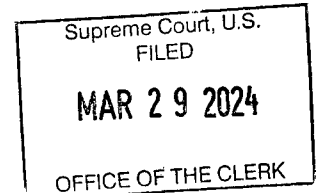


No. **23-7152**

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
SEAN BURTON - PETITIONER, PRO SE



VS.

COMMONWEALTH OF PENNSYLVANIA - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

SEAN BURTON

S.C.I. PINE GROVE

189 FYOCK ROAD

INDIANA, PA 15701

**QUESTION(S) PRESENTED**

1. . WHETHER THE COMMONWEALTH OF PENNSYLVANIA VIOLATED THE **BRADY** RULE.
2. WHETHER PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED WHICH PREVENTED AND DEPRIVED PETITIONER FROM PRESENTING A COMPLETE AND UNDERSTANDABLE DEFENSE.
3. WHETHER THE COMMONWEALTH OF PENNSYLVANIA IGNORED AND NOT RECOGNIZED THE RULES SET FORTH IN **42 PA.C.S.A. 9541-9546** UNDER THE NEWLY DISCOVERED FACTS AND GOVERNMENT INTERFERENCE, IN ORDER TO DENY PETITIONER'S THIRD P.C.R.A. PETITION.

**LIST OF PARTIES**

COURT OF COMMON PLEAS OF DELAWARE COUNTY  
OFFICE OF THE DISTRICT ATTORNEY  
ATTN: JACK STOLLSTEIMER, ESQ.  
201 WEST FRONT STREET  
MEDIA, PA 19063

## LIST OF ALL PROCEEDINGS

- *Sean Burton v. Commonwealth of Pennsylvania*, No. \_\_\_\_\_, The Supreme Court of the United States. Judgment entered \_\_\_\_\_.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. 520 MAL 2023, The Supreme Court of Pennsylvania. Judgment entered Feb. 6, 2024.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. 2163 EDA 2022, The Superior Court of Pennsylvania. Judgment entered Sept. 7, 2023.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. CP-23-CR-0003894-2010, The Common Pleas Court of Delaware County, Pennsylvania. Judgment entered Aug. 9, 2022.
- *Sean Burton v. John E. Wetzel*, No. 130 MD 2021, The Commonwealth Court of Pennsylvania. Judgment entered Feb. 10, 2022.
- *Sean Burton v. John E. Wetzel*, No. 19-1981, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered Aug. 19, 2019.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. 1634 EDA 2018, The Superior Court of Pennsylvania. Judgment entered Apr. 11, 2019.
- *Sean Burton v. John E. Wetzel*, No. 62 MAP 2017, The Supreme Court of Pennsylvania. Judgment entered Sept. 21, 2018.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. CP-23-CR-0003894-2010, The Common Pleas Court of Delaware County, Pennsylvania. Judgment entered May 9, 2018.
- *Sean Burton v. John E. Wetzel*, No. 16-1400, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered Oct. 5, 2016.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. 439 MAL 2015, The Supreme Court of Pennsylvania. Judgment entered Nov. 17, 2015.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. 1861 EDA 2014, The Superior Court of Pennsylvania. Judgment entered May 5, 2015.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. CP-23-CR-0003894-2010, The Common Pleas Court of Delaware County, Pennsylvania. Judgment entered May 30, 2014.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. 311 MAL 2012, The Supreme Court of Pennsylvania. Judgment entered Aug. 28, 2012.

- *Commonwealth of Pennsylvania v. Sean Burton*, No. 1582 EDA 2011, The Superior Court of Pennsylvania. Judgment entered Mar. 28, 2012.
- *Commonwealth of Pennsylvania v. Sean Burton*, No. CP-23-CR-0003894-2010, The Common Pleas Court of Delaware County, Pennsylvania. Judgment entered May 24, 2011.

## **TABLE OF CONTENTS**

OPINIONS BELOW.....	i
JURISDICTION.....	ii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	iii,iv,v, vi
TABLE OF AUTHORITIES.....	vii
STATEMENT OF CASE.....	1
REASONS FOR GRANTING THE WRIT.....	14
CONCLUSION.....	19

## **INDEX TO APPENDICES**

APPENDIX A - DECISION OF STATE TRIAL COURT
APPENDIX B - DECISION OF STATE SUPERIOR COURT
APPENDIX C - ORDER OF STATE SUPREME COURT DENYING REVIEW
APPENDIX D - STROPAS' MENTAL HEALTH RECORDS
APPENDIX E - MOTION IN LIMINE
APPENDIX F - ORDER OF STATE TRIAL COURT GRANTING MOTION IN LIMINE
APPENDIX G - PETITIONER'S TIMELY P.C.R.A.
APPENDIX H - PETITIONER'S MEDICAL RECORDS

## **OPINIONS BELOW**

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 520 MAL 2023 and is unpublished.

The opinion of the Superior Court appears at Appendix B to the petition and is reported at 2163 EDA 2022, has been designated for publication.

## **JURISDICTION**

The date on which the highest state court decided my case was 2/6/2024. A copy of that decision appears at Appendix A.

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



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### UNITED STATES CONSTITUTIONAL AMENDMENTS: U.S.C.S. 6 AND 14

#### AMENDMENT 6: RIGHTS OF THE ACCUSED-COMPULSORY PROCESS CLAUSE

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

#### AMENDMENT 14: § 1. DUE PROCESS CLAUSE

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

□ The United States Supreme Court has made it clear that whether rooted directly in the due process clause of the fourteenth amendment, or in the compulsory process clause of the sixth amendment, the United States Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. An essential component of procedural fairness is an opportunity to be heard.

POST CONVICTION RELIEF ACT:

**42 Pa.C.S.A. § 9543: ELIGIBILITY FOR RELIEF**

(a) *General rule.*- To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

- (i) currently serving a sentence of imprisonment, probation or parole for the crime;
- (ii) awaiting execution of a sentence of death for the crime; or
- (iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

(2) That the conviction or sentence resulted from one or more of the following:

- (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- (iv) The improper obstruction by government officials of the petitioner's right of

appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

(b) *Exception.*- Even if the petitioner has met the requirements of subsection (a), the petition shall be dismissed if it appears at any time that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. A petition may be dismissed due to delay in the filing by the petitioner only after a hearing upon a motion to dismiss. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have discovered by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.

#### **§ 42 Pa.C.S.A. § 9545 : Jurisdiction and proceedings**

(a) *Original jurisdiction.*- original jurisdiction over a proceeding under this subchapter shall be in the court of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter.

(b) *Time for filing petition.*

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgement becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 1 year of the date the claim could have been presented.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).	1, 14
CRANE V. KENTUCKY, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed. 2d 636 (1986).....	1, 15, 18
CHAMBERS V. MISSISSIPPI, <i>supra</i> .....	1, 16, 18
RIVERA V. HARRY, 2022 U.S. Dist. Lexis 4122 (EDPA 2022).....	1
GENERAL STATEWIDE JUDICIAL EMERGENCY, 230 A.3d 229, 230 (Pa. filed April 28, 2020).....	2
COMMONWEALTH V. DUMAS, 2021 PA SUPER. Unpub.Lexis 1163, note 5.	2
AMADEO V. ZANT, 486 U.S. 214, 108 S.Ct. 1771, 100 L.Ed.2d 249 (1988)...	2
COMMONWEALTH V. BURTON, No. 1582 EDA 2011 (3/28/12).....	8
COMMONWEALTH V. BURTON, 2015 PA SUPER. Unpub. Lexis 1233 (5/5/15).....	11
COMONWEALTH V. BURTON, 2163 EDA 2022.....	13
WEARRY V. CAIN, 136 S.Ct. 1002, 1006, 194 L.Ed. 2d 78 (2016).....	14, 15
YOUNGBLOOD V. WEST VIRGINIA, 547 U.S. 867, 870, 126 S.Ct. 2188, 165 L.Ed. 2d 269 (2006).....	14, 15
SMITH V. CAIN, 565 U.S. 73, 76, 132 S.Ct. 627, 181 L.Ed. 2d 571 (2012).....	15
UNITED STATES V. SCHEFFER, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed. 2d 413 (1998).....	16
HOLMES V. SOUTH CAROLINA, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed. 2d 503 (2006).....	16
STATUTES AND RULES	
U.S.C.S-6.....	iii
U.S.C.S-14:§ 1.....	iii
42 Pa.C.S.A. § 9543.....	iv
42 Pa.C.S.A. § 9545.....	v

## STATEMENT OF THE CASE

This is a serial PCRA petition that relies on new facts which were suppressed by the prosecution, causing the loss of the petitioner's Sixth and Fourteenth Amendment right to present a complete and understandable defense. The petitioner stabbed James Stropas, who was a combat veteran. The petitioner's defense was that Stropas attacked him and he defended himself.

The central issue in the PCRA petition was the prosecution's suppression of the mental health records of Stropas which supported and corroborated the defense and explained why Stropas would attack petitioner. The failure to disclose Stropas' mental health records disclosing he suffered from Chronic/Severe PTSD and, as a result, had a history of attacking people for no reason was vital to the defense. The suppression of the Stropas mental health records was a violation of *BRADY V. MARYLAND*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Furthermore, the suppression of the Stropas mental health records denied due process of law guaranteed by *CRANE V. KENTUCKY*, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)[*"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, CHAMBERS V. MISSISSIPPI, supra, or the compulsory process or confrontation clauses of the Sixth Amendment, the constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."*]

Contrary to the Superior Court's opinion. App. B, petitioner's third PCRA petition qualifies for the timeliness exception provided by for government interference. 42 PA.C.S.A. 9545(b)(1)(ii).

In addition, petitioner's PCRA petition qualifies for the extraordinary circumstances recognized in *RIVERA V. HARRY*, 2022 U.S. Dist. Lexis 4122 (DEPA 2022).

First, with respect to the exception for extraordinary circumstances, acting Chief Counsel

Timothy Holmes sent a memo dated march 22, 2020 addressed to the "Inmate Population" stating, "If you have civil cases, nearly all courts have been granting stays of at least 30 days. If you have a civil case deadline and cannot meet those deadlines because of this situation, then your cases will not be dismissed and late filings will not be rejected." The PCRA petition is a civil action. Petitioner had an unqualified right to rely on the Holmes' letter. It follows from the Holmes' letter that post-COVID, the PCRA'S timeliness requirements are not a jurisdictional bar.

Next, pursuant to Pennsylvania's Supreme Court's order arising from the COVID-19 statewide judicial emergency, the time computation for all legal filings required to be filed between March 19 and April 30, 2020 was suspended and the filings were deemed timely if filed by May 1, 2020. IN RE: GENERAL STATEWIDE JUDICIAL EMERGENCY, 230 A.3d 229, 230 (Pa. filed April 1, 2020). The suspension of deadlines was later extended through May 11, 2020. IN RE: GENERAL STATEWIDE JUDICIAL EMERGENCY, 230 A.3d 229, 230 (Pa. filed April 28, 2020). Per curiam. It follows that the Pa. courts may grant extensions for good cause. COMMONWEALTH V. DUMAS, 2021 PA Super. Unpub.Lexis 1163, note 5.

The PCRA court did not address the PCRA court's right to apply equitable extensions of the timeliness provisions of the PCRA as did the district court in RIVERA V. HARRY, 2022 U.S. Dist. Lexis 4122 (EDPA 2022).

The PCRA petition is timely under one or more of the exceptions to the PCRA timeliness requirements. The Court of Common Pleas had Jurisdiction. The Superior Court had Jurisdiction. The Supreme Court had Jurisdiction. This court has exclusive Jurisdiction.

It is based on new facts suppressed by the prosecution. The petition is timely under the principles set forth in AMADEO V. ZANT, 486 U.S. 214, 108 S.Ct. 1771, 100 L.Ed.2d 249

(1988). In that case Amadeo was convicted of murder and sentenced to death. The conviction was affirmed on appeal. Amadeo filed for habeas corpus which was denied for prosecutorial default. The Supreme Court reversed, holding that cause for procedural default exists if some interference by officials made compliance impossible. In Amadeo, defense counsel discovered the office of the district attorney schemed to cause under representation of blacks to juries.

The district attorney's memorandum had been suppressed by county officials and thus was not available to defense counsel. The suppression was interpreted as a hidden defect that excused the procedural default.

In this case, the district attorney's office suppressed the Stropas mental health records proving that the victim in this case had PTSD and, as a result, had a propensity to attack people for no reason at all. App. D, page 5. This propensity was vital to the defense.

Sean Burton was the owner of Final Impact, a car stereo and alarm shop in Morton, Pa<sup>1</sup>.

He met Theresa Murphy in 2004. She was the single mother of two children, and Burton was divorced. On July 6, 2006, Burton and Murphy married, and lived as a couple in Pennsylvania. Burton maintained a separate residence in Delaware where he would stay for extended periods of time. In 2006, before the marriage, Murphy met army sergeant James Stropas, a combat veteran who was working as a security guard in the building where Murphy worked. In early 2008, Burton and Murphy separated. Murphy filed for divorce without a lawyer. The divorce became final June 10, 2008. Record 203.

<sup>1</sup> Many of the facts have been extracted from the memorandum of the Superior Court at 1582 EDA 2011 which has been incorporated by reference into the opinion of the PCRA court dated October 13, 2011. Record 0001.



During the separation but prior to the divorce, Burton lived in his Delaware residence.

Burton's daily commute from Delaware to Pennsylvania where Burton's store is located takes Burton on Baltimore Pike and passes Church Rd where Murphy's home is located, which is 5 minutes away from Burton's place of business. Burton observed a white jeep parked in Murphy's driveway, Burton was still in contact with Murphy, so when they spoke Murphy told Burton that the owner of the white jeep is a friend of hers and is allowing them to park there as a convenience so the person can take the train to work. Burton did not believe Murphy, so in February, 2008, Burton decided one morning on his way to work to stop by Murphy's home, Stropas' jeep was parked in the driveway, Burton knocked on the door and Murphy let him in, Burton then proceeded to the master bedroom where he saw Stropas on the bed wearing shorts and a tank top. Burton asked Stropas "Who are you?", Stropas replied "My name is Jim", then Stropas asked Burton, "Who are you?", Burton replied, "I'm Theresa husband", Murphy came into the master bedroom and then Burton started to leave, Burton looked at Murphy and said "Jennifer was right, you are a slut", Burton was upset, but no altercation occurred.

After separation and divorce, Burton and Murphy continued to see each other, Murphy wanted Burton to moved back into her home, the boys wanted Burton home as well, Murphy wanted Burton to re-marry her and Burton was hesitant about doing so, Burton and Murphy remarried each other in November, 2008. In March, 2009, Stropas began a second tour of duty in Iraq during which time he remained in contact with Murphy. Shortly thereafter, upon returning to the United States, Stropas went on a road trip by himself, where he returned to the area in May, 2010. Record 203.

During the memorial day weekend 2010, Burton and Murphy had a disagreement stemming from Burton's infidelity. The couple discussed divorce.

Burton left the house, and Murphy contacted Stropas, who began living with her shortly thereafter.

On June 9, 2010, Murphy, now represented by an attorney, filed for divorce and sought spousal support and division of marital property. Upon receiving the complaint, Burton attempted to reconcile because he did not want to pay support. When Burton's first marriage ended, he was ordered to pay his ex-wife four years of alimony, and he did not want to go through the same thing with Murphy. Record 204.

At the same time that Murphy was living with Stropas, she and Burton attended marriage counseling sessions and continued to have a sexual relationship.

On Sunday, June 20, 2010, Father's day, Murphy invited Stropas to spend the day with her and the two children. Burton was not invited. In the early hours of June 20, 2010, Burton went to Murphy's house, and attached a GPS device to the undercarriage of Stropas' jeep which was parked in the driveway of Murphy's house. The GPS device transmitted information regarding the location of Stropas' vehicle to Burton's cell phone and laptop so Burton would have proof that Murphy was living with another man. Record 204.

On the morning of Monday, June 21, 2010, Burton drove his work van to work. He and Murphy texted about a marriage counseling session for that evening. That morning, Murphy and Stropas planned to go to Stropas' doctor appointment, and because they were running late, Murphy asked Stropas to drive to the Dunkin Donuts at the Old Sproul Shopping Center to pick up some coffee for her. Record 205.

Burton was at the office at Final Impact where he left to go and run errands, as he normally does every Monday, which includes the bank, post office, distributors, restocking items

etc. He left work at approximately 10:30 a.m. Burton was on Baltimore Pike when he received a text from Murphy, Burton pulled over into the Bertucci's parking lot. Burton parked his work van in Bertucci's parking lot and was checking the text message from Murphy as well as e-mails on Burton's laptop computer. Burton had a wireless aircard plugged into his laptop for wi-fi connection which works off the same technology as cell phones, this generated longitude/latitude/time and date stamp similar to cell phone data. Burton could observe Stropas' jeep while it was parked in Murphy's driveway which was about 100 feet away.

Burton then saw Stropas backing out of the driveway, Burton received notification on his cell phone that the vehicle had moved at approximately 10:45 a.m. Burton observed Stropas heading towards Baltimore Pike, Stropas turned into the Old Sproul Shopping Center. Burton left Bertucci's parking lot, then drove pass the Old Sproul Shopping Center, Burton wanted to talk to Stropas, and decided to turn into the gas station next to the Shopping Center and entered through the alternate entrance to the Old Sproul Shopping Center. Burton found a parking spot close to Stropas' jeep. Burton saw Stropas exiting dunkin donuts and Stropas looked directly over in the direction of Burton's work van, Burton turned his Final Impact tee shirt. He turned the shirt inside out, and put it back on. Record 205.

Stropas had 2 cups of coffee and a bag of food. Stropas opened the driver's side of the jeep and entered the vehicle. Burton approached Stropas, who acknowledged his presence by saying, "Hey Sean". Burton took the stand, he testified that Stropas grabbed an 8 inch knife<sup>2</sup> and came at him. Burton was standing outside the vehicle. Burton grabbed the blade of the knife, he managed to twist the knife, causing the handle to break away from the blade, leaving the handle in Stropas' hand and the blade in Burton's hand. Stropas attempted to rise up from the driver's

<sup>2</sup> The prosecution never established who owned the knife, or explained how the knife happened to be inside Stropas jeep.

seat. Using the blade, Burton stabbed and slashed Stropas numerous times. Record 206. After the attack was over, Burton drove out of the shopping center. Police pulled him over shortly thereafter and, as he exited the jeep at the officer's command, he stated "He came at me with a knife and I had to defend myself." Burton was taken to the hospital where he was treated in the emergency room at Springfield Hospital. Burton has tendon and nerve damage to his hands, and sustained 35 stitches. App. H. Stropas was dead. Record 206.

A search of Burton's work van revealed a hand truck, heavy duty rubber gloves, duct tape, electrical tape, plastic zip ties, a shovel, a hatchet, a can of gasoline, a baseball bat and numerous other items. Record 206.

On August 31, 2010, Burton filed a motion seeking an order from the trial court directing the Philadelphia Veterans Administration Hospital ("VA") to produce Stropas' physical and mental health records. The motion stated that the defense in the case was "justification because Burton believed that deadly force was necessary to protect himself against deadly force used by Stropas." Record 207.

On October 27, 2010, in anticipation of Burton attempting to introduce evidence that Stropas suffered from a severe case of PTSD, the prosecution filed a motion in limine seeking to preclude the defense from introducing such evidence. App. E. The prosecution argued that the Stropas mental health records were privileged, and therefore unavailable, there would be no evidence of the symptoms Stropas may have had. The prosecution argued that without evidence of record, any suggestion of mental illness would be more prejudicial than probative. Record 81.

On December 9, 2010, the trial court (Dozor, J.) agreed with the prosecution's argument and ordered defense counsel not to mention PTSD during the trial. App. F. Record 86, 207.

At trial, Burton tried to introduce the following text messages that Stropas sent to and

received from other individuals:

- a. 5/23/10 at 2:54:27 pm, outgoing message to Sarah Mehmel: "I'm looking at 70% disability from what they are telling me."
- b. 5/25/10 at 10:03:31 pm, outgoing message to Gayle: "It was very hard and tiring but I told the truth and I am starting a rigorous PTSD program. I hope this work."
- c. 5/25/10 at 1:12:43 pm. Incoming message from Gayle: "Will you have to go to therapy every week?"
- d. 5/25/10 at 1:19:46 pm, outgoing message to Gayle: "Looks like it. At least for a little while."
- e. 6/3/10 at 11:29:42 am, outgoing message to Corry: "Hay man, I'll call you tonight but they want me to do inpatient treatment for the PTSD. 2-4 weeks of it. Sucks."

Burton alleged that the text messages were evidence of PTSD and necessary to show that Stropas was the aggressor during the unprovoked confrontation in the parking lot.

The trial judge refused to admit the evidence on the grounds that the text messages were inadmissible hearsay, and Stropas' PTSD was not relevant evidence of his character<sup>3</sup>.

The Superior court affirmed the decision of the trial judge. COMMONWEALTH V. BURTON No. 1582 EDA 2011 (3/28/12). Record 208. However, the Superior court held that the trial court erred when it held that petitioner could not testify about the following communications between Theresa Murphy and the petitioner. Murphy told petitioner as follows:

<sup>3</sup> The defense attorney (Much) stated, "The commonwealth knows that the decedent was being treated for PTSD during the month before his demise and the prosecution's attempt to preclude the defendant from seeking to prove the truth is disingenuous and contrary to its ethical obligations to the citizens of this commonwealth." The trial attorney directed the court's attention to decedent's text messages to his friends less than a month before his demise and the testimony of those with first-hand knowledge of the extent to which the decedent was emotionally impaired as a result of the PTSD. Relevant portions of the decedent's text messages (SMS messages # 137, 232, 234, 280, 296, and 421) are attached to the pro-se PCRA petition. App. G.

BURTON'S LAWYER: While you were out in the parking lot with Theresa Murphy at the wedding on Friday, June 18, 2010, did you have any conversation with her?

BURTON: I had several conversations with her.

BURTON'S LAWYER: And what, if anything did she tell you?

BURTON: She told me that Jim had killed men, women and children and he will kill you as well.

He wants to put a bullet in your head.

He has PTSD, showed me the text.

He says he has been to a lot of third world countries and is not afraid of you.

On March 21, 2010, the jury trial began with Judge Barry C. Dozor presiding.

Burton was represented by Mark Much. Burton took the stand and testified that when he approached the jeep, Stropas was seated inside, and the driver's door was wide open. Burton intended to close the door so that he would be outside, and Stropas would be inside. He did not get to close the door because Stropas turned around with a knife in his hand. Burton grabbed the knife blade with his right hand, and grabbed his right hand with his left hand as his body was pinned against the driver's side door frame. Burton twisted the blade and it snapped leaving the blade in Burton's hand and the handle in Stropas' hand. Stropas started to move towards Burton, and Burton stabbed Stropas in the chest. He proceeded to stab and slash while pushing Stropas back into the seat. Burton backed away and stood straight up. Stropas' car keys were on the center console, he could have easily started up his car and drove away, but instead Stropas lunged over to the front passenger floor of the vehicle and Burton thought Stropas was reaching for another weapon, so Burton yelled out for help twice while entering the vehicle and stabbed Stropas in the back. Stropas was then reaching for the front passenger door handle which led

Burton to believe that Stropas was trying to get out of the vehicle and kill him. Burton then stabbed Stropas in the neck. Burton saw Stropas' face, dropped the blade in the right rear passenger floor area, and held Stropas' neck to try and stop the bleeding. He did not have a phone to call for help so he started to drive to the hospital.

The jury heard from Dr. Bennett Preston, the medical examiner who performed the autopsy. He testified that Stropas was slashed and stabbed 70-80 times and sustained classic defense wounds. He testified that he reviewed photographs of Burton's injuries, and testified they were not defense wounds, but were caused by Burton's hands slipping on the knife. Dr. Preston falsely testified that Burton did not have nerve or tendon damage, while looking directly at Burton's medical records, Dr. Preston had Burton's medical records in his hands at the time of his testimony. Burton sustained 35 stitches and has nerve and tendon damage and was scheduled for surgery, but was prevented from obtaining medical care and Burton's injuries are now permanent. App. H.

On March 25, 2011, the jury convicted Burton of first-degree murder and PIC. On May 24, 2011, Burton was sentenced to life for first-degree murder and a consecutive term of 6-23 month for PIC.

On June 15, 2011, Burton appealed to the Pa. Superior Court. On appeal, Burton raised the following issues, to wit.

1. Whether the trial court erred in precluding Burton from presenting proof that the deceased was being treated for post-traumatic stress disorder (PTSD), as this evidence was supportive of the claim that Stropas was the aggressor and that Burton acted in self-defense, thereby depriving Burton right to present a complete defense as guaranteed by the United States and Pennsylvania Constitutions, and the right to present competent and

relevant evidence?

2. Whether the trial court erred, and deprived Burton of the due process right to present competent evidence in his defense when it (i) precluded Burton from introducing various text messages authored by Stropas as the messages were properly authenticated and were statements of Stropas' state of mind; (ii) prevented Burton from eliciting testimony of what Burton was told about Stropas' violent background; and (iii) prevented Burton from establishing what Murphy told Stropas about Burton because exclusion of evidence supportive of his claim that the deceased was the aggressor and that Burton acted in self-defense?

The Superior Court agreed that the trial court erred when it precluded Burton from testifying that Murphy told him that Stropas had killed men, women and children when he (Stropas) was in the army. The statement was offered to show Burton's state of mind that a confrontation with Stropas was a dangerous, life-threatening situation. The Superior court held that the trial court erred but the error was harmless because the jury did get to hear why Burton was afraid of Stropas. Record 210. The Superior court's opinion was incorporated by reference into the PCRA court's opinion denying the PCRA petition. Record 0001.

Burton filed a PCRA petition claiming ineffective assistance of trial counsel. The PCRA court denied the petition. The Superior court affirmed. COMMONWEALTH V. BURTON, 2015 PA Super. Unpub. Lexis 1233 (5/5/15). The issues were as follows:

1. Did the PCRA court err in denying Burton a new trial due to ineffective assistance of counsel for failure to call an expert witness regarding the use of a GPS locator device?
2. Was trial counsel ineffective for failing to object to the prosecutor's closing argument that "It was not the first time Burton's gone after somebody with a knife?



Record 212.

3. Was trial counsel ineffective for failing to object to prosecutorial misconduct during closing argument?

On February 23, 2021, petitioner filed a pro-se PCRA petition. App. G. The petitioner claimed an exception to the PCRA timeliness provisions under 42 PA.C.S.A 9545 (b)(ii). Petitioner claimed the trial court erred when it denied him the right to introduce mental health records establishing Stropas had PTSD and a propensity for unprovoked violence. Petitioner attached to the PCRA petition mental health records which this was the first time petitioner had ever laid eyes on them, petitioner received the mental health records on 1/12/21. Petitioner claimed that trial counsel was ineffective for not making sure that the mental health records of Stropas were produced so the jury could understand that Stropas was afflicted with PTSD, and had a propensity for unprovoked violence. Petitioner obtained from the V.A. evidence that Stropas was being treated for PTSD and "meets the DSM-IV criteria for PTSD, chronic and severe, with symptoms in all three of the diagnostic category." Petitioner explained how he came upon the new evidence. He explained how he wrote to the V.A. and obtained copies of the V.A.'s documents. In the documents, Stropas explained his propensity for unprovoked violence. He explained that he would attack his bed partner during a nightmare and have no recollection of doing so, which became a frequent occurrence. App. D., page 5. The mental health records dovetail with Murphy's conversation with petitioner about Stropas' PTSD.

BURTON'S LAWYER: While you were out in the parking lot with Theresa Murphy at the wedding on Friday, June 18, 2010, did you have any conversation with her?

BURTON: I had several conversations with her.

BURTON'S LAWYER: And what, if anything did she tell you?

BURTON: She told me that Jim had killed men, women and children.....

PROSECUTION: Objection, your honor.

THE COURT: I'm going to sustain the objection.

BURTON'S LAWYER: As a result of the conversation with Theresa, and I don't want you to tell us what was said, what conclusions did you reach?

BURTON: I was afraid of him. [COMMONWEALTH V. BURTON, No. 1582 EDA 2011 page 14 (3/28/12). Record 208.

The Superior court held the error was harmless because the jury heard Burton testify why he was afraid of Stropas even though the trial court erroneously sustained the objection.

The problem is that the combination of errors including the information supplied by Theresa Murphy plus the Stropas' V.A. mental health records strengthened the evidence of self-defense and undermined the murder charge. The trial court's refusal to allow Burton to testify about his reasons for fearing Stropas was not harmless error because there was a substantial likelihood that the combination of errors affected the judgement of the jury. The trial court undercut the defense by refusing to admit the Stropas mental health records, and then undercut the defense by refusing to allow the petitioner to explain to the jury why he was afraid of Stropas.

On August 9, 2022, the PCRA court denied the PCRA petition. App. A. The PCRA judge did not order petitioner to file a statement of matters complained of on appeal.

Nevertheless, on October 13, 2022, the PCRA court wrote an opinion. Petitioner appealed. On September 7, 2023, the Superior court affirmed. COMMONWEALTH V. BURTON, 2163 EDA 2022.

## **REASONS FOR GRANTING THE PETITION**

Under Pennsylvania Law and clearly established Federal Law the PCRA court was required to consider the totality of the evidence when ruling on a BRADY claim.

HERE THE SUPERIOR COURT DID NOT CONSIDER THE TOTALITY OF THE EVIDENCE WHICH SHOWS THAT THE PROSECUTION COMMITTED A BRADY VIOLATION WHEN IT SUPPRESSED EVIDENCE THAT STROPAS HAD A SEVERE CASE OF PTSD MAKING HIM PREDISPOSED TO LAUNCH AN UPROVOKED ATTACK ON PETITIONER. ON THE BOTTOM RIGHT CORNER OF THE MENTAL HEALTH RECORDS THERE IS A PRINT DATE OF OCTOBER 26, 2010. APP. D, THE MOTION TO SUPPRESS (MOTION IN LIMINE) WAS FILED BY THE PROSECUTOR ON OCTOBER 27, 2010. APP. E, WHICH IS THE VERY NEXT DAY. THE SUPREME COURT OF PENNSYLVANIA DENIED PETITIONER'S APPEAL WITHOUT AN OPINION. APP. C.

BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 ("BRADY") states that the new evidence must be exculpatory or impeaching.

WEARRY V. CAIN, 136 S.Ct. 1002, 1006, 194 L.Ed. 2d 78 (2016) held "To prevail on his BRADY claim, WEARRY need not show that he "more likely than not" would have been acquitted had the new evidence been admitted. Rather, evidence is "material" under BRADY when it simply demonstrates a "reasonable probability" that had the evidence been disclosed, the result of the proceeding would have been different.

YOUNGBLOOD V. WEST VIRGINIA, 547 U.S. 867, 870, 126 S.Ct. 2188, 165 L.Ed. 2d 269 (2006) makes it clear that BRADY applies to members of the prosecution team. A reasonable probability is a likelihood sufficient to undermine confidence in the outcome. The weaker the state's case, the more likely that the withheld evidence is material. SMITH V. CAIN,

565 U.S. 73, 76, 132 S.Ct. 627, 181 L.Ed. 2d 571 (2012), eyewitness testimony was the only evidence linking the petitioner to the crime and therefore undisclosed statements contradicting testimony was "plainly material". If the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient.

In the case at hand, the BRADY violation requires the court to consider the totality of the record.

The materiality of BRADY is not considered in light of the probability of acquittal. WEARRY V. CAIN, 136 S.Ct. 1002, 1006, 194 L.Ed. 2d 78 (2016) ["To prevail on his BRADY claim, WEARRY need not show that he "more likely than not" would have been acquitted had the new evidence been admitted]. Rather, evidence is "material" under BRADY when it simply demonstrates a "reasonable probability" that had the evidence been disclosed, the result of the proceeding would have been different. YOUNGBLOOD V. WEST VIRGINIA, 547 U.S. 867, 870, 126 S. Ct. 2188, 165 L.Ed. 2d 269 (2006). A reasonable probability is a likelihood sufficient to undermine confidence in the outcome. The weaker the state's case, the more likely that the withheld evidence is material. SMITH V. CAIN, 565 U.S. 73, 76, 132 S. Ct. 627, 181 L.Ed. 2d 571 (2012), eyewitness testimony was the only evidence linking petitioner to the crime and therefore undisclosed statements contradicting testimony was "plainly material". If the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient.

Here, the prosecution's motion in limine suppressed information disclosing Stropas' PTSD and the propensity to attack others for no reason. The trial court's order granting the motion in limine, App. F. was a violation of petitioner's constitutional right to present a complete and understandable defense. CRANE V. KENTUCKY, 476 U.S. 683, 106 S.Ct. 2142,

90 L.Ed. 2d 636 (1986)["Whether rooted directly in the due process clause of the fourteenth amendment, CHAMBER V. MISSISSIPPI, supra, or the compulsory process or confrontation clause of the sixth amendment, the constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."] Record 158.

Petitioner's constitutional right to present a complete defense is violated by the exclusion of evidence pursuant to a state evidentiary rule that arbitrarily and categorically bars the defense from offering otherwise relevant and reliable evidence vital to the defense. UNITED STATES V. SCHEFFER, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed. 2d 413 (1998)[State rules may not be arbitrary and they must serve a legitimate interest], HOLMES V. SOUTH CAROLINA, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed. 2d 503 (2006)[vacating conviction arising from a state law that interfered with the defense for no good reason]. Record 161.

In the case at hand, there was no valid justification for the suppression of evidence of Stropas' PTSD, and how it expressed itself in uncontrolled violence. Among the VA records, petitioner found a statement that Stropas "would attack his bed partner during a nightmare". App. D., page 5.

The prosecution's closing argument was as follows:

In essence, they tried to convince you that the victim pulled a knife so the defendant had to kill him. Counsel-- the defense wants you to believe that the victim was sitting in his jeep, heading back from getting his girlfriend breakfast, and pulls an eight-inch faberware serrated knife from inside of his car for absolutely no reason. Defendant has suggested--defense has suggested, counsel argued it. But there's no evidence in this case that the victim was afraid of the defendant.....What motive would Jim Stropas have to harm the defendant? [Tr. 3/25/11, pages 93-94].

And the victim says, hey Sean. And he pulls the kitchen knife out of nowhere for no reason . No reason at all. [Tr. 3/25/11 at page 100].

Petitioner has represented that he has conducted substantial research on PTSD, and the research has revealed that the PTSD would provide a plausible explanation for why Stropas would attack him with a knife for no good reason.

The court's order not to mention PTSD deprived petitioner of the Federal Constitutional Right to present a complete defense for no good reason. The order gave the prosecution an insurmountable undeserved advantage and the prosecutor exploited it. Record 86.

The prosecutor violated due process and deprived petitioner of the right to present a complete defense. The prosecutor knew that the decedent suffered from a serious case of PTSD and she knew that he had nightmares and attacked people for no reason. She took steps to ensure that the jury was not given the chance to evaluate all of the evidence, including the PTSD which provided an explanation for the attack with eight-inch knife for no obvious reason. Record 81.

If the jury had been given all of the evidence, including the fact that Mr. Stropas was suffering from PTSD, and had attacked people in bed for no reason there was a reasonable probability of acquittal.

The prosecution successfully objected to admission of all references to PTSD. The court granted the prosecution's motion, APP. F., even though Mr. Stropas was dead, could not claim the privilege and the V.A. had revealed the information about the PTSD eliminating the existence of privilege.

The prosecution's argument was as follows : "Without any medical evidence the victim was actually suffering from or being treated for PTSD, there will obviously be no evidence of what if any symptoms the victim may have had."

"The suggestion of an illness without any foundation or specifics as to symptoms is irrelevant and immaterial to the case". "Allowing this suggestion without any evidence in the record to make further assumptions about the victim would be far more prejudicial than probative." App. F.

The jury was entitled to know all the facts, including the fact that Mr. Stropas suffered from PTSD and had attacked his bed partner during a nightmare. The prosecution suppressed key facts, and then exploited the suppression of evidence during the closing argument. Trial counsel was constitutionally ineffective for not insisting that the mental health records be admitted, and for failing to preserve the argument for the appeal that the trial court's refusal to admit the mental health records of Mr. Stropas was a violation of petitioner's fundamental constitutional right to present a complete defense. *CRANE V. KENTUCKY*, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed. 2d 636 (1986)[*"Whether rooted directly in the due process clause of the fourteenth amendment, CHAMBERS V. MISSISSIPPI, supra, or the compulsory process or confrontation clause of the sixth amendment, the constitution guarantees criminal defendants a meaningful opportunity to present a complete defense"*].

Record 158.

It is also important to note that the district attorney's argument in this appeal stated the "Petitioner agreed to have this evidence suppressed." Why would petitioner or anyone "agree" to have exculpatory evidence which strengthens, corroborates and support his defense to be suppressed or sealed? It does not make any sense. Petitioner was excluded from attending the suppression hearing and the hearing to seal documents. Therefore, petitioner was not privy as to what took place at those hearings.

## CONCLUSION

Petitioner humbly request this court to exercise it's jurisdiction and to grant petitioner relief in the form of the following:

VACATE SENTENCE/CONVICTION or REVERSE SENTENCE/CONVICTION.

IMMEDIATE DISCHARGE.

EXPUNGE CRIMINAL HISTORY-Petitioner had no criminal history prior to this incident and was and still is a law abiding citizen who had passed several F.B.I. background checks.

PETITIONER ALSO REQUEST ANY RELIEF THIS COURT DEEMS APPROPRIATE.

This conviction violates both State and Federal Constitutional Rights. The petition for a Writ of Certiorari should be granted.

Respectfully submitted,



SEAN BURTON, PETITIONER, PRO SE

DATE: 3 / 28 2024