NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD CHIPPERO,

Petitioner,

v.

ATTORNEY GENERAL, NEW JERSEY, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should Petitioner's convictions be vacated because the evidence was wholly insufficient to sustain his convictions?

PARTIES TO THE PROCEEDINGS

The Petitioner is:

Richard Chippero

The Respondent is:

Administrator, Northern State Prison
Attorney General of New Jersey

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STATEMENT OF JURISDICTION

Richard Chippero seeks review of the April 25, 2022 Order of the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 2254 of Title 28 of the United States Code, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), reads, in relevant part:

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

STATEMENT OF THE CASE

Middlesex County Indictment No. 91-09-1510 charged Appellant, Richard Chippero, with possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4(d) (Count One), burglary, contrary to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:18-2 (Count Two); aggravated sexual assault, contrary to N.J.S.A. 2C:14-2(a) (Count Three); murder, contrary to N.J.S.A. 2C:11-3(a)(1) and/or N.J.S.A. 2C:11-3(a)(2) (Count Four); felony murder, contrary to N.J.S.A. 2C:11-3(a)(3) (Count Five) and hindering apprehension or prosecution, contrary to N.J.S.A. 2C:29-3(b)(1) (Count Six).

Mr. Chippero was tried twice for the crimes charged against him. The first trial was held in 1993 and resulted in convictions on all Counts, except Count Two, which was dismissed by the trial court during the first trial. On July 1, 1999, the Appellate Division affirmed the convictions. The New Jersey Supreme Court granted certification and reversed, however, ruling that because Mr. Chippero "was illegally arrested and interrogated," the confession stemming therefrom should have been suppressed. Therefore, the matter was remanded for a new trial without the admission of the unlawfully obtained confession. *State v. Chippero*, 164 N.J. 342 (2000).

The new trial commenced on February 11, 2003 and ended on March 7, 2003, before the Honorable Phillip Paley, J.S.C. and a jury. On the latter date, the jury convicted Mr. Chippero of purposeful or knowing murder and possession of a weapon for an unlawful purpose, but found him not guilty of felony murder and aggravated sexual assault.[1]

On May 12, 2003, Judge Paley merged the two convictions and sentenced Mr. Chippero to life imprisonment with thirty years to be served before parole eligibility.

Mr. Chippero filed an appeal from the convictions stemming from the second trial. On August 9, 2006, the Appellate Division ordered a remand to the trial court to explore whether the New Jersey Supreme Court's ruling in this case in *State v. Chippero*, 164 N.J. 342 (2000), that Petitioner's arrest was not based on probable cause, vitiated the search warrant obtained to search his home.

On September 28, 2006, the trial Court issued a written opinion, holding that the Supreme Court decision in *State v. Chippero* had no effect on the probable cause finding on the search warrant.

On May 13, 2008, the Appellate Division reversed Mr. Chippero's convictions, holding that the Supreme Court's ruling in Chippero required a

[1] The hindering apprehension charge was dismissed during the retrial.

reversal. The Appellate Division could not conclude that, even if there was a basis for distinguishing between "probable cause to arrest" and "probable cause to search," the Supreme Court's holding on review of the first trial can be limited to the absence of probable cause to arrest. In light of the reversal, the Appellate Division did not rule on the remaining issues raised by Mr. Chippero on said appeal.

Thereafter, the State obtained a stay of the judgment and filed a Petition for Certification with the New Jersey Supreme Court, which was granted by the Court. On December 29, 2009, the New Jersey Supreme Court reversed the Appellate Division's ruling and remanded the case for consideration of the other issues raised by the Petitioner that had not been previously decided by the Appellate Division.

On December 7, 2010, the Appellate Division, considering Mr. Chippero's remaining arguments, affirmed his convictions. Petitioner thereafter sought certification, which was denied by the New Jersey Supreme Court on June 7, 2011.

Mr. Chippero subsequently filed a Petition for Post-Conviction Relief (PCR). Oral argument was heard on August 27, 2012, and on said date, the Honorable denied the PCR application without affording Mr. Chippero an

evidentiary hearing. Thereafter, the New Jersey Supreme Court denied Mr. Chippero's Petition for Certification.

Mr. Chippero then filed a *pro se* federal habeas petition setting forth several grounds for relief. By Order dated January 14, 2020, the District Court denied the habeas petition for the reasons set forth in the accompanying Opinion. The District Court also ordered that a certificate of appealability shall not issue.

Mr. Chippero filed a Notice of Appeal, which was also treated as a request for a certificate of appealability. Appellant's request for a certificate of appealability was granted by the Third Circuit on July 30, 2020 as to the following issue:

> Chippero's request for a certificate of appealability is granted in part and denied in part. The request is granted solely on the following issue: whether the District Court erred in denying his claim that the evidence was insufficient to sustain his conviction. See generally *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We are satisfied that "jurists of reason could disagree with the district court's resolution of [this] constitutional claim[]." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Mr. Chippero's request for a certificate of appealability was denied as to the remaining claims.

On April 25, 2022, the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of habeas relief. App. 1-9.

REASONS FOR GRANTING THE WRIT

PETITIONER'S CONVICTIONS MUST BE VACATED BECAUSE THE EVIDENCE WAS WHOLLY INSUFFICIENT TO SUSTAIN HIS CONVICTIONS

The District Court had jurisdiction over this matter pursuant to 28 U.S.C. § 2254 because Mr. Chippero's habeas petition alleged that he was incarcerated in violation of the United States Constitution; this Court has jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253. On appeal before the Third Circuit, review of the District Court's opinion was plenary, when as in this case, the District Court denies a habeas corpus petition based on its review of the record and does not conduct an evidentiary hearing. *Showers v. Beard*, 635 F.3d 625, 628 (3d Cir. 2011).

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Mr. Chippero must satisfy two statutory requirements to prevail on his federal habeas petition. First, he must establish that "he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Second, since the state appellate court ruled on the merits of his claims, he must also go further and show that his detention is the result of a state court decision that was (1) "contrary to, or involved an unreasonable application of, clearly

established Federal law, as determined by the Supreme Court of the United States;" or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

"Contrary to clearly established Federal law" means the state court applied a rule that contradicted the governing law set forth in U.S. Supreme Court precedent or that the state court confronted a set of facts that were materially indistinguishable from U.S. Supreme Court precedent and arrived at a different result than the Supreme Court. *Eley v. Erickson*, 712 F.3d 837, 846 (3d Cir. 2013) (citing *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)). The phrase "clearly established Federal law" "refers to the holdings, as opposed to the dicta" of the U.S. Supreme Court's decisions. *Williams*, 529 U.S. at 412.

Under § 2254(d)(1), "[a] state court decision is an unreasonable application . . . if the court identifies the correct governing legal rule from the Supreme Court's cases but unreasonably applies it to the facts of the particular case." *Jacobs v. Horn*, 395 F.3d 92, 100 (3d Cir. 2005). The state court's application of clearly established law must be objectively unreasonable before a federal court may grant the writ. *Roundtree v. Balicki*, 640 F.3d 530, 537 (3d Cir. 2011).

Under § 2254(d)(2), an application for a writ of habeas corpus should be granted which 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. See *Miller-El v. Dretke*, 545 U.S. 231, 265 (2005) (granting habeas relief where state court's finding of no *Batson* discrimination was clearly erroneous, unreasonable and reflected a "dismissive and strained interpretation" of the evidence); *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003) ("[A] decision adjudicated on the merits in a state court and based on a factual determination will … be overturned on factual grounds [if it is] objectively unreasonable in light of the evidence presented in the state-court proceeding."); *Wiggins v. Smith*, 539 U.S. 510, 528 (2003) (granting habeas petition, in part under Sections 2254(d)(2), where state court of appeals' factual conclusions about what the trial record revealed were clearly erroneous as to specific facts as well as generally wrong in its overall conclusion that there was sufficient evidence counsel provided effective representation).

See also *Lambert v. Blackwell*, 387 F.3d 210, 235 (3d Cir. 2004), *cert. denied*, 544 U.S. 1063 (2005) ("The fundamental prerequisite to granting the writ on factual grounds is consideration of the evidence relied upon in the state court proceeding. Section 2254(d)(2) mandates the federal habeas court to assess whether the state court's determination was reasonable or unreasonable given that evidence. If the state court's decision based on such a determination is

unreasonable in light of the evidence presented in the state court proceeding, habeas relief is warranted."); see also *Grant v. Stickman*, 122 Fed. Appx 590, 594 (3d Cir.), *cert. denied*, 546 U.S. 846 (2005); *Beneshunas v. Klem*, 137 Fed. Appx. 510, 514 (3d Cir.), *cert. denied,* 546 U.S. 1019 (2005) (We may also grant a writ under § 2254(d)(2) if the state court decision was based on an objectively unreasonable factual determination.).

Here, it is submitted that Mr. Chippero has not procedurally defaulted his claims and has, in fact, exhausted them in the State Court. That is, Mr. Chippero certainly argued on direct appeal that the verdict was against the weight of the evidence, as well as that the trial Court erred in denying his motion for a judgment of acquittal at the close of the State's case. Certification was thereafter denied by the New Jersey Supreme Court.

The District Court held that whether or not Mr. Chippero's "sufficiency of the evidence claim... is exhausted or unexhausted, it must be denied on the merits."[2] The United States Court of Appeals for the Third Circuit affirmed the

[2] Mr. Chippero also claimed that he was "actually innocent of the charges against [me] and the verdict is against the weight of the evidence thereby depriving [me] a fair trial and due process of law." The District Court "construe[d] this to assert two separate claims: actual innocence and weight of the evidence."

District Court's denial of habeas relief. In so doing, it is respectfully submitted that the lower Courts erred.

A claim that a jury's verdict is against the weight of the evidence raises due process concern where, "after viewing the evidence in the light most favorable to the prosecution, [no] rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see also *State v. Reyes*, 50 N.J. 454, 458-459 (1967).

But, this inquiry does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. "Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id;* see also *Woodby v. INS*, 385 U.S. 276, 282 (1966).

"Inferences from established facts are accepted methods of proof when no direct evidence is available. It is [nevertheless] essential ... that there be a logical and convincing connection between the facts established and the conclusion inferred." *United States. v. Bycer*, 593 F.2d 549, 550 (3d Cir. 1979).

With regard to the case at bar, it is respectfully submitted that even viewing the evidence in the light most favorable to the State, the elements of the crime(s)

were not established beyond a reasonable doubt. In addressing Mr. Chippero's assertion that there was no direct or even circumstantial evidence adduced at trial that could lead to an inference of guilty, the District Court found that "the record at trial was replete with evidence adduced against him, including: the testimony of his mother who gave the police Chippero's gray t-shirt which she had just washed blood stains out of; his mother's and Dr. DeForest's testimony regarding the blood-stained shoelace from the Sneakers and the shoe imprint on the victim's back; and McMenemy's sighting of Chippero outside Rose Tocci's residence the day she was killed. (Citations omitted.)

With regard to Mr. Chippero's assertion that the jury's verdict was against the weight of the evidence, the District Court found that "a rational jury could find Chippero guilty beyond a reasonable doubt of the offenses charged if the jurors chose to believe McMenemy's testimony; to credit Dr. DeForest's analysis of the footprint evidence, the T-596 sneakers' blood-stained shoelace, and the shoe imprint on the victim's back; to discredit the accounts offered by the defense witnesses; and to find credible the testimony of Mary Giaguinto, Leonard Falabelda, and Barbara Traube."

As will be demonstrated herein, it is submitted that the proof presented by the State at trial was wholly insufficient to sustain the convictions, and this

includes the aforementioned evidence relied upon by the Court in denying Mr. Chippero's application for a writ of habeas corpus.

At the outset, it should be pointed out that there were no eye witnesses to the murder. The State's case against Mr. Chippero was purely circumstantial, there was no direct evidence; and this was conceded by the State. In so doing, the State argued that considering the "pieces of circumstantial evidence...when, evaluated together and individually," "the only reasonable inference that can be drawn from that evidence...[is] that Richard Chippero raped and murdered Ermina Rose Tocci on July 23, 1991."

Regarding the testimony of Mary Giaquinto, Leonard Falabelda and Barbara Troube concerning the time that Mr. Chippero allegedly approached them, and what he supposedly said to them, it is submitted that even if their respective testimony was accurate, that does not establish beyond a reasonable doubt that Mr. Chippero murdered Ms. Tocci, or even knew before anybody else that the victim had been stabbed and had been found in a pool of blood.

Moreover, and in any event, the State based its case in large part on this faulty premise that Mr. Chippero supposedly knew of the murder/stabbing before the news became public information. Giaquinto, who lived at the trailer park, testified that she went outside when she saw the police lights on July 23, 1991.

She was speaking to another neighbor when a male voice behind her said "someone got stabbed. Some woman got stabbed." The man disappeared, and Giaquinto could not identify the man, but he was wearing a white t-shirt. Later that night, she saw the man sitting in a lounge chair. She did knot know the man's name, but she saw him once after that night riding around the block on his bicycle.

Falabella and his wife Traube lived across the street from Rose Tocci. Falabella knew Mr. Chippero. When he and his wife saw the police vehicles, they went outside with their dogs. About a half hour after the police arrived, defendant came across the street to play with the dogs. Mr. Chippero allegedly told Falabella and Traube that the woman across the street had been stabbed and found in a puddle of blood. Falabella asked defendant how he knew that. Mr. Chippero supposedly replied that he had heard it over the police radio/scanner.

Firstly, it is clear that, according to Falabella and Traube, Mr. Chippero asserted that he had heard the information over the police scanner or police radio. Moreover, and in any event, as argued by trial counsel during summation, the State did not prove that Mr. Chippero told his neighbors that Ms. Tocci was stabbed before anyone else know. Certainly, the police at the scene knew right away what had occurred. Additionally, all three of these witnesses testified that

the police had already arrived at the scene, and according to Falabella, it appears that they had already been there for at least about a half an half hour. (A957-A958)

Additionally, Mr. Chippero and his brother Vinny, were closest to the scene than any of the other neighbors. They were not across the street, but rather, right next door just twenty to forty feet away and were in a position where they could overhear what was being said by the officers and what was being relayed over the police radios.

Most importantly, we have the testimony of Ms. Giaquinto who also testified about a young man who told her that the woman was stabbed to death and then went back across the street and sat on a lawn chair next to his father. It is obvious that the "father" was Richard Chippero and that the young man was his younger brother Vinny, who also apparently overhead the police and passed along what he had heard to Ms. Giaquinto. In light of her testimony, some of these remarks can not even be attributed to Richard Chippero, let alone be relied upon to prove advance knowledge.

With regard to the t-shirt provided to law enforcement by the defendant's mother, which she had already washed, she described the stains on the shirt before she washed it as being a pinkish yellow color. In any event, she also testified at trial that this shirt did not even belong to Mr. Chippero; it was a size large which

belonged to her twelve year old son Vinny. Given the aforementioned testimony, coupled with the simple fact that there was nothing tying this shirt to the homicide (i.e., DNA, hair follicles, blood, saliva, semen, etc.) , this too, is clearly not enough to establish guilt beyond a reasonable doubt. To the contrary, this t-shirt isn't even an indication of any wrongdoing.

The Court also referred to the "T-596 sneakers' blood-stained shoelace, and the shoe imprint on the victim's back" to support the denial of Mr. Chippero's habeas corpus application. However, there was nothing on the sneakers and/or shoelaces to tie these items to the scene of the crime. The DNA testing results of the blood on the shoelace which was relied upon by the Judge specifically excluded Mr. Chippero as the source of that blood. It was also not the decedent's blood. Therefore, it is submitted that any blood found on the shoelace actually helps to exonerate Mr. Chippero.

With regard the imprint found on the victim's back, it is submitted that the crime scene in this case was not pristine and the could have easily been left by someone other than the perpetrator. It is further submitted that the testimony concerning the imprint on decedent's back allegedly matching that of the sneakers supposedly owned by the defendant was incredibly unworthy of belief as it was not founded on any appropriate methodology of comparison.

Doctor DeForrest himself undermined the validity of his own testimony. Although he "concluded" that the T-956 sneakers shared the same outer sole pattern as the footprint in the photo, he did not know the size of the actual imprint on the back of the decedent and would have himself needed a higher quality imprint to make a definitive match. There was simply too much blood on the shoe when the imprint was actually made. The pattern could have been made by a sneaker with a tread pattern similar to the T-956.

Dr. DeForrest also conceded that the photo was not clear, and moreover, specifically testified that he was “not saying that that particular shoe made that mark.” Instead, because of the lack of clarity in the photograph, and the lack of distinguishing features, he simply said that he could not exclude that shoe.

Because there was a lack of clarity, DeForrest was also unable to even determine the size of the shoe that made the imprint. He could not tell from the photo what the manufacturer's characteristics were and could not determine any individual identifying characteristics. He was also not given any sneakers owned by John Simmons to compare. In short, DeForrest admitted that he could not give any detailed reconstruction, but, rather, only suggestions.

For example, he conducted but a superficial and fleeting search for sneakers with similar tread wear. He could not locate any other footwear that might have

made the impression and did not have any information as to which company manufactured the sneakers, nor was he given any. He did not know the number of such sneakers sold in the area, or whether the design of the impression could have been from other types of sneakers. Tellingly, he also was compelled to admit that there was a very low number of footwear contained in the FBI catalog in relation to the entire universe of footwear. There were literally thousands of different designs and many of these designs were produced in large quantities. Many of these items would never be in the FBI data base. Therefore, this evidence was not conclusive of anything, even though it was a large part of the State's case.

The State could not even prove that the sneakers belonged to Mr. Chippero. The defendant's mother did not recognize these sneakers. Moreover, she testified that having purchased sneakers for her son Richard, she knew that he wore a size 13 wide. According to Inv. Haley, however, the T-956 sneakers recovered were a size 12.

Likewise, the testimony of Kevin McMenemy was also highly suspect and unworthy of belief. Firstly, it is highly likely that he did not even see the defendant on July 23rd. On cross-examination, he initially claimed not to recall giving a description of the man he saw as being in his 30's, of medium build,

between 5,6"-5 , 8". It was only when transcripts of earlier statements he gave, in which he provided a description of this man as weighing between 175-180 and being in his 30's or 40's that he acknowledged that earlier description. Secondly, he also acknowledged that there were no blood or other stains on this man or on his clothing. He also saw no weapon. McMenemy also described the man's hair as covering his ears. Incredibly, the police did not have him look at any lineups or photo arrays and his identification was based solely on what he saw in the paper.[3] Lastly, the defendant was simply going into his own home and there was nothing at all untoward about his being there since he lived right next door; he was not seen exiting the victim's premises.

The State also relied upon the phone call to McMenemy at his place of work allegedly made by Mr. Chippero from the Middlesex County Jail. It is submitted, however, that this should not be given any credence, as it was based on a flimsy foundation. There was no direct proof, whatsoever, that Mr. Chippero made the call. The officer who testified, Vitanza, stated that inmates play pranks and jokes

[3] McMenemy did not make an in-court identification of Mr. Chippero. During summation, the Assistant Prosecutor justified that by providing his personal opinion about McMenemy's veracity thereby vouching for his credibility stating "Kevin McMenemy did not walk into this courtroom and say that's the man I saw 12 years ago. I think it would have been a little unbelievable, incredible for him to walk into this courtroom having not seen this person for 12 years and say, yeah, that's the person I saw." [emphasis added]

on other inmates, that the cells were full, that no records are kept of who makes phone call and there was no evidence defendant was even in the common area when the call was made. Most importantly, the defendant's discovery provided to him by his lawyers had been stolen. That discovery contained the work phone number of Keven McMenemy, to whom the call was made. A conviction for murder can not be based on such testimony like that concerning the call from C-pod.

As the prosecutor stated in his closing, the State's entire theory of the case was that the defendant "sexually assaulted her [Rose Tocci] and wanted to silence the only living witness to that heinous crime." However, the evidence adduced, by both the State and the defense, totally rebutted that theory and paved the way for a conclusion that the defendant was not a murderer, just as he was not a rapist. Indeed, the stipulation entered into explicitly stated that the defendant was excluded as the person who deposited the sperm in the decedent's vagina, although John Simmons could not be excluded. The blood on the shoelace of the left sneaker was not that of the defendant, but this sample was not compared to the blood of Mr. Simmons.

Doctor Shuster, the State medical examiner, admitted that the reddening of the deceased's vaginal area could have been caused by consensual sex. There was

no physical trauma to the vaginal canal and he admitted that, in forced sex, there will be trauma to the vaginal canal. For some unknown reason, he took only one swab from the vagina and did not take any swabs from the labia. In fact, he did not take any swabs from the five compartments of the vagina and the exact time of the taking of the swabs could not even be determined. The ejaculate found could have been a day older than the approximately twelve hours the doctor had originally estimated and he acknowledged that he told an investigator that the ejaculate could have been two days old. Thus, the State's own medical examiner could not testify with any credibility or certainty that any sexual assault of any kind had occurred.

Nor was there any trace evidence remotely linking the defendant with the crime or placing him inside 51 Poe Road at any time. DeForrest, the State criminalist, compared hair samples to the hair of the defendant and Simmons and could find no hairs matching those of the defendant. But, he could not eliminate Simmons as the donor of the hairs found. The defense expert, Doctor Richard Saferstein, agreed with the stipulation concerning a lack of trace evidence or sperm linking the defendant to the crime and, tellingly, testified quite convincingly that this type of a crime, occurring in a confined area, would invite close contact and was an atmosphere highly suited to producing trace evidence. He also

concluded that the hairs were not from the defendant and could have been from an unidentified black male.

Ironically, in this case, there was actually much more evidence that strongly supported a conclusion of innocence, or, at a minimum, showed that the defendant's guilt was not established beyond the legally mandated reasonable doubt. It was beyond cavil that robbery was not a motive, as significant sums of cash were found lying around, in plain sight. There was no proof of any forced entry. When coupled with the undisputed fact that the decedent always kept the doors locked and never allowed strangers (or, hardly anyone else) into the trailer, that strongly negated the possibility that the defendant was the killer but rather strongly suggested that the killer was someone that Ms. Tocci knew well and/or had their own keys to the trailer. In this regard, it is highly significant that Simmons used his keys to gain entrance to the trailer when he discovered the body.

Finally, it is submitted that the testimony and actions of John Simmons provides the best proof that a reasonable doubt existed as to the defendant's guilt and he should have been exonerated. The evidence strongly suggested that

Simmons was the real killer.[4] And, an accused is constitutionally entitled to prove his innocence, or persuade a fact finder of a reasonable doubt of guilt by suggesting someone else committed the crime charged. *State v. Jiminez*, 175 N.J. 475, 486 (2003); see also *State v. Koedatich*, 112 N.J. 225, 297 (1988), cert. denied, 488 U.S. 1017 (1989). As stated by Chief Justice Weintraub, "[i]t would seem in principle to be sufficient if the proof offered has a rational tendency to engender a reasonable doubt with respect to an essential feature of the State's case." *State v. Sturdivant*, 31 N.J. 165, 179 (1959), cert. denied, 362 U.S. 956 (1960). To be admissible, evidence of another's guilt need not be conclusive, and it "need not [constitute] substantial proof of a probability that the third person committed the act." *Jiminez*, supra, 175 N.J. at 486.

In the instant case, there can be no doubt, whatsoever, that Simmons was an admitted liar. First, Simmons reported at 5 p.m., two hours late, for his second job at Monmouth County and could not provide any explanation for that unexplained lateness. At first, he tried to testify that he was only thirty minutes late, but on cross-examination admitted to the truth of two hours, but still had no explanation.

[4] Even the decedent's mother did not understand why Simmons was not investigated and went so far as to make inquiry of Det. Clark about her concern.

Thus, from the outset, on a crucial point, Simmons contradicted himself and earlier statements that he had made.

He also denied that the t-shirt found in the bedroom, with blood on it, was his. Simmons wore a size of shirt smaller than the defendant, who wore an extra large. The shirt in the bedroom fit a smaller man, which was Simmons. Yet, he tried to assert that he had did not own such a shirt, because he knew that the admission would place him at the scene. Further, the stipulation entered into stated that Richard Chippero was excluded as being the source of any hairs found at the scene, although Simmons could not be positively excluded. Additionally, the stipulation also stated that a hair recovered from Rose Tocci's body appeared to have been removed from its source by other than natural means such as combing, brushing, pulling or some other external force. That forcible removal certainly would have happened if Rose Tocci had struggled with Simmons, trying to ward off his attack.

Simmons also lied about many other things. He claimed that he did not know that Rose had changed her life insurance policy to make him a beneficiary of $32,500, but he did admit that Rose talked to him about her relocating to Florida and also talked to him about separating, only two months before her death. He fought her family for the insurance proceeds and eventually was successful in that

litigation, again profiting due to his relationship with Rose Tocci. He also tried to conceal the fact, through feigned lack of memory, that Rose loaned him $3,400 to buy his Buick Riviera, but in his 1995 testimony, he acknowledged that she loaned him this sum of money for the car. He also acknowledged that they both agreed to end their relationship two months before Rose's death. It is clear that Simmons perceived he might well be losing his "meal ticket" and was upset about that possibility.

From his first conversations with police officers, on the night of the murder, he blatantly misled the authorities. He lied about whether he lived at 51 Poe Road and admitted that he lied to Lieutenant Mozgai about staying at 51 Poe Road "only occasionally." Under oath, on tape, he stated that they last had sex four months before her death, but then later admitted that was a lie as they had sex only four days before her death.

He also concealed the fact that he had more storage places elsewhere than those locations the police searched, but he did not tell the police about those other storage locations. In 1995, he testified that he wore a blue t-shirt with his name on it. Then, in 2003, that changed too; he testified that he did not know what color that the shirt was. He admitted to arriving at work at Monmouth County, two hours late, at 5 p.m. on July 23 and that he had never been that late for work.

Simmons' own testimony showed that he was the only person that might have gained access to the trailer, due to kind of personality that Rose Tocci had, especially her distrust of strangers and fear of opening the door to *anyone.* He himself testified that Rose always kept the doors locked and that whenever he would return to the trailer, the doors would be locked. Rose went as far as to tell him to not even answer the door if someone knocked. He did not want to be accused of this crime and that is the reason that he lied to the police about his relationship with Rose. He also admitted that he wore a white, medium-sized t-shirt. It is submitted, therefore, that Simmons' testimony was devoid of truth, was self-serving in the extreme, and should not have been given any credit by the jury.

The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires that every element of a crime be established beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 361-362 (1970). Here, based upon the foregoing, it is submitted that Mr. Chippero's convictions must be vacated; the evidence was simply insufficient to sustain said convictions for which he was wrongly convicted.

CONCLUSION

For the reasons stated in this petition, Mr. Richard Chippero respectfully requests that a writ of certiorari be issued to review the decision below.

Respectfully submitted,

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Dated: June 10, 2022