drinks at the China Bar. N.T.,3/22/17, p.19,20. While driving there Mr. Gibbons observed Ms. Lofton on her phone alot. N.T.,3/22/17,p.20,21. After leaving, while outside smoking, an unidentified suspect approached them, snatched Ms. Lofton's purse, and robbed Mr. Gibbons of his cellphone, car keys, and about $300. N.T.,3/22/17,p.23,24. Mr. Gibbons then reached between his seat, grabbed a firearm and began shooting at the suspect, simultaneously the suspect shot back, hitting Mr. Gibbons once in the foot

and as Mr. Gibbons was fleeing, he was shot again in the back. N.T.,3/22/17,p.25,26,27. Mr. Gibbons returned to the Bar and called for help. Before arrival of officers and medical responders, Mr. Gibbons hid his firearm in the bathroom trash can. N.T.,3/22/17,p.28 After detectives found the hidden firearm, Mr. Gibbons admitted that it was his firearm.

2. Evidence collected from the Scene

Upon arrival, officers created a perimeter of the crime scene, and began to collect evidence. Spent shell casings from two different caliber guns was discovered. Mr. Gibbons vehicle had bullet holes in it. There was a cellphone recovered, that was later identified, as Ms. Lofton's phone. Firearm found in the Bar's bathroom belonged to Mr. Gibbons. N.T.,3/22/17,p.28.

3. Ms. Lofton's Questioning

Ms. Lofton was questioned, numerous times, days after the crime, in which she denied any involvement. N.T.,3/22/17,p.110,116,117. She identified the white cellphone, that was found at the scene, as her personal phone, and denied detectives access to said phone. Detectives obtained a warrant for the cellphone and discovered that Ms. Lofton was communicating with someone, whose phone number is saved, under her contacts, as "Darrell." When asked "who is Darrell?"

She said a family relative. N.T.,3/23/17,p.17. The text messages revealed that Lofton and Darrell, was planning a robbery. September 2, 2016, detectives arrested Ms. Lofton and Petitioner for the said crimes.

a. Ms. Lofton's implicating Petitioner as being her accomplice in setting Mr. Gibbons up

Ms. Lofton gave numerous statements to detectives, stating she was not involved and did not know who committed the crime. N.T.,3/22/17, p.110,116,117. Ms. Lofton was lying to protect herself, but after a court hearing and becoming aware of the time she could face, then, this is when she began to implicate herself, along with Petitioner, as the one setting Mr. Gibbons up. N.T.,3/22/17,p.110,128-132.

On October 13, 2016, Ms. Lofton signed a Proffer Agreement with the District Attorney, and gave another statement. N.T.,3/22/17, p.90,91,92.

i. Proffer Agreement Statement by Ms. Lofton

In this statement, she now says: she previously gave false statements; she was involved in the setting up of Mr. Gibbons; Petitioner was the one she was communicating with on the phone to rob Mr. Gibbons; she called Petitioner to give him their location; she sent text messages telling Petitioner to take her purse too;

she communicated with Petitioner about a week after the shooting and Petitioner gave her $300 of the $900 that was taken from the robbery; she admitts she was drinking and taking pills.

ii. Jury Question Asking To See Proffer Agreement Statement

During jury deliberation, the jury asked to see the statement dated October 13,2016, by Ms. Lofton. N.T.,3/24/17,p.67.

4. Ms. Lofton's Trial Testimony

Ms. Lofton is a corrupted and polluted source, her testimony is to be taken with caution. N.T.,3/22/17,p.78-80. She is testifying in hopes of a better sentencing deal. N.T.,3/22/17,opening statement, p.4,5. Ms. Lofton admits she was taking pills and drinking on the night of the crime. See Proffer Agreement Statement ,page 5.

Ms. Lofton testifies, that on the night of the crime she went to the bar with Mr. Gibbons to have drinks. N.T.,3/22/17,p.83. Already drinking and being intoxicated N.T.,3/22/17,p.82, while at the bar with Mr. Gibbons, Ms. Lofton decided to have more drinks. N.T.,3/22/17,p.83. Ms. Lofton's intentions was just to have a couple of drinks with Mr. Gibbons, however, those intentions of hers changed. N.T.,3/22/17,p.83.

Ms. Lofton says while at the bar she was texting Petitioner, even making a phone call to him while in the bathroom. N.T.,3/22/17, p.83,84,86,87. She admits, she was texting her cousin (Petitioner) cause she was trying to set up Ant (Mr. Gibbons). N.T.,3/22/17,p.85. After going outside to have a smoke with Mr. Gibbons, Ms. Lofton and Mr. Gibbons was approached by a suspect with a gun. The suspect snatched Ms. Lofton's purse, and demanded everything from Mr. Gibbons. N.T.,3/22/17,p.88. Ms. Lofton ran toward the bar, and heard a couple of gun shots. N.T.,3/22/17,p.89.

Police arrived and Ms. Lofton told them lies. N.T.,3/22/17,p.90. Ms. Lofton continued to lie and give false statements, up until the Proffer Agreement Statement between her and the prosecutor. N.T.,3/22/17,p.90,91. Ms. Lofton was shown text messages, that was in her phone the night of the crime. She recognized those messages, as the communication between herself and Petitioner. N.T.,3/22/17,p.85. Still, Ms. Lofton wasn't sure who committed the crime. N.t.,3/22/17, p.94,95. She did say that her and Petitioner talked at her mom's house after the shooting. When she asked Petitioner what happened?, Petitioner response was "not to worry about it." N.T.,3/22/17,p.95,96. Ms. Lofton said Petitioner gave her $300, and told her that he got about $900 from the robbery. N.T.,3/22/17,p.96. However, Mr. Gibbons testified that only about a few hundred was taken from him. N.T.,3/22/17,p.24. Ms. Lofton testified that Petitioner indicated

that someone else did the crime. N.T.,3/22/17,p.108. In,fact, Petitioner never admitted to the crime, he just told Ms. Lofton not to worry. N.T.,3/22/17,p.109,110.

During cross-examination, Ms. Lofton was asked about the events on the night of the crime, and she admitted that she couldn't, or was trying to remember. N.T.,3/22/17,p.102,113-117. She also admitted that, she only gave the Profer Agreement Statement, implicating herself and Petitioner, because she wanted to say something the prosecutor would like, so she wouldn't go down for this. N.T.,3/22/17,p.132. She was aware that the Petitioner was facing the same charges, and the prosecutor and detectives were searching for evidence against Petitioner. Implicating Petitioner would be her way out. She never saw $900. N.T.,3/22/17,p.132. She only "assumed" that Petitioner gotten $900. N.T.,3/22/17,p.134. This would play right into what the prosecutor wants to hear.

a. The Text Messages

Commonwealth witness, Detective Jeffrey Koch, testified at trial about information downloaded from Ms. Lofton's cellphone. N.T.,3/22/17,p.72. Det. Koch testified about incriminating messages between Ms. Lofton's cellphone and a number stored in her phone that was attributed to a "Darrell" (Petitioner) that occurred on August 20th between 7:02pm and 11:11pm. N.T.,3/22/17,p.73-78.

Ms. Lofton identified the text messages that was found in her phone, as communication between herself and Petitioner. These are the text messages between "Ms. Lofton" and a contact in her phone as "Darrell" :

7:02pm, incoming text from Darrell: "Cuz Darrell."
7:03pm, reply from Ms. Lofton: "Got you."
10:52pm, outgoing text from Ms. Lofton: "Get ready if anything 2 nite."
10:52pm, reply from Darrell: "Ok let me know."
Outgoing phone call from Ms. Lofton to Darrell at 10:59pm, duration 1 minute and 14 seconds long.
11:10pm, outgoing text from Ms. Lofton: "We outside smoking."
11:10pm, Reply from Darrell: "Ok."
11:11pm, Outgoing text from Ms. Lofton: "You gone see us out front. We in parking lot. Take my purse too."
N.T.,3/22/17,p.76-78.

Ms. Lofton testified that these were her instructions, to Petitioner, to come and rob Mr. Gibbons. Her purse being taken was to deflect the fact that she was involved. N.T.,3/22/17,p.84-87. During that 1 minute and 14 second phone call, Ms. Lofton wasn't even sure if it was Petitioner, who she implicated, on the phone with her. N.T.,3/22/17,p.107,108.

b. Ms. Lofton's impaired Faculties

Ms. Lofton admits she was drinking before and while at the bar N.T.,3/22/17,p.82,83, she also said she was taking pills. See Proffer Agreement Statement page 5. Ms. Lofton was under the influence of not only alcohol, but pills also. Her judgement was altered. She could have easily been texting someone, who she assumed was Petitioner. The only indication that it may have been Petitioner, whom she claims, she was texting with, was from

the text message that came at 7:02pm (Cuzn Darrell). 3 hours and 50 minutes elapsed before the next text message. It's impossible to say, without any uncertainly, that it was Petitioner whom she was texting with the whole time. Ms. Lofton even admits, she's keep trying to remember. N.T.,3/22/17,p.102,113-117. That's because she was under the influence at the time. But, now she have to say something to please the prosecutor. N.T.,3/22/17,p.132. Furthermore, Ms. Lofton even admits, she did not recognize Petitioner's voice on the phone. Id. at 107,108. For the sake of a reduced sentence, implicating Petitioner was her safest choice.

i. Ms. Lofton's Reward For Her Testimony

Before attending Petitioner's trial to testify for the Commonwealth, Ms. Lofton had already pled guilty of conspiracy. Her sentence didn't come until after Petitioner's trial had concluded. N.T., 3/22/17,p.92. Honorable William Carpenter sentenced Ms. Lofton to an 1 year county sentence with additional probation. Judge Carpenter was also the sitting Judge at Petitioner's trial.

5. Incriminating Letters

Five letters that were recovered from Shonda Gelormo's home, girlfriend of Petitioner, was stipulated as being sent from Petitioner. N.T.,3/23/17,p.83. Petitioner testified that

he only sent two of the letters. N.T.,3/23/17,p.128-133,143,147. Specifically, Petitioner testified that he sent the first letter dated September 17th and the letter dated March 9th. N.T.,3/23/17, p.129,130. With regard to these two letters, Petitioner testified that the letters were "fabricated" by him with the intent to support his suspicion that his letters were being tampered with by the police. N.T.,3/23/17,p.130,149.

a. Evidence Of The Stipulated Letters

Prior to trial, Petitioner's trial counsel and prosecutor stipulated that all five letters were sent by Petitioner. Commonwealth argued, and submitted evidence throughout all phases of trial, indicating that Petitioner not only sent the letters, but that he also written the letters. N.T.,3/22/17,opening statement,p.7,8; N.T.,3/23/17,p.86-97,140,141; N.T.,3/24/17,p.40. This was a clear mischaracterization of said stipulation.

Detective Koch, commonwealth's witness testified, without any cross from defense, about the letters, and read the contents of the letters to the jury. N.T.,3/23/17,p.86-97. During deliberation, the jury asked to see the letters written by Petitioner. N.T.,3/24/17, p.67. Petitioner testified that someone else had possible written the letters, and that it was not his hand writing on all of the letters. N.T.,3/23/17,p.140.

6. Testimony Of Commonwealth's Witnesses

Commonwealth witness, Detective Morrison, provided testimony regarding cell phone location. Det. Morrison testified that a cell phone number, whose subscriber was Petitioner, was found to be utilizing a cell phone tower in the "general vicinity" of the China Bar on the night in question between 11:19pm and 11:33pm. N.T., 3/22/17,p.150,151..

The commonwealth also called Dr. Christian Westing, an expert in DNA analysis. N.T.,3/23/17,p.59. He testified regarding a series of swabs, taken from a gun that was found in a residence belonging to Petitioner, along with a reference sample that was taken from Petitioner. Dr. Westing concluded that in regard to the major contributor, Petitioner could not be excluded as a potential cont-tributor. N.T.,3/23/17,p.77. Dr. Westring testified that Petitioner was "excluded" from the Dna found on the slide, hammer and release of the firearm. N.T.,3/23/17,p.81. There were also DNA of other contributors on the firearm. N.T.,3/23/17,p.81.

a. The Cellphone Subscribed to Petitioner

The cellphone data location evidence shows the movement of the person who possessed the phone. At 10:59pm, the suspect was in Phoenixville and began moving toward the China Bar.

At 11:19pm, 11:32pm, and 11:33pm, the suspect is in the general vicinity of the China Bar. N.T.,3/22/17,p.149.

Petitioner testified that he did not possess that cellphone on the night of the crime. N.T.,3/23/17,p.123. Moreover, the cellphone in question was never discovered. During deliberation, the jury did request to see the cellphone data evidence. N.T.,3/24/17, p.67.

b. DNA evidence

There was DNA evidence that Petitioner's DNA was on the firearm used in this crime. Petitioner admitted to possessing the firearm. Testifying that he purchased it from his cousin, for $300, days after the crime happened. N.T.,3/23/17,p.126. There were also DNA on the firearm from other unidentified contributors. N.T.,3/23/17, p.81.

i. Background Of Firearm

This firearm was seized during a search of Petitioner's residence. N.T.,3/23/17,p.27. Ballistics was conducted, and came back consistent with the spent shell casings at the crime scene. N.T.,3/23/17,p.53-55.

7. Defense

Petitioner defense at trial was essentially an alibi defense, submitting two alibi witnesses, and testifying on his own behalf.

a. Testimony Of Petitioner (Darrell Johnson)

Petitioner testified denying any involvement with the robbery and shooting. Petitioner testified that he attended a cookout with his uncle around 9:00pm. N.T.,3/23/17,p.120,121. Petitioner testified that he spent the rest of the evening speaking to other individuals at the cook out and "well in the hours of almost 12:00ish, close to that hour," left by himself and went back to his mother residence. N.T.,3/23/17,p.122. More importantly, Petitioner testified that he could not have been at the robbery because he was at the cookout in Pottstown. N.T.,3/23/17,p.139.

b. Testimony Of Gregory Boyd and Zakiyha Henderson

Both, Mr. Boyd and Mrs. Henderson, testified that they had interaction with the Petitioner at the cookout, but could not account for the time that Petitioner left the cookout. N.T.,3/23/17, p.110,111,153,154,155.

i. Alibi Defense, Absent Alibi Instruction

There weren't any alibi instructions given to the jury, nor did Petitioner's trial counsel request one. Petitioner's trial counsel, Mr. Egan, did state, prior to presenting petitioner's two witnesses, that he considered the two witnesses as "quasi-alibi" witnesses. And he did not believe they were going to be specific enough to warrant an alibi instruction. N.T.,3/23/17,p.99.

Reasons For Granting The Petition

I. The Pennsylvania state court's ruling was not supported by the evidence and free from legal error when it held that Petitioner's trial counsel was not ineffective for neglecting to request and preserve an Alibi Instruction(Pa.SSJI Crim.3.11). This violated Petitioner's right to counsel under the Sixth Amendment and right to a fair trial under the Fourteenth Amendment.

A. Supporting Facts

The robbery and shooting happened on Aug. 20, 2016, at a China bar, in Stowe, Pennsylvania, approx. 11:33pm. At Petitioner's jury trial. Det. Morrison testified regarding cell phone data location. A phone number, whose subscriber was Petitioner, was found to be utilizing a cellphone tower in the "general vicinity" of the China Bar, at the relevant time of the crime. N.T.,3/22/17,p.150,151. Det. Morrison also said the said phone was in Phoenixville, Pennsylvania at 10:59pm, began traveling in the direction of the crime scene at 11:01pm. N.T.,3/22/17,p.148,153,159. Det. did not see who possessed the said cellphone. N.T.,3/22/17,p.152.

Petitioner testified that he was at a cookout during the relevant hours of the crime. N.T.,3/23/17,p.121,122. During cross, Petitioner simply said he could not have been at the robbery because he was at the cookout. Id. at 139. Petitioner had 2 witnesses testify pertaining to his alibi. Id. at 110,111,154. Trial counsel considered these 2 witnesses as "quasi-alibi" witnesses. Id. at99.

1. Why "No" Alibi Instruct Given?

Petitioner acknowledges that counsel may decline to request an alibi instruction in reasonable circumstances. Petitioner asserts that such reasonable circumstance were not present here. Petitioner's testimony was an alibi defense, even submitting 2 alibi witnesses. Id. at 106,122,139,153. An alibi instruction should have been requested by counsel. There was no full explanation of exactly why counsel did not request an Alibi Instruction after hearing Petitioner's testimony. Trial counsel's statement, considering Petitioner's 2 witnesses as quasi-alibi witnesses came prior to Petitioner's testimony, and trial counsel did not include Petitioner in his list of potential "quasi-alibi" witnesses.

a. Standards Inwhich Pennsylvania Courts Are To Abide By

Where an alibi defense is present, the trial court must instruct the jury that it should acquit if the alibi evidence, even if not wholly believed, raised a reasonable doubt as to the presence of the defendant at the scene of the crime at the time when the offense was committed. Commonwealth v. Brunner, 341 Pa.Super.64,491 A.2d 150 (1985)."Such an instruction is necessary due to the danger that the failure to prove the defense will be taken by the jury as a sign of the defendant's guilt." Commonwealth v. Pounds, 490 Pa. 621,633-634,417 A.2d 597,603 (1980).

General instructions on the Commonwealth's burdon of proving each element of a crime beyond a reasonable doubt is not an adequate substitute for a specific alibi instruction. Pounds, Supra 490 Pa. at 634,417 A.2d at 603. Similarly, a general charge on assessing the credibility of a witness will not suffice. Commonwealth v. Van Wright, Supra 249 Pa.

Super. at 458,378 A.2d at 386. Id. 341 Pa. Superior Ct. at 69-70,491 A.2d at 152-153.

Petitioner's trial counsel's unexplained failure to request alibi instructions, after alibi evidence had been offered and received, constitute ineffective assistance. Brunner.

The Pennsylvania Suggested Standard Criminal Jury Instruction (Alibi) Instruction would have reminded the jury that the Commonwealth had the burdon to prove it's case beyond a reasonable doubt and that defendant's alibi evidence, either by itself or together with other evidence, may be sufficient to raise reasonable doubt, with reasonable doubt you must result in finding the defendant not guilty. The phrase "either by itself or together with other evidence" would have been instructive in Petitioner's case as it would have informed the jury that, even if they disbelieved Petitioner's 2 witnesses, they could have still believed Petitioner's testimony alone and found reasonable doubt.

b. Pennsylvania Mis-Application Of Thier Own Standards

The P.A. Superior Court, in it's opinion, did not argue that Petitioner's alibi claim was precedually defaulted, nor did they argue that Petitioner lacked merit. They argued that the evidence against Petitioner was overwhelming, therefore, unable to prove prejudice. See App. A, p.7,8.

i. Petitioner's Testimony Alone Establish An Alibi

In following the path of the suspect on the night of the crime, we must turn to the cellphone location evidence. (1) The suspect who possessed the phone, was in Phoenixville, Pa. at 10:59pm, and began moving toward the China Bar (crime scene). (2) At 11:19pm, 11:32pm and 11:33pm, the suspect was in the general vicinity of the China Bar. N.T.,3/22/17,p.149.

Petitioner testified that he was at the cookout from 9:00ish to 12:00ish. N.T.,3/23/17,p.120-22. This would alibi him not being in Phoenixville at 10:59pm, as the cellphone data shows. Further, Petitioner simply says he could not have been at the robbery because he was at the cookout. Id. at 139. Also, he said he did not have the phone. Id. at 123.

2. Harmless Error Standard-Overwhelming/Contradicting Evidence

Error is considered to be harmless where: (1) the error did not prejudice the defendant or the prejudice was de-minimis; or (2) the erroneously admitted evidence was merely cumulative of other, untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and "uncontradicted" evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict. Commonwealth v. Williams, 524 Pa. 404,573 A.2d 536,538-539 (1990), citing Commonwealth v. Story, Supra. Id. at 327,612 A.2d at 1352. See also: Commonwealth v. Nolen, 535 Pa. 77,85,634 A.2d 192,196 (1993).

In Story, 476 Pa. 391,383 A.2d 155 (1978), the Supreme Court held

that"in applying the overwhelming evidence test to determine if an error is harmless, a court may rely only on uncontradicted evidence."

a. Applying Harmless Error Standard

In this instant case, the evidence against Petitioner was not so overwhelming as to make an Alibi Instruction meritless. Further, the evidence against Petitioner is contradicting at best.

Mr. Gibbons testified that he did not know the person who robbed and shot him N.T.,3/22/17,p.31; Mr. Gibbons testified that the suspect said to him "Do you remember me, old head, from back in the day?" id. at 24, which would infer that the suspect and Mr. Gibbons had some interaction in the past; Mr. Gibbons testified that he did not know the Petitioner. Id. at 53.

Mr. Gibbons testified that the suspect had a red, white and blue flag or bandana or cut-off shirt covering his face id. at 48,49; detectives searched Petitioner's home and did not find a shirt or anything matching the one described by Mr. Gibbons. N.T,3/23/17,p.36.

A search of that home did produce a firearm that was used in this crime. and Petitioner's DNA was on it; Petitioner testified that he purchased the firearm, from Ms Lofton, after the crime had occurred id. at 126; there was evidence that DNA belonging to someone else found on the firearm as well. Id. at 81.

There's evidence that a cellphone registered to Petitioner was in the general vicinity of the crime at the relevant time; Petitioner testified that he did not possess that phone on the night of the crime. Id. at 123.

Commonwealth's key witness Latia Lofton is Petitioner's cousin and alleged accomplice, and had already pled guilty, she would be sentenced by Judge Carpenter, the same Judge hearing Petitioner's case. Prosecutor never states that Ms. Lofton is testifying because she wants to tell the truth, on the contrary, he states: "She's testifying today because she's hoping to get a lighter sentence by Judge Carpenter." N.T.,Opening Statement,3/22/17,p.4,5 This lighter sentence, she did receive.

Ms. Lofton testified that she and Petitioner planned the robbery, however, she never identified Petitioner as the one committing the crime. In fact, she only identifed Petitioner as the person she was texting on the phone N.T.,3/22/17,p.84, and still, she wasn't sure if Petitioner was the one who committed the crime. Id. at 94,95,107,108.

The $300 that Ms. Lofton received from Petitioner was said by Petitioner, it was for the purchase of the firearm. IN Ms. Lofton's Proffer Agreement and during direct, she says Petitioner had gotten $900 from Mr. Gibbons. N.T.,3/22/17,p.96. However, Mr. Gibbons say's only a few hundred was taken. Id. at 24. Further, during redirect, Ms. Lofton now "assumed" Petitioner got $900.Id. at132,134.

The cellsite evidence that was said to place the Petitioner in the general vicinity of the crime, was gathered from a cellphone number that was subscribed to Petitioner. No one ever sees Petitioner with this phone. N.T.,3/22/17,p.152.

There was video that a white work van was parked near the crime at the relevant time, but Petitioner does not appear in the video, or in the van. Id. at 165.

The evidence of the prosecution in this case is contradicting at best to substain a verdict of guilty, therefore, harmless error can not be attributed to the evidence of this case.

i. How Can A Jury Assess Alibi Evidence Without Alibi Instruction

During jury deliberation, while trying to assess Petitioner's alibi evidence, the jury asked to see the map of the cellphone showing suspect's whereabouts. N.T.,3/24/17,p.67. In addition, they asked: "What's the street name the van was parked on?" Id. at 68. They also asked to hear the Reasonable Doubt Instructions. Id.at 69. This is a clear indication that the jury was trying to assess the whereabouts of the suspect, while trying to assess, Petitioner's alibi evidence. But without the proper instructions, it could not have been possible.

It's very likely that the outcome of trial would have been favorable for the Petitioner had the court instructed the jury on the alibi evidence, or if trial counsel had requested such instructions. Under Strickland, trial counsel's performance was deficient; and there's a reasonable probability that but for trial counsel's error the result

of the proceedings would have been different. Thus, violating Petitioner's Constitutional rights under the 6th and the 14th Amendment. And the States Court's ruling that Petitioner's rights weren't violated and/or any violation was harmless was unreasonable.

II. The Pennsylvania States Court's ruling was not supported by the evidence and free from legal error when it held that Petitioner's trial counsel was not ineffective for entering into stipulations with the Commonwealth, that Petitioner sent five letters, without first obtaining Petitioner's approval, when said stipulations were in contrast to Petitioner's defense and trial testimony. This violated Petitioner's right to counsel under the 6th and right to a fair trial under the 14th Amendment.

A. Supporting Facts

There was a stipualtion between Petitioner's trial counsel and the prosecutor, that the 5 letters recovered from Shonda Gelormo's (Petitioner's girlfriend) home, on March 16, 2017, were sent by Petitioner. N.T.,3/23/17, p.83. After this stipulation, Petitioner testified that he only sent 2 of the letters. Id. at 128-133,143,147. Specifically, he sent the first letter dated September 17, and the letter dated March 9. Petitioner said, the letters were fabricated to support his suspicion that his mail were being tampered with by the police. Id. at 128,130,132,149.

The P.A. Superior Court noted that the stipulation was that Petitioner sent the letters, but there was no stipulation about the "content" of the letters. See App. A, page 4. However, the Commonwealth not only argued that Petitioner sent the letters, he also argued that he stipulated to writing the letters. These letter were significant to the Commonwealth's case and the prosecutor reminded the jury, throughout every stage of trial proceedings, that Petitioner wrote the letters. N.T.,Opening Statement,3/22/17,p.7; N.T.,3/23/17,p.140,141; N.T.,3/24/17,p.40. These improper comments was a mischaracterization of the stipulations.

The letters were so significant , that the jury requested to see them during deliberation. N.T.,3/24/17,p.67. The jury requested: "Can we see the letters written by Darrell to his girlfriend?" The question alone indicated that the jury inferred that all letters were written by Petitioner. It was an error for the P.A. superior court to focus only on

the sender of the letters without addressing the fact that the prosecutor, through all phases of trial, argued that Petitioner wrote the letters without any objection by Petitioner trial counsel.

The court did give a jury instruction pertaining to the contents within the letters. N.T.,3/23/17,p.48,49. If not for the improper comments from the prosecutor, there would not have been any need for such instruction, thus, highlighting the improper comments made by the Prosecutor.

1. Federal Standards For Improper Comments Mase By Prosecutor

Prosecutorial statements may have a "great potential for misleading the jury." Carter, 236 F.3d at 786, and impacting jury deliberations "because a jury generally has confidence that a prosecuting attorney is faithfully observing his obligations as a representative of a sovereignty." id. at 785-86 (quoting Hofbauer, 228 F.3d at 700).

In Girts v. Yanai, 501 F.3d 743 (6th Cir. 2011), the court employs a two-part test to determine whether prosecutorial misconduct warrants a new trial. A court must first consider whether the prosecutor's conduct and remarks were improper, and then consider and weigh four factors in determining whether the impropriety was flagrant and thus warrants reversal. United States v. Carroll, 26 F.3d at 1387 (6th Cir. 1994). The Four Factors:

(1) Whether the conduct and remarks of the prosecutor tended to mislead the jury or prejudice the defendant; (2) Whether the conduct or remarks were isolated or extensive; (3) Whether the remarks were deliberately or accidentall made; and (4) Whether the evidence against the defendant was strong.

a. The Prosecutor's Statement Were Prejudicial

"The first [Flagrancy] factor on the effect of the improper arguments at issue; namely whether they were misleading or otherwise prejudicial to the defendant." United States v. Modena, 302 F.3d 626,635 (6th Cir. 2002).

Petitioner assert that the prosecutor's remarks and mischaracterization of stipulation were very prejudicial. The prosecutor's remarks, that Petitioner wrote the letters, or that Petitioner's trial counsel stipulated that Petitioner wrote the letters, were improper. N.T.,Opening Statement, 3/22/17,p.7; N.T.,3/23/17,p.140,141.; N.T.,3/24/17,p.37,40.

Since trial counsel did not object to the improper statements, the prosecutor was not admonished for the comments. United States v. Galloway, 316 F.2d 624,633 (6th Cir. 2003)(finding that the court's admonition expressing specific diapproval of prosecutor's improper comment is sufficient to constitute curative instruction); Carter, 236 F.3d at 787 (holding that general instruction given at the end of trial, rather than when comments were made, did not cure misconduct). Petitioner's trail counsel did not object to the improper comments, nor did the court give any curative instructions.

b. The Prosectur's Statements Were Not Isolated

The prosecutor's opening argument was that Petitioner wrote the letters. Commonwealth's witness Detective Koch, read all 5 letters to the jury. N.T.,3/23/17,p.83-97. During cross examination of Petitioner, the prosecutor argued that Petitioner written the letters. Id. at 140-151. Prosecutor argued during closing that Petitioner wrote the letters. And lastly, the jury asked to see the letters written by Petitioner.

A relatively brief and unrepeated comment may have prejudicial effect if a judge does not give a strong and timely curative instruction.

Eberhardt v. Bordenkircher, 605 F.2d 275,279 (6th Cir. 1979); see also United States v. Smith, 500 F.2d 293,297 (6th Cir. 1974).

In the instant case, the judge did not give any instructions, nor did counsel request any, pertaining to the prosecutor's improper comment.

c. The Prosecutor's Statements Were Deliberate

The very repetition of the improper statement reveals that such comments were not accidentally placed before the jury. Prosecutor thereby, deliberately placed the improper statements before the jury.

d. The Strenght Of The Evidence Against Petitioner Was Not Overwhelming

As previously discussed in the Harmless Error Standard (I.A.2.), the evidence against Petitioner was not overwhelming. further, the evidence against Petitioner is contadicting at best:

Mr. Gibbons testifies that he did not know the suspect N.T.,3/22/17, p.31; Mr. Gibbons said the suspect said to him "Do you remember me, old head, from back in the day?" id. at 24, which would infer that he and the suspect had some interaction in the past; Mr. Gibbons said he do not know Petitioner. id. at 53.

Mr. Gibbons said the suspect had a red, white and blue flag or bandana or cutoff shirt covering his face id. at48,49; detectives searched Petitioner's home and did not find anything matching that description. N.T.,3/23/17,p.36.

A search of that residence did produce a firearm that was used in this crime, and Petitioner's DNA was on it; Petitioner said he purchased the firearm from Ms. Lofton, after the crime had occurred id. at 126; there was evidence that DNA belonging to someone else found on the firearm as well. Id. at 81.

There was evidence that a cellphone registered to Petitioner was in the general vicinity of the crime at the relevant time; Petitioner said that he did not possess that phone on the night of the crime. Id. at 123

Further, the alleged phone was never discovered.

Commonwealth's key witness, Latia Lofton, is Petitioner's cousin and alleged accomplice. She had already pled guilty, she would later be sentence by the same Judge hearing Petitioner's case. Prosecutor stated: Ms. Lofton is testifying because she wants a lighter sentence. N.T., Opening Statement,3/22/17,p.4,5. She did receive that lighter sentence.

Ms. Lofton said that she and Petitioner planned the robbery, Ms. Lofton never identify Petitioner as the one who committed the crime. In fact, she only identify Petitioner as the person she was texting on the phone with N.T.,3/22/17,p.84, and still, she wasn't sure if Petitioner was the one who committed the crime. Id. at 94,95.

Ms. Lofton said that, while she was alone with Petitioner, he indicated that someone else did the crime. Id. at 108. Ms. Lofton and Petitioner had a conversation, after the crime had happened, in secrecy, while at her mother's house, and still he did not admit to the crime.

There was a video that a white work van was parked near the crime at the time the crime happened, but Petitioner does not appear in the video, or in the van. Id. at 165.

Ms. Lofton said she received $300 from Petitioner, and that Petitioner told her that he got $900 from the robbery. Id. at 96. However, Mr. Gibbons said only a few hundred was taken id. at 24, and then on redirect, Ms. Lofton says, Petitioner never said anything about getting $900, she only assumed. Id. at 134.

The cellsite data location evidence placed the suspect in the general vicinity of the crime at the relevant time. Petitioner's only direct connection to that cellphone, is that it is subscribed in his name, there isn't any evidence of him possessing that phone on the night of the crime. Id. at 152.

There was 5 letters that was stipulated as being sent by Petitioner. Petitioner denied writing all 5 letters. N.T.,3/23/17,p.128-133,140,143,147.

The evidence of the prosecution in this case is contadicting at best to substain a verdict of guilty, therefore harmless error can not be attributed to the evidence of this case.

2. Infection Of The Trial

(1) The prosecutor misstated evidence. (2) Petitioner rights were violated, because he was not aware that prosecutor would argue that, petitioner not only stipulated to sending the letters, but that he also stipulated to writing the letters. (3) The improper comments were not invited by the defense. (4) There weren't any curative instructions.

(5) The weight of the evidence against Petitioner was not so overwhelming. (6) Petitioner did not approve of stipulation; trial counsel did not object or challenge any evidence pertaining to the stipulated letters, nor did he object to the prosecutor's mischaracterization of the stipulation; Petitioner testified saying, he did not write all of the letters. He was adversely affected because trial counsel stipulated that he sent the letters, but failed to object when prosecutor mischaracterized said stipulation.

a. Pennsylvania Superior Court's Error

The P.A. Superior Court erred in holding that the PCRA court was correct in concluding that Petitioner suffered no prejudice as these letters could have been authenicated and submitted into evidence without the stipulation. App. "A" page 4

If the letters were submitted into evidence without stipulation, Petitioner would have been able to submit his own rebuttal evidence; trial counsel would have been able to cross or object to evidence pertaining to the incriminating letters. Trial counsel elected not to cross examine a damaging witness to the defense. N.T.,3/23/17,p.97. If not but for the stipulation, counsel would have been able to search for the truth and any unanswered questions pertaining to the letters.

i. Instructions To The Jury

The instructions about what it means when counsels stipulate, was read to the jury. N.T.,3/22/17,p.70. The jury are to follow the rules of the court, in doing so, the credibility of Petitioner was adversely effected in the eyes of the jury, in that, Petitioner's trial counsel stipulated to Petitioner sending the letters, but failed to object when prosecutor mischaracterized said stipulation. Also, the timing of

the prosecutor's improper comments, being the first, middle, and last thing the jury heard, magnified the error.

It's very likely that the outcome of trial would have been favorable for the Petitioner had not trial counsel accepted the stipulation, without prior approval from Petitioner, and/or trial counsel objected to the prosecutor's mischaracterization of stipulation.

III. The Pennsylvania State Court's ruling was not supported by the evidence and free from legal error when it held that Petitioner's trial counsel was not ineffective for failing to conduct an on-the-record colloquy with Petitioner before agreeing to the stipulations regarding the five letters allegedly sent by Petitioner

A. Supporting Facts

In addition to the supporting facts stated in the above arguments, Petitioner's trial counsel and prosecutor stipulated, without Petitioner's approval, that 5 letters were sent by Petitioner. N.T.,3/23/17,p.83. The incriminating letters was used to show Petitioner's consciousness of guilt, deception and show that Petitioner was telling certain trial witnesses how they should testify. The stipulation waived Petitioner's right to cross examine any evidence or testimony pertaining to the letters.

1. Colloquy Should Have Been Requsted By Counsel

The stipulation agreed by counselors waived Petitioner's right to, effectively cross or challenge the stipulated evidence. Petitioner's testimony about the letters were tainted because of the stipulation. Prosecutor also argued that Petitioner stipulated to writing the letters, without any objection by trial counsel. This was a clear mischaracterization of stipulation. So, when the jury received the instructions by the court about what it means when counsels stipulate N.T.,3/22/17,p.70, they are to follow those instructions. In doing so, whatever Petitioner said about the 5 letters, were moot in their eyes, because they were

instructed to accept the fact that Petitioner not only sent, but that he also, written the letters. N.T.,3/24/17,p.37,40. The court's failure to conduct an colloquy, and trial counsel's failure to request one, was not harmless, and Petitioner suffered prejudice.

a. Proof Of Petitioner's Disapproval or "Non" Agreement Of Stipulation

Petitioner's own testimony, of him , denying writing all 5 letters, is a clear indication that he was not in agreement with stipulations. A colloquy would have assured all parties, that all parties was in agreement with said stipulation, and if there were no agreement, the letters would have been authenicated some other way. Further, the court would have informed Petitioner of certains rights he would be waiving, by stipulating.

b. Authority Of The Court

An error can not be held harmless unless the appellate court determine that the error could not have contributed to the verdict. whenever there is a "reasonable possibility" that an error "might have contributed to the conviction," the error is not harmless. Commonwealth v. Davis, 452 Pa. at 178,305 A.2d at 719, quoting Chapman v. California, 386 U.S. at 24,87 S.Ct. at 828.

In deciding whether an error is harmless because there is properly admitted overwhelming evidence of guilt, the untainted evidence relied upon must be "uncontradicted." In Commonwealth v. Henderson, 456 Pa. 234, 317 A.2d 288 (1974), this court held an error not harmless under the

overwhelming evidence test because there was evidence in the case which contradicted the guilt of the defendant.

i. Contradicting Evidence

Mr. Gibbons testified that he did not know the person who robbed him N.T.,3/22/17,p.31; Mr. Gibbons testified that the suspect said to him: "Do you remember me, old head, from back in the day?" id. at 24, which would infer that the suspect and Mr. Gibbons had some interaction in the past; Mr. Gibbons said he did not know Petitioner. Id. at 53.

Mr. Gibbons testified that the suspect had a red, white and blue flaf covering his face id. at 48,49; detectives searched Petitioner's home and did not find anything matching that. N.T.,3/23/17,p.36.

A search of that home did produce a firearm that was used in this crime, and Petitioner's DNA was on it, Petitioner said he purchased the firearm from Ms. Lofton, after the crime had occurred id. at 126; there was evidence that DNA belonging to someone else found on the firearm as well. Id. at 81.

There was evidence that a cellphone registered to Petitioner was in the general vicinity of the crime during the relevant time; Petitioner said he did not possess that phone on the night in question. N.T.,3/23/17,p.123. Further, the alleged phone was never discovered.

Commonwealth's key witness, Latia Lofton, is Petitioner's cousin and alleged accomplice. She had already pled guilty, she would later be sentenced by the same Judge hearing Petitioner's case. Prosecutor states: Ms. Lofton is testifying in hopes of getting a lighter sentence N.T.,Opening Statement,3/22/17,p.4,5. She did receive that lighter sentence.

Ms. Lofton testified that she and Petitioner planned the robbery, however, Ms. Lofton never identify Petitioner as the one who committed the crime. In fact, she only identify Petitioner as the person she was texting on the phone with id. at 84, and still, she wasn't sure if Petitioner was the one who committed this crime. Id. at 94,95.

Ms. Lofton testified that, while she was alone with Petitioner, he indicated that someone else did the crime. Id. at 108. Even in the privacy of Ms. Lofton's mother's house, while in secrecy, Petitioner still, never admit to the crime, he just tells her not to worry. Id. at 109,110.

There was video that a white work van was parked near the crime at the time the crime happened, but Petitioner does not appear in the video, or in the van. Id. at 165.

Ms. Lofton testified that she received $300 from Petitioner, and that he told her that he got $900 from the robbery, Id. at 96. However, Mr. Gibbons says only a few hundred was taken id. at 24, and then on redirect, Ms. Lofton now says, Petitioner never said anything about getting $900, she only assumes. Id. at 134.

The cellsite data location evidence placed the suspect in the general vicinity of the crime at the relevant time. Petitioner's only direct connection to that cellphone, is that it is subscribed in his name, there isn't any evidence placing that cellphone on Petitioner's person the night of the crime. Id. at 152.

There was 5 letters that was stipulated as being sent by Petitioner. Petitioner denied writing all five letters. Specifically, testifying that he only wrote two of them. Petitioner also claimed it was someone else handwriting. N.T.,3/23/17,p.140.

The evidence of the prosecution in this case is contradicting at best to substain a verdict of guilty, therefore harmless error can not be attributed to the evidence of this case.

ii. Summary

Petitioner submitted an alibi defense. Trial court did not give an alibi instruction, nor did trial counsel request any.

Five incriminating letters were stipulated between trial counsel and the prosecutor, without prior approval from Petitioner. Prosecutor mischaracterized said stipulation by saying, the defendant stipulated to writing the letters. The improper comments went on throughout the whole trial, without any objections or curative instructions.

There weren't any colloquy, nor was any requested by trial counsel, regarding the stipulations. The stipulation waived Petitioner's right to cross-examine any evidence pertaining to the letters.

The Pennsylvania State Court denied Petitioner relief, on the basis that the evidence against him was overwhelming. Petitioner argues that the overwhelming evidence that the Court relies on is contradicting at best, and therefore was not harmless err. Commonwealth v. Henderson, 456 Pa. 234,317 A.2d 288 (1974).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: February 23, 2022