IN THE
SUPREME COURT OF THE UNITED
STATES

22-6923 **ORIGINAL**

22-5263

JESSE BROWN
PETITIONER
v.
ERIC ARMEL, SUPERINTENDENT, SCI FAYETTE
LAWRENCE KRASNER, PHILADELPHIA, D.A.
JOSH SHAPIRO, PENNSYLVANIA ATTY GEN.;
RESPONDENTS

PETITION FOR AN EXTRAORDINARY WRIT

A PETITION SEEKING A WRIT OF HABEAS CORPUS

FROM [redacted] THE THIRD CIRCUIT

Jesse Brown #HN1283
SCI Albion
10745 Route 18
Albion, PA. 16475

QUESTIONS PRESENTED

I. Is the Petitioner entitled to An defense theory?

II. Is the Petitioner entitled to An standard of review of his claims on they merits?

III. Is the Petitioner entitled to over come procedural default do to the ~~fact~~ fact of trial counsel And P.C.R.A. Counsel ineffctives?

IV. Is the Petitioner entitled to An Evidentiary Hearing do to the fact the Petitioner file An brief layering the ineffective Assitance on trial Counsel And P.C.R.A. Counsel?

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CONSTITUTUINAL STATUTORY PROVISIONS INVOLVED

AMENDMENT VI

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

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws.

18 Pa.C.S.A.§2501 Criminal Homicide.

(a) Offense defined.--- A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being
(b) Classification--- Criminal homicide shall be clssified as murder, voluntary manslaughter, or involuntary manslaughter.

18 Pa.C.S.A.§2502 Murder

(a) Murder of the First degree---A Criminal homicide constutes murder of the degree when it is committed by an intentional killing.
(b)Murder of the second degree--- A criminal homicide constitutes murder of the second degree when it is commiied while defendant was engaged as a principal or an accomplice in the perpetration of a felony.
(c) Murder of the third degree---All other kinds of murder shall be murder of the third degree. Murder of the thied degree is a felony of the first degree.

18 Pa.C.S.A.§2503. Voluntary Manslaughter

(a) General rule--- A person who kills an individual without lawful justification commits voluntary manslaughter if at the time of the killing he is acting under sudden and intense passion resulting from serious provacation by:
(1) the individual killed; or
(2) another whom the actor endeavors to kill; but negligently or accidentionally causes the death of the individual killed
(b) Unreasonable belief killing justifiable--- A person who intentionally or knowingly kills an individual commits voluntary manslaughter if at the time of the killing he believes the circumstances to be such that, if they existed, would justify the killing under Chapter 5 of this title(relating to general principles of justification) but belief is unreasonable.
(c)Grading---Voluntary manslaughter is a felony of the first degree.

18 Pa.C.S.A.§2504 Involuntary manslaughter

(a) General rule.--- A person is guilty of involuntary manslaughter when as a result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless manner, he causes the death of another person.
(b)Grading--- Involuntary manslaughter is a misdemeanor of the first degree.

ORDER IN QUESTION

This is An Appeal from District Judge Joseph F. Leeson, Jr. Case number 2:18-cv-04512 Denied on December 21, 2021, from Sentence rendered by The Honorable George Overton Which sentenced The Petitioner dated April 21, 2008 in the Philadelphia Court of Common Pleas, Criminal Trial Division, Which sentenced The Petitioner to A term of Life Imprisonment without the possibility of parole on the charge of First Degree Murder And to A concurrent term of three to Six years on VUFA, All on CP No. 51-CR-1301955-2006 And An Appeal from the Third Circuit Appeal number 21-2959 And Also Appealing from United States Courts of Appeals Certiorari And Rehearing Appeal number 22-5263

X

STATEMENT OF THE CASE

PROCEDURAL HISTORY:

The Defendant having been arrested and charged with Murder and related offenses, came to be represented by the undersigned. The Defendant's case was assigned to the Courtroom of The Honorable George Overton of the Philadelphia Court of Common Pleas. Trial commenced on April 15, 2008, with a Motion to Suppress the Jury Selection and eventually ended on April 21, 2008, with the jury finding the Defendant guilt of Murder in the First Degree, VUFA (Section 6106) and Possession of an Instrument of Crime. The Court immediately sentenced the Defendant to a term of Life Imprisonment without the possibility of Parole on a Murder charge and to a concurrent term of three to six years on the VUFA offense. No further penalty was imposed on PIC. Thereafter the Defendant filed a timely Notice of Appeal and a timely 1925(b) Statement. This advocate's Brief in support of the Appeal now follows.

FACTUAL HISTORY:

Tariq Blackwell was shot and killed on May 13, 2006, in or about the 600 block of Porter Street in Philadelphia. Officer Fidler of the Crimes Scene Unit responded to the scene (N/T, 04/16/08, p.134). Photographs were taken and available evidence documented (N/T,

04/16/08, p. 137). Six fired cartridge cases were recovered (N/T, 04/16/08, p. 152).

Jerrica Fulton, the girlfriend of the deceased was with him on the evening of May 12, 2006. The Defendant and the victim had words (N/T, 04/16/08, p. 161-162). On the following day Jerrica was with Mr. Blackwell once again and they encountered the Defendant on the street. Mr. Blackwell, the victim, approached the Defendant and punched him in the mouth and at that time the Defendant pulled out a gun and began to shoot (N/T, 04/16/08, p. 241-245).

Dr. Hood opined that the cause of death was gunshot wounds of the back and chest and that the manner of death was homicide (N/T, 04/17/08, p. 25). Police Officer Cannon of the Firearms Identification Unit opined that the six fired cartridge cases were fired in one weapon (N/T, 04/17/08, p. 39). Officer Cannon further testified that he examined the photograph taken from the Defendant's cell phone which portrayed the Defendant with a gun. It was his opinion that the gun was a "Glock," although he could not tell the caliber (N/T, 04/17/08, p. 45-46).

The testimony of Tishea Green probably best sums up what occurred out on the street. The transcript reflects the following:

> Q. Tell the jury what, if anything, you saw or heard as you were walking past.
> A. Okay, what I heard first was Tariq walking up to the Defendant, whatever, and said that "I heard that you was looking at my girlfriend in a type of way that you wasn't supposed to.

SUMMARY OF THE ARGUMENT

Court-Appointed P.C.R.A Counsel Richard T. Brown fail to give the Petitioner inadequate representation in P.C.R.A. proceeding, where Counsel fail to raise any of Petitoner's Arguably meritorious issues, See. Com. v. Albert, 561 A.2d 736 (Pa. 1989). When Considering the Pennsylvania Supreme Court's new rule Announced in Com. v. Grant, 813 A.2d 726 (2002) (claims sounding in trial counsel's ineffectiveness should be deferred for review during P.C.R.A. proceedings), Crentes even greater emphasis on protecting individual rights to a "fair and meaningful" review of [his] P.C.R.A. claims. This is especially true, consideration given meritorious P.C.R.A claims May be forever lost should P.C.R.A. Counsel "drop the ball": See. Com. v. Hampton, 718 A.2d 1250 (Pa. Super. 1998). Postconviction Counsel must raise All arguably meritorious issues which might lead to the convict's securing of relief, by Mr. Brown not raising any of the Petitioner's meritorious issues in P.C.R.A. Proceeding violated the Petitioner's Fourteenth Amendment, due-process, in P.C.R.A. proceeding. See. Coleman v. Thompson, 501 U.S. 722 (1991). The Federal Court should consider the petitions without first requiring resort to the state form; however, the court rejected this contention, reasoning, in part, that where, because of ineffective Assistance A petitoner has not been able to raise certain errors by way of a direct Appeal, it (the federal court) felt certain that the state Supreme court would recognize the inapplicability of the state's general policy (that postconviction proceedings Are not A substitute for direct appeals) which is Aimed At preventing A petitioner from deliberately circumventing A direct Appeal and relying instead on postconviction relif. The intricate, Ambiguous, and unsettled question of the Availability of federal relif where state remedies have been bypassed or neglected is considered in depth in Rosenberg, "Jettisoning Fay v. Noia: Procedural Defaults by Reasonably Incompetent Counsel," in 62 Minn L. Rev 341 (March, 1978). The Petitioner must be Awared An new trial As the result of ineffective of trial Consel Jay S. Gottlieb for not raising the issues in An direct Appeal And P.C.R.A. Counsel Richard T. Brown for not raising issues in P.C.R.A. Proceeding. See. Com. v. Townsell, 379 A.2d 98 (Pa. 1977).

LEGAL ARGUMENT

SIXTH AMENDMENO, RIGHT TO COUNSEL, AND FOURTEENTH AMENDMENO, DUE PROESS, VIOLATED DO TO PRIVILEGE AGAINIST SELF INCRIMINATION

P.C.R.A. Counsel (Richard T.Brown)was ineffective for failing to allege that trial counsel (Jay S.Gottlieb)was ineffective for [redacted] privilege Against Self incrimination defense without defendant consent.See.**Commonwealth v. Watlington**,420 A.2d 431 (1980).R.Crim.P.904 Provid an absolute right to counsel on the first petition and a qualified right to counsel on second and subsequent petitions in post-conviction proceedings.See. **Commonwealth v. Kaufmann**,592 A.2d 691 (Pa.Super.1991).And also see. **Commonwealth v. Lindsey**,687 A.2d 1144 (Pa.Super.1996).P.C.R.A. Counsel (Richard T.Brown)failed to provide the defendant with adequate legal argument,the defendant file a P.C.R.A. Petition on August 19,2010 and file an Pro Se Amended Petition on December 28,2010 with the issues of:Counse was ineffective for Failure to Maintain Client's Innocence as you can see in Exhibit-A .P.C.R.A. counsel (Richard T.Brown) fail to raise claim that has a rguable merit of trial counsel (Jay S.Gottlieb) presented a [redacted] Self incrimination defense without defendant consent.This issue has a rguable merit.On April 18,2008 at trial,trial counsel (Jay S.Gottlieb) stated to the jury in closing argument,the transcript reflects the following:

"I would admit to you right off the bat that Jesse Brown shot Tariq Blackwell.I don't think on the basis of evidence that you heard there is any reasonable doubt about that"

You can see.[redacted] (N.T.,4/18/08,Pg.6,21-25)

--degree murder,defense counsel indicated to the jury,that he thougth his client was guilty of murder in the second-degree.

110K1172(1)

Trial Courts Statement in it's charge that,in it's opinion,it would be a **miscarriage of justice** if Petitioner was found not guilty entitled Petitioner convicted of first-degree murder to a new trial, even if defense counsel indicated to the jury that he thought his client was guilty of murder in the second-degree.

If you see.**Commonwealth v. Lawson,549 A.2d 107 (Pa.1988).**This case states: Second or subsequent postconviction request for relif will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred.**Criminal Law 998(21).**By trial counsel (Jay S.Gottlieb) stated to the jury that the defendant did the murder for a lesser charge,it would be a miscarriage of justice if the defendant was found not guilty and this is the strong prima facie is showing that offered the demonstrated of a miscarriage of justice that had occurred under **Lawson.**The defendant had a constitutional right to counsel at trial proceeding,trial counsel (Jay S.Gottlieb) violated the **Sixth Amendment**,right to counsel,and violated the **Fourteenth Amendment**, due process.Trial counsel (Jay S.Gottlieb) is ineffective under **42 Pa. C.S.A. § 9545(a)(2)(ii)**thats addresses claims asserting "ineffective assistance of counsel which,in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place."Trial counsel (Jay S.Gottlieb) was ineffective when he told the jury that his client was guitly in closing argument,closing argument is the "truth-determining process" and by trial counsel told the jury that his client is guitly took away the reliable adjudication of guilt and innocence because the jury already heard that the defendant was guitly and the jury did not determine the

guilt or innocence,and the guilt or innocence did not had taken place. If you see.Commonwealth v. Kimball,555 Pa.299,724 A.2d 326 (1999).And also see.Strickland v. Washington,466 U.S. 668,694,104 S.Ct. 2052,2068,80 L.Ed.2d 674 (1984). See concurring opinion of Zappala,J.,in Commonwealth v. Williams,566 Pa.533,570,782 A.2d 517,527 (2001). Pursuant to the plain language of the Act,one seeking relief on the grounds of ineffective assistance of counsel must plead and prove by a preponderance of the evidence:(1)ineffective assistance of counsel which,in the circumstances of the particular case,so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place,id,at Section 9543(A)(2)(ii);Trial counsel (Jay S.Gottlieb) was ineffective when he told the jury in closing argument that his client is "guitly" and closing argument is the "truth-determining process" and by the jury already heard that the defendant was "guitly" they could not had deliberate the guilt or innocence because they decision was already made by trial counsel. (2)that the allegation of error has not been previously litigated or waived ,id.at Section 9543(A)(3);If you see.[redacted],you will see the 1925(b) statement and the issues raise by trial counsel (Jay S.Gottlieb) in the direct appeal and you will also see attach is the Statement of Matters Complained from the P.C.R.A. proceeding the opinion from the lower court on the issues raise by P.C.R.A. counsel (Richard T.Brown) and you will see that the issue of trial counsel is ineffectivenes for presented a Self [redacted] incrimination defense without defendant consent had not been previously litigated;and if you see.Exhibit-E you will see the response obections notice to the 907 that was file on February 5,2014 the issue was raise in the petition and the issue is well reserve and ready for litigation.(3) that the failure to litigate the issue prior to or during trial or on direct appeal could not have been the result of any rational,strategic or tactical decision by counsel.Id.at Section 9543(A)(4).

By trial/appeal counsel (Jay S.Gottlieb) failure to litigate the [redacted] lesser charge defense on a post-sentence motion and/or direct appeal ,where,Mr.Gottlieb performance had fell below any objetive standard of reasonableness,wheres, Mr.Gottlieb fail to appeal his main argument,Mr.Gottlieb's performance being deficient by an unprofessional standard...wheres Mr.Gottlieb's trial tactics and strategy had no rational basis in obaining a favorable outcome in the Defendant's behalf and wheres Mr.Gottlieb strategy was so insufficient where as it amounted to no defense at all but an open guilty plea to the jury and in open court against the Defendant's wishes and against the weight of the evidence.

P.C.R.A. counsel (Richard T.Brown) was ineffective for failing to allege that trial/appeal counsel (Jay S.Gottlieb) was ineffective for presented a [redacted] Self incrimination defense without the Defendant's consent,wheres, Professional Conduct Rules,Informed Consent,states:requires that a clinent's consent be obtained in a writing signed by the client,and/or see. Com. v. Wever,457 A.2d 505 (Pa.1983),and records shows that the two witnesses Jerrica Fulton and Tishea Green have not seen the shooting,wheres, Mr.Gottlieb failed to challenge the issue on a post-sentence motion and/or direct appeal,violating, the Defendant's constitutional rights,the Sixth Amendment,right to counsel,and the Fourteenth Amendment,due process,and the Defendant did not have equal protection of the law,and it is an Miscarriage Of Justice,failure of justice,Making,Prior Counsel Ineffective for Presented a [redacted] Self incrimination Defense without Defendant's Consent under "Extraordinary Circumstences" §9544(b)(2).See.Com. v. Lawson,549 A.2d 107 (Pa.1988).Also see.Com. v. Watlington,420 A.2d 431 (Pa.1980).This case need to be remanded for a new trial.This issue have arguable merit.

Trial counsel (Jay S.Gottlieb) had no Reasonable Basis for presented a [redacted] Self incrimination defense.If you see [redacted] you will see the preliminary hearing transcript from November 8,2006 trial counsel (Jay S.Gottlieb) asking Jerrica Fulton about the shooting the transcript reflects the following:

Q.You didn't see my client fire the gun,did you?

A.No.

(N.T.,11/8/06,Pg.24,16-18)

Alos attach to Exhibit-B,and you will see the trial transcript from trial on April 17,2008 the transcripts Ms.Pescatore asking Tishea Green about a gun,the transcript refle the following:

Q.Did you ever see a gun?

A.No.

Q.Never saw a gun?

A.No.

(N.T.,4/17/08,Pg.67,9-12)

Attach to Exhibit-B,is an statement made by Tishea Green made on 5-13-06 the same day of the incident,Ms.Green was ask about who she recognize any people that was arguing?and she stated:"Yse,I saw,Riq,and I saw two other guys,and I saw Riq's Girlfriend,Jerrica,and Tariq Brother or Cousin,they all were on the sidewalk it sounded like Tariq was arguing with one of the guys about his Girlfriend."

Attach to Exhibit-B,is an statement made by Jerrica Fulton on 5-13-06 the same day of the incident,Ms.Fulton was ask:

Q.Was there anyone else out there that you know of that saw what happened?

A.It was just me and Tariq were there that I saw.

That mean that it was a unknown person that was out there that could have been the shooter the record(s) support that the (2) two witnesses Jerrica Fulton and Tishea Green have not seen the shooting and an statement made by Tishea Green shows that there was a unknown person that was out there that could have been the shooter,the evidence are not overwhelming,the evidence are circumstancesul and there are no reasonable basis for Mr.Gottlieb action or inaction for presented a ~~diminished capacity~~ Self incrimination defense.It is only in the most clear-cut of cases that the reason for the conduct of

SIXTH AMENDMEND, RIGHT TO COUNSEL, AND FOURTEENTH AMENDMENT, DUE PROESS, VIOLATED DO TO THE INSUFFICIENT EIVDENCE TO SUSTAIN FIRST DEGREE MURDER CONVICTION, BUT MAY BE SUFFICIENT TO SUSTAIN CONVICTION OF VOLUNTARY MANSLAUGHTER

P.C.R.A. counsel (Richard T.Brown) was ineffective for failing to allege that trial/appeal counsel (Jay.S.Gottlieb) was ineffective for failing to challenge insufficient eivdence to sustain First-Degree Murder conviction, but may be sufficient to sustain conviction of voluntary manslaughter on a post-sentence motion and/or direct appeal.Preliminary hearing where trial/ appeal counsel (Jay S.Gottlieb) fail to file any pre-trial motions,challen-ging,the eivdence that was insufficient to sustain an first-degree murder. If you see [redacted] from November 8,2006 Preliminary Hearing,the transcri-pts reflects the following:

THE COURT:I heard the guy was across the street and the guy went over to the guy and punched him in the mouth and bear-hugged the guy.And the guy took a gun out and shot him four,five times in the stomach.

MS.FAIRMAN: Right.He intended to kill him.He shot him several times.The other man was--

THE COURT: Wait a minute.Let me just ask you this.I'm trying to figure this out now in this respect.I'm not intending on killing anybody.I had an arum-ent with a person and I'm across the street standing around talking to a couple of people.I have a gun on me.And a guy comes over and starts punch-ing me in the mouth.I pull a gun out and I shoot him.That's first degree?

MS.FAIRMAN: Yes.

THE COURT: Why?

MS.FAIRMAN: First of all,you have to look at where he shot because we

(N.T.,11/8/06,Pg.27,3-25)

have the presumption of specific intent to kill.He's shot in the chest,whic-h is an area that's filled with vital organs,which is the key.The Commonwea-lth would be entitled to a jury instruction saying you can infer an intent to kill from the use of a deadly weapon on a vital part of the body.

THE COURT: If I'm minding my own business,not bothering nobody,and I shoot this guy and kill him because the guy starts fighting me out of the clear blue sky,that's not third degree?

MS.FAIRMAN: It's not like it was a stranger,your Honor.There's a guy you know who comes up and punches you,which is not a good thing.I'm not saying that's good.But certainly a punch doesn't give you the right to use deadly force.There has to be more to it to use deadly force.

THE COURT: Well,you don't know what this guy has.You don't know what's up with him.The guy comes over and he starts punching you.

(N.T.,11/8/06,Pg.28,2-25)

That's not third degree?

MS.FAIRMAN: It's not third degree at this point,your Honor.But if your logic is that it's a self-defense type of argument,that take us somewhere else entirely.But what I'm saying,for purposes of being held for a preliminary hearing,it's enough to go to the jury of first degree murder.We would be entitled to that presumption that he used a deadly weapon on a vital part of the body.That in itself if we are entitled to that presumption get us by the preliminary hearing.

THE COURT: Yes,as a murder.

MS.FAIRMAN: As a first degree murder.Because that entitles--

THE COURT: Yes.That's right.

MS.FAIRMAN: Specific intent.

THE COURT:I forget the case law.We have been reading that stuff.

MS.FAIRMAN: And the rest is argument to the jury.If they can reduce it and say it's self-defense or something (N.T.,11/8/06,Pg.29,2-25)

else,they can

THE COURT: Yes.So we will do it generally.

MS.FAIRMAN: Yes,your Honor.I would ask that.

MR.GOTTLIEB: Judge,you took my two arguments away from me.That you could argue to the jury there was no intent to kill.It is a misplaced self-defense.We could bring it down to third or even voluntary.We made the argument.

They made their argument.We are at a preliminary hearing.

THE COURT: Yes.Because basically the case law show--

MR.GOTTLIEB:I understand,sir,perfectly.

THE COURT: Regardless of how it looks,he still has still has to go to trial. We will do it murder generally.

MR.GOTTLIEB: Fine.

THR COURT: Stand.The Commonwealth has made their case out against you on the charges. **(N.T.,11/8/06,Pg.30,2-25)**

The D.A.,Ms.Fairman,states:"it's enough to go to the jury of first degree murder.We would be entitled to that presumption that he used a deadly weapon on a vital part of the body."(N.T.,11/08/06,Pg.29,9-12).Wheres,that is not enough to go to the jury as a first degree murder,because,The Supreme Court has also recognized,while this inference is well recognized in our law it will not be permitted to support a finding of malice where the direct evidence presented in the Commonwealth's case proves the contrary.See. **Com. v. Caye,348 A.2d 136 (Pa.1975);Com. v. McGuire,409 A.2d 313(Pa.1979); Com. v. Carbone,544 A.2d 462(Pa.Super.1988).**The evidence stated in the Preliminary Hearing,shows,that the Defendant was not the "provoker" or the "aggressor."Model Penal Code §210.3,Comment 1(1980),states:Despit the fact that the homicide was intentional,it was said to have been without malice because it was committed in the heat of passion generated by adequate provocation.The following conditions must be satisfied for use of deadly force by the accused to be justified on grounds of self-defense:(1)the accused must not have been the aggressor Com. v. McComb,341 A.2d 496(1975) and must have been otherwise free from fault in provoking or continuing Com. v. Walley,353 A.2d 396(1976)the incident;Com..v. Mehmeti,462 A.2d 657 (1983)The facts in the case and Jerrica Fulton Preliminary Hearing testiom ny clearly estąblishes that the Defendant was not the "aggressor" or the "provker" and the Defendant was free from continuing the incident.(2)the accused must have reasonably believed he was in imminent danger of death or serious bodily injury;Com. v. Miller,170 A. 128(1934)The Defendant was

in serious of bodily injury when Tariq Blackwell spotted the Defendant and cross the street and hit and bear-hugg the Defendant out of no where as facts and testiomny clearly establishes;the Defendant don't know Mr.Blackwell's intentions and he don't know what Mr.Blackwell has,that put the Defendant in fear of serious bodily injury.(3)the accused must not have violated a duty to retreat Com. v. Breyessee,28 A. 824(1894)or to avoid the danger which could have been accomplished with safety Com. v. Roundtree, 269 A.2d 709 (1970).By Tariq Blackwell bear-hugg the Defendant,the Defendant could not retreat and by Mr.Blackwell want up to the Defendant,the Defendant had no time to avoid the danger Mr.Blackwell put the Defendant safety in immediate danger,or so called "chance-medley."

RULES WHEN ISSUE RAISED AS TO USE OF DEADLY FORCE.

Deadly force is force that,under the circumstances in which it is used,is readily capable of causing death or serious bodily injury."Serious bodily injury" is bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.According to this definition, force is not deadly force simply because it happens to kill or seriously injury.For example,a slap in the face that freakishly and unexpectedly leads to death is not deadly force.A defendant uses deadly force when he or she knows that his or her actions,under the circumstances in which he or she commits them,are readily capable of causing death or serious bodily injury.By the evidence,it should never had want to the jury as a First or Third Degree Murder.The evidence was insufficient to establis malicious killing beyond a reasonable doubt,but evidence was sufficient for jury as to whether killing was justifiable or whether it constituted voluntary manslaughter.See.Com. v. McGuire,409 A.2d 313 (Pa.1979). By the insufficien evidence at Preliminary Hearing,constitutes,an Miscarriage Of Justice. Black's Law Dictionary,Eighth Edition defines "Miscarriage Of Justice" A grossly unfair out come in a judicial proceeding,as when a defendant is convicted despite a lack of evidence on an essential element of the crime-

Also termed failure of justice.This is the strong prima facie showing the demonstrate of an miscarriage of justice under Lawson.See.Com. v. Lawson,549 A.2d 107 (Pa.1988).The evidence was shown at Preliminary Hearing,that the killing was an Chance-Medley.Random House Webster's Dictionary of The Law,defines "Chance-Medley"N.killing in self-defense in a sudden fight.Also called manslaughter by chance-medley.A killing other than in self-defense that occurs during a sudden and unpredicted encounter that get out of hand.A sudden and unexpected fight,sudden affray;sudden brawl;especially one in which a participant is killed.

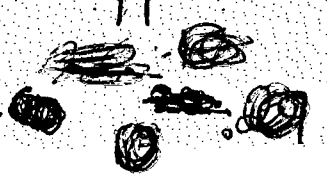
This clearly establishes that Preliminary Hearing counsel (Jay S.Gottlieb) was ineffective by failing to investigation and deprived the Defendant an potential defense,violate,the Defendant's constitutions rights Sixth Amendment,through Fourteenth,Mr.Gottlieb did not give the Defendant effective assistance at Preliminary Hearing and/or Trial proceedings.See.Goodwin v. Balkcom,684 F.2d 794 (11Cir.1982).In this case see.Contitutional Law268.1(6)Criminal Law641.13(1);Habeas Corpus25.1(6).Also see.Com. v. Perry,644 A.2d 705 (Pa.1994);Com. v. Gibson,940 A.2d 323 (Pa.2005).

Evidence at trial shows the same evidence of "Chance-Medley"Facts, Statements,and Transcripts supports the followings:

Insufficient eivdence to sustain first-degree murder conviction in the death of Tariq Blackwell,the eivdence around the case shows lack of malice.

FACTS:

Jerrica Fulton testified that she was the girlfriend of Tariq Blackwell.(N.T.4-16-08,at p.159).On MAY 12,2006,Ms.Fulton along with Mr.Blackwell and her best friend Shonique Hawkins traveled to a Chinese food store located on 7th Street and Ritner Street (N.T.4-16-08,at p.160).Appellant approached Jerrica Fulton and gave her his phone number on a piece of paper.(N.T.4-16-08,at p.186-189).The paper said,"Jay.Call any time.(215)285-9977."(N.T. 4-16-08,at p.188).Her boyfriend;Mr.Blackwell may have observeds this and an argument ensued between him and Appellant.(N.T. 4-16-08,at p.166).The next day,May 13,2006,Ms.Fulton and Mr. Blackwell were walking in the area of 6th Street and Porter Street,when Mr.Blackwell spotted Appellant on the corner with another male.(N.T.4-16-08,at p.171).Mr.Blackwell went over and another argument followed,eventually escalating into a fist fight.(N.T.4-16-08,at p.171).At some point Appellant pulled out a gun,and while he and Mr.Blackwell were "bearhugging" each other,he fired that gun.(N.T.4-16-08,at p.174-176). Appellant fired that gun at least six times.(N.T.4-17-08, at p.39).Tariq Blackwell sustained two gunshot wounds,one to the chest and one to the back.(N.T.4-16-08.at p.15-16).He was taken to Jefferson Hospital,where he was pronounced dead within an hour of sustaining those gunshot wounds.(N.T.4-17-08 at p.13).



Jerrica Fulton made an statement on 5-13-06 the same day of the incident.The Detectives ask Ms.Fulton "What was this shooting over?"Ms.Fulton answer "My boyfriend being jealous."

On November 08,2006 at Preliminary Hearing Jerrica Fulton was ask by Ms.Fairman,D.A.,"What happens when you meet up with the defendant and these two other people?"The transcripts reflects th-e following:

A.I was still standing there.Tariq goes across the street.The defendant was looking at him and Tariq hit him.

Q.You said Tariq crossed the street?

A.Yes.

Q.And then he went up to the defendant and hit him?

A.Yes.

Q.Did anybody same anything to either the defendant or Tariq before he hit him?

A.No.Because everybody was in shock.

(N.T.11-8-06,pg.13,13-25)

On April 16,2008 at Trial Jerrica Fulton was ask by Mr.Gottlieb ,Defnce Counsel,about being ask about her boyfriend being jealous.The transcripts reflects the following:

Q.So,in other words,you cannot tell us,the ladies and gentlemen of the jury,the Judge,myself,and Ms.Peseatore why you told the detective on the same day of the shooting that the shooting happened because your boyfriend was jealous?You're telling us that you can't tell us why you said that;is that correct,Miss?

A.My boyfriend was a very jealous person,but Idon't like-

(N.T.4-16-08,pg.228,13-21)

The testimony of Tishea Green probably best sums up what occurred

out on the street.The transcript reflects the following:

Q.Tell the jury what,if anything,you saw or heard as you were walking past.

A.Okay,what I heard first was Tariq walking up to the Defendant, whatever,and said that "I heard that you was looking at my girlfriend in a type of way that you wasn't supposed to.You said something to her.That's when I seen Reek hit him.

Q.Hit who?

A.The Defendant.He hit the Defendant and that's when I heard three shots after that.

(N.T.4-17-08,p.66,67,21-25,2-6)

The Supreme Court has ruled on many occasions that malice may be inferred from the use of a deadly weapon directed at any vital part of a victim's body,whether or not the weapon was a gun which discharged accidentally or was fired intentionally.See.Com v. Moore,594 Pa.619,937 A.2d 1062(2007).Cert.denied, 129 S.Ct.452,172 L.Ed.2d 326(2008);Com v. Jones,590 Pa.202,912 A.2d 268(2006);Polsky v. Patton,890 F.2d 647(3d Cir.1989).However ,as The Supreme Court has also recognized,while this inference is well recognized in our law it will not be permitted to support a finding of malice where the direct evidence presented in the Commonwealth's case proves the contrary.See.Com v. Caye,465 Pa.98 ,101,348 A.2d 136,137(1975);Com v. McGuire,487 Pa.208,409 A.2d 31-3(1979);Com v. Carbone,544 A.2d 462(Pa.Super.1988).In Com v. Caye this case states:Inference of malice may normally be drawn from fact that deadly weapon has been used upon vital part of body,but it is not permissible to draw such inference of malice where direct evidence presented by Commonwealth is contrary to such finding..

In Com v. McGuire this case states:Evidence,which negated inference of malice that would normally arise from defendant's use of deadly weapon on vital part of body of victim in light of belligerent and pugnacious disposition of victim and fact that he was provoker and aggressor,was insufficient to establish malicious killing beyond a reasonable doubt and thus did not support defendant's third-degree murder conviction.**(Per Nix. J.,with one Justice concurring and the Chief Justice concurring in result.) 18 Pa.C.S.A. §§101 et seq.,2501,2502(c).**

Defendant alleges that the evidence was insufficient to sustain first-degree murder conviction,but may be sufficient to sustain conviction of voluntary manslaughter.The Defendant was charged with first-degree murder,third-degree murder,and voluntary manslaughter.The Commonwealth attempted to justify the verdict by relying on the inference of malice that normally may be drawn from the fact that a deadly weapon has been used upon a vital part of the body.While this inference is well recognized in our law it will not be permitted to support a finding of malice where the direct evidence presented in the Commonwealth's case proves the contrary.Accepting the testimony in a light most favorable to the Commonwealth as we must,**Commonwealth v. Pride,450 Pa.557, 301 A.2d 582(1973);Commonwealth v. Young,446 Pa.122,285 A.2d 499 (1971);Commonwealth v. Wrona,442 Pa.201,275 A.2d 78(1971),**we are constrained to conclude there was no justification for finding the presence of malice under the evidence.If you will view the testimony,you will see that Tariq Blackwell was in fact the provoker and aggressor.

The Supreme Court has held that "if and when sufficient provocation is found,then the focus of inquiry for the trier of fact shifts to the Defendant's response to that provocation:"The relevant unquiry is threefold:did the Defendant actually act in the heat of passion when he committed the homicide;did the provocation directly lead to the slaying of the person responsible for the provocation;and was there insufficient "cooling time" thus preventing a reasonable man from useing his "reasoning faculties" and "capacity to reflect".Absent any of these elements an accused's defense of provocation must fail and he is not entitled to a verdict of voluntary manslaughter.See.Com v. Whitfield,475 Pa. 297,304-305,380 A.2d 362,366(1977) (emphasis in original),quoting Com v. McCusker,448 Pa.382,390,292 A.2d 286,290(1972) (footnote omitted).Com v. Rivers,383 Pa.Super.409,557 A.2d 5 (1989).

When Tariq Blackwell spotted the Defendant and cross the street and hit the Defendant,as testimony shows,by Tariq hiting the Defendant lead to his slaying and the Defendant act in the heat of passion when homicide was committed,that provocation gave the Defendant insufficient "cooling time" and preventing the Defendant from useing his "reasoning faculties" and "capacity to reflect" .The Defendant have sufficient provocation and is entitled to voluntary manslaughter. The Supreme Court has held,for example, that an inference of malice is not supported by evidence that suggests only that the Defendant acted out of anger or rage; in such a case,voluntary manslaugter,not murder,is established. See.Com v. McGuire,487 Pa.208,409 A.2d 313(1979) (Robert,J., dissenting) (Larsen,J.,dissenting).

And The Supreme Court has come to the same conclusin where it appeared that the Defendant acted strictly out of fear of bodily harm.See.Com v. Scott,480 Pa.50,389 A.2d 79(1978);Com v. Carbone, Pa.Super.261,544 A.2d 462(1988).If you see.Com v. Nau,373 A.2d 449(1977).This case states:To establish self-defense,it must be shown that slayer had been free from fault in provoking or continuing difficulty which resulted in killing,that slayer had reasonable belief that he was in imminent danger of death,great body harm or some felony,that there was necessity to kill in order order to save himself and that slayer did not violate any duty to retreat or avoid danger.As testimony shows,that the Defendant was a cross the street talking to two other people Tariq cross the street,the Defendant was looking at him cross,thatoshow rigth there no malice,Tariq just hit the Defendant that put the Defendant in imminent danger and testimony shows that eno words was said to the defendant or Tariq befor Tariq cross the street and hit the Defendant,making the Defendant from free of provoking.The Pennsylvania Supreme Court recognized even prior to enactment of crime code §2503(b) on point that the malice necessary to establish murder was negatived (and voluntary manslaughter established) by the Defendant's intentional killing under the mistaken belief thattfacts establishing justification existed.See.Com v. Cain,484 Pa.240, 398 A.2d 1359(1979).

18 Pa.C.S. §505 provides that "[t]he use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of portecting himself against the use of unlawful force by such other person on the present occasion...The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death,**serious bodily injury**,Kidnapping or sexual intercourse compelled by force or threat" **18 Pa.C.S. §505(a), (b)**.When Tariq Blackwell cross the street and hit the Defendant and bear-hug him,that put the Defendant in imminent danger of serious bodily injury and by Tariq bear-hugging the Defendant,the Defendant was unable to retreat.The Defendant don't know Tariq Blackwell and when Tariq try to fight the Defendant out of no where,the Defendant don't know what Tariq has,he don't know Tariq intentions,and testimony shows that there was no words said to Tariq or the Defendant when Tariq was a cross the street,that made the Defendant free from fault in provoking.Testimony shows the Defendant was looking at Tariq cross the street when Tariq want up to the Defendant and hit him,that made it clear that there was no malice when the deadly force was use.The Defendant have all the elements for voluntary manslaughter.Where the argued triggering provocation is the threat ofgserious injury to another,the Supreme Court has stressed the necessity for a showing of "immediacy of harm and resultant sudden passion" in order to reduce the degree of homicide to voluntary manslaughter.See.**Com v. Pirela,510 Pa.43, 507 A.2d 23 (1986).**

Murder of the first-degree and voluntary manslaughter both require the same specific intent to kill.The Defendant is not argueing,specific intent to kill,the Defendant is arguing,the lack of malice,the evidence show around the case.See.Com v. Mason,474 Pa.308,378 A.2d 807(1977);Com v. Fisher,342 Pa.Super. 533,493 A.2d 719 (1985).If you see.Com v. Fisher,493 A.2d 719 (Pa.Super.1985).This case states:Voluntary manslaughter occurs where there is a specific intent to kill,but said intent contains no malice by reason of passion or provocation.Commonwealth v. Pitts,486 Pa. 212,404 A.2d 1305 (1979);Commonwealth v. Long, 460 Pa. 461,333 A.2d 865 (1975).Passion or provocation precludes malice,but has no effect on intent.Either passion or provocation explains why a crime is not murder,but neither is a necessary element of voluntary manslaughter.18 Pa.C.S.A. § 2503.

Tariq Blackwell was in fact the provoker and aggerss and if you will view the testimony,you will see the act was not inspired by malice.In this case,the inference of malice that would normally arise from the Defendant's use of a deadly weapon upon a vital part of the body of the deceased,absent further explanation ,is clearly negated by the other evidence presented in this case by the Commonwealth,This case should be;Reversed and remanded for a new trial on the charge of voluntary manslaughter.

By P.C.R.A. counsel (Richard T.Brown) was ineffective for failing to allege that trial/appeal counsel (Jay S.Gottlieb) was ineffective for failing to challenge the insufficient evidence to sustain First-Degree Murder conviction,but may be sufficient to sustain conviction of Justifiable and/or Voluntary Manslaughter at Preliminary Hearing,Trial,Post-sentence Motion ,and Direct Appeal,wheres,there are the 18 Pa.C.S.§505 defense,Facts, Witnesses testimony of Jerrica Fulton and Tishea Green,case law of Com. v. Caye,348 A.2d 136(Pa.1975);Com. v. McGuire,409 A.2d 313(Pa.1979);Com. v. Carbone,544 A.2d 462(Pa.1988).Clearly establishes that the Defendant was not the "provoker" or the "aggressor",making,all evidence "Manslaughter by Chance-Medley" where,the Defendant's charges should have been no higher than Voluntary Manslaughter because in the heat of conflict,a person who has been attacked ordinarily has neither time nor composure to evaluate carefully the danger and make nice judgments about exactly how much force is needed to protect himself or herself.And this should had never want to the jury as a First or Third Degree Murder,violated,the Defendant's Fourteenth Amendment,due process,and the Defendant did not have equal protection of the law,at Preliminary Hearing,Trial,Post-Sentence Motion and/or Direct Appeal,do to the insufficient evidence because the killing was shown by evidence an "Chance-Medley" an act done within self-defense, making,Prior Counsel Ineffective for failing to Challenging the Insufficient Evidence to sustain First Degree Murder conviction,but May be sufficient to sustain conviction of Justifiable and/or Voluntary Manslaughter at Preliminary Hearing and/or an Post-Sentence Motion,Direct Appeal under "Extraordinary Circumstences" §9544(b)(2).See.Com. v. Lawson,549 A.2d 107 (Pa.1988)also see.Com. v. Watlington,420 A.2d 431(Pa.1980).This issue have arguable merit.

See concurring opinion of Zappala,J.,in Com. v. Williams,782 A.2d 517 (Pa.2001).Pursuant to the plain language of the Act,one seeking relief on the grounds of ineffective assistance of counsel must plead and prove

by a preponderance of the evidence:(1) ineffective assistance of counsel which,in the circumstances of the particular case,so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place,id.at Section 9543(A)(2)(ii);Preliminary Hearing counsel (Jay S.Gottlieb) undermined the truth-determining process that no reliable adjudication of guilt or inncence could had taken place was at Preliminary Hearing,wheres,Mr.Gottlieb fail to raise "Manslaughte by Chance-Medley",as evidence shows,that shows that Mr.Gottlieb was ineffective by Counsel lack of thorough investigation,deprived the Defendant of a potential defense,wheres,if Mr.Gottlieb had raise an "Manslaughte by Chance-Medley" at trial,there are a probability that the trial proceeding would have been different if Mr.Gottlieb had raise "Chance-Medley",wheres,Mr.Gottlieb fail to file an post-sentence motion challenging the insufficient evidence of First-Degree Murder and/or fail to challenge the insufficient evidence of First-Degree Murder on Direct Appeal,wheres,if Mr.Gottlieb had raise insufficient evidence of First-Degree Murder at Preliminary Hearing,Trial, Post-Sentence Motion and/or Direct Appeal,the outcome of those proceedings would had probability been different.The reliability of the adjudication of guilt or innocence and the probability that Counsel's ineffectiveness caused a different outcome of the proceedings are concepts so closely intertwined and commonly-rooted in Strickland that the Pennsylvania Supreme Court has refused to separate them.See.Strickland v. Washington,466 U.S.668 694,104 S.Ct.2052,2068,80 L.Ed.2d. 674(1984).Mr.Gottlieb violated the Defendant's Sixth Amendment,right to counsel,and Fourteenth Amendment,due process,and the Defendant did not have equal protection of the law,throughout the whole proceedings of,Preliminary Hearing,Trial,Post-Sentence Motiom and Direct Appeal.(2)that the allegation of error has not been previously litigated or waived,id.at Section 9543(A)(3);If you see [redacted] you will see the Response Obection notice to the 907 that was file on February 5, 2014 insufficient evidence,this issue,was raise in that notice,and if you see.Com. v. Watlington,420 A.2d 431(Pa.1980).This case states:For the purp-

oses of this act,an issue is waived if:The petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial,at the trial,on appeal,in a habeas corpus proceeding or any other proceeding actually conducted,or in a prior proceeding actually initiated under this act.This issue is not waived because the Defendant raise the issue in a prior proceeding.If you see [redacted] you will see certified mail receipt,showing,that the Defendant send P.C.R.A. counsel (Richard T. Brown) an letter and the issues that the Defendant want the Attorney to raise in his P.C.R.A. claim and the insufficient evidence issue was one of them.The Defendant had send trial judge Honorable George W.Overton an letter,that was not send by certified mail,first class mail,telling the judge the issues that the Defendant want P.C.R.A. counsel (Richard T.Brown)raese to raise.This issue has not been previously litigated,this issue is well reserve and ready for litigation.(3)that the failure to litigate the issue prior to or during trial or on direct appeal could not have been the result of any rational,strategic or tactical decision by counsel.Id.at Section 9543(A)(4).Trial/appeal counsel (Jay S.Gottlieb) performance fell below any objetive standard,wheres,Mr.Gottlieb fail to give the Defendant effective assistance at Preliminary Hearing,wheres,the Defendant was charge with First and Third Degree Murder that was insufficient evidence,wheres, evidence clearly shows that the killing was an "Chance-Medley" an act that was made within self-defense,this clearly establishes that Mr.Gottlieb was ineffective for lack of thorough investigation,deprived Defendant of an potential defense because if Mr.Gottlieb had litigated an "Chance-Medley" at Preliminary Hearing there are a probability that the outcome of the Preliminary proceedings would have been different,by the charges would had want to the jury as Justifiable and/or Vountary Manslaughter in stead of First and Third Degree Murder;the same go for Trial,Mr.Gottlieb litigated voluntary manslaughter in closing arguments,but fail to raise "Chance-Medley",wheres,Mr.Gottlieb had no,any rational,strategic or tactical decision when Mr.Gottlieb fail to raise voluntary manslaughter and/or

chance-medley of the insufficient evidence to sustain First-Degree Murder on a post-sentence motion and/or direct appeal,MR.Gottlieb,violated,Pa.R. Crim.P.1504(d) that provides that appointment of counsel includes representation in any appeal,wheres,Mr.Gottlieb fail to appeal his main argument. Tiral/appeal counsel (Jay S.Gottlieb) had no Reasonable Basis for not litigating voluntary manslaughter and/or "chance-medley" at Preliminary Hearing,wheres,there are 18 Pa.C.S.§505 defense,the Facts about the case, like witnesses testimony of Jerrica Fulton and Tishea Green,supporting case law of Com. v. Caye,348 A.2d 136(Pa.1975):Com. v. McGuire,409 A.2d 313 (Pa.1979);Com. v. Carbone,544 A.2d 462(Pa.1988).That clearly establishes that therDefendant was not the "provoker" or the "aggressor" showing that there was no malice in the killing,the evidence show that the act was within self-defence,furthermore,Mr.Gottlieb had no reasonable basis for not appealing the insufficient evidence of First-Degree Murder,wheres,at Trial Mr.Gottlieb told the jury that the Defendant was guilty in closing argument for an lesser charge than First and Third-Degree Murder,wheres,Mr.Gottlieb did not file an post-sentence motion and Mr.Gottlieb did not raise insufficient evidence of First-Degree Murder issue in the direct appeal,Mr.Gottlieb violated,the Defendant's Fourteenth Amendment,due process,and the Defendant did not have eual protection of the law,throughout,Preliminary Hearing,Trial ,and Post-Sentence Motion,Direct Appeal proceedings.Mr.Gottlieb had no reasonable basis for acting or failing to act for not raising "chance-medley "at Preliminary Hearing and/or Trial,wheres,Mr.Gottlieb fail to challenge the insufficient evidence of first-degree murder on an post-sentence motion and/or direct appeal,violated,Pa.R.Crim.P.1504(d)that provides that the appointment of counsel includes representation in any appeal,wheres,record clearly establishes that the action or omission of Mr.Gottlieb was without a reasonable basis,the court should resolve the reasonable basis prong in a remand for an evidentiary hearing as to the strategy of Mr.Gottlieb should be in order.

Preliminary Hearing counsel (Jay S.Gottlieb) Prejudice the Defendant ,wheres,Mr.Gottlieb fail to investigate,deprived the Defendant of an potential defense,wheres,there are the 18 Pa.C.S.§505 defense,the Facts abo about the case,witnesse(s) testimony of Jerrica Fulton and Tishea Green, supporting case law of Com. v. Caye,348 A.2d 136(Pa.1975);Com. v. McGuire, 409 A.2d 313(Pa.1979);Com. v. Carbone,544 A.2d 462(Pa.1988),that clearly establishes that the Defendant was not the "provoker" or the "aggressor", showing,that there was no malice in the killing,the evidence shows that the act was within self-defence an "Chance-Medley";if Mr.Gottlieb would had litigated an "Chance-Medley" there are a probability the outcome of the Preliminary Hearing would had been different,furthermore,Mr.Gottlieb fail to challenge the Trial insufficient evidence of First-Degree Murder conviction on a Post-Sentence Motion and/or Direct Appeal,violating,Pa.R. Crim.P.1504(d) that provides that the appointment of counsel includes representation in any appeal,also violated,the Defendant's Fourteenth Amendment,due process,and the Defendant did not have equallprotection of the law.The Defendant was prejudiced by the action or omission of Mr.Gottlieb,if Mr.Gottlieb had litigated "Chance-Medley" at Preliminary Hearing and/or challenge the insufficient evidence of First-Degree Murder conviction on Post-Sentence Motion and/or Direct Appeal,there is a reasonable probability that...the outcome of those proceedings would have been different.In Com. v. McGill,832 A.2d 1014(Pa.2003).This case stares:42 Pa.C.S.§9543(a)(2)(ii) requires a P.C.R.A. petitioner to "plead and prove by the preponderance of the evidence...[t]hat the conviction or sentence resulted from...[i]neffective assistance of counsel which,in the circumstances of the particular case,so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." P.C.R.A. counsel (Richard T.Brown) undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place in the particular case was the P.C.R.A. proceeding,wheres,Mr.Brown fail to allege that trial/appeal counsel (Jay S.Gottlieb) was ineffective for faili=

ng to challenge the insufficient evidence of First-Degree Murder conviction at Preliminary Hearing,Post-Sentence Motion and/or Direct Appeal,wheres, there are the 18 Pa.C.S.§505 defense,the Facts about the case,supporting case law of Com. v. Caye,348 A.2d 136(Pa.1975);Com. v. McGuire,409 A.2d 313 (Pa.1979);Com. v. Carbone,544 A.2d 462(Pa.1988),that clearly establishes that the Defendant6was not the "provoker" or the "aggressor" showing that there was no malice in the killing,as evidence shows,that the killing was an "Chance-Medley" and act within self-defence,wheres,if Mr.Brown had raise this claim on the behalf of the Defendant there are a reasonable probability that..the outcome of the P.C.R.A. proceeding would have been different. The reliability of the adjudication of guilt or innocence and the probability that counsel's ineffectiveness caued a different outcome of the proceedings are concepts so closely intertwined and commonly-rooted in Strickland that the Pennsylvania Supreme Court has refused to separate them.See. Strickland v. Washington,466 U.S.668,694,104 S.Ct.2052,2068,80 L.Ed.2d 674 (1984).P.C.R.A. counsel (Richard T.Brown) had no Reasonable Basis for not failing to allege that trial/appeal counsel (Jay S.Gottlieb) was ineffective for challenging the insufficient evidence of First-Degree Murder at Preliminary Hearing,Trial,Post-Sentence Motion,and/or Direct Appeal,wheres, there are the 18 Pa.C.S.§505 defense,the Facts about the case,supporting case law of Com. v. Caye,348 A.2d 136(Pa.1975);Com. v. McGuire,409 A.2d 313 (Pa.1979);Com. v. Carbone,544 A.2d 462(Pa.1988),that clearly establishes that the Defendant was not the "provoker" or the "aggressor",showing, that there was no malice in the killing,as evidence shows,that the killing was an "Chance-Medley" an act made within self-defence,the Defendant should had not been charge no higher than Voluntary Manslaughter,wheres,this shows that the acting or failing to act that Mr.Brown fail to raise this claim on the behalf of the Defendant,wheres,records clearly establishes that the action or omission of Mr.Brown was without a reasonable basis,the court should resolve the reasonable basis prong in a remand for an evidentiary hearing as to the strategy of Mr.Brown should be in order.

P.C.R.A. counsel (Richard T.Brown) Prejudice the Defendant when Mr.Brown fail to allege that trial/appeal counsel (Jay S.Gottlieb) was ineffective for failing to challenge the insufficient evidence of First-Degree Murder at Preliminary Hearing,wheres,evidence shows that the Defendant should be charge no higher than Voluntary Manslaughter and/or challenge the insufficient evidence of First-Degree Murder conviction at Trial on an Post-Sentence Motion and/or Direct Appeal,wheres,there are overwhelming evidence showing that the Defendant act within self-defence,wheres,there are 18 Pa.C.S.§505 defense,the Facts about the case,supporting case law of Com. v. Caye,348 A.2d 136(Pa.1975);Com.y.McGuire,409 A.2d 313(Pa.1979);Com. v. Carbone,544 A.2d 462 (Pa.1988);that clearly establishes that the Defendant was not the "provoker" or the "aggressor" showing that there was no malice in the killing,as evidence shows,that the killing was an "Chance-Medley" an act made within self-defence,wheres,Mr.Brown,violated,the Defendant Fourteeth Amendment,due process,and the Defendant did not have equal protection of the law,in the P.C.R.A. proceedings.Mr.Brown also violated Pa.R.Crim.P.1504 (d) thats provides that the appointment of counsel include representation in any appeal.The Defendant was prejudiced by the action or omission of Mr.Brown,wheres,if Mr.Brown has raise the meritorious claim on the behalf of the Defendant in the P.C.R.A. proceedings,there is a reasonable probability that...the outcome of the proceeding would have been different. The layered of ineffectiveness are according to Com. v. McGill,832 A.2d 10-14(Pa.2003) and Com. v. Williams,782 A.2d 517(Pa.2001).The Defendant has met the three-pronged test of Pierce,the Prior Counsel of (Jay S.Gottlieb) and (Richard T.Brown) is ineffective under Pierce,See.Com. v. Pierce,786 A.2d 203 (Pa.2001) and also ineffective under Strickland v. Washington, 466 U.S.668,694,104 S.Ct.2052,2068,80 L.Ed.2d 674 (1984).Prior to the 1995 amendments to the P.C.R.A. post sentence motion counsel's representation would excuse waiver if the Defendant established that the representation was ineffective under the Pierce standard.See.Act of November 17,1995,P.L. 1118,No.32(Special Sess.No.1).

See. Commonwealth v. Hamm, 378 A.2d 1219(Pa.1977).

In this case see Criminal Law. Criminal Law 1187

Defendant is entitled to a discharge if Commonwealth's evidence is insufficient to support his conviction.

This issue have arguable merit, this case need to be reversed and remand for an evidentiary hearing.

The facts, the Statement by Jerrica Fulton and Tishea Green shows that the Defendant is not the provoker or the Aggressor and this shows that is no malice in the killing by all the evidence in this case and this clearly establishes that the Defendant is innocent of first-degree Murder and this is an Strong prima facie Showing an Miscarriag of justice. See. Com. v. Szuchon, 633 A.2d 1098 (1993). The Defendant's case need to be remand for and new trial and the Defendant need to be discharge Accordance to Com. v. Hamm, 378 A.2d 1219 (Pa. 1977).

Furthermore, Upon a finding of procedural default, review of a federal habeas petition is barred unless the habeas petitoner can show cause for the procedural default and Actual prejudice Arising there from, or that a fundamenta Miscarriage of justice will result if the claim is not considered. Coleman, 501 U.S. At 750. Court Appointed P.C.R.A. Counsel Richard T. Brown file an Supplemental 1925(b) Statemement on 9-16-15 and Mr. Brown failed to file an Corresponding Motion seeking per imission to supplement previously-filed Notice of issue on Appeal by filing a Pa.R.A.P. 1925(b) statement nunc protunc. This got the Petitioner's claims waived. The Petitioner's claims was noncompliance with state procedural rules, making, Trial Counsel violated Petitioner's privilege Against Self-Incrimination claim, Sufficieny of Evidence claim, and Trial Counsel was ineffective for failing to object to Shanique Hawkins testimony claims should be good for federal habeas Corpus review. See. Martinez v. Ryan, 566 U.S. 1, 9-10 (2012); Coleman v. Thompson, 501 U.S. 722, 729-32 (1991).

The Petitioner's claims have not been fairly presented to the State courts the claims was properly asserted in the State system but not addressed on the Merits because of an independent and Adequate state procedural ruleAnd is unexhausted AND there Are no Additional State remedies Available to pursue.

P.C.R.A. Counsel Richard T. Brown performance fell below any objetive Standard where Mr. Brown file an Supplemental 1925(b) statement on 9-16-15 And failed to file An corresponding Motion seeking Perimission to supplement previously-filed Notice of issue on Appeal by filing A Pa.R.A.P. 1925(b) Statement nunc pro tunc, this got the Petitioner's Claims waived Mr. Brown had no Any rational strategic or tactical decision Mr. Brown gave the Petitioner inadequate representation in P.C.R.A. proceeding.

Mr. Brown had no Reasonable Basis for not filing An corresponding Motin seeking perimission to supplement previously-filed Notice of issue on Appeal by filing A Pa.R.A.P. 1925(b) statement nunc pro tunc. this why Petitioner's Claim got procedural default this clearly establishes that there no reasonable basis for Acting or failing to act for not filing An Pa.R.A.P. 1925(b) statement nunc pro tunc And this shows that Mr. Brown Action or omission was without An reasonable basis.

P.C.R.A. Counsel Richard T. Brown Prejudice the Petitioner where Mr. Brown did not file An Pa.R.A.P. 1925(b) statement nunc pro tunc this got the Petitioner's Claims got without Merit in State Court And procedural default in the Federal Court the Petitioner was prejudice by the Action or omission of Mr. Brown if Mr. Brown had filed An Pa.R.A.P. 1925(b) statement nunc pro tunc on behalf of the Petitioner there is A reasonable probability that... the outcome of the P.C.R.A. proceeding would have been different.

Honorable Joseph F. Leeson, Jr. United States District Judge over looked the Petitioner's facts in light of evidence that was presented wheres if you see Federal Court docket date 12-17-18 you will see that Petitioner had filed An Brife in support of the Writ of Habeas Corpus whese the ineffectiveness was layered And cases was use, Martinez v Ryan, Coleman v. Thompson, And Strickland v. Washington. And Petitioner's facts of evidence and over looked And the Writ of Habeas Corpus got denied this violated the standard under the Antiterrorism and Effective Death penalty Act (AEDPA) thats states:

Under the Antiterrorism And Effective Death Penalty Act (AEDPA), A habeas Court may not grant relief with respect to any claim Adjudicated on the Merits by the state courts unless the Adjudication: (1) resulted in A decision that was contrary to, or inovlved 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 ~~resulted in A decision that was based on~~ unreasonable de termination of the facts in light of the evidence presented in the State Court proceeding. 28 U.S.C. § 2254(d). By the Honorable Joseph F. Leeson Jr. denied the Petitioner's Writ of Habeas Corpus without looking At the Petitioner's facts And CAses that wAS Presented Violated. (1) resulted in A decision that was contrary to, or inovlved An unreasonable Application of, Clearly established Federal lAw, As determined by the Supreme Court of the United States. This claim has Arguable merit And this case need to be reversed And ramand for And evidentiary Hearing And than An new trial. Furthermore excusing Procedural default under Martinez v. Ryan, his procedurally defaulted ineffective Assistance of trial counsel claim has some merit And that his state-post Conviction counsel was ineffective under the standards of Strickland v Washington The Petitioner has shown that by layered the ineffstive of Trial And PCRA Counsel ues in the three-prong of Pierce And two prong of Strickland And Maritinez now see Jeffrey Workman, 16-1969 (3rd Cir 2018. This CAS A order reversed And case remanded with instructions to grant A conditional Writ of habeas Corpus should be inorder.

EXTRAORDINARY CIRCUMSTANCES

The Petitioner was charged with multiple degre of Murder that the burden was on the prosecution to prove A pecific [sic] degree. The Petitioner was prejudiced [sic] trial Counsel Closing Argument in wich [sic] he stated "you notice I'm not saying anything About self-defense, because it isn't A self-defense issue It's A Killing It's An illegal Killing. And I Agree with that one hundred percent, but it is not first-degree Murder" (N.T. 4-18-08 At 3). So what Kind of Murder is it? He told the jury that its not A first-degree And not An [sic] self-defense issue, so the jury don't Know what Kind of Murder it is, he Also [sic] stated "Straighout talking to you Killing, My Client did it, but it is not first-degree Murder." (N.T. 4-18-08 At 5-7). He Also stated "I would Admit to you right off the bat Jesse Brown Shot Tariq Blackwell I don't think on basis of evidence that you heard there is any reasonable doubt About that." (N.T. 4-18-08 At 6, 21-25).

Trial Counsel Jay S. Gottlieb was Also direct Appeal Counsel. By trial/Appeal Counsel Jay S. Gottlieb failure to litigate the lesser Charge defense on A post-sentence Motion And/or direct Appeal where Mr. Gottlieb fail to Appeal his Main Argument Mr. Gottlieb's performance being deficient by An unprofessional Standard... Wheres Mr. Gottlieb's trial tactics And Strategy had no rational basis in obaining A favorable outcome in the Petitioner's behalf and wheres Mr. Gottlieb's Strategy was so insufficient where As it Amounted to no defense At All but An open guilty plea to the jury And in open court Against the Petitioner's wishes And Against the Weight of evidence. Mr. Gottlieb Violated Pa. R. Crim. P. 1504(d) that provides that Appointment of Counsel includes representation in Any Appeal. The Petitioner was prejudiced.

P.C.R.A. Counsel Richard T. Brown fail to give the Petitioner effective Assistance by Mr. Brown fail to Make citations to the record And/or site Any legal Authority, where, you have (N.T., 4-18-08, Pg 6, 21-25) And (N.T., 4-18-08, Pg 14, 5-7) And you have case law U.S. v. Swanson, 943 F.2d 1070 (1991) U.S. App. LEXIS 19734; 91. Showing that Mr. Brown fail to inarticulately, drafted the Petitioner's brief. See. Commonwealth v. Ollie, 450 A.2d 1026 (PA. Super 1982). Mr. Brown left the Petitioner's brief "Completely lacking in substance." See. Commonwealth v. Albert, 561 A.2d 736 (PA. 1989). Mr. Brown fail to participate Meaningfully, And violated the representation requirement of the Act. 19 P.S. § 1180-12 (Repealed); And that did not give Appellate Court the opportunity to Assess legitimacy of underlying Claim. 42 PA. C.S.A. § 9541 et seq.; U.S.C.A. Const. Amend. 6. See. Criminal Law 641.13(7) in Albert's Court; 561 A.2d 736 (PA. 1989). Mr. Brown violated the Petitioner's Fourteenth Amendment, due-process, in the P.C.R.A. proceeding. See. Coleman v. Thompson, 501 U.S. 722 (1991). Also see. Martinez v. Ryan, 132 S.Ct. 1309 (2012). If Mr. Brown had Made Citations to the record And site legal Authority in the P.C.R.A. Proceeding, Probability that... the outcome of the proceeding Would have been different. The reliability of the Adjudication of guilt or innocence And the probability that Counsel's ineffectiveness caused A different outcome of the proceedings Are concepts so closely intrertwined And commonly-rooted in Strickland that the Pennsylvania Supreme Court has refused to separate them. See. Strickland v. Washington, 466 U.S. 668 (1984). Trial Counsel fail to raise his Main Argument in direct Appeal And P.C.R.A. Counsel fail to raise trial Counsel ineffectiveness in P.C.R.A. Court this is An extraordinary Circumstances. The Court found that pursuant to

PCHA., 19 P.S. §1180-4 (Supp. 1979-80). Issues that could have been raised earlier were finally litigated unless the Petitioner could have shown extraordinary circumstances to justify his failure to raise the issues. The Court found that ineffective Counsel was An extraordinary reason to justify defendant's failure to raise issues. See. Commonwealth v. Watlington, 420 A.2d 431 (Pa. 1980). Where client was prejudiced by A last minute change in representation that was beyond his control); Baldayaque, 338 F.3d At 152-153 (finding that where An Attorney failed to perform An essential service, to communicate with the client, And to do basic legal research, tolling could, Under the circumstances, be warranted); Spitsyn, 345 F.3d At 800-802 (finding that "extraordinary circumstances" may warrant tolling where lawyer denied client Access to files, failed to prepare A petition, And did not respond to his client's communications); United States v. Martin, 408 F.3d 1089 (C.A.8 2005). See Also. Holland v. Florida, 130 S.Ct. 2549 (2010). By Trial Counsel / Direct Appeal Jay S. Gottlieb fail to Appeal his Main Argument for an lesser charge on the behalf of the Petitionr And P.C.R.A. Counsel Richard T. Brown fail to rais this claim And did not inarticulately, drafted this claim got the Petitioner's claim procedural default the ineffectiveness on both Counsels prejudiced the Petitioner And this is An extraordinary Circumstances.

CONSTITUTUINAL VIOLATIONS

Sixth Amendmend right to Coonsel was violated when trial Counsel Jay S. Gottlieb told the jury that the Petitioner was guilty of Murder. See. United v Cronic 466 US 648, 80 L Ed 2d 657 104 S Ct 2039 (1984), And See.

United State v. Swanson, 943 F.2d 1070 (1991); Also see. Strickland v. Washington, 466 U.S. 668 (1984). Even When no theory of defense is Available, if the decision to stand trial has been Made, Counsel Must hold the prosecution to it's heavy burden of proof beyond reasonable doubt. See. Commonwealth v. Myers, 897 A.2d 493 (Pa. Super. 2006) And see. Commonwealth v. West, 883 A.2d 654 (Pa. Super 2005) Also see. Commonwealth v. Flores, 909 A.2d 387 (2006 Pa. Super). By the prosecution stated this to the jury. "Well, I have to tell you I've been doing -- I've been a D.A. now 19 years And there's not many cases I tried where defense counsel actually stands up And Admits that their person did it" (N.T. 4-18-08, Pg 15, 10-15) This shows that the prosecution did not proof it burden beyond An reasonable doubt. See. United States v. Miguel, 338 F.3d 995 (CA9 2003) And. Conde v. Henry, 198 F.3d 734 (CA9 2000); Also see. Glebe v. Frost, 574 U.S. — (2014). By the D.A. did not prove they burden of proof beyond an reasonable doubt this violated the Petitioner's Fourteenth Amendmend, due-proess, At trial At the truth-determining process proceeding. Because Closeing Argument At trial is the truth-determining process. By trial Counsel told the jury that the Petitioner did the Murder violated the Petitioner's Fourteenth Amendmend, due-proess, At trial. Sixth Amendmend; right to Counsel, was violated when trial Counsel fail to Argue An Chance-Medley because the Petitioner was not the provoker or the Aggressor the eivdence was insufficient to sustain first-degree Murder, eivdence shows Voluntary Mansluaughter by seeing preliminary hearing, facts Around the Case, And Witnesse's Statement show Voluntary Mansluaugher

this making the Petitioner's Fourteenth Amendmend, due-proess violated at trial and Appeal. By P.C.R.A. Counsel Richard T. Brown fail to raise Petitioner's claims in P.C.R.A. Court violated the Petitioner's Sixth Amendmend, right to counsel, And Fourteenth Amendmend, due-proess See, Workman v. Superintendent Albion SCI, 908 F.3d 896, 2018.

The Petitioner is entitled to a Certificate of Appealability he made A substantial showing of the denial of a constitutional right 28 U.S.C. § 2253 (c) (2). The U.S. Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 893 (1983), held this means that the Appellant need not show that he would prevail on Merits, but Must demonstrate that the issues Are debatable Among jurists of reason, that a Court could resolve the issues [in a different manner] or that the questions are Adequate to deserve encouragement to proceed further. [Citations Omitted] See. Flieger v. Delo, 16 F.3d 878, 883 (8th Cir. 1994). The jurists of reason could debatable Among the Constitutional right of. these Claims. See. Miller-EL v. Cockrell, 537 U.S. 322 (2003).

CONFLICT WITH THE DISTRICT COURT

Joseph F. Leeson, Jr. District Judge stated on Petitioner's Claim self-incrimination that this claim is procedurally defaulted the Petitioner showed that defaulted should be exused by layer the claim of ineffective of Counsel by trial for not raising Claim on direct Appeal And P.C.R.A. Counsel for not raising this claim in P.C.R.A. Court by useing Case law of Strickland v. Washington, And showed the ineffective under Strickland And that Petitioner was prejudice And use Martinez v. Ryan, 132 S.Ct. 1309 (2012). To over come the defaulted Cases And evidence was overlook. The Judge stated that trial Counsel Closing Argument that the Petitioner did the Murder for a lesser degree of guilt was reasonable strategic decision

And that the Petitioner was not prejudiced, wheres, you have case law of United States v. Cronic, 466 U.S. 648 (1984); United States v. Swanson, 943 F.2d 1070 (1991); Martinez v. Ryan, 132 S.Ct. 1309 (2012); Workman v Superintendent, Albion S.C.I, 908 F.3d 896, 2018. Remember, trial Counsel told the jury that it not an first-degree and its not an self-defense, so how is trial Counsel Arguing self-defense? Course of judicial proceedings, And sanctioned such a departure by the lower Court this is a Call for an exercise of this Court's supervisory power. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was violated 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; By the Petitioner useing United States v. Swanson, 943 F.2d 1070 (1991); Strickland v. Washington, 466 U.S. 668 (1984). These cases was overlook making an unreasonable Application of, Clearly established Federal law, as determined by the Supreme Court of the United States. As to the insufficient evidence claim was stated that the claim was procedurally defaulted because of failed the put in of direct Appeal or P.C.R.A. Court the Petitioner layer the ineffective of Court by trial Counsel fail to Appeal his main argument And if you see Appendix-D you will see that P.C.R.A Counsel fail to Argue or raise any issues on behalf of the Petitioner, the Petitioner use case law
- As to Martine v. Ryan, 132 S.Ct. 1309 (2012). To over come the defauted and Strickland v. Washington, 466 U.S. 668 (1984). For the ineffective And Showed that the Petitioner was prejudiced, All of this was over looked by District Court making the Antiterrorism and Effective Death Penalty Act (AEDPA) was violated; 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. If you See Apperdix-A you will See the denied of the Report And Recommendation was. Also Stated that the specifc intent to Kill required for A conviction of frist-degree murder can be established through Circumstantial evidence, such AS the use of A deadly weapon on A vital part of the victim body this is in Conflict with theses CASES See. Commonwealth v. CAYE, 348 A.2d 136 (PA 1975); Commonwealth v. McGuire, 409 A.2d 313 (PA. 1979); Commonwealth v. Carbone, 544 A.2d 462 (PA. Super. 1988). And this violated the (AEDPA); resulted in A decision that was based on an ureasonable determination of the facts in light of the evidence presented in the State Court proceeding. 28 U.S.C. § 2254(d). The jurists of reason could debatable Among the Merit of these Claims. See. Miller-EL v. CocKrell, 537 U.S. 322 (2003).

REASON

Petitioner has raise the claims in the district Court, the Court Stated that Petitioner's claims are procedural default, the Court Stated that claim was not raise in direct Appeal or in P.C.R.A. Court the Petitioner has showed that the failer of raising Claims was on trial Counsel who was direct Appeal Counsel And P.C.R.A. Counsel Petitioner layer the Claims of ineffective And use case law should had over come the default the district Court over look the Petitioner's evidence And been bias toward the Petitioner, the Petitioner in so need of this Court discretionary Powers.

CONCLUSION

A habeas corpus petition prepared by a prisoner without legal Assistance may not be skillfully drawn and should thus be read generously. It is the policy of the Courts to give A liberal construction to pro se habeas petitions. See. Jeffrey Workman, 16-1969 (Third Circuit 2018). There for Petitioner hope And pray for All of the reasons Advanced herein, this Honorable Court should Grant this Petitioner A Order reversed and case remanded with instructions to grant A conditional writ of habeas Corpus.

Respectfully Submitted

x Jesse Brown

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Date: 1-3-2023