

22-5758

No. _____

ORIGINAL

DEATH IN PRISON SENTENCE...

FILED

SEP 22 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUSTUS HEBREW EVANS JR. — PETITIONER
VS,

KATHLEEN M. JENNINGS, ATTORNEY
GENERAL, STATE OF DELAWARE, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DELAWARE SUPREME COURT
55 THE GREEN, DOVER, DE 19901
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS HEBREW EVANS JR. #00191247
(Your Name)
JAMES T. VAUGHN CORRECTIONAL CENTER
1181 PADDOCK ROAD, SMYRNA, DE 19977
(Address)

INAPPLICABLE... PRO SE PRISONER,
(PHONE NUMBER)

IV.

QUESTION(S) PRESENTED

- ONE: UNDER MARTINEZ V. RIAN 132 S.Ct. 1309 (2012):
DOES NO COUNSEL DURING INITIAL Rule 61 PROCEEDING, QUALIFY AS CAUSE
TO OVERCOME PROCEDURAL DEFAULT MECHANISMS...?
- TWO: DOES FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTRUCTION, QUALIFY
AS SUBSTANTIAL DUE PROCESS VIOLATION OF RIGHTS TO FAIR TRIAL?
HENRY V. STATE 805 A.2d 860 (2002); CITING, 11 DEL. C. § 206, AND...
BECK V. ALABAMA 447 U.S. 625, 633 (1980)...
- THREE: WHETHER DUE PROCESS CLAUSE OF FEDERAL CONSTITUTION PROTECTS INTERESTS IN
FAIR NOTICE AND REPOSE, COMPROMISED BY RETROACTIVE LEGISLATION...?
WEAVER V. GRAHAM, 450 U.S. 24, 25 (1981):
- FOUR: WHETHER, AT BAR, APPLICATION OF AMENDED CRIMINAL RULE VIOLATES EX
POST FACTO LAWS OF ART. I, § 10 OF U.S. CONSTITUTION?
COLLINS V. YAMABLOOD 497 U.S. 37 (1996); AND ITS PROGENY?
- FIVE: WHETHER DISCOVERING PROSECUTION WITHELD EXONERATORY CRIME SCENE WITNESS
STATEMENTS 13 YEARS AFTER TRIAL, ESTABLISHES A BRADY VIOLATION IF SO
PROVEN? BRADY V. MARYLAND 373 U.S. 83 (1963):
- SIX: WHERE THE STATES HIGHEST COURT HAS SIDESTEPED TRIAL FACTUAL PREMISES
AND CONTROLLING PRECEDENT IN CASE OF ONE WHO IS ACTUALLY INNOCENT
WILL THE U.S. SUPREME COURT EXERCISE DISCRETION?
- SEVEN: LIKE PURNELL, APPLYING PETITIONERS' CASE UNDER OLD VERSION OF Rule 61
(IXS); IS PETITIONER ENTITLED TO RELIEF PURNELL V. STATE 2021 DEL. LEXIS
193 (DEL. JUNE 12, 2021)?
- "SEE: APPENDICE E - MEMORANDUM... AND F - EXHIBITED RECORD..."

V.

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:

RELATED CASES

1. PURCELL V. STATE. 2021 DEL. LEIS 193 (JUNE 17, 2021); AND ITS PROGENY'S
2. HENRY V. STATE, 805 A.2d 860 (2002); AND ITS PROGENY'S CITING:
BECK V. ALABAMA 497 U.S. 625 (1990);
3. COLLINS V. YOUNGBLOOD 497 U.S. 37 (1990); AND ITS PROGENY'S CITING:
GRAHAM V. WEAVER 480 U.S. 34, 35 (1981); AND ITS PROGENY'S CITING:
ART. 1. § 10 OF THE U.S. CONST. [AS RELATED TO EX POST FACTO LAWS]...
4. STURGIS V. STATE 2018 DEL. SUPER. LEIS 1321 (NOV. 19, 2018); WHERE ..
[THE ACTUAL EFFECT OF THE 2014 AMENDED RULE IS CONCEDED.]
5. BRADY V. MARYLAND. 373 U.S. 83 (1963); AND ITS PROGENY'S...
6. MARTINEZ V. RYAN 132 S. CT. 1309 (2012); AND ITS PROGENY'S...

VII.

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VIII.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
MARTINEZ V. RIAM, 132 S.Ct. 1309 (2012) - - -	iii, 6
HENRY V. STATE BOS A, 2d BDO (2002) - - -	iii, 5
BECK V. ALABAMA, 447 U.S. 625 (1980) - - -	iii, 5
WEAVER V. GRAHAM, 450 U.S. 24 (1981) - - -	iii
COLLINS V. V. YOUNG BLOOD, 497 U.S. 37 - - -	iii, 5, 7, 8
BRAND V. MARYLAND, 373 U.S. 83 (1963) - - -	iii, 5
FURMELL V. STATE 2021 DEL. LEXIS 193 - - -	iii, 9
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BURTON V. STATE, 2018 DEL. LEXIS 588 - - -	5
U.S. ex rel. STEIBLER V. PAROLE, 501 F. SUPP. 1077 (1980) - - -	7
WRIBAT V. STATE 91 A3d 972 (2014) - - -	7

STATUTES AND RULES

SUPERIOR COURT CRIMINAL Rule 61 - - -	ii, 4, 5, 6
ART. 1 § 10 - - -	iii, 4
11 DEL. C. § 206 - - -	ii, 5

OTHER

SEE APPENDICE E, MEMORANDUM, SUPPORTING WRIT,
 SEE APPENDICE F, EXHIBITS TO MEMORANDUM...

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.

IX:

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 B 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 SUSSEX COUNTY SUPERIOR COURT court appears at Appendix C 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was June 15, 2022.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: July 12, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

XI.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 14 AMENDMENT DUE PROCESS RIGHTS TO FAIR TRIAL -
- 14 AMENDMENT DUE PROCESS RIGHTS TO HAVE REQUESTED LESSER INCLUDED INSTRUCTION GIVEN TO JURY -
- 14 AMENDMENT DUE PROCESS RIGHTS TO ADEQUATE NOTICE OF RULE CHANGE AND RETROSPECTIVE APPLICATION -
- 14. AMENDMENT DUE PROCESS PROTECTIONS OF ART. I, § 10 OF THE UNITED STATES CONSTITUTIONS ... AS RELATED TO EX POST FACTO LAWS -
- 14 - AMENDMENT DUE PROCESS AND EQUAL PROTECTIONS OF RULES, LAWS, STATUTES AND FEDERALLY PROTECTED CONSTITUTIONAL RIGHTS -

NOTE: PETITIONER RAISES ALL FEDERALLY PROTECTED RIGHTS

XII.

STATEMENT OF THE CASE

1. THIS CASE ILLUSTRATES AN ABSOLUTE MISCHANCE OF JUSTICE IN THE UNFAIR AND UNCONSTITUTIONAL BURDEN PLACED UPON PETITIONER AND SIMILARLY SITUATED PRO SE PRISONERS CONVICTED AND SENTENCED BEFORE THE JUNE 4, 2014 AMENDMENT TO SUPERIOR COURT CRIMINAL RULE 61...

FIRST: WITHOUT ADEQUATE NOTICE OF RULE CHANGE, IN ACCORD WITH FEDERAL DUE PROCESS PROTECTIONS OF THE UNITED STATES CONSTITUTION, AGAINST REPOSE THAT MAY BE COMPROMISED BY RETROACTIVE LEGISLATION... AND...

SECOND: THE VIOLATION OF ARTICLE 1 § 10 OF THE UNITED STATES CONSTITUTION AS RELATED TO EX POST FACTO CHANGE LAWS, WHERE:

2. OF GREAT IMPORTANCE... THE HISTORICAL FACTUAL RECORD BEGINS ON JANUARY 14, 2015, WHERE:

FIRST: DENIED REVIEW OF A SUCCESSIVE RULE 61(C)(1) COLORABLE CLAIMS OF A MISCHANCE OF JUSTICE BEFORE THE STATE SUPERIOR COURT [2] PETITIONER APPEALED TO THE STATES HIGHEST COURT RAISING THE IDENTICAL CLAIM THAT FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTRUCTION, VIOLATED DUE PROCESS RIGHTS TO A FAIR TRIAL [3]... HOWEVER...

i. THE COURT DENIED REVIEW OF 61(C)(1) "MISCHANCE OF JUSTICE" EXCEPTION... BASED UPON THE AMENDED RULE 61 REHEARING MOTION ADVANCING EX POST FACTO CLAUSE VIOLATIONS DENIED [5]

2. ENCLOSED APPENDIX F, PAGE #1 EXHIBIT # 1, SUPERIOR COURT ORDER,

3. ENCLOSED APPENDIX F, PAGE #3 EXHIBIT # 2, SUPREME COURT ORDER P# 3 AT (5)

4. ID

5. SUPREME COURT DOCKET APPEAL # 634, 2014... REHEARING MOTION

STATEMENT OF CASE CONTINUED

SECOND: THE QUESTION BECOMES:

ONE: UNDER OLD VERSION OF 61(C)(5) "MISCARriage OF JUSTICE" EXCEPTIONAL...

WOULD A VALID REQUESTED LESSER ENCLOSED INSTRUCTIONAL ISSUE, MEET THE "MISCARriage OF JUSTICE" EXCEPTIONAL TO REACH MERITS OF CLAIMS?

TWO: WOULD A VALID CLAIM OF A SUBSTANTIAL CONSTITUTIONAL CRIMINAL ADVANTAGE REQUISITE ELEMENTS TO ESTABLISH AN EX POST FACTO CLAIM? VIOLATION? COLLINS V. VONING BLOOD 497 U.S. 37 (1996), AND ITS PROGENY'S...

THREE: WHERE RETROACTIVE APPLICATION OF ANUNCIAED RULE, IN EFFECT ELIMINATES 61(C)(5): BURTON V. STATE 2018 Del. LEIS 588* Feb 12, CITING... STURGIS V. STATE, 2018 Del. SUPER. LEIS 1321 AT 3... HOWEVER...

THIRD: WHERE DELAWARE STATUTE PROVIDES FOR THE INSTRUCTIONAL... IL DEL. C. § 206: AND STATE LAW IS WELL ESTABLISHED IN ISSUE... HENRY V. STATE 805 A.2d 860 (2002) CITING BECK V. ALABAMA 477 U.S. 625, 633 (1980); THEREFORE:

i. IN MEMORANDUM SUPPORTING PETITION FOR WRIT OF CERTIORARI... SEE: [APPENDICE E AND APPENDICE F], WHERE:

a). THE FACTUAL PREMISES AND IMPLICATED FEDERAL PROTECTED RIGHTS ARE PRESENTED FOR RESOLVE... FURTHERMORE...

3. HAVING DISCOVERED IN APRIL OF 2020 THAT THE PROSECUTION WITHELD EXHIBITORY CRIME SCENE EYE WITNESS STATEMENTS, ESTABLISHING AN ABSOLUTE BRADY VIOLATION... [6] IT'S CLEAR THE STATES HIGHEST COURTS PARTIAL RESOLVE AS TO:

i. THE WITHELD EVIDENCE WAS AVAILABLE AT TRIAL IN 2007, ANNOUNCES AN CRITICAL MISAPPREHENSIONAL OF FACTS AND APPLICABLE LAW AS SUCH WOULD UNDISPUTABLY CHANGE OUTCOME OF THE TRIAL... BRADY V. MARILLAND 373 U.S. 83 (1963); HOWEVER...

6 APPENDICE E PAGE # 21 GROUND # FIVE

STATEMENT OF CASE CONTINUED...

ii. DISPITE THE FACT THAT THE (2014 AMENDED Rule 61(C)(5) PROVISIONS);
MAKES THE PROCEDURAL DEFENDANTS IMPOSSIBLE TO SUPPLEMENT AND OBTAIN
ACTUAL INDEPENDENT REVIEW...

a). THE CORE ISSUE AT BAR IS, THE COURT ACKNOWLEDGES THE PROSECUTORIAL
WITHHELD POLICE REPORTS OF EXHIBITORY CRIME SCENE EVIDENCE, THE
COURTS RESOLVE AS:

THE EVIDENCE WAS AVAILABLE IN 2007 IS A GLARING PROBLEM THAT
REWARDS STATE ACTORS GUILTY OF BRAND VIOLATIONS... THIS... KEEPING AN
OTHERWISE INNOCENT MAN IN PRISON UNDER A KNOWING, WITHHELD AND
INTENTIONAL WRONGFUL CONVICTION... WITHOUT DUE PROCESS AND EQUAL
PROTECTIONS OF RULES, LAWS, STATUTES AND FEDERALLY PROTECTED RIGHTS!
SEE: [APPENDICE E, MEMORANDUM OF LAW... AND, APPENDICE F, EXHIBITED
RECORD]...

4. AN UNCONSTRAINED REVIEW OF THE FACTUAL RECORD AND IMPLICATED MATTERS OF
LAW, DEMANDS THE U.S. SUPREME COURT TO ACT... A "FUNDAMENTAL MIS-
CHANCE OF JUSTICE" EXCUSIS PROCEDURAL BARS, WHERE ONE WAS NOT REPRESENTED
BY COUNSEL AT INITIAL Rule 61 PROCEEDINGS... MARTINEZ V. RYAN
132 S. CT. 1309 (2012). HOWEVER...

i. AT BAR, THE STATE COURTS HAVE ELIMINATED THE 'MISCHANCE OF JUSTICE'
REVIEW AND/OR MADE IT IMPOSSIBLE TO APPLY... AND...

a). PRO SE PETITIONER HUMBLY PRAYS THE UNITED STATES SUPREME COURT
WILL GRANT REVIEW OF THIS WRIT AND RESOLVE THE GLARING DEPRIVA-
TIONS OF SUBSTANTIALLY PROTECTED CONSTITUTIONAL RIGHTS!

SEE: [MEMORANDUM OF LAW APPENDICE E... AND... EXHIBITS, APPENDICE F.]

XIII.

REASONS FOR GRANTING THE PETITION

EX POST FACTO JURISPRUDENCE IS NOT A NEW LEGAL FRONT. THE UNITED STATES SUPREME COURT OBSERVES:

JUST WHAT ALTERATIONS OF PROCEDURE WILL BE HELD TO TRANSGRESS THE CONSTITUTIONAL PROHIBITION CANNOT BE EMBRACED WITHIN A SET FORMULA OR STATED IN A GENERAL PROPOSITION... HOWEVER...

THE CONSTITUTIONAL PROVISION IS INTENDED TO SECURE SUBSTANTIAL PERSONAL RIGHTS AGAINST ARBITRARY AND OPPRESSIVE LEGISLATION AND NOT TO LIMIT CONTROL OF REMEDIES AND MODES OF PROCEDURE WHICH DO NOT AFFECT MATTERS OF SUBSTANCE...

SEE: US, ex rel. STEIBLER v. BOARD OF PAROLE SOI F. SUP 1077 (1980).

COLLINS v. YANNUKHOOD 497 US, 37 (1990).

* UNDER CRIMINAL RULES CONTEXT * HOWEVER...

1. OF GREAT IMPORTANCE AT BAR... THE DELAWARE SUPERIOR COURT REVERSED A DEATH ROW CONVICTION UNDER 61(C)(S); MISCARriage OF JUSTICE EXCEPTIONAL REVIEW... WRIT IN STATE 91 A.3d 972 (MAY 16, 2014); HOWEVER...

2. IMMEDIATELY THEREAFTER SUBMIT TO AMENDED Rule 61(C)(S); AND ON JUNE 4, 2014 DID SO, WHICH IN EFFECT ELIMINATED 61(C)(S) "MISCARRIAGE OF JUSTICE" EXCEPTION, WITH RETROACTIVE EFFECT... HOWEVER...

i. WITHOUT REGARD TO DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION PROTECTS THE INTERESTS IN FAIR NOTICE AND REPOSE COMPROMISED BY RETROACTIVE LEGISLATION... FURTHERMORE...

a). CO-CHAIRMAN OF CRIMINAL RULES ADVISORY COMMITTEE HAD NO KNOWLEDGE OF Rule CHANGE [7]

REASON FOR GRANTING PETITION. CONTINUED...

- b). NOR DID PROMINENT MEMBER OF LEGAL COMMUNITY, KNOW OF THE AMENDMENT TO THE RULE [B]... THEREFORE...
- c). FAIR NOTICE AS DEMAND UNDER THE CONSTITUTION, COULD NOT HAVE BEEN GIVEN UPON PETITIONER, NOR AFFECTED CLASS DEFENDANTS... FURTHER-MORE...

3. COLLINS SUPRA, 497 US, 37... ADVANCES AN EXHAUSTIVE ANALYSIS OF THE CONTROLLING PRECEDENTS, SIDESTEPED BY THE STATES HIGHEST COURT AND...

i. THE IMPORTANCE OF RESOLVING THE EX POST FACTO CLAUSE ISSUE IS ONE OF NATIONAL IMPORTANCE, WHERE:

a). DELAWARE COURTS HAVE NOT ALLOWED ANY REASONABLE CHALLENGE TO THE JUNE 4, 2014 AMENDMENT TO CRIMINAL RULE 61. A.D.M.

ii. JUSTICE HAS TAILED OFF FACTUAL AND LEGAL OPINIONS THAT NOT ONLY IN PASSING, REMOTELY ADDRESSES EX POST FACTO CLAUSE ISSUES.

4. THUS... AT BAR... AND... BECAUSE AFFECTED CLASS DEFENDANTS FACE AN INSUR-MOUNTABLE DEPRIVATION OF 61(i)(s) "MISCHIEFABLE OF JUSTICE" EXCEPTIONAL RE-VIEW OF AN OTHERWISE WRONGFUL CONVICTION AND SENTENCE, WHEREAS...

i. NONE OF THE SUBSTANTIVELY PROTECTED RIGHTS CAN BE RESOLVED; AS TO CONSTITUTIONALITY OF ISSUES RAISED, DUE TO PROHIBITION UNDER AMENDED RULE...

a). THE IMPORTANCE OF PUTTING THE STATES HIGHEST COURT IN LINE OF ESTABLISHED PRECEDENTIAL AUTHORITIES IN ISSUE, THE CASE SHALL BE REVERSED AND REMANDED FOR A NEW TRIAL... ALSO...

APPENDIX F. P. # 11 EXHIBIT # 4, P# 1 AT (1) AND 3 AT (11)

REASON FOR GRANTING PETITION - CONTINUED

5- EVEN AS WE TURN TO PURWELL v STATE 2021 DEL. LEXIS 193,
F.M. 185-187 WE FIND...

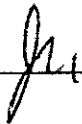
- i. NO DOUBT UNDER OLD VERSION OF 61(C)(5) "MISCHANCE OF JUSTICE"
EXCEPTIONAL PETITIONER IS ENTITLED TO RELIEF, HOWEVER,
- a). PURWELL, WAS REPRESENTED BY COUNSEL!
- b). THE TWO TIERED LEGAL SYSTEM DOES NOT ACCORD PRO SE LITIGANTS
DUE PROCESS AND EQUAL PROTECTION OF RULES, LAWS, STATUTES
NOR CONSTITUTIONALLY PROTECTED RIGHTS...

XIV.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: SEPTEMBER 22, 2022

CASE NUMBER: _____

DEATH IN PRISON SENTENCE

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUSTUS HERREW EVANS JR. - PETITIONER.

vs.

KATHLEEN M. JENNINGS, ATTORNEY
GENERAL, STATE OF DELAWARE — RESPONDENT.

RE: MEMORANDUM SUPPORTING WRIT OF HABEAS CORPUS PETITION...

TO UNRAVEL THIS GORDIAN KNOT BEFORE US. PETITIONER OPENS WITH THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION AND PROTECTED INTERESTS IN FAIR NOTICE AND REPOSE COMPROMISED BY RETROACTIVE LEGISLATION.. AND..

THE DELAWARE SUPERIOR COURTS' JUNE 4, 2014 AMENDED VERSION OF CRIMINAL RULE 61, BEING APPLIED AT BAR, UNDISPUTABLY VIOLATES ARTICLE I § 10 OF THE UNITED STATES CONSTITUTION... [AS RELATED TO EX POST FACTO LAWS] ... COLLINS V. YARBROOD, 497 US, 37 (1996); AND ITS PROGENY, THEREFORE...

REACHING MERITS OF COLLECTIVE ISSUES RAISED, MAY THE COURT SO ORDER A NEW TRIAL...

DATE: SEPTEMBER 22, 2022

PRO SE PETITIONER
AUGUSTUS HEBREW EVANS JR. #00194247
JAMES T. VAUGHAN CORRECTIONAL CENTER
SIMI VALLEY DE 19977

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49 PAGE APPENDIX RECORDS / EXHIBITS...

CONSTITUTIONAL AND STATUTORY PROVISIONS...

SUPERIOR COURT CRIMINAL Rule 61

14 AMENDMENT DUE PROCESS .. NOTICE PROVISIONS

U.S. CONST. ART. I § 10 . RELATING TO EX POST FACTO LAWS

14 AMENDMENT DUE PROCESS - RIGHTS TO FAIR TRIAL

14 AMENDMENT DUE PROCESS - REQUESTED LESSER INCLUDED INSTRUCTION

* 11 DEL. C § 206 - LESSER INCLUDED INSTRUCTION STATUTE

14 AMENDMENT DUE PROCESS - BRADY VIOLATION - NEW TRIAL

SUPERIOR COURT CRIMINAL Rule 61(c), APPOINTMENT OF COUNSEL,

SUPERIOR COURT CRIMINAL Rule 61(h). EVIDENTIARY HEARING

14 AMENDMENT DUE PROCESS - EQUAL PROTECTIONS. RIGHTS TO RULE, STATUTES

LAWS STATE AND FEDERAL CONSTITUTIONS

14 AMENDMENT - DUTY OF JUDICIARY TO DENY NO MAN DUE PROCESS AND
EQUAL PROTECTIONS, RIGHTS

ALL OTHER PROTECTIONS AVAILABLE UNDER STATE AND FEDERAL LAW THE
COURT MAY APPLY TO CASE SUA SPONTE TO GRANT A NEW TRIAL!

CASE CITATIONS...

- Purdell v. STATE, 3031 Del. Lexis 193, (Del. June 17, 2001)
Sturdis v. STATE, 2018 Del. Super. Lexis 1331 (Nov. 19, 2018)
U.S. ex Rel. George v. Anderson, 393 F. Supp. 807 (D. Del. 1968)
Wright v. STATE, 91 A.3d 926 (May 16, 2014)
Turnage v. STATE 137 A.3d 396 (Del. Nov. 4, 2015)
Prest v. STATE 337 A.2d 576 (Del 1967)
Martinez v. Man, 133 S.Ct. 1302 (2009)
Brady v. Maryland, 373 U.S. 83 (1963)
* Henry v. STATE, 205 A.2d 860 (2000)
* Beck v. ALABAMA, 447 U.S. 635, 633 (1980)
Hoff v. Evans, 456 U.S. 605, 611 (1982)
Evans v. STATE, 100 A.3d 1021 (Del. Supr. Ct. August 19, 2014)
Boyer v. STATE, 563 A.2d 1181 (1989)
Boone 373 U.S. 347, 354 (1964)
U.S. ex Rel. Sterbler v. Board of Probate, 501 F. Supp. 1077 (3d Cir. Nov. 14, 1980)
Warren v. Marrero, 417 U.S. 653 (1974)
Graham v. Newer 450 U.S. 94, 95 (1981)
E.G. TEXAS INC. v. Shurt 454 U.S. 516, 597 (1982)
Hibbs v. U.S., 740 F.2d 339, (1984)
Benzell v. Ohio, 369 U.S. 167 (1988)
Dunham v. Missouri, 153 U.S. 377, 382, 83 (1894)
Mallory v. South Carolina, 337 U.S. 180 (1955)
Cottrell v. Yumblood 497 U.S. 37 (1996)
Teague v. Lane 489 U.S. 888
Evans v. Hanessey 934 F. Supp 137 (D. Del. 1996)
Brady v. Maryland, 373 U.S. 83 (1963)

CASE CITATIONS CONTINUED ...

BRADY V. MARYLAND, 373 U.S. 83 (1963)

STATE V. SYKES 2017 Del. Super. LEgis 639.

PHILLIP V. JOHNSON, 2015 U.S. DIST. LEgis 54479

MCQUIGGIN V. PERKINS, 569 U.S. 383 (2013)

DOWDES V. STATE 771 A.2d 389. (Del. 2001)

CARTER V. PIERCE 196 Fed. Supp. 3d 447, 454-55 (D. Del. 2016)

STEVENSON V. STATE, 784 A.2d 349. (2001)

LITKEY V. U.S. 553 (1994)

CASE NUMBER: _____

DEATH IN PRISON SENTENCE
IN THE
SUPREME COURT OF THE UNITED STATES

AUGUSTUS HEBREW EVANS JR. — PETITIONER,
VS.

KATHLEEN M. JENNINGS, ATTORNEY
GENERAL, STATE OF DELAWARE — RESPONDENT,

RE: MEMORANDUM SUPPORTING WRIT OF HABEAS CORPUS PETITION...

FROM OUTSET APPELLANT REHASHES THIS COURT'S JANUARY 14, 2015 DENIAL OF THE
SUCCESSIVE RULE 61 MOTION^[1] AND MOTION OF REHEARING EN BANC^[2] HIGHLIGHTING
ALMOST IDENTICAL ISSUES OF PURWELL SUPRA, FOL 185-187... AND...

PROPOSES UNCONSTRAINED REVIEW OF THE OPERATION OF THE JUNE 4, 2014 AMENDMENT
TO CRIMINAL RULE 61, AND... CONSEQUENTLY ITS RETROSPECTIVE APPLICATIONS' EFFECT AT
BAR, IN AN OTHERWISE WRONGFUL CONVICTION AND SENTENCE...

THE GLARING DEPRIVATION REQUIRES HINDSIGHT REVIEW AS TO ... "WHETHER FAILURE TO GIVE
THE REQUESTED LESSER INCLUDED INSTRUCTION^[3]... ADVANCES AN DEPRIVATION OF APPELLANT'S
FUNDAMENTAL RIGHTS TO A FAIR TRIAL... AND...

APPELLANT ADVANCES... AFTER REACHING MERITS OF CLAIM IN ORIGINAL SUCCESSIVE RULE 61
MOTION... NO DOUBT UNDER OLD VERSION OF 61(C)(5)... LIKE, PURWELL SUPRA FOL 185-187, HE
IS ENTITLED TO RELIEF AND A NEW TRIAL IS WARRANTED... HOWEVER...

WITH THIS APPEAL AND UNDER PURWELL SUPRA, APPELLANT PRESENTS — ISSUES FOR REVIEW...

1 APPENDICE PAGE # 3 EXHIBIT # 2 PAGE # 3 at (5)

2 SUPREME COURT DOCKET MARCH 2015

3 APPEND. P. # 3 & # 3 P# 3 AT (5)

I. SUMMARY OF GROUNDS RAISED...

- ONE: NO COUNSEL AT INITIAL GI PROCEEDING. QUALIFIES AS CAUSE FOR PROCEDURAL DEFAULT. PURCELL SUPRA. FIL 187; CITING MARTINEZ V. RYAN 132 S. CT 1309?
- TWO: WHETHER FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTRUCTIONAL QUALIFIES AS A SUBSTANTIAL CLAIM... MARTINEZ SUPRA, CITING MILLER-EL V. COCKRELL 537 322 (2003)??
- THREE: WHETHER... AT BAR... INADEQUATE NOTICE OF RULE CHANGE AND RETROSPECTIVE APPLICATION VIOLATES FEDERAL DUE PROCESS INTERESTS IN FAIR NOTICE...? LANDGRAF V. U.S. CIVIL PROB. 511 U.S. 244, 265 (1994); BOYER V. STATE, 562 A.2d 1181 (1981):?
- FOUR: WHETHER [AT BAR]... RETROSPECTIVE APPLICATION VIOLATES ART 1 § 10 OF THE U.S. CONST. ART. 1 § 10 AS PERTAINING TO EX POST FACTO LAWS? U.S. EX REL. STEIGLER V. BOARD OF PAROLE, 501 F. SUPP. 1077 (3d CIR. 1980); [IN CRIMINAL RULES CONTEXT]... COLLINS V. YOUNGBLOOD, 497 U.S. 37 (1990) [IN CRIMINAL RULES CONTEXT]...
- FIVE: SUPERIOR COURTS ABUSE OF DISCRETION AND ERROR IN ESTABLISHED PRECEDENT IN THE OCTOBER 8, 2021 ORDER DENYING RELIEF. [4]...

II. DELAWARE SUPREME COURT

THIS COURT REVIEWS SUPERIOR COURTS' DENIAL OF POST CONVICTION RELIEF, INCLUDING FACTUAL DETERMINATIONS, FOR ABUSE OF DISCRETION... ZERENOSKI V. STATE 12 A.3d 1115, 1119 (Del. 2010). QUESTIONS OF LAW AND CONSTITUTIONAL VIOLATIONS ARE REVIEWED DE NOVO. DAWSON V. STATE, 673 A.2d 1136, 1190 (Del. 1996); AND...

COLLECTIVELY, THE UNIQUE CIRCUMSTANCES AT BAR REQUIRES THE COURT TO:

i. REVIEW BOTH... THE 2015 ORDER [5] AND OCTOBER 8, 2021 ORDER [6] UNDER LIGHT OF PURCELL V. STATE, 2021 Del. LEIS 193 FIL 185-187 (JUNE 12, 2021):

- 4 APPEN. P. # 34 EX # 14
5 APPEN. P. # 3 EX # 2 P# 3 QT(S)
6 APPEN. P. # 34 EX # 14

GROUND ONE: FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTRUCTION...

WHETHER FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTRUCTION CREATES A FUNDAMENTAL DEFECT IN APPELLANT'S RIGHTS TO A FAIR TRIAL... AND... WOULD BE WARRANTED REVIEW UNDER OLD VERSION OF 61(C)(5) "MISCARRIAGE OF JUSTICE EXCEPTION...?"

I. THE FACTS

1. OVER 7 YEARS AGO IN EVANS V. STATE #634, 2014... THIS COURT DENIED REACHING MERITS OF CLAIM... DUE TO AMENDED VERSION OF CRIMINAL RULE 61^[7]
2. AN UNCONSTRAINED REVIEW OF ISSUE AS WAS PREVIOUSLY RAISED AND UNDER BACKGROUNDO OF PURMELL V. STATE, 2021 DEL. LEGIS 193 FM 185-187... ESTABLISHES... NO DOUBT EVANS UNDER OLD VERSION OF 61(C)(5)... A NEW TRIAL IS WARRANTED...
3. THOUGH APPELLANT DID NOT HAVE COUNSEL AT INITIAL 61 PROCEEDING AND RAISED ISSUES OF MARTINEZ V. PLAN 132 S.OT. 1309 (2012): WHILE ARGUING...
 - i. INADEQUATE NOTICE OF RULE CHANGE...
 - ii. EX POST FACTO CLAUSE VIOLATIONS...MOTION TO REHEAR... DENIED^[8]... HOWEVER...
 - a). LIKE PURMELL, REACHING MERITS OF CLAIM... APPELLANT SHALL ESTABLISH, NO DOUBT... UNDER OLD PROVISIONAL OF 61(C)(5) "MISCARRIAGE OF JUSTICE" EXCEPTION... HE IS ENTITLED TO RELIEF, WITHOUT NEED TO PROVIDE COMPELLING NEW EVIDENCE OF ACTUAL INNOCENCE... WHERE:
4. DURING JURY INSTRUCTIONS, APPELLANT REQUESTED COURT TO GIVE THE LESSER INCLUDED INSTRUCTION^[9] WHICH WAS ERRONEOUSLY DENIED FOR ALL OR NOTHING^[10]

⁷ APPEN. P. # 3 EX # 2 P. # 3 at (5)

⁸ SUPREME COURT DOCKET FEBRUARY... MARCH 2015

⁹ APPEN. P. # 25 EX # 10 TRANS. C-121 LINE # 8 - C-122 LINE # 7

¹⁰ ID.

FACTS CONTINUED...

5. EVEN AFTER HE ACKNOWLEDGED IMPORTANCE OF ALLEGED GUN ^[11] NO GUN WAS EVER LOCATED OR PRESENTED AS EVIDENCE ^[12]...
6. EVERY PRETRIAL MOTION CHALLENGING VERACITY OF SWORN AFFIDAVIT OF THE ARREST WARRANT AND GUN ALLEGATIONS DENIED ^[13]...
7. STATE RELIED UPON ALLEGED EYEWITNESS ^[14]... EVERY CHALLENGE TO THE STATEMENTS MADE AND DECISION IN RECORD... DUE TO PENDING WARRANTS DENIED ^[15]...
8. NOT ONCE DURING ANY COURT PROCEEDING WAS APPELLANT ABLE TO CONFRONT THE WITNESS ^[16] WITNESS STATEMENTS USED AT THE PRELIMINARY HEARING ^[17]...
9. 3 DAYS... 3 DAYS... 3 DAYS BEFORE TRIAL... ALLEGED EYEWITNESS ADMITTED TO LYING ^[18]... MOTION TO DISMISS DENIED ^[19]...
10. EVERY MOTION TO SEVER CASES WAS DENIED ^[20] AS SUPPOSED GUN TIED THE TWO CASES TOGETHER... HOWEVER...
11. NO GUN TO CONNECT CASES AND ALLEGED VICTIM IDENTIFIED SOMEONE ELSE AS THE SHOOTER WITH 100% DEGREE OF CERTAINTY ^[21]
12. FINALLY ON APRIL 2020 APPELLANT DISCOVERED THE POLICE... NEITHER OF THE AGENCIES REVEALED CRIME SCENE EYEWITNESS ^[22]

¹¹ APPEN. P. # 28 EX. # 11 TRANS. P. # 21 LINE # 5-18

¹² APPEN. P. # 15 EX # 5 P. # 3 AT (6) - ALSO, APPEN. P. # 18 EX # 6

¹³ SUPERIOR COURT DOCKET OF CASE

¹⁴ APPEN. P. # 15 EX # 5 P. # 3 AT (7)

¹⁵ SUPERIOR COURT DOCKET SHEET

¹⁶ AS THE RECORD WILL REVEAL... EVERY CHALLENGE DENIED, WITNESS NEVER CONFRONTED...

¹⁷ APPEN. P. # 19 EX # 7 TRANS. P. # 3 AT (1)(2)(3) AND P. # 11 AT (4) - P. # 12 1(A)

¹⁸ APPEN. P. # 24 EX # 9

¹⁹ SUPERIOR COURT JULY 9, 2007 TRANSCRIPT UNAVAILABLE...

²⁰ APPEN. P. # 28 EX # 11 TRANS. P. # 21, LINE # 3-18

²¹ APPEN. P. # 45 EX # 15 P. # 2 AT (6)

²² APPEN. P. # 30 EX # 12

FACTS CONTINUED...

13. UNABLE TO AFFORD PRIVATE INVESTIGATOR ^[23] APPELLANT OBTAINED AN WRITTEN AFFIDAVIT... NOTARIZED ^[24] ESTABLISHING AN ABSOLUTE BRADY VIOLATION...
14. COURT BELOW SHOULD HAVE HELD EVIDENTIARY HEARING ON ISSUE OF THE NEWLY DISCOVERED EVIDENCE ^[25]...

II. SCOPE OF REVIEW

FROM OUTSET... WE MUST FIRST RESOLVE WHETHER APPELLANT ADVANCED A COLORABLE CLAIM OF A MISCARRIAGE OF JUSTICE UNDER OLD VERSION OF RULE 61(C)(5)... IN THE PRIOR SUCCESSIVE MOTION ^[26] AND SAME IN THIS APPEAL UNDER PRONOUNCEMENTS OF PURCELL SUPRA... THEREFORE...

THE PERFECTED FACTUAL RECORD AND IMPLICATED STATE DECISIONS CONCERNS AN ISSUE ARE RIPE FOR RESOLVE UNDER OLD VERSION OF 61(C)(5): WRIGHT V. STATE 91 A.3d 972 (MAY 16, 2014).

III. MERITS OF ARGUMENT...

STRAIGHT FORWARD... DELAWARE PROVIDES FOR THE REQUESTED LESSER INCLUDED INSTRUCTION BY STATUTE. 11 DEL. C. § 206(C)...

WELL ESTABLISHED STATE LAW HENRY V. STATE 805 A.2d 860 (2002) AND ITS PROGENY'S CITING FEDERAL PRECEDENTIAL AUTHORITY OF BECK V. ALABAMA 497 U.S. 625, 633 (1990) ADVANCES THE SUBSTANTIAL NATURE OF THE CLAIM... FURTHERMORE...

EVEN AS IS THE NATURE OF CASE AT BAR, A BIASED COURT BELOW, MAY BELIEVE "AGAINST ALL EVIDENCE THAT APPELLANT HAD A GUILTY" IT IS PROVIDENCE OF JURY TO DETERMINE THE BEARING UPON THE LESSER INCLUDED OFFENCE. HENRY SUPRA... PAR # 10 ... AND...

23 APPEN. P. # 31 EX # 13 P. # 2 at (1-3)

24 APPEN. P. # 30 EX # 12

25 APPEN. P. # 34 EX # 14 P. # 10 AT 32 - P # 11 at 37

26 APPEN. P. # 3 EX # 2 P. # 3 AT (5)

MERITS OF ARGUMENT CONTINUED...

A DEFENDANT IS ENTITLED TO LESSER INCLUDED INSTRUCTION [IF] 4 CRITERIA ARE MET...

ONE: THE REQUEST MUST BE MADE... AND...

i. AT BAR THE CRITERIA IS MET [27]

TWO: LESSER MUST CONTAIN ELEMENTS OF CHARGED OFFENSE... AND...

i. 11 DEL. C. § 602(b): DISPLAY WEAPON...

ii. 11 DEL. C. § 602: NO WEAPON... AND...

THE [SECOND] CRITERIA IS MET...

THREE: ELEMENTS MUST BE IN DISPUTE... AND...

i. FROM OUTSET OF PROSECUTION... APPELLANT HAS [DISPUTED] THE ALLEGED GUN... AND...

THE [THIRD] CRITERIA IS MET...

FOUR: THERE MUST BE SOME EVIDENCE TO ALLOW THE JURY TO RATIONALLY ACQUIT OF THE GREATER OFFENSE AND CONVICT OF THE LESSER... AND...

i. THE CLARING EVIDENCE FROM OUTSET, ADVANCES AN ABSOLUTE RATIONAL BASIS... NO GUN LOCATED AT SCENE OF CRIME [28]... EVEN AFTER ANOTHER SEARCH UNDER ORDER OF PROSECUTOR, NO GUN FOUND [29]... AND... STATES WITNESS ADMITTED TO HING 3 DAYS BEFORE TRIAL [30]...

THE [FOURTH] CRITERIA IS MET...

APPELLANT HAS ESTABLISHED THAT NO COURT FAILURE TO GIVE THE REQUESTED INSTRUCTION VIOLATED MY FUNDAMENTAL RIGHTS TO A FAIR TRIAL UNDER U.S. CONSTITUTION. HOPPER V. EVANS 456 U.S. 605, 611 (1982); BECK SUPRA, 477 U.S. 625... ALSO HENRY SUPRA, AND DEL. STAT. 11 DEL. C. 206...

27 APPEN. P. #25 EX #10 TRANS. C-121 L#8 - C-122 L#7

28 APPEN. P. #15 EX #5 P#3 AT (6)

29 APPEN. P. #18 EX #6

30 APPEN. P. #24 EX #9

III. Conclusion

CONSEQUENTLY AN UNCONSTRAINED REVIEW OF THE JANUARY 14, 2015 ORDER DENYING RELIEF IS REHASHED UNDER THIS COURT'S REMARKABLE PRONOUNCEMENTS OF PURCELL V. STATE 2021 DEL. LEXIS 193, F.1185-187 (JUNE 17, 2021): AS TO THE EFFECT OF THE (JUNE 4, 2014 AMENDMENT) TO CRIMINAL RULE 61 WHICH ELIMINATED 61(G)(5) "MISCHANCE OF JUSTICE" EXCEPTION AS WAS IN PLACE PRE JUNE 4, 2014... FURTHERMORE...

REACHING MERITS OF CLAIMS AS WAS PRESENTED AND DENIED REVIEW 31 NO DOUBT EVANS IS ENTITLED TO RELIEF UNDER OLD PROVISION WITHOUT HAD TO PROVIDE COMPELLING NEW EVIDENCE OF ACTUAL INNOCENCE... AND... A NEW TRIAL IS WARRANTED; AND...

TAKING MY CASE ANOTHER STEP... THE QUESTIONS LEFT OPEN IN PURCELL SUPRA F.1185-187 AND THE OBLIGATION PUT ON CRIMINAL RULES ADVISORY COMMITTEE ARE PIPE FOR REVIEW... UNDER THIS COURT'S ABUSE OF DISCRETION ANALYSIS OF FACTUAL DETERMINATIONS ZEBROWSKI, 12 A.3d at 1119... AND DE NOVO REVIEW AS TO QUESTIONS OF LAW AND CONSTITUTIONAL ISSUES... I.D....

31 APPEN P. # 3 EX # 2 P # 3 AT (5)

PART III. APPEAL OF SUPERIOR COURTS DENIAL OF RELIEF

COLLECTIVELY... THE COURT BELOW DENIED THE SUCCESSIVE RULE 61 MOTIONAL UNDER THIS COURTS RECENT PRONOUNCEMENT OF MURIEL V. STATE, 2021 DEL. LEXIS 193, FAL 185-187 (JUNE 17, 2021): BASED UPON A CONTRARY AND UNREASONABLE FACTUAL AND LEGAL REVIEW... AND... WE EXERCISE...

THIS COURTS' ABUSE OF DISCRETIONARY REVIEW OF THE FACTUAL DETERMINATIONS AND DE NOVO REVIEW AS TO MATTERS OF LAW AND CONSTITUTIONAL ISSUES ZEBRONSKI SUPRA 12 A.3d 1119... WHERE:

I. MEMORANDUM BELOW 32

THE MEMORANDUM SUPPORTING THE SUCCESSIVE RULE 61 MOTIONAL AND APPEAL PUT FORTH RELIANCE UPON ALMOST IDENTICAL ISSUES OF MURIEL SUPRA, AS RECENTLY WAS PRONOUNCED BY DELAWARE SUPREME COURT (JUNE 17, 2021): AS TO...

ONE: UNDER OLD VERSION OF 61(C)(5) "MISCHANCE OF JUSTICE" EXCEPTION "NOW REVISED", BURTON V. STATE 2018 DEL LEXIS 586* FAL 12... CITING STURGIS V. STATE, 2018 DEL. SUPER. LEXIS 1321 AT 3. "NO DOUBT ESTABLISHES ENTITLEMENT TO RELIEF AND A NEW TRIAL IS WARRANTED"

SEE: ENCLOSED, GROUND ONE: REQUESTED LESSER INCLUDED INSTRUCTION... [PAGE # 1-7]...

TWO: AMENDMENT TO RULE 61 (JUNE 4, 2014): AND THE ONE DAY NOTICE, WITH RETROSPECTIVE APPLICATION, VIOLATES FEDERAL DUE PROCESS INTEREST IN FAIR NOTICE OF THOSE WHOM OTHERWISE ARE ENTITLED TO RELIEF! INADRAAF V. U.S. FILM PRODUCTS 511 U.S. 244, 265 (1994); BOYER V. STATE, 562 A.2d 1181 (1981):

THREE: APPLICATION OF AMENDED RULE "AT BAR" VIOLATES EX POST FACTO CLAUSE OF ART. I, § 10 OF U.S. CONSTITUTION... U.S. EX REL. STEIBLER V. BOARD OF PRISON 501 F. SUPP. 1077 (1980): [IN CRIMINAL RULES CONTEXT]..

FOUR: DISCOVERING THE STATE WITHHELD EXCULPATORY, CRIME SCENE, EYE WITNESS STATEMENTS... ESTABLISHES NEWLY DISCOVERED EVIDENCE OF AN ABSOLUTE BRADY VIOLATION... BRADY V. MARYLAND 373 U.S. 83 (1963): THIS 61(C)(2)(i) NEWLY DISCOVERED EVIDENCE PROVISIONAL STAND MET...

II. ORDER BELOW 33

1. TRUE TO THE DELAWARE WAY... MASTERFULLY THE SUPERIOR COURT SIDESTEPS THE RELIANCE UPON PURNELL SUPRA, AND REACH MERITS OF CLAIM AS TO WHETHER UNDER OLD VERSION OF 61(C)(5): (PRE 2014)...

"APPELLANT WOULD BE ENTITLED TO A NEW TRIAL... BASED UPON THE FUNDAMENTAL DEFECT, FAILURE TO GIVE REQUESTED INSTRUCTION... CREATED AGAINST MY RIGHTS TO A FAIR TRIAL"? HOWEVER...

2. IN LIGHT OF NEWLY DISCOVERED EVIDENCE ISSUES RAISED... "THOUGH ERRONEOUSLY" THE COURT DEVOTES 8 OF THE 11 PAGE MOTION... OPINING AS TO:

"NEW EVIDENCE THAT A PERSON OTHER THAN APPELLANT COMMITTED CRIME" 34
[NOTE] & AM NOT MAKING THIS UP... READ IT!

3. AS A MEMBER OF THE SUSSEX COUNTY CRIMINAL RULES ADVISORY COMMITTEE, APPELLANT REACHES TO UNDERSTAND... NOW JUDGE KARLITZ, COULD NOT PROVIDE DEDICATED TIME TO ADDRESS THE OBLIGATION DIRECTED TOWARD THE COMMITTEE IN PURNELL SUPRA, TO CREATE AN ALTERNATE OF REDRESS FOR THOSE LIKE PURNELL, UNDER OLD VERSION OF 61(C)(5). PROVISIONAL IS ENTITLED TO RELIEF. EO CAL #185-187 AT 187... AND...

4. LIKE PURNELL, APPELLANT HAS BEEN FIGHTING SINCE 2006 AND HAVING RAISED ALMOST IDENTICAL ISSUES RELATED TO AMENDED VERSION OF RULE 61 (2014)... WITHOUT ADEQUATE NOTICE... AND RETROSPECTIVE APPLICATION, WHILE... LIKE PURNELL, ESTABLISHING, UNDER OLD VERSION OF 61(C)(5)... NO DOUBT APPELLANT IS ENTITLED TO RELIEF... AND...

THE QUESTIONS LEFT OPEN IN PURNELL SUPRA, ARE RAISE FOR REVIEW. EO CAL 185-187...

33 APPEAL P. # 34 EX # 14

34 EO P. # 4 AT (14) FILE # 10

GROUND TWO: INADEQUATE NOTICE OF AMENDED RULE CHANGE 35

ON CASE BY CASE ANALYSIS:

WHETHER ONE DAY NOTICE WITH RETROSPECTIVE APPLICATION OF AMENDED RULE, VIOLATED DUE PROCESS CLAUSE OF FEDERAL CONSTITUTION AND REPOSE COMPROMISED...

I. THE FACTS

1. REITERATING ALL AFORESAID FACTS AND IMPLICATED MATTERS OF LAW AND CONSTITUTIONAL PROVISIONS RELEVANT TO THIS ISSUE... SEE: PAGES # 1-9...
2. PRIOR TO JUNE 4, 2014 AMENDMENT TO CRIMINAL RULE 61... NEWLY DISCOVERED EVIDENCE WINS NOT REQUIRED TO FILE A SUCCESSIVE PETITIONAL CHALLENGING A WRONGFUL CONVICTIONAL AND SENTENCE WRIGHT V. STATE 91 A.3d 972...
3. WITHOUT NOTICE, SUPERIOR COURT CRIMINAL RULES ADVISORY COMMITTEE AMENDED RULE 61, WITH RETROSPECTIVE EFFECT ON CASES FINAL BEFORE JUNE 4, 2014...
4. CO-CHAIRMAN OF COMMITTEE HAD NO KNOWLEDGE OF AMENDMENT 36
5. LEGAL COMMUNITY HAD NO KNOWLEDGE OF AMENDMENT 37
6. HAD ADEQUATE NOTICE BEEN GIVEN... APPELLANT WOULD HAVE EXERCISED FINAL FILING UNDER OLD VERSION OF 61(1)(S) "MISCHIEF OF JUSTICE" EXCEPTION ELIMINATED BY THE AMENDMENT... BURTON SUPRA FN #12...
7. UNDER OLD VERSION OF 61(1)(S)... NO DOUBT EVANS IS ENTITLED TO RELIEF!

II. SCOPE OF REVIEW

BASED UPON THE CONSTRUCTION OF THE MEMORANDUM BELOW AND ISSUES OF THIS APPEAL, THE PLEADINGS IMPLIES A TWO-FOLD VIABILITY OF EX POST FACTO CLAIMS... FOUNDED UPON THE IDENTICAL FACTS... FURTHERMORE, THAT THE AUTHORITIES CITED... DEMAND REVIEW IN A CRIMINAL RULES CONTEXT... AND...

35 APPEND. P. # 3 EX # 2 P. # 3 AT (S)

36 APPEND. P. # 9 EX # 3

37 APPEND. P. # 11 EX # 4 P. # 1 AT (1) AND P. # 3 AT (1)

SCOPE OF REVIEW CONTINUED...

1. THE QUESTION LEFT OPEN IN PURCELL SUPRA... AS TO:

WHETHER THE PROMULGATION OF AMENDED VERSION OF RULE (404): WITHOUT A NOTICE PERIOD... SATISFIES FEDERAL DUE PROCESS REQUIREMENTS? ED CAL # 186...

* [WAS NOT RESOLVED]... AND IS REFUSED AT BAR... REQUIRING CASE BY CASE REVIEW AS TO THE EFFECT OF THE RETROSPECTIVE APPLICATION... AND...

2. BEING THAT APPELLANT NO DOUBT WOULD BE ENTITLED TO RELIEF UNDER THE OLD PROVISION OF (61)(5) "MISCARRIAGE OF JUSTICE" EXCEPTION... "NOW EVISCERATED"

a) - HAD ADEQUATE NOTICE BEEN ACCORDED... A NEW TRIAL WOULD HAVE BEEN GRANTED OVER 7 YEARS AGO! [38]

III. MERITS OF ARGUMENT

APPELLANT [DOES NOT]! DOES NOT! DOES NOT CHALLENGE THE COMMITTEES' AUTHORITY TO AMEND THE RULES... HOWEVER... THEY MUST "GIVE FAIR WARNING OF THEIR EFFECT AND PERMIT INDIVIDUALS TO RELY ON THEIR MEANING UNTIL EXPLICITLY CHANGED" WEAVER V. ORLAND 450 U.S. 24 AT 28-29 (1981); AND ITS PREDECESSORS... THUS...

1. FROM ONSET THE CENTRAL PROHIBITION IS A COMMAND FOR "THE LACK OF FAIR NOTICE"

2. THE STATE OF DELAWARE HAS LIMITED CASE RESOLVE IN THE ISSUE AND IT'S APPARENT FROM BOYER V. STATE 562 A.2D 1186 (DEI. SUPREME COURT (1989): ADMIRABLE...

i). DUE PROCESS DOES NOT PRECLUDE A STATE FROM ADDING TIME OR OTHER LIMITATIONS ON A PREVIOUS REMEDY [IF] THE PROVISION PROVIDES A [REASONABLE] TIME WITHIN TO INVOLVE BEFORE THE ADDITION BECOMES EFFECTIVE. CITING E.G. TEXAS INC. V. SLOTT 454 U.S. 516, 527 F.2D 21 (1982); OLBES V. U.S. 3d CIR... 740 F.2D 239, 247-50 (1984)

ii). IN BOYER SUPRA, THE ORDER PROMULGATING RULE 61 ADOPTED SEPT. 17, 1987 [P]RO-
VIDED, THE ORDER WOULD NOT BECOME EFFECTIVE UNTIL JAN. 1, 1988 AND
WITH OTHER PROVISIONS INCLUDED ... BOYER ... HAD 15 MONTHS NOTICE IN WHICH
TO BRING HIS CLAIMS ... HOWEVER...

3 - DISTINGUISHED FROM BOYER ... [AT BAR], THE AMENDMENT WAS MADE ON JUNE 3, 2014
AND GIVEN EFFECTIVE DATE OF JUNE 4, 2014 ... [ONE DAY LATER] ... WITH [RETROSPECTIVE]
APPLICATION ... AND...

FIRST: WE ACKNOWLEDGE WRIGHT V. STATE 91 A.3d 972 (MAY 16, 2014): A DEATH ROW MANIFEST
TILTY AFTER 25 YEARS OF NAVIGATING THE COURTS ... FINALLY HAD A JUDGE FOLLOW THE
GILLESPIE "MISFEASANCE OF JUSTICE" EXCEPTIONAL REVIEW AND GRANTED RELIEF ... BUT...

SECOND: 16 DAYS LATER ... THE SINISTER MOVE OF AMENDING RULE 61, WHICH IN EFFECT AIMS
TO ELIMINATE GILLESPIE: BURTON SUPRA 2018 DEL. LEXIS 588 (JUL 12: SEE ALSO - STURGIS SUPRA,
2018 DEL. SUPER. LEXIS 1321 AT 3 ... AND...

i. NO DOUBT ... THE AMENDMENT MADE IT IMPOSSIBLE FOR APPELLANT TO OBTAIN
RELIEF IN AN OTHERWISE WRONGBLY CONVICTION AND SENTENCE [39] ... AND...

ii. IN EFFECT ERRECTED "A STEEL CURTAIN" ... FURTHERMORE...

THIRD: CO-CHAIRMAN OF ADVISORY COMMITTEE HAD NO KNOWLEDGE OF RULE CHANGE [40] NOR
DID LEGAL COMMUNITY [41] AND HOW DIFFICULT IS THE ISSUE FOR A PRO SE INMATE
TO BE FULLY NOTICED OF RULE CHANGE, AND...

4. NO DOUBT DUE PROCESS INTERESTS IN FAIR NOTICE VIOLATED, JANOSKAF V. ILS, FILM PRODUCTS 511
WS, AT 266 ... AND THE QUESTION BECOMES...

* WILL THE COURT FINALLY REACH MERITS OF CLAIMS AND ORDER A NEW TRIAL?

39 APPEN. P. # 3 EX # 2 P# 3 AT (5)

40 APPEN. P. # 9 EX # 3

41 APPEN. P. # 11 EX # 4 P# 1 AT [I] AND P. # 3 AT [II]

GROUND THREE: ENTITLEMENT TO RELIEF UNDER OLD VERSION OF GIGGS) ..

NO DOUBT... UNDER OLD VERSION OF GIGGS) "MISFEASANCE OF JUSTICE" EXCEPTION APPELLANT IS ENTITLED TO RELIEF, WITHOUT NEED TO PROVIDE COMPELLING NEW EVIDENCE OF ACTUAL INNOCENCE...

I. THE FACTS

SIMPLY PUT ...

FITTING SQUARELY WITHIN PRONOUNCEMENTS OF PURNELL SUPRA, 2021 DEL. LEGIS 193 EN 185-187... THE FACTUAL PREMISES AND IMPLICATED MATTERS OF /AND ADVANCED APPELLANT UNDER OLD VERSION OF Rule..., WAS /IS ENTITLED TO NEW TRIAL...

II. SCOPE OF REVIEW

EVANS V. STATE #634, 2014... REACHING MERITS OF CLAIMS DENIED UNDER THE AMENDED VERSION OF THE Rule 42

III. MERITS OF ARGUMENT

REACHING MERITS OF CLAIMS ...

i. FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTITUTIONAL... WAS SUBSTANTIAL CLAIM PRESENTED?

ii - EX POST FACTO CLAIM VIOLATIONS... DOES APPLICATION OF AMENDED Rule AT BAR, VIOLATE EX POST FACTO CLAIM OF ART. I, §10 OF U.S. CONST.?

AND...

AFTER RESOLVE... NO DOUBT NEW TRIAL WARRANTED... WHERE!

42 APPEND. P. #3 ET #2 P#3 AT(S)

Ground three: [A]... Failure to Give Requested Lesser Included Instruction

Notice: [Ground one]: Reiterated from Aforenoted [Pages 3-7]

I. Facts

All factual premises reiterated...

II. Scope of Review

All factual and legal principals from Pages 1-14 reiterated.

III. Merits of Argument

Id....

IV. Conclusion...

Fitting squarely with Purdell v. State 2021 Del. Lexis 143 at 185-187.

New trial warranted... Id.

GROUND THREE: [B]... EX POST FACTO CLAUSE VIOLATION

RETROSPECTIVE APPLICATION OF THE [JUNE 4, 2014 AMENDED VERSION OF RULE 61] AT BAR... DEPRIVES APPELLANT OF SUBSTANTIALLY PROTECTED RIGHTS TO CHALLENGE AN OTHERWISE WRONGFUL CONVICTION AND SENTENCE... AS PERMITTED UNDER OLD VERSION AND VIOLATES EX POST FACTO CLAUSE OF ART. I §10 OF U.S. CONSTITUTION...

PLEASE NOTE: SUPERIOR COURT'S AUTHORITY TO AMEND RULE... [NDR]... CONSTITUTIONALITY OF RULE IS AT ISSUE...

THE ISSUE REQUIRES A [FIRST IMPRESSION] REVIEW AS TO WHETHER OR A CASE BY CASE ANALYSIS... [IN A CRIMINAL RULES CONTEXT]... APPLICATION OF THE [JUNE 4, 2014 VERSION OF RULE 61] VIOLATES EX POST FACTO CLAUSE...

I. THE FACTS

1. CRITICAL... THE ISSUE ON APPEAL IS ATTRIBUTABLE TO THE APPLICATION OF AMENDED RULE IN CASE # 634, 2014, WHERE FAILURE TO REACH MERITS OF CLAIM WAS BASED UPON THE JUNE 4, 2014 AMENDMENT AND REACHING MERITS OF CLAIM OF FAILURE TO GIVE REQUESTED LESSER INCLUDED INSTRUCTION WAS DENIED [93] AND...

2. WITH SAME ISSUE NOW VISIBLE UNDER RECENT PRONOUNCEMENTS OF PURCELL V. STATE, 2021 DEL. LEXIS 193 (MAY 18, 2021)... THE COURT ERRED IN DENYING RELIEF [94] WHERE:

II. SCOPE OF REVIEW

SIMPLY PUT... MERITORIOUS CLAIM OF FAILURE TO GIVE REQUESTED INSTRUCTION, ADVANCES A DEPRIVATION OF APPELLANT'S FUNDAMENTAL DUE PROCESS RIGHTS TO A FAIR TRIAL... AND IS VERY IMPORTANT IN RESOLVING EX POST FACTO ISSUE THAT MUST BE CAREFULLY CONSIDERED AS TO BOTH!

ONE! 61(CS): MISFEASANCE OF JUSTICE EXCEPTION AT TIME OF OFFENSE AND SENTENCING, SEE: WRIGHT V. STATE 91 A.3d 972 (DEL. MAY 16, 2014)... AND...

93. APPEAL P. # 3 EX # 2 P. # 3 IT (CS)

94. APPEAL P. # 34 EX # 14

TWO: WHETHER AMENDMENT TO 611(C) WITH RETROSPECTIVE APPLICATION, DEPRIVED EVANS OF ANY SUBSTANTIAL PROTECTIONS AVAILABLE TO REVIEW WRONGBUL CONVICTIONS AND SENTENCE... DUNCAN V. MISSOURI 152 U.S. 377, 382, 383 (1894); THEREFORE...

REITERATING ISSUES RAISED IN PAGES [1-15] OF THIS MOTION... THE CENTRAL RESOLVE AT THIS JUNCTION IS WHETHER APPELLANT ESTABLISHES AN EX POST FACTO CLAIMS VIOLATION AND... ONE THIS JOURNEY INTO WELL ESTABLISHED RULES, STATUTES, LAWS AND FEDERALLY PROTECTED RIGHTS, TO BE APPLIED IN [CRIMINAL RULES CONTEXT].. AND... WE FIND...

III. MERITS OF ARGUMENT

1. A FIRST IMPRESSION IMPLICATIONS OF THE CONSTITUTIONAL PRINCIPLES THAT SHALL GUIDE WELL ESTABLISHED FUNDAMENTAL PRINCIPALS OF EX POST FACTO JURISPRUDENCE... OPEN WITH ... U.S. EX REL. STERBLER V. BOARD OF PAROLE 501 F. SUPP. 1077 (1980 3d CIR); AS THE HISTORICAL APPLICATIONS IN [A CRIMINAL RULES CONTEXT].. ESTABLISH A VIOLATION, WHERE:

i. THE CHANGE/AMENDMENT TO RULE 61 (2014) WAS NOT MERELY PROCEDURAL... BECAUSE AS IS FINALLY CONCEDED BY THE COURTS... THE AMENDMENT IN EFFECT ELIMINATED 611(C)'S "MISCARriage OF JUSTICE" EXCEPTIONAL REVIEW TO WRONGBUL CONVICTIONS AND SENTENCES... UNDER A SUMMERS PETITION BY THOSE CONVICTED PRIOR THERETO! BURTON V. STATE 200 A3d 1206 (2010); CITING... STIRGIS V. STATE 2010 DEL SUPER. LEXIS 1321.. FINDING:

"THE MISCARriage OF JUSTICE" EXCEPTIONAL NO LONGER APPLIES UNDER NEW VERSION OF RULE" ED... THIS... [AT BAR]...

ii. THE CHANGE WITH RETROSPECTIVE APPLICATION, DIMINISHES POSSIBILITY OF HAVING OTHERWISE VALID CLAIMS OF SUBSTANTIAL DEPRIVATION ADJUDICATED. WARDEN V. MARRERO 417 U.S. 653 (1974)...

2. ITS A FUNDAMENTAL PRINCIPAL THAT EX POST FACTO CLAIMS FORMS OUT THE LAW AND/OR PROCEDURES AT TIME OF CONVICTION... WEAVER SUPRA. 450 U.S. 24, 25. AND... A FAIR WARNING IS PARAMOUNT TO THE EFFECT TO PERMIT RELIANCE UNTIL EXPLICITLY CHANGED ED 28-29

3. THE CLAUSE CAN ONLY FULFILL ITS MEANING AND PURPOSE AND MEANING ONLY WHEN THE COURTS LOOKS TO THE LAW / PROCEDURE IN EFFECT AT TIME... THEREFORE...

i. - THE SENTENCING DATE... FINALITY OF CONVICTION... SHOULD BE THE FOCAL POINT FOR EX POST FACTO ANALYSIS... AND...

FIRST: EVANS' CONVICTION AND SENTENCE BECAME FINAL AUGUST 31, 2007... AND THE DIRECT APPEAL WAS FINAL ON FEBRUARY 13, 2009... EVANS v. STATE 968 A.2d 441 (2009).

SECOND: Rule 61 APPLICATIONS ARE CONTROLLED BY MECHANISMS IN PLACE REGARDING SUCCESSIVE PETITIONS IN 2007, WHERE:

a) - UNDER 61(1)(5) "MISCHANCE OF JUSTICE" EXCEPTIONAL... APPELLANT ONLY NEEDED TO RAISE A [VALID CLAIM] OF A SUBSTANTIAL CONSTITUTIONAL VIOLATION. WRIGHT SUPRA 91 A.3d 972... AND...

b) - NOT ONLY HAS THE "MISCHANCE OF JUSTICE" EXCEPTIONAL BEEN ELIMINATED. BURTON SUPRA 200 A.3d 1206... CITING STURDIS SUPRA 2018 (Ct. SUPER. LETIS 1321)... THE AMENDED VERSION REQUIRES NEWLY DISCOVERED EVIDENCE... SUPERIOR COURT CRIM. RULE 61(1)(5) (JUNE 4, 2014)... THEREFORE...

ii - THE CHANGE / AMENDMENT... IN EFFECT DEPRIVES APPELLANT OF A "SUBSTANTIAL PROTECTION" UNDER WHICH OLD PROVISION OF [NOW ELIMINATED] 61(1)(5) "MISCHANCE OF JUSTICE" EXCEPTIONAL... IN CHALLENGE TO WRONGFUL CONVICTION AND SENTENCES... DUNCAN v. MISSOURI, 152 U.S. 377, 382-383 (1894); AND...

iii - THE EX POST FACTO CLAUSE WAS INTENDED TO SECURE SUBSTANTIAL RIGHTS AGAINST ARBITRARY AND OPPRESSIVE LEGISLATIVE ACTION.. MAHONY v. S. CAROLINA 237 U.S. AT 183..

4. CRIMINAL RULES OF PROCEDURE VIOLATE EX POST FACTO CLAUSE, IF:

i. - IT APPLIES TO EVENTS PRIOR TO ITS ENACTMENT...

ii - THE CHANGE ADVERSELY AFFECTS THE OFFENDER... COLLINS v. VORHIES 497 U.S. 371 (1996); BEAZELL, 269 U.S. 167... DOBBERT 432 U.S. 282...

iii THE U.S. SUPREME COURT ADVANCES TWO KEY ELEMENTS... THAT!

ONE! IT MUST BE RETROSPECTIVE ...

TWO! IT MUST DISADVANTAGE OFFENDER AFFECTED BY IT... AND...

FIRST! AMENDED RULE ADOPTED JUNE 3, 2014 WITH EFFECTIVE DATE OF JUNE 4, 2014 WITH RETROSPECTIVE APPLICATION... THEREFORE...

a). FIRST ELEMENT SATISFIED ...

SECOND! WE TURN TO THE SCOPE OF AMENDED RULE AND ITS PRACTICAL EFFECT... AND...

a). THE COURT DENIED REVIEW OF THE 61(C)(S) MOTION UNDER AMENDED VERSION OF THE RULE 45 AND ...

i. IT MUST BE NOTED... EX. WRIT V. STATE 91 A.3d 972 (BEL. SUP. CT. JUNE 16, 2014). A DEATH ROW INMATE AFTER OVER 25 YEARS OF LITIGATION... UNDER CRIMINAL HAND OF COUNSEL ARGUING 61(C)(S) "MISLEADING OF JUSTICE" EXCEPTIONAL CRIMINAL HAD PROBABLY CONVICTION AND SENTENCE VIOLATED... AND...

ii. 19 DAYS LATER... "UNDER THE DELAWARE WAY" THE RULE WAS AMENDED WITH THE ADDED PROVISION THAT... ALL CONVICTIONS AND SENTENCES PRIOR TO AMENDMENT WILL BE RETROSPECTIVELY AFFECTED... ADDING THAT...

"A SECOND OR SUBSEQUENT MOTION WILL BE SUMMARILY DISMISSED, UNLESS THE WRIT WAS CONVICTED AFTER TRIAL AND... PLEADS NEW EVIDENCE OR NEW CONSTITUTIONAL RULING" AND...

iii. REVIEW OF THE PRACTICAL EFFECT, WE FIND... IN RESOLVE OF THE REVIEW DENIED AT BAR... NO DOUBT UNDER OLD VERSION OF 61(C)(S): APPELLANT IS ENTITLED TO RELIEF OF A NEW TRIAL 46 AND...

b). CLEARLY... OVER 7 YEARS LATER... THE ISSUE HAS BEEN DENIED REVIEW AND NO DOUBT AS TO THE CLEAR DISADVANTAGE IN DENIAL OF HAVING OTHERWISE MERITORIOUS CLAIM REVIEWED AND WHERE AMENDED RULE VIOLATED EX POST FACTO... A NEW TRIAL IS WARRANTED...

45 APPEN P # 3 EX # 2 P # 3 AT (S)

46 ID

GROUND FOUR: CAUSE FOR DEFAULTED CLAIMS AND PREJUDICE

WHERE APPELLANT DID NOT HAVE COUNSEL AT INITIAL 61 PROCEEDING. CAUSE FOR THE DEFAULTED CLAIMS ARE ESTABLISHED... FURTHERMORE...

THE EX POST FACTO CLAIM VIOLATION DID NOT MANIFEST UNTIL AFTER JUNE 4, 2014... MORE SPECIFICALLY... JANUARY 14, 2015... AND...

NOTE: IN PART... FIRST IMPRESSION ANALYSIS REQUIRED IN EX POST FACTO ISSUES...

I. THE FACTS

1. DURING INITIAL Rule 61 PROCEEDING, COUNSEL WAS NOT APPOINTED...
2. LESSER INCLUDED INSTRUCTION ISSUE WAS NOT RAISED UNTIL SUCCESSIVE PETITION IN SUPERIOR COURT AND WAS PROCEDURALLY BARRED. [47]
3. APPEAL TO DEL. SUPREME COURT... ISSUE DENIED BASED UPON AMENDED Rule [48] MERITS NOT REACHED...
4. SUPERIOR COURTS RESOLVE AS TO ISSUE OF REQUESTED LESSER INCLUDED AS HAVING BEEN FORMALLY ADJUDICATED IS [ABSOLUTELY] CONTRADICTED [49]... FURTHERMORE...
5. SUPERIOR COURTS RESOLVE AS TO EX POST FACTO CLAIM BEING FORMALLY ADJUDICATED IS ALSO ABSOLUTELY CONTRADICTED AS [50] ISSUE HAS BEEN DENIED AS BARRED!
6. HAD THE COURT APPLIED RECENT PRONOUNCEMENTS OF: PURCELL SUPRA, 2021 DEL. LEXIS 193 61 185-187, AS PERTAINS TO AMENDMENT TO Rule 61(C)(5)... A NEW TRIAL IS WARRANTED!

II. SCOPE OF REVIEW

MARTINEZ V. RYAN 132 S.Ct. 1309 (2018): DID NOT BECOME AVAILABLE UNTIL (2012)... AND IS OF GREAT IMPORTANCE, WHERE:

FIRST: NO COUNSEL AT INITIAL Rule 61 PROCEEDING. MERITS OF DEFAULTED LESSER INCLUDED

⁴⁷ APPEAL P. #1 EX #1

⁴⁸ APPEAL P. #3 EX #2 P. #3 AT (5)

⁴⁹ APPEAL P. #34 EX #14 P. #3 AT (11)

⁵⁰ DO

INCLUDED INSTRUCTIONAL CLAIM ESTABLISHES:

- a). DEPRIVATION OF SUBSTANTIAL FUNDAMENTAL RIGHTS TO A FAIR TRIAL. HEWRY, SUPRA, 805 A2d 860, AND ITS PROGENY...
- b). UNDER MARTINEZ SUPRA, 132 S.Ct. 1309..., CITING MILNER-EL V. COCKRELL 537 U.S. 322 (2003) AS TO SUBSTANTIAL NATURE OF ISSUE DEFANTED... WE FIND THAT:
i. REACHING MERITS OF CLAIM DEFANTED... A NEW TRIAL IS WARRANTED!

III. MERITS OF ARGUMENT

SIMPLY PUT... EVERY PRONOUNCEMENT OF PURCELL V. STATE HAS BEEN MET... AND
LIKE PURCELL, NO DOUBT EVANS IS ENTITLED TO RELIEF. LA GAL. 185-187...

THE AVENUE OF REDRESS, IS A NEW TRIAL. LA GAL #187

GROUND ONE: NEWLY DISCOVERED EVIDENCE

THE COURT'S MISAPPREHENSION OF NEWLY DISCOVERED EVIDENCE PROVISIONAL IS AN ABUSE OF DISCRETION AND EVIDENTIARY HEARING SHOULD HAVE BEEN GRANTED UNDER EXTRAORDINARY CIRCUMSTANCES AT BAR...

I. THE FACTS

AFTER 14 YEARS FIGHTING, KNOWING I DID NOT HAVE A GUILTY... NOR DID I SHOOT ANYONE... AS AN ACT OF GOD... I DISCOVERED... THAT:

1. CHIEF of Laurel Police in 2006 WAS MICHAEL. WILSON WAS A FORMER CORRECTIONS OFFICER AT S.C.I.U. AND NOT ONLY DID HE KNOW ME, HE ASSURED I WAS CHARGED WITH MOST SERIOUS OFFENSES...
2. THAT THERE WERE TWO EXCULPATORY CRIME SCENE EYE WITNESSES WITHHOLD, THAT WERE NOT REVEALED TO ME!
 - i. ANTHONY MABEE... "DIED OF COVID 19... DEC. 2020...
 - ii. SHERITA STANLEY... NOTARIZED AFFIDAVIT 51... AND...
3. CONTACTING A PRIVATE INVESTIGATOR, THE \$2500.00 TO COMPLETE AND TRANSCRIBE WITNESS STATEMENTS 52 AND I DON'T HAVE THE FUNDS...
4. EVIDENTIARY HEARING NEEDED AND DENIAL IS ABUSE OF DISCRETION 53
5. NEITHER OF EXCULPATORY EYE WITNESS STATEMENTS WERE GIVEN... HOWEVER THE WITNESS THAT LIED... RECAPTURING 3 DAYS BEFORE TRIAL 54 WAS USED AT THE PRELIMINARY HEARING 55

II. SCOPE OF REVIEW

THE CLAIM BASED UPON NEWLY DISCOVERED EVIDENCE. ACTUAL INNOCENCE IS BASED UPON PROSECUTION WITHHOLDING EXCULPATORY CRIME SCENE EYE WITNESS STATEMENTS

51 APPEAL P. 30 EX # 12

52 APPEAL P. 31. EX # 13

53 APPEAL P. 34 EX # 14 P. # 11 at 36-37

54 APPEAL P. # 24 EX # 9

55 APPEAL P. # 14 EX # 7, P. # 3 at ①, ②, ③, AND P. # 11 at 4-1 P # 12 1 (A)

ESTABLISHING A BRAND VIOLATION. 373 U.S. 83 (1963):

ACTUALLY... THIS CLAIM IS NOT NEEDED... FINDING APPELLANT IS ENTITLED TO RELIEF IN PRIOR ISSUES... NEW EVIDENCE NOT NEEDED... HOWEVER...

i. AN EVIDENTIARY HEARING AND GIVING CHANCE TO ESTABLISH ISSUE ADVANCES WHAT HAS BEEN KNOWN 17 YEARS! THE CONVICTION WAS BASED UPON A BIAS COURT WHO IGNORED THE PROSECUTION... HOWEVER...

ONE: THE NEW WITNESS WILL CHANGE RESULTS OF NEW TRIAL AND/OR TRIAL PERIOD!

TWO: HAS BEEN DISCOVERED AFTER TRIAL... AND... COULD NOT HAVE BEEN DISCOVERED BECAUSE OF DILIGENCE...

THREE: NEW EVIDENCE IS NOT MERELY IMPERMISSIBLE... OR CUMULATIVE...

ii. EVIDENCE IS NEW IF IT WAS NOT AVAILABLE AT TRIAL AND COULD NOT HAVE BEEN DISCOVERED THROUGH DUE DILIGENCE. STATE V. SYKES 2017 DEL. SUPR. LEXIS 639...
PHILOPOT V. JOHNSON, 2015 U.S. DIST. LEXIS 54479... FURTHERMORE...

as. EVIDENCE MUST BE REVIEWED AS A WHOLE, WITHOUT REGARD TO ADMISSIBILITY.
PHILOPOT SUPRA, KNO...

ii. MUST BE SUCH AS TO CHANGE RESULTS OF A NEW TRIAL. HOWARD 771 A2d 282, 291...

III. MERITS OF ARGUMENT

THE COURTS ASSERTED THAT SOMEONE OTHER THAN APPELLANT COMMITTED CRIME ^[56]
WILL NOT PASS MUSTER!

i. EVIDENCE IMPEACHABLE AND EXHAUSTIVE!

ii. SUPPRESSED BY STATE!

iii. APPELLANT PREJUDICED!

[FIRST] ELEMENT MET (BRAND): i. NO GUN POSSESSED, WITNESS RECALLED... EXHAUSTIVE
CRIME SCENE WITNESSES WITHELD BY STATE... MATERIALITY MET! [SECOND] ELEMENT
BRAND V. MARYLAND, 373 U.S. 83 (1963):

56 APP. P. # 34 EX # 14 P. # 4 AT (14)

GROUND SIX: JUDGES BIAS/IMPARTIALITY/REFUSAL

AN UNCONSTRAINED REVIEW OF THE 61 MOTION DENIAL⁵⁷ ESTABLISHES... AS A MEMBER OF THE CRIMINAL RULES ADVISORY COMMITTEE... THE JUDGE FAILURE TO ACKNOWLEDGE THE 61(C)(1) RESPONSIBILITY OF PURCELL V. STATE 2021 DEL. LEXIS 193 at FAL 185-87... PERFECTED HIS BIAS/IMPARTIALITY.

I. THE FACTS

ANY UNBIASED JURY WOULD HAVE NOTED THE REMARKABLE PARALLELIS OF PURCELL SUPRA, AS PERTAINING TO AMENDED VERSION OF Rule 61(C)(1) AND THE UNDISPUTABLE REALITY THAT APPELLANTS CASE IS IDENTICAL AND ANSWERS THE QUESTIONS LEFT FOR ANOTHER DAY TO FAL 185-87...

THE 32 PAGE MEMORANDUM IS REplete WITH HITTING SQUARELY WITH PURCELL AND IN 11 PAGE OPINION... NOT ONLY SENTENCE AS TO WHAT WAS RAISED AND EVEN AS I HAVE SAT IN PRISON 17 YEARS... MY MOTIONS LABELED FRIVOLOUS, REPETITIVE AND MERITLESS... HOWEVER...

SAME ISSUES RAISED BY ALL ATTORNEYS AND ITS REMARKABLE! WOW!

II. SCOPE OF REVIEW

A JUDGE DOES NOT HAVE TO BE BIASED, SO LONG AS HE APPEARS SO. STEVENSON V. STATE 782 A.2d 349 (2001); LITKEY V. U.S. 553 F.2d (1994); THE REQUIREMENT THAT A JUDGE BE IMPARTIAL IS A FUNDAMENTAL PRINCIPLE OF THE ADMINISTRATION OF JUSTICE. LOS V. LOS 545 A.2d 381, 383 (Del. 1991); A TWO PART TEST ADOPTED... (1) SUBJECTIVE BELIEF - ONE HEAR ONE FREE OF BIAS... (2) OBJECTIVE BELIEF - EVEN BELIEVING HE CAN, IT MUST BE DETERMINED ON APPEARANCE...

III. MERITS OF ARGUMENT

HOW CAN A JUDGE COMPLETELY IGNORE FULL SCOPE OF PURCELL SUPRA AS WAS RAISED?

57 SUPERIOR COURT DOCKET Rule 61 MOTION...

CONCLUSION

TREADING CAREFULLY... APPELLANT'S CASE IS WELL DISTINGUISHED IN ACTUAL APPLICABILITY OF EX POST FACTO LAWS BEING APPLIED IN A CRIMINAL RULES CONTEXT OF SUPERIOR COURT RULE 61(C)(S) "MISCHIEF OF JUSTICE" EXCEPTION IN EFFECT BEFORE THE JUNE 4, 2014 AMENDMENT. WRIGHT V. STATE 91 A3d 972 (DEL. SUPER. CT. MAY 16, 2014): HOWEVER...

TURNING TO PURCELL SUPRA, FN 185-187 AND THE EXACTING PRINCIPALS OF LAW, WITH QUESTIONS LEFT OPEN AND NEED OF AVENUE OF REDRESS OBLIGATION, FITTING SQUARELY AT BAR...

HOWEVER... THE REAL ISSUE IS APPELLANT IS NOT AN ATTORNEY... AND... FROM THE OUTSET, ITS CLEAR THE COURT BELOW ONCE AGAIN HAS MATERIALLY SIDESTEPED THE PERTINANT ISSUES AND TAILORED A FAVORABLE OPINION... CONTRARY TO PURCELL...

TREADING CAREFULLY... AFTER 17 YEARS AND OVER SEVEN YEARS SINCE THE AMENDMENT... THE DELAWARE WAY HAS PREVAILED... HOWEVER... HAVING RAISED AMIDST IDENTICAL ISSUES OF PURCELL SUPRA, WITHOUT GUIDING HAND OF COUNSEL, THE CONCERN IS:

WHETHER STATE SUPREME COURT WILL REVIEW THE TRUE FACTS "SIDESTEPED REPEATEDLY" AND IMPLICATED MATTERS OF LAW, AGAINST BACKGROUND OF PURCELL SUPRA, FN 185-187 AND RESOLVE AS TO:

WHETHER UNDER OLD PROVISION OF 61(C)(S) "MISCHIEF OF JUSTICE" EXCEPTIONAL EVISCERATED... AND RESOLVE WHETHER APPELLANT IS ENTITLED TO RELIEF, WITHOUT NEED TO PROVIDE, COMPELLING NEW EVIDENCE [58]... AND... ORDER A NEW TRIAL...

DATED: SEPT. 22, 2022

PRO SE APPELLANT

58 APPEN. P. # 3 EX # 2 A. # 317(S)

Seville

APPELLANT DID SERVE:

MARIA T. KNOLL, ESQ.,
KATHRYN GARRISON, ESQ.
DEPARTMENT OF JUSTICE
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SUSAN BURKE ESQ.
ACLU DELAWARE
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ON THIS 22nd DAY OF SEPT 2022

AUGUSTUS HERBREW EVANS JR #00191247
JAMES T. VAUGHAN CORRECTIONAL CENTER
1101 PADDOCK ROAD
SMYRNA, DE 19977