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No. **22-7174**

IN THE  
SUPREME COURT OF THE UNITED STATES

James R. Householder, Jr.  
Petitioner

v.

Assistant District Attorney  
Judith Petrush, et al  
Respondents

> Civil Action No. 22-1895  
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PETITION FOR WRIT OF CERTIORARI

This is a Petition for Writ of Certiorari from the denial of the petition for rehearing in the United States Court of Appeals for the Third Circuit, dated September 27, 2022.

James R. Householder, Jr.  
pro se  
Inmate No. LW-2687  
S.C.I. Greene  
175 Progress Drive  
Waynesburg, PA 15370

**ORIGINAL**

QUESTIONS PRESENTED FOR REVIEW

1. Was I deprived of my (14th) Fourteenth Amendment of due process of a fair trial. when I pleaded with my trial attorney and the Judge Meagan Bilik-DeFazio to make my trial attorney to depend me and bring up testimony of S.A. from the preliminary hearing to show how her testimony did not corroborate to what she was saying happened? Jury Trial 08/06/14 at 255 and on pages 3 and 4 of this petition for writ of Certiorari.

2. Because S.A, E.S. and E.B.s differences in their testimony at the jury trial and preliminary hearing showing they did not corroborate each other, nor do they corroborate what they testified to what they say happened to themselves, that I have shown in the (a) Supporting facts on pages 6 through 11, why can I not impeach them under Rule 609(a)?

3. Was I deprived of my (14th) Fourteenth Amendment of due process of a fair trial, because S.A., E.B. and E.S. were never directly questioned about their differences in their testimony from the jury trial and preliminary hearing, showing they did not corroborate each other, nor do they corroborate what they testified to what they say happened to themselves, that I have shown in the (a) supporting facts, pages 6 through 11?

4. Was I deprived of my (6th) Sixth Amendment of effective counsel, because my trial attorney failed to cross-examine

E.B., S.A. and E.S. about their differences in their testimony from the jury trial and preliminary hearing showing they do not corroborate each other, nor do they corroborate what they testified to what they say happened to themselves? Shown in the (a) Supporting facts, pages 6 through 11.

5. Did the United States District Court for the Western District of Pennsylvania, Report and Recommendation, Civil Action No. 2:20-cv-01115, error on page 4, by stating:

By the way of background, during his cross-examination of the victims, trial counsel pointed out several of the inconsistencies that Appellant references.

When there is no such thing as cross-examining by the way of background? And then shows the only one time it was done showing how E.B.'s and S.A.'s testimony of where and when they said they discussed what they said happened to each other, was at different places and different years?

And they were never questioned about the differences.

6. Did the United States District Court, Report and Recommendation, Civil Action No. 2:20-cv-01115, on page 4, not realize that besides that I wanted my jury trial attorney did not question S.A. about being touched in Swissvale and the discrepancies of S.A.'s testimony between the preliminary hearing and jury trial, I also. wanted brought up S.A.'s testimony at the preliminary hearing 12/04/12, at 42?

Mr. Householder: Simply because S.A. is up there stating she remembers everything clearly and everything else. Here it is, specifically says, (from the preliminary hearing 12/04/12 at 42) S.A., stating in Swissvale you testified that these incidents, that you don't think that you don't think these things happened, is that accurate? A. Yes. Q. And you answered honestly that you really don't remember those,

correct? A. Yes. Jury Trial 08/06/14 at 255.

7. Did the United States District Court, Report and Recommendations, Civil Action No. 2:20-cv-01115, on page 4, error by stating:

Trial counsel also cross-examined S.A. as to her testimony that her memory was clear that she had been abused but that she did not completely remember everything. see id. at 235.

Because S.A. testified that her memory was clear:

Q. For instance you testified, under oath today that your father only touched you in Swissvale with his hands. A. Yes. Q. And you've testified today that you cannot remember that other parts of his body touching you, is that correct? A. What do you mean? Q. His penis. A. No, I do not remember. Q. So, your memory is clear -- that's why I'm asking these questions. Your memory is clear from age 5 all the way to the present? A. Yes. Jury Trial 08/06/14 at 234 and 235.

8. Will the lies in my case stop before it is too late?

9. Did the United States District Court, Report and Recommendations, Civil Action No. 2:20-cv-01115, on page 6 error by stating:

certain instances of inconsistency in the victims testimony were addressed during cross-examination and thus there is no arguable merit as to Appellant's argument regarding these items. See Franklan, 990 A.2d at 797?

When the Court showed the only time my trial attorney cross-examined S.A. was about testifying:

Q. But your recollection is, after the cast was removed he did touch you again? A. Yes. Q. With what? A. His hand, his penis and his mouth. Q. Okay. So, this statement where he tried to assault you after the cast was removed but you wouldn't let him is not accurate? A. No. Both statements are accurate. Jury Trial 08/06/14 at 244 through 247.

My trial attorney never questioned S.A. about any other inconsistencies that I have shown in the (a) Supporting facts, pages 6 through 11.

The court also showed the only one time my trial attorney questioned E.B. was about how at the preliminary hearing E.B. testified I touched her over her clothes. Preliminary hearing 12/04/12 at 85. But how at the jury trial E.S. testified I touched her under her clothes. Jury Trial 08/06/14 at 287 and 289, that I have shown in the (a) Supporting facts pages 6 through 11.

How could E.S. not know if she was touched on top of her clothes or underneath her clothes?

And the court never showed, that my trial attorney, questioned E.B. about any inconsistencies, because he never questioned E.B. about any of the inconsistencies that I have shown in the (a) supporting facts pages 6 through 11.

10. Was I deprived of my (14th) Fourteenth Amendment of due process, when my trial attorney took information from a police report and failed to admit it into evidence at trial?

Q. DO you remember talking to this detective? A. Yes.  
Q. And do you recall giving him statements? A. Yes. Do you recall giving him a statement that you were in a cast until September 2008 and nothing happened between that?  
Jury Trial 08/06/14 at 244 and 245.

11. Was I deprived of my (6th) Sixth Amendment of effective counsel, when my trial attorney took information from a police report and failed to admit the police report into evidence at trial?

Q. Do you remember talking to this detective? A. Yes.  
Q. And do you recall giving him statements? A. Yes. Q. Do you recall giving him a statement that you were in a cast until September 2008 and nothing happened between that?  
Jury Trial 08/06/14 at 244 and 245.

12. Did the Assistant District Attorney Judith Petrush commit prosecutorial misconduct during my trial, by giving her own opinion, instead of using evidence of record or re-questioning S.A. for the truth?

Q. If S.A. said she was not touched at your residence in Natrona and you say she was, are you mistaken?

Mrs. Petrush: And I would object to that, because I don't think that's what S.A. testified to. I think she indicated that she could not recall whether she was or not and - . Jury Trial 08/06/14 at 290 and 291.

## 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:

A.D.A. Judith Petrush represents all parties involved

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### JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) from Federal Civil Case C.A. No. 22-1895 denied on September 27, 2022, Rehearing from the United States Court of Appeals for the Third Circuit.

### SUMMARY OF ARGUMENT

On page 5 of the Report and Recommendation in the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:20-cv-01115 states: "However, the police reports were not admitted into evidence and (Begley) failed to provide...any other factual evidence." Commonwealth v. Begley. Id.

Because I cannot use the police reports or Children's youth Services reports, I removed the inconsistencies which involved the police reports and CYS reports from the Concise Statement of the Case, Supporting facts on pages 5 through 11. I have only shown the inconsistencies proven by factual evidence of record between the difference in the Preliminary Hearing transcripts on December 04, 2012 and the Jury Trial transcripts on August 06, 2014, showing how E.S., E.B. and S.A.'s testimony do not corroborate each other nor do they corroborate what they testified to what they said happened to themselves.

Therefore, since the Concise Statement of the Case, supporting facts on pages 5 through 11, are only factual evidence of record, they are properly presented before a reviewing Court.

The United States District Court for the Western District Court of Pennsylvania, Civil Action No., 2:20-cv-01115, Report and Recommendation, copied the decision of the Superior Court, Docket No. 202 WDA 2018 filed. First on page 4 of the United States District Court for Western Pennsylvania, Civil Action No. 2:20-cv-01115 states: By the way of background, during

crossed-examination of the victims, trial counsel pointed out several inconsistencies that appellant references. Trial counsel crossed-examined E.B. about the first time she discussed the incidents of sexual abuse with S.A. and E.B. indicated they started talking to each other about the incidents See N.T. Trial 8/6/14 at 229, 391.

This shows how S.A. testified that she told E.B. at the mall Jury Trial 8/6/14 at 217, 219 and that S.A. was about 15 years old and E.B. was 16 years old. Jury Trial 8/6/14 at 229.

Then while questioning E.B. about the differences by asking E.B. if she told the officer if E.B. told S.A. at the Mills Mall? But E.B. testified: No, She never told at the Mall. in fact E.B. testified she told S.A. at the Lower Burrell house, outside and she was 13 years old which would have made S.A. 12 years old. Jury Trial 8/6/14 at 391

My Trial Attorney never questioned S.A. or E.B. about the differences in their testimony. which is factual evidence of record. and does not corroborate their stories.

Yet on page 6 of the Report and Recommendation of the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:20-cv-01115 states: the victims testimony corroborated each other.

The first example that the Court shows contradicts itself.

Also, on page 4 of the Reports and Recommendation of the United States District Court of Western Pennsylvania, Civil Action No. 2:20-cv-01115 states: Trial counsel crossed-examined S.A. about her statements that the assaults stopped when she fractured her ankle and that she was assaulted after the cast was removed. See Id at 244-246,

This is the thing that my Trial Attorney questioned S.A. about. And he even says that it can't be accurate.

S.A. testified: Q. Which is more accurate today, that he touched you with his hands, his penis and his mouth after ~~your~~ your cast was removed. or what you told the detective. That he did not touch you because you wouldn't let him? A. I'm sure - I'm positive that he touched me with all three parts and I know I was fighting him off.

Q. Okay. So, this statement where he tried to assault you after the cast was removed but you wouldn't let him is not

accurate? A. No. Both statements are accurate. My Trial Attorney then replied: So, that can't be accurate. Jury Trial 8/6/14 at 244 through 247.

Next on page 4 of the Reports and Recommendation of the United States District Court for the Western District of Pennsylvania states: Trial counsel also cross-examined S.A. as to her memory was clear that she had been abused but that she did not completely remember everything. See Id at 235.

But if you look at Jury Trial 8/6/14 at 234, he asked S.A., you testified under oath today that you father only touched you in Swissvale with his hands and at 235 of the Jury Trial 8/6/14 asked if S.A. remembered if she was touched with his penis and she testified she did not remember.

But the Court failed to show how my Trial Attorney never questioned S.A. about how she testified different at the Preliminary Hearing on 12/04/12.

S.A. testified: that bad things started to happen in Swissvale and that her father used his hands and sometimes his penis. Preliminary Hearing 12/04/12 at 10 and 11.

This shows again how the Court contradicted itself, trying to make it look like my Trial Attorney did more than he did. The lie have been going on for 10 years, will they stop before it's too late?

Also, on page 4 of the Reports and Recommendation in the United States District Court for the Western District of Pennsylvania states: Trial counsel, outside the presence of the jury, also stated that he had a strategy not to ask S.A. about being touched at Swissvale and the discrepancy between being touched with Appellant's hands or his penis because it would give her the opportunity to clarify, say more about the incidents, and revisit that attempted rape charge. N.T. Trial 8/6/14 at 248-49.

But this is not the only part of what I wanted brought up about S.A. and the discrepancies about what happened in Swissvale,

I testified: Mr. Householder: Simply because S.A. is up there stating she remembers everything clearly and everything

else, here it is specifically (S.A. testimony from the Primary Preliminary Hearing 12/04/12 at 42) S.A. starting in Swissvale you testified that these incidents, that you don't think these things happened, is that correct. S.A. answered yes. And then S.A. was asked: And you answered honestly that you really don't remember those, correct. S.A. answered yes.

This shows how S.A. testimony, factual evidence from the Preliminary Hearing of what she said happened doesn't corroborate to what she testified to at the Jury Trial and my Trial Attorney would not question her about any of it, which is evidence of record.

The only one thing that my Trial Attorney questioned E.S. during the trial was about:

On page 4 of the Reports and Recommendation in the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:20-cv-01115 states: Additionally, trial counsel cross-examined E.S. regarding Appellant touching her underneath her clothes despite having said he did not previously. at 287-88.

Which shows how at the Preliminary Hearing E.S. testified that appellant touched her over her clothes and at the Jury Trial E.S. testified that appellant touched her under her clothes, which shows how her testimony of factual evidence does not corroborate of what E.S. said happened to her.

I have shown how the United States District Court for the Western District of Pennsylvania, only produced inconsistencies by the way of background about the differences of when and where S.A. and E.S. discussed what happened to them that my Trial Attorney never questioned either of them about which shows that their testimony does not corroborate what they are saying through factual evidence of record.

Also, I have shown the United States District Court for the Western District of Pennsylvania only produced the only one time my Trial Attorney questioned E.S. was about weather I touched her over or under her clothes and produced the only one time my Trial Attorney questioned S.A. was about how she testified that both statements are accurate that the assaults stopped when she fractured her ankle and that the assaults continued after she fractured her ankle, that appellant used his hand, penis and mouth. This show how their testimony does not corroborate what they said happened to them, which is testimony of factual evidence of record.

My Trial Attorney failed to use inconsistent testimony to impeach complainant's discription of what accuser's said happened Higgins v. Renico, 470 F.3d 624 (6th Cir. 2006)

The prejudice incurred from the omitted element is that it potentially cause a wrongful conviction of all charges, which there is clear factual evidence of record, which shows how the accusers' testimony does not corroborate each others' testimony nor what they testified what happened to them, showing they fabricated their testimony which is sufficient to support a finding that there was a "reasonable probability" of a different outcome. Strickland v. Washington, 466 U.S. at 694

#### CONCISE STATEMENT OF THE CASE, SUPPORTING FACTS

These are inconsistencies of factual testimony of record of the differences of what E.S., E.B. and S.A. testified to under oath, between the Preliminary Hearing and Jury Trial.

Questioning E.B., E.S. and S.A. about the differences in their testimony is vital, because their testimony is the only evidence in my case.

Ladies and Gentlemen, you are not going to hear any forensic evidence in this case. Jury Trial 8/6/14 at 94.

(a) Supporting facts: My trial attorney never questioned S.A. about the inconsistent testimony: Q. And since your memories are clear you've testified to what you remember occurring in Swissvale at age 5? A. Yes. Q. For instance you testified under oath today that your father only touched you in Swissvale with his hands? A. Yes. Q. Correct? A. Yes. (Jury Trial Aug. 4-8, 2014, page 234)

But at the Preliminary Hearing S.A.'s testimony was different: That in Swissvale some bad things started to happen, Q. Did some bad things start to happen with the Defendant at that house in Swissvale? A. Yea. Yea. A. The earliest I can remember was five and he would just touch me everywhere. Q. And what parts of his body did he use or did he use an object or how did he touch you? A. He used his hand and sometimes his penis. (Preliminary Hearing Dec.04, 2012, page 10 and 11)

Although S.A. testified at trial she remembered what occurred in Swissvale at age 5, at the Preliminary Hearing S.A. testified: Q. S.A., starting in Swissvale you testified that these incidents, that you don't think that those things happened, is that correct? A. Yes. Q. And you answered honestly that you really don't remember though. Correct? A. Yes. (Preliminary Hearing Dec. 04, 2012 page 42)

My trial attorney never questioned S.A. about how she testified that the assaults continued in Arnold: Q. And what kind of touching do you recall at the living room in Arnold? A. Um, the same thing as Swissvale, like he rubbed his penis on my butt, my vagina. (Preliminary Hearing Dec. 04, 2012 page 21)

But S.A.'s testimony was different at the Jury Trial: Q. Now, you remember events as well in the city of Arnold that your father touched you? A. Yes. Q. And he touched you where on you body? A. My vagina. Q. Anywhere else other than your vagina? A. No. (Jury Trial Aug. 4-8 2014 page 235 and 236)

Also, S.A. was asked: Q. Do you know if he inserted his penis into your buttocks? A. No, he didn't. (Jury Trial Aug. 4-8, 2014, page 238)

The only one inconsistency that my trial attorney directly questioned S.A. about was: Q. But your recollection is, after the cast was removed he did touch you again? A. Yes. Q. With what? A. His hand, his penis and his mouth. Q. And that was after your cast was removed? A. Yes. Q. Do you remember talking to this detective? A. Yes. Q. And do you recall giving him statements? A. Yes. Q. Do you recall giving him a statement that you were in a cast until September 2008 and nothing happened between that? After she got the cast off, Householder tried to assault me once more. S.A. refused to be assaulted and told Householder that she was going to tell her mother. Do you remember telling him that? A. Now I do.

Q. So, which is more accurate today, that he touched you with his hands, his penis and his mouth after your cast was removed, or what you told the detective, that he did not touch you because you wouldn't let him? A. I'm sure - I'm positive that he touched me with all three parts and I know I was fighting him off. Once I hit 13, I did start fighting him off before and after I had my cast on.

Q. Okay. So, this statement where he tried to assault you after the cast was removed but you wouldn't let him is not accurate? A. No. Both statements are accurate. Q. Well, this says you wouldn't let him touch you. A. Okay. That was - Q. So that can't be both accurate. Mrs. Petrush: Well I would object. Mr. Cecchetti: No, Please. and now I lost my train of thought. I'm moving on. Jury Trial 8/4/14 at 244 through 247.

And nothing more was said about the differences of how both statements were true.

My Trial Attorney never questioned S.A. or E.B. in the differences of the factual evidence of record of where and when S.A. and E.B. talked to each other.

S.A. testified: Q. Okay, did you ever tell E.B. about the defendant had done to you? A. Yes. A. Okay, we were at the mall, just me and he, and she -- we sat down for a break, and she said weird things were happening to her, between her and the defendant and I was shocked and I told her that the same things were happening to me. Jury Trial 8/6/14 at 217 and 219.

S.A. testified: Q. Now, the time you talked to E.B., when was that? A. That was probably 2010, 2011 when I was 15 years old and I believe she was 16. Jury Trial 8/6/14 at 229

E.B. testified: Q. Also, the first time that you said anything to anyone about this incident was to S.A. wasn't it. A. Yes. Q. And where did you tell S.A.? A. At the Lower Burrell house outside. Q. And how old were you at the time? A. Probably about 13 years old. Q. Did you ever tell this officer that you told S.A. at the Mills Mall? A. No. I never told at the Mall. Jury Trial 8/6/14 at 391

My Trial Attorney never questioned E.B. about the difference in E.B.'s testimony between the Preliminary Hearing and the Jury Trial.

E.B. testified at the Preliminary Hearing: Q. Did you see any thing happen to S.A. or anybody else besides yourself at that house in Lower Burrell? A. Just S.A., nobody else. Q. What did you see happen to S.A. there? A. I have just seen her being touched on her boobs, and then him trying to kiss her, but I understand she was his daughter, so I didn't think that was weird but I still protected her. Preliminary Hearing 12/14/12 at 64.

Then E.B. testified at the Jury Trial: Q. On any of these occasions that you say that you saw things happening to S.A., were things happening to you also? A. Yes. Q. on the same incident? A. Yes. Q. Tell us about that? A. I woke up one time he was touching S.A. underneath her shirt on her breasts and on top of her pants, and he was doing the same thing to me. He would go back and fourth between us. Q. And were did that happen? A. At the Allegheny Township house in the living room. Jury Trial 8/6/14 at 367.

E.B. testified at the Preliminary that E.B. seen me doing things to S.A. at the Lower Burrell House, but never testified seeing seeing anything happening to S.A. at the Allegheny Township House.

Then E.B. testified at the Jury Trial that she seen me doing different things to S.A. at the Allegheny Township House but never testified that E.B. seen me doing anything to S.A. at the Lower Burrell House.

S.A. testified at the Jury Trial: Q. Now, were you assaulted by your father while at the Allegheny Township apartment? A. Not to my knowledge. Jury Trial 8/6/14 at 261.

How can this be, when E.B. testified at the Jury Trial:

Q. E.B., did you ever speak to S.A. about the things that you saw happening to her? A. Yes. Q. And was that something that happened just once or did you try to do that after each time you saw something happened? A. I tried to tell her when that would happen to her. A. If something happened to her, I would tellher. Jury Trial 8/6/14 at 392.

My Trial Attorney never questioned E.B. about the differences of where things happened between the Preliminary and



Jury Trial at the Lower Burrell House.

E.B. testified at the Preliminary Hearing: Q. Did it happen again in the living room at the Lower Burrell House? A. A couple times, yes, and we switched from the living room upstairs to like the finished basement downstairs. Q. And what happened in the basement? A. Same thing. Preliminary Hearing 12/4/12 at 61.

E.B. testified at the Jury Trial: Q. Was that always in the room where the air mattress was located, the living room? A. Yes. Q. And did anything bad happen to you in any other room in that Lower Burrell House? A. No, Jury Trial 8/6/14 at 353.

My Trial Attorney started to question E.S. about how her testimony was different from S.A.'s but then withdrew everything after the Assistant District Attorney Mrs. Petrush stated her opinion and not the facts.

E.S. testified: Q. Now, the times that you were at your home that you saw things being done to S.A. and E.B., what were some of the things that you witnessed Jim doing to S.A.? A. Just grabbing her chest, pretending to play around. Just touching her inappropriately. Q. And you saw that? A. Yes. Q. What did you see him do to E.B.? A. The same thing. Q. Was this during horse play or was this on a mattress when they were sleeping? A. Both. Jury Trial 8/6/14 at 289.

If S.A. said she was not touched at your residence in Natrona and you say she was, are you mistaken? Mrs. Petrush: And I would object to that, because I don't think what S.A. testified to. I think she indicated that she could not recall whether she was or not and - Mr. Cecchetti: If somebody said they don't recall being touched - I'll withdraw everything. Jury Trial 8/6/14 at 290 and 291.

S.A. testified: Q. But at the Sekeras residence, you also saw horse play? A. Yes. Q. Did he horse play with you? A. A. No. Jury Trial 8/6/14 at 263.

My Trial Attorney never questioned E.S. about her differences in her testimony between the Preliminary Hearing and Jury Trial about what E.S. said she seen me do to E.B.

~~E.S. testified at the Preliminary Hearing: Q. Did you ever~~  
~~-- we talked about E.B. and S.A. Did you ever see anything~~

going on with them or -- A. Yes. Q. -- him do anything weird with them? What do you see? A. I'd seen him grabbing E.B. the one night when I woke up in the middle of the night, he was sleeping with her. Q. Where was that? What room? A. Upstairs. Like he was between holding her. Q. He was holding E.B.? A. Yes. Q. Did you see what part of her body was he holding on to? A. Her back. Q. So you knew he was there? A. Just the one time. Preliminary Hearing 12/04/12 at 87 and 88.

E.S. testified at the Jury Trial: Q. Okay. And what about when you girls would be sleeping? Did you see anything whenever you were sleeping? A. Occasionally he would sneak into bed, and I woke up in the middle of the night the one time he was passed out drunk. Well, not necessarily passed out, but he was touching E.B. while she was sleeping. Q. What did you see? A. Grabbing her butt and her crotch. Jury Trial 8/6/14 at 281 and 282.

On redirect by Mrs. Petrush: E.S. thinking back on the occasion that you recall seeing the defendant Jim, up against E.B. Q. -- what part of her body do you recall him touching on that occasion? A. Her back and her butt. Just it was night. Q. Okay. So, do you recall on that occasion him also touching her chest? A. I couldn't tell you that. Jury Trial 8/6/14 at 299 and 300.

This also shows how at the Preliminary Hearing E.S. testified she only saw me touching E.B. "just the one time" but at the Jury Trial that it was occasionally she seen me doing things to E.B.

The only inconsistency that my Trial Attorney questioned E.S. about the difference of factual evidence of record was between the Preliminary Hearing and the Jury Trial. E.S. testified at the Jury Trial was:

Q. And when he touched you, did he ever touch you underneath your clothes? A. He would hold my stomach. He would fondle me. Q. Just on your stomach? A. On my breasts, too. Q. Were you wearing a bra at the time he touched you on your breasts? A. Yes. Q. Did he go on top of the bra or underneath the bra? A. Both.

Q. Do you remember testifying at the preliminary hearing? A. Yes. Q. And you were under oath at the time? A. Yes. Q. So, again, do you remember being asked, did he ever touch you underneath your clothing on any parts of your body? A. Yes. --

Q. And what was your answer? A. No. Jury Trial 8/6/14 at 287 through 289.

My Trial Attorney never questioned E.B. about the differences of her testimony between the Preliminary and the Jury Trial, even though this one is minor it still shows how she's being deceitful.

E.B. testified at the Preliminary Hearing: Q. And isn't true that he was suppose to take you and your boyfriend to Kennywood? A. He was, because we were going to see S.A. and L.H. for their band. Q. At some point he didn't take you he's not taking you? A. Correct. Q. And you got upset, correct? A. I did. Q. That was -- the Kennywood trip was suppose to occur right before you initially had the breakdown and went to the police, is that correct? A. Yes. Preliminary Hearing 12/4/12 at 76.

At the Jury Trial E.B. testified: Q. Do you recall an incident in which Jim was suppose to take you to Kennywood? A. Yes. Q. He did not take you to Kennywood, did he? A. No. Q. Did you get upset? A. No. Jury Trial 8/6/14 at 382, 383.

I have shown many inconsistencies in the Concise Statement of the case, supporting fact, that were not brought up at Trial, how E.S., E.B. and S.A.'s testimony of only factual evidence of record between the Preliminary Hearing transcripts and Jury Trial transcripts taken under oath, do not corroborate what they witnessed happened to each other, nor what the testified happened to themselves. There is no such thing as cross-examination by the way of background, E.B. and S.A. were never questioned about the differences of when and where they talked about what they say happened to them.

The United States District Court for the Western Pennsylvania, Showed the only on time that my Trial Attroney questioned S.A. and the only one time he questioned E.B.

## REASONS FOR GRANTING RELIEF

A reviewing Court "must 'evaluate the totality of available evidence - both adduced at trial' and the additional available evidence that adequate counsel would have procured." Harris v. Thompson, 689 F.3d 609, 648 (7th Cir. 2012), quoting Williams v. Taylor, 529 U.S. 362, 397, 120 S. Ct. 1495, 146 L.Ed.2d 389 (2000)

I was deprived of my Fourteenth Amendment Section 1 - All persons born in the United States are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its ~~jurisdiction~~ jurisdiction the equal protection of the laws.

I was deprived of a fair Trial, by the accusers' not being questioned about what I have shown. I have shown substantial factual evidence of record the differences of E.S., E.B. and S.A.'s testimony under oath between the Preliminary Hearing transcripts and the Jury Trial transcripts that shows how their testimony does not corroborate each other of what they say they witnessed nor do they corroborate what they testified to what happened to themselves.

The united States District Court for the Western District of Pennsylvania showed the only one time my Trial Attorney questioned S.A. and contradicted itself by saying my Trial attorney questioned S.A. about the difference of touched her in Swissvale, Then saying my Trial Attorney outside the presence of the jury had a stratigy not to question S.A. ~~about~~ about the difference of what touched her in Swissvale.

The Court showed the only one time my Trial Attorney questioned E.S. was about whether she was touched over or under

her clothes. My Trial Attorney never questioned E.B. about any of the differences in her testimony between the Preliminary Hearing transcripts and the Jury Trial transcripts that I have shown in the Concise Statement of the Case, supporting facts.

The United States District Court for the Western District of Pennsylvania states that E.B. and S.A. were cross-examined by the way of background about the differences of what they testified: ~~to~~ of when and where they discussed what happened.

There is no such thing as background cross-examination. E.B., E.S. and S.A. were never questioned about the differences of when and where they talked to each other deprive me of my Fourteenth Amendment of due process of a fair Trial.

The lies have been going on for 10 years, they have to stop, before it's too late.

Failure to use evidence "that would have enable cross-examination" against the accusers' "might have been thoroughly discredited" is a "dereliction of professional duty." Stanley v. Bartley 465 F.3d 810, 814 (7th Cir. 2006)

The United States Courts of Appeals for the Third Circuit denied my application for a certificate of appealability by showing three Cases.

The first Case for C.A. No. 22-1895 states: Because Appellant has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. §2253(1); Miller-El v. Cockrell 537 U.S. 322, 338 (2003) This Case is a Capital Murder murder scheduled for a jury trial, accusing the prosecution had used race-based peremptory challenges in selecting jury.

That case does not have differences in their testimony of factual evidence of record by accuser or witness. I have shown substantial testimony of factual evidence of record, showing that E.S., E.B. and S.A. were not questioned about the

differences of their testimony between the Preliminary Hearing transcripts and Jury Trial transcripts showing they do not corroborate what they testified happened to each other nor does their testimony corroborate what they testified happened to themselves, even without the differences in the police reports

The second case the United States Court of Appeals for the Third Circuit C.A. No. 22-1895 uses states:

"In particular, jurists of reason would not debate the District Court's conclusion that Appellant cannot prevail on his claim that trial counsel rendered ineffective assistance by failing to adequately cross-examine the victims. See Strickland v. Washington, 466 U.S. 668 (1994)

But if you look at this Case Strickland v. Washington 466 U.S. 668 (1994) the defendant pleaded guilty, my plea was not guilty, I did not plead guilty.

The third Case the United States Court of Appeals for the Third Circuit states;

(explaining that the courts should not "second guess" an attorney's cross-examination conduct "unless there is no strategic or tactical justification for the course taken. Eze v. Senkowski, 321 F.3d 110, 127 (2nd Cir. 2003)

The United States Court of Appeals for the Third Circuit changed the wording the Case Eze v. Senkowski, 321 F.3d 110, 127 (2nd Cir. 2003) states:

Criminal Law & Procedure> Counsel> Effective Assistance> Assistance> Trials

Counsel's decision not to call a particular witness usually constitutes trial strategy that the court hesitates to second-guess so long as the strategy advanced the client's interests.

By the accusers' not being cross-examined about the differences in their testimony that I have shown in the Concise Statement of the Case, supporting fact, I am deprived of my Fourteenth

Amendment of due process of a fair trial and the truth determining process.

#### CONCLUSION

I have shown how the United States Court of Appeals for the Third Circuit used the three cases unreasonably applying the facts.

The Sixth Amendment guarantees the right to the effective assistance of counsel, applicable to the states through the Fourteenth Amendment. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984)

Under 28 U.S.C. §2254(2) the United States District Court for the Western District of Pennsylvania made an error because it resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding. Strickland v. Washington 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984)

I have shown how the United States District Court for the Western District of Pennsylvania showed the only one time my Trial Attorney questioned S.A. was about she testified at trial that the assaults stopped when she fractured her ankle and that the assaults continued after she broke her ankle and that both were true and how my Trial Attorney testified that can't be accurate.

And then showed the only one time my Trial Attorney questioned E.S. was about how she was touched under her clothes and then she was touched only over her clothes.

The Court tried to say S.A. and E.B. were questioned about the differences of where and when they talked to each other by the way of background cross-examination which the fact is they never got questioned about the different testimony because there

is no such thing as background cross-examination. The Court also shows how S.A. and E.B.'s testimony does not corroborate each other.

I have shown how E.B., E.S. and S.A.'s testimony did not corroborate what they testified they seen happening to each other nor what happened to themselves through the Preliminary Hearing transcripts and Jury Trial transcripts, under oath in the Comcise Statement of the Case, supporting facts pages 5 through 11.

Cross-examination is a vital and fundamental part of a fair trial, providing the principal means by which the believability of a witness and the truth of his or her testimony are tested.

In criminal cases, the right extends beyond the subjects testified to on direct examination, and includes the right to examine the witness on any facts tending to refute inference or deductions arising from matters testified to on direct examination.

...to test the witness's memory and perceptions, but the cross-examiner has traditionally been allowed to impeach or discredit the witness's story. Commonwealth of Pennsylvania, Appellee v. John Thomas Spiewk, Jr. Appellant Supreme Court of Pennsylvania 533 Pa, 1; 617 A.2d 696; 1992.

Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact. Evidence that merely advances an inference of a material fact may be admissable, even where the inference to be drawn only from human experience. Commonwealth of Pennsylvania, Appelle v. Dawn E. Hawk, Appellant Supreme Court of Pennsylvania 551 Pa. 71; 709 A.2d 373.

Therefore, the conviction should be reversed and the sentence should be vacated and James R. Householder, Jr. should be released from prison or granted a new trial. My



petition for a Writ of Certiorari should be granted

Respectfully submitted,

*James R. Householder Jr.*

James R. Householder, Jr.

pro se

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