No. 23-5319

IN THE

SUPREME COURT OF THE UNITED STATES

ANTOINE L. RIGGINS

PETITIONER

V.

ERIC TICE, et al.

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS IN THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Antoine L. Riggins
169 Progress Drive
Waynesburg, PA 15370

QUESTION(S) PRESENTED

1. IS THERE AN URGENT NEED TO FURTHER DISCUSS THE EXCEPTION MENTIONED IN BRECHT V. ABRAHAMSON 507 U.S. 619 (1993). WHERE DEFENDANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS ARE VIOLATED, WHEN THEIR NON-TESTIFYING CODEFENDANT'S CONFESSION IS USED AGINST THEM AT A JOINT TRIAL?

2. IS A DEFENDANT DENIED A FAIR TRIAL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS, WHEN A SPECTATOR'S EMOTIONAL OUTBURST DURING TRIAL WAS PROVING TO HAVE HAD AN IMPACT ON THE JURY?

LIST OF PARTIES

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

- Michelle Henry (Attorney General)
- Eric Tice (Superintendant of SCI Somerset)

RELATED CASES

Commonwelth v. Antoine Riggins, No. CP-51-CR-0204501-2006, Court of Common Pleas Philadelphia. Judgment entered April 14, 2009 (Direct Appeal)

Commonwelth v. Riggins, No 3314 EDA 2008, Pennsylvania Superior Court. Judgment entered June 7, 2010 (Direct Appeal)

Commonwelth v. Antoine Riggins, No. CP-51-CR-0204501-2006, Court of Common Pleas Philadelphia. Judgment entered January 30, 2017. (PCRA)

Commonwelth v. Riggins, No. 1110 EDA 2016, Pennsylvania Superior Court. Judgment entered March 29, 2018 (PCRA)

Riggins v. McGinley, No. 2-18-cv-04429, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered March 29, 2022

Riggins v. SCI Somerset Superintedant, No. 22-1881, U.S. Court of Appeals for the Third Circuit. Judgment entered January 4, 2023 (COA)

Riggins v. SCI Somerset Superintendant, No. 22-1881, U.S. Court of Appeals for the Third Circuit. Judgment entered March 29, 2023 (Rehearing En Banc)

Antoine Riggins v. Eric Tice, No._____, United States Supreme Court. Judgment entered_____

TABLE OF CONTENT

INDEX TO APPENDICES

APPENDIX B: District Court *ORDER* and *OPINION*

APPENDIX C: Magistrate Judge *REPORT AND RECOMMENDATION*

APPENDIX D: Rehearing En Banc denial *ORDER*

APPENDIX C: Request of time to file Writ of Certiorari *ORDER*

TABLE OF AUTHORITIES CITED

CASES **PAGES**

STATUTES AND RULES

OTHERS

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.

OPINION BELOW

For case from the Federal Court:

The opinion of the United States Courts of Appeals appears at Appendix A to the petition and is unpublised.

The opinion of the United States District Court appears at Appendix B to the petition and is reported at *Riggins v. Superintendant McGinley*, et al. 2022 U.S. Dist LEXIS 56377.

JURISDICTION

For case from Federal Courts:

The date on which the United States Court of Appeals decided my case was March 29, 2023.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 29, 2023, and copy of the order denying rehearing appears at Appendix D.

An extention of time to file the petition for a Writ of Certiorari was granted to and including August 7, 2023 on June 28, 2023, in Application No. 22-A-1123.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

***United States Contitution, Amendment* VI**:

In all criminal prosecutions, the accused shall enjoy the right to...an impartial jury of the State and District wherein the crime shall have been committed...

***United States Constitution, Amendment* XVI (1)**:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 17, 2005, around 10:00pm, Terrell Pough (Victim) was shot outside his apartment complex, and later pronounced dead.

On November 30, 2005, after investigating the death of the Victim, Antoine Riggins (Petitioner) was charged with the death of Terrell Pough, after detectives claimed Petitioner allegedly confessed.

Thereafter, a Preliminary Hearing was conducted, and Trial date of Februay 26, 2007 was set.

A. State Court Proceedings

Petitioner was tried by jury, jointly, with his codefendant, Saul Rosario under docket number CP-51-CR-0204501-2006.

On February 23, 2023, a motion to suppress was files, but was denied.

Petitioner's trial was conducted from February 26, 2007 thru March 6, 2007 before the Honorable Shelly Robins New.

On March 6, 2007, the jury returned a verdict of guilty for Petitioner of murder in the first degree, robbery, carrying a firearm without license, criminal conspiracy, theft, possession of instrument of crime, and receiving stolen property.

On March 15, 2007, Petitioner was sentenced to life imprisonment without parole and a consective sentence of 10-20 years imprisonment.

Initially, though requested by Petitioner, trial Counsel did not file a Direct Appeal. However, Petitioner filed a *Pro Se* petition under the Post Conviction Relief Act (PCRA).

On November 10, 2008, after a hearing, the PCRA Court reinstated Petitioner's right to appeal *Nunc Pro Tunc*, the Superior Court affirmed the judgment of sentence. *Commonwealth v. Riggins* 4 A.3d 675 (Pa. Super 2010).

On April 26, 2011, the Pennsylvania Supreme Court denied allowance of appeal. *Commonwealth v. Riggins* 20 A.3d 1211 (Pa. Super).

On April 23, 2012, Petitioner filed a *Pro Se* PCRA petition, and Stephen T. O'Hanlon was appointed to represent him.

On April 11, 2013, Mr. O'Hanlon filed letter and motion to withdraw in accord to *Commonwealth v. Finley* 550 A.2d 213 (Pa. Super 1988).

The Court issued a *Notice of Intent to Dismiss,* under *Pa. R. Crim. P* 907, and Petitioner respond.

On November 22, 2013, the PCRA Court dismissed the petition. However, the PCRA Court did not properly notified Petitioner as required under *Pa. R. Crim. P.* 907. And Petitioner was instructed to file, yet, another, PCRA petition to reinstate his appeal rights.

On March 18, 2016, three years later, with the assisstance of *Pro Bono* Counsel (Criag Cooley), the PCRA Court reinstated Petitioner's right to appeal from the dismissal of his first PCRA petition *Nunc Pro Tunc.*

On January 30, 2017, the PCRA Court issued a written opinion.

On March 29, 2018, the Superior Court affirmed the denial for relief. Commonwealth v. Riggins 188 A.3d 586 (Pa. Super 2018).

On September 18, 2018, the Pennsylvania Supreme Court denied allowance of appeal.

B. Habeas Corpus Proceedings

On November 26, 2018, Petitioner filed a timely *Pro Se* Writ of Habeas Corpus in federal Court.

On Februay 3, 2019, Petitioner retained private Counsel (Micheal Wiseman).

On July 31, 2019, Respondents were ordered to reply.

On August 13, 2019, Counsel for Petitioner filed a *Brief In Support* of Petitioner's

petition, reducing the petition down to two claims.

On December 18, 2019, Repondents answered Petitioner's petition.

On February 1, 2020, Counsel for Petitioner filed a *Reply Brief.*

On February 10, 2020, Counsel for Petitioner filed a *Notice of Spplemental Authority.*

On January 4, 2022, the Magistrate Judge filed a *Report And Recommendation (R&R)*, denying Petitioner any relief. (Appendix C)

On March 20, 2022, Counsel for Petitioner filed four objections to the Magistrate Judge's *R&R.*

On March 29, 2022, the Chief District Judge filed a *Memorandum* in support of his *Order* to deny Petitioner any relief.

On April 24, 2022, Petitioner filed a timely *Pro Se Notice of Appeal* in the District Court to appeal to the United States Court of Appeal for the Third Circuit.

On July 14, 2022, Petitioner, filed a *Pro Se, Application for A Certificate of Appealability (COA)* in the Third Circuit Court of Appeals.

On January 4, 2023, a Three Panel Judge denied Petitioner's *COA* without an opinion. (Appendix A)

On February 9, 2023, Petitioner, filed a timely Pro Se, *Petition For Rehearing En Banc* in the Third Circuit Court of Appeals.

On March 29, 2023, the *En Banc* panel denied Petitioner any relief. (Appendix D)

On June 11, 2023, Petitioner filed a *Motion For Extention of Time* to file a Writ of Certiorari in this Supreme Court.

On June 28, 2023, this Court granted Petitioner a time extension date of August 7, 2023.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

To our United States Supreme Court Justice Sonia M. Sotomayor.

NOW COMES, Antoine Riggins, Petitioner (*Pro Se*), on this 17 day of July 2023, requesting that this Supreme Court grant Petitioner a Writ of Certiorari for the herein reasons.

Further, Petitioner likes to remind this Court of its ruling in *Erickson v. Pardus* 551 U.S. 89 (2007) when viewing the petition before you. Where this Court stated:

> "Pro Se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers."

Id.

Thus, Petitioner intend to present two issues of great importance to our criminal Justice system. Issuses that has been known to have had a robust impact on criminal trials, and only this United States Supreme Court can resolve. And in doing so, Petitioner prays to achieve what our late Justice Ruth Bader Ginsburg was recognized for doing (Quoting *Dorothy Kenyn*):

> "Justice Ginsburg would first change minds, then change the law."

Id.

And from Petitioner's knowledge and research in this Court, the following two issues are being raised for the first time, and are issues previous Justices have recognized as needing further discussion, as will be mentioned and quoted herein.

I. IS THERE AN URGENT NEED TO FURTHER DISCUSS THE EXCEPTION MENTIONED IN BRECHT V. ABRAHAMSON 507 U.S. 619 (1993). WHERE DEFENDANTS' SIXTH AND FOURTEENTH AMENDMENT RIGHTS ARE VIOLATED, WHEN THEIR NON-TESTIFYING CODEFENDANT'S CONFESSION IS USED AGAINST THEM AT A JOINT TRIAL?

A. REASON FOR WRIT

During Petitioner joint trial, his non-testifying co-defendant's confession to police was used against him. Though his co-defendant's statement was redacted and a cautionary instruction to the jury was giving, the prejudicial impact it posed could not be cured, violating his Sixth and Fourteenth Amendmant rights to confront the witness against him under *Bruton v. United States* 391 U.S. 123 (1968).

The State Court reviewed this claim on the merits through the lens of a "*Trial Counsel Ineffective claim.*" However, the State Court's decision was proving to be an unreasonable application of this United States Supreme Court precedent, and a violation of this Petitioner's Sixth and Fourteenth Amendment rights.

The District Court agreed, and the Third Circuit Court of Appeals adopted:

> "In light of this precedent and considering the matter before us, we conclude that the Pennsylvania Superior Court unreasonably applied clearly established Federal law set forth by *Bruton*, *Richardson* and *Gray*."

R & R at 14 (Append A)

> "Having found Riggins's Sixth Amendment Confrontation Clause rights were violated."

R & R at 17

Chief District Judge's agreement:

> "After reviewing de novo, the Court finds the R&R correctly determined... (1) the record did support a finding of a *Bruton* violation."

CJM at 5 (Append C)

The Third Circuit Court of Appeals adopted the District Court's ruling, making it evident, they too, agreed on a *Bruton* violation. (See Append D) A

However, though both the District Court and Third Circuit Court of Appeals fully agreed there was a *Bruton* violation, both Courts also agreed it to be "harmless error" under *Brecht v. Abrahamson* 507 U.S. 619 (1993), and for that reason , Petitioner brings this writ.

Petitioner, now, humbly urges this United States Supreme Court to decide on this important federal question, on why the "*Brecht* exception" should be applied, which was only briefly discussed in *Brecht*[1], but is of great importance in the integrity of habeas relief.

B. VIOLATION

In this case, three decisions of this Court (*Bruton v. United States* 391 U.S. 123 (1968), *Richardson v. Marsh* 481 U.S. 200 (1987) and *Gray v. Maryland* 527 U.S. 185 (1998) set the standard for a violation of a defendant's Sixth Amendment right to confront witnesses against him. This right is implicated whenever the govenment presents an out-of-court statement (such as a confession) of a non-testifying codefendant during a joint trial. This Court, therefore has held that the admission of such statements may violate a defendant's Sixth Amendment rights-"even if the Court redacts the statement to eliminate the defendant's name and instructs the jury not to consider the statement against the defendant." *Gray v. Maryland* 527 U.S. 185 (1998).

Petitioner, now presents the State's clear and deliberate violation of his Sixth and Fourteenth Amendment rights, when the State used his non-testifying co-defendant's confession against him during trial from Opening to Closing arguement:

---

1 This exception to *Brecht* was only briefly discussed, in part, in a footnote (*Id.* 507 U.S. at 638 n #9), and is of dire importance. This is to ensure, as this Court agreed in *Brecht* that, "habeas relief under §2254 is reserved for those prisoners whom society has grievously wrong." *Id* at 654.

1. Opening Arguement

Before the jury heard **any** evidence in the case (Including the codefendant's confession), it heard from the Prosecutor that the codefendant allegedly gave Petitioner the gun used in the crime, setting the narrative fo the jury when they hear Petitioner's codefendant's confession read into evidence:

> "Now what did Saul Rosario do you may be wondering?...Saul provided the 357 gun...and stood right beside the Shooter when he fired that kill shot. **And he's sitting right next to him** because, Ladies and Gentlemen, all for one and one for all."[2]

N.T. 2/27/07 p. 142-43

This Supreme Court in *Gray* noted the following in instances like the one just mentioned:

> "even where the confession was the very first [piece of evidence] introduced at trial, the jury would have known that the statement obviously referr[ed] directly to someone. Where the jury need only lift his eyes to **[the other defendant] sitting at counsel table**, to find what will seem the obvious answer." (emphasis added)

Id. 523 U.S. at 193

2. During Petitioner's Testimony

If the Commonwealth's opening remarks were not harmful enough, the way Petitioner's codefendant's confession was used thoughout trial as evidence against him, clearly, warranted Petitioner relief under *Gray* and *Bruton.*

---

2 No evidence was introduced, nor did the Commonwealth argue that there was a third person involved in this case, making the likelihood the jury would clearly assume the redacted names ("My friend", "The other guy") during trial was indeed Petitioner in this case.

While Petitioner was exercising his right to testify in order to prove his innocence, the Commonwealth and co-counsel used Petitioner's non-testifying codefendant's confession against him, and by doing so, undid redactin, violating Petitioner's Sixth and Fourteenth Amendment rights, and further, making his codefendant's confession "incriminatin on its face."

Questioning (Violation) went as follows:

Commonwealth

DA: And you saying that Saul Rosario was lying when he said that he saw **you** shoot Terrell Pough?

DA: And you are still saying that Saul was lying when he gave the statement to police saying that he was there with **you** when **you** killed Terrell Pough?

N.T. 3/5/07 p. 95

Codefendant's Counsel

Co-counsel: And you sit there today and you tell the Ladies and Gentlemen of this jury that the police are lying against you right?

Co-counsel: What he (codefendant) said in his statement was true though. **You** came to him and got the gun from his house, right? He gave it to **you**?

Id. at 76-77.

Co-counsel: So, your little brother [Though not brothers, referring to codefendant] at the time he got locked up or taken down to the police station, of all people in the world he could pick and say what was going on about this case, he put **you** in it?

Id. at 89.

This line of questioning of Petitioner during cross-examination clearly informed the jury that Petitioner was the person, in fact, named in his codefendant's confession, violating his right to confront the witness against him.[3]

This Supreme Court in *Gray v. Maryland* 527 U.S. 185 (1998) addressed the scope of redction, holding that:

> "Redactions that simply replace a name with an obvious blank space or a word such as 'deleted' or a symbol **or other similarly obvious indications of alteration**, however, leave statements that, considered as as a class, so clearly resemble *Bruton's* unredacted statements that, in our view, the law must require the same result."[4]

Gray 527 U.S. at 192

Therefore, the reasons for the *Gray* rule, set by this Supreme Court that prohibits redactions that "notify the jury that a name has been deleted" applies with exception force in this case:

> "A jury will often react similarly to an **unredacted confession** and a confession redacted in this way, for the jury will often realize that the confession refers specifically to the defendant. **This is true even when the State does not blatantly link the defendant to the deleted name...**"

Id. at 193

If this Supreme Court in fact believes "the jury will often realize that the confession refers specifically to the defendant," especially in a case as the one at hand, and that "[t]his is true even when the State does not blatantly link the defendant to the deleted name." Then in the case before you today, where the Commonwealth and Petitioner's codefendant counsel **blatantly and**

---

3 Petitioner's trial counsel never objected to this line of questioning or remarks, which wa his claim in the lower federal courts as well.

4 In *Vasque v. Wilson* 550 F.3d 270 (3rd Cir 2008), the Court of Appeals held that "a use of "the other guy" in a redacted reference to the defendant **was too obvious to qualify as a proper redaction**". *Id.* at 279-81.

purposefully linked Petitioner to his non-testifying codefendant's confession, would warrant the same results as *Gray* and *Bruton.*

3. Closing Arguement

To deepen the prejudicial impact, in which, such a violation had on Petitioner. Before deliberation, the jury heard again, and was made aware of who "the other guy," and "My friend" was in Petitioner's non-testifying co-defendant's confession. Ths time, not only did the Prosecutor and co-counsel make them aware, but the trial Judge did as well:

COMMONWEALTH

> "Antoine Riggins planned to kill Terrell."
> "He got the mean...The means to that murder was provided by Saul Rosario."

N.T. 3/5/07 p. 277

> "But for Saul Rosario's actions in assisting the killer, Antoine Riggins, Terrell might be here today. I'm asking you to hold them both responsible."

N.T. 3/5/07 p. 295

CO-COUNSEL

> "Mr. Riggins I suggest to you attained the weapon from Mr. Rosario."

N.T. 3/5/07 p. 218

> "And what does Saul do? He admits that he gave Mr. Riggins the gun. He admits that he was there...He didn't deny any of that..."

N.T. 3/5/07 p. 233

Trial Judge Instuction

> "You also heard that the words read to you in the alleged statement of defendant Antoine Riggins differed slightly when read by the detective and later read by the District Attorney in her cross-examination. You are not to infer that anyone purposely misstated anything when he or she read the words to you. Under the law, **we are requested to redact or sanitize certain words in an alleged statement** in a case such as

> this. The rules change slighty if a defendant testifies and is then cross-examined. Do not speculate, Ladies and Gentlemen as to the reason."

N.T. 3/6/07 p. 32

In that instance, it is without questoin, the jury knew Petitioner was "the other guy", "My friend" mentioned in his co-defendant's confession. And though the Judge instructed the jury to "not speculate," this Supreme Court has recognized the risk of prejudice stemming from the introduction of a codefendant's confession is so high that, in some cir cumstance, even a limiting instruction cannot cure the constitutional problem. See *Bruton v. United States* 391 U.S. 123 (1968):

> "There are some context in which the risk that the jury will not, or cannot follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored."

Id. at 136.

In the following section, Petitioner will demonstrate how the Third Circuit Court of Appeals decided an important federal question that not only conflicts with this Supreme Courts pertinent decisions, but decisions of their own, and one that continues to effect criminal defendants in every Circuit of the United States.

C. REASON WRIT SHOULD ISSUE

As laid out above. Petitioner, without question, suffered a denial of his rights guaranteed by the Sixth and Fourteenth Amendments. Rights that were rooted in the *Bill of Rights*, and championed in Congress by our fourth President James Madison who informed Congress that, the "independent" federal courts would be the "guardians of [these] rights." However, though the lower federal courts agreed Petitioner's rights were indeed violated, they ruled it to be a harmless error.

This Supreme Court, over time, ruled on decisions such as *Kotteakos v. United States* 328 U.S. 750 (1946), *Chapman v. California* 386 U.S. 18 (1966), *Brecht v. Abrahamson* 507 U.S. 619 (1993) and *O'Neal v. McAninch* 513 U.S. 432 (1995) whenever such constitutional rights

were prone to harmless-error analysis. Such as the case at hand.

In *Brecht*, this Court ruled to apply the standard set out in *Kotteakos v. United States* 328 U.S. 750 (1946) for case on Habeas Corpus. There, this Court also inform the independant Federal Courts on how to properly apply such standard. Petitioner here, grateful, simply quotes this Court in Brecht, as it's language there was so elegantly put to aide Petitioner's claim here:

> "To apply the *Kotteakos* standard properly, the reviewing court must, therefore, make a de novo examination of the trial record. The Court faithfully engages in such de novo review today...The *Kotteakos* requirement of de novo review of errors that prejudice substantial rights-as all constitutional errors surely do-is thus entirely consistent with the Court's longstanding commitment to the de novo standard of review of mixed questions of law and fact in habeas corpus proceeding. See *Wright v. West* 505 U.S. at 299-303.
>
> The purpose of reviewing the entire record is, of course, to consider all the ways that error can infect the course of a trial. Although The Chief Justice properly quotes the phrase applied to the errors in *Kotteakos* ("substantial and injurious effect of influence in determining the jury's verdict.") at 623, we would reread *Kotteakos* itself if we endoresd only a single-minded focus on how the error may (or may not) have affected the jury's verdict...
>
> In a passage that should be kept in mind by all courts that review trial transcripts, Justice Rutledge wrote that the question is not "were they [the jorors] right in their judgment, regardless of the or its effect upon the verdict. It is rather what effect the error had or reasonably may be taken to have had upon the jury's decision. The crucial thing is the impact of the thing done wrong on the minds of other men, not one's own, in the total setting.
>
> This must take account of what the error meant to them, not singled out and standing alone, but in relation to all else that happend. And one must judge others' reactions not by his own, but with allowance for how others might react and not be regarded generally as acting without reason. This is the important difference but one easy to ignore when the sense of guilt comes strongly from the record. *Id.* at 764.

Brecht 507 U.S. at 642-43

However, the lower federal courts decided in a way that conflicts with this Court. Petitioner proceeds to demonstrate how.

First, the Court of Appeals denied Petitioner's request for a *Certificate of Appealability* (COA) under 28 *U.S.C.* §2253 (c) (2) and cited *Slack v. McDaniel* 529 U.S. 473 (2000), though their decision conflicts with this Court. Under § (c) (2) and *Slack* it's stated:

> "To obtain a COA the applicant must make a substanial showing of the denial of a constitutional right."

Id. at 483.

Furthermore, the Court of Appeals merely paid lipservice guiding the issuance of a COA. (See Append D) This Court however, reversed the Fifth Circuit's decision for this same reason and held that:

> "reasonable jurists would find debatable or wrong the District Court's dispostion of [Petitioner's]...claim, and that [Petitioner] is therefore entitled to a Certificate of Appealability." (emphasis added)

Miller-El v. Cockrell 537 U.S. at 338

This Court in *Miller-El*, further stated, why in certain instance a COA should issue:

> "[A] COA does not require a showing that the appeal will succeed. According, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in *Slack* would mean very little if appellant review were denied because the prisoner did not convince a Judge, or, for that matter, three Judges, that he or she would prevail. It is consistent with §2253 that a COA will issue in some instances where there is no certainty of unltimate relief." *Barefoot*, at 894, *n* 4.

Miller-El, 537 U.S. at 337.

Moreover, Petitioner, having made a clear and "substanial showing of the denial of a constitutional right," as domonstrated in section (B) of this claim and why a COA should have

been issued, moves to his next point.[5]

This Court in *Brecht* ruled that, in granting habeas relief, the error had to have "had a substanial and injurious effect or influence in determining the jury's verdict." *Id.* 507 U.S. at 623. And so, the lower Courts ruled the *Bruton* violation in this case did not have such an effect:

> "The Sixth Amendment *Bruton* violation was harmless under *Brecht* and did not have such a "substanial and injurious" effect on the jury's verdict to justify a grant of the writ."

CJM at 1. (See Append C)

However, this decision was also an important federal question that was in conflict with this Court for two (2) reasons.

First, this Court in *Brecht* (Quoting *Greer v. Miller* 438 U.S. 756 (1987)) announced an exception to *Brecht*, stating:

> "Our holding does not foreclose the possibility that in an unusual case, a **deliberate and especially egregious [constitutional] error of the trial type, or one combined with a pattern of prosecutorial misconduct**, might so infect the integrity of the procedding as to warrant the grant of habeas relief, **even if it did not "substanially influence" the jury's verdict.**" (emphasis added)

Id. 507 U.S. at 638.

---

5 The Court of Appeals in the Third Circuit rendered no opinion of their own, but instead chose to adopt that of the District Court. For that reason, Petitioner's arguement is based off the District Court's opinion.

And further, in her dissenting opinion, Justice O'Connor stated:

> "Moreover, since the Court only mentions the possibility of an exception, **all concerned (Petitioner) must also address whether the exception exists at all.**" (emphasis added)

Id. at 655.

Petitioner, now demonstrates the exception, in fact, does exists. And further urge this Court to recognize the need for further discussion on this "exception," and the need for its "existance."

In the first part of the exception, it states:

> "In unusual cases, a deliberate and especially egregious error...may warrant relief."

Id. at 638.

Petitioner, in section (B) of this claim, laid our the "deliberate and especially egregious error" which violated his rights during trial. And something the lower Courts has acknowledged, and Petitioner mentioned herein in section (A) of this claim.

The second part of the *Brecht* exception is:

> "or one that is **combined with a pattern of prosecutorial misconduct, may infect the integriey of the proceeding to warrant habeas relief,** even if it did not "substanial influence" the jury's verdict." (emphasis added)

Id. at 638.

If a *de novo* review of the entire record was conducted as instructed in *Brecht*, then in this unusual case, the "deliberate and especially egregious error," "combined with [the following] pattern of prosecutorial misconduct," would surely warrant relief and demonstrate the need for the *Brecht* exception existance:

DELIBERATE PROSECUTORIAL MISCONDUCT[6]

1. Prosecutor deliberately undid redaction during trial, as mentioned herein in section (B) of this claim.
2. Prosecutor knowingly allowed her witness to lie to jury, and made no effort to correct him. *N.T.* 3/2/07 p. 100.[7] (This in and of itself was a violation of *Napue v. Illinois* 360 U.S. 264 (1959))[8]
3. During Closing Arguement, Prosecutor deliberately told the jury Petitioner's testimony was "incredible":

> "Ladies and Gentlemen, you don't automatically give credit to somebody just because they get on the stand...Ladies and Gentlemen, the testimony of Antoine Riggins (Petitioner) was totally, absolutely, and positively incredible."[9] NT 3/5/07 p.288

Not only do Courts rule this type of statement denies a defendant a "fair trial".[10] See *State v. Reed* 684 P.2d 699 (Wash 1984). Accord *Watson v. United States* 552 U.S. 74 (2007:

> "Defendant's right to fair trial by impartial jury was violated by prosecutor's repeated statements in closing that defendant

---

6 Petitioner laid this out for the Court of Appeals in his request for a COA, and in his *Petition for Rehearing En Banc* as well.

7 From the time Petitioner was charged and throughout Court proceedings, he has claimed he was manhandled and tricked into sigining a fabricated confession. Petitioner even testified to this at trial. However, when the Prosecutor asked the above mentioned witness (Sgt. Wilkins) "did Detective White ever interview Mr. Riggins (Petitioner)," the witness stated "No".

However, seven (7) days before at Petitioner's *Motion to Suppress* hearing, the detective (Det. White), in fact, admitted to questioning Petitioner privately before Petitioner ever provide his alleged confession. N.T. 2/3/07 p.35. (Though Det. White testified at Suppress Hearing, he was not called to testify at trial, so the jury never heard this)

8 Petitioner raised this claim in the State Court, and in his initial Habeas Petition as well. However, habeas corpus counsel did not agree nor felt it was a good claim, though it would have aided Petitioner's story/innocence.

9 The Trial Court nor trial counsel objected or corrected such comments made by the Prosecution to the jury at that time or any other.

10 Petitioner tried his hardest, but could find no caselaw in his Circuit or this Court to support his claim of prosecutor's remarks.

was a liar"

Reed. 684 P.2d 699 (Wash 1984)

This told they jury moments before they were set to deliberate, in fact, not to believe the defense of Petitioner, denying him a fair trial as ruled by this Court.

The "pattern of prosecutorial misconduct" mentioned above, combined with the "deliberate and especially egregious [constitutional] error," demonstrates the need for the "exception" our Justice Stevens raised in *Brecht* and *Greer*. Also, it lends aide to a passage Justice Stevens used from *Kotteakos*, quoting Justice Rutledge on "[what] should be kept in mind by all courts that review trial transripts":

> "[T]he question is not were they (the jury) right in their judgement, regardless of the error or its effect upon the verdict. It is rather what effect the error had or reasonably may be taken to have had upon the jury's decision. The crucial thing is the impact of the things done wrong on the minds of other men, not one's own, **in the total setting.**" (emphasis added)

Brecht 507 U.S. at 642-43.

Petitioner's second reason the lower Court's decision conflicts with this Court in *Brecht* is, the evidence in *Brecht* and Petitioner's case, here, are totally opposite to render the same relief, making the *de novo* review of the lower Courts flawed in a sense.

First, *Brecht* openly admitted in Court to the crime, Petitioner here, maintained his innocence, despite the fabricated confession used against him.[11]

---

11 It as been recently proving in the city (Philadelphia) in which, Petitioner here, has been convicted that, fabricated confession has lead to wrongful convictions. Here are but a few articles, last visited on January 28, 2020:

https://whyy.org/episodes/coerced-to-confess-philly-man-exonerated-after-27-years ("After 27 years in prison, Willy Veasy was exonerated after lawyers discovered that two detectives had pressure him into confessing to a murder he didn't commit")

https://whyy.org/articles/city-awards-west-philly-man-750000-settling-claim-coerced-murder-confession/ ("City awards West Philly man $750,000, settling claim of coerced murder confession")

According to the National Registry of Exonerations, 12% of the Nation's 2,547 exonerations to date, have a false confession as a contributing factor. (The Registry is a Project of the University of California Irvine Newkirk Center for Science and Society; the University of Michigan Law School and Michigan State University College of Law

Second, *Brecht* was caught driving the victim's car after the incident. In Petitioner's case, another individual was caught in possession of victim's car.[12]

There was no cumulative or corrobarating evidence to aide *Brecht's* story, ther wa various evidence to corroborate Petitioner's herein testimony.

Furthermore, this Court in *Delaware v. Van Arsdall* 475 U.S. 673 (1986), provided Courts with several factors in reviewing Confrontation Clause errors:

> "[1] The importance of the witness' testimony in the prosecutor's case, [2] Whether the testimony was cumulative,
> [3] The presence or absence of evidence corrobrating or contradicting the testimony of the witness on material points,
> [4] The extent of cross-examination otherwise permitted, and of coures, [5] The overall strength of the prosecutor's case."
> (Numbers Brackets added)

Id. at 684.

For sake of argument, Petitioner starts with number five (5) of *Van Arsdall* review factors.

In all due respect, the "overall strength of the prosecutor's case" was relatively weak, making the prejudical effect here robust, and the *Brecht* "exception" essential in cases as the one before you today.

Here, the Commonwealth and Courts continue to base their harmless-error review on one, Petitioner's alleged confession, quoting *Schneble v. Florida* 405 U.S. 427 (1972) as stating:

> "the most commonly cited factor for a finding of harmless error

---

. The referenced statistic can be found at http://www.law.umich.edu/special/exonerations/Pages/ExonerationsContribFactorsByCrime.aspx., last visited January 28, 2020

12 The individual mentioned above wa never charged nor trialed with Petitioner and his codefendant. Nor did the prosecution call this individual to testify, even though the individual claimed Petitioner was allegedly with him in the victims car, in his statement to police.

is the introduction at trial of a defendant's own confession."[13]

Id. at 430.

However, as in *Brecht*, the defendant in *Schneble*, though raising a *Bruton* claim there, stood by his confessions made to police. But again, this was not the case before you today. Petitioner here, denied and distance himself from his alleged confession, just as the defendant did in *Cruz v. New York* 481 U.S. 186 (1987), fifthteen years after the ruling in *Schneble*.

In *Cruz*, this Court United States Supreme Court held that, in some instances, even when a defendant's own alleged interlocking confession is admitted against him during trial, *Bruton* is still applicable:

> "[I]t seems to us that 'interlocking' bears a positively inverse relationship to devastation. A codefendant's confession will be relatively harmless if the incriminating story it tells is different from that which the defendant himself is alleged to have told, but enormously damaging if it confirms, in all essential respects, the defendant's alleged confession. It might be otherwise if the defendant were standing by his confession, in which case it could be said that the codefendant's confession does no more then support the defendant's very own case. **But in the real world of criminal litigation, the defendant is seeking to avoid his confession--on the ground that it was not accurately reported, or that it was not really true when made."**

Cruz, at 192.

Furthermore, Petitioner ask this Court to consider what Justice Marshall expressed in his dissenting opinion, in the very same case (*Schneble v. Florida* 405 U.S. 427 (1972)) the lower Court used to deny Petitioner, here, relief, when considering the alleged confession of a

---

13 The detectives involved in the taking of Petitioner's alleged confession has recently been added to a list of corrupt officers in Philadelphia, some for fabricating documents. (See. *ThePoliceTransparencyProject.com*)

Petitioner has yet to file a "newly discoveried" claim due, in part, to no officer being charged, only, accused.

Petitioner on appeal:

> "The mistake the Court makes is in assuming that the jury accepted as true all of the other evidence. The case turns on this assumption, and as [fully] demonstrated above, it is clearly erroneous...In light of the evidence with respect to **coercive police activities**, we cannot say with evern a minimal degree of certain that the jury did not find the statements involuntary and that it did not choose to disregard them and almost all of the other evidence in the case which derived from [them]."

Id. at 436.

Two, three (3) witnesses who claimed Petitioner made admissions to them after, the crime, but whom was highly impeached during cross-examination, inconsistent testimony and, in part, admitted having motives in lying against Petitioner, were the prosecutor's key witnesses.[14]

This sort of evidence is the type Justice Marshall also spoke on in his dissenting opinion mentioned, herein, in *Schneble*:

> "we cannot say with evern a
> minimal degree of certain that the jury did not find the
> statements involuntary and that it did not choose to disregard them and almost all of the other evidence in the case
> which derived from [them]."

Id. 405 U.S. at 436.

Furthermore, by the lower Courts holding tight that, the above mentioned witnesses being reason for harmless-error ruling, this is, in fact, a conflict of their very own recent ruling in *Johnson v. Superintendant SCI Fayette* 949 F.3d 791 (3rd Cir 2020) where they stated:

> "they testimony of the prosecutor's two key witnesses could not
> be considered 'cumulative' evidence of the petitione's guilt, as

14 Petitioner laid all this out in his Counseled brief in the District Court, as well in each stage of appeal in the Third Circuit Court of Appeals.

> both witnesses were substantially impeached and their testimony was contradicted through other witness testmony."

Id. at 803.

Thus for, Petitioner's codefendant's confession was improperly corroborated by "less-then-credible testimony" and had a prejudicial effect on Petitioner here today.

This further demonstrates a clear triumph for Petitioner under (1), (2), (3) and (4) of the factors set out in *Van Arsdall* mentioned herein.

Three, and for the record. Petitioner would like to make clear that, despite the Commonwealth and lower Court's misrepresentation of the facts, there are **no actual "eyewitnesses" to this crime itself.** Not even Petitioner's alleged codefendant ever stated he witnessed the crime. These witnesses only testified to seeing a number of people in a particular area, not the actual shooting itself take place.

Last, the Commonwealth, as did the lower federal Courts made nothing more then an overstatement of claiming there was "overwhelming evidence," when it mentioned Petitioner's gym bag in victims car and his absence from school after victim's death.[15]

In closing, this case rested solely on a fabricated confession, three (3) witnesses with motives to testify and a host of prosecutorial misconduct that not only mislead the jury, but the Courts throughout Petitioner's appeal process.

THEREFORE, Petitioner prays he has satisfied this Court with recognizing the "exception" in *Brecht* does, in fact, exist, and a need for a further discussion of the "exception." Further, Petitioner humbly request this Court grant him a new trial due, in part, to his Sixth Amendment violation, and any other releif this United States Supreme Court deem worthy.

---

15 First, Petitioner produced school attendance records in the lower Courts, in order to demonstrate that, Petitioner's absence from school started long before victim's death.

Second, Petitioner testified at trial that, he left his bag there after his friend (Victim) dropped him off after school, with the notion his friend would pick him up later that night as they agreed.

II. IS A DEFENDANT DENIED A FAIR TRIAL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS, WHEN A SPECTATOR'S EMOTIONAL OUTBURST DURING TRIAL WAS PROVING TO HAVE HAD AN IMPACT ON THE JURY?

A. REASON WRIT BROUGHT

Petitioner brings this Writ due to it being a question of great importance, and one only this United States Supreme Court can resolve.

After denial for a Writ of Habeas Corpus in the District Court, Petitioner sought a *Certificate of Appealibility* (COA) in the Third Circuit Court of Appeals. There, Petitioner was denied a COA on this issue under *Carey v. Musladin* 549 U.S. 70 (2006). However, though *Carey* was viewed on the influence of a spectator, this Supreme Court viewed that matter on an accessory worn by the spectator, not a verbal outburst like the one before you today.

Further, the Court of Appeals itself citing *Carey*, stated that this Supreme Court has yet to address the issue of a spectator's outburst, and its effect during a criminal trial:

> "[T]he Supreme Court itself admitted that it has yet articulated a rule as to the effect a third-party's outburst or display may have on a criminal trial." (citation omit)

Append C, at p. 32.

And for that reason denied Petitioner any relief, which demonstrates how essential this issue is on a defendant's due process right:

> "[W]e conclude that the instruction remedied any issue as to the admission of 'unsworn' testimony against Riggins and that his claim on this basis is without merit."

Append C, at p. 32 n.19.

For the above reason, Petitioner, in the following sections will present the violation in the case before you, as well as the need for the "new rule" Justice Kennedy spoke of needing to be implement in situations like the one hand in *Carey*:

> "In all events it seems to me the case presented to us here (*Carey*)

> does call for a new rule, perhaps justifed as much as a pre-ventative measure as by the urgent needs of the situation."

Id, 549 U.S. at 81.

B. VIOLATION

While Petitoiner was exercising his right to testify on his own behalf, the mother of the victim erupted into an emotional and compelling outburst from the gallery:

> [Counsel]: How would you characterize your relationship?
>
> [Petitioner]: We was friends.
>
> [The Mother]: 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 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?

N.T. 3/2/07 p. 103-131.

Thereafter, both Petitioner's Counsel and Co-counsel requested a mistrial due to the nature of the incident:

> [Attorney] McDermott: Your Honor, at this point I have to request a mistrial.
> [Attorney] Connor: I join in that request Your Honor.

Id.

After denying both counsel's request for a mistrial, the trial Judge and both Counselor's discussed the issuance of a curative instruction, and how to poll each juror to determine if they could disregard the outburst. There, the Court was made aware of the following.

First, on behalf of the jury, juror number one not only expressed the jury had safety concerns, but a robust compassion for the mother's pain (outburst) was discussed by the jury as a whole, though they were instructed not to throughout trial:

[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?

[Juror]: On the outburst, a few people didn't know exactly what to do, you know, they kind of felt, as she was like, jumping over the bench or something.

[The Court]: So, in other words, **they were worried that something might happen?**

[Juror]: Right.

[Attorney] Connor: I have a question.

[The Court]: Go ahead.

[Attorney] Connor: **Was there talk amongst other jurors about the outburst?**

[Juror]: **It was as soon as we went back**...this was something that everybody felt, you know.

[Attorney] McDermott: Your Honor, before he leaves just in response to Mr. Connor's question. **You said it was something that we all felt** when we went back into the room. I'm not quite sure I understand. **Was is a discomfort or was it a fear?**

[Juror]: I'm human being, We are all human beings. **You know, if you can't feel, you know, a mother's pain, I mean, that was basically it. You feel that.**

N.T. 3/2/07 p. 155-160.

The trial Court, aware of the jury's discussion of two (2) matters regarding the outburst (Safety & A mother's pain), denied Petitioner a fair trial under due process, when it addressed only the "safety" concerns, but not the extent of private jury conversations about "feel[ing] a mother's pain" which is a form of prejudice.

Because there is no record of the extent the mother's outburst had on the jury, though it shows it, in fact, had an effect on the jury. One could only believe that such a robust emotional outburst, in fact, also influenced the jury's verdict, which denied Petitioner not only a fair trial under the Fourteenth Amendment, but an impartial jury under the Sixth Amendment. See

Sheppard v. Maxwell 384 U.S. 333 (1966) (Quoting *Irvin v. Dowd* 366 U.S. 717 (1961) where this Court stated:

> "**[E]ven though each juror indicated that they could render an impartial verdict** despite exposure to prejudicial newspaper article, we set aside the conviction holding: 'with his life at stake, it is not requiring to much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion...' The undeviating rule of this Court was expressed by Mr. Justice Holmes over half a century ago in *Patterson v. Colorado*, 205 U.S. 454 (1907): 'The theory of our system is that the conclusion to be reached in a case will be induced only by evidence and arguement in open court, **and not by an outside influence**, whether of private talk or public print.'" (emphasis added)

Sheppard, at 351.

This Court in *Sheppard* went further to state:

> "Due process requires that the accused receive a trial by **impartial jury free from outside influence.**" (emphasis added)

Id, at 362.

Second, Juror number nine expressed how she was "wondering if they (Spectators) come in the courtroom with a gun or something like that." *N.T.* 3/2/07 p 177. The trial Court then informed her that "everyone who comes in the building is thoroughly searched, and to make [her] feel better, [the Judge] would have additional security in the courtroom." *Id.* However, this does not negate the fact that, this is a concerned juror that is now worried, and will most likely lose focus at the slightest movement.

Third, Juror number ten was equivocal in response to her security question:

> [The Court]: Do you have any security or safety issues?
>
> [Juror]: No, I don't believe so.

N.T. 3/2/07 p. 179-180.

Further, this juror was questionable, which even the Chief Judge pointed out in his opinion:

> "[T]he Court will not address how *Riggins 1* did not 'address the fact that Juror 10-who was equivocal in response to the safety questions-rode the train with the victim's family."

Append B at p. 9 n.2.

Also, the fact that the Juror voluntarily provided such alarming information, the Judge, not once, questioned her on how she knew it was in fact the victim's family if they had no contact.

Aware of these concerning details, the trial Court still did not find the need to conduct further inquires into the discussion the jury had immediately following the outburst.

Finally, both the Prosecutor and Counselors attempted to avoid any further tainting of the jury by keeping them from further discussing the matter:

> [DA]: Then they have a chance to talk about it...**We need to avoid as much taint as possible.**" (emphasis added)

N.T. 3/2/07 p. 142.

However, not only did the Prosecutor's statement above indicate she felt some tainting had already been done, the trial Court allowed just what the Prosecutor attempted to avoid:

> [The Court]: Here's what we will do. Juror number one will remain. Jurors two to 14 will go in the back. I will send them back with the Court Officer, who will be instructing them not to discuss the matter. **And, I mean, they can talk amongst themselves but not about this.** And the Court Officer will remain there, and then you may question her on the record afterward." (emphasis added)[16]

N.T. 3/2/07 p 143-144.

---

16 The Court Officer was **never** questioned on the record to ensure the jury did not further discuss the matter, prejudicing Petitioner in the process.

And though the trial Judge informed the Court she would "instruct the Court Officer to instruct the jury not to discuss the matter." This Supreme Court has long recognized that there is instances so dire, it is likely the jury cannot, or will not follow the instructions:

> "There are some contexts in which the risk that the jury **will not, or cannot, follow instructions** is so great, **and the consequences of failure so vital to the defendant**, that the practical and human limitations of the jury system cannot be ignored." (emphasis added)

Bruton 391 U.S. at 136.

For the above reasons, Petitioner, in the following section, seeks to articulate the urgent need for the "new rule" Justice Kennedy spoke of in *Carey v. Musladin* 549 U.S. 70 (2006). The same case used to deny Petitioner relief.

C. REASON WRIT SHOULD ISSUE

The Sixth Amendment states that "In all criminal prosecutions, the accused shall enjoy the right to...and impartial jury." *U.S. Const. Amend* VI. Further, extending to the Fourteenth Amendment. See *Ristaino v. Ross* 424 U.S. 589 (1976).:

> "Criminal defendants' in State Court is guaranteed impartial jury by the Sixth Amendment as applicable to states through the Fourteenth Amendment, principles of due process also guarantee defendants' impartial jury."

Id.

Foregoing, the lower federal Courts denied Petitioner relief, in part, due to this Supreme Court not addressing if a "third-party's outburst (Spectator)" will influence the jury's verdict:

> "[T]he Supreme Court itself admitted that is has yet articulated a rule as to the effect a third-party's outburst or display may have on a criminal trial." (citation omitted)

Append C, at p. 32.

However, in the same case the lower federeal Courts used to deny Petitioner relief, *Carey*,

this Supreme Court mentioned that, in situations as the one before you today, the *Antiterrorism and Effective Death Penalty Act* of 1996 (AEDPA) does not require the "Federal Courts" to wait on this Supreme Court:

> "If, in a given case, of this nature was brought about by the wearing of bottons, **relief under the AEDPA would likely be available even in the absence of a Supreme Court case** addressing the wearing of bottons. While general rules tend to accord Courts "more leeway ... in reaching outcomes in case-by-case determinations," **AEDPA does not require Federal Courts to wait for some identical pattern before a legal rule must be applied.**" *Wright v. West* 505 U.S. 222 (1992) (Kennedy, J., concurring in judgment) (emphasis added)

Carey 549 U.S. at 81.

Furthermore, the lower federal Court's decision conflicts with one of their own cases, *United States v. Resko* 3 F.3d 684 (3rd Cir 1993),[17] which Petitioner presented to the Court of Appeals to demonstrate why he was entitled to relief.

In *Resko*, the Third Circuit Court of Appeals reversed the District Court's decision holding that:

> "[T]he District Court abused its discretion by not conducting further inquiry into the extent of intra-jury conversation about the case because, the jurors could have been prejudiced and deprived appellants of their rights to an impartial and fair jury." (emphasis added)

Id, at 684.

Instead, like in *Resko*, whether then inquiring more into the conversation the jury had about the outburst brought to the trial Courts attention by juror number one, the Court asked two

---

17 Petitioner uses a Third Circuit Court of Appeals case, as it is the closes in fact comparison, and lends the best legal language to articulate the arguement before you today.

questions that raised more questions than it answered. (1) Can you be a fair and impartial jury to both parties? (2) Do you have any safety concerns? And like in *Resko*, the jury answered "Yes" to the first question and "No" to the later. This was even after juror number one, had just informed the Court on the jury's behalf, they were discussing the matter of "safety" and "A mother's pain," as soon as they went in the back. *N.T.* 3/2/07 p. 157.

However, unlike in *Resko*, the trial Court in the case before you, **never**, asked the jury if they were in fact discussing the outburst, and if it affected them in any way. Thus, this further calls into question, the **integrity**, of the jury after juror number one's honesty with the trial Court. See *Goverment of the Virgin Islands v. Weatherwax* 20 F.3d 572 (3rd Cir 1994) (Quoting *Resko*), where the Third Circuit Court of Appeals itself, "emphasised the importance of questioning jurors whenever the **integrity** of their deliberation is jeopardize." *Id,* at 578:

> **"We recently held that a District Court's failure to evaluate the nature of the jury misconduct or the existence of prejudice required a new trial. *United States v. Resko* 3 F.3d 684 (3d Cir 1993).** In *Resko*...**because the questions were not phrased to ascertain significant information about the content or extent of the jurors discussion, we held that the District Court could not have made a reasoned determination that the defendant's would not suffer any prejudice due to the jurors discussions.** *Id.* at 690. Under these circumstances, i.e., where the juror misconduct was discovered mid-trial but the District Court did not adequately determine whether defendants were or were not prejudiced, vacation of the convictions and remand for a new trial were necessary. *Id* at 695. (emphasis added)

Weatherwax 20 F.3d at 578.

Fanally, in concluding this arguement on the urgent need for a rule on the matter before you. The Court of Appeals claims, because Petitioner did not articulate how he was prejudiced, he is not entitled to relief. This claim falls flat for many reasons.

First, in a sense, Petitioner produced ample prejudice from the record alone when juror number ten suspiciously admitted that she rode the train with the victim's family everyday. Juror number nine worried someone could bring a gun into the courtroom. And juror number one informed the trial Court that the entire jury was discussing the matter, and "felt a mother's pain,"

however, again, the trial Court did not feel the need to inquire into the jury discussion, to ensure Petitioner received a fair trial and impartial jury.

Second, as stated by the Third Circuit Court of Appeals themselves, not assessing the extent of the juror's conversation can only lend support to Petitioner. See *United States v. Resko* 3 F.3d 684 (3d Cir 1993):

> "[B]ecause the District Court failed to engage in any investigation beyond the cursory questionaire, **there is no evidence in the record one way or the other regarding prejudice to the defendants. We simply have no way to know the nature to the jurors' discussions and whether these discussions in fact resulted in prejudice to the defendants**. We appreciate the discretion that is generally afforded the District Court in these situations and its superior ability to **assess** the jury's demeanor. However, the absence of information and the consequent inability of **the District Court meaningfully to assess the nature and extent of the jurors' premature discussions in order to ascertain whether there has been any prejudice to the defendants creates a highly problematic situation**. Simply put, the questionaire raised more questions than it answered. And there is no way to know the nature of those discussions whether they involved merely brief and inconsequential conversations about minor matters or **whether they involved full-blown discussions of the defendants' guilt or innocence**." (emphasis added)

Id., at 690.

Third, and most important, in a matter so damaging such as this, it is not on the defendant to demonstrate he was prejudiced, it is on the government. And on no stage of Petitioner's appeal process has the lower federal Courts ascertain Petitioner was not prejudiced by the outburst. See *Chapman v. California* 386 U.S. 18 (1967):

> "The State must prove beyond a reasonable doubt that the constitutional error did not contribute to the verdict obtained."

Id., at 24.

Also, See *Remmer v. United States* 347 U.S. 227 (1954):

> "In criminal case, any private communication, contact, or tempering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial...**and the burden rests heavily upon the Government**

> **to establish, after notice to and hearing of the defendant, that contact with the juror was harmless to the defendant.**" (emphasis added)

Id., at 229.

Thus, though Petitioner has produced prejudice in this matter as shown above, it, is not, upon him to do so. But, it is, upon the State to demonstrate Petitioner was not prejudiced.

Furthermore, the lower Court mention how, the fact that the juror who informed the Court that there was discussion amongst the entire jury, "did not actually participate in the deliberation due to an appointment, and thus his concerns would not impact the deliberation," *Append B.*, at 10, is more of a reason why Petitioner is entitled to relief. This is due to, the lower federal Courts failing to realize that, Juror number one seat through 90% of the trial, and because there is no record of the extent of the jury's discussion, there is no way to know if juror number one did not influence the jury before leaving. See again, *United States v. Resko* 3 F.3d 684 (3d Cir 1993) (Quoting *Lillian B. Hardwick & B. Lee Ware Juror Misconduct* § 7.04 at 7 (1998):

> "Since the prosecution presents its evidence first...**it is likely that any initial opinions formed by the jurors, which will likely influence other jurors, and will be unfavorable to the defendant for this reason.**" (emphasis added)

Resko 3. F.3d at 689.

And though each juror stated they could still be "impartial," this Supreme Court has still set aside convictions holding:

> "**even though each juror indicated that they could render an impartial verdict** despite exposure to prejudicial newspaper articles, we set aside the conviction holding:...'The theory of our system is that the conclusions to be reached in a case will be induced **only by evidence and argument in open court, and not by any outside influence**, whether of **private talk** or public print." (emphasis added)

Sheppard, 384 U.S. at 351.

And last, the Court of Appeals has considered various factors in a matter such as the one before you:

> "[1] Since the prosecution presents its evidence first, any premature discussions are likely to occur before the defendant has a chance to present all of his or her evidence, **and it is likely that any initial opinion form by the jurors, which will likely influence other jurors, will be infavorable to the defendant for this reason.** [2] Once a juror expresses his or her views in the presence of other jurors, he or she is likely to continue to adhere to that opinion **and may tend to cause the juror to approach the case with less then a fully open mind.** [3] The jury system is meant to involve decisionmaking as a collective, deliberative process and premature discussions among individual jurors may thwart that goal. [4] Because the Court provides the jury with legal instructions only after all the evidence has been presented, jurors who engage in premature deliberations do so without the benefit of the Courts instructions on the reasonable doubt standard. [5] Requiring the jury to refrain from prematurely discussing the case with fellow jurors in a criminal case helps protect a defendant's Sixth Amendment right to a fair trial as well as his or her due process." (Brackets Added) (emphasis added)

Resko 3 F.3d at 389.

Petitioner further likes to remind this Supreme Court of two important key points when deciding this matter. First, as this Court stated:

> "[T]he practical and human limitations of the jury system cannot be ignored."

Bruton 391 U.S. at 136.

With that, we must understand that, though consciously the jury stated they could be impartial, unconsciously, they clearly from the record felt differently.

Second, along with "feeling a mother's pain," the Prosecutor lead the jury to further feel prejudice towards Petitioner by her statement to the jury:

> "Ladies and Gentlemen, **the testimony of Antoine Riggins (Petitioner) was totally, absolutely, and positively incredible.** (emphasis added)

N.T. 3/5/07 p. 288.

Clearly leading the jury to discredit the defense of Petitioner, and denying him a fair trial and impartial jury under the Sixth and Fourteenth Amendments.

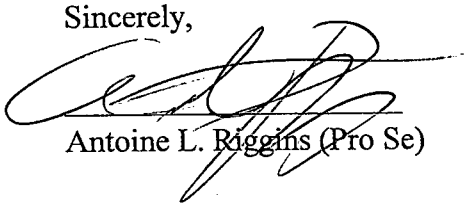
THEREFORE, Petitioner humbly request this Supreme Court grant him a new trial, as

well as any other relief this Court deem worthy, in regards to his right to an impartial jury and fair trial under the Sixth and Amendment which were violated.

CONCLUSION

For all of the reasons stated herein, the petition for a Writ of Certiorari should be granted in order to ensure Petitioner rights are secure.

Sincerely,



Antoine L. Riggins (Pro Se)

Date: August 1, 2023

Cc: File