

24-7191

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAR 14 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

DARYL COOK - PETITIONER
(Your Name)

vs.

SUPERINTENDENT COAL TOWN - RESPONDENT(S)
SHIP SCI, ET AL.

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

PETITION FOR WRIT OF CERTIORARI

Daryl Cook, #JR8635
(Your Name)

SCI Coal Township, 1 Kelley Drive
(Address)

Coal Township, PA 17866
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. Whether the Federal District Court and Court of Appeals Erred in Not Applying or in Misapplying the Appropriate Standard of Review in Federal Habeas Corpus proceedings Resulting From Claims of Insufficient Evidence to Support Petitioner's State Criminal Conviction of Third Degree Murder and, thus Failed to Carry Out Their Duty To Assess the "Historic" Facts Where Petitioner Made a claim that An Involuntary Confession Was Used to convict him of Third Degree Murder in The State Trial Court Despite A Dying Declaration Being Made Against the Perpetrator And for Where The Record Show that The Jury Foreperson Said Petitioner Was Innocent, Not Guilty When the Judge Asked him "How About Third Degree? See Jackson v. Virginia, 443 U.S. 307 (1979). See also Miranda v. Arizona, 384 U.S. 436 (1966) (indicating that; 1. "The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination).

LISTED OF PARTIES

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

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

*Attorney General of Pennsylvania
District Attorney of Philadelphia*

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is
Cook v. Superintendent Coal Township, SCI 2024 U.S.
 reported at App. LEXIS 16951 (3d. Cir. July 11, 2024); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is
Cook v. McGinley, 2021 U.S. Dist. LEXIS 265623
 reported at (E.D. Pa. Nov. 15, 2021); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is
[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is
[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 07/11/2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10/15/2024, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including March 14, 2025 (date) on December 16, 2024 (date) in Application No. 24 A 584.

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

For cases from **state courts**:

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

 A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

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AB 02.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Deprived of Liberty without Due Process of Law

Fourteenth Amendment: Section 1. "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 privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

INTRODUCTION

This is an “extraordinary” relief case because it gives rise to “exceptional” circumstances which qualify this case for ‘extraordinary’ relief as indicated by the following facts:

FACTUAL HISTORY

On Tuesday, March 18, 2008 at 8:43 PM 39th District police of the City of Philadelphia Police Department responded to a radio call of a stabbing inside 2038 West Tioga Street, Philadelphia, Pennsylvania as a result of Petitioner’s nephew, Andre Williams, who is now deceased, calling 911 and reported in pertinent part: There was an altercation with two people fighting, both of them got stabbed”. See Excerpt from 911 Tape (CD) (indicating what was said by Andre Williams to the 911 dispatcher on the 911 Tape CD, Appendix A-1, attach hereto.) See also Letter to Lee Mandell, Esquire i.e. Petitioner’s trial counsel, Dated September 3, 2008 at page 2, EE (listing the 911 Tape (CD) as discovery provided to Petitioner’s Court-appointed attorney, Lee Mandell), Appendix A-2, attached hereto; Letter of August 13, 2024 (indicating that documents was sent to petitioner on August 13, 2024 by request of his appointed Federal Defender Claudia Flores’ Paralegal), Appendix A-3, attached hereto.” See Letter of October 28, 2024 from Attorney Flores (indicating that she sent Petitioner an index of the homicide file and DOA file on October 28, 2024 that her office received from the DA’s office in Petitioner’s case and that she would send Petitioner a copy of the items that he would like to have, upon approval of her request.) Appendix A-4 attached hereto. See also Letter of December 16, 2024 from Attorney Flores (indicating Attorney Flores sent Petitioner a copy of the redacted discovery in

his case that was approved by the DA, which included ¹ discovery that Petitioner was never provided with or made aware of by his trial counsel Lee Mandell, Esq. and which constitute "historic facts" of this case that show the evidence was/is insufficient to sustain the jury verdict of guilty and that the jury verdict was contrary to the weight of the evidence) Id. Accordingly Petitioner hereby respectfully request that this Honorable Court take "judicial Notice" of the ^{state} documents, i.e. facts, herein that was excluded at trial and in the Court's, Federal District's and Third Circuit Court's opinions, memorandum, recommendation and report, in the interests of justice, which petitioner needs to mention herein to aid this Court's decision in granting his instant petition and the relief that the record shows he is entitled to as indicated and demonstrated.

FACTUAL HISTORY CONTINUED

On Tuesday March 18, 2008, when the police responded to the above-said radio call and arrived at the scene of the stabbing, the victim who died, namely, Robert Daniels, made a dying declaration to police, stating that Petitioner's nephew, namely, Andre Williams, aka AJ, had stabbed him. See Appendix B-1.

On the same date of the stabbing incident, i.e. March 18, 2008 detective Williams # 8051, had interview Warren Shuler, who lived in the rear of the same floor the decent lived on, and he gave the Detective a statement indicating that he heard arguing and that he heard someone saying, "YOU GOT MY MONEY NIGGER." See Investigation Interview Record, Appendix B-2.

¹ Petitioner had requested that Attorney Flores send him a copy of the 911 Tape when he asked her did she see same in his records and she said she believe she seen something indicating that Petitioner's trial counsel was given a copy of same and that she would send him a written copy of the 911 recording, i.e. CD, and she sent him the 911 Excerpt, and i.e. the excerpt from the Tape (CD) cited herein, Excerpt from 911 Tape (CD), Appendix A-1, along with other documents. Petitioner had requested as indicated in the Letter of August 13, 2024, Appendix A-3. Not only did Petitioner's trial counsel fail to provide Petitioner with a copy of the 911 tape upon Petitioner's request, he also acted as if he never had it at trial, and he did not provide Petitioner with all the discovery he received from the District Attorney office.

As a result of all the above, an arrest warrant was approved for Andre Williams, charging him with murder, PIC and Burglary, and the warrant was issued on March 19, 2008. See Homicide record, Appendix B-3.

On March 21, 2008 Petitioner nephew, Andre Williams was arrested, and at the time of his arrest he purportedly stated to the police, YOU GOT ME I'M TIRED OF RUNNING I DID IT." See Activity Sheet Dated 03/20/2008 (indicating that as a result of Andre Williams arrest he stated "you got me I'm tired of running I did it., " and he was transported to Homicide Division and turned over to Det. Cummings for interview), Appendix B-4. Activity Sheet dated 3-21-08, Appendix B-5 indicate that through arriving officers at the scene of the crime "were told by complainant that a male name AJ from a 1st floor apartment did the stabbing" and although at the time of AJ's (Andre Williams) arrest he stated" you got me I'm tired of running I did it," according to Activity Sheet Dated 3-21-08 Andre Williams told Detective Cummings in summary: that he was present when the decedent was stabbed and that he was stabbed by his uncle; that he heard some commotion on the second floor and went to investigate; as he entered the decedent's room he observed the decedent and his uncle (i.e. the Petitioner) engaged in a fight; and he further stated that as he broke up the fight he observed his uncle stab the decedent several times; he placed a call to 911 and then fled the area; when asked why he didn't stay for the arrival of the police, he would only change the subject and not respond, however, he identified his uncle as Daryl Cook... And at this time the interview was halted and Det's Cumming and Glenn proceeded to last known address of Cook; Cook was not present and a survey of the area was also negative; upon returning to homicide, Andre Williams was informed that his uncle was unable to be located, and at that time Detectives attempted to initiate a formal statement at which time Williams stated that he was not going to say anything more and

requested a lawyer, and no formal interview was conducted once Williams invoked his right to counsel. See Id. See also Activity Sheet Dated 3-21-08, Appendix B-5.

Furthermore, despite all of the above, on June 6, 2008, Petitioner was arrested at a Deli on his way to work, as a result of Petitioner's nephew's alleged father, Amir Van Williams, summoning Philadelphia Police and telling them that his son, Andre Williams, was in jail for a murder that Petitioner committed, without telling the police how he obtain that information and without him giving the police an address where he could be reached, thus Petitioner was arrested without probable cause and telling without a warrant issued for his arrest or a criminal complaint filed against. See Vehicle or Pedestrian Investigation Report, Appendix C-1 (erroneously indicating that Petitioner was wanted for murder, and that he was arrested based on A'mir Van Williams, an alleged family member being a witness that Petitioner was wanted for murder).

Moreover, despite the fact that on the day that Petitioner was arrested i.e. on June 6, 2008 he stated to homicide Detective who was interviewing him, that he had knowledge of the alleged incident and was not present when the victim was stabbed to death, and thus had nothing else to say to the Detective, and subsequently, Petitioner was asked to give a blood sample and he fused to give one without a search warrant, and therefore, the detective left and came back with a search warrant, indicating that the warrant was requested to collect blood from Petitioner for a DNA sample based on Petitioner's nephew, Andre Williams, whom the dying declaration was made against, allegedly stated, "after" being arrested and charged with murder and related offenses, that: "he was present at the time of the incident but that he observed his uncle Daryl Cook... become involved in an altercation with the victim. During the altercation, Williams stated he saw his uncle produce a knife and stab the victim." Thus, the warrant also indicated that blood was collected from the crime scene and therefore, the Detective wanted to collect

Petitioner's blood to compare it with the blood collected from the scene. See. Search Warrant and Affidavit, Appendix C-2, See also Activity Sheet Dated 6-6-08 (indicating that when he was first interviewed by homicide Detective McNamee, who has also prepared and executed the search warrant for DNA to be compared to blood and other evidence collected from the scene of the crime, Petitioner stated that he was not present when the incident occurred, however, it also indicate that what Petitioner stated was contrary to statements made by defendant Andre Williams, and therefore Petitioner was believed to be present at the time of the stabbing of Robert Daniels), Appendix C-3. id. (also indicating he had no knowledge of incident.)

Not withstanding the above, after refusing to talk or give a self-incriminating statement to detective McNamee on June 6, 2008, the date of Petitioner's arrest, Petitioner was held in the Homicide Unit of the Philadelphia police Department from the date of his arrest until Sunday June 8, 2008, at which time he was interviewed by two more Homicide detectives, namely Detectives Rodden and Hesser and he was physically assaulted and threatened by Rodden while he was inside of the interview/interrogation room alone with him "after" Petitioner had asked for a lawyer and was told that there are no lawyers on Sundays and refused to talk to him, said Detective used the statement that he told Petitioner to sign, to charge Petitioner with murder and send him to prison even though he had not filed a " criminal complaint" against petitioner and never obtained a warrant for Petitioner's arrest for murder and related offenses "before" he forced petitioner to give him a self-incriminating statement. See Philadelphia Police Department Arrest Report dated 06/08/2008 (Indicating that Petitioner was arrested on 06/06/2008 based on Petitioner allegedly being pointed out by "**Family Members**" as being wanted for homicide of Richard (Robert) Daniels, and that Petitioner was transported to the Homicide Unit and was also wanted on a summary bench warrant, and moreover, on Sunday June 8, 2008, Petitioner

allegedly gave an inculpatory statement admitting to stabbing the decedent, thus, charges was approved by ADA Ponterio, charging criminal Homicide, burglary, criminal trespass, and PIC),

Appendix D-1.

After Detective Rodden told Petitioner to sign the statement, He also told Petitioner to sign the 'Non-Consent to Video tape statement" form, indicating thereon that: "I, Daryl Cook, age 48 years, do not consent to the videotape and audiocassette recording of an interview with Det. Rodden and Det. Hesser of the Philadelphia Police Department Homicide Unit on or about 6-8-08." However, the NON-CONSENT TO VIDEOTAPE STATEMENT, indicate that Petitioner signed said statement on 6-8-08 at 4:59 P.M. "after" his alleged voluntary self-incriminating statement of Daryl Cook Dated 6-08-08 at page 1 and 3 (indicating that petitioner did not sign his true signature on page 1, and indicating on page 3, that he allegedly stated: "I knew that I stabbed the old man in self-defense", and that the statement ended at 4:42 P.M., Sunday June 8, 2008). Appendix D-2. See also Non-Consent to Videotape statement on back of page 3 of Statement of Daryl Cook, at Appendix D-2; Memorandum Dated 6/9/08 (indicating that although an arrest warrant was obtained for Andre Williams, there is no indication therein that an arrest warrant was obtained for Petitioner "before" he was arrested on 06/06/08 and that an arrest warrant was obtained for Petitioner "before" he was arrested on 06/06/08 and that an arrest warrant was approved and issued for Andre Williams aka "AJ" charging him with murder, PIC and Burglary, that Petitioner allegedly made an inculpatory statement admitting to stabbing decedent; and that Lt. Riehl conferred with ADA Ann Ponterio as to all aspects of the investigation and approved the charges of Murder, Burglary, Criminal Trespass and PIC, and although it also indicate that Family was notified of Petitioner's arrest and Court

date, it does not indicate that an arrest warrant had been approved and issued for Petitioner. See Activity Sheet Dated Sunday, June 08, 2008, Appendix D-4.

As a result of the charges against Petitioner, his preliminary hearing was held on August 12, 2008, at which time, the only evidence presented by the Commonwealth to establish A “prima facie” case existed against Petitioner was his alleged “voluntary self-incriminating statement, even though he had testified that the statement was forced and it should be on film showing same. See Preliminary Hearing Transcript of August 12, 2008, at page 7-14.

Although the Police had witnessed the stabbing victim make a dying declaration that Andre Williams, aka “AJ” had stabbed him and Detective Rodden was aware of same and that when Petitioner was first brought to Homicide Unit and a Detective to talk to him about the stabbing death of the decedent Petitioner refused to talk to him about same, i.e. “the denied any involvement in this incident” according to the testimony of Detective Rodden, Petitioner was arrested for a bench warrant and he was considered a suspect for the murder of the decedent based on information provided by Petitioner’s nephew, Andre Williams, whom the decedent told the police stabbed him. Id. at page 28 n.1-9, and Page, n. 15-17; Moreover, despite Petitioner requesting to make a phone call and he was allowed to make same by Detective Rodden, said Detective testified that he did not recall same. Id. at page 33, n. 11-17; Said Detective also denied that he assaulted threatened Petitioner and that Petitioner asked for a lawyer. Id. at page 32, n. 17-25, and page 33, n. 1-10. Furthermore, despite there being “no testimony or signed statement by Andre Williams showing what information was given by Andre Williams to make Petitioner a suspect for questing” and there was “no arrest warrant for murder issued against Petitioner,” thus”, the Commonwealth did not show probable cause for Petitioner to be held in the Homicide Unit for murder of the decedent and, and there was “no evidence”

presented by the Commonwealth showing that Petitioner was "actually" present at the crime scene " and the Commonwealth being aware of the dying declaration that Andre Williams stabbed the decedent," ^{the} The Commonwealth failed or refused to request that the charges be dismissed and Petitioner's counsel had also failed or refused to request that the charges be dismissed based on "there being no competent evidence" a *prima facie* case" existed against Petitioner. See Preliminary Hearing Transcript.

On 8/22/08, the Commonwealth filed Information against Petitioner merely indicating that the "information charges that in the County of Philadelphia, Pennsylvania, Cook, Daryl: Intentionally and with malice caused the death of another human being; and/or while engaged as a principal or as an accomplice in the perpetration of a felony, with malice caused the death of another human being intentionally, knowing, recklessly or negligently "as to count 1, and also charging "Possessed an instrument of crime with intent to employ criminally." See Information filed 08/22/08 (failing to indicate how Petitioner allegedly caused the death of Robert Daniels, i.e. the manner of death), Appendix D-5

On 09/10/08 trial counsel, Lee Mandell, filed a Motion for Suppression representing therein in pertinent part:" 1. Defendant was arrested on or about June 6, 2008 by officers of the Philadelphia police Department and charged with murder and related offenses. 3. As a result of ..interrogation, it is alleged that certain statements either oral or written, were made by the defendant 4. The defendant did not knowingly, intelligently or voluntarily waive his privilege against self-incrimination or his right to counsel. 5. The interrogations were not incident to, pursuant to nor following a lawful arrest. 6. Prior to and after arrest, defendant was aggrieved by certain searched and seizures conducted by various law enforcement officials without a valid search warrant and without legal cause in violation of the Forth Amendment of the United States

Constitution and, independently in violation of the Pennsylvania Constitution, Article 1, Section 8.7. As a result of said search, defendant believes certain evidence will be used against him at the trial of his case. (11) The interrogation, .. were made incident to, pursuant to or following an unlawful arrest. (14) The arrest, identification and confrontations were not pursuant to a lawfully obtained warrant," and trial counsel represented in conclusion for relief that: "WHEREFORE, the defendant prays that this Honorable Court order that: (1) all property and any and all evidence of every kind and description which was obtained as a result of the search and seizure shall be barred from being received or admitted into evidence and they be suppressed; (2) that all statements and admissions improperly taken shall not be received or admitted into evidence; and (3) all identifications resulting from improper procedures or made in the absence of counsel be suppressed and no testimony respecting the same be received." See Motion To Suppress, Appendix E-1. However, at the suppression Hearing held on August 10, 2009, Trial counsel only argued that Petitioner's statement was not voluntary and failed or refused to raise that Petitioner's arrest was unlawful and so was the search of his blood, thus the statement and Petitioner's DNA were inadmissible evidence as "Fruit of the poisonous tree," and therefore should be suppressed. See Suppression Hearing Transcript, Trial (Jury) Volume 1, August 10, 2009, at page 3-44 (indicating that although trial counsel made the trial Court aware that Petitioner's arrest was unlawful and so was the search of his blood for DNA sample, trial counsel, Mr. Mandell only argued that: Your Honor, I submit under all these circumstances that the lengthy period of delay in the interview and the process by which it was obtained, I submit to the Court all lead to the point that this was a totally involuntary statement and, therefore, it should be suppressed"). Id. at page 44, n. 13-20; Consequently, the trial judge denied the Motion to Suppress solely based on: " The Court finds Detective Rodden to be a credible witness, does

not find the defendant to be credible in his recounting of why he gave the statement and as such, given the detective's statement, the Court finds the statement voluntarily. No threats or promises were made. Although he was held for a significant period of time in Homicide, he was alert and was able to recount to the detective freely and voluntarily what occurred on March 18th of '08 when Daniels was stabbed to death. Based on that, the Motion to suppress the statement is denied.² The judge never addressed whether Petitioner's arrest was unlawful, thus, the statement was "fruit of the poisonous tree." Id. at page 45-51. See also Id. at page 16-28 (indicating that Petitioner did not have an arrest warrant issued against him for murder and he refused to talk to the Detective who first attempted to interview him on June 6, 2008, the date of his arrest without probable cause or a warrant to arrest him and take him to Homicide for murder, and that he was only being held in the Homicide Unit based on hearsay allegedly from his nephew Andre Williams).

On 09/23/2008, Petitioner filed a Pro se motion to Suppress and/or Quash Information. See Motion to Suppress and /or Quash Information filed on 09/23/2008, by Daryl Cook.

On 01/12/2009 Petitioner filed a Pro se Motion to Set Nominal Bail and a pro se Petition for Writ of Habeas Corpus.

On 08/10/2009, the trial Court granted trial counsel's oral Motion for Judgment of Acquittal and acquitted Petitioner of the First degree Murder charge, and disposed of the Burglary and criminal trespass charges.

On 08/12/2009, the trial Court declared a mistrial because the jury was hopelessly deadlocked. See Trial Court Docket.

² Id. at page 51, n.8-23.

On 08/28/2009, Petitioner filed a Pro se Motion in arrest of Judgment.³

On 07/02/2010, Petitioner filed a Pro se Omnibus Pre-trial Motion filed See Omnibus Pre-trial Motion filed on 07/02/2010.

On 07/28/2010, Petitioner filed a Pro se Motion for Recusal, a Motion in Arrest of Judgment, Amended Motion for Arrest of Judgment and Brief in support and Motion to Recuse Judge, and Motion for Appointment of counsel. See Motion for Recusal Motion in Arrest of Judgment, Amend. Mot. For Arrest of Judgment and Brief in support, and Motion for Appointment of Counsel filed on 07/28/2010, by Daryl Cook.

On 08/12/2010, Petitioner filed a Pro se Amended Motion for Appointment of counsel. See Amended Motion for Appointment of Counsel filed on 08/12/2010, by Daryl Cook. As a result of Petitioner's mistrial on 08/28/2009, the trial Court ordered a new trial. Despite Petitioner's trial counsel not requesting an acquittal at the time the jury announced that they were hopelessly deadlocked instead of request a mistrial and thus request that new trial be barred on the ground of "double jeopardy," trial counsel maintained Petitioner's innocence, i.e. he stated to the jury at the second trial in his opening and closing arguments that Petitioner is innocent, and because of the "dying declaration" against Andre Williams, his nephew and co-defendant, and Andre Williams at the time of his arrest purportedly telling the police that he did the stabbing and was tired of running and because of Petitioner's alleged "voluntary" self-incriminating statement, the jury could not find Petitioner guilty beyond a reasonable doubt. He also had argued that because of the circumstances surrounding Petitioner's alleged "voluntary" self-incriminating statement, the jury could not accept the statement as "voluntary" or "true" (and i.e.

³ It is significant to note that on 10/28/09, Andre Williams was found not guilty, by Judge Jeffey P. Minehart, at a bench trial. According to the Philadelphia District Attorney's Office DAO Unit Disposition Sheet, Mr. Williams was arrested and charged with murder of Robert Daniels because Mr. Daniels had made a "dying declaration" that Andre Williams had stabbed him. However, when Petitioner got arrested he allegedly gave a statement that he, not Andre Williams (i.e. Petitioner's nephew) stabbed the decedent in self-defense See DAO Unit Disposition Sheet.

because of the dying declaration and Petitioner's nephew purportedly admitting to stabbing the decedent to death; and the fact that Petitioner was held in the Homicide Unit for over two days on a bench warrant for disorderly conduct, a summary offense and not for murder and he denied involvement in the stabbing death of the decedent when he was arrested on June 6, 2008 and when detective Rodden tried to talk to him on June 8, 2008, yet after there being no documentation that Petitioner was fed since June 6, 2008 until June 8, 2008, he decided to give Detective Rodden a self-incriminating statement "after" he was fed by said Detective, and therefore, the jury should disregard Petitioner's alleged "voluntary" confession to stabbing the decedent See Trial Transcript, Volume 1, August 10, 2009, at page 64-72 (indicating that trial counsel stated to the jury that Petitioner is innocent, and because of the dying declaration the jury should find that Petitioner's alleged voluntary statement was "not voluntary" and cannot be accepted and, therefore the jury will find that, in fact the person responsible for the death of Mr. Daniels was, in fact A.J. or Andre Williams, as his correct name is and not this young man over here); Trial Transcript, Volume 1, August 11, 2009 (Trial counsel's closing argument), at page 4-24 (indicating that trial counsel's defense was that Petitioner is innocent not self-defense, the same defense as his opening statement to the jury). Id. See also Trial Transcript, Volume 1, July 08, 2010, at page 27-33 (Trial counsel maintain in his opening statement to the jury at Petitioner's second trial, i.e. new trial, after the mistrial was declared in his first trial because the jury was deadlocked, that Petitioner's defense is that he is innocent and the Commonwealth will not be able to prove its case beyond a reasonable doubt, and therefore, there's only one verdict, "Daryl Cook is not guilty of these charges"); Trial Transcript, Volume 2, July 09, 2010 at page 53-72 (indicating that trial counsel cross-examined Detective Rodden and showed the jury that said Detective knew about the dying declaration before he interviewed Petitioner, he knew about

to stabbing

Andre Williams purportedly admitting Mr. Daniels to death; he knew that Andre Williams allegedly gave an formal statement to Detective Cummings, allegedly stating that he was present at the scene of the crime and observed his uncle, Petitioner, stab the decedent, which was “inadmissible” hearsay because he did not give a formal statement and had asked for a lawyer; he knew that Petitioner was not arrested based on an arrest warrant for murder; he knew that petitioner had refused to talk to the first Detective who tried to talk to Petitioner about the stabbing death of Mr. Daniels and he also refused to talk to him, i.e. Detective Rodden, when he attempted to question him about said stabbing and moreover, trial counsel showed the jury that there was “no valid” reason for Petitioner’s arrest for murder on June 6, 2008 and that there was no documentation that showed that was fed, given anything to drink or an opportunity to use the bathroom or make a phone call and, there was ‘no valid” reason for Petitioner not to consent to videotape/audio taping his alleged “voluntary” statement, and that said Detective talked to Petitioner “informally” before Petitioner was read his right to remain silent and request a lawyer and, Petitioner still had denied involvement in the stabbing incident, however, “after” Detective Rodden gave Petitioner something to eat and drink Petitioner allegedly gave said Detective a self-incriminating statement); Trial Transcript, Volume 3, July 12, 2010 (indicating that trial counsel maintained Petitioner’s innocence is his closing argument to the jury at Petitioner’s second trial, based on the dying declaration,” Andre Williams admitting that he stabbed the decedent when he was arrested and, based on Andre Williams fleeing the scene “after” he called 911 and reported that two people were stabbed and the Commonwealth did not play the 911 tape recording (CD) of 911 call for the jury to hear), at page 11-33.

On July 13, 2010, at the time of Petitioner’s second trial because of the mis-trial-hung jury, as a result of trial counsel’s representation and the Commonwealth’s failure to produce and present

“sufficient evidence” to the jury for the jury to “find beyond a reasonable doubt” Petitioner guilty of the charges he was facing, “first” the jury said they were hopelessly deadlocked and “after” the judge namely, Jeffery P. Minehart (the same judge who presided at Petitioner’s nephew bench trial) had sent the jury back to deliberate again, they sent a note out asking about the PIC charge and was told not to worry about that charge, to decide a verdict without that charge, and “ the Commonwealth withdrew the PIC charge, while the jury was still out deliberating and, when the jury reach a verdict, and he responded “ **yes, not guilty of all charges,**” and looked at the rest of the jurors and said, “**right, not guilty**”, yet still the judge stated to the foreperson, **you can’t do that , you must be confused, you need to go back and think some more,**” however, the trial transcript does not say that, i.e. what the Judge and foreperson “**actually**” said to each other, it merely imply what “**actually**” transpired between the judge and jury person, by only indicating that the judge asked the foreperson do the jury need further clarification and the foreperson said “**No**” when the judge asked the foreperson, “**how about third degree,**” the foreperson responded,” **With innocence, yes, not guilty. Not guilty, right.**” However, the judge sent the jury back to deliberate again. See Trial Transcript, Volume 4, July 13, 2010, at page 2, 5-8, 14 n.2-4, 1317. See also Id. at page 14-16, n.-5 and page 28, n.18-22.

As a result of the trial Court not accepting or recording the “not guilty verdict,” and Petitioner’s trial counsel not requesting a mistrial or that the jury be polled “before” the trial judge sent the jury back to deliberate again, at the time of sentencing on August 26, 2010, Petitioner had asked the trial judge how was he going to be sentenced “after” the jury had found him not guilty of all charges and the Judge sent the jury back to deliberate again “after” telling the foreperson, “**you can’t do that,**” etc. and that he did not want his court-appointed trial counsel

to represent him anymore because he did not request a mistrial when he asked him to, and the judge said he would appoint a new counsel to file post sentence motions for Petitioner, and he had denied that the jury foreperson has said that Petitioner was found “**not guilty of all charges**” in his courtroom, and Petitioner’s trial counsel did not speak up and tell the judge that the foreperson did say petitioner was not guilty of all charges and nor did the acting prosecutor for the Commonwealth See Trial Transcript of July 13, 2010, at page 14,n. 2-4; Sentencing Transcript of August 26, 2010, at page 9, n.17-21, page 10,n.5-25.

On 09/14/2010, as a result of the trial Court not appointing new counsel to file post-sentence motions, Petitioner filed a Notice of appeal to the Superior Court.

On 10/22/2010, Petitioner filed a copy of his “Application for Emergency Order staying Judgment of sentence at # CP-51-CR-0010093-2008, And requiring Plaintiff, Daryl Cook’s Immediate Release Pending Disposition of His Complaint, And for partial Judgment,” that he had failed in the civil division of the Court of Common pleas of Philadelphia County.

On 10/27/2010, Petitioner filed a Pro se statement of Matters Complained of on Appeal to the Superior Court, raising the issues that he had anticipated on appeal, and thus raising the not guilty and dying declaration issues. See Statement of Matters Complained of on Appeal filed Pro se on 10/27/2010, by Petitioner, Appendix E-3.

On April 20, 2012, Attorney David Rubenstein entered his appearance on behalf of Petitioner. Therefore, Petitioner filed multiple Pro se motions that were denied without prejudice to his right to re-apply for relief through counsel.

Petitioner filed a counseled direct appellate brief on August 6, 2012; however, Attorney Rubenstein also filed a petition for remand averring that Attorney Sias failed to raise additional issues on appeal in the 1925 (b) statement. Application for Remand 8/6/12, On August 27, 2012,

the Pennsylvania Superior Court granted Attorney Rubenstein's application for remand and provided Petitioner an opportunity to file a supplemental 1925 (b) statement. In a motion for extra-ordinary relief on December 24, 2012, Petitioner's counsel sought additional time in which to file the 1925 (b) statement. On January 16, 2013, the Superior Court granted the motion for an extension of time. Petitioner's supplemental 1925 (b) statement was filed on February 4, 2013; the trial Court addressed the additional issues raised by Appellant in the supplemental 1925 (b) statement. On June 25, 2013, the Superior Court vacated the briefing schedule to permit Petitioner to file a supplemental brief "due to a breakdown in the operation of the Court" because the right to file a supplemental brief had not been reinstated following the Order granting Petitioner's petition to file the supplemental 1925 (b) statement. Petitioner's supplemental brief was filed on August 26, 2013 raising two claim that the evidence was insufficient to sustain Petitioner's conviction and the trial Court erred in denying Petitioner's motion for mistrial which was based on several people chanting "not guilty, not guilty" as the jurors passed them in the hallway on their way to deliberate, the Commonwealth sought an extension to file a brief, but ultimately did not file a brief.

The Pennsylvania Superior Court affirmed Petitioner's judgment of sentence on March 21, 2014.⁴ See Commonwealth v Daryl Cook 100 A.3d 314, 2014 Pa. Super. Lexis 1217 (Pa. Super. Ct. Mar. 2014), Superior Court decision, Appendix G, attached hereto. The Supreme Court of Pennsylvania denied Petitioner's petition for Allowance of appeal on August 26, 2014.

⁴ Former Justice Fitzgerald who was specially appointed to the Superior Court, filed a dissenting opinion in which he opined that the record did not support the trial court's finding of fact regarding the totality of the circumstances surrounding Petitioner's alleged confession. Justice Fitzgerald recognized that Petitioner specific challenge to his pre-confession detention was arguably waived for failure to identify it in his pretrial motion to suppress, but he noted that the Commonwealth did not object to lack of notice of Petitioner's specific at the suppression hearing, but did not file an appellate brief in this case.

See Commonwealth v Daryl Cook 626 Pa. 704, 99 A.3d 75, 2014 Pa. Lexis 2194 (Pa. 2014).

See Trial Court Decision on Judgment of sentence, Appendix H.

On March 5, 2015 Petitioner timely filed a Pro se petition pursuant to Pennsylvania Post Conviction Relief Act (“PCRA”) 42 Pa. C.S.A. § 9541, et seq. On August 11, 2016, Petitioner filed a Pro se Writ of Habeas Corpus, Counsel was appointed and on March 5, 2017, counsel filed a no merit letter.

On March 13, 2017 Petitioner filed a Motion for Appointment of New counsel which the PCRA Court denied on April 11, 2017.

On April 11, 2017, the PCRA court sent petitioner a notice of Intent to Dismiss pursuant to Pa. R.Crim. P. 907, to which Petitioner filed a response on April 24, 2017. On May 16, 2017, after purportedly reviewing the entire record and determining that the raised issues lacked merit, the PCRA Court issued an order dismissing the PCRA petition without a hearing and permitting PCRA counsel to withdraw. On June 28, 2017, the PCRA Court issued its opinion for the benefit of the Superior Court See Trial Court Decision on PCRA petition, Appendix E. The Pennsylvania superior court affirmed the denial of PCRA relief of June 26, 2018. See Superior Court Decision on PCRA petition, Appendix E.

On May 20, 2019, Petitioner filed a petition for writ of habeas Corpus in the United States District Court the Eastern District of Pennsylvania at Daryl Cook v Thomas S. McGinley, et al, Civil Action No. 19-2206. On November 15, 2021, the District Court denied Petitioner’s petition for writ of habeas corpus after over-ruling his amended objections to the Report and Recommendation, and also denied the motions he filed before the Court denied his petition. See Order of district Court, Appendix C; Report and Recommendation, Appendix D.

On December 9, 2021, the District Court denied Petitioner's timely filed Motion to Amend or Alter Judgment. On or about December 15, 2021, Petitioner filed an amended Notice of Appeal and a Motion for Appointment of counsel. See Appendix F-1. Subsequently Petitioner filed a Motion for counsel and/or Nominal bail, and an amended Motion for counsel and/or nominal bail, and on June 2, 2022, and the United States Court of Appeals Circuit Judges for the third Circuit ordered: "Appellant Daryl Cook has appealed the District Court's denial of his habeas corpus petition and seeks a certificate of appealability ("COA"). The Court has determined that further written argument would be helpful to the resolution of Cook's application for a COA. The Commonwealth is directed to file a response to Cook's COA application within 30 days of the date of this order. In addition to any other issues that the Commonwealth may wish to address, it is specifically directed to address Cook's claim regarding the voluntariness of his June 8, 2088 statement to police. In addressing the totality of the circumstances surrounding that statement, the Commonwealth should also address the conditions of Cook's confinement during his pre-confession detention. See *Withrow v Williams*, 507 U.S. 608, 693 (1993); *Miller v Fenton*, 796 F.2d 598, 604 (3rd Cir.1986). Cook may file a reply within 21 days of being served with the Commonwealth's response. Cook's COA application, and his pending motions, will be held in abeyance pending the Court's receipt and consideration of the Commonwealth's response and, if applicable, Cook reply.

Further, it appears that certain records from Cook's State Court proceedings on Direct Appeal May be helpful to the resolution of Cook's COA application, and it appearing that such records are missing from the State Court record that was filed in the District Court, the Commonwealth shall file copies of the counseled briefs that Cook filed in his Direct appeal to

the Pennsylvania Superior Court, See Pa. Super. Ct. Case No.2712 EDA 2010, within 30 days of the date of this order. See Third Circuit Order of June 2, 2022, Appendix A-1.

On July 15, 2022, the Commonwealth, i.e. Matthew Stiegler, Federal Litigation Unit Supervisor, filed a “Response Regarding Certificate of Appealability” (Concluding therein that for reasons given therein, “the Court should grant a Certificate of Appealability on Cook’s third ground-his challenge to the sufficiency of the evidence and deny COA on all of his other claims. The Commonwealth takes no position at this stage on the merits of Cook’s claim”). See Response Regarding Certificate of Appealability filed in the Third Circuit on 07/15/2022.⁵

On February 13, 2023, third Circuit Judges (namely AMBRO, SHWARTZ, and BIBAS) decided the following documents submitted by Petitioner Pro se and, granted Petitioner’s request for a certificate of appealability under 28 U.S.C. § 2253 (c)(1); (2) Appellant’s Motion for counsel and/or nominal bail; (3) Appellant’s amended motion for counsel and/or nominal bail; (4) Appellee’s response to Appellant’s request for a certificate of appealability, docketed July 15, 2022; and (6) Appellant’s reply in support of request for a certificate of appealability, decided August 3, 2022” See Third Circuit Order of February 13, 2023, Appendix A-2; Amended Notice of Appeal and Motion for appointment of counsel, Appendix F-1; Amended Motion for Counsel And/or Nominal Bail, Appendix F-2; Reply to response regarding Certificate of Appealability.⁶

⁵ It is significant to note that on or about January 1, 2022, Petitioner filed a Motion for Counsel And/or Nominal Bail (indicating that all counsel who was appointed to represent Petitioner at trial, direct appeal and PCRA proceeding’s was ineffective in failing to raise the “dying declaration” and “not guilty “ issue and in not investigating the Petitioner’s issues raised in his Pro se filings, and that the District Court did not rule on his requests for counsel and/or investigator to be appointed). See also amended Motion for Counsel And/or Nominal Bail (indicating that Petitioner was denied presentation of the 911 tape recording and investigation into the not guilty issue, and thus denied a fair trial), Appendix F-2.

⁶ Despite “all” of petitioner’s Pro se filing in the Third Circuit Court of Appeals mentioned in its Order of June 2, 2022 and its Order of February 13, 2023 showing that Petitioner’s constitutional rights were violated at the time of his arrest, interrogation trial, and sentencing, i.e. his 4th, 5th 6th, and 14th amendment rights, and therefore, he should have been granted a COA on “all” his claims presented to the District Court and his claim presented to the Third Circuit Court of appeals in his Amended Motion For Counsel And/Or Nominal Bail regarding the 911 tape recording (CD) not being presented and played at his trial, thus the District Court should have been ordered to grant Petitioner’s Habeas Corpus petition and order his immediate release from custody, contrary thereto, the Third

On August 3, 2023, although Petitioner's appointed counsel filed a Motion to expand certificate of appealability, it was treated as a Motion to reconsider and thus denied. See Order of August 3, 2023, Appendix A-3.

On July 11, 2014 Circuit Judges Krause, Restrepo, and Matey filed an Opinion affirming the District Court's judgment solely relying on Petitioner's alleged "voluntary" self-incriminating statement which they treated as Petitioner raising a self-defense claim therein, without him testify to same and although he testified that the statement was coerced, fabricated, and the record show it was "fruit of the poison tree," and his defense represented by his Court appointed attorney at trial was that he was/is innocent, i.e. not guilty. See Opinion, Appendix A. Petitioner inadvertently omitted prior to the Circuit Judge's decision on July 11, 2004, Petitioner's Court appointed counsel, namely, Claudia B. Flores, from the Federal Community defender Office for the Eastern District of Pennsylvania filed an initial brief and joint appendix on behalf of Petitioner in November 2023 "after" Petitioner's counseled "Application to Expand Certificate of Appealability" filed on July 12, 2023 was denied on August 3, 2023 after it was treated as a motion for reconsideration. See Application to Expand Certificate of Appealability filed on July 12, 2023 (presenting additional evidence to support Petitioner's allegations of abuse, coercion, fabrication, and an attempt to present such evidence through the Commonwealth had "first" conceded that Petitioner should be granted a COA on his insufficiency of evidence claim, See Appellee's response to Appellant's request for a certificate of appealability, docketed July 15, 2022 filed by Mathew Stiegler, esq. at Page 14-18, in Appellee's Brief filed by Anthony Salzetta, Esq. on February 6, 2024, the Commonwealth did not "concede" that Petitioner should be granted a COA on his "insufficiency of evidence" claim. See Appellee's Brief filed February

Circuit Court "only" granted petitioner a COA on his "insufficient", evidence claim and appointed counsel to represent him and, subsequently denied said claim instead of grant him summary relief and order the District Court to grant his petition and order his immediate release from custody.

6, 2024 (indicating that the Commonwealth had concluded that “Cook’s claim challenging the sufficiency of the evidence supporting his conviction does not merit relief. The Superior Court reasonably found that the Commonwealth introduced sufficient evidence to prove-third-degree murder and disprove self-defense beyond a reasonable doubt. This Court should affirm the District Court’s Order denying Cook’s habeas petition”.)⁷ Despite the words of the Homicide Detective, namely, Gregory Rodden, who Petitioner testified against at the preliminary hearing and suppression hearing about him assaulting him and telling him what to say so that he would not have to go to prison; the Commonwealth used the words, “**I know that I stabbed the old man in self-defense**” as evidence, that Petitioner raised a self-defense claim in his alleged statement, in the light most favorable to the Commonwealth instead of move to have all the charges dismissed in light of the dying declaration and Petitioner’s testimony that he is innocent and was coerced to give Detective Rodden the alleged voluntary self-incriminating statement which should have been video/audio taped because petitioner seen a camcorder facing the one-way mirror in the room that he was assaulted in by Detective Rodden and he was also coerced to sign the “Non-Consent to Video statement” which indicate thereon that Petitioner Petitioner’s interview with Detective Rodden was recorded by videotape and audio cassette recording because it say: **I Daryl Cook, age 48 years, do not consent to the videotape and audiocassette recording of an interview with Det. Rodden and Det. Hesser of the Philadelphia Police Department, Homicide Unit on or about 6-8-08**; and moreover, despite Petitioner’s trial counsel solely raising and urging that Petitioner is innocent and that his alleged voluntary statement should not be considered as “ voluntary or true” in light of the dying declaration and totality of the circumstances surrounding his confinement in the Homicide unit without an arrest

⁷ However, most interesting in this case is, everyone except petitioner’s trial counsel, treated Petitioner’s alleged words in his alleged voluntary statement as true regarding him allegedly stating therein that: “ I knew that I stabbed the old man in self-defense” See Statement of Daryl Cook Dated 6-8-08, at page 3, paragraph 3, Appendix D-2.

warrant for murder for a period of over 50 hours, it appear in the record as though Petitioner, his appellate counsel, the Superior Court, his PCRA counsel, the District Court, and the Third Circuit court of appeals agreed with the Commonwealth that Petitioner “raised” a self-defense claim in his alleged voluntary self-incriminating statement even though he did not testify at his trial that he acted in self-defense and he and his appellate counsel and Federal Defender counsel in the Third Circuit “merely” argued that even if his alleged voluntary statement could be accepted as him raising his own self-defense claim instead of his Court appointed counsel raising same and/or without Petitioner testifying to same, they argued that the Commonwealth could not and did not show “Malice” or present competent, reliable evidence that Petitioner was “actually” the perpetrator or that Petitioner could retreat safely after he was attacked by the decedent, even though the Commonwealth “contended” that Petitioner acted out of anger, which constitute heat of passion. See Decision of United States Court of Appeals Opinion, Appendix A (indicating that he stabbed Daniels, they should also find that he acted in self-defense”, and that: After exhausting his State remedies, Cook filed this petition, arguing the trial evidence was insufficient to support his conviction because the Commonwealth failed to prove malice (as required for Third-degree murder conviction) and, “alternatively”, **failed to disprove self-defense.”** The District Court denied Cook’s petition, and “we granted a Certificate of Appealability “with respect to Cook’s claim challenging the sufficiency of the evidence against him for his third-degree murder conviction”).

However, the Circuit Judges failed to look at the “historic facts” that show the evidence was insufficient to support his conviction, such as the dying declaration and the fact that if his alleged voluntary statement was true, it merely indicated that he acted in the heat of passion, yet how could it be accepted as true when it merely indicate that he stabbed the decedent twice in the

stomach and not numerous times or in his chest and he did not consent to have his alleged voluntary statement recorded and nor did he testify that he acted in self-defense or argue to the jury that he acted in self-defense. See Id. at page 2. Instead of reviewing the “historic facts” of the case such as the dying declaration, Andre Williams admitting to stabbing the decedent, Petitioner being arrested and searched without probable cause to reasonably believe that he had committed the homicide and was held in the Homicide Unit for over 50 hours without any evidence that he was fed or was able to sleep probably and the jury being hung in his first and second trial and the foreperson responding to the trial Court’s question, “ how about third degree,” and the foreperson said according to the “erroneous” transcript, “with innocence,” “not guilty”, etc., the Circuit Court judges simply ~~reweighed~~ ^{that} ~~reweigh~~ the evidence the Commonwealth presented to the jury even though they said they could not reweigh the evidence the jury evaluated. Id. at 3-5.

As a result of Krause, Restrepo, and Mately, Circuit Judges of United States Court of Appeals for the Third Circuit affirming the United States District Court for the Eastern District of Pennsylvania denial of Petitioner’s petition for habeas relief on July 11, 2024, Petitioner’s Court-appointed Federal Community Defender, Claudia B. Flores, Esq. filed a “Petition for Panel Rehearing and rehearing En Banc” on September 24, 2024 (indicating that she expressed a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decision of the United States Supreme Court and the U.S. court of Appeals for the Third Circuit, and that consideration by the full Court is necessary to secure and maintain uniformity of decision is contrary to Jackson v Virginia, 443 U.S. 307 (1979), and the Third Circuit’s decisions interpreting Jackson, by failing to consider whether there was “ sufficient evidence to justify a rational tier of the facts to find guilt beyond a reasonable doubt.” Id.” at 313. And also

indicating to the Third Circuit panel and Court en Banc that the {this} appeal involves a question of exception important, i.e. whether a murder conviction is based on sufficient evidence where no eyewitnesses testified at trial to describe the struggle that ensued after the victim attacked Mr. Cook with a knife, and the only evidence before the jury was Mr. cook's statement which clearly established self-defense in the absence of any evidence to the contrary). See. Petition for Panel Rehearing and Rehearing En Banc, filed 09/24/2024; Third Circuit Court Opinion, Appendix A; Denial of Petition for Rehearing, Appendix B.

REASON FOR GRANTING THE PETITION

Petitioner has been fighting for justice every since the day of his unlawful arrest for murder when he was arrested on June 6, 2008 and transported to the Homicide Unit of the Philadelphia police Department headquarter at 8th race street, Philadelphia Pennsylvania and, told the initial Homicide detective, who attempted to interrogate/interview him about the homicide of Robert Daniels, that he did not want to talk to him or give him Petitioner's blood to test without a search warrant and when he told the second Homicide detective, namely Gregory Rodden, on June 8, 2008, over 50 hours after being held in the Homicide Unit, that he wanted a lawyer and had refused to talk to him about the homicide of Robert Daniels. See Activity Sheet Dated 6-6-08, Appendix C-3; Activity Sheet Dated Sunday, June 8, 2008, Appendix D-4; Trial Court Opinion, at page 2, paragraph 2, Page 3, paragraph 2, Appendix H; PCRA Court Opinion, at page 2-4, paragraph 1, Appendix F; Preliminary Transcript of August 12, 2008, at page 7-14; Pro se Motion to suppress and/or Quash Information filed 09/23/2008; Pro se Motion to set Nominal Bail and Pro se Petition for Writ of Habeas Corpus filed 01/12/2009; Pro se Motion in arrest of Judgment filed 08/28/2009; Pro se Petition for Writ of Habeas Corpus And/or Motion to Dismiss filed on 12/14/2009; and Amended Motion to Dismiss filed on 4/22/2010; Pro se Pre-trial Motion filed on 07/02/2010; Pro se Motion for Recusal, Motion In Arrest of judgment, Amended Motion for Arrest of Judgment and Brief in support, Motion to Recuse judge, and Motion for appointment of counsel filed 07/28/2010; Pro se Amended Motion for appointment of counsel filed on 08/12/2010; Pro se Notice of Appeal to the Superior Court; Pro se Copy of his "Application for Emergency Order Staying Judgment of Sentence at CP# 51-CR-0010093-2008, And Requiring Plaintiff, Daryl Cook's Immediate Release Pending Disposition of his Complaint, And for Partial Judgment" filed on 10/22/2010 in CP# 51-CR-0010093-2008 that he filed in the

Civil Division of the Court Common Pleas of Philadelphia County, at Daryl Cook, et al .v Commonwealth of PA, et al. No. 04474, April Term, 2012 Pro se Motion for Post Conviction Collateral relief (“ PCRA” petition), filed on march 5, 2015; Pro se petition for writ of Habeas corpus, filed on August 11, 2016 in the PCRA Court Pro se Motion for Appointment of New Counsel, filed on March 13, 2017; Pro se response to PCRA Notice of Intent to Dismiss pursuant to Pa. R. Crim. P.907, filed on April 24, 2017; ⁸ Pro se petition for Writ of Habeas corpus, filed in the United States District Court for the eastern District of Pennsylvania on May 20, 2019; Pro se Motion for Extraordinary Relief; Pro se Reply in Opposition to Response to Petition for Writ of Habeas Corpus; Pro se initial objection to Report and Recommendation; Pro se Amended Objections (citing reply in Opposition to Response to Petition for Writ of Habeas Corpus); Pro se evidence in support of Petitioner’s Amended objections; Pro se Letter; Pro se Motion for Emergency release; Pro se Motion for Speedy disposition or Nominal Bail. Also District Court Order, at Page 1, (indicating Pro se filing in that Court), Appendix F-1; Pro se amended Motion for counsel And/or Nominal Bail, Appendix F-2 (indicating that Petitioner had reason to believe *withheld the 911 tape* that the Commonwealth had *it*); Pro se motion for extraordinary Relief Under the All Writs Act, filed in the United States District court for the Eastern District of Pennsylvania, at Civil Action 19-2206 (Cook v McGinley), See also Order filed October 16, 2019 denying said Motion, Appendix F-4.

Notwithstanding none of the above, Petitioner has also discovered through his Assistant Federal defender that his trial counsel and the assistant district Attorney knew about the “dying declaration”

⁸It is also signification to note, that ‘after’ the PCRA Court denied Petitioner’s Motion for appointment for appointment of New PCRA counsel on April 11, 2017 and dismissed his PCRA petition without a hearing on May 16, 2017 Petitioner filed Notice of appeal and a seven page Rule 1925 (b) statement and raise a single issue in his brief and he had requested a Remand for a hearing on his erroneous transcript, etc. in his “Motion for Emergency Order and Stay Pending Disposition of hearing”, which was denied on August 14, 2017. See Superior Court Decesion at page 2-3, Appendix E.

stating that petitioner's nephew, A.J. aka Andre Williams, had stabbed Mr. Daniels "before" Petitioner allegedly "voluntary" gave detective Rodden the "self-incriminating statement" in question herein, "after" she, namely, Claudia Flores, had got approval from the Disstrict Attorney's office (DAO) to provide petitioner with a redacted copy of the Homicide file (H-file) and copy of the DAO file documents and, items requested by Petitioner as previously indicated herein, and moreover, Petitioner also discovered therefrom, that the Homicide detective, Rodden, "knew" at the time of him coercing Petitioner to say it was self-defense when he stabbed Mr. Daniels so that he would not have to go to prison, "after" Petitioner was physically and verbally assaulted by Detective Rodden, that Petitioner's nephew, Andre Williams, had already confessed to killing Mr. Daniels, thus Williams had confirmed Mr. Daniel's **"dying declaration"**, yet still, Detective Rodden told Petitioner that his nephew said Petitioner did the killing but he did not believe him so all Petitioner had to do was say his nephew did it and he would be allowed to go home "today", however, Petitioner told said Detective that he is not an informant and that's when the Detective started physically assaulting him and threatening him and caused Petitioner to give in and say, "can I call my family first to see what they say about me giving you a statement before I give you one" and then allowed Petitioner to make two (2) phone calls (i.e. one to Mrs. Bert and one to Aminah Brown, who have both passed away), and petitioner told Mrs. Bert that the Homicide Detective was trying to force him to give the Detective a statement See Police statement, Appendix B-1, (indicating that Petitioner's trial counsel and the Assistant District Attorney knew that Mr. Daniels made a dying declaration that Petitioner's nephew, Andre Williams, had stabbed him, "before" Petitioner was arrested purportedly based on his nephew making an "oral", i.e. informal, statement that Petitioner had stabbed Mr. Daniels, even though Petitioner's nephew, who also have passed away, also purportedly made an "oral" statement at the of his arrest that he had stabbed, i.e. killed, Mr. Daniels). See also Activity Sheet Dated 03/20/2008, Appendix B-4 (indicating

that Andre Williams, i.e. Petitioner's nephew, as task force officers approached him he put his hands in the air and purportedly stated ("YOU GOT ME I'M TIRED OF RUNNING I DID IT"); Activity Sheet Dated 3/21/08 (indicating that, Andre Williams purportedly told Det. Cummings that he heard some commotion on the second floor and went to investigate. As he entered the decedent's room he observed the decedent several times, However, it also indicate in paragraph 1 that: "Based on an investigation and the dying declaration by the decedent a warrant was obtained charging AJ aka Andre Williams with murder and PIC"), Appendix B-5.⁹ Furthermore, despite Det. Glenn's name being mentioned in Appendix b-5, his name was not mentioned in Activity Sheet 03/20/2008, Appendix B-4, it merely indicate that "after" Williams was transported to Homicide Division, he was turned over to Det. Cummings for interview, and despite Williams' trial counsel requesting Detective Cummings notes relating to the informal statement of Andre Williams, as well as any other documentation or witnesses to this statement, she i.e. Williams' Public Defender, was only provided with Activity Sheet dated 3/21/08, Appendix B-5, documenting Andre Williams oral statement to Detective Cummings, in response to her request. See Letter Dated December 23, 2008, letter Dated January 15, 2009 and February 5, 2009 in Appendix F-5. In the interests of justice and public policy, Petitioner respectfully invoke this Honorable Court to take judicial notice of all the documentation mentioned and presented herein regarding Andre Williams which was presented as hearsay at petitioner's trial or "not" presented at Petitioner's trial, yet was used to arrest and interview Petitioner despite the decedent's "dying declaration" that AJ, aka Andre Williams stabbed him. ¹⁰ See Michael Stango v Gregory

⁹ It is significant to note that, although Activity Sheet Dated 3-21-08 indicate in paragraph 3 that petitioner's nephew "told Det. Cummings in summary that he was present when the decedent was stabbed by his uncle", it does not indicate that Det. Glenn was present when Petitioner's nephew was purportedly interviewed by Det. Cummings, Id. and nor does the Homicide record at page 2, paragraph 1, Appendix H-1.

¹⁰ Also, Petitioner invoke this Honorable Court to take judicial notice of the following cases cited that show that the Homicide Detectives and supervisors who participate in arresting charging, and interviewing Andre Williams, and Petitioner, and purportedly obtained "oral" statements from them, including the alleged formal voluntary statement of Petitioner was accused of misconduct, including fabrication of inculpatory evidence, suppression of exculpatory evidence, coercion, and misrepresentation.

Rodden, 2001 U.S. Dist. Lexis 15728 (E.D.Pa. Aug.11, 2001) (accusing Gregory Rodden of not having probable cause to arrest, among other things); Dwayne Thorpe v City of Philadelphia, 2020 U.S. Dist. LEXIS 158682 (E.D. Pa. Aug. 31, 2020) (accusing Det. Henry Glenn, Det. John Cummings, Sgt. Frank Hayes, and Lt. Philip Riehl-and the City of misconduct that led to Thorpe's wrongful conviction); Theophalis Wilson v City of Philadelphia, 2023 U.S. Dist. LEXIS 140212 (E.D. Pa. August 11, 2023) (accusing Gregory Rodden, Former District Attorney Lynne Abraham, City of Philadelphia, et al. of violation of Wilson's civil rights and state Law). See also Motion to expand COA, filed 8/3/23 in the third Circuit of Appeals (indicating cases Detective Gregory was accused of misconduct). Not only was Petitioner "arbitrarily arrested and coerced i.e. into giving "false" statement i.e. held over 50 hours in custody and beaten/threatened, in violation of his rights under the 4th , 5th , and 14th amendments to the United States Constitution, the State trial Court record "before" the trial Court and jury, and the lack of evidence "before" them and at the Preliminary hearing, the record at the time of sentencing indicating that Petitioner's trial counsel and the prosecutor did not speak up to the judge about the jury foreperson saying that Petitioner was "**not guilty of all charges**" and the Court did not appoint new counsel to represent petitioner, the decision of the Superior Court of Pennsylvania on Direct Appeal and on appeal from the Order dismissing Petitioner's PCRA petition without an evidentiary hearing, based on Petitioner's PCRA appointed counsel's no-merit letter, the United States District Court's and Court of Appeals for the third Circuit's record, "all" show that petitioner has been "arbitrarily" deprived of his liberty, in violation of the 4th , 5th , 6th , and 14th amendments to the Constitution of the United States, and Laws of the United States where:

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The record thus for contained herein along with the Pro se filing's cited above in page ~~32-34~~ and the decisions of the State Courts, i.e. trial/PCRA Court, Superior Court of Pennsylvania, and the United state District Court for the Eastern District of Pennsylvania and United States Court of Appeals for the

Third Circuit show that despite the “decedent’s dying declaration” that Andre Williams stabbed him and Andre William’s purportedly made an “excited utterance” to police at the time of his arrest that “YOU GOT ME I’M TIRED OF RUNNING I DID IT”, his alleged words purportedly during an informal interview with a Homicide Detective, namely John Cummings, that Petitioner was the person who stabbed the decedent was accepted as true the decedent’s dying words even though pursuant to **Crawford v Washington**, contrary to Andre Williams’ counsel’s “**Motion to exclude**” decedent’s “**dying declaration**” from being admitted as evidence that Williams was the person who stabbed him because Petitioner allegedly voluntary confessed to the murder and the dying declaration is admissible hearsay, and thus in light of the dying declaration contrary to police having a valid “reason to transport Petitioner to Homicide and for petitioner to be held over 50 hours in the Homicide Unit until “after” he allegedly voluntary gave detective Gregory Rodden a self-incriminating statement and contrary to the Commonwealth accepting as true over the decedent’s dying words that Williams witnessed Petitioner stab the decedent, to give the Commonwealth reason to believe that Petitioner’s “alleged” voluntary self-incriminating statement i.e. confession to stabbing the decedent was **true** and thus **competent** to establish “**a prima facie**” case against Petitioner and give a jury or judge reason to believe **beyond a reasonable doubt** that Petitioner stabbed the decedent not Andre Williams, in **Crawford**, the Court indicated therein that: “**We have previously acknowledge that two forms of testimonial statements were admitted at common law even though they were unfronfronted**” (citing *Id.*, at 56, n.6, 62, 124 S.Ct. 1354, 158 L.ED. 2d 177), and then stated therein that: “**The first of these were declarations made by a speaker who was both on the brink of death and aware that he was dying**”, citing, e.g. *King v Woodstock*, Leach 500, 501-504, 168 Eng. Rep.352, 353-354 (1789); *State v Moody*, 3 N.C. 31 (Super.L.Eq. 1978); *United States v Veith*, 28 F.cas.367, 367-368 (No. 16, 614) (CC DC 1803); *King v Commonwealth*, 4 Va. 78, 80-81 (Gen. Ct. 1817). See

Defendant's Motion to exclude the Testimonial Statement of the decedent (citing Crawford v Washington, 541 U.S. 36 (2004), Appendix F-7. Despite that Andre Williams' counsel argument in his Motion to Exclude is not supported by Crawford, it is also well settled State law that a dying declaration is admissible as an exception to the hearsay rule See also Commonwealth v Minnick 2016 Pa. Super. Unpub. Lexis 1154, 145 A.3d 774 (citing Commonwealth v Griffin, Pa. R.E. 804 (b) (2), and 803 (3); Commonwealth v LaRosa 1990 Pa. Super Lexis 2771 (March 8, 1990) Although Petitioner is just a layman, it appears to him from Williams' counsel's argument in his aforesaid "Motion to Exclude", that Williams' counsel merely was attempting to " sway" the judge who heard her Motion to decide that the "**dying declaration**" was mere hearsay in violation of Williams' confrontation right pursuant to Crawford even though Crawford do not/did not hold that and she admit same in her Motion at 5, Page 3. See Defendant's Motion to Exclude The Testimonial Statements of The Decedent at 5, page 3, Appendix F-7. Thus, Petitioner believe that it is apparent from Williams' motion to exclude arguing that because of Petitioner's alleged "voluntary" confession to killing Mr. Daniels, i.e. the decedent, Williams' attorney totally ignored the fact that the decedent's "**dying declaration**" in the instant case before the trial Court, and i.e. bench trial, at which the judge (namely Jeffrey P. Minehart) was presiding, who also presided at Petitioner's jury trial, constituted an exception to hearsay and if the judge granted the motion it would cause an "**injustice**" to Mr. Daniels and Petitioner, because contrary to Williams' attorney's argument that " the constitutional right to confront must trump a rule of evidence' as indicated earlier, the United States Supreme Court did not hold that ~~support~~ a dying declaration is inadmissible hearsay and the cases previously cited herein that support a dying declaration as being "**reliable**" clearly comport with "**fairness**" under the United States Constitution to "**honor a decedent's last words**" identifying who was responsible for his injury or injuries which caused his death. Certainly, it is illogical, unreasonable, unfair for dying man last words

to be trumped by the words of the person who he said was responsible for his death or by words of a person who try to protect the person who the “**dying declaration**” was made against, by him “falsely” confessing to the killing for whatever reason, i.e. whether he was forced to confess or just trying to get his friend or family member off the hook. However, for the sake of argument, even though someone other than the person who the “dying declaration” was made against try to take the blame for the decedent’s death by confessing to killing him, the dying declaration would cause a reasonable person, jurist to have “a reasonable doubt” as to whether the person who confessed was “actually” the doer and especially as in this particular case the person who the dying declaration was made against purportedly “admitted” to being the doer at the time of his arrest and then “later”, purportedly during an “informal interview” with Detective Cummings, he i.e. Williams, accused Petitioner of being the person who committed the murder, and Petitioner was arrested based on his “unreliable” alleged “oral” statement to Detective Cummings and/or based on his father’s ‘unreliable’ alleged “oral” statement to a police officer who did not find an arrest warrant for murder issued for petitioner, yet Petitioner was arrested and transported to the homicide division of Philadelphia police Department despite the dying declaration against Andre Williams, Petitioner’s nephew, who was arrested and charged with the murder of the decedent before Petitioner, and was thus acquitted of all charges as a result of Petitioner’s forced alleged confession that was unreliable in light of the dying declaration and the fact that his alleged confession wrongly stated that he stabbed the decedent twice in his stomach even though there was no evidence of the decedent being stabbed in the stomach and the Criminal Complaint and Information filed against Petitioner does not indicate where the decedent was stabbed at by Petitioner and nor do Andre Williams’ 911 call to the police indicate where he allegedly observed the decedent get stabbed at when he asked by the 911 dispatcher, “[T] he person who was stabbed, where part of the body”? See Expert of 911 (CD), Appendix A-1; Police Statements, Appendix B-1;

Statement of Daryl Cook, Appendix D-2; Vehicle or Pedestrian Investigation report, Appendix C-1; Philadelphia police Department Arrest report Dated 06/08/2008 (indicating that Petitioner was arrested on 6/6/2008 because family members pointed him out as being wanted for murder and the cause of death was multiple stab wounds to the chest), Appendix D-1; Vehicle or Pedestrian Investigation Report (indicating again that Petitioner was arrested on 6/6/2008 based on unreliable hearsay, i.e. without probable cause to have reason to believe that petitioner committed the murder, in light of the dying declaration), Appendix C-1; DAO Unit Disposition Sheet (indicating that Andre Williams was found not guilty by Judge Jeffrey P. Minehart, the same Judge who presided at Petitioner's jury trial, because Petitioner allegedly said he stabbed the decedent in self-defense and Williams did not stab him despite the dying declaration), Appendix E-2.¹¹ The "Historic" facts thus far show that Petitioner's prosecution was initiated in "bad faith". See Daryl Cook's and Andre Williams' Criminal Complaint/Probable Cause for Andre Williams' Arrest (indicating that Daryl Cook caused the death of the decedent by stabbing him but it don't say where he allegedly stabbed him at, even though according to Petitioner's {Daryl Cook's} alleged voluntary self-incriminating statement, he stated that he stabbed the decedent twice in his stomach yet he was not stabbed in his stomach; and Andre Williams' Criminal Complaint indicates that Williams caused the decedent's death by stabbing him repeatedly in the chest and arm, and his Affidavit of Probable Cause indicates that the decedent said Williams stabbed him and when asked if he was sure A J stabbed him, he replied yes), Appendix F-8; Information filed 08/22/2008 (indicating that Daryl Cook was charged with murder without indicating how he caused the decedent's death, i.e. what part of decedent's body the instrument of crime was used and, although it say that Petitioner possessed an instrument of crime with intent to

¹¹ It is significant to note that although Petitioner have obtained discovery regarding his nephew's (i.e. Williams') trial, he was unable to discover whether on not Williams' "Motion to exclude" was granted and whether the prosecutor, namely, Joanne Pescatore, Esq., opposed the motion to seek justice or ignored the dying declaration and Petitioner's assertion/testimony that his statement was not voluntary or his words.

employ it criminally, it does not say what the instrument of crimes was, however at the time of trial, when the jury asked about the instrument of crime an extraordinary event occurred while the jury was in deliberation, and Petitioner was prejudiced therefrom because if the PIC charge was explained to the jury Petitioner may not have been found guilty of third degree murder due to his alleged “voluntary” statement saying that he took the knife from the decedent “after” the decedent was swinging the knife at him, and therefore, **“there was no evidence of Petitioner being in possession of the knife with intent to employ it criminally”** when he entered the open door to the decedent’s room because he heard his nephew arguing with somebody and his “only” “intent” was to see what was going on with his nephew), Appendix D-5 See also Jury Notes at page 8 (indicating that the jury asked that the PIC charge be explained to them), Appendix H-3; Trial Transcript of July 13, 2010, at page 14,n.9-11, and page 27, n.8-23.

Most import, despite the evidence being insufficient to support the verdict as indicated by Petitioner being subjected to two trials as a result of the first trial resulting in a hung jury, i.e. deadlocked, and as indicated by the second jury also being deadlocked yet “forced” To give another verdict after the foreperson announced in open Court that Petitioner was **“not guilty of all charges”** even though the trial transcripts incorrectly say that “after” the judge asked the Foreperson: **How about third degree,”** the Foreperson responded: **With innocence, yes not guilty. Not guilty, right,”** See Jury Notes at page 4 (indicating jury is deadlocked), Trial Transcript of July 13, 20110, at page 6, n.11-page 7, n.1-7 (indicating that the jury was hopelessly deadlocked after the Judge said he was giving the spencer and asked the Foreperson **does the jury require any additional clarifying instructions on the law that applies to the case at this time,”** and the Foreperson responded: **“No Your Honor”**. See also Trial Transcript of July 13, 2010, at page 14, n.2-4 (indicating that after being forced to deliberate again despite the Foreperson telling the Judge that the jury was deadlocked and needed no additional

clarification or clarifying instruction on the law, when the judge asked the foreperson, how about third degree, he said with innocence, yes, not guilty, etc. according to the transcripts) However, when Petitioner tried to have the transcript corrected, the Judge took it upon himself to review the transcript and say there is nothing wrong with it and thus did not afford him a hearing regarding same and nor did the Superior Court grant him a remand for a hearing on same. The Judge had also denied in open Court on the record that the Foreperson had said Petitioner was not guilty of all charges, and the prosecutor and defense counsel did not speak up and inform the judge that the foreperson did say that Petitioner was not guilty, See Sentencing Transcript at page 10 and he sent the jury back to deliberate again even though not guilty is in the transcript and Petitioner made the Judge aware of same at sentencing “before” the transcript was transcribed and indicated same in his Pro se 1925 (B) Statement. See Letter of December 19, 2012-Complaint in the nature of Mandamus regarding Errors in trial transcript/Errata Sheet Dated 12-26-12/Letter of January 15, 2013, Determination of trial judge, Appendix H-4; Letter from David S. Rudenstein, Esq. Dated February 9, 2013 (indicating that Mr. Rudenstein said there was nothing he could do to attempt to correct the transcript); Statement of Matters Complained of on Appeal, at page 6. N-page 7 (indicating what transcribed when the Foreperson said Petitioner was not guilty of all charges before the transcript was Transcribed), Appendix E-3. No attorney investigated the not guilty issue. See Appendix H-6. ¹²

Moreover despite the record showing that Petitioner did not waive or default any issue and all his issues in his Habeas corpus petition and PCRA petition had/have merit and was exhausted, it appear that the State trial Court, appellate Court, the District Court and third Circuit Court did not review the entire record and/or address all of Petitioner’s claims, issues he raised in his PCRA and Habeas Corpse petitions, and he have been denied due process, a fair and meaningful opportunity to be heard because

¹² The Letter from the attorney who Petitioner could not afford to hire indicated that he would investigate the jurors and every personnel in the Court to obtain an Affidavit showing that the Foreperson did announce Petitioner was not guilty. Appendix H-6.

of the grave miscarriage of justice he is suffering and have been suffering as a result of the State and Federal Courts relying on his compelled self-incriminating statement which was obtained pursuant to his unlawful arrest and which he did not testify to and nor did the Homicide Detectives present the video/audio tape of his alleged “voluntary” confession, which the Detective made him sign a consent not to. See Appendix D-2¹³ Thus, all the public who Petitioner made aware of his case found the issue of the transcript having not guilty in it “Shocking” to their minds, and the fact that his “Motion for Arrest of Judgment And Brief In Support, filed on July 28, 2010” show that contrary to the Superior Court’s decision stating that although Petitioner filed numerous Pro se motions, there was no post-verdict motion for a new trial based on the weight of the evidence, Petitioner raised the dying declaration, i.e. weight of the evidence claim, in said Motion for Arrest of Judgment. See Motion for Arrest Judgment and Brief in Support, at page, Appendix F-9; Superior Court Decision Shocking to their minds not to mention the District Court’s decision and third Circuit wrongfully concluding that it don’t matter how the fight started even though it started because the decedent pulled a knife out from under his mattress and started stabbing Petitioner when all Petitioner did was say what’s going on and Petitioner merely acted in the heat of passion, if it is true that he stabbed the decedent and therefore, he would not be guilty of Third degree instead of “ involuntary manslaughter. See Castro v Regan, 525 F.2d 1157 (3rd Cir. 1975).

Based on the Historic facts herein and evidence presented or not presented to the jury, Petitioner is relying on his counseled arguments in the United States Court of Appeals for the Third Circuit and his arguments in the United States District Court for the Eastern District of Pennsylvania and Court of Appeals for the Third Circuit. See Petitioner’s Pro se petition for Writ of Habeas corpus filed in the District Court on May 20, 2019; Petitioner’s Pro se reply in Opposition to Response to Petition for

¹³ The Prosecution did not present the video/Audio to demonstrate the use of procedural safeguards to secure the privilege against self-incrimination pursuant to Miranda v Arizona 384 U.S. 436 (1966).

Writ of Habeas Corpus; Pro se Amended Objections to Report and Recommendation; Petitioner's counseled "Application to Expand Certificate of Appealability," filed on July 12, 2023; Petitioner's Counsel "Initial Brief and Joint Appendix filed 11/09/2023; Petitioner's counseled "Petition for Panel Rehearing and Rehearing En Banc," filed on September 24, 2024", citing *Jackson v Virginia* 443 U.S. 307 (1979); The facts asserted in the Factual History herein at page 1-25.¹⁴ Clearly, Petitioner's PCRA petition, Brief for Appellant on Appeal from the Order dismissing PCRA, Habeas Corpus petition, and Reply in Opposition to response to Petition for Writ of Corpus show that all Petitioner's issues, claims raised on direct appeal, in the PCRA proceeding, and in the united States District Court was exhausted and have merit, thus the District court and Court of Appeals for the Third Circuit erred and/or abused its discretion in not finding that the evidence was insufficient to the support ^{Petitioner's} Petitioner's conviction of Third degree murder, especially in light of Petitioner's counseled arguments. Petitioner respectfully request that counsel be appointed herein if necessary to aid the Court's decision.

CONCLUSION

The petition for a writ of Certiorari should be granted.

Respectfully submitted,

Daryl Cook

Date: March 13, 2025

¹⁴ The Commonwealth failed to show that Petitioner's statement was voluntary pursuant to the Third Circuit Order of June 2, 22, thus, the evidence was insufficient to support the verdict. See. Order of June 2, 2022 Appendix A-1. See also *Jackson v Virginia* (indicating that the United States Supreme Court will review the facts to determine whether the confession was wrongly admitted in evidence).