24-7505

No. 24-1158

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD EVANS

petitioner

vs.

SUPERINTENDENT DALLAS SCI ET. AL.

Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Donald Aldrigo Evans KU1113

Sci Dallas

1000 Follies Road

Dallas Pennsylvania 18612

QUESTION(S) PRESENTED

No. 24-1158

QUESTION(S) PRESENTED

LIST OF PARTIES

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

1) DELAWARE COUNTY DISTRICT ATTORNEYS' OFFICE
DELAWARE COUNTY COURTHOUSE
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MEDIA PENNSYLVANIA 19063

2) OFFICE OF ATTORNEY GENERAL
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1000 MADDISON AVENUE
NORRISTOWN PENNSYLVANIA 19403

3) OFFICE OF THE ATTORNEY GENERAL
OF PENNSYLVANIA
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PHILADELPHIA PENNSYLVANIA 19103

4) SUPERINTENDENT DALLAS SCI
1000 FOLLIES ROAD
DALLAS PENNSYLVANIA 18612

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No. 24-1158

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 E to the petition and is

[✓] reported at C.A. No. 1158; 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[ ] is unpublished.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 D to the petition and is

[✓] reported at 2:21-cv-0574-JHS; or
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts:**

Superior Court PA July, 2021
[✓] reported at 56 EDA 2020 CP-23-CR-679-2012; or
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

Court of Common Pleas
[✓] reported at 56 EDA 2020 CP-23-CR-679-2012; 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[ ] is unpublished.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 October 4, 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: December 6, 2024, and a copy of the Order denying rehearing appears at Appendix F.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including May 12, 2025 (date) on March 13, 2025 (date) in Application No. 24-1158A .

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

N/A

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

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

18 PA.C.S. 2702(A)(1)(F)(1)

18 PA.C.S. 2702(A)(1)(F)(1)

18 PA.C.S. 2702(A)(3)(F2)

18 PA.C.S. 2702(A)(6)(F2)

75 PA.C.S. 3733(A)(F3)

35 PA.C.S. 780-113(A)(30)(F)

18 PA.C.S. 5104 (M@)

18 PA.C.S. 2705(A)(3)(M2)

75 PA.C.S. 3743 (M2)

18 PA.C.S. 7508

42 PA.C.S. 9714

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STATEMENT OF THE CASE

On 10/25/2011 at (12:03 PM))) an ANONYMOUS call was placed to Prospect Park PD. Subsequently Chief Engel received a radio call and responded to the 600 block of Pennsylvania avenue. Engel pulled his vehicle alongside Petitioner's driver's side car door. Officer Boseman pulled his vehicle in front of Petitioner's front bumper and Officer Hoover, accompanied by several officers, positioned their vehicles behind one another. Petitioner turned his vehicle off and attempted to hand Chief Engel vehicle documents/insurance and valid drivers license, however, Engel did not accept them. From Petitioner's peripheral view, he observed officers' arming themselves of which caused Petitioner to panick. Petitioner turned the ignition back on and attempted to drive away from officers in reverse. Boseman is to have conducted a controlled vehicle interruption causing Petitioner's vehicle to strike the curb and spin out of control striking vehicles near an auto body shop. When Petitioner's vehicle stalled, a projectile struck Petitioner's driver's side window and exit through the passenger window. Petitioner exit his vehicle, ran into the hood of his car falling to the ground. Two Garen Employees pursued Petitioner as he ran across Chester Pike highway and on to the CVS parking lot. Engel drove to Petitioner's vehicle to check on the passenger for possible injuries, of which was the end of his involvement. Officer Rafter of Norwood PD jumped the curb near Summit avenue and jammed on the brakes nearly running Petitioner over with his

vehicle. Petitioner surrendered via kneeling down and lay flat across a grass area. Garen Employees watched Petitioner until police arrived. Petitioner was handcuffed, shot in the back of the head with a taser, and subsequently assaulted by police and Garen Employees. Incident to arrest, Hoover conducted a search and seized $1,264.00 from Petitioner. Boseman is to have found a green leather jacket, took it to the police station, searched the pockets and found drugs. Petitioner and passenger/ VanVladricken was transported to the police station and placed in holding cells. EMS personnel from Taylor hospital located Petitioner and VanVladricken at the police station to check for possible injuries. One of EMS personnel followed a blood trail to Petitioner's cell, and found Petitioner laying on the floor in a pool of blood. EMS demanded that Petitioner be transported to the hospital to be treated for injuries. Subsequently, Petitioner was placed on a stretcher and taken to Taylor hospital. Magisterial Judge Lippart traveled to Taylor hospital and arraigned Petitioner while he was handcuffed to a bedrail. Petitioner was charged with the following:

MAnufacture Delivery or Possession with Intent to Manufacture or Deliver(PWID), Intentional Possession of Controlled Substance (K&I), Aggravated Assault, Recklessly Endangering Another Person (8 counts), Fleeing or Attempting to allude an Officer, Simple Assault (2 counts) Resisting Arrest, Accidents Involving Damage Attended Vehicle/Property (2 counts), Reckless Driving, Accident Damage to Unattended Vehicle or Property (2 counts),

Attempted-Criminal Homicide, Aggravated Assault(A)(1), Aggravated Assault(A)(2), Aggravated Assault(A)(3) and Aggravated Assault (A)(6) (1 count each) relating to Chief Engel. October 4, 2012, Petitioner was found guilty of (PWID), 4 Counts of Aggravated Assault, Recklessly Endangering Another Person, Fleeing or Attempting to Elude an Officer, Resisting Arrest, Accident Involvin Damage Attended Vehicle/Property, Reckless Driving, and Accident Damage Unattended Vehicle/Property. November 7, 2012, Petitioner was sentenced to an aggravated term of imprisonment of/from 24 1/2 years to 62 years as follows:

CHARGE	SENTENCE
18 PA.C.S. 2702(A)(1)(F)(1)	: 120-240 months
18 PA.C.S. 2702(A)(2)(F1)	: Merged
18 PA.C.S. 2702(A)(3)(F2)	: Merged
18 PA.C.S. 2702(A)(6)(F2)	: 39-120 months
75 PA.C.S. 780-113(A)(30)(F)	: 78-240 months
18 PA.C.S. 5104(M2)	: 9-24 months
18 PA.C.S. 2705(A)(3)(M2)	: 12-24 months
75 PA.C.S. 3743(M2)	: 6-12 months

REASONS FOR GRANTING THE PETITION

I. THE TRIAL COURT VIOLATED PETITIONER'S 6TH AND 14TH AMENDMENT CONSTITUTIONAL RIGHTS VIA REFUSING TO GRANT PETITIONER'S REQUEST FOR A CONTINUANCE, TO WHERE ATTORNEY BOGGS INFORMED PETITIONER, ON THE TRIAL WAS TO BEGIN, THAT HE HAD A CONFLICT OF INTEREST

Trial counsel explained to the court that he and Petitioner have always disagreed on how to proceed. (NT.10/03/2012 pp.4) October 2, 2012, Petitioner submitted a handwritten petition seeking to have Boggs disqualified. Petitioner explained to Bogs that he did not possess any drugs October 25, 2011, nor attempt to harm any officer. Boggs was informed about police misconduct, corruption, and various witnesses, however, Boggs deemed such criteria as hearsay. (NT.10/2/2012 pp.18-19 EXH'"D") Petitioner retained Attorney Johnson October 2, 2012, prior to the start of trial, and had also explained that Boggs was preparing a trial strategy against him and in favor of the prosecution. Boggs denied any conflict, and subsequently, his representation was (forced))) upon Petitioner. The very next day, just minutes before the jury was sworn in, ADA Mann explained to Bogs, that its key witness, VanVladricken, was found in possession of cocaine at the time of the vehicle stop. Chief Engel cited her for Disorderly Conduct. The R&R suggest that Boggs seemed prepared to cross-examine VanVladricken regarding the Guilty Plea and Citation generally, suggesting that counsel was aware of its contents Id at 110-11, however, she nor Chief Engel explained the basis for the Disorderly Conduct charge or testified as to whether the citation included other charges. Wilson v. Beard 589 F.3d 651 664 (3d Cir.2009) Citation-(P9110911-5) was not disclosed at trial. Brady v. Maryland 373 U.S. 83 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963) Detective Lythgoe of the Del. Co. Special

Investiations recently discovered the Citation (13 years later))) in 2024. It was Boggs affirmative duty to inform the court of the informations relayed to him by ADA Mann, however, Boggs invoked his duty of loyalty to VanVladricken. (NT.10/3/12 pp.107) Adjoining Circuits have opined that the duty of loyalty belongs to the client. Stoia v. United States 109 F.3d 392 395 (7th Cir.1997) On October 3, 2012, Boggs entered a two-fold conflict asking to be withdrawn, and to allow Attorney Johnson to entere his appearance. (NT.10/3/2012 pp.3-7) The court denied Boggs request, and once more, (forced))) the representation of Boggs upon Petitioner. The sixth amendment right to counsel is a fundamental right as it's essential to fair adjudication. U.S. Goldberg 67 F.3d 1092 (3d Cir.1995) The only evidence of the case was a green leather jacket alleged to have contained 3.6 grams of cocaine. (NT.05/15/2012 pp.8 EXHIBIT "B") After the Suppression hearing concluded, Petitioner retained Nasurat Rasheed esquire. Subsequently, Petitioner was summoned to appear for Civil matter MJ-3244-cv-0000156-2012. The civil matter arose from the 10/25/11 incident, and Insurance agents opined that the Prospect Park police were soley responsible for what occurred. Judge Coll scheduled the criminal trial for September 24, 2012 9:00 AM. Judge Lippart scheduled the civil matter for September 24, 2012 1:00 PM. Attorney Boggs and Rasheed were informed of the scheduling conflicts. Request for a continuance was made, but neither court would grant Petitioner's request. Petitioner obtained medical records

from Taylor hospital in efforts to (prove))) and prepare a defense surrounding police misconduct/corruption. Boggs gave ADA Mann Petitioner's medical records, whom in turn provided fraudulent expert testimony, and subsequently lost/misplaced and/or possibly destroyed the records. Arizona v. Youngblood 488 U.S. 51 109 S.Ct. 33 102 L.Ed.2d 281;also see Giglio v. United States 405 U.S. 150 153 92 S.Ct. 763 31 L.Ed.2d 104 (1972). The Prospect Park PD Insurance claim was withheld at trial. (NT.11/7/2012 pp.63) Brady v. MAryland 373 U.S. 83 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963). ADA MAnn opt to introduce and place into evidence, for the very first time, the Prospect Park PD Insurance claim, at Petitioner's November 7, 2012 sentencing. The defense was not provided a copy of the claim in order to xerox/photoraph and/or inspect. An actual conflict did exist between trial counsel and Petitioner. The standard for analyzing claims of attorney conflict of interest derives from the United States Supreme Court's opinion in Culver v. Sullivan 466 U.S. 335 349-50 (1980). The Commonwealth violate Petitioner's 6th and 14th amendment rights U.S.C. via refusing to grant a continuance premised upon the surrounding circumstances.

II. PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO SELF REPRESENTATION

When Judge Coll refused to allow Johnson to enter his appearance, Petitioner placed on-the-record, that he

"did not want Attorney Boggs representing him." (NT.10/3/12 pp.12 EXHIBIT "Q") Faretta v. California 422 U.S. 806 819 n.15 (1975) Supreme Court has reasoned that because the right to self-representation serves to affirm a defendant's personal autonomy an indeed, is "a right when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to harmless error analysis. The right is either respected or denied; it's deprivation cannot (ever) be harmless. Likewise, the rule that defendant is not required to have counsel (forced))) upon his is true on appeal an leads to the recognition that all defendants have the basic right to address the court with pro se brief. The Sixth Amendment to the U.S. Constitution and Article I, Section Nine of the Pennsylvania Constitution (guarantee))) the right to self-representation when a (sic) Appellant makes a knowingly and intelligent waiver to assistance of counsel. See Pa. Const. amend VI; Commonwealth v. Houtz, 2004 Pa. Super 300 856 A.2d 119 122 (Pa.Super. Ct.2004). In fact, "where a defendant knowingly, voluntarily, and intelligently seeks to waive his right to counsel, the court...must allow the individual to proceed pro se." Commonwealth v. El, 602 Pa. 126 977 A.2d 1158 1162-63 (Pa.2009) In this case, appellant insisted upon his constitutional right to self-representation, an he was properly (colloquied))) by the court with the (2018 U.S. Dist. Lexis 16) Court's standard colloquy. The Court did not inquire

into appellant's mental health in the colloquy because no mental illness was apparent and none was raised by a party. Therefore, the Court maintains that its colloquy was clear and sufficient under the circumstances. Judge Coll did not afford Petitioner any colloquy thereof. (NT.10/3/2012 pp.12 EXH'"Q") The Commonwealth infringed upon Petitioner's 6th and 14th amendmenty constitutional rights.

III. ATTORNEY BOGGS CONCEDED GUILT WITHIN HIS OPENING STATEMENTS, TO THE JURY, OF WHICH DEPRIVED PETITIONER OF HIS 6TH AND 14TH AMENDMENT CONSTITUTIONAL RIGHTS

Petitioner explained to the court that Attorney Boggs was preparing a trial strategy against him and in favor of the prosecution. After Boggs learned of VanVladricken possessing cocaine at the time of the 10/25/2011 vehicle stop, there was a derelict of duty on his behalf, whereas, as an officer of the court, he was obligated to inform Judge Coll and declare a mistrial. Boggs representation was fundamentally incompetent. Strickland v. Washington 466 U.S. 668 104 S.Ct. 2052 80 L.Ed.2d (1984). In his opening statements Boggs (agreed))) with ADA Mann, in that justice will end up being a conviction for Petitioner. (NT.10/3/2012 pp.26-27) The McCoy court explained that there must be accorded a new trial without any need to first show prejudice. Pp__-(La.2016) 218 So.3d 3d 535, reversed and remanded. The sixth amendment guarantees a defendant the right to choose the objective of his defense and insist that

counsel refrain from admitting guilt. The error was structural in kind of which affected the framework on how a trial proceeds rather simply an error in the trial process itself. Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d

IV. THE TRIAL COURT COMMITED STRUCTURAL ERROR AND VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL UNDER THE 6TH AMENDMENT U.S.C.

Just minutes before the jury was about to retire, ADA Mann added charges to the verdict slip. (NT.10/4/2012 pp.130-133) Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017). The jury did not return a verdict for 75 Pa.Cosnt. Stat. 3743, and Petitioner was released from any culpability of (Accident involving damage to attended vehicle or property))) and (leaving the scene of an accident))) thereto. However, from the bench, Judge Coll found Petitioner guilty of the chare. (NT.10/4/2012 pp.144) Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017). The structural error doctrine "recognizes that some constitutional errors (require reversal))) without regard to the evidence in the particular case." Rose v. Clark 478 U.S. 570 577 106 S.Ct. 3101 92 L.Ed.2d 460 (1986)(citing Chapman v. California 386 U.S. 18 23 n.8 87 S.Ct. S.Ct. 824 17 L.Ed.2d 705 (1967) "(T)he defining features of structural error is that it affects the frame work on how a trial proceeds rather simply an error in the trial process itself." Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017)(quoting Fulminante 499 U.S. at 310)

V. THE PROSECUTION EXERCISED EGREGIOUS MISCONDUCT VIA WITHHOLDING FAVORABLE EXCULPATORY EVIDENCE AT TRIAL OF WHICH VIOLATED DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

Under Brady, "the suppression by the prosecution of evidence favorable to an accused...violates due process where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution." 373 at 87. Brady requires the disclosure of "impeachment evidence as well as exculpatory evidence." Strickler v. Greene 527 U.S. 263 280 119 S.Ct. 1936 144 L.Ed.2d 286 (1999) Even inadvertent failure to disclose may violate this duty, which does not require a criminal defendant's request. see United States v. Bruce 984 F.3d 884 (9th Cir.2021) Disclosures "must be made at the time when (the) disclosure would be (2023 U.S. App. lexis 7) of value to the accused." United States v. Aichele 941 F.2d 761 764 (9th Cir.1991)(quoting United States v. Gordon 844 F.2d 1397 1403 (9th Cir.1988) The 911/radio calls is in concert with Computer automated draft reports, of which provides (precise))) time the (Anonymous phone call))) was made October 25, 2011 at (12:03 PM))). The (time))) the call was made is significant, because at (12:03 PM))) October 25, 2011, VanVladricken, a key prosecution witness, was issued Citation (P9110911-5))) by Officer Chief Enel. Supplemental Appendix "a1") Boggs Attorney Boggs learned of the Citation just minutes before the jury was sworn in, whereas, ADA Mann explained that drugs was found in possession of VanVladricken at the time of the

10/25/11 vehicle stop. The (R&R) indicated that Attorney Boggs seemed prepared to cross-examine VanVladricken regarding the Guilty Plea and Citation generally, suggesting Boggs was aware of its contents, Id at 110-11, however, VanVladricken nor Engel explained the basis for the Disorderly Conduct charge. citing Wilson v. Beard 589 F.3d 651 664 (3d Cir.2009) A defendant has the right to face his accuser, likewise, VanVladricken's (criminal record))) must be disclosed to the defense. 911/radio calls, C.A.D. reports and Citation (P9110911-5) was intentionally withheld by the prosecution at trial. Brady v. Maryland 373 U.S. 83 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963) Citation (P9110911-5) was Newly-Discovered 13 years after Petitioner was arrested. The (contents))) of Citation (P9110911-5) indicate that it was issued 10/25/11 at (12:03 PM))). It also refers to Newly-Discovered (Incident Report 20111025M3504). The Report provides that the Prospect Park PD (did not))) arrive on the 600 block of Pennsylvania avenue until (12:05 PM))) October 25, 2011. see (EXHIBIT "J") Plainly put, VanVLadricken was arrested/detained at (12:03 PM))) 10/25/2011 by Chief Engel. VanVladricken was not inside Petitioner's vehicle (when))) the anonymous phone call was placed to the police. (NT.10/3/2012 pp.78); Supplemental Appendix 1a "Jointly an in concert with eachother, ADA Mann and Prospect Park PD exercised a known deception to deceive a court. Napue v. Illinois 360 U.S. 264 79 S.Ct. 1173 3L.Ed.2d 1217 (1959). The prosecution presented evidence and testimony it knows to be false. The Haskell

court made it clear with respect to false evidence and testimony. In Gillispie v. Timmerman-Cooper 2013 U.S Dist. Lexis 17998 (SD.Ohio 2013), the district court granted habeas corpus based on a failure to disclose Brady material in the form of supplemental police reports. When the case came back to the trial court, the prosecutors claimed they did not have the supplemental police reports. In State v. Gillispie, 2016 Ohio 7688, the court granted immediate release based on the conclusion that the district court's findings of fact were conclusive. These are the same set of circumstances here. The Commonwealth indicated that they do not have any of the requested materials in its possession. (NT.0/27/18 pp.18-19) The Magistrate Judge found : " Assuming that all the items existed at one time and would have been discoverable and favorable to Petitioner -- in other words, the first two prongs of Brady were satisfied -- Petitioner cannot show prejudice in light of the other evidence adduced at trial, particularly the testimony of VanVladricken that she was purchasing drugs from Petitioner, Chief Enel who narrowly avoided injury when Petitioner's car suddenly sped towards him in reverse, and the police officers' who pursued Petitioner by car and on foot, arrested him, and recovered cash and drugs on or near his person. The Incident Report was not published to the jury, and was discovered 13 years after Petitioner was arrested. The Report directly contradicts the testimony of VanVladricken and Engel, whereas, it does not contain any informations about the sale

and purchase of drugs. see (EXHIBIT "J") citing Davis v. Andrews Tex Civ. App. 361 S.W.2d 419 423. The report explains that Petitioner drove pass Engel in reverse, in that he (leaned))) up against his vehicle. The Incident report did not contain any informations of VanVladricken's handwritten statement alleged to have been written while seated in the passenger's seat. Detective Lythgoe of Del. Co. Special Investigations recovered both, Citation (P9110911-5) and (Report 20111025M3504) and could not explain why the Citation and Report was not turned in to be processed. Petitioner was prejudiced, and had such favorable exculpatory evidence been introduced at trial, the outcome of the proceeding would have been different. Del. Co. District Attorneys' office failed to disclose EMS medical reports, Tire Impression Expert reports, Petitioner's street files, incluing, albeit not limited to, Prospect Park PD Insurance Claim. ADA Mann opt to introduce, and place into evidence, for the very first time, at Petitioner's November 7, 2012 sentencing. (NT.11/7/2012 pp.63) Brady v. Maryland 373 U.S. 83 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963) Mann did not provide the defense with a copy of the Insurance Claim in order to xerox/copy/photograph and/or inspect. The jury did not have the Insurance Claim before it, and the informations contained therein would have explained that the Prospect Park PD were soley responsible for the collisions that occurre October 25, 2011. After Insurance agents found

police liable for the accidents, the police filed civil action MJ-3244-cv-0156-2012. As with the findings of the (R&R), Petitioner satisfied the first two prongs of Brady. But it is the contention of the Commonwealth that they do not have any of the requested Brady materials in their possession. (NT.09/27/2018 pp.18-19) Such comports with a Youngblood violation. Arizona v. Youngblood 488 U.S. 1051 102 L.Ed.2d 1007 109 S.Ct. 885 (1988) In Bracy v. Superintendent 986 F.3d 274 (3d Cir.2021), the court held that prosecutors have an absolute duty to disclose Brady material. It held that the defense has no obliation to scavenge for it even if the material can be found in public records. The defense has the right to expect that the prosecution has complied with its obligation to disclose exculpatory evidence and impeachment material.

VI. THE COMMONWEALTH PURPOSELY EXCLUDED ,MEMBERS OF () PETITIONER'S RACE FROM SERVICE ON THE PETITE JURY AND ON THE VENIRE, (WHERE) PETITIONER'S RACE WAS SUBSTANTIALLY UNDER REPRESENTED

Petitioner lodged an objection to the Batson violation, and was threatened by ADA Mann with contempt of court. The very next day, Attorney Bogs reiterated the Batson Claim, (NT.10/3/2012 pp.90 EXHIBIT "R"), and instead of re picking the jury, the court deemed Petitioner's Batson Claim as a delay tactic. There were no African American jurors on the main panel of the jury and members of Petitioner's race was

purposely excluded on account of race. (NT.10/2/2012 pp.77) Batson v. Kentucky 476 U.S. 45 79 90 L.Ed.2d 69 (1986) In Batson the Supreme Court held that a defendant who is a member of a cognizable racial group should show facts that "raises an inference that the prosecutor used that practice to exclude veniremen from the petite jury on account of their race (.) Batson 476 U.S. at 96. A judge determining whether the defenant made a prima facie showing "should consider all relevant circumstances." Id (Internal citations omitted). Once a defendant has made a prima facie case, the burden shifts to the prosecutor to "come forward with a neutral explanation for challenging black jurors." Id at 97. The prosecutor may not rebut the prima facie case "merely denying that he had a discriminatory motive or affirm(ing) (his) good (2018 U.S. Dist. Lexis 17) faith in making individual selections."' Id at 98 (alteration in original). The prosecutor...must articulate a neutral explanation related to the particular case to be tried." Id The Supreme Court has clarified that. The second step of this process does not demand an explanation that is persuasive, or even plausible. At this (second) step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral. Purkett v. Elem 514 U.S. 765 767-68 115 S.Ct. 1769 131 L.Ed.2d 834 (1995) If the prosecutor provides a race neutral explanation

the burden shifts back to the defendant, and the trial court is left with the "duty to determine if the defendant has established purposeful discrimination." Batson 476 U.S. at 98. The Supreme Court has affirmed that Batson's procedural steps were central to it's holding. see Johnson v. California 545 U.S. 162 168 170 125 S.Ct. 2410 162 L.Ed.2d 129 (2005) On appeal, Molineux explained that he was unwilling to raise Petitioner's Batson claim. (NT. 9/27/18 pp.32 EXHIBIT "S") Molineux lost Petitioner's file, and Petitioner purchased his transcripts, whereas the prosecution withheld in excess of 300 pages that prevented Attorney Lattanzi from raising the claim. BAsso v. Miller 40 N.Y.2d 223 241 352 N.E.2d 868 872 386 N.Y.2d 564 568 (1986); see also People ex rel. Benefit Ass'n of Railway Employees v. Miner 387 Ill. 393 56 N.E.2d 353 356. Petitioner is entitled to transcript(s) on appeal. Griffin v. Illinois 315 U.S. 12 (1956). The Evidentiary hearing was scheduled for 10/2/2019, however, the Del. Co. District Attorneys' office did not provide the (missing))) portions of transcript until February 24, 2020. see (EXHIBIT "T") The state court determination of facts is unreliable if the fact-finding process itself is defective. This occurs when the prosecution suppresses evidence favorable to the defense forcing the judge to make a decision on an incomplete record. In such cases, the Mike v. Ryan 2013 U.S. App. Lexis 5102 (9th Cir.2013) court explained, that there is no AEDPA deference. Petitioner is

a member of a protected class of citizens within the United States. The Batson v. Kentucky court made it clear as to putting an end to purposely excluding member's of Petitioner's race on the petite jury and venire. Weaver v. MAssachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017)

VII. ATTORNEY BOGGS RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL OF WHICH VIOLATES THE 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION

Petitioner and Attorney Boggs have always disagreed on how to proceed. (NT.10/3/12 pp.4) Boggs was informed about police misconduct and witnesse(s), and instead of preparing Petitioner's chosen stategy, Boggs formed a fixed bias and deemed Petitioner's claims as hearsay. (NT.10/2/12 pp.18-19 EXHIBIT "D") Strickland v. washinton 488 U.S. 668 104 S.Ct. 2052 80 L.Ed.2d (1984) Boggs did not call any of Petitioner's witnesses. Superior Court opined that Rothwell's Affidavit demonstrated that the potential witness existed, was available, and willing to testify at trial, and that his testimony could have provided material evidence. Boggs knew the existence of this potential witness prior to the start of trial. (NT. 10/2/12 at 18) Furthermore, the Affidavit of Rothwell suggest proof that counsel's omission (caused prejudice) Id Doc 33 at 34. Superior Court denied relief and deemed Petitioner's claim(s) waived. Superior Court pointed out that the PCRA court made the wrong inquiry as to Mr.Rothwell unwilling to testify at the 10/2/2019 Evidentiary hearing.

At the October 2, 2012 proceeding, Boggs placed his (reasons))) on-the-record, indicating that he deemed petitioner's claims of misconduct and witnesse(s) as hearsay. Premised upon Boggs fixed bias, he failed to investigate any and all criteria relevant thereto. Strickland v. Washington 466 U.S. 668 104 S.Ct. 2052 80 L.Ed.2d (1984) Boggs stipulated to (all))) chain of custody of all evidence and forged a defense in favor of the prosecution. Boseman testified that he found the drugs inside one of the pockets of the green leather jacket (at the police station))). (NT.05/15/12 pp.53-54) At the preliminary hearing Officer Hoover denied seizing $1,264.00 from Petitioner. The Affidavit of Probable Cause provides that Engel leaned up aainst his vehicle as Petitioner (drove pass him))) in reverse. The only evidence of the case was a green leather jacket alleged to have contained 3.6 grams of cocaine. (NT.5/15/12 pp.8) At trial, ADA Mann explained that the police found VanVladricken in possession of cocaine during the vehicle stop, to where she was issued a Citation. Bogs was obligated to inform Judge Coll of the informations. Attorney Boggs made errors so serious that he was not functioning as counsel guaranteed by the sixth amendment. Strickland v. Washington 466 U.S. 668 104 S.Ct. 2052 80 L.Ed.2d (1984) Having another bite at the apple, Officer Boseman explained to the court that he (did not))) find the drugs at the police station, in that another officer found the drugs near the CVS store. (NT.10/2/12 pp.156 EXHIBIT "G") Tomkins v. Moore 193 F.3d

1327 1339 (11th Cir.1999)(quoting United States v. Alzate 47 F.3d 1103 110 (11th Cir.1995) Chief Engel (approved))) Incident Report 20111025M3504, however, he testified that he was standing behind the Black Nissan when Petitioner turned on the ignition. At trial, Officer Hoover testified that he did seize $1,264.00 during the 10/25/11 vehicle stop, but failed to mention it in the report. (NT.10/3/12 pp.176 EXHIBIT "I") Hoover is to have polaced the $1,264.00 into evidence time-stamped at (12:03 PM))) 10/25/2011. Newly-Discovered Evidence 20111025M3504 indicates that $1,264.00 was seized 10/25/2011. The Incident Report and Citation (P9110911-5) was withheld at trial. A different and more defense friendly standard of materiality applies when the prosecutor knowingly uses false testimony, or fails to correct false testimony. Where (2018 U.S. Dist. Lexis 17) either of those events has happened, the falsehood is deemed to be material "if there is a reasonable likelihood that the false testimony could have affected the judgment of the jury." Haskell 866 F.3d at 149 (quoting Augurs 427 U.S. at 103); see Giglio v. United States 405 U.S. 150 154 92 S.Ct. 763 31 L.Ed.2d 104 (1972); Napue v. Illinois 360 U.S. 264 271 79 S.Ct. 1173 3 L.Ed.2d 1217 Boggs conceded guilt in his opening statements, (NT.10/3/12 pp.26-27), and at the November 7, 2012 (Sentencing proceeding))), he remained silent as ADA Mann introduced the Prospect Park PD Insurance claim for the first time. (NT.11/7/2012 pp.63)

Napue v. Illinois 360 U.S. 264 271 79 S.Ct. 1173 3 L.Ed.2d 1217 (1959) The sixth amendment does not surrender control entirely to counsel. Faretta v. California 422 U.S. 806 819-20 95 S.Ct. 2525 45 L.Ed.2 562. The lawyer's province is trial management, but some decisions are reserve for the client-including whether to plead guilty, waive the right to a jury trial, testify on one's own behalf, and forego appeal. Autonomy to decide that the objective of the defense is to assert innocence belongs (2018 U.S. Lexis 3) in this reserves-for the client category. Adjoining circuits agree that conceding guilt violates the sixth amendment. The process of (Discovery))) was never exercised despite mandatory dictates of Pa.Crim.R.P. 573. Petitioner did not receive a fair trial, and Attorney Boggs failed to put the Commonwealth's case to adversal testing.

VIII. LAYERED CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AMENDMENT U.S.C.

Trial counsel was ineffective, and all subsequent counsel was ineffective in failing to raise record-based claims obvious from the face of the record. Commonwealth v. McGill 574 832 A.2d 1014 (2003); Strickland v. Washington 466 U.S. 668 104 S.Ct. 2052 80 L.Ed.2d (1984) Attorney Johnson's ineffectiveness bottomed from trial counsel's ineffectiveness. Likewise, Attorney Walsh, Molineux and Lattanzi's ineffectiveness bottomed from trial counsel's ineffectiveness. There were record-based

claims, such as the Batson and Brady claims that were overlooked. Discovery was never handed over to the defense prior to, nor at trial. The Del. Co. District Attorneys office refuses to comply with the mandatory dictates of Pa.Crim.R.P. 573. Petitioner has developed a record at the 9/27/2018 Grazier hearing, in that he wanted all of his claims raised and litigated so that he could preserve claims for a 2254 Federal Habeas Corpus. When Molineux refused to raise Petitioner's claims, (NT. 9/27/18 pp.32 EXHIBIT "S"), the PCRA court attempted to appoint Dugan esquire. Before the court could do so, Petitioner retained Attorney Lantanzi, and expressed the importance of raising and preserving his claims. Lattanzi indicated that she would raise Petitioner's claims, specifically Batson and Brady violations. see (EXHIBIT "T") Lattanzi explained that she would provide a copy of Petitioner's notes of testimony once transferred to Delaware County Prison. LAttanzi sought verification from Petitioner but was unable to complete the process due to new mailing policy within the Pennsylvania Dept.' of Corrections. When Petitioner arrived at Del. Co. Prison Lattanzi indicated that she would provide a copy of notes of testimony at the October 2, 2019 Evidentiary hearing. Lattanzi condensed Petitioner's claims because she did not see the informations/claims in the record. At the Evidentiary hearing, Petitioner reiterated his concerns about the notes of testimony and wanted to show Lattanzi where the claims could be found.

Lattanzi attempted to review transcripts and noticed that several portions of transcript were missing and/or distorted. Lattanzi attempted to raise prior counsel ineffectiveness but Judge Cappelli did not consider the issue. see (APPENDIX "B") The PCRA court denied relief and Petitioner was transported back to Sci Dallas. Lattanzi forward Petitioner's Trial and Sentencing notes of testimony of which was missing in excess of 300 pages. Petitioner spoke with Lattanzi and she indicated that she would contact the District Attorneys office in efforts to ascertain the missing portions of transcript. On FEbruary 24, 2020, Lattanzi Emailed Petitioner and informed him that the missing portions of transcript would be available to be picked up at her office by Petitioner's father. All the while, it was the Commonwealth's intent to deceive the court. As it turned out, Petitioner's Batson and Brady claims, inter alia, were contained therein and obvious from the face of the record. Federal Magistrate Judge found Brady violations, in that Petitioner satisfied two of the prongs. However, Del. Co. District Attorneys office explained that it does not have any of the requested Brady materials in its possession. (NT.9/27/18 pp.18-19) Newly-Discovered evidence (P9110911-5) and (Incident Report 20111025M3504) was ascertained via Detective Lythgoe of the Spectial Investigations Unit. citing Napue v. Illinois 360 U.S. 264 271 79 S.Ct. 1173 3 L.Ed.2d 1217 (1959) Petitioner was handicap toward preparing an

adequate defense and prejudiced without the favorable exculpatory evidence. Citation (P9110911-5) reveals that VanVlaricken was detained and/or arrested 10/25/2011 at (12:03 PM))), and was not inside Petitioner's vehicle when the anonymous phone call was made. Incident report (20111025M3504) explains that the Prospect Park Police did not arrive on the 600 block of Pennsylvania avenue until (12:05 PM))). It is clear and convincing that the Prosecution presented testimony and evidence it knows to be false. Haskell v. Superintendent Greene Sci 866 F.3d 139 149 (3d Cir.2017)(Citing Augurs 427 U.S. 97 96 S.Ct. 2392 49 L.Ed.2d 342 (!976), holding modified by United States v. Bagley 473 U.S. 667 105 S.Ct. 3375 87 L.Ed.2d 481 (1985). Petitioner raised the Batson and Brady claims , inter alia on PCRA appeal. Petitioner's appeal was pending when Commonwealth v. Aaron Bradley appellant Supreme Court of PA Lexis 3819 No. 37 EAP 2020, was announced . Superior Court of Pennsylvania denied relief July 2021, whereas Bradley was decided October 2021. The new rule in Bradley (allows))) defendants to raise ineffectyive assistance assistance of PCRA counsel at the first instance, even on appeal. Superior Court noted that "it would remand" otherwise.

IX. MANDATORY MINIMUM SENTENCES ARE UNCONSTITUTIONAL UNDER ALLEYNE V. UNITED STATES__U.S.__133 S.Ct. 2152 186 L.Ed.2d 314 (2013)

For the charge of 18 PA.C.S.A. 7508 PWID, Petitioner was sentenced to 6 1/2 years to 20 years. The statute is unconstitutional and unenforcable. Commonwealth v. Fennel 105 A.3d 13 (Pa.Super.2014)(holding mandatory minimum sentencing scheme under 18 PA.C.S.A. 7508...unconstitutional). If no statute exist the sentence must be vacated. Commonwealth v. WAtson 945 A.2d 174 178-79 (Pa.Super.2008) The maximum term of confinement for 780-113(A) is 15 years. ADA Mann invoked 18 PA.C.S.A. 7508 and fashioned a sentence in concert with 42 PA.C.S.A. 9714. Petitioner received twice the term of the (former))) applicable range of 3 years. The maximum term of 20 years exceeds that statutory maximum of 15 years. The sentence is illegal. The Commonwealth violated Due Process under the 14th amendment U.S.C.

X. THE TRIAL COURT FAILED TO ADHERE TO THE DICTATES OF 42 PA.C.S.A. 9714 OF WHICH VIOLATED DUE PROCESS UNDER THE 14TH AMENDMENT U.S.C. AND SERVES AS CRUEL AND UNUSUAL PUNISHMENT UNDER THE 8TH AMENDMENT U.S.C.

ADA Mann misrepresented Petitioner's prior conviction(s). Philadelphia docket CP-51-CR-0414231-1994 provides, that the charge of Aggravated Assault was an (Ungraded Felony))). Petitioner was found (Not Guilty))). (Supplemental Appendix "a3") 9714(g) Petitioner's current offense under CP-23-CR-0000679-2012, a thwarted attempt to commit an empty threat of force ("a bluff") is categorically not a crime of violence. In Commonwealth v. Greene 2009 PA. Super. Lexis 4990 (Pa.Super. 2009), this court explained that there could have been crimes where the victim only suffered or was put in fear of only

bodily injury, but under 9714(g) would not qualify as a crime of violence. Petitioner positions, that absent the trier of fact, but by leislative fiat, for a new categorical offense based on status, as a prior convicted felon that was not defined in Title 18 2702, but under the categorical element of Title 42 9714, an ambiguous, new aggravated offense, that was not pled to the jury, prior to, or during trial, was fashioned. Chief Engel did not suffer any injury, and Petitioner's 1991 prior conviction under transcript 5882 provides that the charge is an (Ungraded Felony))), which does not qualify as a crime of violence under 9714(g). ADA Mann invoked 18 Pa.C.S.A. 7508 subjecting Petitioner to a 3 year mandatory sentence. Mann had also invoked 42 Pa.C.S.A. 9714, of which (doubled))) the punishment under 18 Pa.C.S.A. 7508 for the charge of PWID. 18 Pa.C.S.A. 7508 has been ruled unconstitutional, and ADA Mann did not furnish a copy of Petitioner's priors at sentencing so that he could contest the accuracy of informations. Commonwealth v. Motley Superior Court of Pa. 2018 Pa. Super. 8;A.3d 960;2018. The Commonwealth violated due process. The sentence is illegal and serves as cruel and unusual punishment under the 8th amendment U.S.C. Petitioner is a member of a protected class of citizens and avers that he was singled out by the prosecution. Wayne R. Lafave Substantive Criminal Law 1.2(d), at 17 (2003) announced a crime is made of two parts, forbidden conduct and prescribed penalty. The former without

the later is no crime. 18 Pa.C.S.A. 7508 and 42 Pa.C.S.A. 9714 were not contained in the Bill of Particulars, and despite invoking the statutes (after))) Petitioner's trial concluded, the Commonwealth's withholding of the informations it had in its possession serves as a Brady violation. Brady v. Maryland 373 U.S. 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963)

XI. THE COMMONWEALTH IMPOSED AN ILLEGAL SENTENCE WHERE IT IMPOSED CONSECUTIVE SENTENCES FOR AGGRAVATED ASSAULT, ATTEMPT TO CAUSE BODILY INJURY 18 PA.C.S.A. 2702(A)(1) AND AGGRAVATED ASSAULT BY PHYSICAL MENACE 2702(A)(6) WHERE BOTH OFFENSES AROSE OUT OF THE SAME CRIMINAL ACT AND ARE ALTERNATIVE PLEADINGS OF THE SAME STATUTE, WHICH CANNOT SERVE THE BASIS FOR SEPARATE PUNISHMENTS FOR A SINGLE OFFENSE, WHICH VIOLATES DUE PROCESS

The legislature intended for each (subsection))) of Aggravated Assault to establish culpability rather than each representing the commission of a separate crime. Subsection (A)(1) and (A)(6) of 18 Pa.C.S.A. 2702 merge for sentencing purposes. Commonwealth v. Rhoads 431 Pa. Super. 437 (1994);Commonwealth v. Shannon 530 Pa. 279 1020 (1992). Petitioner was subjected to double jeopardy. Commonwealth v. Owens 649 A.2d Super. 437 (1994), and the Commonwealth infringed upon Petitioner's constitutional right to Due Process.

XII. THE TRIAL COURT IMPOSED AN ILLEGAL SENTENCE WHERE IT SENTENCED PETITIONER TO A TERM OF SEVENTY EIGHT(78) MONTHS TO TWO HUNDRED FORTY(240)MONTHS FOR PWID OF WHICH EXCEEDS THE STATUTORY MAXIMUM OF ONE HUNDRED EIGHTY(180)MONTHS, OF WHICH VIOLATES DUE PROCESS UNDER THE 14TH AMENDMENT U.S.C.

The maximum term of confinement for 780-113(a) is 15 years. Judge Coll sentenced Petitioner to 6 1/2 years to (twenty(20))) years for the charge of PWID. 18 Pa.C.S.A. 7508 has been ruled unconstitutional and (unenforcable))). Commonwealth v. Fennel 105 A.3 13 (Pa.Super.2014) The standard range of sentence for the charge, (without))) 18 Pa.C.S.A. 7508 would have been 15 to 18 months of confinement. Once ADA Mann invoked 18 Pa.C.S.A. 7508, and 42 Pa.C.S.A. 9714, Petitioner was subjected to a 3 year mandatory minimumunder 18 Pa.C.S.A. 7508, of which was (doubled))) under 42 Pa.C.S.A. 9714, to a 6 1/2 year (minimum))) and 20 year (maximum))). Plainly put, Petitioner has been subjected to double jeopardy in violation of the 5th amendment, Commonwealth v. Owens 649 A.2d Super. 1994, and the Commonwealth violated Due Process.

XIII. THE TRIAL COURT VIOLATED DUE PROCESS (VIA PROVIDING) IMPROPER REASONABLE DOUBT () JURY INSTRUCTIONS, TO THE JURY, AS SUCH INFORMATIONS CHARGED THEREIN WERE UNLAWFUL AND HIGHLY PREJUDICIAL

Judge Coll read excerpts from the Affidavit of Probable Cause (NT. Voire Dire 10/2/12 pp.31 ln.1-9 & 12-22). The anonymous caller was never identified in order to (authenticate))) the accuracy of the informations. Petitioner was deprived of the opportunity to face the anonymous caller at trial in violation of the 5th amendment. The record reveals there was (never))) any elicit activity. (NT.5/15/12 pp.68) Petitioner and VanVladricken were talking inside the vehicle when she had

asked him if she could buy a couple bags of drugs. also see (NT.10/3/12 pp.92-117 EXHIBIT "E") ADA Mann indicated that the Affidavit of Probable Cause lacks foundation. (NT.5/15/12 pp.32 EXHIBIT "M") The extraneous informations presented to the jury by Judge Coll was prejudicial and abridged Petitioner's constitutional rights to a fair trial. Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017) Furthermore, Judge Coll improperly charged the jury that there were (four))) types of aggravated assault "that hinge on and (idea))) rather than causing injury." see (NT.10/4/12) There is no enactin clause for an (idea))) of aggravated assault. 73 Am Jur.2d "Statutes" 93 p.319 320;Preckle v. Byrne 243 N.W. 823 826 62 N.D. 356 (1932) (T)he purpose of the constitutional provision quoted is * * * to prevent misleading or deceiving the public as to the (nature))) of an (act))) by the title given it. State v. Helmer 211 N.W. 3, 169 Min. 221 (1926). Judge Coll improperly charged the jury in that Petitioner had a (motive))) to harm Chief Engel. (NT.10/4/12 pp.123) The error is structural in kind. Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017). Judge Coll charged the jury, in that "although the presumption of innocence stays with the defendant," Judge Coll conceded guilt, stating,

THE HONORABLE MICHAEL F.X. COLL

"And maybe it still exist at this point."
(NT.10/4/12 pp.85)

The extraneous informations was purposefully charged in efforts to mislead the jury, of which affected the framework on how a trial proceeds rather simply an error in the trial process itself./ Weaver v. Massachusettes 137 S.Ct. 1899 1907 198 L.Ed.2d 420 (2017). The Commonwealth violated Due Process.

XIV. THE COMMONWEALTH LACKED SUBJECT-MATTER JURISDICTION TO PROSECUTE PETITIONER

Honomichle v. State 333 N.W.2d 797 (S.D. 1983) explains, (holding, without a formal and sufficient indictment or information, a court does not acquire jurisdiction and thus, an accused may not be punished for a crime. ADA Mann explained to Judge Coll that the Affidavit of Probable Cause lacked foundation. see (NT.5/15/12 pp.31-32 EXHIBIT "M") Mann continued to prosecute Petitioner premised upon false testimony andevidence she knew to be false. Haskell v. Superintendent Greene Sci 866 F.3d 139 149 (3d Cir.2017) Newly-Discovered Evidence (20111125M3504) explains that Chief Enel (approved))) the Incident Report written by Officer Hoover. Jointly and in concert with each other, they exercised a known deception to deceive a court. Napue v. Illinois 360 U.S. 264 271 79 S.Ct. 1173 3 L.Ed.2d 1217 (1959). see (Supplemental Appendix "a2") The (only) evidence of the case was a green leather jacket alleged to have contained 3.6 grams of cocaine. (NT.5/15/12 pp.8 EXHIBIT "B") Officer Boseman testified that he found the jacket, took it to the police station and found drugs (inside)))

one of the pockets. (NT.5/15/12 pp.53-54 EXHIBIT "F") Having another bite at the apple, at trial, he testified that he (did not) discover the drugs, in that another officer found the drugs and gave them to him. (NT.10/3/12 pp.156 EXHIBIT "G") The court is required to determine de novo, whether such conduct violated Petitioner's right to Due Process. Branch v. Sweeny 758 F.3d 266 232 (3d.Cir.2011) Especially, it is to assess whether there was "any likelihood that the false testimony of the Commonwealth witnesses could have affected the verdict," which is distinct from the "reasonable probability standard used by the District Court. United States v. Augurs 427 U.S. 103-104 (1976) The Commonwealth avered that VanVladricken provided a (handwritten statement))) to Chief Engel while sitting in the passenger's seat of Petitioner's vehicle. The handwritten statement is (not))) contained in the Affidavit of Probable Cause, nor Incident Report (20111025M3504). VanVladricken did not testify at the January 30, 2012 and May 15, 2012 proceedings. Officer Hoover denied seizing $1,264.00 during the October 25, 2011 arrest. Having another bite at the apple, at trial, Hoover testified that he (did seize))) $1,264.00, but forgot to mention it in the Affidavit of Probable Cause. (NT.10/3/12 pp.176 EXHIBIT "I") Hoover indicated that he placed the $1,264.00 into evidence (time-stamped))) at (12:03 PM))). Newly Discovered Evidence (20111025M3504) explains that the police did not

arrive on the 600 block of Pennsylvania avenue until (12:05 PM) October 25, 2011. see (EXHIBIT "J") The anonymous phone call was placed to the police at (12:03 PM))) October 25, 2011 and logged via Del. Com. Chief Engelt was first to arrive on the scene. (NT.10/3/12 pp.40-41 EXHIBIT "H"). What is illuminating, is that VanVladricken was issued, Newly Discovered Evidence (P9110911-5) at (12:03 PM))) on October 25, 2011. Petitioner demonstrates, that he was neither approached, nor arrested at (12:03 PM))) October 25, 2011, because police had not arrived until (12:05 PM))). The U.S. currency was not seized until (after 12:10 PM))), whereas police exercised a controlled vehicle interruption causing Petitioner's vehicle to strike the curb and spin out of control. When Petitioner's vehicle stalled, a projectile struck Petitioner's driver's window and exit through the passenger window. Petitioner exit his vehicle and ran across Chester Pike highway and onto the CVS parking lot. He was pursued by two Garen Employees and police. Petitioner surrendered, via laying flat across a grass area. Garen Employees stood watch until police arrived. Once placed in handcuffs, Petitioner was shot in the back of the head with a taser and subsequently assaulted by police and Garen Employees. It was only (after))) the sequence of events that Officer Hoover (seized))) the $1,264.00 from Petitioner. The Commonwealth violated the four-corners rule, of which explains , relevant in part:

FOUR CORNERS RULE

"Intentions of parties, especially that of grantor, is to be gathered from instruments as a whole and not from isolated parts thereof." Davis v. Andrews Tex Civ. App. 361 S.W.2d 419 423

Premised considered, Petitioner was improperly indicted. Stump v. Sparkman 435 U.S. 349 98 S.Ct. 1099 (1997). The detention and subsequent 10/25/11 arrest of Petitioner was staged. VanVlaricken was not inside Petitioner's vehicle when the anonymous phone call was made to police. Newly-Discovered evidence (P9110911-5) provides that she was detained by Officer Chief Engel at (12:03 PM))) October 25, 2011. i.e. (the same time the anonymous phone call was made to police and logged via Del. Com.))). The Commonwealth did not have the legal authority to prosecute without a formal and sufficient indictment or informations. Honomichl v. State 333 N.2d 797 7798 (S.D.1983); also see Stridiron v. Stridiron 698 F.2d 204 207 19 V.I. 642 (3d Cir.1983) Petitioner abscond prior to the conclusion of trial, and was apprehended in Camden New Jersey. It was the contention of Petitioner to contest the accuracy of informations and/or indictment, however, Petitioner was deprived of an extradition hearing. (All Discovery))), with the exception of 3.6 grams and $1,264.00 U.S. Currency, was (withheld))) at trial. Brady v. Maryland 373 U.S. 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963). The Commonwealth cannot claim that its default was "excusable." Pa.R.Crim.P. 11013 must be judged on what was done by authorities, not on what was done.

After Petitioner's trial concluded, ADA Mann opt to introduce, and place into evidence, for the very first time, the Prospect Park Police Department Insurance Claim. (NT.11/7/2012 pp.63) Brady v. Maryland 373 U.S. 87 10 L.Ed.2d 215 83 S.Ct. 1194 (1963) As it turned out, Prospect Park PD were responsible for the collisions that occurred October 25, 2011. The police filed civil action MJ-3244-cv-0000156-2012 against Petitioner prior to the start of trial. Chief Engel was never standing directly behind Petitioner's vehicle when he turned the ignition on. see (EXHIBIT "J") citing Haskell v. Superintendent Greene Sci 866 F.3d 139 149 (3d Cir.2007) The Commonwealth exercised a known deception to deceive a court, Napue v. Illinois 360 U.S. 264 79 S.Ct. 1173 3L.Ed.2d 1217 (1959), whereas the prosecution lacked subject-matter jurisdiction to prosecute.

XV. ACTUAL INNOCENCE AND MISCARRIAGE OF JUSTICE

The AEDPA rules governing procedural defaulted claims do not apply to a free standing claim of actual innocence. Jointly and in concert with each other, Judge Coll, ADA Mann, and Prospect Park Police colluded in calculated schemes to deceive a court. Napue v. Illinois 360 U.S. 264 79 S.Ct. 1173 3L.Ed.2d 1217 (1959) A fundamental miscarriage of justice has occurred where a constitutional violation has probably resulted in the

conviction of one who is actually innocent. McQuiggins v. Perkins 569 U.S. 383 392 133 S.Ct. 1924 185 L.Ed.2d 1019 (2013) (citing Murray v. Carrier 477 U.S. 478 495-96 106 S.Ct. 2639 91 L.Ed.2d 397 (1986) New reliable evidence/facts was not presented at trial. see (Supplemental Appendix (a1)(a2)&(a3) It is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt' in light of the new evidence. Rozzelle v. Sec'y Fla. Dep't of Corr., 672 F.3d 1000 1011 (11th Cir.2012). The Police were responsible for the collisions that occurred October 25, 2011, (NT.11/7/12 pp.63), and prior to trial, the police had filed civil action MJ-3244-cv-0000156-2012. ADA Mann vouched that there was no contraband for VanVladricken to be charged. However, Citation (P9110911-5) clearly explains that VanVladricken was charged. see (NT.10/03/12 pp.114);also see (Supplemental Appendix "a1") At the time of (12:03 PM))) October 25, 2011, VanVladricken was detained/arrested by Chief Engel. The anonymous phone call was placed and logged via Del. Com., at the precise time of (12:03 PM) on the date of October 25, 2011. Furthermore, Incident Report (20111025M3504) explains that the police did not arrive until (12:05 PM), thus two(2)minutes after the anonymous call was made. And although ADA Mann explained that the Affidavit of Probable Cause lacks foundation, (NT.05/15/12 pp.31-32), she continued to prosecute the case based on false informations and evidence. see (EXHIBIT "M") Petitioner is factually innocent of the charge.

XVI. THE COMMONWEALTH VIOLATED THE EX POST FACTO CLAUSE

The ex post facto clause is a "deep rooted" protection against the retrospective application of new laws. Lynce v. Mathis 519 U.S. 433 (1997)(quoting Landgarf v. USI Film Prods 511 U.S. 244 265 (1994). The two central concerns of the ex post facto clause are "lack of fair notice and government restraint when the legislature increases a punishment beyond what was prescribed when the crime was consumated." Lynce 519 U.S. at 441 (quoting Weaver v. Graham 450 U.S. 24 30 (1991) Every law that changes the punishment annexed to the crime, (when consumated): violates the ex post facto clause. Miller v. Florida 482 U.S. 423 429 (1987). The prosecution misrepresented Petitioner's prior conviction(s) and applied mandatory minimum sentencing scheme(s) 18 PA.C.S.A. 7508 and 42 PA.C.S.A. 9714, of which was misapplied. see (EXHIBIT "L") Petitioner's prior convictions do not qualify as a crime of violence under 42 PA.C.S.A. 9714(g). The sentencing scheme(s) inflicted a greater punishment than the crime warrants. Petitioner's sentencing is illegal and exceeds the statutory maximum for the crimes charged.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

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