BLD-208

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-1881**

ANTOINE L. RIGGINS, Appellant

VS.

SUPERINTENDENT SOMERSET SCI, et al.

(E.D. Pa. Civ. No. 2:18-cv-04429)

Present: MCKEE*, GREENAWAY, JR., and PORTER, Circuit Judges

Submitted are:

(1) Appellant's Motion for Appointment of Counsel; and

(2) Appellant's Application for a Certificate of Appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Becker v. Sec'y Pa. Dep't of Corr., 28 F.4th 459, 462 (3d Cir. 2022). For substantially the reasons given by the Magistrate Judge and the District Court, jurists of reason would not debate the rejection of Appellant's ineffective assistance of counsel claim pertaining to the failure to challenge the out-of-court confession made by Appellant's co-defendant. See Strickland v. Washington, 466 U.S. 668, 687-94 (1984); Bruton v. United States, 391 U.S. 123, 126 (1968); Werts v. Vaughn, 228 F.3d 178, 203 (3d Cir. 2000). In addition, jurists of reason would not debate the District Court's conclusion that Appellant was not prejudiced, and

* Judge McKee assumed senior status on October 21, 2022.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

January 4, 2023

Ronald Eisenberg
Office of Attorney General of Pennsylvania
1600 Arch Street, Suite 300
Philadelphia, PA 19103

Antoine L. Riggins
Somerset SCI
1600 Walters Mill Road
Somerset, PA 15510

Matthew Stiegler
Philadelphia County Office of District Attorney
3 South Penn Square
Philadelphia, PA 19107

RE: Antoine Riggins v. Superintendent Somerset SCI, et al
Case Number: 22-1881
District Court Case Number: 2-18-cv-04429

ENTRY OF JUDGMENT

Today, **January 04, 2023** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTOINE RIGGINS, Petitioner,	:	CIVIL ACTION
v.	:	NO. 18-4429
SUPERINTENDENT MCGINLEY, et al., Respondents.	:	

REPORT AND RECOMMENDATION

DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

January 4, 2022

Before the Court for Report and Recommendation is the counseled petition of Antoine Riggins ("Riggins" or "Petitioner"), a prisoner incarcerated at SCI-Coal Township, in Northumberland County, Pennsylvania for the issuance of a writ of habeas corpus filed pursuant to 28 U.S.C. 2254.[1] Riggins is serving a sentence of life imprisonment following his convictions in the Philadelphia Court of Common Pleas for first-degree murder, and concurrent sentences for robbery, theft by unlawful taking, receiving stolen property, criminal conspiracy, and related firearm offenses. By this Petition he seeks habeas relief on two grounds: asserting an ineffective assistance of counsel claim for his attorney's alleged failure to object to Sixth Amendment violations, and a Fourteenth Amendment due process claim for the trial court's alleged failure to declare a mistrial following an outburst from the victim's mother. For the reasons that follow, we recommend that the petition be denied and dismissed in its entirety.

[1] Although Petitioner is currently confined within the Middle District of Pennsylvania, which includes Northumberland County, *see* 28 U.S.C. § 118(b), venue is proper here pursuant to 28 U.S.C. § 2241(d) in that his confinement grew out of a prosecution and conviction in a Court of Common Pleas within the Eastern District of Pennsylvania.

> Taylor testified that both Riggins and his mother asked her to lie and say that Riggins was at her home on the night the victim was killed. She further testified that Riggins also told her he shot the victim in the back of the head over a drug debt.

Id. Archer's account of the events leading up to Pough's death was also supported by the testimony of Pough's co-worker Ronald Davis ("Davis"), and Pough's neighbor Eugene Birden ("Birden"):

> Davis testified that on November 17, 2005, he was working with the victim at [a restaurant in Germantown.] Davis and the victim closed the restaurant at 10 p.m. that night. Two light-skinned men walked up while the victim was standing by his car, one of whom shook the victim's hand[.]
>
> . . .
>
> Birden, a resident of the apartment complex [where Pough also lived] testified that while attempting to park his car, he saw three men standing in front of the apartment complex, with their backs turned away from him and hoods over their heads. Birden heard a gunshot and drove around the block. When he returned to the front of the apartment complex, he saw a person laying in front of the complex.

Id.

Riggins and Rosario were apprehended by police shortly after the shooting. They both signed written statements in front of detectives, in which they set out their respective criminal responsibility in the offense. On February 23, 2007, Riggins's motion to suppress his written confession was denied. At the close of Riggins's suppression hearing, the court replaced any reference in Riggins's confession to his co-defendant Rosario with the generic term, "my friend." On February 26, 2007, Rosario's motion to suppress his written confession was also denied, and the court replaced any reference to Riggins in Rosario's confession with the generic term, "the guy." As required by *Bruton v. United States*, 391 U.S. 123 (1968), these redactions were an effort to avoid a Confrontation Clause violation in the event the confessions were introduced at trial. It is unclear from the record if the defendants or their counsel believed that these initial redactions

> on the evening on November 17, 2005. Riggins told detectives he shot the victim because he was owed money for crack cocaine.

Id. Additionally, during Riggins's testimony, the mother of the victim interrupted him from the gallery. Her emotional outburst made accusatory reference to Riggins's involvement in her son's murder and was heard by the jury. Ultimately, the jury found Riggins guilty of first-degree murder and other related offenses, for which he was sentenced on May 15, 2007.[3]

Riggins filed a direct appeal with the Pennsylvania Superior Court, in which he challenged the sufficiency of the evidence, the trial court's refusal to grant a motion *in limine* as to a lay witness's "irrelevant and harmful" testimony, and the trial court's refusal to declare a mistrial after the victim's mother's "extremely emotional outburst." *Riggins I* at 4. Riggins was represented by David Rudenstein, Esq. ("Attorney Rudenstein") on appeal. On June 7, 2010, the Superior Court affirmed the judgment of sentence. *See id.* at 22. The Pennsylvania Supreme Court subsequently denied allowance of appeal on April 26, 2011.

On April 23, 2012, Riggins, acting *pro se*, timely filed a PCRA petition that raised several claims of ineffective assistance of counsel, including counsel's failure to object to several *Bruton* violations. The trial court dismissed the petition without a hearing on November 22, 2013. An appeal was filed and the dismissal of Riggins's PCRA petition was affirmed by the Pennsylvania Superior Court on March 29, 2018. The Pennsylvania Supreme Court denied allowance of appeal on September 18, 2018.[4]

---

[3] Rosario was found guilty of lesser charges and sentenced accordingly.

[4] We acknowledge that the amount of time between Riggins's initial PCRA filing and the final disposition of that petition was over six years. Though this amount of time seems incredible to exhaust a PCRA petition in state court, the history of Riggins's petition is a long and storied one, involving several rounds of appeal, amendment, counsel appointments, and procedural mishap. For the sake of brevity, we have not included the full record of Riggins's collateral appeal, but we are satisfied that it is procedurally proper. *See Riggins II* at 1-4. For our purposes on habeas review,

court, the petitioner is considered to have "procedurally defaulted" that claim. *See, e.g., Coleman v. Thompson*, 501 U.S. 722, 749 (1991).

B. Standards for State-Adjudicated Claims

Where the claim presented in the federal habeas petition was adjudicated on the merits in the state courts, the federal court shall not grant habeas relief unless the adjudication:

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

28 U.S.C. § 2254(d). A writ may issue under the "contrary to" clause of Section 2254(d)(1) only if the "state Court applies a rule different from the governing rule set forth in [United States Supreme Court] cases or if [the state court] decides a case differently than [the United States Supreme Court has] done on a set of materially indistinguishable facts." *Bell v. Cone*, 535 U.S. 685, 694 (2002). A writ may issue under the "unreasonable application" clause only where there has been a correct identification of a legal principle from the Supreme Court but the state court "unreasonably applies it to the facts of the particular case." *Id.* This requires the petitioner to demonstrate that the state court's analysis was "objectively unreasonable." *Woodford v. Visciotti*, 537 U.S. 19, 25 (2002).

C. The *Strickland* Ineffective Assistance of Counsel

The Supreme Court employs the two-prong test announced in *Strickland v. Washington*, 466 U.S. 668 (1984), to determine if the defendant was deprived of his right to counsel as guaranteed by the Sixth Amendment. Pursuant to *Strickland*, a defendant who raises claims based on the ineffective assistance of his counsel must prove that (1) "counsel's representation fell below an objective standard of reasonableness," and (2) there is "a reasonable probability that, but for

(2) Riggins was denied a fair trial, as "secured by the due process clause," when the victim's mother had a "disturbing and highly emotional outburst" during Riggins's testimony.

See (Doc. 21 at 3-4.) As discussed within, both of Riggins's claims were timely and satisfied the threshold procedural requirements, thus they are ripe for habeas review. As these claims were appropriately briefed and exhausted at the state court level, we evaluate them on their merits and conclude that Riggins successfully demonstrated that the state court's rejection of Ground One was contrary to, or an unreasonable application of, clearly established federal law but does not afford Riggins habeas relief, as any error he may have suffered was harmless. As to Ground Two, we conclude that the state court's dismissal of Riggins's claim on appeal was proper.

A. Trial counsel was allegedly ineffective for failing to object to "multiple violations" of Riggins's Sixth Amendment rights as established in *Bruton v. United States*, 391 U.S. 123 (1968)

We begin our review of Riggins's first ground for habeas relief by addressing the alleged violation of his Sixth Amendment rights, as established *Bruton v. United States*, 391 U.S. 123 (1968). Riggins claims that his counsel was ineffective for failing to object to the improper redaction and admission of his nontestifying co-defendant's confession at various times throughout trial. *See generally* (Doc. 21 at 10-18.) As Riggins recounts in his briefing, rather than redacting Riggins's existence altogether from his co-defendant's confession, the Commonwealth substituted Riggins's name with terms such as, "the guy" or "the other guy." (*Id.*) Despite this improper redaction, as well as the repeated "unmasking" of Riggins by the Commonwealth and his co-defendant's attorney throughout the trial, Riggins claims that his trial counsel was deficient under *Strickland* by objecting to these *Bruton* violations only once. (Doc. 21 at 20.) As discussed below,

Commonwealth v. Riggins, No. 1110 EDA 2016 ("*Riggins II*"), slip op. at 7 (Pa. Super. Ct. Mar. 29, 2018). In its opinion, the Superior Court explained that *Bruton* and its progeny require both the issuance of a proper limiting instruction and the redaction of "not only the defendant's name, but any reference to his or her existence." *Id.* at 8-9 (quoting *Richardson v. Marsh*, 481 U.S. 200, 211 (1987)). The Superior Court also acknowledged that "redactions indicated with an obvious blank, the word 'delete,' symbols, or other indications violate *Bruton*'s protective rule." *Id.* at 9 (citing *Gray v. Maryland*, 523 U.S. 185, 192 (1998)). Notwithstanding this federal precedent, the Superior Court deferred to the Pennsylvania Supreme Court's holding that "substituting the neutral phrase 'the guy' or 'the other guy' for the defendant's name is an appropriate redaction." *Id.* (citing *Commonwealth v. Cannon*, 22 A.3d 210, 218 (Pa. 2011)); *see also Commonwealth v. Travers*, 768 A.2d 845, 851 (Pa. 2001). The Superior Court pointed out that in Riggins's case, his co-defendant's confession was "compliant with *Bruton* [and] *Cannon*" as it was "properly redacted using the neutral phrases 'the other guy,' 'this guy,' and 'the guy.'" *Id.* Accordingly, as the Superior Court concluded that no *Bruton* violation occurred, Riggins's claim of trial counsel's ineffectiveness "lack[ed] merit." *Id.*

As explained above, in determining the propriety of the Pennsylvania Superior Court's decision as to Riggins's ineffective assistance of counsel claim, we must review the underlying *Bruton* claim. *See Fogg*, 414 F. App'x at 427 ("The ineffective assistance claim is parasitic on the substantive Sixth Amendment claim[.]"). Riggins points to numerous instances in the record where he claims a *Bruton* violation occurred, focusing primarily on the admission of Rosario's insufficiently redacted confession and the subsequent "unmasking" of his identity in relation to that confession. At trial, the Commonwealth called Detective Joseph Bamberski ("Detective

"And you are still saying that Saul Rosario was lying when he gave the statement to police saying that he was there with you when you killed Terrell [?]" (N.T. Mar. 5, 2007, p. 95.) Rosario's attorney made a similar statement during her closing argument, again connecting Riggins to Rosario's confession: "[Saul] admits [to the police] that he gave Mr. Riggins the gun" and "[My] client's statement is...that after the keys fall out of Terrell's jacket, Riggins picks them up, and they drive off in the car." (N.T. Mar. 5, 2007, pp. 233, 240.) Having recounted the allegations underlying Riggins's *Bruton* claim, we review the federal law guiding our analysis of the Pennsylvania Superior Court's decision.[5]

In *Bruton*, the Supreme Court of the United States held that a defendant's constitutional right "to be confronted with the witnesses against him" is violated when a nontestifying co-defendant's (in this case, Rosario) confession implicates the defendant's (in this case, Riggins) guilt, even if a limiting instruction is given by the trial court to consider the confession against only the co-defendant. *See* 391 U.S. at 126; *see also* U.S. Const. amend. VI. Subsequently in *Richardson*, some 20 years later, the Supreme Court created a "narrow exception" to *Bruton*, where it held that "the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when...*the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence.*" 481 U.S. at 208, 211 (emphasis added). The Supreme Court cautioned in *Gray*, however, that a redacted statement may still violate *Bruton* where the redaction is so "obvious" that it is equivalent to leaving the defendant's name in place. 523 U.S. at 193. That is, if "the confession refers directly

[5] We note that Respondents' brief contains little, if any, contest as to Riggins's allegations regarding the *Bruton* violations that occurred at trial. Respondents instead focus their arguments as to whether the violations were harmful.

was Riggins, the other attorneys' lines of questioning and closing statements created a direct link between Riggins and Rosario's confession.

We acknowledge that the Pennsylvania Supreme Court has generally accepted that a redaction which includes a vague reference to the defendant, such as "the other guy" or "the other man," is adequate under *Bruton*. *See Cannon*, 22 A.3d at 221; *Travers*, 768 A.2d at 851. The Third Circuit, however, has held on numerous occasions that redactions containing these generic terms in place of the defendant's name are insufficient to satisfy *Bruton*.[7] *See Eley v. Erickson*, 712 F.3d 837, 860 (3d Cir. 2013) (finding that *Bruton* was unreasonably applied where the redacted statement replaced the names of two defendants with the words "the other two"); *Washington v. Sec'y Pa. Dep't. of Corrs.*, 726 F.3d 471, 473 (3d Cir. 2013) (finding a Confrontation Clause violation where the redacted statement had substituted the defendant's name with "someone I know," "the driver," and "the other guy"); *U.S. v. Hardwick*, 544 F.3d 565, 573 (3d Cir. 2008) (finding the substitution of defendants' names to "the others in the van" was improper under *Bruton*); *Vazquez v. Wilson*, 550 F.3d 270, 281-82 (3d Cir. 2008) (holding that a redacted statement which replaced the defendant's name with "my boy" and "the other guy" in a two-person murder trial violated the Confrontation Clause). The Third Circuit has directly addressed the Pennsylvania Supreme Court's apparent "bright-line rule" that the use of generic terms can sufficiently cure a *Bruton* violation and concluded that such a rule is an unreasonable application of clearly established federal law. *See Vazquez,* 550 F.3d at 281; *see also Hardwick*, 544 F.3d at 573 ("Even redacted statements will present Confrontation Clause problems unless the redactions are so

[7] We acknowledge that Third Circuit decisions are not controlling here because habeas relief depends on whether the Pennsylvania state court's decision was contrary to federal law as established by the United States Supreme Court. *See* 28 U.S.C. § 2254(d). We cite them only to demonstrate that our reasoning and interpretation of *Bruton* is consistent with prior cases containing similar facts that were decided in our Circuit.

Having found that Riggins's Sixth Amendment Confrontation Clause rights were violated, we must determine whether that error was harmless.[9] *See Rainey v. Sec'y of Pa. Dep't Corrs.*, 658 F. App'x 142, 152 (3d Cir. 2016). A petitioner must establish that the trial error "had [a] substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). Under this test, a reviewing court may grant relief only if it has a "grave doubt" as to whether the error at trial was harmful. *Davis v. Ayala*, 135 S. Ct. 2187, 2198 (2015) (quoting *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995)). In other words, "[t]here must be more than a 'reasonable possibility' that the error was harmful," insofar as "the defendant was actually prejudiced by the error." *Id.* Courts may use several factors to guide their review of Confrontation Clause errors, including: "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986). As the Pennsylvania Superior Court denied Riggins's claim based upon an unreasonable application of federal law, we conduct our harmless error review *de novo*. *See Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) ("[W]hen a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law...[the] federal court must then resolve the claim without the deference AEDPA otherwise requires.").

[9] For Riggins to have been prejudiced by his counsel's failure to object to a *Bruton* violation, the *Bruton* violation must have been harmful. *See Fogg*, 414 F. App'x at 427 ("Thus far, each court reviewing [the petitioner's] ineffective assistance claim as it pertains to the *Bruton* violation has held counsel's performance constitutionally sound because its predicate finding of harmless error has rendered [the petitioner] incapable of proving "prejudice" under the second *Strickland* prong.).

In addition to Riggins's own confession, the Commonwealth introduced the testimony of three witnesses, all of whom stated that Riggins had confessed to them that he had killed Pough. (*Id.* at 17.) Archer, the mother of Riggins's son, testified that Riggins had asked her on the night of the murder, "If you shoot someone in the back of the head and they fall like to the side, does that mean that they are dead? [...] And that is when [Riggins] went on and he told me that he shot somebody [...] the young man Terrell Pough." (N.T. Feb. 27, 2007, p. 170.) Parker also testified that she was present for Riggins's conversation with Archer, and that Riggins told her, "[H]e walked up to the back of [Pough] before he opened up the door and shot him." (N.T. Feb. 28, 2007, pp. 220, 228.) Finally, Taylor testified that Riggins had told her that Pough owed him money in a drug debt, and that he met up with Pough on the night of the murder. (N.T. Mar. 5, 2007, pp. 171-72.) Like Archer and Parker, Taylor also testified that Riggins had told her, "He shot [Pough]...[i]n the back of the head." (N.T. Mar. 5, 2007 p. 173.) In light of this testimony, as well as other evidence introduced at trial, Respondents claim that the admission of Rosario's confession was harmless, as Riggins's own confession was properly admitted against him and "well-corroborated by evidence from several sources[.]"[11] (Doc. 25 at 17.)

Riggins acknowledges that, "[a]dmittedly, aside from Rosario's confession, there was a substantial quantity of evidence against Petitioner." (Doc. 21 at 22.) He claims, however, that this evidence was "tainted" and actually increased "the inculpatory value" of Rosario's confession. (*Id.*) At the outset, Riggins argues that his own confession cannot be used in any determination of

[11] Respondents also point to the fact that the trial court instructed the jury not to consider Rosario's confession against Riggins. (Doc. 25 at 19.) As we have already discussed, *Richardson* and *Gray* require a proper limiting instruction *in addition to* adequate redaction in order to satisfy *Bruton*. Thus, we do not think that the issuance of a limiting instruction, alone, contributed significantly in minimizing any prejudice to Petitioner.

Riggins claims that he signed the confession only after he had been "brutalized" by police and has since "vigorously contested and contradicted" its contents. (Doc. 29-1 at 5.); (Doc. 21 at 23.) As to the confessions he allegedly gave to Archer and Parker, Riggins dismisses their testimony as being "severely impeached," "inconsistent with respect to motives for coming forward," full of "omissions," and "expletive-laced." (Doc. 21 at 22.) Riggins similarly encourages us to disregard the presence of his gym bag in the victim's car and his absence from school the day after the murder, as he provided explanations for those facts at trial.[14]

Riggins is mistaken that we may not consider his own confession in our review of whether the *Bruton* violation at trial was a harmless error. In fact, the Supreme Court expressly authorized the consideration of that factor in *Cruz*: "Of course, the defendant's confession [...] may be considered on appeal in assessing whether any Confrontation Clause error was harmless." 481 U.S. at 193-94. We acknowledge that Riggins has attempted to distance himself from his confession and that he urges us not to consider it in our harmless error review due to its alleged fabrication. The question of the admissibility of Riggins's confession, however, has not been raised by Petitioner for habeas review, leaving us free to give it consideration in our harmless error analysis. We remind Petitioner that "*Cruz* does not stand for the principle that admission of an interlocking confession *standing alone* necessitates a finding of harm." *Johnson*, 735 F. Supp. 2d at 244 (emphasis added). The admission of an interlocking confession does not *per se* qualify as harmful error. *See id.* Indeed, "we employ an independent harmless error analysis in order to determine

[14] Riggins claims that his gym bag was in Pough's vehicle because he had "gotten a ride from the victim earlier in the day and left his bag in the car." (Doc. 21 at 23.) Additionally, Riggins stated that he missed school due to "financial problems" and his responsibilities watching his daughter and his nieces and nephews. (N.T. Mar. 2, 2007 pp. 202-03.)

of the murder, including testimony by the victim's co-worker, Davis, who had seen Pough leave work with a man who matched Riggins's description; and testimony by the victim's neighbor, Birden, who had seen the victim with two men outside of the victim's home, heard the gunshot, and then discovered the victim's body. *See* (N.T. Feb. 28, 2007 pp. 82-101, 183-190.) The medical examiner and police confirmed that Pough died of a gunshot wound to the head and that the bullet recovered from Pough's body was consistent with the weapon allegedly used in the shooting. *See* (N.T. Mar. 1, 2007, pp. 12-28, 50-65.) Finally, the presence of Riggins's gym bag in the victim's stolen car and Riggins's subsequent absence from school provided circumstantial evidence that corroborated the testimony given at trial.

In sum, Riggins is unable to show that the *Bruton* violation he suffered at trial was so "substantial and injurious" that it could be considered harmful error. *See Fogg*, 414 F. App'x at 427. Accordingly, under *Strickland*, we cannot accept that he was prejudiced by his counsel's representation, when we see no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[16] *Strickland*, 466 U.S. at 694; *see also Alvarado v. Wingard*, No. CV 17-3283, 2019 WL 6880912, at *14 (E.D. Pa. Jan. 8, 2019), *report and recommendation adopted*, No. CV 17-3283, 2019 WL 6880463 (E.D. Pa. Dec. 16, 2019), *aff'd sub nom. Alvarado v. Superintendent Somerset SCI*, 858 F. App'x 596 (3d Cir. 2021)

Riggins, none of the testimony given by Archer, Parker, or Taylor was contradicted or invalidated by other witnesses at trial. It is for these reasons that we do not find *Johnson* applicable here.

[16] We are not required to engage in any further inquiry into the reasonableness of counsel's representation in accordance with the first prong of *Strickland*, as Riggins has failed to demonstrate prejudice in accordance with the second prong of *Strickland*. In acknowledgement of the arguments Riggins has made as to the first prong, we note that Riggins claims that his attorney objected to the violation of his Sixth Amendment rights *only once*. (Doc. 21 at 20) ("Counsel's only *Bruton-Gray*-related objection occurred during the cross-examination of Petitioner conducted by co-defendant's counsel.") (citing N.T. Mar. 5, 2007 pp. 95-96.)

> The Audience: So why the fuck did you kill him? Why did you kill him? Why did you fucking kill him? Why? Why did you kill my baby? Why did you kill my baby? Why did you kill my fucking baby? Why? Why? Why did you kill him? Tell me that. You motherfucker, why did you kill my baby? Why? Why?
>
> The Sheriff: Judge.
>
> The Court: No.
>
> [Attorney] McDermott: Your Honor, at this point I have to request a mistrial.
>
> [Attorney] Connor: I join in that request, Your Honor.

(N.T. Mar. 2, 2007, pp. 130-131.) Riggins claims that there is "a reasonable probability that this outburst destroyed the jury's objectivity; rendered them far from 'indifferent;' and shattered the calm and serenity to which Petitioner was entitled to during his trial." (Doc. 21 at 31.) Further, Riggins alleges that the outburst "injected another unsworn witness against Petitioner" that his counsel was not able to cross-examine. (*Id.*)

Respondents contend that although Riggins complained on direct appeal that the court had denied him a mistrial because of the outburst, "he did not raise this [complaint] as a federal due process claim," and therefore the claim is unexhausted and procedurally defaulted. (Doc. 25 at 20.) We disagree with Respondents' assessment. In Petitioner's brief on direct appeal before the Pennsylvania Superior Court, he claimed that he "should be awarded a new trial as the result of court error where the court failed...to grant a mistrial in the face of an overtly prejudicial emotional curse-filled outburst by the victim's mother as the defendant was testifying." (Doc. 25-1, Resp. Ex. B at 31.) In his direct appeal, Riggins claimed that was "denied a fair trial" because "the law was misapplied" by the trial court. (*Id.* at 34.) Even more specifically, he claimed that "[t]he [trial] Court's judgment was unreasonable" and therefore his "trial was tainted." (*Id.*) In the petition

refused to declare a mistrial after the outburst, is "functionally identical" to his direct appeal claim. Furthermore, Riggins's assertions on direct appeal are "so particular as to call to mind a specific right protected by the Constitution" that the state court should have been alerted to the fact he was asserting a Constitutional right, namely, his Sixth Amendment right to a fair trial.[17] *Evans*, 959 F.2d at 1233 (internal quotation marks omitted); *see also Duncan*, 513 U.S. at 366. We observe that *Strickland* assures us: "The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment[.]" 466 U.S. at 684–85; *see also Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) ("It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process."). Thus, any claim by Petitioner that he was denied a fair trial necessarily implicates a due process analysis, guided by the covenants of the Sixth Amendment. As Riggins's federal due process claim is the "substantial equivalent of that presented to the state courts," we conclude that he has adequately satisfied the fair presentation requirement and his claim is *not* defaulted. *Evans*, 959 F.2d at 1233 (internal citation omitted).

ii. Merits Analysis

Having determined that Riggins's claim satisfies the threshold procedural requirements, we turn now to address his claim on its merits.[18] Riggins appropriately presented this claim to the

[17] The Sixth Amendment guarantees the following: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, 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." U.S. Const. amend. VI

[18] Although Respondents asserted that Riggins's claim on this basis was procedurally defaulted, they also drafted a substantive response to the claim in their response briefing. As Respondents addressed this claim on its merits, the Court did not need to call for supplemental argument.

> I thank you for your patience. Everyone will remain seated as the jury leaves the room.

Id. at 15-16 (citing N.T. Mar. 2, 2007, pp. 152-54).

The trial judge then polled each juror to determine whether they could disregard the outburst and whether they had any personal safety concerns. *Id.* at 16 (citing N.T. Mar. 2, 2007, p. 155). Every juror indicated that they could disregard the outburst, and only Juror Number One and Juror Number Nine raised safety concerns. *Id.* Juror Number One commented that he and other jurors were concerned that "[the victim's mother] was like, you know, jumping over the bench or something" stating further, "[y]ou know, if you can't feel, you know, a mother's pain, I mean, that was basically it." *Id.* (citing N.T. Mar. 2, 2007, pp. 256, 160). Juror Number Nine queried whether detectives in the courtroom were armed, though she did not indicate any specific safety concerns. *Id.* at 17 (citing N.T. Mar. 2, 2007, p. 117). The Superior Court noted that "Juror Number One did not deliberate in this matter as he was excused from jury duty at the end of the proceedings on March 2, 2007 [the same day as the outburst], due to a prescheduled surgery." *Id.* at 16-17, n.10. The alternate juror who replaced Juror Number One indicated that he could disregard the statements made by the victim's mother and that he did not have any security concerns. *Id.* After the polling concluded, the trial court was confident that the jurors felt safe and could disregard the interruption. She ordered that the trial could continue:

> That is it. So having questioned all 14 jurors, the Court again denies the Defense motion for a mistrial. It is very clear that the jury can follow my instructions, that they have all indicated that they can disregard the outburst, be fair to both sides, and that the only juror that appeared to have a security issue is juror number one...and he's going to be excused at the end of the day because he's having knee surgery on Monday.

safe[.]" *Id.* at 21. In addition to providing "an immediate cautionary instruction," the trial court "spoke with each juror individually," and the jurors asserted that they could disregard the outburst. *Id.* The Superior Court concluded that Riggins's trial was fair, as the outburst was brief, occurred only once, and the trial court followed it with a thorough curative instruction and colloquy of each individual juror. *Id.* at 21-22. The Superior Court was satisfied that the trial court diffused any potential prejudice to Riggins. Riggins now claims that the Superior Court's analysis was both contrary to federal law and "based on unreasonable findings of fact." (Doc 21 at 31.)

1. Alleged Misapplication of Federal Law

As to the federal law he believes was violated, Riggins cites to several United States Supreme Court cases for the proposition that a fair trial requires both an unbiased jury and undisturbed proceedings. *See* (Doc. 21 at 30-31) (citing *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975) ("Among the rights that secure a fair trial, is a fact finder that is unbiased."); *Turner v. Louisiana*, 379 U.S. 466, 471-72 (1965) (The right to an unbiased fact-finder includes the right to "indifferent jurors"*)*; *Estes v. Texas*, 381 U.S. 532, 536 (1965) (a defendant has a right to a fair fact finder and trial with "indifferent jurors" as well as the right to "judicial serenity and calm.")). We conclude that the Pennsylvania Superior Court's decision was neither contrary to, nor an unreasonable application of, this United States Supreme Court precedent.

We acknowledge that the Constitution and various Supreme Court cases have firmly established that a criminal defendant has a right to a fair, uninterrupted trial before an unbiased jury. Although we appreciate Riggins's citation to various cases that reflect that principle, he has failed to articulate how the Superior Court was unreasonable in its application of any of those precedents. The cases upon which he relies collectively stand for a proposition that is simply "far too abstract to establish clearly [a] specific rule." *Lopez v. Smith*, 574 U.S. 1, 6 (2014). The

We now turn to Riggins's allegation that the Pennsylvania Superior Court's decision was based on an unreasonable finding of fact and conclude that this claim is without merit. Riggins asserts that the Superior Court "inaccurately" noted that only Jurors Number One and Number Nine expressed safety concerns, as Juror Number One articulated that "the jury" as a whole had expressed safety concerns and indicated that the jury had discussed the outburst as a group. (Doc. 21 at 31.) Under the AEDPA, factual findings reached by a state court are presumed correct. *See* 28 U.S.C. § 2254(e)(1). This presumption of correctness applies to factual findings made by appellate courts as well as trial courts. *See Sumner v. Mata*, 449 U.S. 539, 547 (1981). If a petitioner wishes to challenge state court findings of fact, he has the burden of presenting the habeas review court with "clear and convincing evidence" to the contrary. *Washington v. Sobina*, 509 F.3d 613, 621 (3d Cir. 2007) (citing *Lambert v. Blackwell*, 387 F.3d 210, 234 (3d Cir. 2004)). It is not enough to decide that the petitioner has advanced a plausible alternative to the factual findings of the state court. *See id.* (citing *Martini v. Hendricks*, 348 F.3d 360, 368 (3d Cir. 2003)). Upon our review of Petitioner's brief and his citations to the record, we conclude that Riggins has not presented this Court with any "clear and convincing evidence" to set aside these factual findings.

As his first alleged factual error, Riggins claims that the Superior Court "inaccurately" noted that only Jurors Number One and Number Nine expressed safety concerns. (Doc. 21 at 31.) In Riggins's view, the state court ignored the fact that Juror Number One reported that the entire jury had expressed a fear of inadequate safety in the courtroom, pointing specifically to this exchange during Juror Number One's colloquy:

> The Court: The next thing I want to ask you is the Court Officer brought to my attention that you expressed something to her on behalf of the jurors. Can you tell me what that was?

> So, it's a few things that I personally felt being right there, right next to the lady.
>
> [Attorney] McDermott: You being juror number one.
>
> The Juror: Being juror number one.

(N.T. Mar. 2, 2007, pp. 155-161.); *see also* (Doc. 21 at 31.) Although Juror Number One indicated that he had personal safety concerns and that members of the jury had spoken to each other about the outburst, the trial court polled the jurors individually in the understanding that Juror Number One was not a designated spokesman for the jury, nor was he participating in deliberations. (N.T. Mar. 2, 2007, pp. 160-61.) After completing the polling, the trial court concluded that the trial could continue, as only one juror other than Juror Number One expressed safety concerns, which had been addressed immediately. (*Id.*, at p. 188.) Thus, the trial court determined that the jury was impartial with the knowledge that Juror Number One "can't really speak for the other jurors." (*Id.* at pp. 155-161.) Absent "clear and convincing evidence" to the contrary, which Riggins has failed to provide, we defer to the state court's findings as to Juror Number One's statements and the impartiality of the jury as a whole.

Riggins also claims that the Superior Court "affirmed, without any explanation, the trial court's conclusion that the jury felt safe" even after Juror Number Nine had expressed concerns about her safety. *See id.* We quote directly from the trial record Juror Number Nine's colloquy regarding her safety below:

> The Court: Do you have any—as a result of what you observed, do you have any security or safety issues that I should be made aware of?
>
> The Juror [Number Nine]: No, not really. I was just wondering if – if they come in the courtroom with a gun or something like that.
>
> The Court: Well, first of all, let me assure you that that is not a possibility. Everyone who comes into the building is thoroughly

knowledge of the identity of the victim's mother prejudiced him so as to constitutionally deprive him of a fair trial. As we have explained, the trial court gave a curative instruction to the jury immediately after the outburst, reminding them that "the only evidence you are to consider as jurors is the evidence that you hear from the witness stand." (N.T. Mar. 2, 2007 p. 152.) Federal law has established that a jury is presumed to have followed the court's instruction. *See Weeks*, 528 U.S. at 234. Therefore, even if the jury had knowledge of her identity, they were instructed to ignore any statements made from the gallery. Again, despite Riggins's arguments, we accept the state court's conclusion as to the jury's impartiality and believe its factual findings were reasonable.

We conclude that Riggins's ground on this basis does not afford him habeas relief, as he has not articulated how the Pennsylvania Superior Court's decision to refuse a mistrial was contrary to federal law, nor has he provided "clear and convincing evidence" demonstrating that the state court's decision was based on unreasonable findings of fact.

IV. CONCLUSION

Neither of the two grounds for relief presented in Riggins's habeas petition provide a basis for relief. Although Riggins properly asserted that his federal rights were violated in Ground One, we are satisfied that the violation was harmless. Ground Two is without merit, having been reasonably rejected by the state court. We therefore cannot recommend that habeas relief be granted on either of the grounds he has raised.

Pursuant to Local Appellate Rule 22.2 of the Rules of the United States Court of Appeals for the Third Circuit, at the time a final order denying a habeas petition is issued, the district court judge is required to make a determination as to whether a certificate of appealability ("COA") should issue. A COA should not issue unless the petitioner demonstrates that jurists of reason

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTOINE RIGGINS, Petitioner,	:	CIVIL ACTION
v.	:	NO. 18-4429
SUPERINTENDENT MCGINLEY, et al., Respondents.	:	

ORDER

AND NOW, this __ day of __ 2022, upon careful and independent consideration of the petition, response, and available state court records, and after review of the Report and Recommendation of United States Magistrate Judge David R. Strawbridge, it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;

2. The petition for a writ of habeas corpus is **DENIED AND DISMISSED**;

3. A certificate of appealability **SHALL NOT** issue, in that the Petitioner has not made a substantial showing of the denial of a constitutional right nor demonstrated that reasonable jurists would debate the correctness of the procedural aspects of this ruling. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); and

4. The Clerk of the Court shall mark this case **CLOSED** for statistical purposes.

BY THE COURT:

JUAN R. SANCHEZ, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1/4/2022

RE: RIGGINS L. v. MCGINLEY

CA No. 18-CV-4429

NOTICE

Enclosed please find a copy of the Report and Recommendation filed by United States Magistrate Judge Strawbridge on this date in the above captioned matter. You are hereby notified that within fourteen (14) days from the date of service of this Notice of the filing of the Report and Recommendation of the United States Magistrate Judge, any party may file with the clerk and serve upon all other parties' written objections thereto (See Local Civil Rule 72.1 IV (b)). **Failure of a party to file timely objections to the Report & Recommendation shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court Judge.**

In accordance with 28 U.S.C. §636(b)(1)(B), the judge to whom the case is assigned will make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The judge may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge, receive further evidence or recommit the matter to the magistrate judge with instructions.

Where the magistrate judge has been appointed as special master under F.R.Civ.P 53, the procedure under that rule shall be followed.

KATE BARKMAN
Clerk of Court

By: s/Stephen Gill
Stephen Gill, Deputy Clerk

civ623.frm (11/07)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTOINE RIGGINS	:	CIVIL ACTION
v.	:	No. 18-4429
SUPERINTENDENT MCGINLEY, et al.	:	

MEMORANDUM

Juan R. Sánchez, C.J. **March 29, 2022**

Petitioner Antoine Riggins seeks collateral review of his state court conviction for the first-degree murder of Terrell Pough, robbery, carrying a firearm without a license, criminal conspiracy, theft, possession of an instrument of crime, and receiving stolen property. In his habeas corpus petition, Riggins seeks habeas relief on two grounds: (1) ineffective assistance of counsel for his attorney's alleged failure to object to Sixth Amendment violations; and (2) violation of the Fourteenth Amendment for the alleged failure of the trial court to declare a mistrial following an outburst from the victim's mother.

United States Magistrate Judge David R. Strawbridge issued a Report and Recommendation (R&R) recommending denial and dismissal of Riggins's petition because: (1) the Sixth Amendment *Bruton* violation was harmless under *Brecht* and did not have such a "substantial and injurious" effect on the jury's verdict to justify a grant of the writ; (2) under *Carey,* the Superior Court was reasonable in holding an appropriate instruction and individual colloquies cured any prejudice against Riggins at trial; and, relatedly (3) the Pennsylvania Superior Court's decision was not based on an unreasonable finding of fact.

Riggins objects to the R&R, asserting the Magistrate Judge: (1) employed an improper harmless error prejudice standard; (2) erred in recommending Riggins had not demonstrated prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984); and (3) incorrectly applied a higher

reference to Riggins was replaced with the phrase "the guy." These changes were intended to avoid a Confrontation Clause violation under *Bruton v. United States*, 391 U.S. 123 (1968), and neither Riggins nor Rosario filed a motion to sever their trials based on these concerns.

Riggins and Rosario were charged with murder, along with other crimes, associated with Pough's death. They were tried jointly from February 28, 2007 to March 6, 2007, in the Philadelphia Court of Common Pleas. The entirety of Rosario's confession, with the redaction replacing references to Riggins as "the guy", was introduced by the Commonwealth. After the entry of the confession on the record, the Commonwealth and Rosario's attorney (Attorney McDermott) made direct and obvious references to Riggins as "the guy" in Rosario's statement.

Riggins's own confession was also read into the record twice, once with the agreed-upon redaction (referencing Rosario as "my friend") and once without redaction after Riggins took the stand. Detective Williams testified:

> she and Detective Ismail Cruz . . . interviewed Riggins on November 30, 2005. In his signed statement, Riggins told the detectives that he shot the victim once in the back of the head with a .357 revolver, as the victim was opening the door to his apartment on the evening of November 17, 2005. Riggins told detectives he shot the victim because he was owed money for crack cocaine.

Commonwealth v. Riggins, No. 3314 EDA 2008 ("*Riggins I*"), slip op. at 5-7 (Pa. Super. Ct. June 7, 2010) (citing Tr. Ct. Op. at 2-5 (Mar. 14, 2009)). During Riggins's testimony, the victim's mother interrupted him from the gallery, and had an emotional outburst accusing Riggins. The outburst was heard by the jury. After deliberation, the jury found Riggins guilty of first-degree murder and other related offenses. Riggins was sentenced on May 15, 2007.

Riggins appealed directly to the Pennsylvania Superior Court, and challenged: (1) the sufficiency of the evidence; (2) the trial court's refusal to grant a motion *in limine* regarding the "irrelevant and harmful" testimony of a lay witness; and (3) the trial court's refusal to declare a

Riggins asserts the R&R applies the wrong standard. In particular, Riggins takes issue with the statement: "[t]here must be **more than a reasonable possibility that the error was harmful," insofar as "the defendant was actually prejudiced by the error.**" Doc. 38 at 17 (quoting *Davis v. Ayala*, 135 S. Ct. 2187, 2198 (2015))(emphasis in the original). Riggins views this as a higher standard than the one traditionally imposed under *Strickland* and *Brecht*, which are "essentially the same standard." *Breakiron v. Horn*, 642 F.3d 126, 147 (3d Cir. 2011); Doc. 41 at 8 (where Riggins states: "the *Brecht* harmless error standard and the *Strickland* prejudice 'are essentially the same standard.'") (citations omitted). However, in *Johnson v. Superintendent*, the Third Circuit stated "*Brecht* requires a finding of "actual prejudice," which is "more than a reasonable possibility the error was harmful." 18-2423 (3d Cir. Feb 7, 2020) (*slip opinion*) (citing *Davis v. Ayala*, 135 S. Ct. 2187, 2197-98 (2016)).This interpretation of *Brecht* is identical to the standard in the R&R Riggins seeks to challenge.

Additionally, after considering all of the evidence, Judge Strawbridge actually applied the *Strickland* standard. Doc. 38 at 23 ("In sum, Riggins is unable to show that the *Bruton* violation he suffered at trial was so "substantial and injurious" that it could be considered harmful error. *See Fogg*, 414 F. App'x at 427. Accordingly, under *Strickland*, we cannot accept that he was prejudiced by his counsel's representation, when we see no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."")

Next, Riggins asserts he has demonstrated *Strickland* prejudice. This lacks merit. After reviewing *de novo*, the Court finds the R&R correctly determined both (1) the record did support a finding of a *Bruton* violation, and (2) the record did not support a finding of prejudice. In his objection, Riggins spends four pages detailing the alleged "impeachment," "purchase," or "contradiction" of the testimony of Amoy Archer and Autumn Parker, evidence regarding Petitioner's gym bag, and Riggins's confession, all of which were asserted in the initial counseled

told "if I *lied* I would be charged with perjury." Doc. 41 at 13; NT 3/5/2007, 185-186 (emphasis added). This statement is true—someone who lies on the stand can be, and often is, charged with perjury. Taylor was not "threatened with perjury to inculpate Petitioner." Doc. 41 at 15.[1]

Riggins also claims Judge Strawbridge ignored how "the evidence against Riggins is undermined by the 'testimony of a disinterested witness who said he saw three men, not two, with hoods at the time he heard a shot.'" Doc. 41 at 16. Judge Strawbridge *did* comment on this evidence, stating "Birden, who had seen the victim with two men outside of the victim's home, heard the gunshot, and then discovered the victim's body," (Doc. 38 at 23) and cited to the same portion of the trial transcript as Riggins does. N.T. Feb. 28, 2007 . 82-101, 183-190.

Riggins's dispute of evidence during his own testimony does not *de facto* meet the *Strickland* standard. Considering the credibility of all of the evidence and testimony in the record, Riggins cannot show the *Bruton* violation he suffered at trial was so "substantial and injurious" it could be considered harmful error, and there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *Fogg*, 414 F. App'x at 427. Riggins's objections are denied and the portion of his habeas petition which rests on the *Bruton* violation is appropriately dismissed.

Riggins's third objection asserts the Magistrate Judge incorrectly applied a clear and convincing burden to Riggins's §2254(d)(2) claim. Riggins is correct. The appropriate standard is not "clear and convincing evidence." As the Third Circuit has noted:

> The Supreme Court has "explicitly left open the question whether [28 U.S.C.] § 2254(e)(1) applies in every case presenting a challenge under § 2254(d)(2)." *Wood v. Allen*, 558 U.S. 290 (2010) (citation omitted). In the absence of Supreme Court guidance, we have explained that § 2254(e)(1) applies to a

[1] The court reminds Riggins's counsel he is an officer of the court, and it is inappropriate to continue to imply a witness was threatened into testifying by the prosecution, without more evidence than a legally accurate representation of perjury. There is a difference between zealous advocacy and blatant misrepresentation.

Riggins also alleges *Riggins 1* was unreasonable when it "noted Juror number 9's concerns, [and yet] affirmed, without any explanation, the trial court's conclusion that the jury felt safe and could disregard the outburst. Yet, Juror 9's concerns were not addressed." Doc. 41, at p. 21. As Judge Strawbridge discussed, Juror 9's concerns were indeed addressed by the trial court. Doc. 38 at 35-36; N.T. Mar. 2, 2007, 177. This was the conversation between Juror Number Nine and the Judge:

> The Court: Do you have any—as a result of what you observed, do you have any security or safety issues that I should be made aware of?
>
> The Juror [Number Nine]: No, not really. I was just wondering if – if they come in the courtroom with a gun or something like that.
>
> The Court: Well, first of all, let me assure you that that is not a possibility. Everyone who comes into the building is thoroughly searched, and in addition to which I will – if it will make you feel better, I will have additional security in the courtroom.
>
> The Juror: No. I realize that. I thought about the detectives downstairs and all.
>
> The Court: Okay. So, that was your only issue?
>
> The Juror: Yeah.

(N.T. Mar. 2, 2007, p. 177.) Juror Number 9's concerns were clearly addressed, as reflected in the above segment of the transcript, which is cited directly in *Riggins 1*. As such, the *Riggins 1* Court was not unreasonable in finding the trial court was confident the jurors could disregard the interruption and felt safe. *See Riggins 1* at 17.[2]

Riggins also argues the *Riggins 1* Court was "improperly and overly concerned with which jurors sat through the verdict," and "although Juror 1 expressed safety concerns, the court noted that this juror did not sit through deliberations because of a previously scheduled medical procedure."

[2] The Court notes Riggins raised another point which is cut off due to scrivener's error. As such, the court will not address how *Riggins 1* did not "address the fact that Juror 10—who was somewhat equivocal in response to the safety questions — rode the train with the victim's family, . . ."