

No. 17-8198

In the

SUPREME COURT OF THE UNITED STATES

Timothy Matthew Jacoby,

Petitioner,

v.

Commonwealth of Pennsylvania,

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA*

BRIEF IN OPPOSITION

CAPITAL CASE

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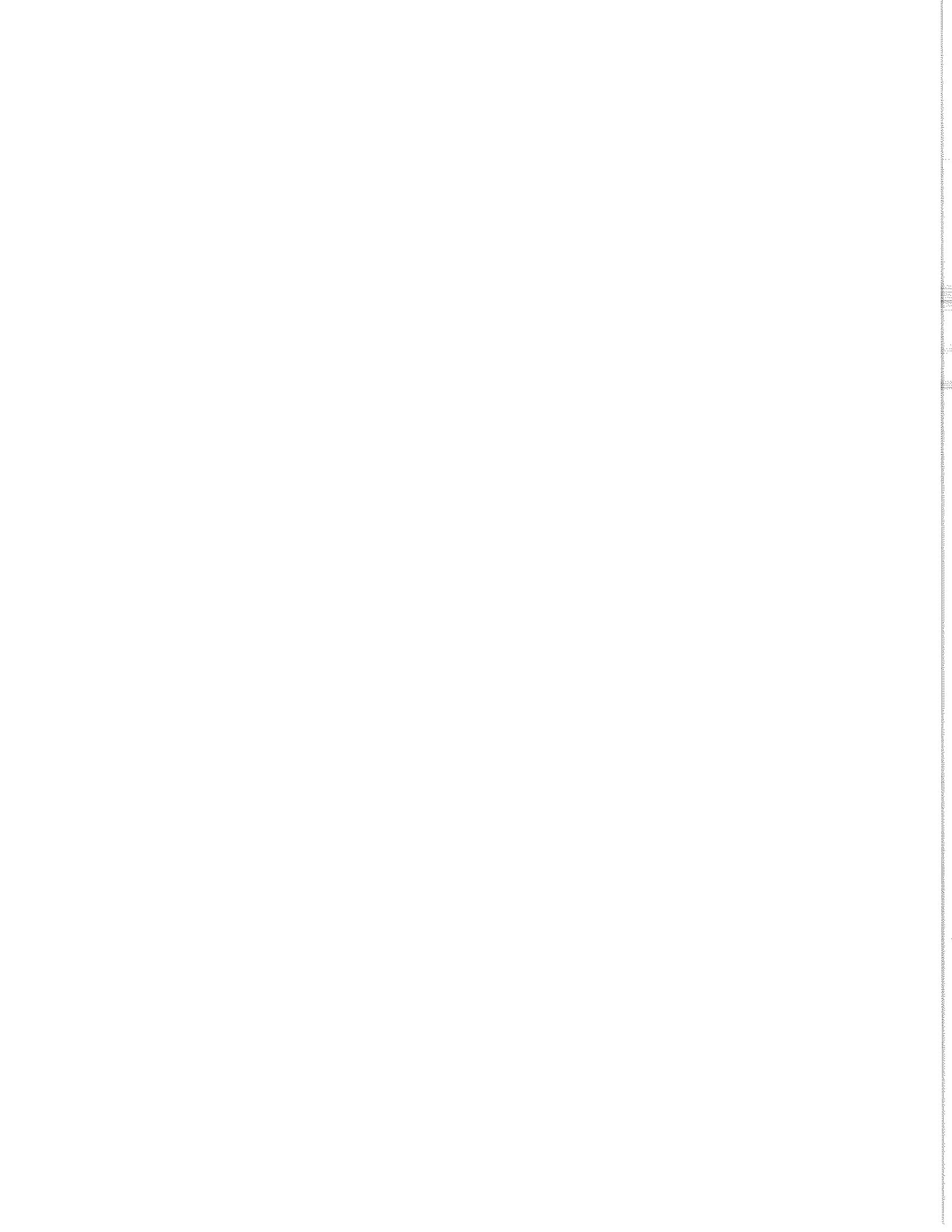
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CAPITAL CASE

Question Presented

Whether the Pennsylvania Supreme Court erred in the manner in which it evaluated the evidence presented at trial in order to hold that the admission of a piece of evidence that should have been suppressed was harmless?

TABLE OF CONTENTS

Table of Authorities.....	iv
Jurisdiction.....	1
Statement.....	1
Argument.....	13
Conclusion.....	19

TABLE OF AUTHORITIES

Federal Cases

<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991).....	17
<i>Chapman v. California</i> , 386 U.S. 18 (1967).....	1, 16
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986).....	19
<i>Halbert v. Michigan</i> , 545 U.S. 605 (2005).....	15

State Cases

<i>Commonwealth v. Chmiel</i> , 889 A.2d 501 (Pa. 2005).....	14
<i>Commonwealth v. Story</i> , 383 A.2d 155 (Pa. 1976).....	14-15
<i>Commonwealth v. Williams</i> , 573 A.2d 536 (Pa. 1990).....	14
<i>Commonwealth v. Wright</i> , 961 A.2d 119 (Pa. 2008).....	14

Other Authorities

SUP. CT. RULE 10.....	14, 15
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BRIEF IN OPPOSITION

Jurisdiction

This Court would have jurisdiction to review the decision of the Pennsylvania Supreme Court under 28 U.S.C. § 1257.

Statement

1. In *Chapman v. California*, 386 U.S. 18 (1967), this Court set forth the test for harmless error analysis, permitting a reviewing court to hold an error harmless where it is “able to declare a belief that it was harmless beyond a reasonable doubt.” 386 U.S. at 24. As the Court explained, harmless error analysis “serve[s] a very useful purpose insofar as [it] block[s] setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial.” *Id.* at 22.

Here, the Pennsylvania Supreme Court applied precisely that rule -- as Petitioner admits. Pet. 7, 9. The court acknowledged that the Commonwealth bore the burden of proving that the error did not contribute to the verdict, and that the court had to be convinced that there was no reasonable possibility the error might have contributed to the conviction. Pet. App. A27. Petitioner’s only quarrel with the Pennsylvania Supreme Court’s decision, then, is that the court did not give enough weight to the evidence he offered at trial when it concluded that the evidence against him was “overwhelming” such that the wrongful admission of one piece of ballistics evidence was harmless. *Id.* But even if this were error by the Pennsylvania Supreme Court -- and it is not -- the petition requests this Court’s

review simply for basic error correction that would not warrant this Court's attention. Because the petition does not even purport to offer any additional reasons justifying this Court's review, the petition should be denied.

2. On March 31, 2010, Monica Schmeyer (hereinafter "Monica" or "the victim") was killed in her residence, located at 3414 Trone Road in Glenville, Pennsylvania. At 2:52 p.m. that day, 911 received a call designated as a "hang-up," which the 911 custodian explained was an open line call. RR 229a. Police were dispatched, and when they arrived at Monica's home, they observed her dead on her living room floor. RR 235a-236a¹.

Police did not disturb the area surrounding Monica's body before processing it. Those areas included areas of blood drops and stains on the bedding, floor, bookshelves and clothing at or near her body. RR 237a-238a, 304a, 307a, 311a-317a. The telephone receiver was off its base, hanging by the bookshelves, with blood located on the "9" and "1" buttons of the telephone. RR 236a, 237a, 309a. Police discovered a .32 caliber Speer headstamped cartridge case at the crime scene by the bookshelves, near the victim's body. RR 304a, 306a, 310a-311a, 322a. Police also located multiple white envelopes containing cash on the first floor in the living room and kitchen. RR 321a, 361a-366a. Elsa Schmeyer, the victim's daughter who resided with her, testified that her mother would keep white envelopes with cash in the house, including the kitchen and living room. RR 285a, 286a-287a, 289a-290a.

¹ Respondent uses the same reproduced record that was submitted to the Pennsylvania Supreme Court.

Elsa Schmeyer was not at their residence on March 31st, as she was in Japan during that time frame. RR 262a, 829a-830a.

Monica and Petitioner did not know each other. Both Elsa Schmeyer and ex-husband Dr. Jon Schmeyer testified that Monica never met or spoke with Petitioner to the best of their knowledge. RR 272a, 285a, 849a-850a. Police did not find any evidence of contact between Monica and Petitioner, such as Petitioner's phone number or address in Monica's house. RR 559a-560a, 892a-893a, 937a.

However, Petitioner did know the victim's ex-husband, Dr. Schmeyer, and associated with him at Hooters as part of an informal social group called the Orange Shorts Society ("OSS"). RR 837a-838a. Dr. Schmeyer discussed his divorce to Monica with the group. RR 838a-840a, 851a. Specifically, Dr. Schmeyer mentioned on multiple occasions that he paid Monica her alimony in cash. RR 838a-839a, 851a-853a, 859a, 882a-884a. While Sara Powell, another member of the OSS and Petitioner's fiancée, did not recall the specific topic of Monica's alimony being mentioned at the OSS gatherings, she did specifically recall her and Petitioner being present for a discussion concerning Elsa Schmeyer traveling to Japan. RR 946a.

On March 31, 2010 at approximately 2:00 p.m., Dr. Schmeyer and Powell met at Panera Bread in the Delco Plaza to discuss foreign exchange currency trading. RR 523a-525a, 842a-845a. Dr. Schmeyer also sent a text to Petitioner, but received no response. RR 495a-496a, 844a-845a, 861a-864a, 875a-876a, 931a-932a, 940a-941a. At approximately 3:00 p.m., Dr. Schmeyer and Sarah Powell went to Hooters

to meet with members of the OSS. RR 526a-528a, 844a, 931a-932a, 942a-943a. Powell expected Petitioner to meet them and was surprised when he did not appear. RR 944a, 945a. She left Hooters at approximately 5:20 p.m. to go to the home that she shared with Petitioner. RR 528a-529a, 942a-943a. At 5:22 pm, she called Petitioner, but her call went to voicemail. RR 498a, 933a-934a, 943a. Petitioner did not return home until after 6:00 p.m. RR 943a-944a. Petitioner told Powell that he was at work while they were at Hooters and that was why he did not attend. RR 944a.

William Kagarise, a distant neighbor of Monica's who lived at 5359 Snyder Mill Road, went to feed his animals on his property at approximately 2:45 p.m. to 3:00 p.m. on March 31, 2010. RR 428a, 429a-430a, 439a. As Kagarise was approaching his barn, he saw a white man walking with his head down along Snyder Mill Road towards Smoketown Road, which is in the direction of the victim's residence on Trone Road. RR 429a-431a, 433a-434a, 435a-436a.

Approximately 20 minutes to 30 minutes later, Kagarise saw the same male heading along Smoketown Road and then on Snyder Mill Road by Kagarise's property. RR 431a-433a, 436a-437a. This was heading away from the victim's residence and the reverse of the male's previous travel. RR 431a-432a. On this return trip, Kagarise saw that the man now had an item in his right hand that Kagarise identified as a white envelope. RR 432a-433a, 437a, 443a, 447a. Kagarise stated that his time frames are approximations based upon his habits because he

does not keep a constant time check while feeding his animals. RR 429a, 439a, 446a.

Kagarise described the white male as being approximately his height (5'10") or a little shorter. RR 430a. He also said the white male had very short hair, so short that he could hardly see his hairline. RR 430a-431a, 432a, 440a. Kagarise's description of the individual he saw resembled the general description of Petitioner, including his hairline. Kagarise also described the gait of the white male walking by his property. RR 433a, 442a. Kagarise testified the male was walking "fast" and like he was heading somewhere "on a mission." Id. Kagarise did not recognize this individual as a neighbor and could not identify the man. RR 445a-446a. Kagarise also said that the conduct exhibited by this white male was unusual for that time of day in his neighborhood. RR 446a.

Anthony Crawford, a neighbor of William Kagarise on Snyder Mill Road, observed a grey or silver full-sized van pulled onto the grass off of Snyder Mill Road in the direction away from Trone Road and Smoketown Road between 4:30 p.m. and 5:00 p.m. RR 458a-459a, 462a-466a, 467a-471a. Crawford also saw a white male walking in the direction of the full-sized van. RR 462a-463a, 468a-470a, 474a. On April 2, 2010, police went to the area of Snyder Mill Road identified by Crawford as the location of the van he observed on March 31st. RR 476a, 477a-478a. Police saw two sets of tire tracks on the grass in that location. RR 478a.

The police obtained surveillance video from the People's Bank and an ATM operated by People's Bank that captures footage of vehicles travelling through the

circle in Jefferson Borough, which are minutes from Monica residence. RR 449a-454a, 456a-458a, 554a-555a, 597a-598a. Specifically, the videos captured a silver cargo van travelling towards Monica's house at approximately 2:38 p.m. RR 599a-600a, 602a-607a. The videos next captured that same van heading away from Monica's house at approximately 2:59 p.m. RR 607a-610a.

Stanley Knight was an employee for Armstrong World Industries and worked with Petitioner. RR 669a-670a. Knight confirmed that Petitioner had access to their silver Ford cargo van, which Petitioner could keep overnight so long as no other employee needed it. RR 670a-671a, 672a-673a, 677a. Employees were to sign the van out for use on a calendar that hung near the parking lot. RR 531a, 533a, 628a-630a, 671a, 673a-675a. Employees operated on the honor system in terms of use and refueling of the van. RR 672a.

Knight had a special knowledge of the operation of the silver Ford cargo van. RR 670a-671a, 672a-673a, 677a. Knight helped order the van and customize it for Armstrong. RR 670a-671a, 672a-673a, 677a. Knight also operated the van on multiple occasions. RR 671a, 678a. Knight even parked by the van and observed it from all angles. RR 671a, 678a.

Knight identified the silver cargo van in the surveillance photos as being the Armstrong Ford van, of which Petitioner had access. RR 679a-683a, 686a. Specifically, Knight could see evidence of the customization within the van which was installed post-factory and unique to Armstrong. Id. Knight also identified a silver van going through the Jefferson circle at approximately 3:56 p.m. towards

Monica's house as being the Armstrong van. Id. He further identified the Armstrong van heading away from Monica's house in Jefferson circle at approximately 4:57 p.m. Id. The calendar used to sign out the silver Ford cargo van was missing the page for the month of March. RR 533a, 535a-536a, 674a. Knight said this was unusual, as the calendar would be generally replaced at the end of the year, not by month. RR 674a. Knight did identify Petitioner's initials on the calendar at other times. RR 673a-674a. Petitioner also enter submitted an expense report on March 31st that established Petitioner used the Armstrong van at sometime between and including March 26th and March 31st. RR 533a-534a, 540a. Finally, Knight confirmed that Armstrong did not conduct any business in Jefferson Borough or in the area of Monica Schmeyer's residence. RR 670a.

Jodd Homan testified that Monica allowed him to hunt on her property on Trone Road. RR 506a. Homan observed numerous animal trails through the woods between her house and Trone Road. RR 507a. In early spring, including March 31st, there was no vegetation between Trone Road and Monica's house and that area would be nearly barren. RR 508a. Additionally, Homan knew that there was a well-maintained natural gas pipeline that came from Smoketown Road up across the corner of the victim's property and it was pretty well maintained. RR 509a. The animal trails and lack of vegetation on Monica's property created an easily used short cut from Smoketown Road to Monica's house.

Dr. Samuel Land performed the autopsy on Monica. RR 334a. He concluded that Monica died from a single gunshot wound to the head. RR 337a-338a, 356a. He

retrieved the metal-jacketed bullet and mutilated metal-jacketed bullet fragment from Monica's skull, as well as clipped the fingernails from her hands, and turned them over to police. RR 343a, 348a-349a, 366a-367a.

Dr. Land also observed blunt force trauma in the form of bruising and lacerations to Monica's brow, face and chin. RR 337a-338a, 339a-340a. Dr. Land testified that the bruising was consistent with multiple blows and would not have occurred from a single post-gunshot fall. RR 342a-343a, 345a-346a, 347a, 352a-353a. Moreover, the lacerations were consistent with being struck in the face with a firearm. RR 345a, 346a-347a.

The victim had blood on the bottom of her sock, indicating she stepped in blood. RR 315a-316a, 317a. There were also blood droplets on her pants, suggesting she had been sitting when they fell, as well as on her bedding. RR 311a-314a. The above-mentioned blood was not consistent with spatter resulting from the gunshot wound to her head, but likely came from before she was shot. RR 311a-317a, 344a, 352a-353a.

NMS Labs tested scrapings from Monica's fingernails for Y-STR DNA². RR 389a-394a, 396a-398a. Such testing was obtained because the blunt force trauma injuries sustained by the victim before her death showed a struggle between her and her assailant. RR 348a-349a. Examination of Monica's fingernails from her left hand revealed a full Y-STR profile from a single contributor. RR 400a, 402a-404a, 801a. Petitioner, his paternally-related male relatives, and an unknown number of

² An autosomal DNA test was initially performed on the fingernail. RR 390a. The results of those tests were DNA profiles that were consistent with Monica's DNA. RR 391a.

males in the general population could not be excluded as the potential source of the full profile. RR 400a, 402a-404a, 405a- 409a, 424a-426a, 782a. Monica possessed this full Y-STR DNA profile consistent with that of Petitioner despite no evidence showing any contact between Petitioner and Monica at any time prior to March 31, 2010. RR 272a, 285a, 559a- 560a, 849a- 850a, 892a- 893a.

Corporal David Krumbine, an expert in firearm and tool mark examinations for the Pennsylvania State Police Crime Laboratory, determined that the .32 caliber Speer headstamped cartridge case found at the scene could have been fired from a Kel-Tec manufactured firearm. RR 722a, 730a, 763a-764a. The metal-jacketed bullet from Monica's skull was consistent with what would be contained in the .32 caliber Speer headstamped cartridge case recovered from the scene. RR 729a-730a, 765a-766a. Petitioner was the registered owner of a first generation Kel-Tec P32 (.32 caliber) semiautomatic handgun, purchased from Layman's Gun Shop on February 12, 2005. RR 716a-717a, 699a-700a, 702a-704a.

During a lawful search at Petitioner's parents' family farm, the police recovered an empty box for a 1st generation Kel-Tec .32 caliber pistol with a sales receipt for the firearm from Layman's Gun Shop, as well as a Pennsylvania State Police application of record of sale form. RR 698a-700a. Petitioner signed these forms. RR 560a-561a, 699a-700a, 702a-704a. Police also located undischarged .32 caliber Speer Dot ammunition. RR 697a-698a, 759a. Finally, police recovered a barrel for a 1st generation Kel-Tec .32 caliber semiautomatic firearm. RR 708a-710a, 735a.

The police also searched an area referred to as the “shooting range” where the Jacoby family would target shoot. RR 481a-484a, 635a. Mark Jacoby, Petitioner’s brother, observed Petitioner shoot a .32 caliber semiautomatic firearm from this location. RR 888a-891a. Powell testified that Petitioner had kept his .32 caliber Kel-Tec semiautomatic handgun under their mattress on Petitioner’s side of the bed. RR 946a-949a. At a time prior to this offense, Petitioner moved this firearm to his parent’s residence at the Jacoby family farm. RR 947a. Powell also testified that the firearm was not hers and that Petitioner and his family would target shoot at the pagoda shooting range area of the farm. RR 928a, 948a.

In searching this target shooting area, the police found four .32 caliber Speer Dot cartridge cases, consistent with ammunition located inside the residence. RR 484a-487a, 490a, 635a-638a. Corporal Krumbine analyzed the four shell casings found under the “shooting range” and compared them to the cartridge case recovered from the crime scene. RR 730a-731a, 732a-735a. Corporal Krumbine concluded that the .32 caliber cartridge case from the crime scene was fired from the same unknown firearm as the four .32 caliber cartridge cases found at the shooting range area of the Jacoby family farm. RR 731a-735a, 763a.

Corporal Krumbine examined the bore of the barrel to the 1st generation Kel-Tec recovered from Petitioner’s parents’ residence. RR 735a-736a, 739a. He observed significant damage from scratching-type marks to the inside of the bore of the barrel that was not original with the handgun’s manufacture. RR 737a-742a. He testified the damage to the bore would have required force from a sharp object

and was intentional; it would not have occurred from ordinary cleaning. RR 738a, 741a-742a, 764a.

Corporal Krumbine testified that test fires from the 1st generation Kel-Tec barrel had significant correspondence with the projectile recovered from Monica's head during the autopsy, but no conclusive determination could be made due to the bore damage, as such damage to the bore altered the condition of the individual characteristics of a firearm used for identification. RR 750a, 751a-752a, 753a-756a, 766a. Additionally, Corporal Krumbine found that all projectiles -- the projectile recovered from Monica Schmeyer and all of his test fires -- had a consistent marking caused by a unique defect at the mouth of the 1st generation barrel, found at the Jacoby family farm, which was caused by possibly dropping the barrel while attached as part of the 1st generation Kel-tec firearm. RR 752a-754a.

Corporal Krumbine analyzed the bunter marks on the headstamps of the recovered cartridge cases. RR 759a. A bunter is a tool that forms the headstamp; the headstamp is the number and the letters that are on a cartridge case. RR 759a-760a. The shell casing found at the crime scene was consistent in headstamp and configuration with the cartridge cases found in the ammunition box found in the second floor bedroom of Petitioner's parent's farmhouse as well as the four cartridges found beneath the deck of the shooting range at the farmette. RR 759a-761a.

The police obtained cellphone tower data for Petitioner's cellphone concerning March 31, 2010. RR 492a, 493a-494a, 797a-499a, 556a-557a. This data revealed

that Petitioner headed west from Lancaster toward York an hour before the murder. RR 497a-503a, 562a-563a, 565a-566a. Specifically, Petitioner's cellphone transmitted off of the west side of a cellphone tower in Lancaster at 1:36p.m. RR 497a, 500a-501a, 502a, 562a. Petitioner worked in Lancaster at Armstrong Industries on March 31st. RR 529a-530a, 670a. At 1:48 p.m., Petitioner's cellphone used the cone facing due north from the cellphone tower located at 421 Wheaton Street in York County, which is near I-83 and Route 30. RR 497a-480a, 500a-501a, 502a, 562a-563a. Petitioner's cellphone records do not reflect any incoming and outgoing calls between 1:48 p.m. and 8:04 p.m., which encompasses the time of the home invasion robbery and murder of Monica Schmeyer. RR 498a, 499a-500a.

3. After Petitioner was arrested and charged, he sought to suppress the evidence obtained as a result of the search warrants, as well as his DNA sample, but the trial court denied the motions. Petitioner was convicted at a jury trial in October 2014, and ultimately sentenced to death. Pet. App. A7-A8.

4. Before the Pennsylvania Supreme Court, Petitioner raised numerous issues, including challenges to the sufficiency of the evidence to support his first-degree murder conviction and to the validity of the search warrant for his home, where the ground-down second-generation barrel was recovered. In separate sections of its opinion, the court upheld the conviction against the sufficiency challenge, Pet. App. A9-A13, and also denied relief on the search warrant claim. Pet. App. A18-A29. Although the court concluded that the search warrant on Petitioner's home lacked probable cause, the court held that the error was harmless

in light of the “overwhelming” evidence against Petitioner, without the second-generation barrel. The court concluded that the barrel “did not contribute to the verdict in any meaningful way.” Pet. App. A29.

5. Justice Mundy, joined by Justice Baer, concurred, noting that she would not hold that the search warrant lacked probable cause. Pet. App. A47-A48 (opinion of Mundy, J., at 1-2). Chief Justice Saylor dissented, noting that he also believed that search warrant was supported by probable cause. Pet. App. A51 (opinion of Saylor, CJ., at 1). But he argued that if the search warrant did lack probable cause, he would not join the majority’s harmless-error analysis, because he felt that it gave too much weight to the Commonwealth’s evidence rather than considering the evidence favorable to Petitioner. *Id.* at A52-A53 (opinion of Saylor, CJ., at 2-3).

Argument

The Pennsylvania Supreme Court applied settled legal standards for harmless error to the particular facts of this case. The court looked to its well-settled precedent, derived from this Court’s case law, to analyze the import of the wrongly admitted evidence to the jury’s verdict, noting that it had to find the error to be harmless beyond a reasonable doubt. Pet. App. A27. The court thus appropriately applied this Court’s harmless-error rule announced in *Chapman*. There is no conflict with this Court’s precedent, nor does the petition suggest any other possible reason to support a writ of certiorari in this case.

On the merits, the court conducted careful analysis of the record as a whole, concluding that the overwhelming evidence of guilt ensured that the evidence that should have been suppressed “did not contribute to the verdict in any meaningful way.” Pet. App. A29. Further review of this particularly fact-bound holding is unwarranted.

1. This petition presents none of the “compelling reasons” that justify this Court’s review on a writ of certiorari. *See* SUP. CT. RULE 10. Petitioner ostensibly identifies a “direct conflict with this Court’s precedent” as the basis for certiorari, Pet. 16, but an examination of the Pennsylvania Supreme Court’s decision reveals no conflict whatsoever.

In conducting its harmless error analysis, the Supreme Court of Pennsylvania properly stated the standard for assessing harmlessness, noting that the Commonwealth bore “the burden to prove beyond a reasonable doubt that the error did not contribute to the verdict.” Pet. App. A27. It did not simply apply its sufficiency analysis; its analyses of the sufficiency challenge and the harmless error issue were distinct. The court relied on two Pennsylvania cases, *Commonwealth v. Wright*, 961 A.2d 119 (Pa. 2008) and *Commonwealth v. Chmiel*, 889 A.2d 501 (Pa. 2005). Both of those cases in turn relied on *Commonwealth v. Story*, 383 A.2d 155 (Pa. 1976), “the seminal case” in Pennsylvania harmless error law, *Commonwealth v. Williams*, 573 A.2d 536, 538 (Pa. 1990), which developed the Pennsylvania law after extensive discussion of this Court’s precedent in *Chapman* and other cases.

See generally Story, 383 A.2d at 162-67. Far from conflicting with this Court's precedent, the decision of the Pennsylvania Supreme Court carefully applied it.

In fact, Petitioner does not actually claim that the Pennsylvania Supreme Court applied the wrong legal standard of sufficiency analysis or failed to acknowledge this Court's requirements for harmless error. Instead, he takes issue with the way in which the court conducted its review. *See* Pet. 7, 9 (admitting that the court "ostensibly considered all the evidence presented at trial through the harmless error lens"). Essentially, Petitioner disagrees with the conclusion reached by the Pennsylvania Supreme Court. This is not an appropriate basis to grant certiorari. At best, what Petitioner challenges is "a misapplication of a properly stated rule of law," for which, as this Court's rules note, "[a] petition for a writ of certiorari is rarely granted." SUP. CT. RULE 10. For, as this Court has noted, it "does not sit as an error-correction instance." *Cf. Halbert v. Michigan*, 545 U.S. 605, 611 (2005).

The petition identifies no other reason justifying review on a writ of certiorari, with no suggestion that the decision below conflicts in any way with decisions by other state courts of last resort or of a United States court of appeals.

2. Petitioner makes no attempt to establish that the question presented is one of special importance, has far-reaching implications, or is evidence that courts routinely refuse to apply or simply misapply this Court's harmless-error precedent. In fact, the implications of the decision below are limited to this case; the Pennsylvania Supreme Court conducted a record-bound analysis, reviewing the

evidence presented at trial in order to reach its conclusion that the improperly admitted evidence “did not contribute to the verdict in any meaningful way.” Pet. App. A29. This necessarily fact-bound conclusion, even if incorrect, poses no threat to future cases. It is limited to the facts of this case, which involved only the court’s ability to conclude that, in light of the evidence from DNA, ballistics, eyewitness accounts, Petitioner’s company van, alteration of his work calendar, the alteration of the first generation barrel establishing tampering and consciousness of guilt, his failure to attend the social club meeting on the day of the murder or answer his cellphone, the correlation between when Petitioner turning off his phone and his direction of travel (towards the victim’s house), and his knowledge of the victim’s habit of keeping cash in her home and her likelihood of being home alone that day, the admission of the second-generation barrel was harmless beyond a reasonable doubt.

3. As already discussed, even if the Pennsylvania Supreme Court erred in how it conducted its harmless error analysis, it correctly applied the standard from this Court’s precedent. Thus, its opinion is not in direct conflict with decisions of this Court and any error would not justify this Court’s review. But the court did not err in any event.

This Court’s explanation of the harmless error standard announced in *Chapman* instructed that a court finding an error to be harmless “must be able to declare a belief that it was harmless beyond a reasonable doubt.” *Chapman*, 386 U.S. at 24. The court did just that in the decision below. Pet. App. A27. A

reviewing court must also determine “whether the State has met its burden of demonstrating that the admission” of the wrongful evidence did not contribute to the conviction. *Arizona v. Fulminante*, 499 U.S. 279, 295-96 (1991) (opinion of White, J., for the Court). The court here also made that determination. Pet. App. A27.

Petitioner’s real complaint is that Petitioner does not like the conclusions of the Pennsylvania Supreme Court. Petitioner appears to argue that the court did not mechanically discuss each piece of evidence favorable to him in its harmless error section before assessing whether the error was harmless in light of the trial record. But that is not what this Court’s case law requires. Rather, the court must assess the error that occurred “in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.” *Fulminante*, 499 U.S. at 307-08 (opinion of Rehnquist, C.J., for the Court).

The opinion below, with its thorough explanation of the evidence in the case, demonstrates that the court did make its harmless decision in the context of the entire trial record. The court did not need to list anew in its harmless section each piece of evidence that tended to prove or disprove Petitioner’s guilt, as it instead referred back to its already extensive discussion of the evidence presented at trial in its resolution of Petitioner’s many other issues on appeal. *See, e.g.*, Pet. App. A2-A7, A10-A13, A16-A18. And the court explicitly noted that it was reviewing the evidence “in light of the standard” for harmless. *Id.* at A27. It discussed the significant evidence of Petitioner’s guilt that factored into its decision.

Id. at A27-A29. The court did not “ignor[e]” that the Commonwealth bore the burden of proof or that there was evidence favorable to Petitioner, as Petitioner claims. Pet. 7. Instead, the court held that the Commonwealth had met its burden. Pet. App. A27.

Far from ignoring Petitioner’s evidence, the court noted and addressed favorable points for Petitioner. The court acknowledged that evidence at trial did not establish “with precision” how frequently Petitioner attended the social club meetings and that no explicit testimony placed Petitioner at a specific meeting where the victim’s keeping money in envelopes or likelihood of being home alone during the month of March was discussed. Nevertheless, the court concluded that such testimony was not necessary because evidence generally placed Petitioner at some of the meetings, and “[t]he circumstantial evidence proved both the crime and the identity of the perpetrator.” Pet. App. A28 n.9. Elsewhere in the opinion, the court acknowledged Petitioner’s challenges to the DNA evidence. Pet. App. A44 n.15. It also noted his highlighting of time discrepancies between eyewitness testimony and the surveillance video of his employer’s van, but dismissed these as “minor inconsistencies.” Pet. App. A16. Thus, in conducting its review of Petitioner’s case, the Pennsylvania Supreme Court was not blind to Petitioner’s evidence, but the overwhelming evidence of Petitioner’s guilt led it to conclude that the admission of the second-generation barrel purchased after the murder was harmless.

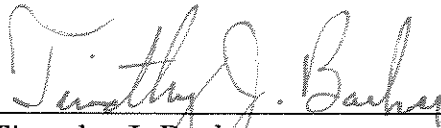
As this Court has explained, “An otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the

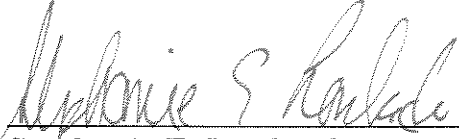
constitutional error was harmless beyond a reasonable doubt.” *See Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986). The Pennsylvania Supreme Court conducted its analysis in line with this Court’s precedent, performing a thorough review of the overwhelming evidence in this case in light of the entire record, and reached that exact conclusion. The mere fact that Petitioner does not like this conclusion is not a basis for this Court to grant certiorari. Because the Pennsylvania Supreme Court’s decision in this case did not conflict with this Court’s precedent, nor did it involve any error, this Court’s review is not warranted.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,


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