ORIGINAL

No. 23-5152

IN THE

SUPREME COURT OF THE UNITED STATES

ANGEL MALDONADO— PETITIONER

VS.

PENNSYLVANIA— RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

PENNSYLVANIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

ANGEL MALDONADO #HS-6238
(Your Name)
SCI-FAYETTE 50 OVERLOOK DRIVE
(Address)
LABELLE, PA 15450
(City, State, Zip Code)
(724) 364-2200
(Phone Number)

QUESTIONS PRESENTED

1. Whether the Pennsylvania Supreme Court erred when it denied Petitioner's request for a new trial based on trial counsel's ineffectiveness for failing to object to the trial court's deficient 'reasonable doubt instruction'?

   (Answered in the negative by the state court).

2. Whether the Pennsylvania Supreme Court erred when it denied Petitioner's argument that trial counsel was ineffective for failing to object to the trial court's improper 'curative instruction' regarding the testimony of witness Jennifer Patrick?

   (Answered in the negative by the State Court).

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

McBride v. Glunt, No. 17-5374, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered May 28, 2020.

Gant v. Giroux, No. 15-4468, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered Oct. 4, 2018.

Bey v. Superintendent Greene SCI, No. 15-2863, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered May 10, 2017.

Brooks v. Gilmore, No. 15-5659, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered Aug. 11, 2017.

Sullivan v. Louisiana, No. 92-5129, 508 U.S. 275. Judgment entered June 1, 1993.

Cage v. Louisiana, No. 89-7302, 498 U.S. 39, 111 S. Ct. 328. Judgment entered Nov. 13, 1990.

In re Winship, No. 778, 397 U.S. 358. Judgment entered Mar. 31, 1970.

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NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE IMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

U.S. CONST. AMEND. XIV

SECTION 1. ALL PERSONS BORN OF NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH 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 THE LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

U.S. CONST. AMEND. VI

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 DEFENSE.

IN THE

SUPREME COURT OF THE UNITED

STATES PETITION FOR WRIT OF

CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or, [ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or, [ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[✓] reported at JUNE. 27, 2023; or, [ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Pennsylvania Superior court appears at Appendix B to the petition and is

[✓] reported at JANUARY. 20, 2023; or, [ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix __.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was JUNE. 27, 2023. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A __ .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Sixth Amendment:

Pursuant to the United States Constitution Sixth Amendment, the standard for evaluating an ineffective assistance claim is set forth in *Strickland v. Washington*. Under *Strickland,* Petitioner must show: (1) that counsel performed deficiently, i.e., that his/her conduct fell below an objective standard of reasonableness; and (2) prejudice, i.e., that confidence in the result of the original proceeding is undermined due to counsel's deficiency. *Strickland* prejudice is established where, but for the effect of counsel's errors, there is a reasonable probability that at least one juror would have had a reasonable doubt with respect to the defendant's guilt.

This High Court has decisively held that counsel's failure to object to an improper jury instruction can constitute deficient performance, and that prejudice can result. Anyone accused of a crime has the right to effective assistance of counsel.

United States Constitution Fifth and Fourteenth Amendments:

Pursuant to the United States Constitution Fifth and Fourteenth Amendment, the requirement that a criminal conviction be based upon proof beyond a reasonable doubt has its roots in the Due Process Clause's right to a fair trial and impartial jury and plays a vital role in the American scheme of criminal procedure, as a prime instrument for reducing the risk of convictions resting on factual error.

That reasonable doubt standard exists to protect the presumption of innocence, that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of Unites States criminal law.

This High Court has held that an error has been deemed structural if the error always results in a fundamental unfairness. For example, if an indigent defendant is denied an attorney

or if the judge fails to give a reasonable-doubt instruction, that is improper, the resulting trial is always a fundamentally unfair one contrary to the provisions of the United States Constitution's Fifth and Fourteenth Amendments.

STATEMENT OF THE CASE

FACTUAL HISTORY:

Angel Maldonado maintains his innocence. The state lower court's factual synopsis is being adopted. That summary is reproduced below:

Allegedly, on June 21, 2007, at 5:00 PM, Jennifer Patrick ("Jennifer") and her sister, Diane Patrick ("Diane") were outside their home with their five-year-old niece and neighbors near the corner of Emerald and Somerset Streets in Philadelphia. At that time, Petitioner and Angelo Martinez drove Martinez's Pontiac Bonneville to that location where they began "setting up the corner" to sell drugs. Diane approached Petitioner and told him that "We're not allowing that here." Petitioner responded, "It's me Dirt, it's me." Diane replied, "I don't care who it is, it's not happening here." Martinez, standing next to Petitioner, pointed to the sisters and said, "Man, f*ck them bitches, f*ck them!"

Jennifer and Diane then began walking their niece to the corner store and as the sisters walked away, Petitioner pulled up his shirt and yelled "F*ck it," revealing a black handgun in his waistband. Martinez continued to point at the sisters yelling, "F*ck them bitches!" After they returned from the store, Jennifer brought her niece into the house. Diane approached Petitioner and Martinez, who were still standing on the corner, and told them both to leave.

Raheem Haines, who lived across the street and was friends with Jennifer and Diane, heard the argument and came out of his house to stop the argument. As the argument escalated, Jennifer tapped her finger on Petitioner's forehead and said "You're a f*cking nut for showing a gun while my niece is out here." In response, Petitioner pulled out his gun and shot Jennifer once in her stomach. Jennifer fell to the ground and cried out, "he shot me!" Diane began to scream and hit Petitioner with her fists. Petitioner then shot Diane in her chest and neck.

As Haines tried to intervene, Martinez punched him and threw him to the ground. Petitioner then repeatedly shot Haines in the head and torse as he laid on the ground. As Jennifer crawled away, Petitioner continued to shoot at her as he and Martinez ran to Martinez's car and drove away from the scene. Diane was pronounced dead at a nearby hospital. Haines was pronounced dead at the scene. Jennifer was taken to a hospital and underwent successful emergency surgery for her gunshot wound.

Police responded to the scene and began searching for Petitioner and Martinez. The pair were caught and arrested after they were identified by eyewitnesses. A Beretta 9mm handgun was recovered after a search of Martinez's car. *Commonwealth v. Maldonado*, 1646 EDA 2021, 1647 EDA 2021 at 3-4 (Pa. Super. 2023).

PROCEDURAL HISTORY:

On May 7, 2010, following a jury trial, Petitioner was found guilty of two counts of first-degree murder, one count each of attempted murder, aggravated assault, VUFA 6105, VUFA 6106, and possession of an instrument of crime ("PIC"). On May 12, 2010, Judge Renee Cardwell Hughes sentenced Petitioner to an automatic life without parole sentence for first-degree murder and imposed concurrent terms of imprisonment of twenty to forty years for attempted murder, three years and six months to seven years for VUFA 6105, three years and six months to seven years for VUFA 6106, and two years and six months to five years for PIC.

Following a timely direct appeal, the Superior Court affirmed Petitioner's judgment of sentence on February 14, 2012. *Commonwealth v. Maldonado*, 1595 EDA 2010 (Unpub. Memo.) (Pa. Super., Feb. 14, 2012). The Supreme Court denied Petitioner's Petition for Allowance of Appeal on March 21, 2013. *Commonwealth v. Maldonado*, 448 EAL 2012 (Pa., March 21, 2013).

Petitioner filed an initial timely pro se PCRA petition on February 28, 2014. The PCRA court initially appointed Petitioner counsel, who filed an amended PCRA petition on October 31, 2017, abandoning several meritorious claims raised by Petitioner. On August 11, 2019, Petitioner filed a supplemental petition, which challenged the trial court's now infamous jury instruction, which is one of many meritorious issues raised in the instant petition, amonst trial court errors and *Brady* violations. On December 3, 2019, Petitioner filed a motion to proceed pro se and an amended PCRA petition. On July 10, 2020, the PCRA court appointed new counsel. On February 21, 2021, Petitioner, through counsel, filed a supplemental PCRA petition, where new counsel also abandoned several meritorious claims raised by Petitioner, i.e. trial court errors and *Brady* violations.

On April 26, 2021, the Commonwealth filed a motion to dismiss. On May 27, 2021, the PCRA court issued its notice of intent to dismiss without a hearing pursuant to Pa. R. Crim. P. 907. On July 20, 2021, the PCRA court dismissed the petition.

On August 11, 2021, Petitioner filed a timely notice of appeal and statement of matters complained of on appeal. On January 20, 2023, the Superior Court affirmed the PCRA court's dismissal. On February 20, 2023, Petitioner filed a Petition for Allowance of Appeal, which was denied JUNE 27, 2023. Writ of Certiorari to the Supreme Court of the United States was filed on JULY 16, 2023,

REASONS FOR GRANTING THE PETITION

This matter is part of the sad progeny of a woefully deficient jury instruction, which the state court has already declared unconstitutional (*see* Appendix C, *Commonwealth v. Drummond*, 22 EAP 2021 Pa. 2022). At issue in this matter was the trial court's so-called "precious one" jury instruction, which unconstitutionally lowered the standard of proof to sustain a criminal

conviction. The same trial court judge in *Drummond* gave a similar jury instruction in the matter sub judice and is reproduced below:

> But let's be clear about reasonable doubt. I find it helpful to think about it this way. Now each one of you has somebody in your life you love. That's the benefit of having the opportunity to talk with you individually. I know there is someone you love. Take a moment and think if your precious one, the one you love, is told by their physician that they have a life-threatening condition, required [surgery].[1] Now, you're probably going to ask for a second, you might even ask for a third opinion. If you're like me, you will start researching the disease. You will start asking questions. What do you know? What do you know about this disease? What do you know about the treatment protocols? Who are the best doctors in town? Who are the best doctors in the country? What do I do to get the best care possible for my loved one? What are my options?
>
> Now, ladies and gentlemen, at some moment the question will be called, are you going forward with the surgery for your loved ones or not? If you go forward – because you have moved beyond all doubt. There are no guarantees. There are no promises. If you go forward, it's because you have moved beyond all reasonable doubt. A reasonable doubt must be a real doubt. It may not be a doubt that is imagined or manufactured to avoid carrying out an unpleasant responsibility. You may not find a citizen guilty based on a mere suspicion of guilt. The Commonwealth bears its burden on proving each defendant guilty beyond a reasonable doubt. If the Commonwealth has met that burden, then the person is no longer presumed to be innocent and you should find him guilty. On the other hand, if the Commonwealth has not met its burden, you must find him not guilty.

N.T. 5/4/2010 at 109-11.

Trial counsel was ineffective for failing to object to that convoluted and utterly meaningless instruction. In determining whether trial counsel's performance met constitutional muster, courts apply the *Strickland* test. *Strickland v. Washington*, 104 S. Ct. 2069 (1984). A court must determine whether: (1) the underlying claim has reasonable merit; (2) counsel lacked a reasonable basis for his actions or failure to act; and (3) the petitioner was prejudiced by counsel's deficient performance such that there is a reasonable probability that the result of the proceeding would have been different absent counsel's error or omission. *Id.*

[1] The word "surgery" was added by previous counsel. In the official record, the sentence ends suddenly, without a completed thought.

In certain instances, counsel's performance can be presumed deficient when it implicates a federal constitutional right or an integral part of the underlying trial court proceeding. *Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993).

This meaningless 'instruction' has successfully been challenged in the Pennsylvania federal district court, which granted relief on federal habeas corpus review. *Brooks v. Gilmore,* 2017 WL 3475475 (E.D. Pa. 2017); *Gant v. Giroux*, No. 15-4468, ECF No. 37 (E.D. Pa. Oct. 4, 2018); *Bey v. Superintendent Greene SCI*, No. 15-2863 (E.D. Pa. 2017); *McBride v. Glunt*, 2020 U.S. Dist. LEXIS 94150, No. 17-5374 (E.D. Pa. May 28, 2020). In *Brooks*, the federal court declared that instruction constitutionally inform for misstating the law of reasonable doubt and thus was a structural error, which meant that Petitioner did not need to show prejudice pursuant to *Strickland v. Washington*, 104 S. Ct. 2069 (1984).

While the state court's decision in *Drummond* was instructive in providing post-conviction petitioners some clarity in how to challenge the "precious one" instruction in Pennsylvania courts, it did not address whether its holding was retroactive nor whether it announced a new constitutional right for Petitioners. Indeed, the state court's decision goes in one breath from declaring: "It was not merely reasonably likely that the jury used an unconstitutional standard; it was almost a certainty" to "thus, based upon the law extant in 2010, counsel was under no reasonable obligation to raise a challenge to the instruction, as any such objection would have lacked a then-existing legal foundation." *Id* at 29-30. Such turnabout is the equivalent of jurisprudential whiplash, which leaves post-conviction petitioners with the scars of constitutional violations and no remedies to treat them.

Drummond also failed to address how the jury instruction is not a structural error as this high court explained in both *Sullivan v. Louisiana* and *Weaver v. Massachusetts*, 508 U.S. 275,

281-82 (1993) ("'[B]eyond a reasonable doubt' factual finding cannot be made where the instructional error consists of a misdescription of the burden of proof" and prejudice must be presumed).

Petitioner adamantly asserts that the 'instruction' as a whole violated his due process rights. An instruction violates due process where jurors could interpret it to allow conviction based on any "decree of proof below" the reasonable doubt standard. *Cage v. Louisiana*, 498 U.S. 39, 41, 111 S. Ct. 328, 112 L. Ed. 2d 339 (1991). This is true not only in cases of misdefinition, but also where a "correct definition" is in some way muddled or distorted by additional instruction language. *See Whitney v. Horn*, 280 F.3d 240, 256 (3rd Cir. 2002); *United States v. Gordon*, 290 F.3d 539 (3rd Cir. 2002). While judges are afforded substantial discretion in how to instruct criminal juries, they cannot exercise such discretion in a way that distorts the controlling legal principles.

The problem is compounded by the fact that the trial judge structured the hypothetical in terms of the jury proceeding to take action on behalf of their family members, twice using the phrase "if you go forward..." This high court has made clear, however, that a charge on reasonable doubt should be expressed "in terms of the kind of doubt that would make a person hesitate to act rather than the kind on which he would be willing to act." *Holland v. United States*, 348 U.S. 121, 140, 75 S. Ct. 127, 99 L. Ed. 150, 1954-2 C.B. 215 (1954).

In essence, the state court glossed over the due process issues, protected by the Fifth and Fourteenth Amendments to the United States Constitutions and only analyzed the ineffective assistance of counsel claims under the three-pronged *Strickland* test – a critical component which has national importance of having this high court decide the question involved, not only for the sake of Petitioner, but also for others similarly situated and in the interest of justice.

Moreover, Petitioner also presents a second issue of national importance, which is trial counsel's ineffectiveness for failure to object to the trial court's curative instruction as related to eyewitness Jennifer Patrick. That exchange is reproduced below:

> [Petitioner's Trial Counsel]: Do you remember that at the preliminary hearing? [The Commonwealth] said to you, you have to go take care of your bench warrant?
>
> [Jennifer]: I know. But I took care of my bench warrant.
>
> [Petitioner's Trial Counsel]: I know you did. But I'm talking about before you saw the detectives. You had an outstanding bench warrant?
>
> [Jennifer]: Yes.
>
> [Petitioner's Trial Counsel]: When they came and got you?
>
> [Jennifer]: Yes.
>
> [Petitioner's Trial Counsel]: They didn't lock you up for that, did they?
>
> [Jennifer]: No. Because I got it lifted.
>
> [Petitioner's Trial Counsel]: You got it lifted about four days later. Are you with me? Do you remember that?
>
> [Jennifer]: Yes.
>
> [Petitioner's Trial Counsel]: What happened in those four days? Did you stay in jail before you testified at the preliminary hearing or were you allowed to go home?
>
> [Jennifer]: I was in jail.
>
> [Petitioner's Trial Counsel]: I'm sorry?
>
> [Jennifer]: I was locked up.
>
> [Petitioner's Trial Counsel]: How long were you locked up before you –
>
> [Jennifer]: A good week. Not even a week.
>
> [Commonwealth Attorney]: Your Honor, I would just ask defense counsel. I think Ms. Patrick is clearly confused.
>
> [Trial Court]: I think we are totally confused now. Let's clean this up. You got arrested in November of 2006?
>
> Jennifer: Right.
>
> [Trial Court]: And then they let you out of jail:
>
> Jennifer: Yes.
>
> [Trial Court]: You made bail?
>
> Jennifer: Yes.

[Trial Court]: And you were supposed to go to court some time in 2007 before this shooting occurred?

Jennifer: Yes.

[Trial Court]: And you didn't go?

Jennifer: No.

[Trial Court]: You got shot?

Jennifer: Yes.

[Trial Court]: Did you go to the hospital?

Jennifer: Yes.

[Trial Court]: You came home from the hospital?

Jennifer: Yes.

[Trial Court]: Did the homicide detectives come pick you up for your interview?

Jennifer: I was in protective custody.

[Trial Court]: You were in protective custody?

Jennifer: Yes.

[Petitioner's Trial Counsel]: Sidebar, your Honor?

[Trial Court]: Yes, your mess.

(N.T., 4/27/10, Pg. 112-15).

Jennifer also stated: "You just got to bear with me because I take medication. You just got to beat with me because I take medication. You just got to beat with me because I'm not on my medication right now. So you have to bear with me. I am on a lot of medication because of this incident." Id. at 84. After Jennifer stated she was in "protective custody," the trial court claimed the "mess" of her examination on Petitioner's trial counsel. Id. at 115.

After denying trial counsel's motion for a mistrial, the trial court judge issued the following instruction to the jury:

> Ladies and gentlemen, thank you for agreeing to come in late today. You know I had other cases to work on. To say it complicated my day is an understatement but that's okay. I want to start, in addition to thanking you for coming in, to ask for your forgiveness. I was irritated yesterday when I last saw you ... I work very hard at having things go smoothly and things did not go smoothly yesterday afternoon, and I was not pleased about that. And I did something that was wrong and that I

should not have done. I told [Petitioner's counsel] that she created this mess, to quote me. She didn't. Nothing that occurred yesterday afternoon was [her] fault.

There are times, and I would well imagine where you see them in your own life, where the universe kind of comes together and it's like, boom. It was in no way her fault. It was wrong of me to say it. So I apologize to her publicly for saying that. She's a really good lawyer. She works very hard. So part of what has made us late today is my trying to figure this out because that's my job: to make sure the record is clean and that you understand exactly what has occurred.

And what I have been able to determine is that on November 4, 2006, Jennifer ... was arrested. She was arrested for crimes related to possession and sale of drugs. On June 1, 2007, a bench warrant was issued because she failed to show up in court. Clearly that had nothing to do with this case because te date that is relevant to us is June 21, 2007. That's the day that the citizens in question lost their life. [Jennifer] Patrick was injured on that day. She was released from Temple Hospital on June 30, 2007. She stayed with various family and friends between June 30 and September 15, 2007. On September 19, 2007, she testified at the preliminary hearing. One year later, completely unrelated to this case as best I can tell, her bench warrant was lifted on September 18, 2008.

Now, [Jennifer] used a term that we don't actually use yesterday. She said she was in protected custody. She also told us at some point during her testimony that she takes medication but she did not take her medication yesterday. When she used that term "protective custody," she was referring to what we call witness relocation. [Jennifer] was placed in witness relocation from February 12, 2008, until April 14, 2008, in a case completely unrelated to this proceeding.

It is my conclusion – and you're not required to draw any conclusion that I have reached. My conclusions have no bearing on you. But it is my conclusion that yesterday was a long day. She didn't take her meds. We were asking all these questions about dates and times. I think she got confused. These are the facts. The inferences you draw from these facts and how you use this information is solely for you to decide. But these are the facts for you to use as appropriate.

(N.T., 4/28/10 at 41-44). Petitioner's trial counsel failed to object to the curative instruction.

In its memorandum opinion, the Pennsylvania Superior Court erroneously stated:

[W]e note that appellant benefitted from Jennifer's testimony and the trial court's actions afterward. The curative instruction indirectly touched upon Jennifer's credibility, or lack thereof, painting the witness as confused, attributed the confusion to her not taking her medication before testifying, and as being involved in multiple criminal matters.

Maldonado at *25.

The Pennsylvania Superior Court's analysis of this claim is contrary both to its own precedent and the fundamental norms of trial. After the trial court judge had excoriated trial

counsel, in front of the jury, for what was a violation pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) – that trial court judge attempted to cure that violation by lying to the jury about the circumstances leading to an eyewitness being placed in protective custody (i.e., "witness protection"). For this reason it is a claim worthy for this Supreme Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Angel Maldonado/AGENT

Date: 7/16/2023