

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARVIN PRICE - PETITIONER

vs.

SUPERINTENDENT VINCENT MOONEY - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FEDERAL COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MARVIN PRICE

SCI R/TREAT

660 State Route 11

Hunlock Creek, PA 18621

(570) -

QUESTION(S) PRESENTED

WHETHER THE COURT OF APPEALS CONCLUSION WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED-- THE PROSECUTION SUPPRESSED INFORMATION THAT WOULD HAVE DISCLOSED THAT THE VICTIM HAD BEEN IN AN EARLIER PHYSICAL ALTERCATION AND ANOTHER PERSON WAS NAMED OVER A DRUG BEEF. AS WELL AS, PROSECUTION TEAM THREATENING "ALIBI WITNESSES".

WHETHER SUMMARILY DISMISSAL OF PETITION CONTAINING SUFFICIENT ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS DUE TO PRO SE PETITIONER'S GENERAL LACK OF EXPERTISE?

WHETHER MATTERS IN WHICH THE COURT OF APPEALS HELD INVALID LAW OF THE UNITED STATES AND PROVISIONS OF THE CONSTITUTION FOR FAILURE TO CALL WITNESSES AND PROSECUTION'S USE OF FALSE TESTIMONY WHICH IT KNEW AND SHOULD HAVE KNOWN OF AND FAILED TO CORRECT IT?

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

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BRADY V. MARYLAND, 373 US 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)..3,5,6,8,14

HAINES V. KERNER, 404 US 519, 520-521, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)..5

HASKELL V. SUPERINTENDENT, GREENE SCI, 866 F3d 139 (3d. Cir. 2017).....5

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

/ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

/ is unpublished

The opinion of the United States district court appears at Appendix "B" to the petition and is

/ is unpublished

JURISDICTION

/ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 5, 2018

/ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 5, 2018, and a copy of the order denying rehearing appears at Appendix "C".

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supreme Court also has exclusive jurisdiction of appeals from final order of the District Court and Court of Appeals.

This case involves Amendment XIV to the United States Constitution, which provides:

Section I.: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of Law.

The Amendment is enforced by Title 28 Section 22554 United States Code Annotated:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States

The Amendment is enforced by Title 28 Section 2072 United States Codes:

(a)The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.;

(c)Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

The goals here are to ensure the wise and just use of information in the making of decisions which stand to protect the right to privacy, human dignity, freedom, and other important values and interests ...that which is the keystone of liberty and the heart of the Law.

STATEMENT OF THE CASE

WHETHER THE COURT OF APPEALS CONCLUSION WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED - THE PROSECUTION SUPPRESSED INFORMATION THAT WOULD HAVE DISCLOSED THAT THE VICTIM HAD BEEN IN AN EARLIER PHYSICAL ALTERCATION AND ANOTHER PERSON WAS NAMED OVER A DRUG BEEF. AS WELL AS, PROSECUTION TEAM THREATENING "ALIBI WITNESSES"?

Petitioner asserts, that there was available information pointing towards his innocence. A female associate of Mr. Troy Jones [deceased], Tracy Morgan had told a police officer that she had been told by [deceased], "if he didn't get these dudes money right, they was gonna' kill him". And, that there was another statement provided to a police officer that "a light skin dude with a hood on ran by", after a Mr. Altoru Hoyle came out a house four doors down when he heard the shots. Then, there is the fact that a Ms. Shelley Betthea and Ms. Angie Shakur had both been intimidated and threaten|| by police officers, detectives and assign||ed prosec||utor. Along with a police officer taking the stand and testifying falsely.

The Court has stated that the elements of a Brady violation are as follows: 1)the evidence was favorable to the petitioner; 2)the evidence was suppressed by the state; 3)the evidence was material to the defense. Evidence is material if there is a reasonable probability that the suppressed evidence would have produced a different verdict.

Evidence is favorable if it tends to show the accused is not guilty or impeaches a prosecution witness. Evidence is material if there was a reasonable probability of a different outcome had the evidence not been suppressed. The suppressed evidence must be considered collectively and not item-by-item.

However, in recent decision, the state cannot be allowed to continue to rely upon and be so quick to raise defenses it relied so heavily upon yesterday. Such as; it may not add a due diligent requirement. It may not add a timeliness requirement. It may not defend on the ground that the defense attorney could have discovered the suppressed evidence. It may not defend on the ground that the information suppressed would not have been admissible evidence. It may not defeat material||ty on the ground that the rest of the evidence was sufficient to support the conviction.

Petitioner contends that Police Officer Benton a.k.a Kennedy is corrupt. Petitioner is an innocent man that was framed for murder. P/O Benton (Kennedy) along with other officers framed defendant and fabricated evidence to win a conviction. The Philadelphia police officers deliberately created a false identity, filed erroneous reports, wrongful conviction, wrongful sentencing and false imprisonment of defendant for more 15 years. Detectives falsely accused defendant for charges of murder. Critical time was lost while police were distracted from the real perpetrator, focusing instead on building the case against an innocent person.

Detectives erred in their paperwork, starting with misidentification of defendant. Detectives created faulty evidence, including taking complicit actions with alibi witnesses and others. Police omitted vital information.

Failure to uphold the Fifth, Sixth, Eighth, and Fourteenth Amendments. In the Commonwealth v. Marvin Price, due process was not executed. Justice was not served. These actions set off a myriad of systemic injustices that failed to uphold the Fourteenth Amendment's safeguards perpetuated throughout each phase of the judicial process from false records to wrongful imprisonment.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Here, Officer Benton (Kennedy) outright fabricated her testimony and evidence against Mr. Price (defendant). While Mrs. Selber knowingly failed to correct it. (See N.T. 1/17/08 pgs 25-37). There are actual existing official reports that cite Officer Benton prior to or upon arrival of emergency transport. Yet, every court stage proceeding chose to ignore the existence of this material fact creating a genuine issue to grant either an evidentiary hearing or writ of habeas corpus.

After said denial from Court of Appeals, a recent decision from the Third Circuit held that a habeas corpus petition will be granted where the prosecution presents a witness who testifies falsely, the prosecutor know or should have known the testimony was false but failed to correct it, and there is a realistic chance that the perjured testimony influenced the judgment of the jury. The Court there, held that this type of Brady violation demands strict scrutiny, and proof of actual prejudice is not required.

See, *Haskell v. Superintendent, Greene SCI*, 866 F3d 139 (3d Cir. 2017).

In this instant matter, the state court unreasonably applied clearly established United States Supreme Court precedent in denying petitioner's Brady and ineffective assistance of counsel claim. Here, the prosecutor suppressed evidence favorable to the defense in violation of Brady, and it was objectively unreasonable for the state court to conclude that there was no reasonable probability that the jury would have reached a different result. The prosecution suppressed information indicating the description belonging to the real killer and using testimony which it knew was false. And, that a police officer taking the stand, without impeachment material, testimony will have a weighty influence upon the jury.

WHETHER SUMMARILY DISMISSAL OF PETITION CONTAINING SUFFICIENT ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS DUE TO PRO SE PETITIONER'S GENERAL LACK OF EXPERTISE?

Pennsylvania courts, at times, appear to frown upon pro se litigants and pleadings.

In the instant matter, there were actual physical tangible existing facts in the record of material fact(s) showing a genuine issue which is the standard and burden to move forward for trial/hearing.

If the court can reasonably read pleadings to state a valid claim on which the litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction,...

Pro se pleadings, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers," *Haines v. Kerner*, 404 US 519, 520-521, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

Presumptions and rules, of course, have their place and utility in the law. But in reviewing matters in pro se and prisoner matters, the appellate courts must walk a fine line between promoting certainty, finality and fairness that place while also taking into account reality of the circumstances presented, ideally in a way that promotes justice for all litigants.

The United States Supreme Court recognizes this tension. For example, *Houston v. Lack*, 487 U.S. 266, 270-72 (1988), states, "Such prisoners cannot take the steps other litigants can take,... unskilled in law, unaided by counsel, and unable to leave the prison, his control over the processing of

his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access."

As pro se prisoners are no longer members of the public due to their incarceration, and, 'without counsel's providing a conduit to publicly available information, a presumption of access is cynical, and the strength of the general rule falters".

WHETHER MATTEI'S IN WHICH THE COURT OF APPEALS HELD INVALID LAW OF THE UNITED STATES AND PROVISIONS OF THE CONSTITUTION FOR FAILURE TO CALL WITNESSES AND PROSECUTION'S USE OF FALSE TESTIMONY WHICH IT KNEW AND SHOULD HAVE KNOWN OF AND FAILED TO CORRECT IT?

The state court unreasonably applied clearly established United States Supreme Court precedent in denying petitioner's Brady and ineffective assistance of counsel claim. In this case, the prosecutor suppressed evidence favorable to the defense in violation of Brady, and it was objectively unreasonable for the state court to conclude that there was no reasonable probability that the jury would have reached a different result.

Furthermore, the state court unreasonably applied Strickland's deficiency standard in concluding that counsel's failure to investigate and call witnesses did not prejudice the defense.

The prosecution suppressed information indicating other "names" than 'Marv' probably pointed to and Identified the real killer, threatened and intimidated 'alibi witnesses', and knowingly allowed false testimony to be given without correcting it.

These constitutional violations demand strict scrutiny, as they violated due process.

The offer of proof of the court of appeals and state courts unreasonable determination that reasonable jurists would find debatable or wrong. That their disposition of petitioner's claims that his Pennsylvania and federal rights were violated under the Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, is entitled to review.

THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Considerations Governing Review on Certiorari:

The character of the reasons for this Court's considerations in these matters:

The Third Circuit Court of appeals has entered a decision in conflict with the decision of another decision similar to this instant matter herein, on the same important matter, which has decided an important federal question where the decision here is in conflict with its recent decision and has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

On December 21, 2017, the United States Court of Appeals for the Third Circuit at no.: 17-3241 (see Appendix "B"), relied upon the Magistrate's decision for its denial of certificate of appealability. The District Court (See Appendix "C"), entered its ruling October 25, 2017.

However, during the pending status of petitioner's §2254 motion, a new Third Circuit case held that a habeas corpus petition will be granted if the petitioner proves that the prosecution presented a witness who testified falsely, the prosecution knew or should have known the testimony was false and failed to correct it, and there is any possibility that the perjury influenced the judgment of the jury. See *Haskell v. Superintendent, Greene SCI*, 866 F3d 139 (3d Cir. 2017). The Court there held that this type of Brady violation demands strict scrutiny and proof of actual prejudice is not required.

This important question of federal law is decided in a way that conflicts with the decision by the magistrate, District court and court of appeals in this instant matter which raised and addressed the same federal question, which was answered in *Haskell. Id.*

Where the courts in conflict; and thereby become divided requires immediate determination in this Court's discretionary jurisdiction. Where the Court of appeals is split among itself, and cannot come to addressing the federal question to establish uniformity, then there is a showing that the case is of such imperative public importance as to justify immediate determination in this Court to uphold and to enforce both due process and equal protection, as intended by the United States Constitution.

For the foregoing reasons the Court should grant certiorari.

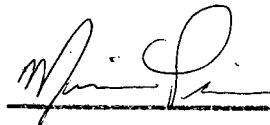
CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted or remanded to the state court for an evidentiary hearing with instructions for further consideration of the actions raising scrutiny. And, for any further proceedings the Court may deem as necessary.

Respectfully submitted,

 Next Friend

Dated: March 26, 2018

 HW5153

Marvin Price

Inst.#HN-5153

Pro Se