

No. 17-6151

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2017

MARQUIS LEE RAYNER,
Petitioner

VS.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S GUILTY VERDICTS AND WHETHER THE VERDICTS WERE AGAINST THE WEIGHT OF THE EVIDENCE?

II. WHETHER THE TRIAL COURT IMPROPERLY INTERFERE WITH THE PETITIONER'S RIGHT TO A FAIR TRIAL?

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COUNTER-STATEMENT OF THE CASE

I. PROCEDURAL HISTORY.

On November 20, 2014, following a four-day jury trial, Petitioner was found guilty of Murder of the Second Degree, two counts of Robbery, Burglary, and Criminal Conspiracy. On April 17, 2015, Petitioner was sentenced to life in prison for Murder of the Second Degree, 90 months to 20 years on each count of Robbery, 54 months to 20 years for Burglary, and 90 to 20 years for Conspiracy. All counts were imposed consecutively to each other.

On April 30, 2017, Petitioner appealed the judgment of sentence to the Superior Court of Pennsylvania. On December 29, 2016, the Superior Court of Pennsylvania, in a published opinion affirmed the judgment of sentence. Commonwealth v. Rayner, 1263 EDA 2015, 153 A.3d 1049 (Pa. Super. 2016). On January 11, 2017, Petitioner filed a Petition for Allowance of Appeal. On July 11, 2017, the Supreme Court of Pennsylvania denied the Petitioner filed a Petition for Allowance of Appeal. Commonwealth v. Rayner, 24 MAL 2017, ___ Pa. ___, 169 A.3d 1046 (2017). On September 28, 2017, Petitioner filed a Petition for a Writ of Certiorari with the United States Supreme Court.

II. FACTS OF THE CASE.

The Commonwealth of Pennsylvania adopts the factual summary as set forth by the trial court:

The evidence offered at trial established that in the early morning hours of June 29, 2012, Dominick Williams was sitting in the living room of his apartment when three black men burst into the apartment. N.T. 11/17/14, pp. 67, 120. All carried guns and were disguised by t-shirts worn across their faces. N.T. 11/17/14, pp. 66-68, 77, 118-119, 132. Without warning, one of the men shot Dominick Williams. N.T. 11/17/15, p. 68. One of the gunmen then yelled “where it’s at,” signifying a robbery. N.T. 11/17/14, p. 69. Another pistol-whipped visitor Jalell Outz. N.T. 11/17/14, p. 72. One of the intruders then went to Aaron Crawford’s bedroom and demanded of him “where is it at, where is it at, give it up,” and then pistol whipped Aaron Crawford as well. N.T. 11/17/14, p. 150. Mr. Crawford opened his top right dresser drawer and showed the intruder a clear plastic lidded jar that contained marijuana, money, and a pack of Newport cigarettes. The intruder grabbed the jar and ran from the bedroom carrying the jar. N.T. 11/17/14, pp. 155-157. The intruder who grabbed the jar was not wearing gloves. N.T. 11/17/14, p. 150. All three of the intruders ran out of the apartment.

Dominick Williams was transported to the hospital and rushed to surgery in an attempt to save his life. He died on the operating table. N.T. 11/18/14, p. 124. Dr. Ian Hood, a forensic pathologist with thirty years of experience performed the autopsy of Dominick Williams. N.T. 11/18/14, p. 212. At trial, Dr. Hood testified that Mr. Williams’ cause of death was a gunshot wound to the left groin. N.T. 11/18/14, p. 218.

Approximately 90 minutes after Dominick Williams had been shot, police officer Stephen Galletta of the Coatesville City Police Department located the clear plastic jar tossed in a hedge row approximately a block and a half from the crime scene. N.T. 11/17/14, p. 244. The jar contained a pack of Newport cigarettes. N.T. 11/17/14, p. 163. Located several feet away was a black t-shirt. N.T. 11/17/14, pp. 244, 248. Witness Aaron Crawford was brought to the discovery scene and identified the jar as the one taken from his bedroom earlier that morning, and the t-shirt as the type of shirt that one of the robbers had been wearing across his face. N.T. 11/17/14, pp.

161-164.

Chester County Detective Kenneth Beam testified as an expert in the field of fingerprint analysis. Detective Beam received as evidence the plastic jar and t-shirt found close to the scene of the robbery. N.T. 11/18/14, p. 49. Detective [Beam] testified that the print with the sharpest and clearest detail found on the plastic jar belonged to co-defendant Dominique Lee. N.T. 11/18/14, pp. 65, 69, 73. Because Detective [Beam] knew that the t-shirt had possibly been tied to across the face of one of the intruders as a disguise, he surmised that the intruder might have left saliva on the shirt. Accordingly, Detective [Beam] sent the t-shirt to the State Police Laboratory for DNA analysis. N.T. 11/18/14, p. 55.

Michael Gossard, a forensic scientist with the Pennsylvania State Police, testified as a serology expert. Mr. Gossard tested the t-shirt for evidence of saliva. N.T. 11/18/14, p. 117. His testing indicated the presence of saliva on two different areas of the t-shirt. N.T. 11/18/14, pp.121, 135.

Timothy Gavel, a forensic scientist with the Pennsylvania State Police DNA lab, performed a DNA analysis on the evidence left on the t-shirt. Mr. Gavel testified that DNA evidence left on the t-shirt belonged to Appellant Marquis Rayner. N.T. 11/18/14, pp. 149, 153. He also testified that the chance of a coincidental DNA match in the African-American population was one in 7.9 quintillion. N.T. 11/18/14, p. 154.

Viewing the above-listed evidence in the light most favorable to the Commonwealth, and drawing all proper inferences favorable to the Commonwealth, we find that the trier of fact could reasonably have concluded that all of the elements of the crimes of which Appellant was convicted were established beyond a reasonable doubt. Thus, his sufficiency of the evidence claim must fail.

May 2, 2016 Opinion of the Honorable James P. MacElree, II, at 4-6.

REASONS WHY THE PETITION FOR WRIT SHOULD BE DENIED

Petitioner has not presented any compelling reasons to grant the petition for a writ of certiorari. The current petition does not present a conflict within the United States Court of Appeals. The lower and intermediate state courts have not decided an important federal question in a way that conflicts with the decisions of another state or federal court. The lower and intermediate state courts have not decided an important question of federal law that has not been, but should be, settled by this Court, and has not decided an important federal question in a way that conflicts with relevant decisions of this Court. At best the petition for a writ of certiorari merely alleges errors consisting of alleged erroneous factual findings or the alleged misapplication of a properly stated rule of law.

The writ of certiorari primarily relies upon Pennsylvania law and the application thereof. Petitioner's argument is essentially that Pennsylvania courts misapplied Pennsylvania law. Petitioner attempts to make his state law claims federal claims by mentioning the 6th and 14th Amendments and due process without any meaningful analysis. Moreover, the writ of certiorari only briefly mentions one federal case, that of the United States Court of Appeal for the Third Circuit (approximately 50 words). See Writ of Certiorari at page 25.

I. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S GUILTY VERDICTS AND THE VERDICTS WERE NOT AGAINST THE WEIGHT OF THE EVIDENCE.

The appropriate standard of review concerning a claim of insufficient evidence to support a state criminal conviction is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

In Cavazos v. Smith, 565 U.S. 1, 132 S.Ct. 2, 181 L.Ed.2d 311 (2011), the United States Supreme Court stated in part:

The opinion of the Court in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979), makes clear that it is the responsibility of the jury - not the court - to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. What is more, a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was "objectively unreasonable." Renico v. Lett, 559 U.S. ___, ___, 130 S.Ct. 1855, 1862, 176 L.Ed.2d 678 (2010) (internal quotation marks omitted).

Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold. The Court of Appeals in this case substituted its judgment for that of a California jury on the question whether the prosecution's or the defense's expert witnesses more persuasively explained the cause of a death. For this reason, certiorari is granted and the judgment of the

Court of Appeals is reversed.

Cavazos v. Smith, 565 U.S. at 2, 132 S.Ct. at 3-4.

In United States v. Quiles, 618 F.3d 383 (3d Cir. 2010), the United States Court of Appeals for the Third Circuit stated in part:

When evaluating a challenge to a jury’s verdict, we apply a particularly deferential standard of review. United States v. Dent, 149 F.3d 180, 187 (3d Cir. 1998). We do not re-weigh the evidence or assess the credibility of witnesses. *Id.* (citing United States v. Voigt, 89 F.3d 1050, 1080 (3d Cir. 1996)). Instead, we view the evidence in the light most favorable to the government before deciding whether any rational trier of fact could have found the presence of the essential elements of the crime beyond a reasonable doubt. *Id.* (citing United States v. Thomas, 114 F.3d 403, 405 (3d Cir. 1997)).

Quiles at 395. *See also* United States v. Tyson, 653 F.3d 192, 202 (3d Cir. 2011); United States v. McBane, 433 F.3d 344, 348 (3d Cir. 2005) (courts do not weigh evidence or determine the credibility of witnesses on sufficiency of the evidence review). The United States Court of Appeals for the Third Circuit stated in part:

[T]he verdict must be upheld as long as it does not “fall below the threshold of bare rationality.” Coleman v. Johnson, ___ U.S. ___, 132 S.Ct. 2060, 2065, 182 L.Ed.2d 978 (2012) (“The jury in this case was convinced, and the only question under Jackson v. Virginia is whether that finding was so insupportable as to fall below the threshold of bare rationality.”).

United States v. Caraballo–Rodriguez, 726 F.3d 418, 431 (3d Cir. 2013) (en banc).

The Pennsylvania standard is the same as the federal standard. Evidence will be deemed sufficient to support a guilty verdict when it establishes each

material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Commonwealth v. Weston, 561 Pa. 199, 749 A.2d 458 (2000). In deciding the sufficiency of the evidence, the reviewing court must accept as true all the evidence, and the reasonable inferences therefrom, upon which the factfinder could have based its verdict and then ask whether that evidence, viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to prove guilt beyond a reasonable doubt. Commonwealth v. Young, 494 Pa. 224, 431 A.2d 230 (1981); Commonwealth v. Boettcher, 313 Pa. Super. 194, 459 A.2d 806 (1983).

In applying this test, the entire trial record must be evaluated and all the evidence received must be considered. A reviewing court must not give weight to or speculate upon matters not in evidence. A reviewing court must recognize and honor the right and obligation of the trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, to believe all, part or none of the evidence. Commonwealth v. Griscavage, 512 Pa. 540, 517 A.2d 1256 (1986); Commonwealth v. Harper, 485 Pa. 572, 403 A.2d 536 (1979).

The facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence, but the question of any doubt is for the trier of fact, unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined

circumstances. Commonwealth v. Sullivan, 472 Pa. 129, 371 A.2d 468 (1977); Commonwealth v. Libonati, 346 Pa. 504, 31 A.2d 95 (1943); Commonwealth v. Davis, 799 A.2d 860 (Pa. Super. 2002); Commonwealth v. Seibert, 424 Pa. Super. 242, 622 A.2d 361 (1993). In other words, before granting a motion in arrest of judgment, the court must make a finding that the evidence supporting the verdict of guilt is so weak and inconclusive that a reasonable fact finder of fact could not be satisfied as to the guilt of the defendant beyond a reasonable doubt. Commonwealth v. Blevins, 453 Pa. 481, 309 A.2d 421 (1973); Commonwealth v. Lanager, 360 Pa. Super. 578, 521 A.2d 53 (1987).

The Supreme Court of Pennsylvania has articulated the reasons why the trier of fact has the right and obligation to believe all, part or none of the evidence:

The trier of fact has the unique opportunity to see and hear subtleties of answers and movements of witnesses and parties not viewable from the cold record. Words are delivered in a wider context than appear on a printed page. What they mean is often determined from how they are said, by whom and for what reason, for which reason a trier of fact is not required to accept all he hears.

Commonwealth v. Griscavage, 512 Pa. 540, 546, 517 A.2d 1256, 1259 (1986).

The distinction between a claim challenging the sufficiency of the evidence and a claim challenging the weight of the evidence is critical. Some federal courts have interpreted Fed.R.Crim.P. 33 to permit the trial court to set aside a conviction that is against the weight of the evidence. In exceptional cases, a motion for new

trial may be granted where the guilty verdict is contrary to the weight of the evidence in the case. A motion for new trial based on the weight of the evidence should be rarely, such that it would be a miscarriage of justice to let the verdict stand. The United States Court of Appeals for the Eleventh Circuit has summarized these principles as follows:

Initially, we note that a motion for new trial made on the ground that the verdict is contrary to the weight of the evidence raises issues very different from a motion for judgment of acquittal notwithstanding the verdict, which is based on the sufficiency of the evidence. On a motion for judgment of acquittal, the court must view the evidence in the light most favorable to the verdict, and, under that light, determine whether the evidence is sufficient to support the verdict. Corbin, 734 F.2d at 650. Thus, on this motion, the court assumes the truth of the evidence offered by the prosecution. On a motion for a new trial based on the weight of the evidence, the court need not view the evidence in the light most favorable to the verdict. It may weigh the evidence and consider the credibility of the witnesses. United States v. Lincoln, 630 F.2d 1313, 1319 (8th Cir. 1980); United States v. Simms, 508 F.Supp. 1188, 1202 (W.D.La. 1980). If the court concludes that, “despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury.” Lincoln, 630 F.2d at 1319.

The decision to grant or deny a new trial motion based on the weight of the evidence is within the sound discretion of the trial court. An appellate court may reverse only if it finds the decision to be a clear abuse of that discretion. Id.; United States v. Indelicato, 611 F.2d 376, 387 (1st Cir. 1979). While the district court’s discretion is quite broad, there are limits to it. The court may not reweigh the evidence and set aside the

verdict simply because it feels some other result would be more reasonable. Simms, 508 F.Supp. at 1202. The evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand. Indelicato, 611 F.2d at 387; United States v. Sinclair, 438 F.2d 50, 51 n. 1 (5th Cir. 1971) (*quoting* Wright, Miller & Cooper, Federal Practice and Procedure: Criminal § 553, at 487). Motions for new trials based on weight of the evidence are not favored. Courts are to grant them sparingly and with caution, doing so only in those really “exceptional cases.” Lincoln, 630 F.2d at 1319; Indelicato, 611 F.2d at 387; Simms, 508 F.Supp. at 1202.

United States v. Martinez, 763 F.2d 1297, 1312–1313 (11th Cir. 1985).

Although there is nothing requiring state courts to consider a motion for a new trial alleging that the verdict is contrary to the weight of the evidence, Pennsylvania permits such challenges. The Pennsylvania standard is the same as the federal standard. A claim challenging the sufficiency of the evidence asserts that there is insufficient evidence to support at least one material element of the crime for which the defendant has been convicted. However, a motion for a new trial alleging that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict, but alleges that “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.” Commonwealth v. Widmer, 560 Pa. 308, 318-319, 744 A.2d 745, 751-752 (2000); Commonwealth v. Lyons, 833 A.2d 245, 258 (Pa. Super. 2003).

The decision to grant or deny a motion for a new trial on the ground that the

verdict is against the weight of the evidence is committed to the sound discretion of the trial court. Absent an abuse of discretion its denial of such a motion will not be disturbed. Appellate review of a weight of the evidence claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Commonwealth v. Clay, 619 Pa. 423, 64 A.3d 1049 (2013); Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745 (2000); Commonwealth v. Brown, 538 Pa. 410, 648 A.2d 1177, 1191 (1994); Commonwealth v. Griffin, 511 Pa. 553, 515 A.2d 865 (1986); Commonwealth v. Pronkoskie, 498 Pa. 245, 445 A.2d 1203 (1982); Commonwealth v. Sullivan, 820 A.2d 795 (Pa. Super. 2003).

A new trial should only be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. Commonwealth v. Goodwine, 692 A.2d 233, 236 (Pa. Super. 1997). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Commonwealth v. La, 433 Pa. Super. 432, 640 A.2d 1336, 1351 (1994), *appeal denied*, 540 Pa. 597, 655 A.2d 986 (1994). "When 'the figure of Justice totters on her pedestal,' or when 'the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.'" Nudelman v.

Gilbride, 436 Pa. Super. 44, 647 A.2d 233, 237 (1994) (*quoting*, Lupi v. Keenan, 396 Pa. 6, 151 A.2d 447, 452, 453 (1959) (Musmanno, J., dissenting)).” Commonwealth v. Davidson, 860 A.2d 575, 581 (Pa. Super. 2004). However, it is the trial court’s sense of justice that must be shocked before a new trial may be granted on a claim that the verdict is against the weight of the evidence. It is irrelevant that the appellate court’s sense of justice may be shocked. Commonwealth v. Brown, 538 Pa. 410, 648 A.2d 1177 (1994); Commonwealth v. Sullivan, 820 A.2d 795, 807 n.11 (2003). One of the least assailable reasons for granting or denying a new trial is the lower court’s conviction that the verdict was or was not against the weight of the evidence and that new process was or was not dictated by the interests of justice. Commonwealth v. Brown, 538 Pa. 410, 436, 648 A.2d 1177, 1189-1190 (1994).

In the case at bar, the Superior Court of Pennsylvania correctly addressed these claims stating in part:

Appellant’s first two issues challenge the sufficiency and weight of the evidence to support his convictions. (*See id.* at 41–55).^{FN#4} For ease of disposition, we will address Appellant’s sufficiency challenge first, and then his weight of the evidence claim.

^{FN#4.} Although Appellant recognizes that each of these issues has its own standard of review, (*see* Appellant’s Brief, at 49), he appears to confuse the legal concepts. (*See id.* at 41–55). For example, “[a] motion for new trial on the grounds that the verdict is contrary to the weight of the evidence,

concedes that there is sufficient evidence to sustain the verdict.” Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 751 (2000) (citation omitted). However, in support of his weight of the evidence challenge, Appellant repeatedly states that the Commonwealth failed to prove the elements necessary to support his convictions. (See Appellant’s Brief, at 44–46). Also, in his sufficiency challenge, Appellant maintains that “[t]he speculative and conflicting nature of the testimony would warrant a reversal on the basis of sufficiency of evidence.” (Appellant’s Brief, at 52). However, this allegation goes to the weight of the evidence. See Commonwealth v. Doleno, 430 Pa. Super. 1, 633 A.2d 203, 206 (1993) (“claim goes to the weight of the evidence because it depends upon a resolution of the conflicting testimony of competing witnesses.”).

In his second issue, Appellant argues that the evidence was insufficient to support the verdict because it required pure speculation. (See Appellant’s Brief, at 49–55). Appellant’s issue lacks merit.

In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the fact finder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt. The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Further, the trier of fact is free to believe all, part, or none of the evidence.

Commonwealth v. Taylor, 137 A.3d 611, 614 (Pa. Super. 2016) (citation omitted). In this case, Appellant was convicted of murder of the second degree, robbery, burglary, and conspiracy.

Pursuant to section 2502(b) of the Crimes Code, “[a] criminal

homicide constitutes murder of the second degree when it is committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony.” 18 Pa.C.S.A. § 2502(b). The Crimes Code also provides, in pertinent part, that “[a] person is guilty of robbery if, in the course of committing a theft, he ... inflicts serious bodily injury upon another [or] threatens another with or intentionally puts him in fear of immediate serious bodily injury[.]” 18 Pa.C.S.A. §§ 3701(a)(1)(i), (ii). It further provides, “[a] person commits the offense of burglary if, with the intent to commit a crime therein, the person ... enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense any person is present[.]” 18 Pa.C.S.A. § 3502(a)(1). Finally:

A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he ... agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime ... or ... agrees to aid such other person or persons in the planning or commission of such crime

....

18 Pa.C.S.A. § 903(a).

In this case, the evidence at trial established that three men broke into Dominick Williams’ apartment with the intent of robbing him. (See N.T. Trial, 11/17/14, at 67, 69, 150). The men were armed with guns and wore t-shirts across their faces. (See id. at 66–68, 77, 118–119, 132). After shooting Mr. Williams, and pistol whipping his roommate, Aaron Crawford, one of the men stole a plastic-lidded jar that contained marijuana and other items. (See id. 155–57). The individual was not wearing gloves. (See id. at 150).

As further described by the trial court:

Approximately [ninety] minutes after Dominick Williams

had been shot, police officer Stephen Galletta of the Coatesville City Police Department located the clear plastic jar tossed in a hedge row approximately a block and a half from the crime scene. (See id. at 244). The jar contained a pack of Newport cigarettes. (See id. at 163). Located several feet away was a black t-shirt. (See id. at 244, 248). Witness Aaron Crawford was brought to the discovery scene and identified the jar as the one taken from his bedroom earlier that morning, and the t-shirt as the type of shirt that one of the robbers had been wearing across his face. (See id. at 161–64).

Chester County Detective Kenneth Beam testified as an expert in the field of fingerprint analysis. Detective Beam received as evidence the plastic jar and t-shirt found close to the scene of the robbery. (See N.T. Trial, 11/18/14, at 49).

Detective Bean testified that the print with the sharpest and clearest detail found on the plastic jar belonged to co-defendant Dominique Lee. (See id. at 65, 69, 73). Because Detective Bean knew that the t-shirt had possibly been tied across the face of one of the intruders as a disguise, he surmised that the intruder might have left saliva on the shirt. Accordingly, Detective Bean sent the t-shirt to the State Police Laboratory for DNA analysis. (See id. at 55).

Michael Gossard, a forensic scientist with the Pennsylvania State Police, testified as a serology expert. Mr. Gossard tested the t-shirt for evidence of saliva. (See id. at 117). His testing indicated the presence of saliva on two different areas of the t-shirt. (See id. at 121, 135).

Timothy Gavel, a forensic scientist with the Pennsylvania State Police DNA lab, performed a DNA analysis on the evidence left on the t-shirt. Mr. Gavel testified that DNA evidence left on the t-shirt belonged to Appellant []. (See id. at 149, 153). He also testified that the chance of a coincidental DNA match in the African–American

population was one in 7.9 quintillion. (See id. at 154).

(Trial Ct. Op., at 4–6) (some record citation formatting provided).

Based on the above evidence, and our review of the record in the light most favorable to the Commonwealth as verdict winner, we conclude that it was sufficient to establish the elements of the crimes of which Appellant was convicted. See Taylor, *supra* at 614. Appellant’s sufficiency challenge does not merit relief.

Appellant also challenges the weight of the evidence to support his convictions. (See Appellant’s Brief, at 41–49). Appellant’s issue lacks merit.

When we review a weight-of-the-evidence challenge, we do not actually examine the underlying question; instead, we examine the trial court’s exercise of discretion in resolving the challenge. This type of review is necessitated by the fact that the trial judge heard and saw the evidence presented. Simply put, [o]ne of the least assailable reasons for granting or denying a new trial is the lower court’s conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice. A new trial is warranted in this context only when the verdict is so contrary to the evidence that it shocks one’s sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.

Of equal importance is the precept that, “The finder of fact ... exclusively weighs the evidence, assesses the credibility of witnesses, and may choose to believe all, part, or none of the evidence.” Commonwealth v. Sanchez, 614 Pa. 1, 36 A.3d 24, 39 (2011) (citation omitted).

Commonwealth v. Konias, 136 A.3d 1014, 1022–23 (Pa. Super. 2016), *appeal denied*, 145 A.3d 724 (Pa. 2016) (most citations and quotation marks omitted).

In this case, the trial court “presided over Appellant’s trial [and did] not find the jury verdict so contrary to the evidence as to shock the [c]ourt’s sense of justice. Thus, [the court] specifically [found] that the verdict in this matter was not against the weight of the evidence.” (Trial Ct. Op., at 6). We decline Appellant’s invitation to re-weigh the evidence in this matter, and conclude that the trial court did not abuse its discretion in denying his weight of the evidence challenge. See Konias, *supra* at 1022–23. Appellant’s weight of the evidence claim does not merit relief.

Commonwealth v. Rayner, 153 A.3d 1049, 1054-1056 (Pa. Super. 2016), *appeal denied*, ___ Pa. ___, 169 A.3d 1046 (2017) (footnote in original).

For the foregoing reasons, the Respondent, the Commonwealth of Pennsylvania, contends that the evidence was sufficient to support the jury’s guilty verdicts and the verdicts were not against the weight of the evidence. Petitioner has not asserted any grounds for granting the Writ of Certiorari.

II. THE TRIAL COURT DID NOT IMPROPERLY INTERFERE WITH THE PETITIONER’S RIGHT TO A FAIR TRIAL.

Petitioner alleges that the trial court interfered during his cross examination of a prosecution witness concerning an alleged inconsistent statement. Petitioner also alleges that trial court improperly interfered twice during defense counsel’s closing argument to the jury. The trial court’s interruptions were appropriate in all of these instances. Each of time the trial court interrupted defense counsel, it was

because defense counsel was not following the law or was inaccurately stating the law to the jury. Defense counsel was misleading the jury, whether intentionally or unintentionally, and the trial court acted appropriately in correctly the situation. Moreover, any alleged error would be harmless beyond a reasonable doubt.

The United States Court of Appeals for the Fourth Circuit has stated in part:

Although they failed to object at trial, Appellants now assert that the district court made several antagonistic comments in the presence of the jury that prejudiced them and the outcome of their cases. In circumstances of alleged judicial interference, “we may not intervene unless the ‘judge’s comments were so prejudicial as to deny [the defendants] an opportunity for a fair and impartial trial.’” Godwin, 272 F.3d at 673 (alteration in original) (*quoting* U.S. v. Gastiaburo, 16 F.3d 582, 589–90 (4th Cir. 1994)). Moreover, where, as here, a defendant fails to timely object to the alleged interference, we only review such claims for plain error. *Id.* (*citing* U.S. v. Castner, 50 F.3d 1267, 1272 (4th Cir. 1995)). After a thorough review of the transcript, we cannot conclude that any of the district court’s comments rise to such a level.

United States v. Harvey, 532 F.3d 326, 335–336 (4th Cir. 2008).

The United States Court of Appeals for the Fourth Circuit has stated in part:

The Supreme Court has observed that a fair trial, in the constitutional context, is one “whose result is reliable.” Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In a similar vein, our good Chief Judge recently observed that “substantial rights are not affected when a picture-perfect proceeding would yield exactly the same result as that which actually transpired.” United States v. Promise, 255 F.3d 150, 166 (4th Cir. 2001) (Wilkinson, C.J., concurring in part and concurring in the judgment); *see also* Neder v. United States, 527 U.S. 1, 15, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (noting that constitutional error is harmless if “it appears

beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained”); United States v. Villarini, 238 F.3d 530, 536 (4th Cir. 2001) (“A new trial is required only if the resulting prejudice was so great ‘that it denied any or all the appellants a fair, as distinguished from a perfect, trial.’”) (quoting United States v. Parodi, 703 F.2d 768, 776 (4th Cir. 1983)).

United States v. Godwin, 272 F.3d 659, 673 (4th Cir. 2001).

With respect to judicial remarks during a trial, the Supreme Court of Pennsylvania has held:

A judge’s remarks to counsel do not warrant reversal unless the remarks so prejudice the jurors against the defendant that “it may reasonably be said [that the remarks] deprived the defendant of a fair and impartial trial.” Commonwealth v. England, 474 Pa. 1, 375 A.2d 1292, 1300 (1977) (stating that a judge’s critical remarks to defense counsel did not deprive appellant of a fair and impartial trial because the remarks were directed to counsel, not appellant).

Commonwealth v. Jones, 590 Pa. 202, 233, 912 A.2d 268, 287 (2006).

Petitioner’s contends that the trial court improperly interrupted the cross-examination of Mr. Stretton of Aaron Crawford. Specifically, Petitioner argues it was an error for the trial court, during defense counsel’s attempt to impeach the witness with an alleged prior inconsistent statement, to state that there was not an inconsistency. However, the trial court was correct to interrupt the cross-examination. The alleged prior “inconsistent” statement was not inconsistent. Pennsylvania Rule of Evidence 613 governs the use of a prior inconsistent statement for impeachment purposes, and provides in part as follows:

(a) Witness’s Prior Inconsistent Statement to Impeach. A witness may be examined concerning a prior inconsistent statement made by the witness to impeach the witness’s credibility. The statement need not be shown or its contents disclosed to the witness at that time, but on request the statement or contents must be shown or disclosed to an adverse party’s attorney.

Pa.R.E. 613.

“Our courts long have permitted non-party witnesses to be cross-examined on prior statements they have made when those statements contradict their in-court testimony. Such statements, known as prior inconsistent statements, are admissible for impeachment purposes.” Commonwealth v. Carmody, 799 A.2d 143, 148 (Pa. Super. 2002). However, the prior statement must be inconsistent:

It is well-established that for a statement to be used for impeachment, a statement actually must be inconsistent with, and not just different from, trial testimony. Mere omissions from prior statements do not render prior statements inconsistent for impeachment purposes. ... “[M]ere dissimilarities or omissions in prior statements do not suffice as impeachable evidence; the dissimilarities or omissions must be substantial enough to cast doubt on a witness’s testimony to be admissible as prior inconsistent statements.”

Commonwealth v. Johnson, 758 A.2d 166, 170 (Pa. Super. 2000) (internal citations omitted).

In the case at bar, defense counsel attempted to impeach a prosecution witness with a statement that was not inconsistent by using a prior statement that dealt with a different topic other than the physical description of the t-shirt:

Q: Now there was nothing that struck out about that shirt, was it?

A: **It had a Polo sign on it.**

Q: You couldn't -- nothing that you could see other than this looked like a shirt that might have been used by the individual or individuals that were in there, am I correct?

A: It looked like it is.

Q: It look like it?

A: Yes.

Q: You can't say it was? You can't say it was a black shirt, correct?

A: **With a Polo sign on it.**

Q: Well, I mean you were shown -- you testified before about the shirt, am I correct?

A: I did.

Q: Did you go back to -- let's see what exhibit it was, D4, the last exhibit put on your witness box. Look at page 84 of that particular document. That is the May 9th grand jury testimony. Now again, do you remember testifying on that date? We already went through that, am I correct?

A: Yes.

Q: And you say you were shown the same shirt that Mr. Conte showed you today. Do you remember that?

A: Correct.

Q: And you were asked the following questions, Mr. Conte asked you or at the time before the grand jury **I'm going to**

show you what I marked as Exhibit 1123C-2. Do you recognize what it is in that photograph? You said yes. Question, what does it look like to you. Answer, it looks like one of the shirts they had on their head. Question, it looks like one of the shirts they had over their head? Answer, yes. Did I read that accurately?

A: You did.

Q: Do you dispute what you said before?

A: I don't.

Q: And there is nothing about seeing a Polo mark or anything like that, is there?

A: No.

Q: Now --

THE COURT: Mr. Stretton, are you offering that as an inconsistent statement to his testimony here at trial?

MR. STRETTON: I'm offering it as an inconsistent statement.

THE COURT: What is inconsistent about that compared to what he just testified to?

MR. STRETTON: Well, I can tell you he said before on direct that it is the shirt. He said when I questioned him he said that it looks like the shirt because it has a Polo or whatever symbol was on there. And then I read the statement to him where it says it looks like it.

THE COURT: It's not inconsistent, sir. Don't argue with me. That is not inconsistent. Have a seat.

(N.T., 11/17/14, 196-198) (emphasis added).

There is nothing inconsistent about the two statements as the trial court

correctly noted. The prior statement does not provide a description of the t-shirt in question. The grand jury testimony simply consists of the witness being shown a shirt and stating that it looked like the shirts the intruders wore during the night in question. At no time was the shirt actually described by the witness during the grand jury transcript used by defense counsel.

Defense counsel's questions to the witness and argument to the trial court, as detailed above, centered on the fact that there was no mention of the "Polo Logo" in the grand jury transcript. The issue of the "Polo Logo" was never addressed in that grand jury transcript. Thus this was an improper attempt by defense counsel to impeach with an omission. Mere omissions from prior statements do not render prior statements inconsistent for impeachment purposes.

Finally, the two statements are entirely compatible with one another as the statements do not conflict. "It looks like one of the shirts they had on their head" is not inconsistent with "It had a Polo sign on it." Each of these statements can logically be true without invalidating the other statement. The statements deal with two different topics: whether the shirt was one worn by the assailants and the actual description of the shirt.

Petitioner next alleges that the trial court improperly interrupted his closing argument. Initially, this issue is waived. Petitioner failed to timely object and thus the issue has not been preserved for appellate review. Alternatively, the issue is

meritless as the trial court needed to interject to properly inform the jury that he would provide them with the applicable law and that they needed to abide by what he told them, not the misinformation stated by defense counsel.

During closing argument, defense counsel stated the following:

[MR. STRETTON:] Legal commentators have called reasonable doubt as the kind of doubt that makes a reasonable person. Hopefully, you guys are all reasonable. People hesitate or refrain in a matter of importance.

THE COURT: I'm going to interrupt you for a moment. Ladies and gentlemen, that is not the exact definition I would give you. That is not the exact legal definition of reasonable doubt for the Commonwealth of Pennsylvania. Go ahead, Mr. Stretton.

(N.T. 11/19/14, 160). Defense counsel then proceeded to continue his closing argument without making a timely objection; thereby waiving the claim.

Alternatively, the issue is meritless. While defense counsel's definition of reasonable doubt was similar to the actual definition, it wasn't the definition that the trial court would provide and that the jury needed to follow. It is well settled that "the trial court is required to instruct the jury as to the applicable law of the case." Commonwealth v. Houck, 102 A.3d 443, 451 (Pa. Super. 2014) (*citing Commonwealth v. Washington*, 549 Pa. 12, 700 A.2d 400 (1997), *cert. denied*, 524 U.S. 955, 118 S.Ct. 2375, 141 L.Ed.2d 742 (1998)). During jury instructions, the trial court provided the following standard jury instruction:

A reasonable doubt is a doubt that would cause a reasonably

careful and sensible person to hesitate before acting upon a matter of importance in his or her own affairs.

(N.T. 11/19/14, 247). Defense counsel's definition was not accurate in several respects. First, defense counsel's definition used a "reasonable person" when the actual definition mentions a "reasonably careful and sensible person." Next, defense counsel changed it from "hesitate" to "hesitate or refrain." Finally, defense counsel ignored the last part of the statement when he indicated the person would hesitate / refrain "in a matter of importance" when the actual standard is that it would cause the person to hesitate "before acting upon a matter of importance in his or her own affairs." While similar, the definition defense counsel of was not accurate. The trial court properly interjected to prevent such confusion.

Petitioner's also argues that the trial court erred by interrupting him when he was discussing the burden of proof in a civil case. During his closing argument, the following occurred:

[MR. STRETTON:] . . . If you visualize lady justice blindfolded and if can imagine a scale as evidence, weight one way or the other. For if it was a civil case and we were fighting over damages, a car accident, breach of contract, the burden is preponderance of the evidence, fifty-one percent. Some civil cases it's higher.

THE COURT: Mr. Stretton it's not fifty-one percent either. I'll explain to the jury as well. You may proceed.

MR. STRETTON: With all due respect.

THE COURT: Mr. Stretton, you're wrong in the law. It's

my job to give this jury the law. Proceed. It's not fifty-one percent. It is the scales dip ever so slightly in one direction or the other.

(N.T. 11/19/14, 160-161). Defense counsel clearly misstated the law concerning the civil burden of proof. The Supreme Court of Pennsylvania has stated:

In Commonwealth v. Wayne, 553 Pa. 614, 720 A.2d 456 (1998), this Court approved the “greater weight of the evidence” definition of preponderance of the evidence and a “tips the scales” instruction without “more probable than not” language. *See also* Commonwealth v. Williams, 557 Pa. 207, 732 A.2d 1167 (1999) (approving “greater weight of the evidence” as the sole definition of preponderance).

Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001). The trial court properly instructed the jury concerning the burden of proof to correct defense counsel's misstatement of the law.

In the case at bar, the Superior Court of Pennsylvania in addressing this claim stated in part:

Finally, in his fifth issue, Appellant argues that the trial court improperly interfered with trial. (See Appellant's Brief, at 68–82). Specifically, he claims that “[the trial court's] interference, commenting on evidence, improper criticism and interruption of [defense counsel's] closing speeches[,] denied [Appellant] his right to due process and a fair trial and impacted [his] Sixth Amendment right to effective counsel.” (*Id.* at 68) (underlining omitted). After exhaustively reviewing the record, we disagree.

[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair

judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.... Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as [] judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune. However, [a] judge's remarks to counsel during trial do not warrant reversal unless the remarks so prejudice the jurors against the defendant that it may reasonably be said [that the remarks] deprived the defendant of a fair and impartial trial.

Commonwealth v. Kearney, 92 A.3d 51, 61 (Pa. Super. 2014), *appeal denied*, 627 Pa. 763, 101 A.3d 102 (2014) (citation and emphases omitted).

In this case, Appellant first maintains that the trial court improperly interrupted his cross-examination of Aaron Crawford, who was in the subject house during the robbery. (See Appellant's Brief, at 72–76). On direct examination, Crawford testified that the intruders who entered the home were African American individuals, and that they wore t-shirts on their heads as disguises, with one of the two individuals entering his bedroom wearing a white t-shirt on his head, and the other wearing a black one. A third person, who did not enter the bedroom wore a white t-shirt on his head. (See N.T. Trial, 11/17/14, at 149, 151, 169). In response to the prosecutor's questions about what color shirts the men were wearing on their bodies, Crawford testified that the two men wearing white t-shirts on their heads were also wearing white t-shirts on their torsos, and the individual wearing a black t-shirt on his head was wearing a black t-shirt on his body. (See *id.* at

169–70). One of the individuals disguised by a white t-shirt struck Crawford in the head and stole a jar from his bedroom that contained marijuana, money, and a pack of Newport cigarettes. (See id. at 152, 155). Minutes later, police took Crawford to a location approximately one-and-a-half blocks from his home where he identified a jar containing a pack of Newport cigarettes as the one taken from his home. (See id. at 161–63). He also identified a black t-shirt located “a couple feet away” from the jar as being the one worn on the head of one of the intruders. (Id. at 164).

On cross-examination, the following relevant exchange occurred:

[Defense Counsel]: Now two guys come in [the bedroom], you said ... both of them had white t-shirts on.
...

[Crawford]: I don’t know.

[Defense Counsel]: White t-shirts on their head[s] today earlier in front of the jury[?]

[Commonwealth]: Objection.

THE COURT: Sustained.

* * *

THE COURT: [Defense counsel], the testimony was that one had a white t-shirt on. He testified that the other had a black t-shirt. There was another man outside that had a white t-shirt.

(Id. at 186).

After our independent review, we conclude that the trial court was responding to an objection raised by the Commonwealth, not condemning defense counsel. The court merely was correcting the mistake in counsel’s recitation of Crawford’s testimony. This does not evidence any of the partiality or bias necessary to find that the trial court acted improperly. See

Kearney, *supra* at 61.

Next, Appellant complains that the trial court's attempt to clarify whether defense counsel was asking about the shirts worn on the assailants' faces or on their bodies, (*see* N.T. Trial, 11/17/14, at 190–91), evidenced partiality necessitating a new trial. This issue is waived because Appellant provides only one incoherent sentence in support of it. (*See* Appellant's Brief, at 74); *see also* Pa.R.A.P. 2101, 2119(a)–(b). Moreover, after reviewing the entire record in this matter, we conclude that the trial court was clarifying counsel's question in an attempt to maintain the orderly presentation of this case. *See Kearney*, *supra* at 61. This claim would lack merit, even if not waived.

Appellant additionally maintains that the trial court improperly interfered when defense counsel was impeaching Crawford about an allegedly inconsistent statement about a Polo insignia on the black t-shirt. (*See* Appellant's Brief, at 74–76). Specifically, Appellant attempted to bring in Crawford's grand jury testimony as an inconsistent statement where, in that statement, he had said that one of the assailant's t-shirts was black and, at trial, he testified that the shirt was black with a Polo insignia on it. (*See* N.T. Trial, 11/17/14, at 197–99). The trial court advised defense counsel that this was not a prior inconsistent statement, and suggested that he read the rules about what such a statement is. (*See id.* at 199). We find no error.

A prior inconsistent statement, in relevant part, is “[a] prior statement by a declarant-witness that is inconsistent with the declarant-witness's testimony and ... was given under oath subject to the penalty of perjury[.]” Pa.R.E. 803.1(1)(A). In other words, prior inconsistent statements are those earlier statements, taken under oath, that are incompatible with the witness's trial testimony.

For example, in Commonwealth v. Buford, 101 A.3d 1182 (Pa. Super. 2014), *appeal denied*, 631 Pa. 741, 114 A.3d 415 (2015), this Court concluded that a trial court properly admitted a tape recorded statement in which the witness identified the

defendant as the perpetrator of the subject crime as a prior inconsistent statement, where the witness recanted her prior identification, and the defendant's culpability, at trial. See Buford, *supra* at 1200. Similarly, in Commonwealth v. Stays, 70 A.3d 1256 (Pa. Super. 2013), a trial court properly admitted a prior inconsistent statement identifying the defendant and the signed photo array, where witness recanted the identification at trial. See Stays, *supra* at 1262. Finally, in Commonwealth v. Pitner, 928 A.2d 1104 (Pa. Super. 2007), *appeal denied*, 596 Pa. 716, 944 A.2d 757 (2008), this Court affirmed a trial court's admission of the witness's guilty plea colloquy, which identified defendant as participating in the crime with him, as a prior inconsistent statement, where he denied defendant's involvement at trial. See Pitner, *supra* at 1108–09.

However, here, the prior statement merely lacked a detail that was included in Crawford's trial testimony. Therefore, the trial court properly advised Appellant that these statements were not incompatible and inconsistent in the sense required for admission as a prior inconsistent statement. See Pa.R.E. 803.1(1)(A); Buford, *supra* at 1200; Stays, *supra* at 1262; Pitner, *supra* at 1108–09. Hence, for all of these reasons, Appellant's claim that the trial court improperly interfered with his cross-examination of Crawford, lacks merit. See Kearney, *supra* at 61.

Finally, Appellant contends that the trial court "improperly criticized and objected to [defense counsel's] closing and misled the jury concerning [his] discussion of the burden of proof." (Appellant's Brief, at 78). This issue is waived for Appellant's failure to provide any pertinent authority in support of his argument that the trial court's interruption during his closing argument supports a finding that it acted improperly. (See *id.* at 78–81); see also Kearney, *supra* at 66–67 (finding claim waived for failure to cite pertinent authority and discussion thereof). Moreover, it would not merit relief.

In Commonwealth v. Britton, 334 Pa. Super. 203, 482 A.2d 1294 (1984), *appeal denied*, 509 Pa. 620, 506 A.2d 895 (1986), similar to this case, the appellant argued that the trial court

acted improperly when it interrupted him during closing argument as defense counsel was explaining the meaning of reasonable doubt. See Britton, *supra* at 1301. In concluding the issue had no merit, this Court observed:

The court correctly curtailed the attorney's remarks explaining to the jury that it was his role to instruct as to the law. It is the duty of the trial judge to instruct the jury as to the applicable law, and it is not error for the judge to interrupt counsel and correct a possibly misleading statement of the law.

Id. (citations omitted)

Likewise, here, we conclude that the trial court was acting within its purview when it interrupted defense counsel to correct what it perceived as a misstatement of the law. See id. Further, the complained-of exchange, (see N.T. Trial, 11/19/14, at 159–61), even were we to view it as “critical or disapproving of, or even hostile to, counsel[,]” does not “reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.” Kearney, *supra* at 61 (citations omitted). Hence, Appellant's argument in this regard lacks merit. Therefore, after our review of the entire record, we conclude that there is nothing in any of the trial court's remarks to Appellant's counsel that rises to the level of requiring a new trial. See id. Appellant's fifth issue lacks merit.

Commonwealth v. Rayner, 153 A.3d 1049, 1060-1063 (Pa. Super. 2016), *appeal denied*, ___ Pa. ___, 169 A.3d 1046 (2017).

For the foregoing reasons, the Respondent, the Commonwealth of Pennsylvania, contends that the trial court did not improperly interfere with the petitioner's right to a fair trial.

CONCLUSION

WHEREFORE, Respondent respectfully requests this Honorable Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

November 14, 2017

/s/ Nicholas J. Casenta, Jr.

DATE

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No. 17-6151

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2017

MARQUIS LEE RAYNER,
Petitioner

VS.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief for Respondent in Opposition to Writ of Certiorari was served, in compliance with Rule 29, upon all parties required to be served, by depositing the document in the United States Mail, with first-class postage prepaid, and addressed to Counsel of Record for Petitioner at:

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November 14, 2017

/s/ Nicholas J. Casenta, Jr.

DATE

Nicholas J. Casenta, Jr., Esquire
Chief Deputy District Attorney
District Attorney's Office
Chester County Justice Center
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